

of the Roman Catholic Bishop, regularly pronounced and deciding as to the validity or nullity of the spiritual and religious tie of marriage between Roman Catholics, can and ought to be recognized by the Superior Court."

In the same case in 25 L.C.J. 261, Jette, J., at the trial decided that before pronouncing on the validity of such a marriage, the Superior Court ought to refer the case to the ordinary of the diocese in order that he might pronounce previously the nullity of the marriage and its dissolution, if there be reason for it, saving the right of the Superior Court afterwards to adjudge as to the civil effects of the marriage tie.

To understand completely the meaning of these adjudications it is necessary to realize that, to the Roman Catholic, marriage is a sacrament and a spiritual bond. Its civil effects, that is those civil rights and obligations which result from the marriage (such as, in Quebec, the amount of the marriage portion, the right of succession, heritage and legitimacy) are regarded as wholly collateral affairs. They can be adjudged of by the Court because, and only to the extent to which they are separable from the substance of the contract, that is the sacrament.

It would seem naturally to follow from this conception of marriage, that where the Church, as in this country, is entirely free and separate from the State, the civil authority would have no right either to establish invalidating impediments to the sacrament of marriage, at least between Christians, nor to grant dispensations from impediments established by the Church, any more than it can effect the sacrament of the marriage itself. To put it more simply, the state cannot make laws concerning marriage itself, but only concerning the civil effects which flow from it. This was the view promulgated by Archbishop Bruchesi, head of the Roman Catholic church in the diocese of Montreal, in a pastoral quoted in the case of *Delpit v. Cote* (1901) 21 Q.O.R. 338.

The opposition to this view is ably maintained in *Connolly v. Woolrich*, 11 L.C.J. 197, by Mr. Justice Monk and in the case just cited of *Delpit v. Cote*, by Mr. Justice Archibald.