the parties belong are reputed to have taken place openly ('publiquement'.)" Taking up the Code and reading it, as

Taking up the Code and reading it, as it must be read, in the light of the foregoing facts, we find the following provisions which call for consideration in dealing with the question submitted:

"128. Marriage must be solemnized openly; by a competent officer recognized by law."

This is the fundamental provision designed to provent claudestinity.

of the same object, and being the natural sequence of the provisions enacted for the same purpose, regarding the publication of banes in the church or churches to which the parties belong (Articles 130-3 and 578 C. C.), is Article 63

which says:

"63 The marriage is solemnized at
the place of the domicile of one or other
of the parties. If solemnized elsewhere,
the person officiating is obliged to verify and ascertain the identity of the

parties."

The latter sentence obviously provides for such exceptional cases as those of persons having no fixed residence ("vagi") or no residence in the province. The form in which the Article is expressed would be inexplicable if it were not thereby intended to prescribe that as a general rule marriage must take place at the domicile of one of the parties. I see no reason why this pro-vision should not apply to Protestants as well as Catholics. The policy which

underlies it so requires.
" Domicile" in this article means place of residence (McMullen v. Wads-worth, 14 A. C., 631, 636) and, in the case of Catholics, and probably of Angli-cans, who have parochial organization, it means the parish in which the parties, one of them, resides. In the case of person belonging to a religious body having neither parochial organization nor its equivalent, or of a person belong-ing to no Church, domicile would prob-ably mean the municipality in which he ably mean the municipality in which he resides. The Catholic parish in Quebec is legally recognized. See R. S. Q., 1909, Articles 4,296 "et seq." It is in the parish church, private chapel, or mission, and for the territory attached mission, and for the territory attached to it that the registers are kept (Articles 42 C. C.) It is the proper curé of the parties, i. e., the parish priest, who is authorized to solemnize the marriage. It is at the Church and within the territory for which he is authorize to keep registers that he is empowered to officiate. While in country places the to officiate. While in country places the parish and the municipality are coterminous, such cities as Montreal and Quebec are divided into many parishes which the territorial limits are well defined, and only within them is the cure authorized to discharge his function and to exercise his rights as parish priest. Every consideration points to his parish being for the purpose of Art. 63 the domicile of the Catholic at all

Publication of banns in the Church to which the parties belong, marriage at the domicile and solemnization by a competent officer are the great safeguard provided by the Code against clandes tinity. In all countries where the civil law prevails, territorial limitation of the jurisdiction to solegalize marriage appears to have been established for that purpose—a policy inspired, no doubt, by the Tridentine Decree.

To further assure obedience to the legal prohibitions in respect to consanguinity, pre-contract and minority, the non-observance of which claudertinity too often serves to cloak, the Code has provided (Articles 136 "et seq.") for formal opposition being made to mar riages by interested persons. The effi cacy of these provisions depends upon the restrictions imposed as to the imposed as to place, time and publicity of solemniza tion by the articles to which allusion has just been made. Article 1,107 of the Code of Civil Procedure, which must be read with the provisions of the Civil Code (Article 144 C. C. requires that the opposition shall be served "upon the functionary called upon to solemnize the marriage," and Article 61 C. C. directs that the disallowance of an opposition shall be "notified to the officer charged with the solemnization of the marriage (See also Article 1,109 by the laws of the Cathelic Church, it C. C. P.) By Article 65 C. C. the "Act of Marriage" which the celebrant is required to prepare and sign, must "inter alia" state "that there has the parameter. been no opposition or that any opposi-tion has been disallowed." These pro-visions accord only with the view that in the ordinary case and as a general rule there must be some one, or at most rule there must be some one, or at most two, defined and ascertainable functionaries charged with the celebration of a marriage and that the jurisdiction of the competent officer mentioned in Article 128 is necessarily territorially restricted as indicated by Article 63; and that is the only logical outcome of the provisions of Articles 130 "et seq." The purpose of such provisions and their effipurpose of such provisions and their effi-cacy to attain the object sought by the Legislature—the prevention of clandes-tine marriages, incestuous marriages, bigamous marriages, and marriages be-tween minors without the consent of parents—are well stated by Mr. Jus-tice Lemieux in Durocher v. Degre at p. 488 "et seq." To hold, as is main-tained by those who contend for a nega-tive answer to both branches of the second question, that every officer second question, that every officer authorized to keep a marriage register is competent to solemnize the marriage of any two persons who come before him, tever their residence and whatever whatever their residence and whatever their religion, provided only they produce to him a license from the Crown, is to destroy at once and completely all the elaborate safeguards which the Legislature has provided to prevent those manifest evils. As put by Mr. Justice Lemieux;

evils. As put by Mr. Justice Lemieux:

"Can it be supposed for an instant that the codifiers after having ordained the publication of marriage (a) in the church of the parties; (b) before a public officer, belonging to the worship of the parties, (c) by their cures, (d) and their having left to the religious authorities to whom the parties are subject

Articles 42, 44 and 45 now call for at-

"42. Acts of civil status are inscribe in two registers of the same tenor, kept for each Roman Catholic parish church, private chapel or mission, and for eac Protestant church or congregation or other religious community, entitled by other religious community, entitled by law to keep such registers, each of which is authentic, and has in law equal

"44. The registers are kept by the rector, curate, priest or minister having charge of the churches, congregations, or religious communities or by any other officer entitled so to do.

"In the case of Roman Catholic churches, private chapels or missions, they are kept by any priest authorized by competent ecclesiastical authority to celebrate marriages or administer bap-tism and perform the rights of burial.

"45. In the case of Roman Catholic churches, private chapels or missions, the register must be granted under the name mentioned in the certificate of authorization by the Bishop, the Ordinary of the diocese, the Vicar-General, or the Administrator, and the priest on presenting the register for authorities. presenting the register for authentica-tion must exhibit the certificate of

authorization."

In these articles the Code expressly recognizes the power of the Catholic Bishop to appoint priests for the solemnization of marriage and to confer upon them the requisite authority.
Their right to keep civil registers is
made to depend upon this authorization
of the Bishop and their competency to
solemnize marriage for civil purposes is in turn made to depend upon their being so authorized to keep registers. (Article 128.)

This latter article, which reads as follows:
"129. All priests, rectors, ministers and other officers authorized by law to keep registers of acts of civil status, are etent to solemnize marriage.

"But none of the officers thus author ized can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion and the discipline of the church to which he belongs." is thesheet-anchor of those who conten

that every officer authorized to keep a marriage register is competent to solemn-ize any and every marriage. It is, on its face, not a faculative provision. It is declamatory of a legal competence already existing—which in the case of ministers of dissenting bodies had been conferred by the statues consolidated in the C. S. L. C., 1861, c. 20, and by subsequent similar acts. It is necessarily general in its terms. It must be ly general in its terms. It must, as must every provision of the Code, be read with the other articles and be so onstrued that their efficacy shall not be destroyed. It is consistent with the limitations which the provisions above discussed necessarily entail. Having regard to the facts that solemnization by their proper out or by a priest acting with his authority or that of the ordinary, was an essential condition of the validity of marriage by dinary, was an essential condition of the validity of marriage by the civil law of Canada at the time of the Conquest, that this continued to be the law in respect to Catholics after the Conquest, that the instructions to the codifiers were to express the existing law, that in their report they say their object has been to preserve to everybody "the enjoyment of his customs and practices according to which the celebration of ording to which the celebration of marriage is entrusted to the minister of the worship to which he belongs, and that they inserted numerous provisions in the Code compatible only with that intention, I have not the slightest doubt that, upon a proper con-struction, Article 129 cannot be read as conferring the general and indiscriminate power to solemnize marriage which Mr. Lafleur felt compelled to contend for, and which would be contend

gard to marriage makes it clear it was he purpose of the Legislature of Quebec I am of the opinion that, under the riage of two Catholics in the Province of Quebec that the celebrant should be the parish priest of one or other of them, or a priest acting with his permission, or with that of the Bishop. Since the marriage may be solemnized at the domicile of either party (Art. 63), this requirement of the Civil Law seems to be inapplicable to the marriage of a Catholic with a non-Catholic. The effect of lic with a non-Catholic. The effect of the other articles of the Civil Code rethe other archers to the Civil Code to the provisions of the civil law as it stood at the Conquest, with some subsequent legislative modifications, therefore harmonizes with that of Art. 127, C. C., which recognizes and adopts for Catholics the law of the Catholic Church as it stood in 1866 in regard to impediments to marriage otherthan those enumerated in the preceding articles of the fret chapter of the Title on Marriage. On no construction of the various arti-

for, and which would inevitably entail

upon the Province the very evils which the whole tenor of its enactments in re-

S. C., 523.

Against the view supported by these authorities, there are only the decisions of two judges of the first instance—one in Delpit v. Cote, Q. R., 20 S. C., 358, in effect overruled within two months by the Court of Review in Darocher v.

their having left to the religious authorities to whom the parties are subject the discretion of granting or of refusing the dispensation of such publication would, after providing for all this series of formalities to be carried out by the curé and the religious authorities in the church of the parties, have left persons after all free to contract marriages before no matter what minister and of a different religion. The idea seems to us neither reasonable nor probable."

The Code in regard to the obvious reason that the law which governs property and civil rights is, in the main, the French law as it existed at the time of the Cession of Canada, after providing for all this series of formalities to be carried out by the curé and the religious authorities in the church of the parties, have left persons after all free to contract marriages before no matter what minister and of a different religion. The idea seems to us neither reasonable nor probable."

The Code in regard to governs property and civil rights is, in the obvious reason that the law which governs property and civil rights is, in the church of the Gospel," the power or authority to solemnize marriage. (Arts. 128 and 129.) That is derived from the law in the case of Provinces."

There cannot be the slightest doubt that the representatives of Lower Canada in insisted that, from the subject of "Marriage," which, is the original draft of the Confederatiou pact, was given in its entirety to the Dominion

age registers for civil purposes (Arts. 44 and 45, C. C.), that right, in turn, involving the civil competence of the priests so authorized to solemnize marriage. (Art. 129, C. C.)

In the Catholic Church, the Bishop has the power to dispense with the publication of banns. The French law in force in Lower Canada recognized that right for civil purposes, and by Arts. 59 and 134; C. C., it is continued. The license issued by the Crown is nothing more than a substitute or an equivalent, in the case of Protestants, for the Bishop's dispensation from the publication of banns, which Catholics must obtain if they wish to be married without such publication, and probably also from the obligation of marriage in the church. obligation of marriage in the church. It is urged that it also does away with the requirement of marriage at the domicile, but I more than doubt that.

Art. 57. prescribes that

"57. Before solemnizing a marriage,

the officer who is to perform the cere-mony must be furnished with a certificate establishing that the publication of panns required by law has been duly made, unless he has published them himself, in which case such certificate is

by Art. 59 (a) it is provided that

'In so far as regards the solemnization of marriage by Protestant ministers
of the Green's regards the solemnisters of the Gospel, marriage licenses are issued by the Department of the Provincial Secretary, under the hand and seal of the Lieutenant-Governor, who, for the purposes thereof, is the competent authority under the preceding article."

The issue of a license to a minister to solemnize a projected marriage does not confer on him the requisite power to do so. It is an authority to the minister to be chosen, if he be competent by law, to proceed with the marriage without proof of the publication of banns and probably elsewhere than in his church. If the minister be otherwise incompetent to solemnize the marriage, the license has no greater validating effect upon it than it would have if the parties were legally incompetent to contract mar-riage. The minister is personally pro-tected from any action or liability for damages by reason of any legal impedi-ment of which he was not aware; (Art.

That marriage licenses issued by the Crown was intended solely for Protestants is made clear by a reference to Article 59 (a) and to the R. S. Q. (1909), Articles 1494, 1495, 1497, 1498 and 2943. The provisions for licenses are confined to the solemnization of marriage

fined to the solemnization of marriage by Protestant ministers and the fees derived from them are by law devoted to Protestant superior education. There is nothing therefore in the provisions of the law regarding licenses inconsistent with the view that a mar-riage between Catholics in the Province of Quebec can be validly solemnized only by the cure of one of the parties or by a priest authorized by him or by the bishop.

I express no opinion as to what persons should for civil purposes be desubject as Catholics to the impediment which has been under discussion.

That question has not been asked.

Before concluding this opinion I think it right to direct attention to the important, but too often overlooked, provisions of Articles 163 and 164 of "163. A marriage, although declared null, produces civil effects, as well with regard to the husband and wife as with

regard to the children, if contracted in good faith." If good faith exist on the part of one of the parties only, the marriage produces civil effects in favor of such party alone, and in favor of the children of the marriage."

second question are that, in the Province of Quebec, marriages between per sons who are both Catholics solemnized before a Protestant clergyman or min-ister are civially invalid: marriages be-Catholic, commonly called mixed marriages, which would otherwise be legally binding, are civilly valid, whether solemnized before a Catholic or a Proresults flow from the provisions of the civil law of that Province, taken by themselves; and also from the law of the Catholic Church, so far as it is the Catholic Church, so far as it is given civil effect by Article 127 of the Civil Code. The recent decree, known as Ne Temere, I understand not to be within Article 127, C. C. It has not received any other legislative recognition, and has, therefore, no civil effect.

I would therefore answer the second question submitted as to clause (a) in the affirmative, and as to clause (b) in the perative.

the negative.

I answer the third question in the negative, for the reasons which Mr. Justice Davies has assigned in support of the negative answer to the first

As was so aply pointed out by Mr. Smith, the special and unique provision made by section 93 of the British North America Act for Federal remedial legislation, intended as a protection to religious minorities in educational matters, precludes the idea that, in regard to other subjects assigned to the evaluation on no construction of the various articles of the Code dealing with marriage can the obvious policy of the Legislature be carried out, or can due effect be given to them all. This conclusion is in accord with the great weight of the jurisprudence of the Province of Quebec. In addition to Laramee v. Evans. 24 L. C. J., 235 and 25 L. C. J., 261 and Durocher v. Degre, Q. R., 20 S. C., 456, already cited, I may refer to Globensky v. Wilson (1886), Q. R., 2 S. C., 174; Vaillanconrt v. Lafontaine, 11 L. C. Jur., 305; and Valade v. Cousineau, Q. R., 2 S. C., 523.

Against the view supported by these authorities, there are only the decisions of two judges of the first instance—one in Delpit v. Cote, Q. R., 20 S. C., 358, in Delpit v. Cote, Q. R., 20 S. C., 358, in Delpit v. Cote, Q. R., 20 S. C., 358, in The Course of the Provincial Legislatures, as affording another argument of some cogency in support of the negative answer gency in support of the negative answer to the third question: "This Province of Quebec is omitted from this section," Degree and the other in Hebert v. Cloustre, Q. R., 41, S. C., 249.

The effect of the provisions of the statutes and of the Code in regard to

The Rev. Father Pope, S. J., at a re-ception given by the Newman Society of Oxford in honor of Cardinal Bourne, speaking of the losses the Church had sustained, said:

"Not least among our heavy losses has been the loss of the Universities. To narrow our view to what concerns us as religious in Oxford, there are Durham College and Gloucester Hall (now Trin-ity and Worcester Colleges) lost to the Order of St. Benedict, there is St. John's College lost to Cistercians, Christ Church to the Augustinian Canons; while of Oseney Abbey and Rowley Abbey, Austin Friars, and the convents of Franciscans and Dominicans, scarce a trace remains. Our ancient homes are a trace remains. Our ancient nomes are destroyed or know us no more, but the Religious Orders once more dive in Ox-ford—living sons of St. Benedict and St. Francis and of St. Ignatius, too; for alone of Religious Orders, the Society, having nothing to lose, positively gained by the loss of Oxford; it gained, as Ox-ford lost, Campion, Parsons, and holy and distinguished men even down to our

SEEDS OF CATHOLIC TRUTH

Continuing his address, Father Pope referred to the part taken by Catholics in the life of the city and the University, and predicted a greater influence when the seeds of Catholic truth now being sown shall have yielded a harvest:

"God is with us, as He was with our "God is with us, as He was with our ancestors. We are here with the blessing of the Holy See and the full approval of the English hierarchy. We are here to wield, in the first place, what must ever be the chief arm of a religious Holy Mass; we chant the Liturgy; we preach and we write, and we are acquiring knowledge, at once the knowledge of books and the knowledge of men. We are coming better to understand England and to be ourselves better understood of Englishmen; we are breaking words, Catholics, not so long since, were to the popular imagination "a lion ramto the popular imagination " a lion pant, a griffin, a wivern, a salaman We are resuming our native place in the city and in the life of the Nation. Oxford, alas! is far from Catholic, but our eyes behold some seeds of Catholic truth germinating within her."

CATHOLIC STUDENTS' RESPONSIBILITY Cardinal Bourne, in replying to the various addresses, dwelt earnestly on the duty of the Catholic in the Univer-sity, and told of the interest with which

he had studied Catholic progress and influence in Oxford since the Holy See had given its final decision, sixteen years ago, permitting Catholics to attend the Universities of Cambridge and dinal was of the opinion that the action of the Holy See was both providential and timely. If Catholics had come up

at an earlier date the possible advantages of the few individuals could not have counterbalanced the inferior position which the Catholic Church forty years ago it would have been al-most impossible for the Religious Orders to establish themselves in the Universities as they have done now, the num-ber of lay under-graduates would have been smaller, Catholics would have been tolerated merely. They could not have attained easily the position they hold to-day. Allowed to come in on equal

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The ancient creative influence of the Church restored to the University must make itself felt. "Every Catholic at make itself felt. "Every Catholic at the University had a great responsibility, because he would have much in-fluence for good or bad." The students were exhorted to bear in mind that a member of a minority always had a heavier responsibility than a member of a majority, for he was more closely observed. The Catholics at the Uni-yersity had also a great responsibility for the part they will play in the future in the Catholic life of the nation.

"All kinds of social and political organizations were taking place around them, and unless they as Catholics were organized in a way that would include every section of their population, the day would come when they would not be able to withstand the forces against

Educated Catholics, said the Cardinal must be prepared to do their duty and assume the responsibilities they were qualified to bear.—Sacred Heart Re-

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