BIGAMY AND DIVORCES.

I. BIGAMY UNDER THE CODE.

The bigamy sections of the Criminal Code of Canada do not prohibit the practice of bigamy as defined in the books, namely the crime of having two wives or husbands at the same time (*a*). The going through the form of a bigamous marriage, not the relationship afterwards, is the indictable offence. Moreover, it is not an offence under the Code for a foreigner resident in Canada to go through the form of a bigamous marriage in another country, even though he may have left Canada with "intent to go through such form of marriage." Nor is it an offence for a Canadian resident abroad to go through the form of a bigamous marriage there. Either may return to Canada with his second choice and take up his residence next door to his lawful wife and be free from molestation under our criminal laws (*b*). Several attempts have been made in the Courts in the interest of Canadians given to plurality of wives, to narrow still further the effect of the bigamy sections. They have sought to have it declared that the Dominion Parliament has no jurisdiction over Canadians while outside the territory of Canada—in other words that the sections in question are ultra vires of the Dominion Parliament.

The Canadian law as to bigamy has been practically unchanged, so far as its territorial scope is concerned, since its enactment in 1841. In 1853 its constitutionality was unsuccessfully attacked in a lower Canadian court in the *McQuiggan case*, 2 L.C.R. 340, and in 1887 the point was raised in Ontario in the *Brierly case*, 14 O.R. 525. The indictment against

(*a*) Sec. 275. Bigamy is the act of a person who, being married, goes through the form of marriage with any other person in any part of the world; . . . . .

No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

(*b*) In *The Queen* v. *Liston* (unreported), tried at the Toronto Assizes in 1893, Chief Justice Armour held that section 278 of the Code, which is the only section which it could be argued covers adultery, was intended to apply only to Mormons.