

The limits of the respective jurisdictions of the Dominion Parliament and the Provincial Legislatures have recently been more clearly defined by the Judicial Committee of the Privy Council, affirming a judgment of the Supreme Court of Canada,¹¹ and it is now settled beyond controversy that the Parliament of Canada has no right to legislate in regard to the solemnization of marriage.

The specific point decided was that the power of the several Provinces to legislate as to the solemnization of marriage entitles them to say if they choose that only certain ministers shall be competent to perform the ceremony of marriage for certain persons; for example, for members of the church to which the minister belongs; and that non-compliance with this formality will render the marriage invalid. The Federal Government, moreover, cannot deprive the Provinces of this power by a law providing that any minister may marry anybody whether belonging to his church or another, because this would be legislation dealing strictly with the subject of solemnization of marriage.

3. DOMINION LEGISLATION.

It is noteworthy that since Confederation the Dominion Parliament, apart from the provisions of the Criminal Code, has passed only two statutes dealing with marriage and divorce. In 1882 marriage between a man and his deceased wife's sister was legalized¹² and in 1890 marriage with a deceased wife's niece was legalized.¹³ It was not until the Act of 1907¹⁴ that marriage with a deceased wife's sister was legalized in England, and marriage has never been legalized in England with a deceased wife's niece.

The Criminal Code of Canada deals with offences in relation to conjugal rights. A bigamist is liable to imprisonment for seven years, and in case of a second offence to imprisonment for fourteen years.¹⁵ The going through the form of a bigamous

11. *In re Marriage Legislation in Canada* (1912) Appeal Cases, p. 880.

12. Statutes of Canada, 45 Vict. ch. 42, sec. 1.

13. Statutes of Canada, 53 Vict. ch. 36.

14. Imperial Statutes, 7 Edw. VII. ch. 47.

15. Criminal Code, R.S.C. ch. 146. sec. 308.