

THE MARRIAGE ACT

Proceedings in Parliament Relating to the Bill to Deal With the Subject—Judgment of the Courts on the Powers of the Dominion and the Provinces.

On January 22, 1912, Mr. E. A. Lancaster moved the second reading of a Bill "to amend the Marriage Act." The effective paragraph of this was:—

Every ceremony or form of marriage heretofore or hereafter performed by any person authorized to perform any ceremony of marriage by the laws of the place where it is performed, and duly performed according to such laws, shall everywhere within Canada be deemed to be a valid marriage, notwithstanding any difference in the religious faith of the person so married and without regard to the religion of the person performing the ceremony.

Doubts having been raised as to the legal power of the Dominion Parliament under the British North America Act, 1867, to enact such a measure, the Government referred the Bill and the general question to the supreme court of Canada, under section 60, of the Supreme Court Act. Accordingly, a case was prepared in which three questions were put in the following form:—

1. (a) Has the Parliament of Canada authority to enact, in whole or in part, Bill No. 3 of the first session of the twelfth Parliament of Canada, entitled, "An Act to amend the Marriage Act"?

(b) If the provisions of the said Bill are not all within the authority of the Parliament of Canada to enact, which, if any, of the provisions are within such authority?

2. Does the law of the Province of Quebec render null and void, unless contracted before a Roman Catholic priest, a marriage which would otherwise be legally binding which takes place in such Province—

(a) between persons who are both Roman Catholics, or

(b) between persons one of whom, only, is a Roman Catholic?

3. If either (a) or (b) of the last preceding question is answered in the affirmative, or if both of them are answered in the affirmative, has the Parliament of Canada authority to enact that all such marriages whether

(a) heretofore solemnized, or

(b) hereafter to be solemnized
shall be legal and binding?