

was the law of England at the time of the cession of Canada, expressly enacts (sec. 15) that the Act did not extend "to any marriages solemnized beyond the seas."

While in England therefore, pursuant to that statute, marriage could only be solemnized by a clerk in holy orders, yet that part of the law did not extend to this country, and was not introduced here, but rather the common law which existed prior to that enactment. It is clear that marriage under the common law of England was a contract made per verba in presenti, that is in words of the present tense followed by co-habitation, and that before Lord Hardwicke's Act it was totally a civil contract: *Dalrymple v. Dalrymple*, 2 Hagg. 54; *Reg. v. Millis*, 10 Cl. & F. 534, *Beamish v. Beamish*, 8 Jur. 781, *Latour v. Teesdale*, 8 Taunton 830. And, as pointed out by Mr. Vice-Chancellor Proudfoot, the English Ecclesiastical Courts, having jurisdiction derived from the civil power and not from the church, could decree dissolution of the marriage, even though it were a civil contract, where legal disability existed.

Archbishop Bruchesi while insisting strongly upon the sacramental character of marriage, apparently limits this characteristic to marriages between those of his own communion. To quote from his own pastoral again: "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