

degrees: see Quebec Civil Code, ss. 124, 125, 126 (which is a codification of the French law as it existed in 1792), and even if both English and French law failed, there is still the Christian law to fall back upon, on the principle laid down by Harrison, C.J., in *Pringle v. Napanee*, 43 Q. B. 285. So that from no point of view whatever can it be successfully maintained that there are no degrees of consanguinity or affinity within which marriage is prohibited in Ontario.

It appears, however, to be beyond any reasonable doubt that marriage is within the term "civil rights," and that, therefore, all questions relating to marriage must be decided by the English law as it stood on October 15th, 1792, save as varied by Provincial or Dominion legislation. This was the opinion of that very learned judge, Esten, V.C., in *Hodgins v. McNeil*, 9 Gr. pp. 305, 309.

Assuming, then, that the law of England as it stood on October 15th, 1792, subject to the variations above referred to, is in force in Ontario, let us now proceed to enquire what that law is, more particularly as regards the question of prohibited degrees.

Prior to the reign of Henry 8, the question of "prohibited degrees" was a matter altogether within the jurisdiction of the Spiritual Courts, which exercised jurisdiction to dissolve marriages contracted within degrees contrary to canon law, and also granted dispensations permitting persons to marry within some of those degrees. It may be here noted that the prohibited degrees under the canon law extended far beyond the rules laid down in Leviticus, and that many of these additional canonical prohibitions seem to have been created merely in order that a wider field might be opened in which dispensations could be applied for and granted for a money consideration. In the reign of Henry 8, these unjust and unreasonable prohibitions of marriage by the canon law in order to fill ecclesiastical coffers with fees for dispensations were deemed to have reached such a pitch of abuse as to require correction at the hands of the civil power. Accordingly two statutes were passed which declared that the only degrees within which marriage should be prohibited are those prohibited in "God's law," which degrees these statutes proceeded to enumerate. The first of these statutes was 25 Hen. 8, c. 22, s. 2, the second 28 Hen. 8, c. 7, which repealed 25 Hen. 8, c. 22, but which, by s. 7, re-enacted with a slight variation s. 2 of the repealed Act which enumerated the prohibited degrees.