

The True Witness

AND
CATHOLIC CHRONICLE,
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MONTREAL, FRIDAY, SEPTEMBER 30, 1870.

ECCLIASTICAL CALENDAR.

SEPTEMBER—1870.

Friday, 30—St. Jerome, C. D.

OCTOBER—1870.

Saturday, 1—St. Remigius, B. C.

Sunday, 2—Seventeenth after Pentecost.

Monday, 3—Guardian Angels.

Tuesday, 4—St. Francis, C.

Wednesday, 5—St. Placidus and Comp., MM.

Thursday, 6—St. Bruno, C.

NEWS OF THE WEEK.

Since our last summary of war movements telegraphic communications have, of course, been conflicting,—all being too indicative, however, of the continued humiliation of France. Jules Favre's efforts for peace have been sternly repulsed by Bismarck, whose remarkable letter we publish below. As was generally expected, the hard terms of Prussia have been indignantly rejected by the French authorities and people, and a general call to arms resounds throughout the land.

It appears that on the return of M. Favre from the headquarters of the King of Prussia, a meeting of the Committee of Defence was held, when immediately General Trochu, in a few concise sentences, called for the instant and unconditional rejection of the propositions, which he described as insulting. He said:—"I dared condemn a hopeless contest, both as a citizen and a soldier. No man has the right to recommend suicide to a nation any more than to a man, but France is in no such emergency. The Capitol is able to resist, and with the fall of the Capitol the Departments will rise.—Winter is fast approaching, and the armies of the invader, which are already harassed and suffering, will then be exposed to the greatest want and misery. From all parts of the country the Republic is warmly indorsed and accepted. New armies are forming on the Loire and at Lyons. All these brave Frenchmen, mustering in arms for the defence of their nation, would disown our action were we to humiliate France by such a surrender of her rights and her honor as Prussia now demands of us. The great cities of France would not abide by our capitulation. The trials of this cruel war, made war of necessity by the implacable invaders, will restore our manhood and elevate the spirit of the French people. I propose that the committee unanimously reject the conditions offered by Count Von Bismarck."

These remarks were vehemently applauded, and the terms of Prussia unanimously rejected. It is said that since the news of this determined stand reached Bismarck at Meaux he has been evidently much disturbed in mind.—Meanwhile, advices from Paris to Tours by balloon, state that the City is completely surrounded by the enemy, at a distance of from two to three thousand yards from the outlying Forts.

A Ministerial note in the *Moniteur* confirms the Proclamation of the Government at Tours, and, appealing to Europe as the judge, says:—"We wanted to stop this barbarous conflict which decimates the people for the benefit of a few ambitious men. We would accept equitable conditions, but will yield neither an inch of territory nor a stone of our fortresses."

Jules Favre is engaged in drawing up a report of his mission to the Prussian Headquarters. The attitude of the population is very determined. No person is allowed on the street after 10 P.M. without the special permit.—Notes from Gambetta and Favre say we can hold out all the winter. Let France make an heroic effort, all parties are unanimous in supporting the Government.

Reports from Rouen of the 25th inst., says a force of 80,000 men has been organized here. The French armies now assembled and organizing, are roughly computed as follows:—Army of North East at Lille, 75,000; army of North West at Rouen, 80,000; army of Loire at

Tours, 120,000; army of Lyons, at Lyons, 150,000; army of the South at Marseilles, 200,000.

With a military genius to direct,—and surely such a one is yet to be found in France,—this force might be made effective to repel the invaders, and to increase that disturbance of mind with which, it is said, Bismarck has been visited. It would appear that public opinion in England is being stirred to its depths in favor of the faithful ally of that country. On the 25th inst. it was telegraphed:—"The excitement caused by the determined refusal of the Prussian Government to grant peace except on terms humiliating and fatal to the Republic threatens to take a shape most embarrassing to the Cabinet. A third Democratic meeting was held to-day in Hyde Park. There was a huge procession in which not one English flag was seen. The feeling against Prussia is intense."

The following is the letter above alluded to: LETTER FROM BISMARCK ON THE PRESENT FRENCH GOVERNMENT AND PEACE NEGOTIATIONS.

BERLIN, Sept. 23.—The following letter from Bismarck is dated Meaux, Sept. 16th:—"Your Excellency is familiar with the circular which Jules Favre has addressed to the foreign representatives of France in the name of the men for the present holding power in Paris, and who call themselves 'Le Gouvernement de la Defense Nationale.'"

I have learned simultaneously that Thiers has entered upon a confidential mission to foreign courts, and may presume that he will endeavor on one side to create a belief in the love for peace of the present Parisian Government, and on the other side request the intervention of neutral powers in favor of a peace which shall deprive Germany of her victories, and prevent every basis of peace which would make the next attack of France on Germany more difficult.

We cannot believe in the sincerity of the present Parisian Government to make peace, as long as it continues, by its language and acts at home, to excite the passions of the people, and to increase the hatred and bitterness of a population stung by the sufferings of the war, and to repudiate in advance every basis acceptable to Germany and unacceptable to France. By such course it becomes impossible to make peace, for which the people should be prepared by calm words and in terms corresponding to the gravity of the situation.

If we are to believe that the negotiations for peace with us are honestly intended, the demand that we should conclude an armistice without any guarantee for our conditions of peace could be meant seriously only on the supposition that we lack military and political judgment, or are indifferent to the interests of Germany.

Moreover, the hope entertained by the present rulers in Paris of diplomatic or material intervention of neutral powers in favor of France, prevents the French people from seeing the necessity of peace. When the French nation become convinced that they, having wretchedly conjured up war alone, and that Germany having had to fight it out alone, they must also settle accounts with Germany alone, they will soon put an end to their resistance—now, surely, unavailing.

It would be an act of cruelty to the French people by the neutral powers to permit the Parisian Government to nourish among the people hopes of intervention that cannot be realized, and thereby strengthen the contest.

We are far from having any inclination to mix in the internal affairs of France. It is immaterial to us what kind of government the French people shall formally establish for themselves. The Government of Napoleon has hitherto been the only one recognized by us.

Our conditions of peace, with whatever government we may have to negotiate, are wholly independent of the question of how or by whom the French nation is governed. They are prescribed to us by the nature of things, and by the law of self-defence against a violent and hostile neighbor.

The unanimous voice of the German Government and people demand that Germany shall be protected by better boundaries than they have had hitherto, against the dangers and violence we have experienced from all French Governments for centuries. As long as France remains in possession of Strasbourg and Metz, so long is its offensive strategically stronger than our defensive.

So far as all South Germany and North Germany on the left bank of the Rhine are concerned; Strasbourg in possession of France is a gate always wide open for attack on South Germany. In the hands of Germany, Strasbourg and Metz obtain a defensive character.

In more than twenty wars we have never been aggressors on France, and we demand of the latter nothing else than our safety in our own land, so often threatened by it. France, on the other hand, will regard any peace that may be made now as an armistice only, and in order to avenge present defeat will attack us in some quarrelsome and wanton manner, as in this war, as soon as it feels strong enough for it from its own resources or from foreign alliance.

In rendering it difficult for France,—from whose initiative alone hitherto the disturbances of Europe have resulted—to resume the offensive, we at the same time act in the interest of Europe which is that of peace. From Germany no disturbance of European peace is to be feared.

After having had this war forced upon us, which for four years, by our care and by restraining the feelings of our national self-respect so incessantly outraged by France, we have prevented, we mean now for our future safety to demand the price of our mighty efforts. We shall demand only that which we must have for our own defence. Nobody will be able to accuse us of want of moderation if we insist on this just and liberal demand.

Your Excellency will make these views your own and advocate them in discussions.

(Signed),

BISMARCK.

No little excitement has been occasioned by General de Wimpffen's public charge against the Emperor of having surrendered before all means of defence were exhausted,—in fact of acting more or less as a coward. It will be remembered that this General in his address to the soldiers immediately after the surrender justified that course by stating,—what appeared to be all-sufficient,—that they "had neither food nor ammunition" at the time. We apprehend, however, that as regards this memorable surrender all will not be found to have been *en regle*, and that history will demand a strict account from the Emperor, not only for this, but for his every other act in connection with the present dreadful war. It appears to have been telegraphed from Brussels on the 26th instant that an immediate publication of a Manifesto from Napoleon in reply to the late Proclamation of the Government at Tours is

promised. M. Conte, private Secretary to the Emperor, is said to be the writer. We await with some anxiety this promised utterance. It may amount to a successful explanation.

From Tours we are also told of the battle of the 19th, that Gen. Ducrot, with a strong force, occupied the heights from Ville Jeuf to Meudon. On Monday he made a reconnaissance, and encountered masses of Prussians, who concentrated in the woods. The enemy had many cannon, but notwithstanding this the French attacked them vigorously, and they were driven back with precipitation. The Prussians, however, reformed in the woods in good order, and took up a strong position on the heights of Chatillon. Here the German artillery became tremendous. General Ducrot was compelled to seek the shelter of Fort Vanness. His artillery was well served and the Mobiles were cool and resolute. Gen. Ducrot finally withdrew into Paris. The Prussians suffered severely, and made no further demonstrations after the French retreated under the guns of the fort.

Russia is diligently fostering rebellion in Turkey; a slight outbreak, which may become more serious, has already occurred. There is no doubt that the Czar, the Emperor of Austria, and the King of Italy are in close alliance, and an Italian fleet is said to be leaving to join the Russian Black Sea squadron, now in active movement.

It is also said that active military preparations are being made in England, and that munitions of war are being forward to Malta and Gibraltar.

From Rome we have no reliable particulars as to how the Holy Father is situated in presence of the sacrilegious foe who has entered his City. It is said the Romans desire the reign of the excommunicated King, and that demonstrations have been made accordingly in Rome. We do not believe it. That there are sufficient of the scum of other parts of the earth in the Eternal City just now to make a mob, and scream for Mazzini and his associate cut-throats, we do believe. But it will yet be established, as it was in 1848, and subsequently, that the subjects of the Pope are not of them. Bailie Cochrane, in his Young Italy, says that on the day the French troops went into Rome in '48, "four thousand strangers went out." So it is now, as time will infallibly prove.

The particulars of the loss of the *Capitaine* are given by the survivors. A heavy squall struck her, and she capsized. The introduction of masts, and the reduction of the height of her sides above the water line from eight feet to six feet, are said to have been her fatal faults.

A cable despatch announces that Sir John Young has been created a Peer of the United Kingdom. The title His Excellency has selected is Baron Lisgar, taken from one of his estates in Ireland.

Sir John A. Macdonald has returned to Ottawa from P. E. Island, apparently quite restored to health, and has received a hearty welcome from all classes in the Capital.

We deeply regret to learn that His Grace the Archbishop of Quebec continues so ill that his medical attendants entertain little hope of his recovery.

THE GUIBORD CASE.—We publish below the judgment of the Court of Review in this important case. The Judges present on the Bench were—their Honors, Berthelot, Mackay, and Torrance.

COURT OF REVIEW.

MONTREAL, September 10.

PRESENT:—Justices BERTHELOT, MACKAY, and TORRANCE.

HENRIETTA BROWN, widow of JOSEPH GUIBORD, vs. THE CURÉ and MARGUILLIERS of the PARISH of MONTREAL.—Judgment was rendered in this cause, generally known as THE GUIBORD CASE, reversing unanimously the judgment rendered by Mr. Justice Mondelet. The Court room was crowded, and great interest was manifested, though the result had been pretty generally anticipated. The judgment having been based on questions of form, it will not be necessary to go any great length into the case to render the grounds of the decision perfectly plain.

MACKAY, J., referred at length to the state of things under which the widow of Guibord presented her petition in November last. In her petition it was alleged that Guibord died a Catholic; the defendants were duly notified of his death, and were duly asked to bury him. They refused. A writ was ordered to issue, and was served as required by the Code of Civil Procedure; one copy being served on the Curé and one on the Marguilliers. Exceptions were taken by the Defendants to the proceedings. These exceptions would cover a quire of paper, but the gist of them might be briefly stated. The Defendants alleged that the writ was informal. They denied that they had refused burial to Guibord. They said that the cemetery was divided into two portions, one part for the burial of persons entitled to ecclesiastical burial, and the other for those entitled to civil burial, but not entitled to ecclesiastical burial. That Guibord, when he died, was under canonical censures, and they had merely refused to bury him in the place appropriated to ecclesiastical burial. They had offered to bury him in the other part of the cemetery, but this offer had been declined.

The answers of the plaintiff to the exceptions amounted to this: that the defendants had really refused burial to Guibord; that Guibord had never lost his status as a Catholic, and the pretended censures of the Church did not deprive him of his right. That the Canadian Institute was a legally formed corporation, and the censures against the Institute were an attempt against the sovereignty of the law; and that Guibord was under no disability when he died. The defendants filed a special replication to the answers of the plaintiff. Judgment was rendered in May last, condemning the defendants.—This was the judgment complained of. The de-

fendants now asked the Court of Review to set aside that judgment for errors. They said that the original writ was informal. It differs from the exigency of the writ as ordered by Art. 1,022, C.P.

There was much to justify the pretension of the defendants, that *sepulture civile* was all that was asked. The writ itself and the service showed that the *cure* was not sued, but the Fabrique. The ecclesiastical ceremony could only be ordered by the Court, if at all, on its being asked for. But in this case there was no demand against any ecclesiastical person. The judgment *quo* did not find ecclesiastical burial to be asked for, nor did it order ecclesiastical burial. The Fabrique would be unable to give such burial. It was important that proper conclusions should be taken in the pleadings, as it was not in the power of the Court to go beyond what was asked for, or to supply omissions. In cases of *mandamus* especially it was important that conclusions should be ample and sufficient. If the plaintiff wished for ecclesiastical burial for the remains of her husband, she should have put the proper parties before the Court. Would it be proper to pass upon this demand without the Bishop? His Honor said he would not adjudicate upon the rights and powers of the Bishop who was not impleaded in the case. But he would say this, and it might be that it would serve to quiet the minds of some, that in Lower Canada there were rights and usages of religious bodies which would not be interfered with by the Courts of law. In the Church of England, for example, a clergyman would not be compelled to bury a person in a churchyard, if the rules of his church prohibited it. He would not be compelled to administer the Holy Communion to a person approaching the table in violation of the rules of the church. And so in other cases. Roman Catholic cemeteries were divided into two parts, one for those who died in peace with the church, and the other and smaller part for those who were not entitled under the rules of the church to ecclesiastical burial. This was the usage, and such usage makes law. Under the rules of churches which denied Christian burial to unbaptized persons, was it unreasonable that the burial grounds should be so divided? The Fabrique had it in their discretion to assign the place of burial for each person. Those who did not die at peace with the church were assigned places at the smaller part. The Fabrique could not be compelled to give ecclesiastical burial, and as to civil burial, the defendants offered it. The second conclusion prayed for a thing to be done by the defendants which they had not office or authority to do. The judgment was bad for several reasons. The peremptory *mandamus* was useless, and would only lead to trouble. It might be conformed to by burial in the smaller part reserved for civil burial. The judgment was bad also in ordering the defendants to insert the certificate of burial on the registry. The *mandamus* should not have issued at all to compel the defendants to do a thing which they had had no office or authority to do. The judgment must be reversed.

BERTHELOT, J., and TORRANCE, J., concurred. The former went somewhat farther than Mr. Justice Mackay as to the authority of the Church in the matter. Mr. Justice Torrance restricted his remarks to the question of form. The following is the judgment as drawn up, with the reasons for reversal:—"The Court here, sitting as a Court of Review, have heard the parties by their respective Counsel upon the judgment rendered in the Superior Court, in and for the District of Montreal, on the second day of May, 1870, having examined the record and proceedings had in this cause, and maturely deliberated.

Considering that the writ issued in this cause, and called writ of *mandamus*, contains no command to perform anything, and was and is not in the force required by law, *non obstant* by Article 1022 of the Code of Civil Procedure;

Considering that of the two demands involved in the *Requête libellée* of said Henrietta Brown, the latter one,—to wit, that the defendant should be ordered to "insérer sur les registres de l'état civil par eux tenus le 'certificat de telle inhumation du dit Joseph Guibord, aussi conformément aux usages et à la loi,'"—cannot be maintained, the said defendants not being the keepers of the Registers of the Etat Civil, nor bound to make any registration in them.

Considering that the other, or first of said two demands,—to wit, that the defendants should be ordered to "inhumer ou faire inhumer dans le Cimetière Catholique 'Romain de la Côte des Neiges sous le contrôle et administration de telle défendeur le corps du dit feu Joseph Guibord conformément aux usages et à la loi,'"—is vague; particularly considering the proofs made that the said Cemetery is divided (as Roman Catholic cemeteries in Lower Canada have been and are) into two parts, the one for ecclesiastical burial and the other for mere civil burial; the fact of which division was known to plaintiff before she presented her *Requête* in this matter.

Considering that whether by the burial demanded, the said Henrietta Brown meant to ask for ecclesiastical burial for the remains of the said late Joseph Guibord, or for mere burial of them without ecclesiastical ceremony, she is unable to maintain the judgment that she has obtained, to wit, the said judgment of the 2nd May against the defendants, because ecclesiastical burial was and is not in the power of defendants to perform, and as to mere burial, it has been offered by the defendants for the purpose of the burial of the said late Joseph Guibord before the plaintiff presented her *requête* in this cause.

Considering that the said judgment under Review is erroneous in not particularizing the *sepulture* and kind of *sepulture* meant by it; also, in maintaining as it has done the answer in law of the plaintiff to defendant's third exception; considering also that the said judgment has adjudged *ultra petita*, in commanding the *cure* of the Parish of Notre Dame to give and perform the burial mentioned in the said judgment.

Considering that by reason of the insufficiency of the original writ in this cause, and of the vagueness of the said conclusions of *requête*, the said writ might be superseded, and that by reason of all the said several premises, together the said writ ought to be superseded, and the said *requête libellée* dismissed.

Considering further that defendants have shown sufficient cause against Peremptory *Mandamus* in this cause or matter.

Considering, therefore, that there is error in the said judgment of the 2nd May, 1870, complained of, doth, revising, reverse the same; and proceeding to render judgment that ought to have been rendered in the premises, doth supersede and quash the said writ of *mandamus*, and doth dismiss said *requête libellée* of the said Henrietta Brown, plaintiff, or *requérante*, with costs, as well in the Superior Court as in the Court of Revision, in favour of defendants against the said Henrietta Brown.

From the perusal of the above it will be seen that the Court distinguished sharply between civil burial, and ecclesiastical or religious burial. Now the first, or civil burial, was never refused to the remains of the deceased Guibord, and to this kind of burial only could he in virtue of his civil status lay claim. His right to the other kind of burial, must be dependent on his religious or ecclesiastical status, which the Civil Courts were not competent to determine.

It will be seen too that the Catholic Church in Canada, in claiming to determine whether any religious rites shall or shall not accompany the burial of those whose remains are brought to her cemeteries, claims no more than is claimed, by, and conceded to the Protestant sects. Thus even a Minister of the Church of England as By Law Established—though that church is a mere human institution, and the creature of the Civil power—cannot be compelled to bury a person contrary to the rules of his church. Shall the Catholic Church then not be as free as the sects?

The decision of the Court of Review we look upon as of supreme importance, as a valuable vindication of the fundamental principle of religious liberty. It draws sharply the line which separates the civil from the spiritual domain; and we think that the principles therein laid down will be as acceptable to the Protestant as they are to the Catholic. Whether the *Institut Canadien* will accept this decision as final, or whether they intend to carry the matter before a higher court we do not know.

Under the many years management of Messrs. Lowe & Chamberlin the Montreal *Gazette* was distinguished for a spirit of fairness towards Catholicity which will, we are sure, be long remembered by the Catholic community at large. It is gratifying to see that the gentlemen who now control the columns of this long established and respectable journal are not less just and fair-minded than were their honoured predecessors. In proof of this we refer with pleasure to the *Gazette's* editorial of the 20th instant, on "Rome—Italy—England," from which—without concurring, be it understood, in all the views of the writer,—we extract the following eloquent passages:—

To its (the Papacy's) true power the loss of pomp or place is nothing. It has never wielded such influence as when in poverty and oppression, nor has ever shown itself so feeble as in the acme of mundane prosperity. The greatest English historian who ever lived—himself a staunch Protestant and earnest admirer of the heroes of the Reformation—could, from the lessons of the Past, wherewith his mind was stored so richly, gather no arguery of its decrepitude. For him, its subtle impalpable all-pervading power was assured even for the invisible age when the world's metropolis shall be a ruin, and bats and night-owls shall make obscure roosting-places among the shattered columns of St. Paul's Cathedral. The loss of temporalities weighs as nothing in eternal aims. Blot out Rome from the map of the world to-morrow and the Church that has made her seat upon the Seven Hills for so many centuries is as abiding and as Catholic as ever.

All of which considerations, however, cannot be twisted into excuse for the shameful peridy of King Victor Emmanuel's government. Whatever of denunciation has been ever fulminated against Piedmontese policy by the most ultramontane of Roman statesmen is more than justified by the flagrant disregard of the September Convention. In this year 1870 it would seem that treaties have no weight at all. Might is the only Right, and the words of Kings are but the empty breath of falsehood. What ever Italy may gain otherwise by a seizure of her ancient capital, she loses the good will of all who love good faith and honour, and reverence most the man who never lies. It is a poor pitiful excuse to say that the republican sentiment of the peninsula compelled the assault upon a neighbouring friendly potentate. Italian republicanism has never been so difficult of restraint. Mazzini knows so much; Garibaldi knows so much; Aspromonte records so much. The occupation of Rome is merely an act of wanton plunder, is wholly without palliation, and is undertaken at the moment solely because Europe is too busy to interfere, and the chance might never occur again. Rome is entered to-day in precisely the same spirit as by Brennus twenty centuries ago. It is *Vae Victis*! And, as Papirius Cursor waited in the Senate Chamber to awe the yellow-haired barbarian by the majesty of his mien, so waits with a sublimer dignity the prince whose grey hairs are covered by the triple crown. *Abbi omen!*

To us it seems impossible that His Holiness can consent for long to occupy the Vatican, after his flag has been hauled down over the city. The position would be, if not undignified, most certainly disagreeable. Submission to the civil authority of an unfriendly power could not but be felt as most galling. In after years it is possible that a successor to this throne may find it easier to accept the position of temporal inferiority, but for Pius IX. the effort is too much to expect with reason. Nor is there need. In his extremity he is neither friendless nor forlorn.—There is yet a Mediterranean Power which has sympathy with his dynasty and respect for his person. There is yet a Mediterranean refuge more sacred than Avignon, more secure than Gaeta. Over the glorious shrine hallowed by the memories of the Knights of St. John, there waves a flag more trusty than either tri-colour. In Malta there may be established, under the proud guardianship of England, an Ecclesiastical State which has never been outshone in Rome. From the island shore whereon the chivalrous champions of the Cross found their refuge after expulsion from Rhodes, there may yet swell through all civilization the voice of Papal authority, sonorous and compelling, and announcing ecumenically its immortal vitality. The circumstances offer no other solution worthier, and none that either devout Catholic or patriotic Englishman should more gladly hail. Under the cross of St. George floats the ark of cosmopolitan refuge from every political deluge. That security has never been more highly honored than it may be by the Sovereign Pontiff. And as it never yet was betrayed, nor violated by fiercest foe, there can be found none other more acceptable in his hour of trouble. He has but to signify his desire and the fleets of England gird him sternly round, established in his own English domain. So much Mr. Odo Russell has already assured him. And, as we have much faith in Pio Nono's sagacity, and respect highly the common sense of not a few among his counselors, we have every hope that Mr. Russell's offer will be accepted. It possesses at least one practical recommendation. There need never be enlisted another Pontifical Zouave. Whom the Lion of England undertakes to guard may sleep unarmed and alone.

An aged Priest, the Rev. M. Menard, from St. Henri de Masouche, fell dead in Notre Dame Street last week, just as he was signalling the street car to stop.

We have received the three first numbers of the *Central Catholic*, published in Syracuse, N.Y. Its mission is "to defend the true and noble old Faith," and its motto *Semper, Veritas, Veritas*. The numbers before us are remarkable for a sound Catholic tone, and much general information.