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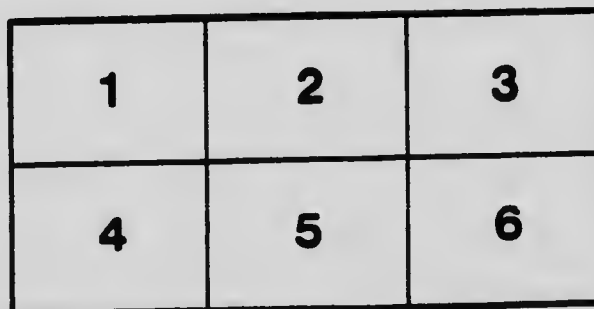
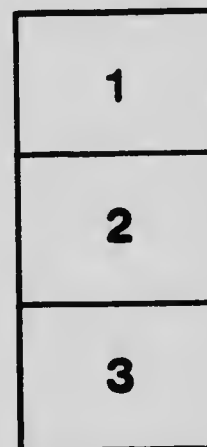
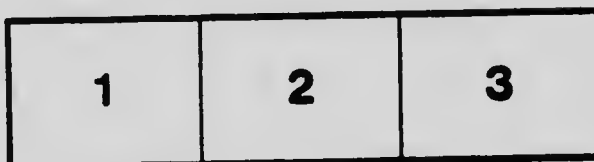
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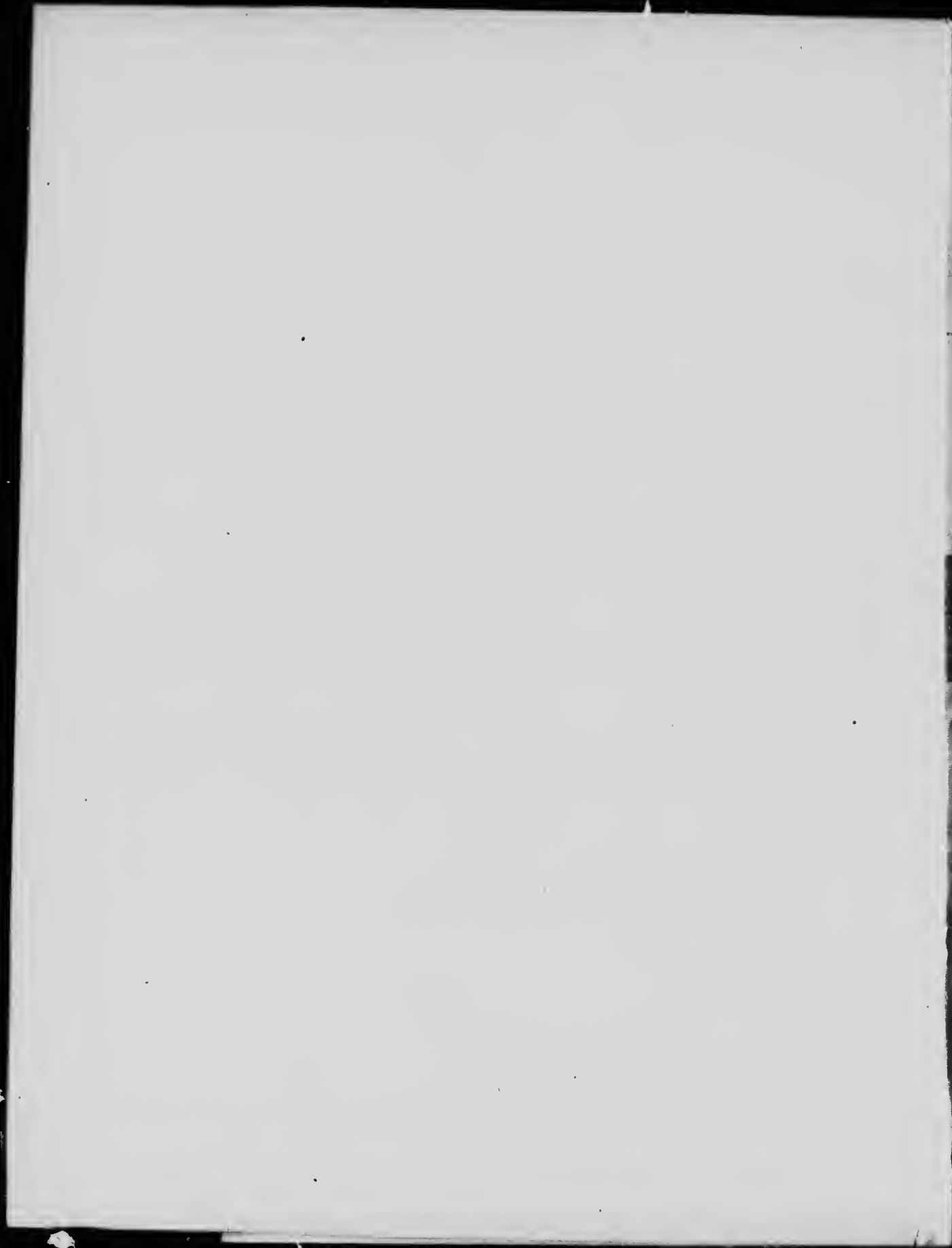
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The Ne Temere Decree; its Purpose, Effects and Relation to Canadian Law and Religion.

By Sir Richard Scott, (Senator.)

The Ne Temere decree, its effects, objects, and opposition is a subject of an interesting letter just issued by Sir Richard Scott. An authority on marriage laws of Canada and divorces and bigamy statistics, he comprehensively discusses the situation in Canada, and particularly in Quebec, as it stands today. Several instances of unfortunate marriages are cited. Says Sir Richard:

"At the Ecumenical Session of the Methodist body recently held in Toronto, following the example of the other religious councils—Anglican, Presbyterian and Baptist—which met in conference in that city during the past summer, a resolution was adopted strongly condemning the 'Ne Temere' decree, and at the instance of Bishop Hamilton the entire conference is reported in the press to have stood as one man to 'denounce this outrage.'"

In equally strong language the conference with equal unanimity condemned the laxity of the divorce laws and certain marriage customs "styled rude and barbarous," adding:

"From the first Methodism has held marriage to be a divine institution, sacred and inviolable, indispensable to social order and to the security and well-being both of the church and the state. This is a time when it is more emphasized than ever in the past, that we must bear witness to this our abiding faith in this most sacred institution

"We desire to express our earnest disapproval of all hasty and ill-considered marriages. Further, to record our most emphatic protest against easy and unjustifiable divorce. Unless something is done to check this mad tendency we fear that the foundation of this primal and indispensable institution will be undermined.

"We commend the stand taken on this subject by all the branches of Methodism represented in this conference, and we bear glad testimony to the fidelity of Methodist ministers in refusing to become partners in this divorce evil by performing marriage ceremonies for unlawfully divorced people. We sincerely hope that in the future, as in the past, Methodism will stand on the impregnable foundation of Holy Scripture in proclaiming to the world, 'Those whom God has joined let no man put asunder.'

"This was likewise adopted unanimously, amid a chorus of 'hears, hears' and applause. The galleries of spectators were quite as much enthused."

MENTIONED NO METHOD.

The conference, while expressing its earnest disapproval of all hasty and ill-considered marriages, and while condemning the Catholic rules prescribed in the Ne Temere with the object of preventing such rash alliances now becoming so general, failed to suggest any method for adoption that would check this rapidly increasing evil. As the resolution affirms the doctrine that marriage is a divine institution, sacred, and inviolable and indispensable to social order and to the security and well-being of the Church and State, Methodism is quits in accord with the Catholic Church in that important matter. But while recognizing hasty and ill-considered marriages as the greatest social evil of our times, the conference might have aided in diminishing the long and yearly increasing list of divorces and of indictments for bigamy by pointing out some manner by which the evil might be checked.

Consider for the moment what is the result of those free and easy marriages hastily contracted. Divorces are yearly increasing; bigamy is becoming a common offence, and the press of the Dominion is constantly reporting cases of wife desertion. In proof of these statements, let me briefly refer to certain facts which illustrate the evils more forcibly than could otherwise be done.

DIVORCE GROWTH.

If a return of all divorces granted since Confederation moved to the Senate last session the following facts were disclosed: In the ten years after Confederation seven divorces were granted; in the next ten years sixteen were granted; in the following ten years thirty-six divorce bills were passed; in the next ten years, ending in 1907, fifty-nine divorces were granted; and in the last three sessions forty-four were granted. If the yearly increasing average is kept up, the current ten-year term will show over two hundred and fifty divorces. And it must be remembered that there are divorce courts in four of the provinces. Up to the year 1906 Nova Scotia, New Brunswick and British Columbia had granted one hundred and forty-five divorces, British Columbia leading with seventy-two. These figures do not, of course, include the many wife desertions that are constantly occurring, chiefly in the cities and towns. If the records of the Children's Aid Societies and other relief organisations were examined they would show a long

list of families left in distress by fathers who have abandoned wives and children, to be cared for by the public, and, ignoring the divorce court, have picked up another mate, and found a clergyman ready for a couple of dollars to perform the marriage ceremony.

In proof of that statement let me refer to the last published report of Criminal Statistics. It will be found in No. 9 Sessional Papers, 1910, pages 18 to 22. The total number of indictments for bigamy in the year were fifty-nine, acquittals twelve.

Of the convictions, there were two in Nova Scotia, two in Quebec, four in Manitoba, and thirty-five in Ontario. Fourteen of the latter were in the county of York (Toronto), with twelve convictions. The residences of nearly all those charged were in the cities and towns. The actual number of those who committed bigamy in that year would probably be three times the number of those charged, as it is usually only those who remain in localities near where they previously lived who are prosecuted. Those who remove to distant points or who leave the country are not again heard of, and often the deserted wife is glad to be rid of a worthless spouse.

BIGAMY STATISTICS.

The number of indictments for bigamy that year in Ontario were forty, against six in the Province of Quebec (three of those being in the city of Montreal).

An examination of the Criminal Statistics for the preceding year will show that bigamy is on the increase, except in the Province of Quebec, where the average number of charges does not exceed three per year, nearly all being in the city of Montreal. Those facts should convince the most sceptical that the marriage law of the Catholic Church, the keynote of which is publicity, is some protection against those "hasty and ill-considered marriages" which the Methodist body so deeply deplored. How else can one explain the extraordinary difference in the number of bigamy charges between Ontario and Quebec?

WOMAN'S LIFE RUINED.

As illustrating the risk that a man will take and hope to escape the charge of bigamy, I may mention a case which recently came under my observation. A respectable Protestant girl just out from England, hired as a nurse in a family in Ottawa, and shortly after meeting casually a Catholic mechanic earning good wages a friend sprang up, and after a time

he proposed marriage, and was accepted.

Willingness to be married by a Protestant minister was probably interpreted as an evidence of his freedom from religious prejudices.

The pair had no difficulty in finding a minister to perform the ceremony. The husband rented a house, where they lived together, yet on the opposite side of the river, not three miles away, was his own home, where his wife and children resided, and he lived a double life for five or six weeks before he was found out. Now the life of that innocent woman has been blasted, and she has no redress. To see him convicted of bigamy was slender satisfaction for the girl he betrayed.

A hundred such cases are happening in Canada every year, and yet the Catholic Church is severely condemned because it surrounds the marriage ceremony with certain safeguards that tend to check bigamy and other hasty and ill-considered marriages, while its censors offer no suggestion for the abatement of the great social evil.

Had the Catholic rule been followed in the instance cited, which would have meant the publication of name and the presence of the man's parish priest, the existence of the first wife would have been discovered, and the bigamous marriage could not have taken place.

THE HEBERT CASE.

It is now three years since the decree *Ne Temere* was put in force in Canada, and yet during that time I am not aware that it can be charged with any of those grave calamities that were suggested at the various ecumenical councils that met at Toronto and elsewhere during the past summer. The Hebert case in the province of Quebec was decided under a law of that province that has been in force for over one hundred years. The much abused edict was not a factor in the case. The matter is governed in that province by a section of the Civil Code (see sections 127, 128, 129, under the heading "Matrimony," Quebec Civil Code), a Quebec statute, which the Quebec Legislature can alter at any time it thinks fit.

This phase of the question will be found admirably dealt with by Mr. J. S. Ewart, K. C., of Ottawa, in number 5 of his "Kingdom Papers," copies of which he sends gratis to all who apply for them. During these same three years that the decree has been in force hundreds of homes have been wrecked by the dissolution of the marriage tie, through divorce, bigamy, or desertion; the evil in many cases being due to free and easy marriages by Protestant clergymen with no questions asked, or to hasty and ill-considered unions, all or most of which might have been prevented by methods akin to those prescribed by the *Ne Temere*.

NEED OF SAFEGUARD.

Can there be more convincing evidence of the wisdom of the Catholic Church in surrounding the marriage ceremony with certain safeguards than that afforded by the latest criminal statistics relating to bigamy, which, as I have said, show forty indictments in Ontario against six in Quebec; three of the latter being in the city of Montreal, and one in the city of Quebec?

When the decree was proclaimed in the different countries it was made clear by the highest ecclesiastical

authorities that it could not affect the right of the state to regulate the marriage contract. But, notwithstanding these statements and the obvious facts it was asserted at the several Ecumenical Councils that the Catholic Church was over-riding the civil law relating to marriage.

Cardinal Logue, in an address at Maynooth, is reported to have said: "They admitted willingly that it was the province and right of the civil law to regulate the civil effects of marriage, but they held at the same time that the civil power had no right to interfere in marriage as far as it was a religious function. That was one of the instances in which it was necessary for them to be on their guard against beginnings. These things were introduced by degrees, and if not stopped in the beginning no one knew how far they would go. They knew by experience what ruin this secularization of marriage had brought to other countries in Europe, they know it had led to the ruin of that great institution matrimony, upon which was founded not only the welfare of the family, but the welfare of the state." In illustration, the cardinal quoted our Lord's answer to the Pharisees, "Render to Caesar the things that are Caesar's, and to God the things that are God's."

EXPLAINS DECREE.

The "Tablet," the official organ of the Catholic primate of England, who has recently been made a cardinal, gave editorially the following explanation:

"The decree speaks only of canonical nullity or validity of marriages; that is, of the nullity or validity in the judgment of the Catholic Church and in the sight of God. The Catholic Church, though she does not acknowledge that the state has any right to determine what marriage shall be null or valid, has no power to change the civil law of marriage. Therefore, notwithstanding the recent decree, if two persons of any religion whatever, against whose marrying there is no legal impediment (that is, no civil impediment according to the law of England) marry each other in England according to the requirements of English law, their marriage is (and such marriage will continue to be) in English law, valid and binding, whether a priest or other minister of religion be present or not."

Therefore, if a Catholic man marry a non-Catholic before any minister or official authorized by law to perform the marriage ceremony, the husband cannot escape all the consequences. He is legally bound to support his wife and children. If he desert his wife and marry again he can be convicted of bigamy, and the children by the first wife are legitimate.

SACRED CEREMONY.

That is the law in all the provinces of Canada, including Quebec, since the law under which the Hebert and other similar cases were decided is a Quebec statute. See as to this Mr. Ewart's paper already referred to. What more have those persons who regard marriage as a civil contract, the right to demand from the Catholic Church? Since the marriage at Canna in Galilee and the injunction of our Lord, "Those whom God has joined together let no man put asunder," matrimony has been in the eyes of the Catholic Church a sacrament. The civil power does not recognize the sacred, indissoluble union of marriage. Then why should it insist on the Cath-

olic Church recognizing the civil contract as the equivalent of the sacramental CEREMONY WHICH BINDS FOR LIFE AND WHICH CAN BE DISSOLVED ONLY BY DEATH? Circumstances may arise that justify a legal separation, but death alone dissolves the sacramental tie, while divorce may dissolve the civil contract.

It is a Christian maxim not to bear false witness against one's neighbor. Yet the four religious bodies which met at Toronto a few months ago persisted in placing a construction on the decree *Ne Temere* which it will not and is not claimed by Catholic authorities to bear.

And this notwithstanding that a delegate, Mr. Walter Mills, K.C., at one of the earlier gatherings read an exhaustive paper, proving from a lawyer's point of view that there was no justification for the interpretation sought to be placed on the decree by the Synod, nor for the attacks being made on the Catholic Church in that connection. Although the decree was proclaimed throughout the world, it was only in Toronto that it aroused any very strong prejudice.

In England, Mr. Birrell's explanation was accepted as satisfactory. In reply to a question in the House of Commons, Mr. Birrell, a member of the British Government, said: "The law knows nothing of papal marriage legislation. We believe that our Catholic fellow-men are not as free as we to marry and to divorce and marry again. Our courts will continue to administer our own law, and all who apply for its benefits shall have them. It has lost none of its efficacy since August 3, 1907."

ONLY TO CATHOLICS.

The *Ne Temere* decree applies only to Catholics. Paragraph III. of Section II. reads as follows: Non-Catholics, whether baptised or unbaptised, who contract among themselves are nowhere bound to observe the Catholic form of betrothal or marriage.

In proof that I have not exaggerated in making the charge of bearing false witness against one's neighbors, let me subjoin a few quotations from the report on the subject of the "*Ne Temere*" Decree adopted by the Ontario Synod of the Church of England:

"What free exercise of religion does not cover.—The claim of the Church of Rome is, that because religious toleration is granted to Roman Catholics, it has thereby been given the power to compel, in order to the supposed validity of certain marriages, the observance, not of what the law of the land lays down in respect thereof, but of the special regulations, antagonistic to these, which the Church of Rome chooses to enforce."

"What does Rome claim? "Rome can destroy matrimony." "Citizens must not be deprived of the freedom given by the law of the land." "The civil and religious liberty supposed to be awarded to every citizen of the Dominion as an inalienable and priceless heritage—our birth-right must not be taken away or impaired."

"What power is to settle our marriage laws? Are the people of Canada to be humiliated by dictation from any outside power, lay or ecclesiastical, upon the question of their marriage laws?"

OBJECT OF DECREE.

Although it was clearly pointed out, in the address by Mr. Mills, K.C., already referred to, that these statements were entirely erroneous, and that the effect of the *Ne Temere* was being grossly exaggerated, yet his legal opinion was brushed aside, and the report was adopt-

ed and has been circulated throughout Protestant homes in Ontario, arousing bitter prejudices among neighbors where harmony and friendship had before prevailed.

The object of the decree *Ne Temere* is to preserve not to destroy matrimony. Where its provisions have not been observed and a marriage is in consequence invalid in the eyes of the church, the Catholic party is urged, not to separate, but to validate the marriage. Where, owing to the objection of the non-Catholic party, this cannot be accomplished by a second ceremony of marriage, it can be brought about (where both parties consent,) by a special dispensation. Such being the case and considering the civil consequences already pointed out of the Catholic party attempting to withdraw from a marriage valid according to law (even though invalid in the eyes of the church) the separations of man and wife due to the decree *Ne Temere* cannot be otherwise than infinitesimally small.

It is well within the mark to say that for every separation of man and wife chargeable to the *Ne Temere*, there are a thousand instances due to other causes. And the existence of the decree prevents the separation of many hundreds more.

The three causes to which I have alluded embrace the largest number. Then why should not those Zealous critics of Catholic church discipline, interest themselves in the one thousand erring brethren, rather than in the one Catholic fallen from grace.

A GREYNA GREEN.

The advocates of free and easy marriage laws must have received a rude shock on reading the recent press reports describing the matrimonial traffic at Niagara Falls where the rivalry between Ministers is so keen that to secure business they divide the fees with the cabman who brings the couple from the opposite side of the river to be united under Canadian law.

Can it be that our law is less inquisitive than the New York State? Ministers at Windsor are also reported to be enjoying a profitable business in marrying couples who cross the river at Detroit. Divorces in the State of New York are in the proportion of one to five marriages, the explanation may be that the lovers take pains to avoid the cost and publicity of the Divorce Court.

At the last Central Canada Exhibition there was a performance by Cowboys and on the same day a special attraction was arranged to consist of "A Wedding on horseback." A "Cowboy and his girl" were to be united. A minister was found to perform the ceremony, and "the divine institution" was degraded but received the applause of the spectators. And yet if one of the parties had been a Catholic in the opinion of the Ecumenical Council, the Catholic church would have been obliged to recognize the union because the ceremony was in accordance with the requirements of the civil law.

The women of Canada are deeply interested in this subject. They are the greatest sufferers; We owe them much for the growth of temperance, and they are constantly battling for other reforms. Are they prepared to see the sacred union that our Heavenly Father has blessed, degraded as it is being in this age? From the laxity attending the marriage ceremony, trial unions and mutual amities are being advocated and already practiced in countries that profess an advanced civilization. The women of Canada have it in their power to check this yearly increasing degradation of the marriage tie by advocating higher and holier modes of entering into conjugal unions.

PREVENTS HASTY MARRIAGES.

The purpose of the *Ne Temere* is to prevent hasty and ill-considered marriages, and not as has been stated to separate man and wife after marriage.

The introductory paragraph begins as follows:—

"To make prudent provision against the rash celebration of sacred marriages which the church of God has always deprecated and forbidden." The most important provision is to the effect that only those marriages are valid which are contracted before the parish priest and at least two witnesses. Now compare that provision with the Pastoral letter of the House of Episcopal Bishops read in all Anglican churches in May last:

"No clergyman of our church shall officiate at the marriage of any divorced person during the lifetime of the former partner. "It is a holy ordinance instituted by God and is the foundation of our social and family life." The church and state must unite to guard the marriage bond and to preserve its indissolubility."

"We greatly deplore the lowering of the ideals and purposes of marriage which is so common in many quarters. It is of the gravest moment that they who enter into this state should be married by a clergyman of the church before proper witnesses and where it is possible in the church building and that they should be in agreement concerning their religious connections. Mixed marriages are ever to be deprecated." The Catholic doctrine endeavors to give effect canonically to those views, but nevertheless is practically over-ridden by the civil law.

CAN FRAME LAWS.

The sentiments expressed in the Anglican pastoral and resolution adopted by the Methodist Council previously quoted harmonize in all important points. These two religious bodies embrace a population in Ontario in excess of all other denominations combined. They have it in their power to frame the marriage law of the province in conformity with the sound principles they have so earnestly advocated. If they will only give effect to them in the way I have indicated those marriage customs "styled rude and barbarous" will cease.

"Hasty and ill considered marriages" will be fewer. Divorces will not increase as rapidly as at present. The House of Bishops will no longer have "to deplore the lowering of the ideals and purposes of marriage which is so common in many quarters." The crime of bigamy will diminish and Ontario will be blessed by a higher tone of morality.

If these two powerful bodies will not take up and improve the marriage law then before condemning the Catholic church for its efforts to elevate matrimony to a divine institution sacred and indispensable to social order" then let the members of these two denominations reflect on our Lord's advice in the third part of the Sermon on the Mount, Cap. 7 St. Matthew: "Judge not that you may not be judged"—and "why seest thou the mote that is in thy brother's eye; and seest not the beam that is in thy own eye."

