

THE
Canadian Independent.

VOL. XIX.

TORONTO, OCTOBER, 1872.

No. 4.

CANADIAN MARRIAGE LAWS—REFORM WANTED.

Under the "British North America Act, 1867," Marriage and Divorce are committed to Federal, and the Celebration and Registration of Marriages to Provincial Legislation. There are several points in relation to which the Laws on this subject seem to us to require definition and version. The interests involved are among the most important. Yet there is much confusion on many parts of this complicated subject.

1. The Romish Church, throughout the former Province of Canada, *claims*, by virtue of certain stipulations in the treaty, by which the Province was surrendered after the Conquest, to grant, through its Bishops, "Dispensations" to marry, which supersede banns or any license from the Civil Power. A case, under this claim, was elaborately argued before the late Chancellor Vankoughnet; but that learned judge deferred his decision so long, that he died without pronouncing it. We notice that another has recently arisen in London, Ontario.

2. Chief Justice Draper, in an elaborate speech before the recent Provincial Synod of the Anglican Church, showed from the history of Canadian Legislation, that much could be said in favour of a similar power being exercised by the Bishops of that Church, if, indeed, its clergy could not legally marry without license or banns. He quoted from the Queen's Commission to the first Governor-General of the Dominion a clause to the effect, that Her Majesty granted Her Representative power to grant Marriage Licenses "so far as we (the Queen) have power," indicating some doubt upon the matter in the minds of the Law Officers of the Crown in England.

Thus it is evident that the very foundation of marriages—viz., the authority under which they take place, is not unquestionably settled. If the above claims can be substantiated, there is a preference given to the Churches of England and Rome that ought not to continue for another day in this land of equal rights.

3. The question of the Degrees of Affinity, within which marriages are unlawful, needs more exact definition. To take the most urgent instance,—that of marriage with deceased wife's sister, it is a doubtful matter how the law of Ontario stands. Under the English law, which we follow, such unions are forbidden; but there