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LONDON, SATURDAY, FEB. 26, 1921

THE MARRIAGE DECISION OF THE JUDICIAL COMMITTEE

So much rambling nonsense and worse has filled the columns of the daily press about the decision of the Judicial Committee of the Privy Council in the matter of the Trembley-Despaties marriage case that we deem it a duty to our readers to discuss the subject with some degree of knowledge of the law of the Church and of the civil law of Quebec.

We publish elsewhere in this issue of the RECORD The Globe's editorial comment on the judgment, together with a letter from Osgood Hall which gives accurately the disabilities with regard to marriage under which Protestant ministers labored in Upper Canada by reason not of the marriage laws of the Catholic Church but of British civil law. The praiseworthy object of the Globe was to soften antipathy to Quebec by reminding its readers that in Ontario not so very long ago much worse conditions obtained than those now complained of so bitterly in the Province of Quebec.

We have selected The Globe editorial because of its evident desire to be fair, reasonable and moderate; too many of our papers both in their news and editorial columns showed themselves rambling, inaccurate and misleading. It is not malicious. Taking The Globe as representing the dispassionate and better informed Protestant view of the case, we may point out that even this view falls short of doing justice to Quebec.

Though Section 91 of the British North America Act declares that "Marriage and Divorce" is within "the exclusive Legislative Authority of the Parliament of Canada," Section 92 of the same Act declares that "in each Province the Legislature may exclusively make laws" with regard to "the Solemnization of marriage in the Province."

This may be far from clear and it may be an example of that concurrent jurisdiction which Sir Wilfrid Laurier deplored, and against which he warned the framers of the Constitution of South Africa. But under this fundamental law of Canada, as interpreted in good faith and without question for nearly half a century, the civil legislation of Quebec recognized the impediments to marriage as laid down by the various Churches or religious communities.

Article 127 of the Civil Code reads: "Other impediments recognized according to the different religious persuasions as results from relationship or affinity or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities."

There is here no special privilege for the Catholic Church.

All churches recognize some impediments to marriage, consanguinity in the first degree, for instance, or the impediment of previous undissolved marriage of either of the parties.

The Westminster Confession of Faith very emphatically and unequivocally lays down such impediments, as for instance in Section iv., Chapter xxiv., where it says:

"Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the word; nor can such incestuous marriages ever be made lawful by any law of man, or consent of parties, so as those persons may live together as man and wife. The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own." C

Now suppose that two honest, God-fearing Presbyterians find that they have through ignorance or otherwise contracted an "incestuous marriage" of this kind and they honestly believe that it never can "be made lawful by any law of man, so as they can live together as man and wife;" the validity of such a marriage the civil law of Quebec leaves to a Presbyterian ecclesiastical court of competent jurisdiction to determine. If the Presbyterian court believes that Confession of Faith with regard to marriage is founded, as it claims to be, on the Word of God we can hardly assume that it would tell the parties to go on living in their "unlawful and incestuous" union. Should this court then declare the marriage null from the beginning the Quebec civil courts would give civil effect to the finding of the Presbyterian ecclesiastical court.

The Quebec Civil Code takes cognizance of this impediment in precisely the same words as it does of the diriment impediments of the Catholic Church.

It is true that Protestants generally regard so lightly the creeds and canons of their Churches that ecclesiastical authority is rarely either exercised or invoked. But that is not the fault of the Quebec Civil Code. That the Catholic Church knows her own mind, respects her own laws, and exercises her authority when her children invoke its exercise, ought not to be a grievance to Protestants.

Summing up the effect of the judgment the Globe says:

"In brief the Privy Council judgment establishes marriage as a civil contract to be annulled only for causes prescribed by civil law."

That marriage is a civil contract is fully recognized by the laws of the Province of Quebec; and the civil law recognized invalidating impediments of "the different churches and religious communities." In so far as marriage is a purely civil contract it was the civil courts that exercised jurisdiction "for causes prescribed by civil law."

Of course marriage to Catholics is something more. It is a sacrament concerning which the Church is competent to legislate. But this phase of the question may be here passed over.

What the Privy Council has apparently decided is that the Legislature of Quebec in Section 127 of the Civil Code as hitherto interpreted has gone beyond the limits of its jurisdiction.

The insinuation or open assertion that the Catholic Church through her ecclesiastical tribunals arbitrarily annulled marriages in Quebec is unfair, untrue and necessarily misleading. Yet this insinuation or assertion is generally found in the discussion of the Trembley-Despaties marriage case. Even The Globe is more or less suggestive of the general charge.

Quite the reverse is true. No ecclesiastical tribunal can annul a valid marriage, it can only declare the nullity when, after rigid investigation, it is found that there was no marriage. In such cases the rule is to validate the marriage by granting the necessary dispensation. This is always done when the parties consent. If one or both refuse to marry, the Church can not coerce them into marriage. But the obligation in conscience and justice is always strenuously urged especially where there are children. It is only the rare exception that ever reaches the civil courts. We have pointed out more than once that there are more divorces in Toronto in a single year than there have been declarations of nullity in the Province of Quebec in the whole three hundred years of her history. And this was true before Toronto had reached anything like its present bad eminence in the matter of applications for divorce.

Another inaccuracy that must be noted is the statement that the reason for the declaration of nullity in the Trembley-Despaties case was that the parties were "fourth cousins." There is very little excuse for slipshod inaccuracy of this kind. It has been often enough pointed out that the parties were related in the "fourth degree" of consanguinity. Brother and sister are related in the first degree; first cousins in the second degree and so on. In the new Code of Canon Law, it may be noted in passing, the third degree (second cousins) is the limit of the impediment of consanguinity.

A singularly unanimous sin of omission—or is it suppression?—is the absence of all reference either in the news or editorial columns of our newspapers to the fact that the

parties to the famous case, who are both Catholics, are now married and living quietly together as man and wife. Of course to give publicity to this significant and gratifying fact would counteract to a considerable extent the impression created, whether deliberately or ignorantly, in the whole discussion of the case.

Where Protestants may be conceded to have legitimate ground for complaint is thus pointed out by The Globe:

"If the Judicial Committee agreed with the Quebec Courts it would be within the power of an ecclesiastical tribunal to annul any marriage between a Protestant and a Catholic solemnized in Quebec by a Protestant clergyman."

Though this question was in no way involved in the Trembley-Despaties case the decision covers it and decides against recent Quebec judgments. We say recent, because we are credibly informed that for a hundred and fifty years after the Cession the civil courts of Quebec never annulled such a marriage. That is a quite recent development which is due to the *Ne Temere* decree.

It is as a matter of fact opposed to the traditional practice of the Church for a couple of centuries before the promulgation of the *Ne Temere* decree.

From the article on Mixed Marriage in the Catholic Encyclopedia we take the following:

"By its decree the Council [of Trent] requires the contract to be entered into before the parish priest or some other priest delegated by him, and in the presence of two or three witnesses under penalty of invalidity. Marriages otherwise contracted are called clandestine marriages. The Church did not find it possible, however, to insist on the rigor of this legislation in all countries owing to strong Protestant opposition. Indeed, in many countries, it was not found advisable to promulgate the decrees of the Council of Trent at all, and in such countries the impediment of clandestinity did not obtain, even in countries where the *Tametsi* decree had been published, serious difficulties arose. As a consequence Pope Benedict XIV., choosing the lesser of two evils, issued a declaration concerning Mixed Marriages in Holland and Belgium (Nov. 4, 1741), in which he declared mixed unions to be valid, provided they were according to the civil laws, even if the Tridentine prescriptions had not been observed. A similar declaration was made concerning mixed marriages in Ireland by Pope Pius, in 1785, and gradually the 'Benedictine dispensation' was extended to various localities. The object of the Council of Trent in issuing its decree had been partly to deter Catholics from such marriages altogether, and partly to hinder any communion in sacred things with heretics. By degrees, however, the Popes felt constrained to make various concessions for mixed marriages, though they were always careful to guard the essential principles on which the Church founds her objections to such unions."

We therefore agree with The Globe that the wiser and more prudent course for the Quebec Legislature to pursue is to accept, in so far as mixed marriages are concerned at least, the decision of the highest legal tribunal of the Empire. Any other course could only lead to agitation, which besides its unwholesome effects on Canadian national life and social relations, would finally result in a national marriage law which, under the British North America Act in the light of the recent decision of the Judicial Committee, is clearly within the province of the Federal Parliament.

A BROAD VIEW OF THE IRISH QUESTION

"The subject who is truly loyal to the Chief Magistrate will neither advise nor submit to arbitrary measures."—Junius.

In another column we give in this week's RECORD The Globe's summary of Bishop Fallon's allusion to the Irish question in an address before the Knights of Columbus in Windsor. Notwithstanding the intensity of the Bishop's indignation at the present British Government's brutal and indefensible policy in Ireland he refuses to confound the clique now vested with a little brief authority with the people of Great Britain, much less with the ideals which he in common with the best and most sincerely loyal British subjects cherish as those that should govern every part of that Commonwealth of Nations which is commonly known as the British Empire.

The magnanimous views of the Canadian Bishop, "every drop of whose blood is of purely Irish origin," are identical with those expressed by justice-loving and patriotic—English statesmen and English publications. We are informed that

Bishop Fallon's address was received by those who listened to it with the warmest approval.

How it impressed others may perhaps be best illustrated by this extract from an editorial of the Quelp Mercury:

"Every true Britisher will agree with the sentiments expressed in an address at Windsor this week, to the effect that a 'just peace' be immediately arranged for in Ireland. If all the clergy will view the situation there as dispassionately as did Bishop Fallon, the feeling in this country, on either side of the question, would not be as intolerant as often appears to be in every-day conversation."

"The Bishop, though Irish himself, refuses to let that fact prejudice his wider view of a situation that has become intolerable. He declines 'to think in terms of Ireland alone.' There is the Empire view to consider. The ideals that characterize India, Australia, New Zealand, Canada—all must be comprehended while considering the proper attitude toward Ireland. He deems it essential that the unity of the Empire continue."

"There are so many ways of looking at the question, that it is pleasing to know this distinguished Irish Canadian prelate, who has visited Ireland many times, who knows Irish ambitions, and Ireland's strength and weakness as well as any man can from a Canadian viewpoint, shows no sympathy with the cry of murders, whether committed by the Sinn Féiners and their sympathizers, or the Crown forces and their supporters and sympathizers. Every true Canadian denounces the same practices as reprehensible, and as delaying any peace that might be possible between the factions there and the Government. Conditions are deplorable, and have been for so long that men have become hardened by the daily recital of deaths in ambush, quickly followed by other deaths in reprisal."

The Montreal Gazette, though feeling constrained to justify the narrow and intolerant view that would justify conditions unequivocally condemned by Bishop Fallon, nevertheless pays him this tribute:

"His Lordship Bishop Fallon, of London, Ontario, who has recently returned from a visit to Ireland, stated in a recent address that all men of good will, irrespective of political considerations, should join together for the purpose of securing an equitable peace for Ireland. His Lordship is a loyal British subject; he asks for a united empire, which should include Ireland, and he points out that he does not for a moment countenance the Sinn Féin murders. At the same time, he denounces the policy of reprisals which, in his opinion, are equally indefensible. The breadth of view of Bishop Fallon is to be commended. His Lordship speaks as a patriotic citizen, anxious for the peace and progress of the Empire."

We commend to our readers' careful perusal the pronouncements of the Archbishop of Tuam which we give elsewhere in this week's RECORD. Here it is worth while to repeat this extract from Archbishop Gilmarin's letter to Father Forde:

"One crime does not justify another, and while I condemn the criminal and cowardly folly of the ambush, I also condemn the inhuman barbarity of such reprisals as you were obliged to witness. I have done all I possibly could to hold up the law of God before the eyes of the Government, as well as before the eyes of the people. I have condemned crime and counter-crime—I have preached the gospel of peace and forgiveness. I now appeal again to the best elements of the two sister nations to call off a state of warfare which is a negation of Christianity, and which, if continued, may bring disaster to the stronger as well as to the weaker nation. In the name of Christianity I renew our call for a Truce of God."

The Westminster Gazette, a journal very moderate, very sane and not at all given to exaggeration, says practically the same things that were said by Bishop Fallon.

"Sir Hamar Greenwood's policy of repression by violence has failed. All the terror and suffering it has caused and all the discredit it has brought upon the British administration have not even had the effect of crushing the Irish extremists. They seem rather to have grown more desperate than before. Such an attempt must in the nature of things succeed quickly or not at all, for a long, continued terror must be ruinous materially and morally, both to Ireland and to Great Britain. A short time ago the Government seemed to have begun to realize this and to have entered upon negotiations with serious intentions. For reasons which have not been disclosed they were broken off, and it would surely be better policy to resume them."

We shall conclude with a quotation from one whose fame is world wide, one whom the world of letters recognizes as belonging to its aristocracy. In a pamphlet entitled "A Plea for Justice" Mr. George W. Russell, (A. E.) an Ulster Protestant and an ardent Britisher, yet withal a good Irishman, after reciting the incredible and savage destruction

of creameries in the course of a plea—surely a reasonable and modest request for an elementary civil right in civilized countries—for a Public Enquiry, writes:

"I say if the British people, because of their natural anger over the shooting of police and soldiers, condoned without enquiry indiscriminate vengeance inflicted on persons and movements which are innocent they will lay up a hell for themselves in their own country. They will be tearing up all the safeguards of justice won through centuries of struggle, and there are too many interests minatory to democracy in power to allow them the advantage of such precedents. If we trust the judges and the courts the Government should not fear to do so. Do not trust those who are afraid of courts of enquiry and who, to every demand for justice, respond by attempts to excite hate and rage among the people."

As we have frequently pointed out, the really anti-British, the real and formidable enemies of the British Empire, are those who, in George Russell's words, are "tearing up all the safeguards of justice won through centuries of struggle," those who are false to British ideals of justice and liberty—these are the real enemies, the traitors within the gates.

IRISH DEMOCRACY AND ENGLISH POLICY

BY THE OBSERVER

Not long ago Mr. Lloyd George, who is proving himself much more of the demagogue than he was thought to be a few years since, said in his dramatic fashion: "Humanity has struck its tent, and is on the march." He grew eloquent—he is often eloquent in his generalizations—on the subject of the bad world we were all supposed to be leaving behind, and on the good world into which we were supposed to be entering.

It is unfortunate for his demagogic fame that he, the author of such delightfully optimistic generalizations, has become the apologist and sponsor for the frightfulness of the Black and Tans.

When I began these articles and headed them: "Irish Democracy and English Policy," I had in mind a fact, which no man who knows even a very little of past events and of present conditions, can fail to recognize; namely, that all that labor justly claims today as against capital, has been of the very substance of Ireland's long fight for social and political freedom. The whole history of Ireland under English rule is the history of confiscation of the possessions and privileges of the many and the giving of them to the few; and the resultant continual claim of the few to get them back again. Nowhere in all the wide world have the evils of capitalism in the worst sense of that sometimes abused word, lasted longer and had greater scope, than in Ireland. No worse political and social fate could befall any people than that all their possessions should be taken from them and given to a small class of selfish and greedy profiteers; and that is exactly what was done in Ireland. And, having been done, it has, up to this moment, defied all efforts of the mass of the people to undo it.

What do I mean by this? I mean that Ireland was taken from its people, root and branch, and acre by acre, and given to courtiers, favorites and hangers-on of English courts, of English aristocrats, and of English politicians. These persons, numbering a few hundreds, became the holders of the power of life and death over millions. To ensure the continuance of that power, they excluded the millions from public office and public power. And to give a semblance of justification to that usurpation they gave to the world a carefully prepared and fraudulent account of these millions; their history and character; and assiduously tended the fires in the devil's furnace of religious bigotry.

To themselves, their heirs and assigns, they appropriated not only all the land and all the business and all the power in Ireland; they appropriated as well all the loyalty and all the religious truth, and the decency and the honesty and all the respectability. They claimed it all; and created, with the aid of their friends in English politics, a history and a literature to give color and plausibility to their claims.

How stands today the case between the descendants and inheritors of this little class, and the people of Ireland? That class was consolidated in its power after the surrender of Limerick, and the cold-blooded villainy of the breaking of the Treaty on which the Irish army surrendered.

The surrender of Limerick marked the conclusion of the 500 years of warfare which went to the conquest of Ireland. Immediately, the millions were reduced into a state of sheer serfdom. The right to religion, language, education; to hold property; to hold any office; all were taken away.

A bargain was struck between the landed aristocracy which then came to the height of their power, through their class-friends in England, with the trading classes of England. The latter were to get whatever legislation was necessary to put an end to Irish manufactures; and in return were to support whatever legislation the land-kings of Ireland required to support them in their position of absolute lordship over the millions whose lands had been confiscated and given to them.

That bargain has been kept down to this day in this year of 1921.

NOTES AND COMMENTS

THE MANAGER of an Ontario Gas Company told the Engineering Institute the other day that a week's consumption of gas in one city eighty years ago, would now supply the same community only half an hour. About the advance in price in nearly the same proportion, and the deterioration in quality, (which are the points most interesting to the consumer at the present time,) he, perhaps, wisely said nothing.

THE POURING of confiscated wine to the value of many thousands of dollars into the sewers of Los Angeles, and several other American cities, which has taken place in recent months, must necessarily operate against the very objects which, it is presumed, those responsible for the action had in view. Extremism has always stimulated reaction, and exception in the present instance is improbable.

"THE WORST thing about the spirits who joggle tables and blow icy drafts on the back of your neck, and keep Sir Arthur Conan Doyle awake nights," says the New York Tribune, "is their boresomeness." That is the one thing which neither Sir Oliver Lodge, nor Sir Conan Doyle, with all their prestige, have not been able to eliminate from a cult which, whatever else may be said for it, makes for mental and spiritual anarchy.

WHILE SO many well-meaning people are agitating themselves over the marriage laws of Quebec, and animadverting upon the Catholic Church's unfailing vigilance in protection of the sacred character of Matrimony, it might do some of the agitated ones good to take a glance at conditions very generally prevailing in some parts of Canada and in the United States.

ACCORDING to the Baltimore Sun, there are at Elkton, Maryland, a group of ministers who make large incomes by marrying eloping couples from Baltimore, Washington, Philadelphia and other cities. One of them, who has retired from the active duties of the ministry, combines large marrying with small farming. He had in this way officiated at the nuptials of 4,000 couples within the space of a year, the emolument grading from five dollars up. To a representative of the Sun he admitted that he paid tips to cabmen for bringing grooms to his mill. He deplored the system, he said, but he "had to meet competition."

A SIMILAR condition of things notoriously obtained at Windsor, Niagara Falls and Bridgeburg until amendments to the Ontario marriage law stamped it out. Instead, then, of venting their spleen upon the Catholic Church, whose sole aim is to shield the sacred institution of marriage from abuse or profanation, those conspicuous in that regard might to more purpose direct their attention to the abuses outlined.

IT WILL surprise some people to learn that according to statistics published in the Los Angeles Times more violent deaths occurred in the United States in the year 1920 than in England, France and Italy combined; that there were more murders committed in Chicago in the same period, than in England, Scotland and Wales combined; and that there were six murders committed in the city of New York for everyone in London. Herein is fit subject for meditation for the misguided American zealots (the Methodist and others who think

with them) whose honest it is that they have opened a mission house opposite the very door of the Vatican. Charity surely begins at home.

THE ATTEMPT to fan into flames the smouldering embers of religious discord (close enough to the surface at any time in Ontario) by the illegal calling of a public meeting in Toronto to form a "strong Protestant organization," ended in a fizzle. Those present who had any reputation to lose, seemed ashamed of their presence and apologized for it. The meeting forgot what it was called for and indulged in a free wrangle on every conceivable sort of topic, ending in a scuffle between representatives of the discordant elements assembled. Some consolation may be drawn from the fact that even the city of Toronto, the boasted hotbed of religious incendiarism, revolted from this attempt to besmirch her reputation as an organized community.

THE GREAT disaster to the Italian army at Caporetto in 1917 was variously attributed to dissension in the ranks, to treachery in the command, and by some, to the insidious influence of the Catholic clergy, operating in favor of Austria. The latter theory was as monstrous as it was far-fetched, for it has been proven that the patriotism of the Italian priesthood throughout the War suffers not by comparison with that of any other nation. Now comes the national historian, Guglielmo Ferrero, with the true elucidation of the Caporetto disaster. He says:

"CAPORETTO REMAINS a huge legend. The treason of the soldiers, of which so much has been said, never existed. The disintegration of the army by defeatist propaganda is a fantastic invention. . . . It was a battle lost by certain errors of generalship which might have been avoided, but which were neither more grave nor more unusual than many other errors committed by many other generals in the course of the world war."

"NEVERTHELESS," he adds, "Caporetto saved us, for all history, since the Cimbric and Teutonic, proves that it is very easy for an army to enter the Valley of the Po, but very difficult to get out of it. The Valley of the Po is a sort of mousetrap: unfortunate is the army which enters there, guided by victory, and finds a serious resistance. It ends by being thrown against the mountains and crushed. . . . The foresight of the historian was verified to the letter. The Austrian army which entered Italy in 1917 never succeeded in getting out."

INHUMAN BARBARITY OF REPRISALS

RASHNESS IS THE COWARD'S CRIME—SELF-RESTRAINT THE HIGHEST COURAGE

In view of some impertinent and misleading references to the Irish hierarchy and clergy we think it opportune to publish the following recent pronouncements of the Archbishop of Tuam. Nothing could be clearer or less equivocal; nothing give the lie more directly to those who either through ignorance or malice traduce the spiritual guides of the Irish people.

Addressing his people in the Cathedral of Tuam, Archbishop Gilmarin said:

"Although the power to govern comes from God, the people have a right, for just reasons, to seek a change of government. There are two ways of bringing about this change—one by revolution and the other by constitutional action. In the present circumstances of this country, armed resistance to the existing Government is unlawful—firstly, because there is no chance of success, and, secondly, the evils of such a course would be much greater than the evils that it would try to remedy. Hence," said His Grace, "I feel bound to warn the brave young men against rash action. Let them remember that rashness is the coward's crime, while self-restraint is the highest courage."

"I feel also bound to warn them against the danger of joining secret societies. Under the new Canon Law, members of secret societies that plot against the Church or State are *ipso facto* excommunicated. I hope that there are no such societies in this locality."

But even the diocese of Tuam is no longer free from crime, and the Archbishop has to note the first breach of the Truce of God which he called for six months ago. There was a serious ambush, and in the following letter to Rev. F. Forde, parish priest of Headford, the Archbishop condemns the ambush and the reprisals:

"Allow me to send you and your people an expression of my most sincere sympathy a