

old French law of Quebec as modified by the conquest and by subsequent provincial statutes. The provisions of the code dealing with marriage, tutorship and property are wholly of French origin.³⁶

The Civil Code deals not only with Solemnization of Marriage but with the capacity to contract a marriage. Dissolution of marriage, according to the code, can only be by death, although separation from bed and board may be granted. It is maintained by some writers that the Imperial Parliament could not have intended to grant to the Federal Parliament jurisdiction over divorce in the Province of Quebec, where divorce is not permissible according to the tenets of the Roman Catholic Church. This position, however, is not tenable.³⁷

(5) *The Maritime Provinces.*—Nova Scotia and New Brunswick, although acquired by conquest in 1713, have been treated by the Courts as planted colonies and subject to the law of England as of that date. New Brunswick enacted legislation on marriage and divorce long before Confederation;³⁸ indeed, its divorce legislation was prior to English legislation on the subject. Nova Scotia had also before Confederation established a Court with jurisdiction "over all matters relating to prohibited marriages and divorce," and with authority to nullify marriages for impotence, adultery, cruelty, pre-contract or kinship within the prohibited degrees.³⁹

Prince Edward Island, like New Brunswick, was originally part of Nova Scotia, from which it separated in 1770, and has also been treated as a planted colony. Its Divorce Court was established in 1835.⁴⁰

(To be Continued.)

36. Walton—"The Scope and Interpretation of the Civil Code of Canada." Montreal (1907), at pp. 23 and 133.

37. *Ib.*, pp. 63-64; and cf. Loranger. *Commentaire sur le Code Civil*, Montreal (1879), vol. 2, No. 81 *et seq.*; Mignault, *Droit Civil Canadien*, vol. 1, p. 551.

38. Statutes of New Brunswick, 31 Geo. III. ch. 5.

39. Revised Statutes of Nova Scotia (2nd Series, 1851) ch. 128.

40. Statutes of Prince Edward Island, 5 Wm. IV. ch. 10.