

## The Legal News.

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### LEGISLATION AT QUEBEC.

Art. 128 of the Civil Code reads as follows :  
 " Le mariage doit être célébré publiquement devant un fonctionnaire compétent reconnu par la loi." A bill introduced by Mr. Wurtele, Q.C., proposes to repeal this article and to substitute the following : " 128. Marriage must be solemnized openly and according to the rites and usages of the church to which the parties or one of them belong, by a competent officer recognized by law."

There was a difference of opinion among the Codification Commissioners, it will be remembered, as to the wording of this article. Mr. Justice Day differed from his colleagues, remarking : " Art. 128 requires that marriage shall always be celebrated openly, ' publique-ment,' and this term *publiquement*, according to the commentators, means that it shall take place in church, *en face de l'église*. I object to a wording of the article which subjects it to such a construction, as it forms a rule which is contrary to the constant and recognised usage of all Protestant denominations except the Church of England. With the exception specified, marriages amongst Protestants are rarely, if ever, celebrated in their places of worship. I think the article should be omitted, or so modified as to require only the presence of witnesses." On the other hand, Messrs. Caron and Morin observe : " La publicité exigée par la première partie de l'article est dans le but d'empêcher la clandestinité des mariages, condamnée avec raison par tous les systèmes de loi ; un acte aussi important et qui intéresse bien d'autres que les parties elles-mêmes, ne doit pas être tenu secret ; or, le meilleur moyen d'empêcher qu'il ne le soit, est de rendre obligatoire la publicité de la célébration. Le mot *publiquement* (openly) a une certaine élasticité, qui l'a fait préférer à tout autre ; étant susceptible d'une extension plus ou moins grande, il a été employé afin qu'il pût se prêter à l'interprétation différente que les diverses églises et congrégations reli-

" gieuses, dans la province, ont besoin de lui donner d'après leurs coutumes et usages, et les règles qui leur sont particulières, auxquelles l'on ne désire aucunement innover. Tout ce qu'on a voulu, c'est d'empêcher les mariages clandestins. Ainsi seront réputés faits *publiquement* ceux qui l'ont été, d'une manière ouverte, et dans le lieu où ils se célèbrent ordinairement, d'après les usages de l'église à laquelle les parties appartiennent."

An important bill, introduced by Mr. Loranger, has been passed. We have not seen the text of the Act, but we understand that it provides that sales of immoveables situated within the limits of the late parish of Montreal may be made at the office of the Sheriff of Montreal, notwithstanding the erection of new parishes within the *banlieue*, and gives validity to all sales which have been so made. But the Act shall not apply to any proceedings taken to set aside any sheriff's sale now pending, which shall be decided and adjudicated upon as if the present Act had not been passed, and the sales of a certain number of properties within the aforesaid limits which have, until this day, been publicly announced to take place at the church door in certain of the new parishes, may legally be made at such church doors. The law is to take effect in sixty days after its sanction.

This subject was brought under notice in the case of *Fauteux & The Montreal Loan and Mortgage Co.*, reported at 22 L. C. J., p. 282, in which the Court of Appeal held that a sale by the Sheriff of Montreal, at his own office, of land situate in a duly erected parish for all civil purposes out of the parish of Montreal, is null and void, and that such sale could only be legally effected at the Church door of the parish in which the land is situate. The amendment was obviously desirable.

Mr. Audet has introduced a bill to amend Art. 505 of the Civil Code, by which " every proprietor may oblige his neighbor to make in equal portions or at common expense, between their respective lands, a fence or other sufficient kind of separation according to the custom, of the regulations and the situation of the locality," by adding, " Nevertheless, whenever a lot of ground is divided up amongst several