

self bound by them but it is almost needless to say that civil law does not flow from the Canons of the Council of Trent as its source.

If marriage is a sacrament it is one that does not depend upon the office of the priest but results wholly from the nature of the contract between the parties. It was equally a sacrament before the Canons of the Council of Trent were enacted; it is equally a sacrament now in France or Belgium, where the marriage is solemnized before a civil magistrate.

To sustain the position of the Archbishop you must set aside the unanimous jurisprudence of France; you must ignore the laws of England; you must forget the British North American Act (Confederation) which assigns marriage and divorce to the Federal Parliament; you must abolish the Civil Code of the Province of Quebec, which makes provision concerning the whole ground and assigns the administration of them to the civil courts.

The secular power had always been acknowledged and even taught in France by the doctors of the Church. It was the doctrine of England at the time of the cession. The same principle prevailed here at the time of the French Régime, and we find the Superior Council prohibiting the Church from proceeding to perform a marriage between minors without the consent of the parents upon an ecclesiastical dispensation (2 Edits and Ordon., p. 311). Surely it is enough to say that the Civil Code of Quebec leaves no doubt as to what authority governs laws relating to marriage.

5. Is the statute in the Civil Code of Quebec, Articles 128 and 129, obscure in its words and ambiguous in its intentions?

The words "publicly" and "competent officer" have been the subject of a difference of opinion among the legal authorities of the province. Judge Jetté expresses the opinion that "publicly" means in the parish Church and "the competent officer," as for Roman Catholics, the proper priest of the parish.

Judge Archibald quotes French jurisprudence to show that "publicly" means an act done before or by any public or authorized officer and before witnesses. As to the meaning of the words "competent officer" the plea in the Delpit case was that the Rev. W. S. Barnes was incompetent because he had no authority to marry two Roman Catholics. This limitation cannot be derived from the civil code of Quebec nor from the old law, for the old law as such disappeared with the old sovereignty. Taking the preexistent law, so far as Roman Catholics are concerned, to be such as Judge Jetté has stated, namely, "That Catholics can only be married after publication of banns, in their own Church, by their own proper priest, on pain of absolute nullity, the whole to be decided by ecclesiastical authority." undoubtedly the civil code of Quebec has radically changed all this by Article 63.