CIHM
Microfiche
Series
(Monographs)

ICMH
Collection de
microfiches
(monographies)

Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Continuous pagination/ Pagination continue
- ☐ Includes index(es)/ Comprend un (des) index

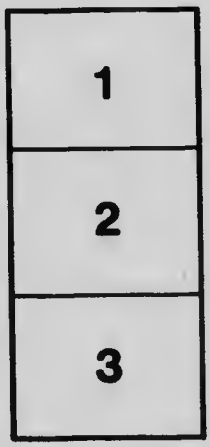
  Title on header taken from:/ Le titre de l'en-tête provient:

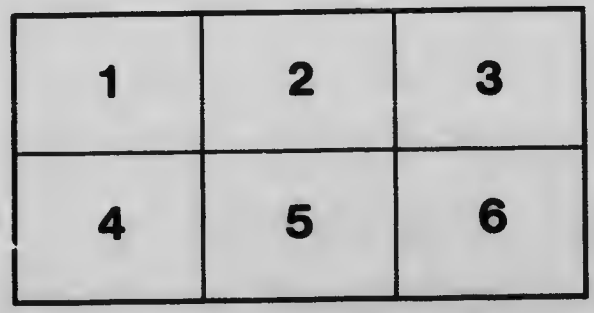
- ☐ Title page of issue/ Page de titre de la livraison
- ☐ Caption of issue/ Titre de départ de la livraison
- ☐ Masthead/ Générique (périodiques) de la livraison

☐ Additional comments:/ Commentaires supplémentaires:

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

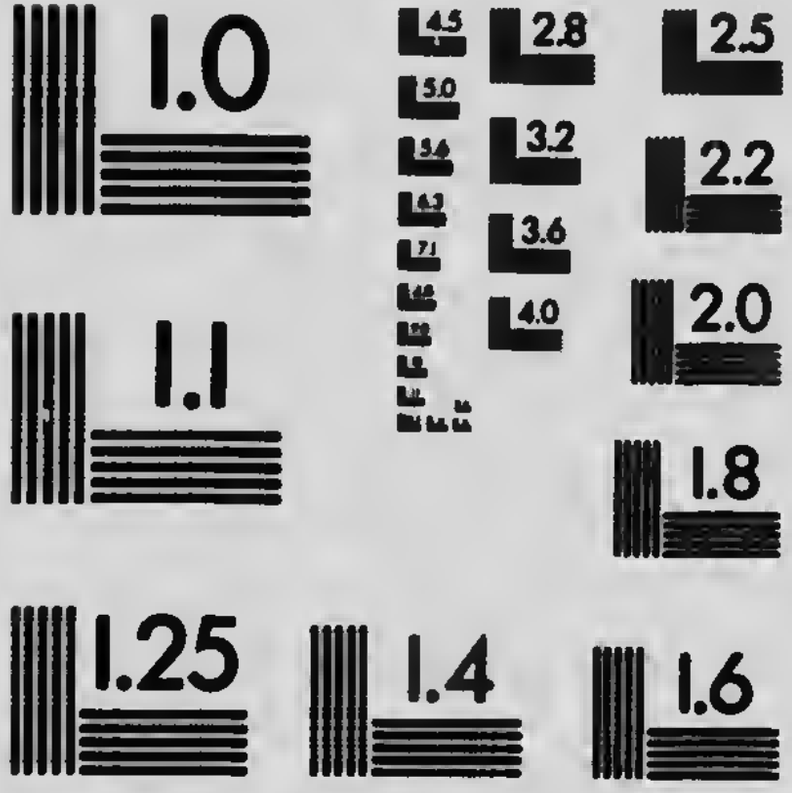
10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						✓					





MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



APPLIED IMAGE Inc

1653 East Main Street
Rochester, New York 14609 USA
(716) 482 - 0300 - Phone
(716) 288 - 5989 - Fax

The "NE TEMERE"

An Explanation and an Appeal

BY

JOHN C. BROPHY, D.D.

MONTREAL
THE CANADIAN MESSENGER, PUBLISHER
1075 RACHEL STREET
1912

PRICE: FIFTEEN CENTS

The "Ne Temere"

The "NE TEMERE"

An Explanation and an Appeal

BY
JOHN C. BROPHY, D.D.

MONTREAL
THE CANADIAN MESSENGER, PUBLISHER
1075 RACHEL STREET
1912

PERMISSU SUPERIORUM

THE "NE TEMERE"

An Explanation and an Appeal

Introduction. That erroneous views concerning the decree *Ne Temere* and a general misconception of certain of its articles and their true import are held somewhat widely, is evident from the perusal of the public press and the accounts of assemblies where the decree came into the debates and was matter of discussion.

The intention of the writer of these pages is to offer such explanation of the decree and of the indicted articles as will remove, he hopes, much unfortunate misunderstanding and state the real scope and effects of this recent legislation.

He presumes to add a few words of appeal to the good-will of all fair-minded and conscientious men, to disabuse the prejudices and allay the unfounded fears that this decree appears to have aroused.

The Church and Marriage. The real meaning of the Catholic Church's laws relative to marriage cannot be realized without a proper acquaintance with the Church's attitude towards marriage.

The following statement is not set down as an invitation to controversy, but as matter of Catholic belief, as a summary of what each and every Catholic is held to accept and believe, or make shipwreck concerning the faith.

1. Christian marriage is a sacrament. The natural contract entered into by man and woman in marriage was raised by Christ to the status and dignity of a sacrament for His believers, and for them it is a sacred rite, conferring grace, as truly as do Baptism or Holy Orders, or the other sacraments.

2. The Church, and the Church alone, has full and complete authority over the sacraments. To her, and to her alone, it belongs to legislate concerning these sacred rites. She has no power to abolish or change them, or institute others. But she has the power to determine authoritatively everything that pertains to their administration. She can fix the conditions she deems requisite for the reception of the sacraments, the manner, time, place, ceremonial. She is the judge as to who may or may not receive them.

3. The Church can enact the laws considered necessary according to times and circumstances. For the Church is a real society, so established by Christ, complete in herself and independent of every other society in all that concerns faith and morals. She, and she alone, can legislate for her children in what relates to God, the soul, and the Divine Law. This legislative power of the Church, as all legislative power, is endowed with concomitant judicial and coercive power. She can pass judgment on the fulfillment or non-fulfillment of her laws, and compel her children to observe them. Hence it follows that since marriage is a sacrament, marriage lies within the proper jurisdiction of the Church whenever it includes a member of her fold. And while the Church has not the authority to alter the essentials of the sacramental contract, as its indissolubility, for instance, she has the authority to safeguard the sanctity of marriage and the spiritual welfare of her children by passing laws, and placing restrictions, and imposing conditions, as may be deemed needful according to times, and circumstances, and localities, in her own best judgment and out of her experience.

It is for the Church to decide who of her fold may or may not contract marriage; to decide how and when and where and before whom the sacramental contract is to be effected. She

forbids any child of hers contracting marriage except as she prescribes. Just as the civil law imposes certain conditions for the validity of sales, of wills, of court procedure; so the canon law requires the observance of conditions that are considered of supreme importance in the gravest of all contracts, marriage. It is of daily experience that the omission, even involuntary and unsuspected, of some condition has invalidated, that is, rendered null and void, certain civil contracts. The same results arise when the prescribed conditions to the contracting of the sacrament of marriage are omitted. Marriage is possible only when these conditions are fulfilled; if they be omitted, it is not a marriage; just as the absence of the conditions prescribed by civil law nullifies the attempted civil contract.

It is evident that the above statement of Catholic belief concerning marriage and the authority of the Church, is not the belief of all Christians. And as prefaced, the spirit of this statement is not controversial; it is to call to the mind of whosoever takes up the consideration of this subject that the above is and must be the firm and unalterable conviction of every member of the Catholic Church; and each and every Catholic must acknowledge it, profess it, and submit to it.

The point in question is not whether Catholic

teaching is right or wrong. It is: Catholics believe that this is the truth, and Catholics are obliged to profess and obey this teaching, or incur the inevitable consequences of their transgressions. It is the law for them, as binding as the Ten Commandments. Again: the question at issue is not the truth or the error of this belief of Catholics; it is far removed from the field of controversy; it is the realization by non-Catholics of this belief of the members of the Catholic Church, and the inevitable influence and effect of this belief upon their acts. They are not any more free to reject the laws of the Church than to reject the Ten Commandments. For them, both are founded upon the Word of God,—to disobey either is an equal sin and jeopardizes the salvation of the soul.

This belief is, we maintain, not to be overlooked in the treatment of Catholic affairs, or the consideration of any policy that would affect so large a proportion of our population.

The Church and Mixed Marriages. The Church makes laws for her children to facilitate and secure their salvation. This is the object of her solicitude. If the effect of her laws reach beyond her fold, it is contingently and only in so far as members of her fold are involved. This is surely evident in her marriage

laws. The briefest inspection of them clearly establishes that she is legislating for her own. The *Ne Temere* decree itself, as shall be seen, contains one clause only that refers to non-Catholics, viz., in the case of marriage of a Catholic and a non-Catholic, called a Mixed Marriage.

Of all delicate questions, requiring the utmost caution and charity in discussion, that of mixed marriages stands in the forefront. It is also one of the most perplexing. From the beginning the Church has had to deal with this thorny problem of mixed marriages. They have ever been to her a fertile source of worry and sorrow. She has never been reconciled to them; rather has she constantly, invariably discountenanced them, discouraged them, opposed them. At various times and in various places some of them have been absolutely forbidden.

This antipathy of the Church to mixed marriages and the reluctance with which she sanctions them are begotten of the sad consequences that so frequently follow them. Her experience has taught her that mixed marriages are a danger. They are a danger to the faith by causing its loss or weakening it. They are a danger to the spirit of peace that should reign in the family circle. Now, the faith is the most precious possession of her children. She exists and labours to teach that faith and keep it intact. Nothing on earth,

nothing in life can compare in importance with that priceless inheritance. There can be no choice between it and anything else in the wide world. It is more than riches, more than father or mother, than husband or wife or child,—it is more than life itself. No one is a Catholic who would not be willing to lay down his life for the faith.

It is not denied, and cannot be, that some mixed marriages are genuinely satisfactory and happy. But these are few. The universal verdict declares them to be almost a negligible quantity in the sum total. The vast majority of mixed marriages end in lamentable failure; in the loss or the weakening of the faith of the Catholic party and offspring, and in discord or the disruption of the home. The Church cannot be indifferent to such distressing results. The Church is not an abstract entity. She is a living community, made up of men and women; she is a world-wide society composed of individuals, and in ultimate analysis the family is her unit of life. Her sons and her daughters are member for member of her body. As truly as she vivifies them, so truly do they build her up. She must protect them and care for them as the body does for every cell in its structure. She knows from bitter experience what to expect from mixed marriages. Every non-Catholic denomination must perforce concur in this, and some have put on record their

opposition to mixed marriages; so little is there to gain by them, and so much to lose.

Canon Law and Mixed Marriages. The Church teaches that marriage is a sacramental contract—at once a contract and a sacrament. She teaches, moreover, that the contract consists in the mutual agreement of the man and the woman, free to marry, to live together as husband and wife. She teaches that this is true marriage, and always was, and ever will be. The presence of witnesses is not essential in itself. A marriage can be valid and indissoluble, binding unto death, without them, providing the parties are free to marry; and this is insisted upon in the opening words of the decree of the Council of Trent, the *Tametsi*. But the Church teaches, besides, that when it is her children who contract marriage, she has the right to stipulate under what conditions they may enter into this mutual agreement; that she has the power so to bind them in conscience that they cannot validly give the necessary consent unless the prescribed conditions be observed. In this, she is not exceeding the rights inherent to any society with legislative powers. The State exercises this right in a multitude of ways: when, for instance, defining under what conditions sales, deeds, wills are valid; or again: under what con-

ditions a voter must express his choice of candidate. The Church uses her right when she demands that the contracting parties in a marriage must declare their mutual agreement before witnesses; and just as she has the right to require witnesses, so can she determine who the witnesses must be. These are three; the contracting parties choose two of them; she chooses the third.

The Church in the sacramental contract of marriage uses her right, as in other contracts the State uses its right. A man twenty years of age may be able to buy and sell, yet the State declares him incapable. A voter marks his ballot for the candidate of his choice, yet the State declares it invalid unless initialed by the State official. It will not be urged that this formality affects the voter's right or choice. Yet as testimony to the presence of the State's witness it is required. So does the Church exact the presence of witnesses, and in particular of her official witness who will also impart, in God's name and in her's, a blessing upon the new union. This presence of witnesses was not always required for the validity of Christian marriage before the Council of Trent, nor was it everywhere required afterwards. But before as after the Council of Trent, marriages contracted without the presence of a priest and the Church's blessing were illicit and opposed by the Church.

Marriage Law of the Council of Trent.

So intolerable had grown the abuses resulting from clandestine marriages that the Council of Trent felt the need of new and effective laws. In Session XXIV., November 11, 1563, the doctrine of the Church on Marriage was reaffirmed; her power to constitute impediments declared under anathema of the contrary (Canon IV.); and the decree *Tametsi* was issued enacting that after its promulgation no marriage could be validly contracted except in presence of two witnesses and a parish priest; and that all marriages attempted without the presence of these witnesses would be null and void; that the parties were incapable of contracting. The cessation of secret marriages and their rampant evils was thus provided for.

Apart from the legislative power of the Church, it is surely natural to assume antecedently that some control should exist over marriage. The theory that considers marriage as a sacramental contract residing in mutual consent and agreement is true and unassailable. But it cannot be applied practically from that one point of view. Marriage concerns primarily the two contracting parties; it concerns also the family and society, and these cannot be disregarded. The troubled times that preceeded the Council of Trent had weakened the influence of the Church. Morals

as well as faith had suffered. That control which was the natural corollary of the Church's supremacy in all things affecting her children's spiritual welfare had now to be insisted on by binding laws. She met the situation, as ever, with a clear, explicit line of conduct to be followed—the *Tametsi*.

This decree entered into force when the Bishops promulgated it in their respective dioceses; it was to be read in the vernacular in every parish church, and thoroughly explained; and it was in vigour one month after the date of its first reading. No enactment could be more admirably conceived to eradicate the evil of secret marriages. The publication of banns would bring to the surface any latent impediment to the intended marriage; the presence of the three witnesses would be abundant testimony to the fact of the marriage; and its inscription in the registry of the parish would remain the public record of it.

Lest the above details appear unnecessary, let me at once state that since the *Ne Temere* is merely an effective application of the *Tametsi* to the needs of today, these details are required for the proper understanding of the *Ne Temere*. And to extend the parenthesis, as the *Ne Temere* was enacted for Catholics, so also was the *Tametsi*. This is abundantly seen from the peculiar method adopted to promulgate it, viz., by dioceses and

parishes. At the time of the Council of Trent, the cleavage between Catholic and non-Catholic population was regional, territorial. The *Tametsi* was not promulgated in non-Catholic localities. These lines of cleavage were not to last. Political upheavals completely changed the situation in some countries, as the Netherlands.

The Benedictine Declaration. Now, it had never been the intention of the Church to legislate for non-Catholics. Benedict XIV. by his Constitution of November 4, 1741, formally declared this in regard to Belgium and Holland, and further declared that in the case of a marriage between a Catholic and a non-Catholic, since the non-Catholic party was not bound by the Tridentine law, the marriage could be validly contracted without the presence of the parish priest. This is the memorable Benedictine Declaration, and it was extended to and published in Canada, November 24, 1764, the year after the cession to England.

It is in consequence of this fact that mixed marriages contracted before a non-Catholic clergyman were valid, though illicit. The Catholic who so contracted marriage acted wrongly, committed a sin; but the marriage was valid, was indissoluble; and no mixed marriage was ever pronounced null and void in this country because

contracted outside of the Church. The Benedictine Ruling came into force in various other parts of the world, also, and is certainly another proof that the Church always desires to follow the line of procedure intended by the Council of Trent.

Need of Readjustment: The "Provida," The "Ne Temere."

The Church is infallible, but has not the gift of prophecy or of omniscience. The flux and reflux in the movement of population brought about a gradual intermingling of Catholics and non-Catholics—most in evidence during the last one hundred and fifty years—until actual conditions did not allow the application of the *Tametsi* according to the mind of the Fathers of Trent. In some countries it was in vigour, in others it was not. It was in vigour in certain regions of one country, but not in the other parts. Confusion, difficulties, seeming contradictions arose and multiplied, embarassing the Church tribunals and disquieting the faithful. Already a measure to relieve the inconveniences of such complications was given to Germany in the *Provida* of January 18, 1906, which brought all marriages of Catholics under the *Tametsi*, and exempted mixed marriages.

Full relief came with the publication of the *Ne Temere*. This decree sweeps away all the

confusion and intricacies begotten of territorial, sectional promulgation. It brings all Catholic marriages under the common law, with the exception of Catholics of the Oriental Rites, who preserve the ante-Tridentine discipline, and of mixed marriages in Germany. The *Ne Temere* is addressed to Catholics, was enacted for Catholics, to regulate the marriages of Catholics, and concerns primarily no one else. The reading of the text makes that point very evident. The object of this decree is to give a uniform discipline to Catholics of whatsoever country or region. It makes universal the Tridentine legislation. It is not a new legislation; but it simplifies the Tridentine laws in their application and discards certain sources of complications and ambiguity. Thus: it determines with the utmost precision who the parish priest is and what the manner of his presence must be; it provides a safe procedure for the marriage of undomiciled parties; it permits the contracting of marriage without the presence of a priest when he is absent for one month.

Clearly and unequivocally, it is a law for Catholics, has for its end to insure the certainty of their valid marriage, to leave no room for doubt, or worry, or fraud.

ENGLISH TEXT OF "NE TEMERE"

Decree of the Congregation of the Council

The Council of Trent (Cap. I, Sess. XXIV, de reform. matrim.) made prudent provision against the rash celebration of secret marriages—which the Church of God has always deprecated and forbidden—when it decreed that "those who attempt to contract marriage otherwise than in the presence of their parish priest or of another priest acting with the license of the parish priest or of the Ordinary, and in the presence of two or three witnesses, become thereby incapable of marrying validly, since the Council declares that all such contracts are null and void."

As the Sacred Council prescribed, however, that the above decree should be published in every parish, and was to have force only in those places in which it should be promulgated, it has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine law, and, being still without it, they continue to be subject to the doubts and inconveniences of the old discipline.

Nor did all difficulty cease in those places where the new law has been in force. For often there have arisen grave doubts in deciding who is to be regarded as the parish priest before whom a marriage must be celebrated. The canonical discipline did indeed decide that he is the parish priest in whose parish one or other of the contracting parties has his or her domicile or quasi-domicile. But as it is sometimes difficult to say whether a quasi-domicile really exists

in a given case, many marriages are exposed to the danger of nullity; whilst many others, through ignorance or fraud, were rendered quite illegitimate and void.

These deplorable results have occurred more frequently in our own time on account of the greater facility and celerity of communication between different countries, no matter how widely separated they may be. Hence, in the judgment of wise and learned men it has been deemed expedient to introduce some change into the law, regulating the form of celebrating marriage, and many bishops in all parts of the world, but especially in the more populous centres where the need of such legislation urges with greater force, have petitioned the Holy See to this end.

It has been requested, also, by many bishops in Europe, as well as by others in various regions, that provision be made to prevent the inconveniences arising from betrothals, that is, mutual promises of marriage, when privately made. For experience has sufficiently shown the many dangers of such espousals, in that they are an incitement to sin and the cause of misleading inexperienced girls, besides involving subsequent dissensions and endless disputes.

These circumstances have induced the Holy Father, Pope Pius X, in his solicitude for all the churches, to advise some modifications with the object of removing the above-mentioned difficulties and dangers. Accordingly he committed to the S. Congregation of the Council the task of examining into the matter and of suggesting such measures as it might deem opportune.

He was pleased, also, to ascertain the opinion of the Commission which has been appointed for the codification of Canon Law, as well as of the Cardinals

chosen on this special Commission to prepare the new code. These and the S. Congregation of the Council have held for this purpose frequent consultations. Finally, having obtained the reports of these bodies, His Holiness ordered the Sacred Congregation of the Council to issue a decree embodying the new laws, approved by himself on sure knowledge and after mature deliberation, by which the discipline in respect of engagements and marriage is to be regulated for the future, so that the celebration of them may be carried out in a secure and orderly manner.

Pursuant, therefore, to the Apostolic mandate the S. Congregation of the Council hereby ordains and decrees:

Engagement or Betrothal

I. Only those matrimonial engagements are considered to be valid and to beget canonical effects which have been made in writing, signed by both the parties, and by either the parish priest or the Ordinary of the place, or at least by two witnesses.

In case one or both of the parties be unable to write, this fact is to be noted in the document, and another witness is to be secured to sign the contract as above, together with the parish priest or the Ordinary of the place, or the two witnesses.

II. By parish priest, as used in the present decree, is to be understood not only the priest who legitimately presides over a parish that is canonically erected, but also, in localities where parishes are not canonically erected, the priest to whom the care of souls has been legitimately entrusted in any specified district, and who is equivalent to a parish priest; and also, in missions where the territory has not yet been perfectly

divided, every priest generally deputed for the care of souls in any station by the superior of the mission.

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

IV. The parish priest and the Ordinary of the place validly assist at a marriage:

(i) from the day on which they have taken possession of their benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended from the office;

(ii) but only within the limits of their territory. And in this territory they assist validly at marriages not only of their own subjects, but also of outsiders;

(iii) provided, when invited and requested, and not compelled by violence or grave fear, they ask and receive the consent of the contracting parties.

V. They assist licitly:

(i) after they have ascertained, according to the prescribed forms, that the contracting parties are free to marry, and that they have duly complied with the conditions laid down by the law;

(ii) after they have ascertained, moreover, that one of the contracting parties has a domicile, or at least has lived for a month in the place where the marriage takes place;

(iii) if this condition be lacking, the parish priest and the Ordinary of the place, to assist licitly at a

marriage, require the permission of the parish priest or the Ordinary of one of the contracting parties, unless it be a case of grave necessity, which excuses from this requirement.

(iv) Except in cases of necessity, is it unlawful for a parish priest to assist at the marriage of persons without fixed abode (*vagos*) until the matter has been duly reported to the Ordinary or to a priest delegated by him, so as to obtain permission to assist at the marriage.

(v) In every case let it be held as the rule that the marriage is to be celebrated before the parish priest of the bride, unless some just cause dispenses from this rule.

VI. The parish priest and the Ordinary of the place may grant permission to another priest, specified and certain, to assist at marriages within the limits of their district.

The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV. and V., for the parish priest and the Ordinary of the place.

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

VIII. Should it happen that in any district the parish priest, or the Ordinary of the place, or a priest delegated by either of them, before whom marriage

can be celebrated, is not to be had, and that this condition of affairs has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the contracting parties in the presence of two witnesses.

IX. (i) After the celebration of a marriage the parish priest, or he who takes his place, is to register at once in the book of marriages the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the Ordinary. This obligation holds likewise when another priest, delegated either by the parish priest himself or by the Ordinary, has assisted at the marriage.

(ii) Moreover, the parish priest is to note in the book of baptisms the fact that the married person contracted marriage on a certain day in his parish. If the married person was baptised elsewhere, the parish priest who has assisted at the marriage is to send notice of the marriage, either directly or through the episcopal curia, to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the book of baptisms.

(iii) Whenever a marriage is contracted in the manner described under VI. and VIII., the priest in the former case, the witnesses in the latter, are bound conjointly with the contracting parties themselves to provide that the marriage be entered as soon as possible in the prescribed registers.

X. Parish priests who violate the rules here laid down are to be punished by their Ordinaries according

to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules given under (ii) and (iii) of No. V, they are not to appropriate the stole-fees, but must remit them to the parish priest of the contracting parties.

XI. (i) The above laws are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church), in all cases of betrothal or marriage.

(ii) The same laws are binding, also, on such Catholics, if they contract betrothal or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtæ religionis* or *disparitatis cultus;* unless the Holy See have decreed otherwise for some particular place or region.

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

The present decree is to be held as legitimately published and promulgated by its transmission to the Ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of our Lord Jesus Christ, next year, 1908.

Meanwhile let all the Ordinaries see that this decree be made public as soon as possible, and explained in the parish churches of their dioceses, so that it may be known by all.

These presents are to have force by the special

order of our Most Holy Father Pope Pius X., all things, even those worthy of special mention, to the contrary notwithstanding.

Given at Rome on the second day of August, in the year 1907.

† VINCENT, Card. Bishop of Palestrina,
Prefect.

C. DE LAI.
Secretary.

Explanation: Betrothals. As is seen, the first part deals with Betrothals. In the eyes of the Church, an institution so sacred as marriage cannot be treated lightly. A promise of marriage, an engagement, is already a contract to marry, restricting and binding the liberty of both parties, and is a grave matter not only of honour but also of justice. It should not be idly given and must not be idly broken. It is a mutual agreement entailing reciprocal obligations, and does not of itself cease with the withdrawal of the will of one party. Unhappily, this native and honest idea of an engagement has lapsed so often into trivial conventionality or hollow form that it has not always its binding force. The *Ne Temere* defines when a Betrothal is to be considered solemn and amenable to Canon Law.

Marriage. The second part of the decree deals with Marriage. It contains no innovation; it is merely the adaptation of the Tridentine laws, their elucidation and real bearing, the disentangling of some involved interpretations, and their explicit statement and universal application. No point has been really changed. The essential character of the marriage contract, viz. mutual consent, is proclaimed in the *Ne Temere* as in the *Tametsi* (art. VIII.) and marriage in the absence of a priest is declared valid. If this absence lasts for one month, the parties may marry validly.

The same three witnesses are required. All ambiguity and controversy in regard to who is parish priest is removed, and what domicile is and how it is acquired has been put in clearest light. The *Ne Temere* mitigates the law to extremest leniency in exceptional cases (art. VII., VIII.). Its manifest purpose is to disencumber marriage laws from embarassment and onerous researches, to render their meaning and application plain, clear, certain and decisive. It comes as measure of relief to all Catholics; for no one can read the text of the decree without recognizing the fact that the *Ne Temere* is addressed to Catholics, legislates concerning Catholic marriages, and explicitly declares (art. XI., iii.) that it is not concerned with the marriage of non-Catholics.

The "Ne Temere" and non-Catholics.

Emanating, thus, from the head of the Catholic Church, addressed to Catholics alone, explicitly denying any interference whatsoever with the marriages of non-Catholics, the *Ne Temere* might appear as an ordinance so domestic to Catholics as to excite surprise that non-Catholics should criticize it and assail it. This conclusion would be absolutely logical if Catholics married only Catholics, and non-Catholics only non-Catholics. But such is not the fact. Mixed marriages have occured, and presumably will occur. Any legislation for the members of the Church must take into account the marriage of Catholics with non-Catholics. The *Ne Temere* does—it was inevitable. Art. XI. ii., says: "The same laws are binding, also, on such Catholics, if they contract betrothal or marriage with non-Catholics, baptized or unbaptized," etc. This paragraph, and this only, can in any possible manner affect non-Catholics. Not one line or one word elsewhere refers or can be forced to refer to non-Catholics. Yet this clause has excited the minds of the non-Catholic world, has provoked the bitterest comment, and has stirred many souls to astonishing expressions of wrath and indignation!

Certainly it is very natural that non-Catholics should take a serious and wholesome interest in

so important a point. The Church asks nothing better than the comprehension of her mind and this legislation. She presents a clear, unequivocal, and consistent statement of her traditional principles. If objection there be to them, she expects consistent and logical objections from dissidents. The attacks upon and condemnation of the *Ne Temere* are neither consistent nor logical.

In the first place, the decree has been generally denounced as an infringement on the rights and privileges of non-Catholics. This unwarranted judgment of it has led to extravagence of language in its denunciation. What really are the facts? The decree not only confines itself to Catholic marriages, but distinctly asserts that it does not intervene in non-Catholic marriages. Yet this decree has been impugned and indicted as an attack on and interference with non-Catholics at large!

One clause, art. XI. ii., treats of mixed marriages, and the strictures are addressed to and laid upon the Catholic party. Indirectly, of course, in this case the non-Catholic is affected. But does this involve the injustice and the hardships which one would suppose, to judge by the tone of indignation and alarm in those who protest? What, in fine, is effected by this clause ii. of art. XI.? It is the withdrawal of the Benedictine Declaration which allowed the validity of

mixed marriages contracted outside of the Church. The marriage of a Catholic outside of the Church was always forbidden under pain of sin, even though declared valid. Permission to marry a non-Catholic, baptized or unbaptized, — the dispensation, — is always required, else the priest cannot assist at the marriage. If the dispensation was refused, or the authority of the Church ignored, then under the Benedictine Declaration it was valid, but illicit and sinful, to contract marriage outside of the Church with a baptized person. Obviously, this created a serious disorder and demanded correction.

Clause ii. requires Catholics to be married before a priest of the Church, under pain of nullity. The power that could grant the Benedictine Declaration could withdraw it, and did withdraw it. A Catholic (unless where special exception has been made) must now contract marriage before a priest of the Church; when the other contracting party is a non-Catholic, he or she must also, of necessity, appear before that priest. What particular hardship is here entailed? The non-Catholic party is free to contract according to Catholic or non-Catholic form of marriage. But the Catholic party is not free. There is the obligation in conscience of obeying the Church, and under pain of nullity of the act. Why should the non-Catholic party refuse the Catholic form of mar-

riage, when free in conscience, especially since the Catholic party has no alternative? Surely not from antipathy to or prejudice against the Catholic faith! Because it would be thoroughly inconsistent to enter into a life-long union with a Catholic and entertain these sentiments towards the faith, the convictions, and principles of conduct of that Catholic. It would bode ill for the future peace and happiness of that married life.

No disparagement of non-Catholics forms of marriage is intended or implied. This only is insisted upon: marriage is a sacrament, and a Catholic should and must receive the sacraments from the Church. This is not onerous; it is only logical and eminently proper. No discrimination is asserted against the non-Catholic clergy, no disregard of or reflection upon their status is affirmed. Not a shade of difference is made between Catholic and non-Catholic clergymen. If two Catholics contract marriage before a priest who is not a parish priest, or a priest unauthorized by the parish priest or the Bishop, the marriage is invalid—it is not a marriage. This may be a mistake, an unintentional neglect—the decision remains inevitably the same: the marriage is null and void. The law weighs upon each and every priest of the Catholic Church with as great rigor as upon any non-Catholic clergyman. There is not one tittle of disparity. It must be a parish

priest, within the territory of his parish—not any priest—but a duly authorized priest of the Church, and that under pain of nullity. No special odium is attached to the assistance of a non-Catholic clergyman; the same, identical censure and strictures follow the assistance of an unauthorized Catholic priest.

Application of the "Ne Temere." The scope and the purpose of the application of the *Ne Temere* have been most frequently misunderstood, and this misunderstanding was the cause of some very vehement denunciations. The *Ne Temere* was published in Rome on August 2, 1907, and was to go into effect on Easter Day, April 19, 1908. It is therefore clearly manifest that up to April 18, 1908, inclusively, the existing marriage laws remained in full vigour; that only on Easter, April 19, 1908, did the *Ne Temere* enter into force. It was not a sudden promulgation, a measure of surprise. Explicit notification was made, and the length of eight and one-half months elapsed before it became law—or, if we will, a fair and full warning was given that in eight and one-half months certain changes would occur in the application of marriage laws. This was not acting in haste, nor disturbing impending arrangements; ample time was left. It could not affect a marriage before

April 19, 1908. Some took advantage of this provision, as, for instance, a Catholic and a non-Catholic marrying before a non-Catholic clergyman as late as April 16, and the marriage is perfectly valid—as it would be on Easter Eve, and up to midnight of April 18. The decree entered into force on April 19, and is in force everywhere from that day, unless some particular place or region has been exempted from it.

Hence it is more than conclusively shown that the *Ne Temere* is not retroactive! Yet from comments made upon some marriage cases recently in the courts, it is assumed that recourse was had to the *Ne Temere* to annul marriages contracted three, five, ten, or more years before April 19, 1908—that it is in effect retroactive, and can affect marriages contracted before its existence! This conclusion implies unacquaintance: first, with the decree itself; and next, with the indissolubility of marriage. A valid marriage can never be invalidated. When a marriage is declared invalid, it is because the invalidity existed from the beginning, and it never was a valid marriage. Properly speaking, marriage is not annulled by the Church. The decision of the Church is only a statement of the fact of the initial invalidity or validity of a marriage. The Church does not break a consummated marriage. Again: no marriage contracted before April 19, 1908, has fallen

or can fall under the *Ne Temere*. All marriages contracted on or after April 19, 1908, are regulated by the *Ne Temere*.

Invalid Marriages. To the misunderstanding of the effects of the *Ne Temere* is added another—of the action of the Catholic clergy. It has been imagined that a priest with a copy of the *Ne Temere* in hand can enter into homes and indiscriminately cause sorrow of heart and anguish of soul, disrupting families and separating husbands and wives who have lived together twenty or thirty or forty years. Now, it has been shown that the *Ne Temere* cannot disturb any marriage contracted before Easter, 1908—less than four years ago. But granted the case that two Catholics, or a Catholic and a non-Catholic, are not validly married, that is, are living outside of wedlock, is it not right that this state of affairs should be rectified? Is it not a duty to do so when occasion offers? Unquestionably it is. And the Church proceeds with all possible indulgence and every desire to spare feelings and avoid publicity and safeguard honour and good name. Every power she has is opened to facilitate the correction of the improper status, and restore peace of heart and soul, and set the faces of these two again towards God. A renewal of consent validates the marriage and gives legitimacy to the children.

But marriage is a matter involving two individuals, two wills. What if one party should refuse, should claim freedom and the right to depart? and what if both agree to separate? This latter hypothesis presents the gravest difficulty. Will any argument change this determination? Perhaps only that of the awful injustice done to their children. If one refuses—that party is either the non-Catholic or the Catholic party—in a mixed marriage, the case before us. If non-Catholic, the influence of the Church cannot be exerted; consent is an act of the will, and the will cannot be constrained. If the party refusing be Catholic, there is some hope that the influence and the authority of the Church will change the determination and procure the consent to a true marriage. If the party persist and definitely refuse, how can the Church obtain "yes" in place of "no"! The party is in reality free.

But freedom from the bonds of marriage does not here include freedom from the obligations imposed by natural justice. A Catholic—to cite the case so frequently invoked by critics of the *Ne Temere* (though the fact is overlooked that the contrary case is just as often met with)—a Catholic man who refuses to marry validly a non-Catholic woman, and claims his freedom, is acting against the wish, the mind, the arguments and the influence of the Church. In departing from

that woman he does not escape the duties in justice owed her and their children. All provision made for them must ever fall short of just treatment, and a cruel hardship endures. It is not the only case of hardship in marriage laws. Should he have married her supposedly a widow, and it is discovered that her husband is alive and refuses to admit her back, a separation is imperative here again, and a severer hardship is entailed. The truth is, that the attitude of care and precaution and control shown by the Church is the safe one. Since non-Catholics marry Catholics, since mixed marriages do occur, it is from the Church that full protection is obtainable, and from the Church it should be sought by contracting according to the conditions required by her. For the validity and stability of that marriage there is nothing to fear.

The State and Marriage. But, it is advanced, should not the civil law exercise control? Is not the State interested in the due celebration of marriage? Yes, beyond question, the State must be concerned. But the office of the State does not extend beyond taking cognizance of the fact of marriage, and protecting thereafter the parties who validly contracted. Be it remembered that the State, in naming an official to witness marriages and to record them

in a registry, has only followed the practice established by the Council of Trent and copied its law. In fact, the State discharges this act with far less prudence and care than the Church. The State requires one witness; the Church, three. The State institutes no investigation concerning the contracting parties and usually demands no delay; the Church exacts sufficient delay to investigate, and ordinarily prescribes the publication of three banns. The evils of hasty marriages are so patent that a reform is being introduced, as in Massachusetts, where at present five days must elapse between procuring the license and contracting the marriage.

Clearly, the function of the State is to establish a record of the marriage, to prevent the possibility of violating with impunity the laws regulating the duties of husband and wife. This end is obtained by making the officiating clergyman a State official and having the record entered in a State registry. The intervention of the State in marriage begins and ends with this adoption of Trent's method to secure publicity. The other regulations of the State emanate from and revolve about this. To extend the jurisdiction of the State into the contract itself is to arrogate an authority totally alien to the nature of the State and to encroach on what lies above and beyond the reach of the State; it is to tres-

pass upon the domain of conscience. For what are the essentials of the contract in marriage? The mutual consent of the contracting parties, an act of two wills. The State cannot claim jurisdiction here. The State cannot command A to marry B. Nor can it forbid A to marry B, when both are free in will to marry. The whole binding power of the marriage contract resides in the freedom of the act of the will. If marriage be not freely entered into, then in conscience it is not binding, not valid, not a marriage. Marriage is a matter of conscience. And what right has the State to interject its authority therein? When in conscience—and in conscience means in the eyes of God—a man realizes that he is not married, how can the State pretend to compel him to admit that he is married? Or, when in conscience and in the eyes of God he knows that he is married, how can the State free him, allow him to repudiate his bonds, and sanction another union that in conscience and in the eyes of God is invalid? No; marriage, that which makes marriage, is far removed from the sphere of action of the State. Marriage is a divine institution; and for Catholics, it is a sacrament and belongs to the jurisdiction of the Church. The Catholic recognizes the power of the Church to bind him in conscience and before God; and when the Church forbids him to contract marriage except under

prescribed conditions, he is bound in conscience to obey, and the act of his will is restricted thereby; and if the injunction be under the pain of nullity, then his act forbidden by the Church is null and void. The State has no more power to legislate for him in these matters—to hold him to an invalid marriage, or to annul his valid marriage—than it has to forbid him hearing Mass on Sundays, or observing Christmas, or keeping abstinence on Fridays.

The Catholic can no more admit the interference of the State in marriage than in the sacrament of Baptism. That marriage should be registered by the State, be held in mind and taken into account, is right and proper. So it is in the case of births and deaths. But that the State should attempt to assert any competency in regulating the administration of the sacraments, or the conditions of validity and invalidity, or dictate by what form they must be given and received, would be for a Catholic a matter not merely of surprise but also of indignation, and would be met with a frank and blunt denial. The hypothesis is too thoroughly inconsistent to need longer refutation. Interference here would not only be resented—it would utterly fail. The sacraments belong to the Church and not to the State.

State Intervention. In view, however, of the civil consequences, might not the State seek a harmonious observance, a uniformity of treatment? Assuredly, and to the full extent required by the scope of the State's authority in marriage. All that pertains to a proper and sufficient attestation of the celebration of a valid marriage by its citizens is certainly the right of the State to exact. Manifestly, these marriages must be valid marriages, true marriages. But it is not the function of the State to declare what marriages are valid. The powers of the State do not contain the determining of the conditions of validity. Where the State is Christian, or has adopted Christian principles, the civil law may enforce the observance of the Divine law, and for instance, forbid polygamy. But there its powers cease. The State accepts the declaration that the marriage is valid, and makes the record of a valid marriage, entailing all civil consequences. Now, who makes this declaration of validity? In marriages where Catholics are the parties, or a Catholic is one party, it is always the Church. In the case of non-Catholics, it is the religious body to which both belong, or it is the parties as private citizens under the laws of the State. Catholics married before a priest, and non-Catholics married before the ministers of their respective creeds, are evidently not violating

any canons binding in conscience, else their marriage would not be sanctioned. In like manner, the parties appearing before a magistrate are presumed to comply with the law of the State. In each instance the marriage is recorded as a true, a valid marriage. But if error or fraud be subsequently detected, what must be the logical action of the State? Evidently, to correct its record of a valid marriage. If a woman marries a man supposedly single, the record of a valid marriage stands until it be proved that he was not single. That record must then be corrected; by error or by fraud, it is a false record. In just the same way the record of a marriage between two Catholics, or between a Catholic and a non-Catholic may be subject to correction. The right and the duty of the State are to hold both parties of a valid marriage to the civil consequences of a valid marriage, or to relieve them of these consequences when the marriage is invalid. To concede more than this; to require Christians living and acting under Divine Law in conscience, to submit conscience to the law of the State and hold as right in conscience what the law of the State prescribes is an Erastian theory which as Christians they must reject and abhor. It is this theory, to Christians an intolerable one, that lies behind the invocation of the powers of the State in matters of conscience. The law of the land is

not the norm of right and wrong; the law of the land cannot displace and supplant the Divine Law, nor undertake the direction of conscience. It is preposterous to expect Catholics to recognize as binding in conscience whatsoever it may please the State to enact. This would mean that the laws made in France and in Portugal against the Church, the clergy, and the religious are binding in conscience; that the legality of marriage by persons under vows having been decreed, the validity of such marriages must be admitted! The absurdity of it is glaring!

Dangers of State Intervention. The principle of State intervention in the fixing of marriage laws is offensive not only to Catholics but likewise to the whole Christian community. This principle must admit the recognition of any laws of marriage passed by the State. At once we are confronted by the possibility and the prospect of changes in these laws. To what might this not lead? We know what revolutionary forces are at work in the seething world about us, and what ideas are taught and what innovations compose the programme of the new order of society. Already in one Europian country, automatic divorce is legalized, by which husband and wife can agree to separate for a time, and then without further formality are free

to contract new alliances—and slip the facile bonds again in any fit or whim. No guarantee preserves us from such marriage laws, or from the simple abolition of all real marriage laws, all form of binding contract: a revolting prospect, surely, but not an impossible anticipation. It is inscribed in the programme of many and many a political circle elsewhere. It is possible here; any such possibility cannot be disregarded.

A false principle can be logically brought to a logical conclusion. We refuse to admit the false principle of State intervention. It is not without surprise that I, for one, note the part that non-Catholic bodies have taken in synods and assemblies in protesting against the position of Catholics in this question of marriage laws, and in petitioning the interference of the State. Astonishment is natural at this attitude of the official representatives of Protestantism. For if Protestantism stands for any principle or rests on any claim, it is that of liberty of conscience. This liberty of conscience must not be denied us. When a Catholic knows in conscience that his marriage is invalid, no law of the land can compel him to consider it valid, or bid him continue in that union. And when the Church perceives that her sons or her daughters have contracted invalid marriages, no law of the land can prevent her compel them to regularize the marriages or to

separate. This is clearly and surely a matter of conscience, and liberty of conscience is here involved, and is denied the Catholic citizen.

Moreover, on the part of at least one non-Catholic body, this attitude is self-contradictory. The charge that the Church clashes with the laws of the State redounds upon its own self. Its own canons forbid what the State allows in marriage, and declare invalid what the State declares valid, and that in two distinct cases, viz. the re-marriage of divorced persons, and the marriage of a man with his deceased wife's sister. The argument *ad hominem* is pardonable in this instance. I think, because it is relevant and direct.

Far be from me to impugn the motives of men whom we know to be just, well-meaning, and filled with zeal for the cause of good. But zeal may be mistaken and misguided, and in the present question we contend that it is. What would be the ultimate gain from State interference and change? Is it anticipated that Catholics will admit upon dictation from the State that valid marriages are invalid, or invalid marriages are valid? Will Catholics be expected to comply in conscience with a law that affirms as true what their conscience tells them is false, or proclaim the invalidity of what their conscience attests is valid? Not any more than Catholics will comply with a law that forbids hearing Mass

on Sunday or commands eating meat on Friday. This is a matter of conscience, and when conscience is interfered with the answer of Catholics is the same today as yesterday, as five, ten centuries ago; the same as given at the beginning of the Church: "If it be just in the sight of God, to hear you rather than God, judge ye."

The "Ne Temere" and Civil Marriage Laws.

In point of fact, has the *Ne Temere* entered into conflict with the authority of the State? Does it openly oppose laws passed by the State relative to marriage?

To charge that it does, is to misunderstand the character and the scope of the decree. The code of every country contains marriage laws. Some of these laws are in harmony with the teaching of the Church concerning marriage, and run parallel with her rules; others are more or less divergent therefrom, and are even founded on principles contradictory to the doctrine of the Church. There is nothing new in this. It is a situation encountered by the Church for many a generation past. The marriage laws of the Council of Trent were not revoked and reversed because here and there the civil law allowed what the Canon law forbade. If the State chose to pass its own marriage laws, it was free to do so, and we fail to see that it found

any impediment in the Church laws, or was prevented from applying its laws as occasion might arise, or from changing them when it desired.

The source of possible friction and conflict was not the Church law, which ever confines itself to its own subjects, the members of the Church; and which operates only within its own domain, the conscience. When the State laws regulated the civil effects of marriage, they were quite within the province of the State, and the Church was not concerned. When these laws encroached on the essential jurisdiction and the inalienable rights of the Church, the State exceeded its powers. These State laws did not limit proportionately the laws of the Church, or their application. The State could not pretend to do that—at least, could not hope to accomplish it—for Church and State are of two different orders and operate in two different spheres. Where the State permitted divorce, those who applied for divorce and were granted it, were declared divorced. Where the State recognized civil marriage, those who contracted before a magistrate were declared married. The Church laws were not thereby nullified. The Church continued to apply her laws as before: divorce was forbidden to her children—a thing abhorred; purely civil marriage was never sanctioned. This action of the Church did not remove the State

laws from the statute books. They remained there for the use of those who wished.

What the State could not do in marriage, the Church could do: she could command and forbid in conscience. The State can make a breach in the walls; but the Church can forbid her children passing out.

Such was the situation. Wherever we turn, we find that both Canon law and State law were co-existent, and both were applied. The marriage laws enacted by the Council of Trent were not limited in any manner or form by subsequent State marriage laws; neither did the Tridentine laws prevent the State from passing any law it chose to make.

In the application of the laws, the State could offer divorce and civil marriage to its citizens; but the Church commanded her children to abstain from such practices. The State cannot compel men and women to divorce, or to contract purely civil marriage; neither can the State's authority counteract the obligation laid in the conscience of her children by the Church. The State continued to offer divorce and purely civil marriage; the Church continued to command her sons and daughters abstain from them.

This situation was not changed in 1908, when the *Ne Temere* went into force. The *Ne Temere* did not affect the civil laws any more than did

the decree of the Council of Trent. The marriage laws of England, France, Italy, the United States, Canada and other countries have not been touched by the *Ne Temere*, have not suffered from it. They continue to authorize divorces, civil marriages, all manners of unions in defiance of the Divine law and the prohibition of the Church, as they did before 1908. Not one such law has been reversed by the *Ne Temere*, not one referred to; in fact, not one such law ever was taken into consideration. The *Ne Temere* is not for one country, but for all; and it binds all the members of the Church in one and the same way, and is an obligation in conscience. What matter the enactments of the State in this? The Church law and the State law are not truly in conflict here, for they do not meet on common ground. The State offers a line of conduct which citizens are free to adopt or not. The Church commands a line of conduct and obliges her children in conscience to follow it. They are not free to choose.

Conclusion. The above exposition of the true nature and bearing of the *Ne Temere* is intended to state the Catholic case as clearly and as fully as, in the humble opinion of the writer, the situation demands, and to undo the unfortunate inferences that have been deduced from the decree. It should not be ac-

counted presumption to hope that no fair-minded man will read these pages without modifying the misconceptions he may have held concerning this decree. More still: why should not a calm view be taken of this legislation so thoroughly confined to the members of the Church? And why should not the right judgment be reached that it is not an aggressive act, a tyrannous measure, or a proof of intolerance?

The *Ne Temere* is not a weapon leveled at non-Catholics; it is a shield for the protection of the members of the fold, and for the safeguarding of the peace of homes and families. It ought to be regarded in this light, and left to the members of the Church, to whom it is addressed.

We, Catholics and non-Catholics, have too many common enemies to afford to squander our energies by flying at each other. We live side by side, and in peace and charity we must live. Professedly we are all working for the cause of the Kingdom of God, and professedly we are trying to build up a glorious nation and mould a splendid people. These ends cannot be attained by dissension, but by harmony and peace and charity.

Amen! will be the reply of every fair-minded and conscientious man.

THE MESSENGER PRESS, MONTREAL