THE NE TEMERE DECREE AND THE SUPREME COURT.

In the public mind the purpose of the reference of Mr. Lancaster's bill and supplementary questions to the Supreme Court is to ascertain and settle the relation of the "Ne Temere" decree to Canadian law. But if so, Mr. Hellmuth's opinion, which will, in a broad sense, be concurred in by most lawyers, does not comprehend enough to settle or even to touch the real point at issue. So long as the decrees of the Church of Rome were regarded by her bishops as only prohibiting the marriages of Roman Catholics before a Protestant minister there was merely a question of the legal right of the functionary to marry two Catholics. Down to 1907 the attitude of that Church towards these marriages and those in which Protestants were concerned is explained by Archbishop Bruchesi thus:—

"In order that a marriage may be valid between two Catholics in the limits where the Council of Trent has been published, the presence of the proper priest and two witnesses are necessary; consequently the marriage of two Catholics before a civil officer or a Protestant minister is null. By virtue of the constitution of the pontiffs there are countries, and the Province of Quebec is of the number, where in spite of the promulgation of the Council of Trent, we are to consider as valid, marriages celebrated clandestinely between two parties, one being a Catholic and the other a baptised non-Catholic. The marriage of a Catholic and a baptised Protestant, or vice versa, celebrated before a Protestant minister, although gravely illicit and calling down the censure of the church, is, however, a marriage contracted in a valid manner even in the eyes of the church herself. Once consummated this marriage cannot be broken by any earthly power, death alone rendering liberty to the party surviving."

It was always asserted that Article 127 of the Quebec Civil Code had recognised the impediment as to the marriage of two Catholics created by the Council of Trent (see *Laramee* v. *Evans*, 24 L.C.J. 235, per Papineau, J., and S.C. 25 L.C.J. 261, per Jetté, J., and *Durocher* v. *Degré*, 20 Q.O.R. 498, all of which include this view with additional and more abstruse reasons). The contrary was maintained by Monk,