

THE MARRIAGE LAWS.

DIARY FOR SEPTEMBER.

1. SUN... 11th Sunday after Trinity.
 2. Mon... Last day for notice of trial for County Court Recorder's Court sits.
 4. Wed... Notices for Chancery re-hearing Term to be served.
 8. SUN... 12th Sunday after Trinity.
 10. Tues... Quarter Sessions and County Court sittings in each County.
 12. Thurs. Chancery re-hearing Term begins.
 13. SUN... 13th Sunday after Trinity.
 14. Sat... St. Matthew.
 15. SUN... 14th Sunday after Trinity.
 16. Wed... Appeals from Chancery Chambers.
 20. Sat... 15th Sunday after Trinity. St. Michael.

THE

Upper Canada Law Journal.

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There is a case now standing for judgment in the Court of Chancery, which discloses the necessity for a thorough revision and amendment of our Marriage Laws.

An action for alimony was brought by the wife against the husband, on the ground of desertion, and the defence set up was that the alleged marriage of the parties was celebrated by the Roman Catholic Bishop of Toronto, without the publication of banns or the procurement of a license from the Governor, under the statute, and that such marriage was celebrated privately in the Bishop's house, without any witness being present, and after canonical hours. The aid of the English statute, known as Lord Hardwicke's Act, was also invoked, whereby it is provided that marriages celebrated without banns or license, shall be deemed clandestine, and shall be null, and void to all intents and purposes whatsoever.

The plaintiff sought to avoid this defence by setting up that these acts did not apply to Roman Catholics (both parties being such in this case, and resident within the diocese of the Bishop who officiated at the marriage ceremony); that marriage was accounted a sacrament by the Roman Church, and as such, being a part of their religion, it was preserved to them intact by the stipulations made upon the capitulation of Canada, and that it was open to that church to regulate the celebration of marriage by their own ecclesiastical rules—and at all events, if the aforesaid

statutes did apply, then the marriage was at most only irregular, but not null and void.

It is evident that here are very important questions as to the privileges of our Roman Catholic fellow subjects, and as to the status of many of those who are not Roman Catholics, upon which no shadow of doubt should be allowed any longer to rest. It should be one of the first objects of the Confederate Parliament, to declare the law authoritatively upon these points. On the one hand, privileges are claimed for the Roman Catholics which exceed those granted to any other religious body; on the other hand, if they are on the same footing as other churches, it would appear that a deviation from the requirements of Lord Hardwicke's Act, operating as a total annulment of the marriage tie, would produce consequences, especially as to the issue of such marriages, frightful to contemplate.

As regards the marriage in question, the matters presented for adjudication are, as the Chancellor remarked, whether the marriage of Roman Catholics by their own Bishop is regulated by our statute, or by the French law applicable to the subject which obtained at the time of the cession of Canada, or whether, exempt from both, the Roman Catholics are in this respect a law unto themselves.

It is our object, in a few papers, to discuss some of the points which present themselves in this case, in order that the necessity for legislative interference may be the more manifest, and that the best mode of applying a remedy may be elicited.

And, first, there would seem to be but little doubt that Lord Hardwicke's Act is in force in Upper Canada. Under English law, marriage is a civil contract, involving civil rights and liabilities, and the very first act of the Local Legislature of Upper Canada, when called into existence, was to pass an act adopting English law in regard to "all matters of controversy relative to property and civil rights." P. S. 32 Geo. III. cap. 1, sec. 3. See Con. Stats. U. C. cap. 9, sec. 1. The marriage law, then in force in England, and by such act introduced into Upper Canada, was 26 Geo. II. cap. 33 (Lord Hardwicke's Act). This position appears to have been at first doubted by the late Chief Justice Robinson, in *Reg. v. Secker*, 14 U. C. Q. B. 604, and *Reg. v. Bell*, 15 U. C. Q. B. 290; but subsequently he announces the deliberate opinion of the court