

It was but two years ago that attention was drawn to the fact that on an old lawn at Winchester the grass kept fairly green even in that dry season, except in certain long strips, about three feet wide, which followed a very regular plan. Excavations where the grass was brown and dead revealed only nine inches below the surface a wall of solid masonry, which on old records being consulted proved to be the ruins of an ancient religious house, demolished during the "great pillage." All trace of it had been lost, until the grass by dying in the shallow soil revealed to knowing eyes the existence of the wall beneath. The entire ruin has since been uncovered to the great joy of antiquarian students.

## THE LENNOX JUDGMENT

BIGRAS vs. THE CHILDREN'S AID OF PRESCOTT AND RUSSELL

Supreme Court Ontario  
In re the Children's Protection Act of Ontario, and in re Rene Bigras and Noel Bigras, children under the age of sixteen years.

Copy of Judgment of Lennox, J., delivered 8th December, 1923.  
W. L. Scott, K. C., for applicant.  
Ritchie, K. C., for Children's Aid Society.

By arrangement between counsel, and to save expense, a writ of Habeas Corpus was not issued and the infants, hereafter referred to as children, were not in Court. Their names as herein set out are in the inverse order of their ages: Noel will be fourteen next December; Albert was eleven last March; Manuel was ten last May and Rene was eight last April.

No question has arisen as to Rene, but he is included in the application and will be embraced in the order.

The mother was a Roman Catholic, and died about three years ago. On the 30th of December, 1922, Adolph Bigras, the applicant and father of the children, executed an instrument under seal called a Transfer of Guardianship, committing the children above named "to the care, guardianship and control of the Children's Aid Society of Prescott and Russell Counties," purporting to release to the Society all his control over them, and constituting the Society their guardian during minority. The instrument recites that he does this voluntarily and of his own free will and accord. The "Transfer of Guardianship" is accepted on behalf of The Children's Aid Society by Rev. P. A. MacEwan, Local Inspector of the Children's Aid Society. I would be doing him an injustice if I interpreted literally his expression, "I happen to be a Baptist."

The instrument of transfer contains this clause: "I direct that said children shall be placed in a good and approved family home where they shall be treated kindly, brought up in the tenets of the Protestant (A. X. B. mark) faith, shall be taught habits of truthfulness, etc." An Order of Commitment followed, and it embodies the provision above set out as to the religious education or training of the children. The children other than the last named, have been placed by the Society in Protestant foster homes. It is conceded that they are well provided for, by respectable Protestant families, and are apparently comfortable and happy.

I have a letter of the 10th instant (I think I had one before) from Mr. MacEwan, which he should not have written. Amongst other things he says: "The parties who have given adoption to the boys do not now wish to part with them, nor do the boys wish to leave them. It would be unfortunate to disturb present relations."

Proselytizing is no part of the duty of an officer of the Children's Aid Society. He should have been content with giving evidence at the hearing. I intimated to counsel, by letter, that if the foster parents are disappointed in what they probably regarded as a permanent arrangement, they should be paid some reasonable and moderate sum for the expenditure for clothing and the like, of which they would not get the benefit, and suggested that counsel tentatively agree on the amount. Mr. MacEwan appears to have got track of this in some way, and accordingly argued the propriety of exacting payment of a little bill of Mr. Lefebvre—to whom I shall presently refer as a witness—for \$188.20. Writing Mr. MacEwan this gentleman says: "I take pleasure in forwarding you a copy of our claim for the four Bigras boys, 13 days \$6.00, \$78.00, etc. I would think he would, and pleasure, too, in any order conditioned upon payment of the total claim; and a few such claims, allowed, as my correspondent suggests, would be well calculated to prevent any disturbance of 'present relations.' And this, unfortunately, is not all. As supplementary evidence, and to contradict and offset the sworn testimony of the applicant, Mr. MacEwan encloses a letter from Mr. W. T. Erskine, J. P., in reply to Mr. MacEwan's letter written after the motion had been launched, and in his possession actually or impliedly, when the motion

was heard, although not referred to at that time. Contrary to the common adage, "second thoughts" are not always best. As appeared upon the return of the motion, Mr. MacEwan was somewhat in evidence—though I did not then think unduly so—when the change of custody was brought about and upon the argument I expressed the opinion that the society acted in good faith and it is undoubtedly a fact that as a body the Society has done and is doing a work of incalculable value to the Province; but it can only act through agents and I regret that as concerning this branch or County Committee, I cannot, now, in view of the matters just referred to, confidently reiterate that opinion, although it is quite possible that they did.

The Society, as a Society, has not strenuously opposed this application. The decision turns upon the effect, if any, to be given to the clause as to the religious training or education of the children; and, whether this should be enforced contrary to the father's wishes, depends upon all the facts and circumstances immediately preceding the commitment. He is not asking to take the children out of the guardianship and legal custody of the Children's Aid Society; he is only asking for an order directing that the children be placed in Roman Catholic foster homes as the Act provides, in order that they shall be instructed in the religion of their father and mother, the religious faith in which they were born and have hitherto been educated, and in the meantime until they are of an age to knowingly deliberately decide for themselves, that they shall have the ministrations of the church to which the three boys are already placed (according to the evidence of Exall, Bigras, and Noel and Albert at all events, I presume, canonically belong, they having made their first Communion. However, be this as it may, the religion of the father is the religion of his infant children; if this father is a Roman Catholic, his children are for the time being, legally Roman Catholics, the provision as to how they are to be placed or "brought up," whether binding upon the father or not, to the contrary, notwithstanding.

Upon the evidence I am thoroughly convinced that the applicant is and has always been a Roman Catholic, and the contention to the contrary is wholly unfounded. Granted that the foster homes selected are in all other respects satisfactory, and assuming without deciding, that these are neglected children, the meaning of section 2 (1) (b) of The Children's Protection Act of Ontario, nevertheless there is no discretionary power whatever vested in anybody as to the religious character of the foster home of a Protestant or Roman Catholic child, and so far as I am aware, there is only one instance in which the statute recognizes or sanctions any modification of the Legislature's clearly defined policy—a Statutory recognition and adoption of the common law, by sub-sec. (3) of sec. 2. For the purposes of this Act, a child shall be deemed to be a Protestant child if its father is a Protestant, and a child shall be deemed to be a Roman Catholic child if its father is a Roman Catholic, unless it is shown that the agreement had been entered into in writing, signed by the parents that the child should be brought up in the faith of its mother, and that faith is not the faith of its father." The exception provided for here does not apply, for there was no agreement between the parents, and the mother and father were of one faith.

And the functions, duties and jurisdiction of the Children's Aid Society are specific, limited and purely statutory; no action or bargaining, or contract with parents is not sanctioned or contemplated—provision is not made for lazy and indifferent parents to throw the responsibilities of parentage upon the State, by bargaining with the Society as to religious education or otherwise; the sphere of its action, and the duty of spontaneous action, by the Children's Aid Society, within its sphere, and solely by virtue of and under the provisions of the Act—are alike unmistakably provided for; and the result is that in cases within the Act, the Society must function, and functioning, be guided solely by the provisions of the Act, without reference to whether the father consents to or opposes what is done; and if the case does not fall within the Act, the Society, whether with or without the parents' consent, has no jurisdiction to do anything whatever.

The religious faith of the father is a question of fact, and the ascertainment of this question is almost an initial proceeding under the Act, sec. 9, sub-sec. (2). The applicant's father and Lefebvre, the most active parties in bringing about this blunder, both thoroughly well knew that the father of the children was born and was still a Roman Catholic, and desired to have his children Roman Catholics. If evidence was taken by the Police Magistrate under section 9, it has not been put in, although the order of Commitment is on file—Mr. Lefebvre and Mr. MacEwan attended.

As a matter of record it would be quite proper, and advisable I should say, when it is possible, to have the father declare his religious faith in writing over his signature. As a matter of record it would be proper

and perhaps advisable, where it can be obtained, although the action of the Society is in no way dependent upon it, to have the consent of the father to the taking over and guardianship of the children, under the provisions of the Act.

And the Legislature had fortunately stated its intention in unmistakable language, the clearly expressed intention is the law; and no private or semi-private convention, or contract, or consent, or direction can over-ride or change or modify it. "Notwithstanding anything in this Act, no Protestant child shall be committed to the care of a Roman Catholic Children's Aid Society or Institution, nor shall a Roman Catholic child be committed to a Protestant Children's Aid Society or Institution, and in like manner no Protestant child shall be placed out in any Roman Catholic family as its foster home, nor shall a Roman Catholic child be placed out in any Protestant family as its foster home."

Sec. 38, sub-sec. (1). The facts ascertained, the Statute operates automatically, and, in the face of a provision so plainly and pointedly prohibitive, and impliedly mandatory as well, I cannot escape from the conclusion that the action of this local branch of the Children's Aid Society, in obtaining and acting upon the alleged agreement, was not only beyond their jurisdiction, but was distinctly contrary to the policy, and clearly expressed intention of the Legislature, and, if allowed, would be subversive of the fundamental principles of the Children's Aid Protection Act, and a denial of the Common Law rights of the father as well.

This in itself, of course, affords ample ground for making the order, but it is not the basis upon which the motion was argued, and it is right that I should deal with the phase of the case so ably argued by Mr. Scott, principally turning upon questions of fact. I have already incidentally touched upon some of the relevant facts and circumstances, and I have dwelt upon the construction of the Act on account of its importance as affecting the public interest, and not too long, perhaps, seeing that upon the judicial and absolutely unbiased observation of its provisions the continued success of this singularly well conceived and provident Statute depends.

What I have already said makes it unnecessary to discuss the dominant right of a father at Common Law as fully as I otherwise would have done. The cases are almost innumerable, and the right of a father as to the custody of his infant children, and control their education, religious and secular, has been recognized by the Courts for time almost immemorial. I dealt with this recently in re Carwood, 25, O. W. H. 283, the case of a child only two and a half years old, and I gave the custody to the father, as against the mother, although there was no morally improper conduct attributable to her. A number of the leading cases are collected in that case. As regards the law affecting this case, it will be sufficient to refer to re Faulds (1906), 12 O. L. R. 245, D. C., affirming the judgment of Anglin, J., where most of the leading authorities are collected and discussed, and if I may say so with very great respect, the most illuminating and convincing judgment I have come upon, as to the right of a father to insist that his religion shall be the religion of his children until they are of an age to decide for themselves. And the Legislature has, I think, always been careful to recognize this sacred right, for instance in The Infants Act, R. S. O. 1914, ch. 153, sec. 36—"Nothing in this Act shall change the law as to the authority of the father in respect to the religious faith in which his child shall be educated."

It was mentioned that one of the applicant's daughters may come back to her father, and they together provide a home for those children, but there is nothing definite as to this, and I am asked to make such order as I think ought to be made, without reference to the re-establishment of a home.

I took viva voce evidence and I have no doubt as to the main facts. The father, as I have said, is a Roman Catholic and he did not at any time determine, as a matter of choice, that his children should be brought up as Protestants. He is a decidedly illiterate man, and the circumstance that he does not speak or understand the English language was a contributory factor in the blunder he committed. He was in poverty, he could not even supply his children with necessary food and, having to work for a living, he could not even keep his children off the street. He says he applied to his own church people for help in securing a home for his children and failed. He was "at the end of the way," helpless and hopeless. In this situation he applied to his father and Arthur N. Lefebvre, a cousin, for advice and he was advised that there was a way out, namely, to give the children into the care of a Protestant (?) Society to be brought up as Protestants. He was made to understand and he did, as I find, understand that the Children's Aid Society of Prescott and Russell was an exclusively Protestant society, and that he must do as he did, or let his children starve or become vagabonds. There are many kinds of duress! I can think of no more numbing condi-

tion than the alternative presented to this man. He never knew that he had a choice, he had no chance to know; he never knew the truth, never knew that the basic principle of the Children's Aid scheme, so wisely and beneficently planned, and crystallized in the Act, I have referred to, absolutely forbids what was done in this case.

I do not know whether these men committed an innocent mistake or otherwise, and it is of no immediate consequence. They were born Roman Catholics, and became Protestants. The unregulated fervor of proselytism to either side is proverbial. The whole thing was a blunder as far as the applicant is concerned, and it was directly contrary to the Act, as I have pointed out, as regards the Society. The duty of the Society was to find out the religious faith of the father, and place the children accordingly, and they certainly would have found out, had they enquired. They had authority whatever to obtain the execution of an instrument of the character in question. It was contrary to public policy, and revocable; re Hutchinson (1912-13), 26 O. L. R. 601, 28 O. L. R. 114. It was wholly ultra vires as above stated and cannot stand in the way of the father's rights, both Common Law and statutory.

The people who have given a foster home to these children, in the meantime, have been put to outlay, and will be subjected to disappointment. They should each be paid by the applicant, as partial recompense, the sum of \$25. Upon payment of these sums the order will go directing that the Society remove the children from their present foster homes and place them in suitable Roman Catholic foster homes, as the Act provides.

As to the costs of the application I make no order.

## THE CATHOLIC CHURCH EXTENSION SOCIETY OF CANADA

### FIRST FRUITS

To those of our readers who have been following for the past few years our advocacy of the Ruthenian problem in Western Canada, the news that the Extension Society's efforts for the solution of that problem have begun to bear fruit, will be heartening news.

The Extension Society has maintained a clear and consistent policy relative to the Ruthenian question ever since it started to cope with it some years ago, when the proselytizing methods of non-Catholic missionary societies were revealed to the Catholics of Canada in all their shallowness, crudeness, and baldness, and so revolted our instincts that, from one end of the Dominion to the other, it was realized that some thing had to be done to save those hundreds of thousands of New Canadians to the faith of their forebears. In season and out of season, we have affirmed that it was the highest question confronting the Catholic Church in Canada today, and that the very best energies of all right-thinking Catholics should be bent towards its solution.

The better and more directly to meet the need we held that the heart of the whole question lay in providing institutions of learning in which Ruthenian boys and young men could receive an education under Catholic auspices that would fit them in the highest possible degree to return as leaders and teachers among their own people. It was in accordance with this conviction that the Governors of the Extension Society in 1918 decided upon the erection of St. Joseph's College in Yorkton, Sask., the centre of greatest Ruthenian activity in Western Canada. An agreement was subsequently made with the Christian Brothers of Ontario by Right Rev. Bishop Budka, to take over the direction of the projected work. In May, 1919, four Brothers left Toronto under the leadership of Brother Ansbert to make the preparations for the work which the peculiarly trying difficulties of language and place demanded in September, 1920, the College was formally opened for the reception of students. Since that time the work has gone on, with difficulties that stamped it as the work of God, but yet with a quiet and substantial success, that gave the greatest possible amount of satisfaction to the President of Extension when he made his official visitation of it last February. Accompanied by His Grace, Archbishop Sinnott of Winnipeg.

Three years is a very short span in the history of an educational institution and much too short a period on which to base an ordered, well-informed and mature judgment of its work. But it may be enlightening to our readers to cite a few statistics which, in our humble opinion, go to show that St. Joseph's College is justifying its existence, while adhering strictly to the demands of the Extension Society, that it should remain an exclusively Ruthenian institution and lend itself only to the needs of that nationality and rite. The College opened in 1920 with 86 pupils. In 1922 this number had grown to 63, and in 1923 to 56. This steady increase in numbers, in spite of the adverse crop conditions which the farmers of the West have had to meet for the past three years, including the present, settles conclusively that the Ruthenian people,

instead of looking askance at the College as a Latinizing institution, designed to win their sons away from their own beautiful rite that is solidly established in the Church, have rather welcomed this new centre of culture with open arms, and intend to patronize it to the extent that the conditions warrant, as it becomes better known among them. There are a number of students in the College at present who are studying in view of the priesthood. Already it has sent forth nine young men who have qualified for the highest teaching certificates demanded by the Province of Saskatchewan, and who are now engaged in schools in various parts of the settlements. But the crowning work of the institution, in so far as its ultimate continuance by the Ruthenians themselves is concerned, making it a self-supporting and self-recruiting institution, is an event to which we shall now advert.

On December 15th, at De La Salle College, Aurora, Ont., three young men—William Kozlak, Nicholas Suse, and William Gayski—were clothed in the holy habit of St. John Baptist De La Salle, and received into the Institute of the Brothers of the Christian Schools by the Rev. Brother Bernard, Provincial, acting in the name of the Superior-General. They received in religion the names of Brothers Methodius, Athanasius and Peter respectively. These men, as their names imply, are of Ruthenian birth, and represent the three Provinces, Alberta, Saskatchewan and Manitoba, in which the vast bulk of the 300,000 Ruthenians now in Canada is to be found. Two of these Brothers are graduates of St. Joseph's College, Yorkton, the third, a native of Winnipeg. Not being of the Latin rite, special authorization had to be received from the Holy See before they could be admitted to the Institute, but in so doing they do not abandon their rite. In so far as can be ascertained just now, this establishes a precedent in the history of the Christian Brothers. These young men will complete their years of training at Aurora in the same manner as the other Novices and Scholastics of the Institute, but on the completion of their religious and professional studies they will carry on their work in their own rite.

These are the bare facts relative to the event, and to many they may seem very common-place and ordinary. But, to the truly wise in the ways of God and His Church, these facts take on an importance which is well nigh transcendent. These three religious vocations are the first religious fruits of Extension's work among the Ruthenians in the West, and who can say what a harvest may follow it, redounding to the glory of God and the salvation of souls, as the work of St. Cyril and a St. Methodius in another century? If, like God, we could look into the seeds of time and tell which would grow and which would not, what a phalanx of future missionaries might we not see wending their way into the ripening mission fields of the West to continue and develop the work which the faith and zeal of the little band of pioneer Brothers made possible.

Donations may be addressed to: REV. J. O'DONNELL, President Catholic Church Extension Society, 67 Bond St., Toronto.

Contributions through this office should be addressed to: EXTENSION, CATHOLIC RECORD OFFICE, London, Ont.

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## 2,000 FREE STUDENTS

Education week was marked at St. Louis University by the announcement made by the Rev. William F. Robinson, S. J., the president, that a plan has been completed by which the University will be able to educate without charge 2,000 students. Father Robinson stated that 1,000 of these would be accommodated in the High school department and the other 1,000 in the college department. He said that the plan had been under consideration for two years and that it would make the High school and college departments as free to students as the Public High schools and State university. The enrollment this year in the college department is 559 and in the High school department 683, the latter having 50 scholarships. It is the aim to increase the enrollment to 1,000 in each department, and this will be made possible with the completion of the new George H. Baker Memorial High School at Kingshighway and Oakland avenue, which will occupy a \$500,000 building.

### NO GENERAL APPEAL FOR FUNDS

A number of citizens, Father Robinson said, have interested themselves in the plan, which would require a fund of about \$350,000, but no general appeal to the public would be made. Further, the University will not wait for the raising of the fund, but begin shortly to operate the plan by increasing the number of students admitted through scholarships. He said the

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free scholarship fund would have no connection with the St. Louis University Endowment Fund, towards which \$1,200,000.92 has been accumulated, which is for the support of the professional schools of the institution.

### NEED OF EDUCATED LEADERSHIP

When announcing the free tuition plan, Father Robinson said, in part: "What the world needs today more than anything else is trained leadership and statistics show that leadership, in the broad sense, is vested in the men who have educated minds. To provide leadership for the future, it is necessary for us to see that more of our young men receive the training that only the High school and college can give and to do this with equal opportunity for youths of sound mentality and good character, whether rich or poor, the training should be free of cost to the student. It has long been the ambition of St. Louis University to aid in this great work by making our High school and college free to all who are qualified to take advantage of the opportunity these schools offer, and now the plan has been formulated which should bring about this condition within the next few years. Fortunately, St. Louis University is in a position which enables us to make such a plan possible at a cost much lower than would be the case in the ordinary institutions of the same rank, as we have a staff of trained educators, members of the Society of Jesus, who receive only their bare living expenses and no pay for their services. In this way we contribute to the foundation services that are worth the annual interest on several millions of dollars."

## ST. JOSAPHAT

### RUTHENIAN MARTYR HONORED

The following manifesto was issued by the Sacred Congregation for the Oriental Church, of which His Eminence Cardinal Tacci is secretary, on the occasion of the third centennial of the martyrdom of Saint Josaphat Kuncsevich, the Ruthenian Archbishop of Polotsk: "Three centuries have passed since the day on which a conscienceless crowd, spurred on by the enemies of the Union, flung itself with sacrilegious impulse on the Holy Archbishop of Polotsk, Josaphat Kuncsevich. It was the morning of Sunday, November 12, 1623. At Vitebsk, while he was preparing to immolate in the sacrifice of the altar the Divine Host of peace, the apostle of unity, the zealous propagator of the love of the Catholic Church and of the Roman Pontiff, sweet Christ on earth, fell, a victim in propitiation for the sins of his people and offered his life for the triumph of the holy cause: the return of the separated brothers to the bosom of the Universal Mother the Roman Church.

"Born at Vladimir, of Ruthenian parents, he went while still very young to Vilna, capital of Lithuania, and under the loving and illuminating guidance of the excellent Jesuit Fathers, Fathers Fabrizio and Gruzewsky, he attained a high degree of perfection in the practice of the most beautiful virtues. A Basilian monk and later Archimandrite in the Monastery of the Holy Trinity at Vilna, he was a splendid example of religious observance. But the work for which his heart and his fervent activity as an apostle yearned was the sincere union of his Church with the See of Saint Peter, and in the pursuit of this high aim he neither spared fatigue nor feared persecution. Appointed Archbishop of Polotsk, he traveled several times through the diocese carrying everywhere his fervent invitation to unity. The field of his ardent labors was to be drenched with the blood of the apostle in order to give abundant fruits. God heard the generous wish several times expressed by the Archbishop of Polotsk, and the Ruthenians had in him their protomartyr.

"At Rome, therefore, the centre of the Catholic Church, toward which the gaze and the sighs of the Saint were turned, it is fitting solemnly to glorify his memory on the occasion of this tri-centennial. As with the Roman Church there will unite in the common manifestations of rejoicing and gratitude, first among all the Orientals, the Ruthenians who boast of the great martyr as a brother, the noble sons of Poland who entrusted to him the celestial protection of their country, the Catholics of all the world who saw with joy a new era of glory for the East open with the martyrdom of Saint Josaphat and perpetuate itself under his auspices."

## BURSES

### FOR EDUCATION OF PRIESTS FOR CHINESE MISSIONS

What is a Bursar? A Bursar or Free Scholarship is the amount of \$5,000, the annual interest of which will perpetually support a student, till he becomes a Priest and Missionary in China. The sum itself is securely invested, and still the annual interest is spent for the training and education of a candidate for the priesthood. When one student has reached his goal, another takes his place, and thus all who are contributing towards the Bursar Fund will be helping to make Missionary Priests longer after they have been laid to rest. Imagine how much good can be done by one priest and missionary! Let everyone, therefore, according to his means contribute to such a meritorious work. Send your contributions to Father Fraser care of the CATHOLIC RECORD.

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Peace hath her victories no less than war.—McGee.

The noblest workers of our world bequeath us nothing so great as the image of ourselves.—Martineau.

We approach perfection in proportion as the divine love enlivenes and rules us.—Archbishop Keane.

## January Funds

Not only is the long trend of bond prices upward, but there are more immediate factors, such as the smaller volume of refunding issues and larger volume of investment funds during the coming year, which further indicate that prices of investment issues will, in all probability, continue their gradual appreciation throughout the coming year.

It is estimated that thirty-five million dollars will be distributed in the early part of January, much of which will be seeking investment. It is advisable, therefore, to make early selections of the securities you may desire.

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