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THE MARRIAGE LAWS IN UPPER CANADA.

A case now pending in the Court of Chancery of Upper Canada has attracted general attention to the state of the 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 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, (26 Geo. II., cap. 33.) 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.

The *Upper Canada Law Journal*, commenting on this remarkable case, urges the necessity of a thorough revision and amendment of the Marriage Laws by the Confederate Parliament. The matters presented to the Court for adjudication are whether the marriage of Roman Catholics by their own Bishops is regulated by the Upper Canada 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, Roman Catholics are in this respect a law unto themselves.

WRITS OF ERROR.

We have deferred till the present month the publication of the judgment quashing the first Writ of Error, in the case of *The Queen* v. *Dunlop*, and are now enabled to complete the case by the report of the subsequent judgment upon the merits. A considerable amount of indignation has, it seems to us, been lavished unnecessarily upon the action taken by the representative of the Attorney-General in this matter. The objection raised when closely examined, assumes almost a purely technical character. It is difficult to imagine that the Attorney-General would not have been just as much responsible for the act of Mr. RAMSAY under the circumstances as though he had signed the fiat for the writ himself. The subdivision of Lower Canada into a large number of Districts has rendered it almost impracticable for the Attorney-General, or Solicitor-General, to be present and make a personal inquiry into the propriety of signing every writ of error.

A majority of the judges held the act of Mr. RAMSAY to be illegal, and it must therefore be assumed that he exceeded his authority in signing the fiat without a special commission from the Crown. But apart from the strictly legal bearing of the case, if it were necessary to exculpate Mr. RAMSAY in the matter, it is only necessary to observe that although the majority decided against the legality of the act, yet the learned judge, the execution of whose judgment was stayed by the writ of error, was of a contrary opinion; and, further, a majority of the same Court have since sustained the second writ of error, and held that the judgment in question went too far in ordering the immediate destruction of all the powder in the magazine.

Before the latter judgment was rendered, Mr. RAMSAY published some remarks upon the case, in a letter to the *Gazette*, from which we subjoin the following extracts:—