

cannot be broken by any earthly power, death alone rendering liberty to the party surviving."

A most interesting and complex question relates to the effect of the conquest, the articles of capitulation and the treaty of cession in 1763 upon the common law existing in Quebec, and whether the common law of England displaced it. But it is unnecessary to enter upon that field of enquiry because Mr. Justice Jetté admits that as a matter of law the old French law as to marriage would be superseded and made obsolete by the institutions of the conqueror. But he relies upon the fact that Roman Catholics were permitted by the Treaty of Paris the free exercise of their religion, and that, as the old institutions relating to matrimony formed part of the exercise of their religion, they were reserved to their jurisdiction. But that free exercise of religion, even if it included the formalities for the celebration of marriage in Roman Catholic churches, would not in any way prevent its adherents of that church, if they so desired, from taking advantage of the more liberal rules laid down by the State for their fellow subjects who were not Roman Catholics. And certainly it could not be contended that the laws of Lower Canada, which were continued, included those which would compel Roman Catholics to conform to that religion, when at that very time the exercise of that religion in England was strictly prohibited. Hence the expression in the treaty of 1763, "so far as the laws of England permitted."

In addition to this the power of dispensation in England was vested in the King and exercised by the Archbishop of Canterbury under a statute delegating it to him (25 Henry VIII. c. 21). To assume that in Quebec after the cession the power still remained in the French King or in the Pope or his bishops would be "contrary to the prerogative of the British Sovereign to issue such dispensations," to quote Lord Stowell in *Ruding v. Smith*, 2 Hagg. 378, a case in which it was argued that, as under the articles of capitulation of Cape Colony it was provided that "the inhabitants shall preserve the prerogatives they enjoy at present," dispensations from the publication of bans must be had from the States of Holland.