

impediments were before 1907 made valid civil impediments by section 127 (and no one can want a wider admission) the question still remains whether the "Ne Temere" decree (promulgated only in 1907) can extend as impediments these existing requirements and make them apply to future mixed marriages. In other words, must article 127 of the Civil Code, which on the assumption already made, may embrace the impediments then existing according to the Roman Catholic Church as affecting its own members, be now read as adopting and including the extension of that impediment to mixed marriages? Does it now for the first time, affect the Protestant who marries a Roman Catholic and subject him to have his marriage annulled first by a bishop of that Church and then declared void as to its civil consequences by the courts of the province of Quebec?

This is a real and vital question. It may well be doubted, first, whether a province has the right to practically prohibit marriage between a Protestant and a Catholic by prescribing a particular and unwelcome mode of solemnisation, a power seemingly resting with the Dominion, which alone can define and prohibit marriage, and, secondly, whether a province can delegate to a church the right to prescribe a mode or modes of solemnisation and enact that failure to observe it or them, constitutes an impediment to marriage. While it is obvious that a provincial legislature can adopt any form of solemnisation, even though previously framed by a church and make it in that way its own statute law (as, it is sought to be argued, article 127 does), it seems equally clear that it cannot abdicate its functions and say that any form or ceremony thereafter prescribed by a church shall be the law of the land. The jurisdiction to legislate as to the solemnisation of marriage cannot be delegated to anyone. Yet this is the position adopted when it is said that the "Ne Temere" decree has applied for the first time an impediment to mixed marriages that formerly attached only to marriages between two Catholics and that such a recent prohibition or restriction can be brought within article 127.