

Secrecy of the Confessional.

A correspondent of the Register in England informs us that the reported case of a Quebec priest having been ordered to divulge the secrets of the confessional has attracted no little attention there. The same matter has been made the subject of comment in some of the American papers, and as these reports serve to raise misconceptions with regard to the Canadian law of evidence and procedure, we publish herewith the terms of a quite recent judgment by Mr. Justice Curran in the Court of Queen's Bench, sitting at Montreal, which elaborately states the Canadian civil code of procedure, and shows that in criminal matters Canadian and English law are alike. Although protection is afforded only to the legal adviser, there is the strongest tendency to extend this privilege. Mr. Justice Curran's judgment was delivered in the case of Bouchard and Bell (see vol. 5, Official Reports of Quebec, p. 138). The learned judge said:—

The question submitted to us by this appeal seemed to be approached on both sides, as though it involved religious distinctions and some grave constitutional problem, and was to be settled upon principles differing in some respect from those ordinarily invoked before legal tribunals. I see no occasion, either in examining or deciding it, to treat it otherwise than we would an ordinary question in regard to a matter of procedure, in which our code has established a rule of exemption in unambiguous and comprehensive terms. In England it has been held to be immemorial that the confidential relationship existing between the client and his legal adviser, the absolute necessity for the one to state his case fully and unreservedly, that he might receive reliable counsel from the other, made it a necessary condition that such communication should be privileged, and that the counsel should neither be allowed nor compelled to disclose it, even when placed in the witness-box and sworn in the usual way, to state the truth, the whole truth (1 Starkie, p. 18; 1 Powell, 69; 1 Chitty, Archbold, 67. Such matters are seldom regulated in England by statute, but by precedent, and a long-continued usage, and there is a decided indication in modern judicial utterances of the extension of this principle to the confidential communications between a penitent and his religious adviser (King v. Griffin, 6 Cox's Crim. Cases, p. 219). Baron Alderson, in commenting on conversations that had taken place between a prisoner and the chaplain of the prison, said:—"I think these conversations ought not to be given in evidence. The principle upon which an attorney is prevented from divulging what passes with his client is because without unfettered means of communication the client would not have proper legal assistance. The same principle applies to a person deprived of whose advice the prisoner would not have proper spiritual assistance. I do not say this down as an absolute rule; but I think that such evidence ought not to be given." And G. Pitt Lew. v. G.C., the editor of the last edition of "Taylor on Evidence," says in a foot-note at p. 595, referring to the decision in R. v. Gilham, that although the judges therein tacitly or expressly accept the position that strict law does not admit the privilege of exemption by a clergyman of the Church of England from stating, as a witness, what was stated to him as a confessor, nevertheless they all protect, by the strict letter of the law in that respect, and Sir R. Phillimore ventured to commit himself to the expression of an opinion, that the privilege of a clergyman of the Church of England as to matters told them in confession will be recognized when the question next comes before a Superior Court.

Dr. Phillips has recently been taught by a Superior Court judgment for damages, by an English judge and jury, that information acquired by a physician as to the condition of his patient is not to be communicated to others in compliance with what he considered a discharge of duty. The same general principles are recognized by the higher United States Courts, and in many of the States special Legislative enactments exempt religious advisers, of whatever creed, from the obligation to disclose, as witnesses, what may have been stated to them in their capacity of religious advisers.

The law of France has always been strict in enforcement of this principle, which Mr. Justice Bowen has referred to. Our jurisprudence was well settled in the same sense prior to the code, but based as it was upon the text of the laws and jurisprudence of France, it might have been limited to confession to a Roman Catholic priest; the only case which had come up for adjudication before the French Courts, and our codifiers therefore logically and properly enlarged the text of the law by article 225, C. P., so as to leave no doubt as to its applicability to all religions, as to all legal advisers. A witness cannot be compelled to declare what has been revealed to him confidentially in his professional character as religious or legal adviser, or as an officer of State, where public policy is concerned.

It is, of course, important to secure correct information as to the facts of each case by means of sworn statements of witnesses, but, like everything else, this importance is only relative, and frequent instances occur where it has to yield to some other principle, which the legislatures or the courts consider to be of greater weight. Most of us can remember when a litigant could not give evidence for

himself on a matter even a relatively within certain degrees. That rule has been gradually relaxed, so that the proximity of relationship now disqualifies a witness and in commercial cases the party may now tender his own evidence, but it is still inadmissible in other cases, no matter what their importance or the impossibility of establishing the facts by other means. Our law prohibits verbal evidence to contradict a written contract, or in regard to contracts even of a commercial character for an amount exceeding \$50, except in certain specified cases. Husband and wife cannot testify either for or against the other. The law treats as privileged, as a general rule, what has passed between a principal and his agent, and will not force its disclosure under oath, at the instance of an adverse litigant. These well-known rules of common observation, which the law has adopted, the disclosure of facts by certain parties is denied either upon grounds of public policy or by reason of the special relationship of such parties to the litigant, or the subject matter in dispute, serve to illustrate how natural it was to establish a similar rule in regard to legal and religious advisers. At all events, the rule exists, and we should feel no more hesitation or scruple in enforcing it than we do in the other cases which I have cited.

The law has enacted which has been attempted to be made between what the penitent says to his confessor, and what the latter says in reply, is not in my opinion a sound or defensible one. The nature of the answer necessarily expresses that of the enquiry, and to enforce its repetition as evidence would violate the reason of the general exemption, and also that other legal principle as to the indivisibility of admissions. They should be wholly disclosed or entirely withheld. The law has enacted the latter stipulation in regard to communications with one's religious adviser, and it should be effectually enforced.

South Staffordshire Tramways Co. vs. Elbsmith, L.R. 2 Q.B.D. (1885), p. 669; Knapp vs. City of London Insurance Co., 29 L.C.J., 238; Ducharme vs. Loisee, 27 L.C.J., 145; Wilson vs. Brunskill, 2 Chancery Chamber Reports (Ont.), 137; Hamelyn vs. White, C.P.B. (Ont.), 148; Forsyth vs. Charlebois, 22 L.C.J., 284; Taylor on Evidence (Ed. of 1895), par. 911.

I have not overlooked the case of R. v. Cox, at p. 14 L.R.Q.B., division 153, to which the learned judge in the Superior Court has referred, but it does not appear to me to control the case now under consideration. That was a criminal case, while this is a civil one, in the Cox case there was evidence already in the possession of the tribunal, and independent of that which was then sought, to establish that the attorney had been consulted by the prisoners for the express purpose of securing advice to enable them to commit and conceal a crime. The moment that was established the reason for the exemption ceased, and the rule forbidding the attorney to state what had occurred between him and the prisoners might have been properly relaxed, as it was here in the case of McKensie vs. McKensie (9 L.C.J., 87), unless some snowy winter circumstance. But until an illegal motive is thus established, the statement of the religious adviser that no such object was apparent, will be unreservedly accepted by the court, in conformity to the principle laid down by this court, in Gagy vs. Chagnure, 13 L.C.R., 31. The court has no power to compel the Provincial Secretary to produce documents connected with affairs of State if their production would be injurious to the public interest, of which he was to be deemed the guardian.

It is not necessary in the judgment maintaining the appeal and reversing the interlocutory order to compel the appellant to disclose what had occurred between him and the penitent at the confessional, but do not base the judgment, in any sense, upon the appellant's having taken an oath or made a vow prohibiting such a revelation. The privilege of exemption is founded entirely upon the provision of our code, based upon grounds of public order, and is applicable to anyone discharging a religious office to whom a confidential statement is made by reason of that office.

THE DUTY OF CHARITY.
Peterborough, Jan. 23.—A large congregation gathered at evening to hear the charity sermon delivered by Rev. Father Fitzpatrick, of Young's Point, a great favorite in town, and an exceptionally gifted preacher. Rev. Father Fitzpatrick spoke from St. Paul to the Galatians, vi. 2:—"Bear ye one another's burdens, for in so doing ye fulfill the law of Christ." He pointed out that of all the duties of man none is so frequently and so fully neglected as that of charity, as that of generously giving to and assisting the poor.

SOCIALISTS MISCONCEIVE THE NATURE OF SOCIETY.
Ottawa, Jan. 22.—Socialism was the subject of the sermon given in the Murray street chapel last evening by the Rev. Father Niles, O.M.I., vice-rector of Ottawa University. "Socialists pretend," the preacher said, "that the State should own everything, that individual man should not own anything, and that the State should distribute everything, giving everybody an equal share. According to Karl Marx, the leader of German Socialists, labour is the only source of capital. The labourer should therefore get possession of capital, but in society, as it is now organized, capital is in other hands.

How society should be reorganized on a new basis. This is the object of socialism, according to the socialist. Unless published in all countries, Father Niles related this, claiming that all this socialist doctrine comes from a wrong idea of society. Society, he stated, is constituted by an intelligence superior to man's. Society is composed of families, and the family of individuals. The individual is therefore anterior to the family and to society. Hence an individual's rights and obligations or duties are natural, and society cannot take them from him.

ADDRESS AND PRESENTATION TO MR. D. J. WALSH.

Mr. D. J. Walsh, for several years connected with the Inland Revenue in this city, has recently been promoted to a responsible position at the Prescott distillery. The following address was presented to him on Thursday evening by the citizens of Norwich, where he has been stationed for the past three years:—

To D. J. Walsh, Esq., Norwich, Ont. Sir—We, the undersigned, take this opportunity, upon the eve of your departure from our midst, to express to you the high esteem in which you are held by your friends at Norwich. During your residence of three years in Norwich, we have admired those sterling qualities of head and heart which have won for you the respect and goodwill of the citizens at large. While we regret your departure, we are pleased to know that you have been promoted in this respect, in which you are such an able and efficient officer. We are pleased to know that during the slow years that you have served as an officer in the Civil Service you have been steadily promoted. We are not surprised at this, for your zeal and integrity have led you, wherever you have been stationed, to faithfully and fearlessly discharge the duties entrusted to you by the Department of the Government under which you have served, while in your capacity as a public servant you have, by diligently striving to promote the best interests of the service, won confidence and respect, you also, as a private citizen, endeared yourself to all who know you, and are deservedly popular.

We further ask your acceptance of this chair as a slight memento of the respect and esteem in which you are held by your friends in Norwich, and trust that you may be long spared to enjoy its comfort. It is the earnest wish of your friends that your future may be bright and prosperous, and we all join in wishing you and Mrs. Walsh every happiness and comfort in your future home. (Signed) Thos. Brown, Austin D. Ellis, Jas. H. Farrington, committee. Norwich, Jan. 20, 1899.

UNITED STATES INDEPENDENT LEAGUE.

The Register has received from President M. Van Hoesen, of New York, a copy of the manifesto issued by the United States Independent League, which is "an association of American citizens, organized to oppose and defeat every political machination or attempt to entangle the United States in the quarrels of European Powers; and, more especially, to defeat the widespread influence which England is at present using to secure an alliance with our Government." The manifesto opens with the following declaration of George Washington, which is printed in italics:—"Against the insidious wiles of foreign influence, believe me fellow-citizens, the jealousy of a free people ought to be constantly awake, since history teaches us, and the Orient teaches us, that foreign influence is one of the most baneful foes of Republican Government. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard."—Washington.

Proceeding, the document sets forth that:—"The leading powers of Europe—Russia, France, Germany, and England—and Japan, the new nation of the Orient, are gathered in conferences around the yellow corpse of China, withheld from rending it piecemeal by their jealousy and hatred of one another. In the event of war over the partition of China, the support of the United States would be of vital importance to England, isolated and distrusted as she is, her traditional policy of pillage and selfish aggrandizement having earned for her the hatred of every other nation. In Africa, France and England are on the brink of war. On the frontiers of India, England and Russia are massing forces for a death struggle, in which the Empire of India is the stake." The closing paragraphs are as follows:—"It is said that the question of expansion in the Far East, and the question of an alliance with England, are one and inseparable. We believe that these two questions are distinct and separate, and should not be linked together. Expansion is an American problem, about which opinion is divided, while an alliance means a political connection with a foreign monarchy. "We desire to harmonize and unite all classes of the American people against the insidious designs of England, the hereditary foe of this Republic, and the common enemy of subject races and struggling nationalities."

AN EXCELLENT OPINION.
The London Echo says:—"A rumour which has gained currency in Canada is to the effect that one of the last acts of Lord Aberdeen as Governor-General was to recommend the grant of a medal to the men who suppressed the Fenian

and the Fenian, in 1868. We can only hope that Lord Salisbury will not sanction an unwise act if it is true. To revive, after thirty years, incidents which are deeply deplored, will be resented throughout the Empire by those who have no sympathy with Fenianism. And to so many Irishmen the grant of a medal for service against them would be most stinging. Can it be that the rumour refers to the ratings of the French Canadians under Louis Riel? Even if this is its origin, the decision would be most unwise. Not thus was unity between the North and South brought about. Civil quarrels should be forgotten and forgiven.

C.M.B.A. BRANCH 15.

At the regular meeting of Branch 15 of the Catholic Mutual Benefit Association, held in the hall at the corner of Queen and McCull streets on Friday, a most enjoyable evening was spent. This being the first meeting after the installation of officers for the year, the branch invited the members of Branches 49 and 11 to be present, and amongst those who responded were:—From 49—President Quinn, Charles Byron, Cook, Landy, and Mulvihill. From 11—President Dolan, Vice-President Kelly, Chancellor Pegg, and Bros. Peeg, McCann, McQuinn, Highland, and Ryan. Bro. James Ryan, of Branch 85, was also present. During the meeting President Wm. Ray, in a few well-chosen remarks, gave an outline of the origin of fraternal societies, and the work done by the officers, and then asked Treasurer E. F. Wheaton to step forward, and on behalf of the branch presented him with a handsome silver candlestick in appreciation of his valuable services rendered while in office. Bro. Wheaton, in a few words, thanked the members for the honour conferred upon him. Then, after speeches by the visiting brothers, they were escorted to the larger hall, and enjoyed themselves with games of pedro and euchre, and after doing ample justice to the refreshments served by Bro. J. McHenry, the meeting was brought to a close.

TROUBLE IN THE CHURCH OF ENGLAND BECOMES ACUTE.

London, Jan. 24.—The real contest in the ritualistic controversy in the Church of England has now actually begun. Hitherto it has been an affair of correspondence and leading articles. News comes from Liverpool—which, curiously enough, is the most anti-ritualistic diocese in the United Kingdom—that the two curates of the Church of St. Agnes, in Rosters park, have insisted, against the wish of the majority of the congregation, on preaching in favour of compulsory confession. They have refused either to avoid reference to the subject or to resign, so on the advice of the Bishop the vicar gave them six months' notice. Thereupon the vicar of a neighbouring church wrote a long letter of sympathy, and offered places to both on his own staff. Local excitement runs high, and it is likely that the Bishop will refuse to license the curates to their new positions. Meanwhile part of the congregation sympathizes with the curates. The matter may find its way into the law courts.

The whole ritual question is assuming daily more serious proportions, and it is thought not unlikely that eventually it will lead to the disestablishment of the Church through a coalition of extreme ritualists and non-conformists.

AMERICAN PRELATES AT ROME.

The Boston Republic says:—"The departure of Archbishop Ireland for Rome has been made the occasion for the wildest sort of speculation by the yellow journals. One of these predicted his capture by the Holy Father, and asserted that he had been summoned to the Vatican to receive his castigation. Another said he was to be invested with a red hat. A third declared that he was to be sent to the Philippines. A fourth contended that he was called to the Eternal City to consult with the Pope upon the President's policy. And so it went.

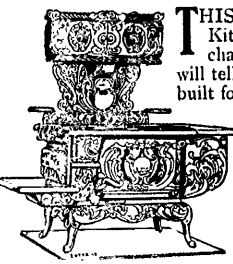
Archbishop Corrigan has taken the trouble to issue a calm statement of the law governing "ad limina" visits of prelates to Rome. After stating generally the obligations resting upon every bishop to pay such a visit during each decennial period, his Grace says:—"To be more specific, the present decennial period, during which the duty of visiting the throne of the apostles is to be fulfilled, began on December 20th, 1895, and will end in 1905. Within these two dates a bishop is free to consult his own convenience in discharging the aforementioned obligation. But this law in mind, and knowing that Archbishop Ireland has not been abroad since 1895, one would be guilty of indelicacy at least, if not of actual impertinence, in asking why his Grace refuses to visit Rome at present." But such a consideration will not deter the yellow journals from keeping up their policy of wild and reckless guessing and speculation upon the Archbishop's objects and purposes.

MUNIFICENT GIFT FROM THE POPE.

The "Tablet" announces that Leo XIII. has sent to England the sum of four hundred thousand Italian lire (about sixteen thousand pounds sterling) to form part of a perpetual endowment for the new college his Holiness has established in Rome, under the name of St. Bede's, to enable Anglican clergymen who have joined the Catholic Church to pursue their studies for the priesthood. The funds will be administered by the Archbishop of Westminster for the time being.

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THE POPE'S HEALTH.

Rome, Jan. 24.—The Pope has completely recovered from his recent attack of influenza, and gave audiences today as usual.

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