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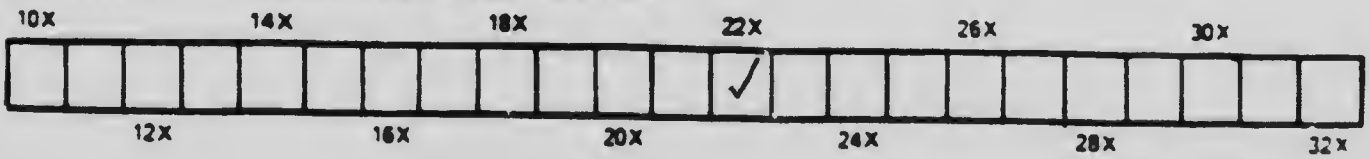

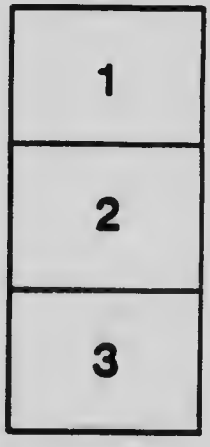

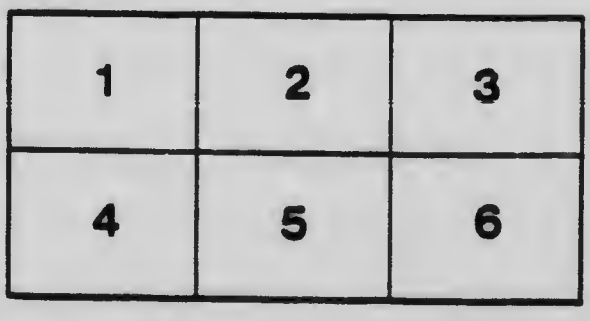

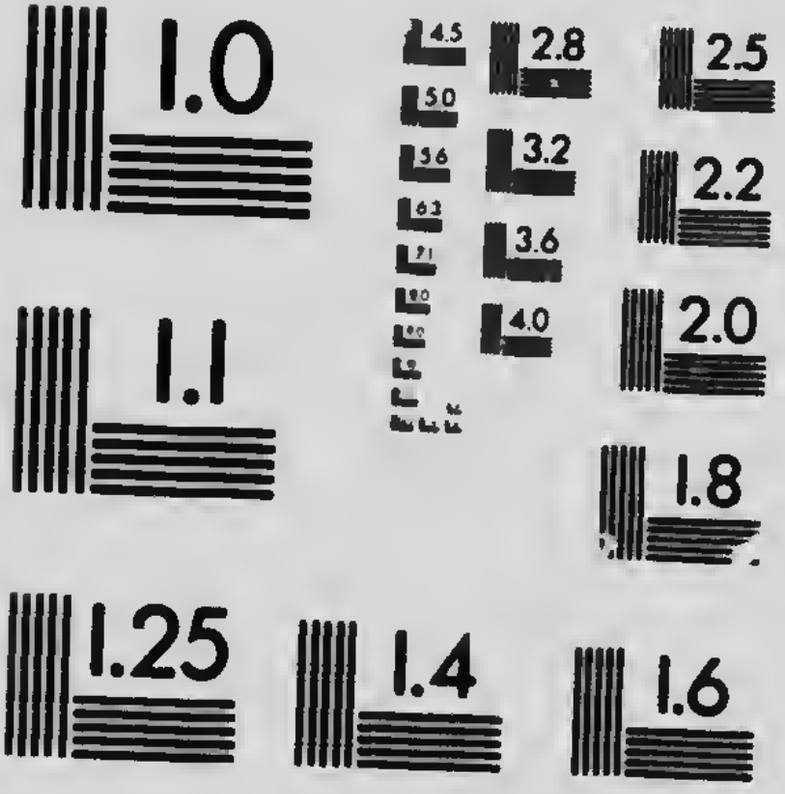

Issued by the Committee appointed by the General Synod of the Church of England in Canada.

MEMORANDUM

NE TEMERE DECREE

It will be helpful to consider, apart from irrelevent issues which have been unnecessarily introduced into the matter, the following incontrovertible facts connected with the present demands of Rome to control the marriage laws of Canada.

For the convenience of the reader the following propositions are given shortly and consecutively, with an accompanying appendix.

I.

(a) The Church of Rome asserts under the Decrees of the Council of Trent the absolute right to make laws affecting marriage and "to constitute impediments to destroy matrimony."

In Quebec it exercises virtually the right of divorce, and claims elsewhere power to an extent only limited by the want of authority to render effective its decrees in countries which forbid such interference. (See Ap. I., a^1).

(b) Notwithstanding this pretension of Rome, as a matter of fact the decrees of the Council of Trent, as adjudged by the Privy Council in England, are not now and never were, either at the time of the cession to England or at any other period in force in Quebec. (See Ap. I., b^1).

(c) In Quebec, until the introduction of the Benedictine Decree, if no generally recognized impediments existed, the mere consent of the parties followed by their living together as man and wife, constituted, as was then the case under the general canon law, the sacrament of marriage, and was valid. The parties at times were said to "have married themselves in the presence of their parents assembled." It was equally a "sacrament" where the marriage took place before a Civil Magistrate.

(d) In 1741, Pope Benedict XIV. issued the Benedictine Decree, which, according to its terms, affected only Roman Catholics. The decree was in force in Quebec before the time of the cession, and laid down the rule to guide in the class of marriages therein referred to.

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(e) This decree was not intended to and did not affect the marriages of Protestants. Pope Benedict considered the matter and actually and logically declared that as Protestants could not be affected by the decree, in virtue of the indivisibility of the contract, therefore it could not appiy in the case of the union of a Protestant with a Roman Catholic, as, if it did so, the marriage of Protestants would thus be interfered with, which was not the effect or intention of the decree. (See Ap. I., e[1].)

(f) This decree, therefore, recognized mixed or "clandestine" marriages between Protestants and Roman Catholics. The presence of a Roman Catholic priest in order to the validity of the function was not required, but such marriages were valid when a Protestant minister was present—in this respect placing the priest and the minister on the same footing.

(g) It was claimed by Rome that at the time of the cession the Benedictine Decree was in force and established the rule as to marriage in Quebec. It prescribed regulations to govern Roman Catholics in their marriages but did not interefere with the marriages of Protestants with Roman Catholics, or among themselves or with those of another faith. There was no doubt or question upon the point, which was absoluteiy affirmed by Archbishop Bruchesi in 1901. (See Ap. I., g[1].)

(h) The importance and incontrovertibility of the fact that the Benedictine Decree was operative in Quebec from a period preceding the cession, and continuously up to the present as the law ruling Roman Catholics in regard to their marriages, uniess interfered with by the Ne Temere Decree, is evident.

(i) The Benedictine Decree being in force at the time the Ne Temere Decree was promuigated, the rights of all Canadian citizens, whether Roman Cathoiic or Protestant, are saved to them by the express ianguage of this iatter decree.

Rome had already dealt with this question and had passed its Benedictine Decree, which had gone into force in Canada, and this being the case, the Ne Temere Decree by its exclusive terms is not in force in Canada, which is excepted from its operation, and the Benedictine Decree, if ever binding, continues in force. (See Ap. I., i[1].)

(j) Shortly, the matters above referred to stand as follows:

(1) Rome claims that the Benedictine Decree was in force at the time of the cession.

(2) This decree declared mixed or clandestine marriages to be valid even when the witness thereto is a Protestant minister.

(3) The Ne Temere Decree excepts from its operation places where such a decree as the Benedictine is in force.

(4) The latter decree therefore continues in force in Canada.

(5) Therefore the Ne Temere Decree does not affect Canada, and the old law as to marriage continues.

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(h) The importance and incontrovertibility of the fact that the Benedictine Decree was operative in Quebec from a period preceding the cession, and continuously up to the present as the law ruling Roman Catholics in regard to their marriages, unless interfered with by the Ne Temere Decree, is evident.

(i) The Benedictine Decree being in force at the time the Ne Temere Decree was promulgated, the rights of all Canadian citizens, whether Roman Catholic or Protestant, are saved to them by the express language of this latter decree.

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(2) This decree declared mixed or clandestine marriages to be valid even when the witness thereto is a Protestant minister.

(3) The Ne Temere Decree excepts from its operation places where such a decree as the Benedictine is in force.

(4) The latter decree therefore continues in force in Canada.

(5) Therefore the Ne Temere Decree does not affect Canada, and the old law as to marriage continues.

(6) Consequently, Rome has no right to invalidate marriages declared valid by the Benedictine Decree and virtually to divorce those legally married thereunder.

(7) If this were permitted it would set at nought the laws throughout the Dominion, and introduce there the Canon law of Rome in the domain of matrimony, breeding lawlessness and immorality. Are we to be compelled in self-defence to enact laws in Canada similar to the anti-clerical laws of France, Italy, Spain, Portugal or South America, in respect of this most vital matter?

(8) The question may well be asked, Where does Rome find authority for her audacious claim that when the statute law of the land validates a marriage, she, placed in the same position as other religious bodies in the Dominion, has the right by her decree to overrule such legislative declaration and nullify what it enacts.

II.

(a) The Roman Catholic authorities, although in language so ambiguous that it at once creates suspicion, claim to sustain under some "right guaranteed by treaty and by the constitution of the country," a superior position in respect of marriage. Although often asked specifically to point out the treaty, statute or other ground on which this claim is based, the request has never been complied with and the history of the time absolutely disproves it.

(b) It is an estabilshed fact that no such right by treaty, statute, or obtained in any other manner, as is now claimed by Rome under the Ne Temere Decree, was awarded as a condition of the cession or otherwise.

(c) It is well to bear in mind that no such rights as those now demanded by the Roman Catholic Church were permitted to it up to the time of the cession.

This Church had been up to that date in a state of tutelage to the French ruler. The eight following extracts from the volumes of the original archives, open to the world, serve as examples to show how completely in all things the Church was ruled by its head, the French King. He ordered

(1) That the Church must be guided by "the King's intentions concerning Church matters."

(2) That no religious community could exist or be formed without his royal permission.

(3) That no nuns could be made by the Church without his leave, as it would be an intreference with the liberty of the king's subjects, which belonged to him and not to the Church.

(4) That the Bishop must collect tithes in other ways than by the refusal of absolution or the sacrament, through which means the Bishop had ordered the priests to enforce payment.

(5) That the Bishop must cancel his refusal to allow the Recollets to go on missions, as His Majesty's will is that he so employ them."

(6) That a sharp rebuke is to be administered to the parish priest for abusing his ministry. If it happens again His Majesty will have him punished.

(7) He declares that Father Joseph was wrong in refusing in writing to give absolution to Mademoiselle ——.

(8) That the Hospitaliers are not to take any vows or to wear uniform.

It is strange that the Roman Catholic Church instead of rejoicing in the large liberty that is now awarded to it after suffering from these petty interferences and caprices of the King of France in the general regulation of the Church and in every little parish difficulty, as it arose, should be unwise enough instead of enjoying, to complain, of the comparatively extensive liberty and power that is granted to it.

(d) Let us glance at the only four documents to which Rome can refer for support in this claim:

(1) At the capitulation "the free exercise of the Roman Catholic religion" was given, but the right to collect tithes was refused.

(2) By the Treaty in 1763 His Britannic Majesty consented "to his new Roman Catholic subjects professing the worship of their religion according to the rites of the Roman Catholic Church, but with this ruling exception—"as far as the laws of Great Britain permit."

(3) It was explained by the instructions to the first Governor-General, Murray—"You are not to admit of any ecclesiastical jurisdiction of the See of Rome, or any other ecclesiastical jurisdiction whatever under your government.

(4) By The Quebec Act, 1774, it is declared that the Roman Catholics may "enjoy the free exercise of the religion of the Church of Rome," which is expressly made subject to the King's supremacy as declared by statute first Elizabeth: "No foreign . . . prelate . . . or potentate, spiritual or temporal, shall use, enjoy or exercise any manner of power . . . . spiritual or ecclesiastical within this realm or the dominions thereof," which may shortly be summed up, as it was twenty-one years afterwards—

"The Bishop of Rome hath no jurisdiction ... this realm."

(e) In 1688, dissenters other, than Roman Catholics, were granted "the free exercise of their religion." In 1851, Cap. 105 V., allowed all religious denominations, which included Roman Catholics, "the free exercise and enjoyment of religious profession and worship, without discrimination or preference." These words covered neither more nor less than the language of the Quebec Act— enjoy the free exercise of the religion." All accepted the terms as given. The change that is now sought to be introduced by Rome is indeed an arrogant attempt of one of the religious denominations to subvert the authority of our Sovereign Lord the King. (See Ap. II., e[1].)

(f) Further light will be thrown upon the question of the very limited rights of the Church of Rome by looking at its position immediately after the cession as shown from the same authentic source. To the efforts of the Church of Rome after the cession to obtain a recognition of claims from time to time made, the answer was—

(1) The King is supreme;

(2) You are given "the free exercise of the religion of the Church of Rome, subject to the King's supremacy," as was provided;

(3) Certain privileges which you are enjoying were specially referred to, and these having been specifically dealt with, exclude others;

(4) The Bishop of the Church of England is the Bishop of Quebec, with the powers that belong to such office;

(5) The Roman Catholic officer is "superintendent" without such title or rights;

(6) The Church of Rome has no position but that which belongs to a tolerated religion;

(7) The presence of French Immigrant Priests in Quebec is only on sufferance;

(8) The English Canon Law rules. Roman Catholic Bishops must act under the King's commission. In all matters, temporal or mixed, they must be subject to the King's authority. All English subjects are free from the papal power. A Roman Catholic Bishop cannot legislate nor can he obtain any rights which the Church of England does not possess. His appointments must be made for spiritual purposes only and with the approbation of the Governor. He has jurisdiction over his clergy, but subject to the controlling power of the King's Bench. He cannot have the power to appoint the Superintendent of Catholic Schools or to erect parishes.

What is shown in the documents referred to by the Roman Catholic authorities in favor of their claim, and what took place at the time of their acceptance, and after they were acted upon give an incontrovertible body of evidence which demonstrates that the claim of Rome to interfere with the marriage laws of the land is without foundation. It has no more power than has any Protestant Church to interfere with the rights of the citizens of the Dominion given equally to all by the Dominion and Provincial Statutes governing the laws of marriage.

It cannot turn itself indirectly into a Matrimonial and Divorce Court, rendering abortive the marriage laws of our land.

III.

(a) As to the effect of "the civil code of Lower Canada" on the question of marriage, one might well rest on the convincing reasoning of the Court in the Quebec case of Delpit vs. Cote as found in its "conclusions." It is, however, well to draw attention to three facts which may not otherwise be sufficiently emphasized:

(1) This law concerning marriage was not enacted for the benefit of the members of a particular creed, but was general legislation for all.

(2) It is a law complete in itself. It designates the officers before whom the marriage is to be solemnized and makes provision for all that is required for the validity of the marriage.

(3) Under the law all the functionaries it authorizes, regardless of creed, can solemnize marriages without restriction as to the religious belief or non-belief of the parties, outside or inside the Church, and without restriction as to the locality where the ceremony is performed.

The material clauses of the Code are found in the appendix. The language used is so simple that it is hard to understand how a difficulty could arise in comprehending it, if its words receive the meaning usually and properly attributed to them. No misunderstanding occurs until it is sought to import into some of the words, applicable to all citizens, a peculiar meaning in order to sustain the posltion of the Church of Rome which is repudiated by all other Christian bodies. (See Ap. III., a[1].)

IV.

(a) Up to this point no authority has appeared which would warrant the interference of the Church of Rome in respect of the marriage laws of the land. When is it alleged that it came into being? When did Rome get from the English king compulsory power over Canadian subjects which was absolutely forbidden by the French Sovereign?

There is no ecclesiastical court in the Province of Quebec. No Bishop has the power to convert himself into an ecclesiastical court, and therefore there is no method of procedure in existence for annulling a marriage.

(b) If any peculiar right was granted to Rome at the date of the B.N.A. Act, 1867, it must be there found. But so far from that being the case, the whole matter is covered in favor of the Dominion and the Provinces.

By the 91st section of the Act, "marriage and divorce" is exclusively reserved to the Parliament of the Dominion, and therefore it, and it alone, has the power to deal with the status that results from a marriage entered into in conformity with the requirements of the Provincial Legislature, between what persons and, under what circumstances, it shall be created, and, if at all, destroyed.

There is no right of interference here any more than there is under S. 92, ss. 12, which includes "the solemnization of marriage in the Province" within the subjects on which it may exclusively make laws.

The question of the procedure and formalities to be observed to enable its citizens generally to lead up to and enter lawfully into the marriage

relationship is reserved to the Legislature of each Province, which has the power to prescribe for itself in respect thereof such regulations as it deems proper.

No church, priest or minister thereof, in the Dominion, has the right, because of any supposed ecclesiastical law, rule, or privilege, to seek to disturb or affect such status when it has been obtained as above.

How serious an interference with the freedom of the subject is experienced when a child, one of the king's subjects, baptised on the day of its birth in the Roman Catholic Church, is never permitted to shake off this yoke, or change his communion, and notwithstanding that the whole of the life from the period of discretion may have been lived as a member of another religious body, the person is still bound as a member of the Roman Catholic Church. That is, that in the most important matter in life and through eternity this Church seeks to deprive him of making a choice and to bind him by her laws forever.

Signed on behalf of the Committee,

S. H. BLAKE, Chairman
W. D. GWYNNE, Secretary

APPENDIX
TO
NE TEMERE DECREE MEMORANDUM

For the convenience of the reader the preceding propositions are repeated with an accompanying appendix containing some further useful matter.

I.

(a) The Church of Rome asserts under the Decrees of the Council of Trent the absolute right to make laws affecting marriage and "to constitute impediments to destroy matrimony."

In Quebec it exercises virtually the right of divorce, and claims elsewhere power to an extent only limited by the want of authority to render effective its decrees in countries which forbid such interference.

(I. a[1])

The extent of this claim appears from

The 24th Clause of the Sixth Session of the Council of Trent, 1563, "touching the reformation of marriage,"

> "If any one should say that the Church could not constitute impediments destroying matrimony, or that the Church has erred in so constituting impediments destroying matrimony, let him be anathema."

Observe that the power claimed is of "destroying matrimony." This the Church of Rome has claimed for over 350 years, and has exercised it whenever she considered she was powerful enough to do so. The clause is, in its terms, absolute, it is not limited as to time or place. It speaks as the voice of a paramount power able at its will to interfere with the laws of the Government of any land where it pleases, and has the power to make its decree effective. The menace continues to stand in the above words.

In the "Compendium of Moral Theology," by P. J. P. Gury, S.J., the text book used at Maynooth and other Roman Catholic Colleges, the position of Rome in this matter is thus authoritatively laid down.

> "Question—Is a marriage valid when the contracting parties leave a place where the decrees of the Council of Trent are in force, so as to go to another place where they are not?
>
> "Answer—No, it is not valid.
>
> "Question—Is it valid when one leaves a place where these decrees are not in force, so as to contract marriage clandestinely in another place?
>
> "Answer—No, even if contracted while passing through this place only.

"Question—Should heretic marriages be considered as valid in places where those decrees are now in force?

"Answer—Positively no; for the following reasons:—

"1. Because in all countries where decrees have been proclaimed they oblige al people indiscriminately, heretics or Catholics, as the former are subject also to the jurisdiction of the Roman Church.

"2. Because, if heretics were excluded from this general law of the Roman Church, they would be granted a privilege for their rebellion which would be absurd."

(b) Notwithstanding this pretension of Rome, as a matter of fact the decrees of the Council of Trent, as adjudged by the Privy Council in England, are not now and never were, either at the time of the cession to England or at any other period in force in Quebec.

(I, b[1])

Some sentences from the conclusions of the Privy Council in the celebrated Guibord Case, which in 1874 overruled the ecclesiastical authorities of Quebec and the civil appellate courts which adopted their findings and compelled them to grant the remains of Joseph Guibord Christian burial, make this plain. In regard to the argument of the Church authorities, the Privy Council says:—"They appear to place their principal reliance on Rule 10 of the Conncil of Trent," and it then proceeds thus to deal with this contention:—

"In the first place, it is a matter almost of common knowledge, certainly of historical and legal fact, that the decrees of this Council (of Trent), both those that relate to discipline and to faith, were never admitted in France to have effect *proprio vigori*, though a great portion of them has beeu incorporated into French ordonnances. In the second place, France has never acknowledged nor received, but has expressly repudiated, the decrees of the Congregation of the Index.

"No evidence has been produced before their Lordships to establish the very grave proposition that *Her Majesty's Roman Catholic subjects in Lower Canada have consented, since the cession, to be bound by such a rule as it is now sought to enforce, which, in truth, involves the recognition of the authority of the inquisition, an authority never admitted, but always repudiated by the old law of France.*"

(c) In Quebec, until the introduction of the Benedictine Decree, if no generally recognized impediments existed, the mere consent of the parties followed by their living together as man and wife, constituted, as was then the case under the general canon law, the sacrament of marriage, and was valid. The parties at times were said to "have married themselves in the presence of their parents assembled." It was equally a sacrament where the marriage took place before a Civil Magistrate.

(d) In 1741, Pope Benedict XIV. issued the Benedictine Decree, which, according to its terms, affected only Roman Catholics. The decree was in force in Quebec before the time of the cession, and laid down the rule to guide in the class of marriages therein referred to.

(e) This decree was not intended to and did not affect the marriages of Protestants. Pope Benedict considered the matter and actually and logically declared that, as Protestants could not be affected by the decree, in virtue of the indivisibility of the contract, therefore, it could not apply in the case of the union of a Protestant with a Roman Catholic, as, if it did so, the marriage of Protestants would thus be interferred with, which was not the effect or intention of the decree.

See the learned commentary on this subject by P. Charles Gonthier, S.I., of the College Sainte Marie, Montreal, with the imprimatur of the Archbishop.

(I. e[1])

"Autrefois Benoit XIV, dans sa célèbre Déclaration sur les mariages clandestins des hérétiques dans les Paye-Bas, . . . avait directement déclaré que les mariages des protestants dans ces contrées n'etaient pas soumis à la loi du Concile de Trente.

"Puis par voie de conséquence, s' appuyant sur l'indivisibilite du contrat, et se hasant sur une opinion d'un certain nombre de canonistes de son temps, il avait tiré la conclusion que dans un mariage mixte, la partie hérétique gardait son exemption, et par suite la communiquait á l' autre ; d'ou suivait que là où les mariages clandestins des hérétiques entre eux étaient valides, les mariages mixtes clandestins l'étaient aussi.

. . . . .

"On connait un certain nombre d'actes du st. Siége déclarant la validité des mariages mixtes contractés clandestiuement.

"Le premier dans l'ordre des temps est la fameuse Déclaration bénédictine. Le 4 Novembre, 1740, le Pope Benoit XIV. définissait la situation légale, au point de vue du mariage, des catholiques et des hérétiques vivant daus la Belgique et la Hollande. Il déclarait et statuait que les protestants dans ces provinces n'elaient pas soumis au décret Tametsi, de plus Il déclarait que'en vertu de l'indivisibilité du contrat, dans ces memés provinces ies mariages mixtes étaient exempts de la loi de clandestinité.

Cette déclaration a depuis été successivement étendue á beaucoup de pays, soit explicitement, soit equivalemment.

Elle fut étendue au Canada, dès ies premiers temps de l'occupation anglaise ; en 1763.

TRANSLATION

"Benedict XIV. in his well-known Declaration with regard to clandestine marriages of heretics in the Low Countries . . . at that time positively declared that the marriages of protestants in these countries were not governed by the law of the Council of Trent,

"As a conclusion flowing from this, basing his view upon the indivisibility of the contract, and founding his conclusion upon that of a certain number of the canonical writers of his own day, he arrived at the result that in a mixed marriage, the heretic party to it preserved his exemption, and in turn communicated this exemption to the other party; whence it followed that in those places where clandestine marriages of heretics among themselves were valid, clandestine mixed marriages were valid also . . . .

We know of a certain number of pronouncements of the Holy See declaring in favor of the validity of mixed marriages clandestinely contracted.

"The first in the order of time is the famous Benedictine Declaration. On the 4th of November, 1740, Pope Benedict XIV defined the legal position of catholics and heretics living in Belgium and Holland on the subject of marriage. He declared and decreed that the protestants of these countries were not governed by the Tametsi Decree ; furthermore, he declared that by reason of the indivisibility of the contract, mixed marriages in these same countries were exempt from the law of clandestinity.

"This Declaration has since that time been successively extended to many countries, either directly or in some other manner having equal force.

"It was extended to Canada from the earliest times of the English occupation in 1763."

This declarstion Pope Benedict never altered.

(f) This decree, therefore, recognized mixed or "clandestine "marriages between Protestants and Roman Catholics. The presence of a Roman Catholic priest in order to the validity of the function was not required, but such marriages were valid when a Protestant minister was present—in this respect placing the priest and the minister on the same footing.

(g) It was claimed by Rome that at the time of the cession the Benedictine Decree was in force and established the rule as to marriage in Quebec. It prescribed regulations to govern Roman Catholics in their marriages but did not interfere with the marriages of Protestants with Roman Catholics, or among themselves or with those of another faith. There was no doubt or question upon the point, which was absolutely affirmed by Archbishop Bruchesi in 1901.

(I. g[1])

He then issued a pastoral letter on the occasion of the celebrated case of Deipit vs. Coté, being before the Supreme Court of the Province of Quebec, from which the following extract is taken:

> "By virtue of the Constitutions of the Sovereign Pontiffs there are countries, and the Province of Quebec is of the number, where *in spite of the promulgation of the Council of Trent*, we are to consider as *valid, marriages celebrated clandestinely between two parties, one being a Catholic and the other a baptized non-Catholic. The marriage of a Catholic and a baptized Protestant, or vice versa, celebrated before a Protestant minister*, although gravely illicit and calling down the censures of the Church, is, *however, a marriage contracted in a valid manner, ev. · in the eyes of the Church herself. Once consummated this marriage cannot be broken by any earthly power, death alone rendering liberty to the party surviving.*"

In his further pastoral letter, issued after the promulgation of the Ne Temere Decree in 1907-8, he refers to his Diocese as one in which "the Benedictine Declaration was in vigour."

The following extract from the Tridentine Decree throws a strong light on the subject:

The Council of Trent, Chapter 1. Sec. 24, although condemning what it calls "clandestine marriages," yet makes this concurring statement as to their validity:—

> "It is not to be doubted that clandestine marriages made by the free consent of the contracting parties, are valid and true as long as the Church has not made them invalid; and they are to be rightly condemned, even as the Holy Synod condemns and anathematizes them, who deny that they (clandestine marriages) are true and valid, and who falsely affirm that marriages contracted by children without the consent of their parents are invalid, and that parents can make them valid or invalid."

The utterance of Pothier, the leading authority of the old French law, is illuminating:

> "The marriage that the faithful contract, being a contract which Jesus Christ has elevated to the dignity of a sacrament, it is at the same time both civil contract and sacrament. The marriage, being a contract, belongs, like all other contracts, to the political order; and it is in consequence, like all other contracts, subject to the laws of the secular power that God has established to govern all that belongs to the government and good order of civil society."

(h) The importance and incontrovertibility of the fact that the Benedictine Decree was operative in Quebec from a period preceding the cession, and continuously up to the present as the law ruling Roman Catholics in regard to their marriages, unless interfered with by the Ne Temere Decree, is evident.

(i) The Benedictine Decree being in force at the time the Ne Temere Decree was promulgated, the rights of all Canadian citizens,

whether Roman Catholic or Protestant, are saved to them by the express language of this latter decree.

Rome had already dealt with this question and had passed its Benedictine Decree, which had gone into force in Canada, and this being the case, the Ne Temere Decree by its exclusive terms is not in force in Canada, which is excepted from its operation, and the Benedictine Decree, if ever binding, continues in force.

(I. i[1])

The principal clauses of the Ne Temere Decree, called authoritatively and truly "The new marriage laws," are the following, and they should be perused with care."

III. Only those marriages are valid which are contracted before the parish priest or the Ordinary of the place, or a priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII. and VIII.

VII. When danger of death is imminent and where the parish priest and Ordinary of the place, or a priest delegated by either of these, cannot be had, in order to provide for the relief of conscience and (should the case require it) for the legitimation of offspring, marriage may be contracted validly and licitly before any priest and two witnesses.

VIII. Should it happen that in any district the parish priest or the Ordinary of the place, or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses.

XI. (i.) The above laws are binding on all persons baptized in the Catholic Church and on all those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church) whenever they contract spousalia or marriage with one another.

(ii.) The same laws are binding also on the same Catholics as above if they contract spousalia or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment Mixtae religionis or disparitatis cultus; unless it has been otherwise decreed (sit statutum) by the Holy See for some particular place or region.

(iii.) Non-Catholics, whether baptized or unbaptized, who contract among themselves, are nowhere bound to observe the Catholic form of sponsalia or marriage.

The last sentence of Clause XI. (2) prevents this clause affecting mixed marriages in Canada, as before the issuing of the Ne Temere Decree "the Benedictine Declaration was in vigour" in Canada, and in this "place or region" (Canada), the Holy See "having otherwise decreed," the Ne Temere Decree was never binding. No doubt there was good reason for this exception, which should not now be disregarded.

But passing over this ground, let us see how the matter otherwise stands.

"There is But One Church."

On the 2nd of August, 1907, this Ne Temere Decree was published at Rome. On the 12th of November, 1907, the same Roman Catholic Archbishop issued Circular No. 65, containing "Instructions to his Clergy regarding Mixed Marriages," on the first page of which there is this statement:—"There is but one Church; our duty is to observe its laws and to have them observed." Possibly this assumption made on the part of the Roman Catholic Church, not only in Italy and elsewhere, but in the Dominion of Canada, that it is the one Church, will account for much that has been said and done in connection with the Ne Temere Decree. The representative of this Church, calling it "the Catholic Church," the "one Church," and its members "the Catholics," proceeds at page 7 to state:—

"Tell your parishioners, in our name, that we will no longer grant dispensations for mixed marriages as we have done in the past. They cannot in future expect to obtain these dispensations, even though they bring forward the weighty reasons of temporal advantage or mutual affection, even though they threaten to seek the services of a minister of another religion."

"We would also remind you that there is excommunication against every Catholic who attempts to be married by a Protestant minister."

"Undoubtedly she lays down as an essential condition of the dispensation she grants, that all the children born of a mixed marriage must be baptized and educated in the Catholic religion."

Once a Roman Catholic Always a Roman Catholic.

"But it must be noted that all the regulations of this decree bind those who, at any time of their life, have belonged to the Catholic Church, even though they may have later on left her and renounced her teachings."

The following results flow from "the new marriage laws":—

(a) In infancy a boy and a girl baptized in the Roman Catholic Church, on arriving at years of discretion become members of a Protestant church and are, as Protestants, duly married by a Protestant minister empowered by law to perform the ceremony of marriage, and yet, as such a marriage, under the Ne Temere Decree, is, where it is in force, brought under Clause 11 (2), the same is invalid, the parties are living in concubinage, the children are illegitimate, and the Church and the civil law may interfere and declare these results with all that flows therefrom.

(b) The same result follows such a marriage if not both, but either one of the parties, be baptized a Roman Catholic and thereafter becomes a member of a Protestant church.

(c) The same result follows such a marriage between a Roman Catholic and a Protestant.

(d) The same result follows if an authorized Protestant Christian minister performs the ceremony between Roman Catholics.

A woman ignorant of the fact of her baptism as an infant in the Church of Rome is brought up and becomes and is a member of a Protestant church, and is married to one of the same faith by a duly authorized Protestant minister empowered by the State to perform such ceremony, and she finds many years afterwards that the Church of Rome says she is under the Ne Temere Decree living in concubinage and her children illegitimate.

A woman knowing that in infancy she was baptized in the Roman Catholic Church, abandons that Church, is converted to Protestantism and marries one always a member of a Protestant church, with a like result, although neither of the contracting parties at the time of marriage was de facto a member of the Roman Catholic Church, but both of them were members of a Protestant church.

A member of the Roman Catholic Church is married to a member of a Protestant church by a Protestant minister duly authorized, with a like result.

Two members of the Roman Catholic Church are publicly married by license by a duly appointed minister in a Protestant church, with a like result.

Can Canada be compelled to submit to dictation in a matter of such vital importance as the validity of marriages?

(j) Shortly, the matters above referred to stand as follows:

(1) Rome claims that the Benedictine Decree was in force at the time of the cession.

(2) This decree declared mixed or clandestine marriages to be valid even when the witness thereto is a Protestant minister.

(3) The Ne Temere Decree excepts from its operation places where such a decree as the Benedictine is in force.

(4) The latter decree therefore continues in force in Canada.

(5) Therefore the Ne Temere Decree does not affect Canada, and the old law as to marriage continues,

(6) Consequently, Rome has no right to invalidate marriages declared valid by the Benedictine Decree and virtually to divorce those legally married thereunder.

(7) If this were permitted it would set at nought the laws throughout the Dominion, and introduce there the Canon law of Rome in the domain of matrimony, breeding lawlessness and immorality. Are we to be compelled in self-defence, to enact laws in Canada similar to the Anti-Clerical laws of France, Italy, Spain, Portugal or South America, in respect of this most vital matter ?

(8) The question may well be asked, Where does Rome find authority for her audacious claim that when the statute law of the land validates a marriage, she, placed in the same position as other religious bodies in the Dominion, has the right by her decree to overrule such legislative declaration and nullify what it enacts.

II.

(a) The Roman Catholic authorities, although in language so ambiguous that it at once creates suspicion, claim to sustain under some "right guaranteed by treaty and by the constitution of the country," a superior position in respect of marriage. Although often asked specifically to point out the treaty, statute or other ground on which this claim is based, the request has never been complied with and the history of the time absolutely disproves it.

(b) It is an established fact that no such right by treaty, statute, or obtained in any other manner, as is now claimed byRome under the Ne Temere Decree, was awarded as a condition of the cession or otherwise.

(c) It is well to bear in mind that no such rights as those now demanded by the Roman Catholic Church were permitted to it up to the time of the cession.

This Church had been up to that date in a state of tutelage to the French ruler. The eight following extracts from the volumes of the original archives, open to the world, serve as examples to show how completely in all things the Church was ruled by its head, the French King. He ordered

(1) That the Church must be guided by "the King's intentions concerning Church matters."

(2) That no religious community could exist or be formed without his royal permission.

(3) That no nuns could be made by the Church without his leave, as it would be an interference with the liberty of the king's subjects, which belonged to him and not to the Church.

(4) That the Bishop must collect tithes in other ways than by the refusal of absolution or the sacrament, through which means the Bishop had ordered the priests to enforce payment.

(5) That the Bishop must cancel his refusal to allow the Recollets to go on missions, as "His Majesty's will is that he so employ them."

(6) That a sharp rebuke is to be administered to the parish priest for abusing his ministry. If it happens again His Majesty will have him punished.

(7) He declares that Father Joseph was wrong in refusing in writing to give absolution to Mademoiselle ——.

(8) That the Hospitaliers are not to take any vows or to wear uniform.

It is strange that the Roman Catholic Church instead of rejoicing in the large liberty that is now awarded to it after suffering from these petty interferences and caprices of the King of France in the general regulation of the Church and in every little parish difficulty, as it arose, should be unwise enough instead of enjoying, to complain of, the comparatively extensive liberty and power that is granted to it.

(d) Let us glance at the only four documents to which Rome can refer for support in this claim:

(1) At the capitulation "the free exercise of the Roman Catholic religion" was given, but the right to collect tithes was refused.

(2) By the Treaty in 1763 His Britannic Majesty consented "to his new Roman Catholic subjects professing the worship of their religion according to the rites of the Roman Catholic Church, but with this ruling exception—"as far as the laws of Great Britain permit."

(3) It was explained by the instructions to the first Governor-General, Murray—"You are not to admit of any ecclesiastical jurisdiction of the See of Rome, or any other ecclesiastical jurisdiction whatever under your government.

(4) By The Quebec Act, 1774, it is declared that the Roman Catholics may "enjoy the free exercise of the religion of the Church of Rome," which is expressly made subject to the King's supremacy as declared by statute first Elizabeth: "No foreign . . . . prelate . . . . or potentate, spiritual or temporal, shall use, enjoy or exercise any manner

of power . . . . spiritual or ecclesiastical within this realm or the dominions thereof," which may shortly be summed up, as it was twenty-one years afterwards—

"The Bishop of Rome hath no jurisdiction in this realm."

(e) In 1688, dissenters, other than Roman Catholics, were granted "the free exercise of their religion." In 1851, Cap. 105 V., allowed all religious denominations, which included Roman Catholics. "the free exercise and enjoyment of religious profession and worship, without discrimination or preference." These words covered neither more nor less than the language of the Quebec Act—"enjoy the free exercise of the religion." All accepted the terms as given. The change that is now sought to be introduced by Rome is indeed an arrogant attempt of one of the religious denominations to subvert the authority of our Sovereign Lord the King.

(II. e[1])

The preamble and first section of this Act are as follows:

"Whereas the recognition of legal equality among all religious denominations is an admitted principle of colonial legislation; and whereas in the state and condition of this Province, to which such a principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct legislative authority, recognizing and declaring the same as a fundamental principle of our civil policy; Therefore,

"(1) The free exercise and enjoyment of religious profession and worship, without discrimination or preference, so as the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, is by the Constitution and laws of this Province allowed to all Her Majesty's subjects within the same."

But neither here was it pretended that this declaration of religious toleration with the free exercise of religious profession and worship permitted interference with the marriage laws of the Province, on the part of any of the religious denominations in Canada to which the above rights were permitted.

(f) Further light will be thrown upon the question of the very limited rights of the Church of Rome by looking at its position immediately after the cession as shown from the same authentic source. To the efforts of the Church of Rome after the cession to obtain a recognition of claims from time to time made, the answer was—

(1) The King is supreme;

(2) You are given "the free exercise of the religion of the Church of Rome, subject to the King's supremacy," as was provided;

(3) Certain privileges which you are enjoying were specially referred to, and these having been specifically dealt with, exclude others;

(4) The Bishop of the Church of England is the Bishop of Quebec, with the powers that belong to such office.

(5) The Roman Catholic officer is "superintendent" without such title or rights;

(6) The Church of Rome has no position but that which belongs to a tolerated religion;

(7) The presence of French Immigrant Priests in Quebec is only on sufferance;

(8) The English Canon Law rules. Roman Catholic Bishops must act under the King's commission. In all matters, temporal or mixed, they must be subject to the King's authority. All English subjects are free from the papal power. A Roman Catholic Bishop cannot legislate nor can he obtain any rights which the Church of England does not possess. His appointments must be made for spiritual purposes only and with the approbation of the Governor. He has jurisdiction over his clergy, but subject to the controlling power of the King's Bench. He cannot have the power to appoint the Superintendent of Catholic Schools or to erect parishes.

What is shown in the documents referred to by the Roman Catholic authorities in favor of their claim, and what took place at the time of their acceptance, and after they were acted upon give an incontrovertible body of evidence which demonstrates that the claim of Rome to interfere with the marriage laws of the land is without foundation. It has no more power than has any Protestant Church to interfere with the rights of the citizens of the Dominon given equally to all by the Dominion and Provincial Statutes governing the laws of marriage.

It cannot turn itself indirectly into a Matrimonial and Divorce Court, rendering abortive the marriage laws of our land.

III.

(a) As to the effect of "the civil code of Lower Canada" on the question of marriage, one might well rest on the convincing reasoning of the Court in the Quebec case of Delpit vs. Cote as found in its "conclusions." It is, however, well to draw attention to three facts which may not otherwise be sufficiently emphasized:

(1) This law concerning marriage was not enacted for the benefit of the members of a particular creed but was general legislation for all.

(2) It is a law complete in itself. It designates the officers before whom the marriage is to be solemnized and makes provision for all that is required for the validity of the marriage.

(3) Under this law all the functionaries it authorizes, regardless of creed, can solemnize marriages without restriction as to the religious belief or non-belief of the parties, outside or inside the Church, and without restriction as to the locality where the ceremony is performed.

The material clauses of the Code are found in the appendix. The language used is so simple that it is hard to understand how a difficulty could arise in comprehending it, if its words receive the meaning usually and properly attributed to them. No misunderstanding occurs until it is sought to import into some of the words, applicable to all citizens, a peculiar meaning in order to sustain the position of the Church of Rome which is repudiated by all other Christian bodies.

(III. a[1])

The "conclusions" of the court in the Delpit case are so well worthy of study that they are given here:

"(a) Considering that there exists in this Province no established church, but that all denominations of Christians are perfectly free and equal;

"(b) Considering that marriage is a contract of natural law, and belongs to the whole body of the population without distinction of religious belief;

"(c) Considering that our law relating to marriage was enacted without reference to the religious beliefs of any section of the population, but as a general law to secure the publicity of marriage, and the authenticity of its proof;

"(d) Considering that neither the Code, nor the authority of England since the cession of this country, nor of this country under the French regime, required any religious ceremony as an essential of the validity of the marriage;

"(e) Considering that marriage is a civil contract, the obligation of which, however, has, with most Christian nations, been reinforced by considerations relating to religion;

"(f) Considering that in the interpretation of any law relating to marriage, every presumption must tend towards the validity of marriage;

"(g) Considering that articles 128 and 129 of the Civil Code require that marriage be solemnized publicly and before a competent officer, and that all persons authorized to keep registers of civil status are competent officers, and that the literal interpretation of these articles would exclude any limitation such as that set up by the plaintiff;

"(h) Considering that there is no ground to limit the general application of the articles in question, except such as would be based upon the supposition that the law intended to confer upon the particular religious bodies an obligatory jurisdiction over their members, which is absolutely contrary to the complete freedom of religious profession prevailing in this country;

"(i) Considering, therefore, that the said Rev. W. S. Barnes was not an incompetent officer to receive the consent of the parties to the marriage in question;

"(j) Considering that at the cession of this country the functions of all courts in previous existence absolutely ceased and determined, and could not be revived or re-established without the expression of the will of the new sovereignty;

"(k) Considering that since the said cession the new sovereign authority has never constituted any ecclesiastical court in this country, and that no such court has existed, or does exist therein;

"(l) Considering that all the different religious organizations in this country are purely voluntary associations, free and independent of the State with regard to all matters of faith and doctrine, but having no coercive jurisdiction over any of their members;

"(m) Considering that actions for annulment of marriage are civil actions, and are specially confided to the courts of civil jurisdiction;

"(n) Considering, therefore, the decree of the ecclesiastical authority, pleaded by the plaintiff, as being null and void and of no legal effect;

"(o) Considering plaintiff's action wholly unfounded and defendant's demurrer well founded, doth maintain said demurrer, and dismiss plaintiff's action with costs."

But it is claimed that the Civil Code gives peculiar rights to the Roman Church. Its language is simple and distinct. No difficulty arises until it is

sought to import into some of the words of this Act, applicable to all citizens, a peculiar meaning in order to sustain the position of the Church of Rome which is repudiated by those not members of that Church.

Section 63. "The marriage is solemnized at the place of the domicile of one "or other of the parties; if solemnized elsewhere, the person officiating is obliged "to verify and ascertain the identity of the parties."

Section 127. "The other impediments recognized according to the different "religious persuasions, as resulting from relationship or affinity or from other "causes, remain subject to the rules hitherto followed in the different churches "and religious communities. The right, likewise, of granting dispensations from "such impediments appertains, as heretofore, to those who have hitherto enjoyed "it.

Section 128. "Marriage must be solemnized openly by a competent officer "recognized by law."

Section 129. "All priests, rectors, ministers and other officers anthorized by "law to keep registers of acts of civil statns, are competent to solemnize mar- "riage. But none of the officers thus authorized can be compelled to solemnise "a marriage to which any impediment exists according to the doctrine and belief "of his religion and the discipline of the Church to which he belongs."

Section 161. "When the parties are in possession of the statns, that is, when "they have lived together as man and wife pnbliciy, and the certificate of their "marriage is produced, they cannot demand the nuility of such act."

Section 128 is as follows: "Marriage must be solemnized openiy by a competent officer recognized by law." In the French version the word nsed in piace of openly is "pnbliquement." In order to meet the demands of Roman Catholics a meaning is sought to be given these words "openiy" and "publiquement" entirely nnwarranted, as is shown in the convincing judgment of Mr. Justice Archibald in the celebrated case of Delpit vs. Cotê, as to which he says:—

"(a) Articles 128 and 129 of the Civil Code require that marriage be solemnized publicly and before a competent officer, and that all persons authorized to keep registers of civil status are competent officers, and the literal interpretation of these articles would excinde any limitation such as that set up by the plaintiff."

"(b) There is no ground to limit the general application of the articles in qnestion, except such as would be based npon the supposition that the law intended to confer upon the particnlar religious bodies an obligatory jnrisdiction over their members, which is absointely contrary to the complete freedom of religious profession prevailing in this country."

This is the answer given to the claim that under the simple words "openly" and "publiqnement" there is introduced all that has been import. into the word "clandestine," as necessitating marriage by the Roman Catholic parish priest, if the Church, etc.

Nor is there any better foundation for the other claims made under the fnrther clauses of the Code. If the extended meaning claimed were given to these words, it would introduce a discretionary enlargement, the catalogne of which might be varied from year to year, and produce a state of doubt and uncertainty which would be intolerable.

Clause 63 is as follows:—

"The marriage is solemnized at the place of the domicile of one or other of the parties; if solemnized elsewhere, the person officiating is obliged to verify and ascertain the identity of the parties."

This does not require that the marriage shonld be in the church, nor in the place of domicile of either of the parties. How completely this negatives the Roman Catholic rule to-day as to "clandestine" marriages!

Then observe Clause 129:—

"All priests, rectors, ministers and other officers authorized by law to keep registers of acts of civil status, are competent to solemnize marriage."

"But none of the officers thus authorised can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion, and the discipline of the church to which he belongs."

All functionaries authorized by law, no matter what their creed, or without a creed, can solemnize marriage, without restriction as to the religious belief or non-belief of the parties, outside the church, and without restriction as to the locality where the ceremony is performed. A reasonable clause is introduced to save the conscience of the officer who considers an impediment to the marriage exists, but which places no bar in the way of the parties, who may select another officer, to whom the impediment is non-existent, to solemnize the marriage.

The final clause of the first chapter, which deals with the qualities and conditions necessary for contracting marriage, is 127.

"The other impediments recognized according to the different religious persuasions, as resulting from relationship or affinity, or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities.

"The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it."

Three observations may be made on this article: (a) Taking the usual rule of construction, the words "from other causes" would be limited by the class of matter which is being dealt with in the twelve preceding clauses; (b) No fresh impediment could be introduced, as the reference is "to the rules hitherto followed," and (c) No matter can be presented as an impediment which is taken up and solved by such articles of the Code as 128, 63 and 129. Here impediments supposed or real are taken up and dealt with, and cannot be reimposed by a church or otherwise. The parties following out these regulations of the Code are then brought under Clause 161.

"When the parties are in possession of the status, that is, when they have lived together as man and wife publicly, and the certificate of their marriage is produced, they cannot demand the nullity of such act."

In order to do away with the true effect of the Civil Code as expounded by Mr. Justice Archibald, it is read by some of the other judges and writers, so as not to give its words the meaning usually attributed to such language.

Recent events, so well known to all that it is unnecessary to go into them in detail, make it imperative that the present doubts and uncertainties introduced into the question of marriage, and the wrongs thereby caused by the Church of Rome, should be set at rest and ended. The actual position of citizens of our Dominion should be clearly defined and declared by the Legislature, and, so far as possible, one uniform marriage law for the whole Dominion should be passed.

IV.

(a) Up to this point no authority has appeared which would warrant the interference of the Church of Rome in respect of the marriage laws of the land. When is it alleged that it came into being? When did Rome get from the English King compulsory power over Canadan subjects which was absolutely forbidden by the French Sovereign?

There is no ecclesiastical court in the Province of Quebec. No Bishop has the power to convert himself into an ecclesiastical court, and therefore there is no method of procedure in existence for annulling a marriage.

(b) If any peculiar right was granted to Rome at the date of the B.N.A. Act, 1867, it must be there found. But so far from that being the case, the whole matter is covered in favor of the Dominion and the Provinces.

(c) By the 91st section of the Act, "marriage and divorce" is exclusively reserved to the Parliament of the Dominion, and therefore it, and it alone, has the power to deal with the status that results from a marriage entered into in conformity with the requirements of the Provincial Legislature, between what persons and, under what circumstances, it shall be created, and, if at all, destroyed.

(d) There is no right of interference here any more than there is under S. 92, ss. 12, which includes "the solemnization of marriage in the Province" within the subjects on which it may exclusively make laws.

(e) The question of the procedure and formalities to be observed to enable its citizens generally to lead up to and enter lawfully into the marriage relationship is reserved to the Legislature of each Province, which has the power to prescribe for itself in respect thereof such regulations as it deems proper.

(f) No church, priest or minister thereof, in the Dominion, has the right, because of any supposed ecclesiastical law, rule, or privilege, to seek to disturb or affect such status when it has been obtained as above.

(g) How serious an interference with the freedom of the subject is experienced when a child, one of the king's subjects, baptized on the day of its birth in the Roman Catholic Church, is never permitted to shake off this yoke, or change his communion, and notwithstanding that the whole of the life from the period of discretion may have been lived as a member of another religious body, the person is still bound as a member of the Roman Catholic Church. That is, that in the most important matter in life and through eternity this Church seeks to deprive him of making a choice and to bind him by her laws forever.

S.H.B.
W.D.G.