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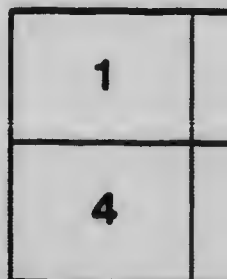
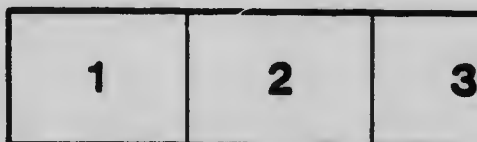
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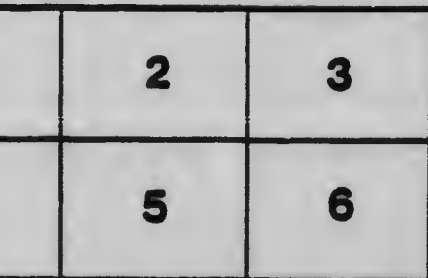
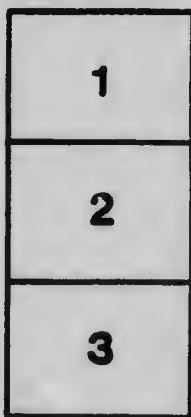
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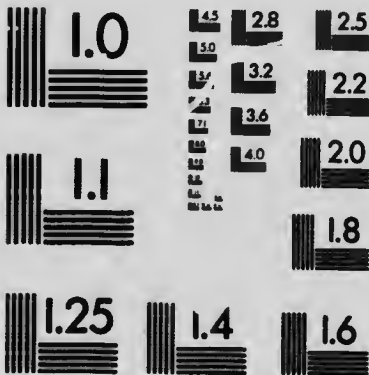
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*Extract from the Lord Bishop of Montreal's
charge to his Synod, February 6, 1912.*

ON MARRIAGE.

The subject of *marriage* is occupying a large place in the public mind at the present time. This affords an excellent opportunity of teaching people what it really is.

The Christian has a very high ideal of marriage. To him each one who is baptized is united to the Incarnate Son, and shares His life and is in Him a child of God. His body is a temple in which dwells the Holy Ghost. Every time he eats the Bread and drinks the Wine he feeds on the Body and Blood of Christ, he dwells in Christ and Christ in him.

The Christian lives by faith. By faith he abides in Christ. This exalts life and the body in which the life dwells. When two such lives are united in Holy Matrimony it is "a deeper, more intense and mysterious interpenetration of being than that even of the marriage in Paradise." It is the sacramental union of two lives in Christ. Marriage is to the Christian not only a contract, it is an "honourable estate instituted of God." Like all sacraments it has *matter* and *form*. *The matter* of marriage is the mutual consent of the parties. The dictum of Ulpian *nuptias non concubitus sed consensus facit* (consent not cohabitation makes a marriage) was not only an axiom of Roman Law, but became embodied in the Canon Law of the East and the West. Under Roman Law the one essential of marriage was mutual consent, and it has been always recognized in the Catholic Church. S. Thomas Aquinas said "consent is the efficient cause of marriage, and, therefore, what excludes consent excludes marriage."

The form of marriage widely differs. In the early Church they naturally adopted the practices prevalent in Rome shorn of their heathen accessories. Some of them, like the white garment of the bride, the veil, the floral wreath, the ring, the joining of hands, have come down to us. "The marriage of the early Christian was simply the marriage of Roman Law and Roman custom." At the first it took place in the house of those concerned, after a time they went to the Church for the priestly benediction. Subsequently, the whole ceremony was in the Church.

Throughout the Christian era opinions have differed on marriage, as they do to-day. While some in the middle ages

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held that the *priestly benediction* was an essential of marriage, others as firmly denied its absolute necessity for the validity of marriage. Certainly after the first few generations, it was the ordinary accompaniment of marriage, but, says Watkins, in his work on Holy Matrimony, it was not for many centuries required by either the ecclesiastical or secular law, as a condition of valid marriage. This is shown by the *Constitution* of Theodosius and Valentinian, which recognized the consent of the parties as sufficient. The seventy-fourth *Novel* of Justinian A.D. 537, after laying down what is required of persons of noble and gentle standing, enacts "that the common people generally may continue to contract valid marriages without any external solemnity." The *Eclogue* of Leo, the Isaurian, enacts that the written or verbal consent of the parties and their parents is sufficient. So, that we can safely say, that prior to the Council of Trent, priestly solemnization was not required by the Canon Law as a condition of such validity, though the Christian marriages were usually solemnized in the Church, and the benediction of the priest followed, as a matter of course.

The ministers of the sacrament are the two persons who are being married, who minister in valid manner before proper and appointed witnesses.

The Church holds that the proper witness is the *priest* of the Church, who can give the blessing of the Church. "Yet a marriage between persons with no Canonical bar, who are duly married within a Registry Office, or before a Magistrate is valid, and the Church must recognize the validity of such even though she deplores the omission of religious ceremony and priestly benediction," says Canon Knox-Little.

We may conclude that the essentials of Christian marriage are *first*, Baptism, without which they cannot be regarded as Christians; and *second*, Consent; and many would add a *third*, the Copula.

There are other marriages than Christian. For *non-Christian* marriages, of course, Baptism is not required. It is obvious that the Church could hardly give the blessing in the Triune Name to one who did not believe in the Trinity, nor could such persons say, "with all my worldly goods I thee endow, in the name of the Father and of the Son and of the Holy Ghost." Where both are not Christian we have nothing to do, as a Church, though we have as citizens.

The Church in the West has prohibited, from the days of Justinian, all marriages of Christians with non-Christians. The rigour of this system in the Roman Communion has been minimized by the system of Papal Dispensations.

In other ages, as now, the controversy has raged, as to whether the Church could recognize the marriage of non-Catholics with Here-

tics or Schismatics, was, of course, were baptized. The question is set forth by the Sacred Congregation of the Council under Benedict XIV, on the 4th of November, 1741. After urging that no such marriages should be performed, and that Bishops and Clergy should do their utmost to prevent them, the Council says, "If, however, by chance, any marriage of this kind has been already contracted in those parts without the observation or the form of the Council of Trent, or if such a marriage should happen to be contracted hereafter (which may God avert!) His Holiness declares the marriage of this kind is to be accounted valid, if there be no other Canonical impediment, and that neither of the consorts can in any way enter upon a new marriage under colour that the said form has not been observed, so long as the other consort shall survive." Thus mixed marriages with heretics, though discouraged are counted valid (Watkins). In the East the validity of the marriage is recognized where the non-orthodox person has been "sufficiently baptized." These distinctions are, of course, recognized as guiding the action of the Church, and expressing the opinion of the Church.

It seems to me that St. Paul lays down very clearly the Christian position, which we in the Church must assert with emphasis to-day. In the 1 Corinthians, the 7th Chapter and the 12th and following verses, he says, "But to the rest speak I, not the Lord, if any brother have a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband; else were your children unclean; but now are they holy. But if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases; but God hath called us to peace. for what knowest thou O wife, whether thou shalt save thy husband? or how knowest thou O man, whether thou shalt save thy wife?" Here the Apostle lays it down that the unbelieving one may depart, and if he, because of the faith of the other, does so depart, then the believer is free. Free surely *not to marry again*, but free from the obligation to the unbelieving partner who forsakes him. But St. Paul does not think for a moment that the believer—the Christian—should ever be the one to depart in such a case. This has reference no doubt to a marriage contract before conversion. But if it were inherently wrong, separation must have been enjoined.

We must not forget, while we assert the dignity of human life in the Christ that *all* human life is sacred. God breathed into every man the breath of his own life at the creation, and the Christ took the humanity of all mankind when he became Incarnate. Then every life is holy, and we must strive to uphold the dignity and the

purity of every human life. That must be, surely, the ideal that we must set before us.

While the unbelieving person may not realize this dignity of life, the Church should be the last one to fail to do so. When, therefore, a Christian marries one against whom there is no bar except that of religion, and the Marriage has been consummated, it seems to me that it is a horrible degradation of human life for the Church to separate those two persons, and permit the Christian partner to marry another. However unwise the marriage may be, this separation can never be justified because of the sanctity of human life, and of the human body. Let the Church discipline the person, if she will, who disobeys her advice, but it is a horrible degradation of our human life to *separate them*, and permit either to marry again. Once the state of matrimony has been in force.

We have seen then that the essential of marriage is mutual consent, given before witnesses. It is desirable from the Church standpoint that the witness before whom it is given should be the priest of the Church, that the Church's benediction may be given, yet this is not essential, because the ministers of the sacrament are the contracting parties. The marriage would be equally valid if the authorized witness were another than the priest. The State authorizes certain persons to act for it before whom such consent may be given. The State must therefore protect the civil rights of all who give "their truth either to other" before any authorized witness. We must not allow the real point at issue in the present controversy to be lost sight of in the mass of irrelevant matter. The *Ne temere* Decree is only an *incident*, it is not the *issue* before us. It has served to draw attention to the claims which are being made, but it really ought not to matter to us whether it is in force or not, for no foreigner, either civil or ecclesiastical, has jurisdiction in **this** Realm. Nothing that the Bishop of Rome says, therefore, either individually or through the Sacred Congregation of the Council can affect our laws. What makes it a question with us in this Province is, that those who adhere to the Papacy believe the decree to be binding on them as a law of their Church. And an ambiguous clause in our Civil Code, it is claimed, makes the law of any Church a part of the law of this Province.

The first point at issue is the *supremacy of the Civil* over the *Ecclesiastical* authorities in the matter of *marriage*. When a marriage is contracted, and there is no legal impediment recognized by the State, then the State must protect such marriage and safeguard those married in their whole Civil Status. No other power than the State can set aside such a marriage. The State must recognize the marriage solemnized by all whom it authorizes to officiate. No annulment of marriage should be permitted because of the religious

views, either of the officiant, or of the contracting parties. The State, as such, cannot recognize the religious conviction of the people, as affecting the Civil Status of marriage, nor can it permit any marriage to be called invalid which it regards as valid. We have seen of late this principle violated; we have seen a marriage annulled by the Civil Courts because of *religious* opinions. Two persons, both baptized, adhering to the Roman Communion, were married by a Methodist Minister. The marriage was annulled because, according to the law of the Roman Church, it is forbidden to its members to be married except by their parish priest. Yet the State authorizes Methodist ministers to solemnize marriages, and in this case the State gave its License for their marriage. It is the duty of the State to see that its own license is honoured, and that the act of its own officer is upheld. Yet the Civil Court declares the marriage to be annulled, because it was contrary to the law of the Church, as interpreted by the Court of the Roman Archbishop of Montreal. I know that the party seeking the annulment of the marriage, and in whose favour judgment in the Civil Court was given, has since desisted from the judgment, and discontinued his the action; the question is before the Court, but the point of law remains still undetermined.

We have recently witnessed a horrible scandal, which ought to arouse this whole Dominion to action. Two persons, both baptized, members of the Roman Communion, were married by a Roman priest. There is no question of the *religious* position of the parties or of the officiant. They have been married for about eight years; for some years they have not lived together, I understand. The Roman Church does not believe in divorce! It is, however, discovered that they are related in "the third and fourth degree of collateral consanguinity." According to the law of the Roman Church they should have obtained a *dispensation* before such marriage was solemnized, this they failed to do. They could have obtained it had they desired. The Ecclesiastical authority was willing to give such dispensation, for the judgment of our Civil Court said, "considering that the parties to the union did not express a willingness to accede to the demand of the religious authorities, that they should be regularized in the marriage state," therefore, the decree of the Court of the Roman Archbishop annulling this marriage was confirmed by our Civil Court under article 127 of the Civil Code of this Province. Here is a case where two Romanists, married by a Roman priest, have their marriage set aside, because the Roman Church married them without a dispensation from her own laws! It was not alleged that there was any relationship which was forbidden by this *Dominion*, nor was it alleged that the relationship was too close to make marriage *lawful*.

They could have been married had they obtained a dispensation; but because a priest of the Roman Church performed an act without an ecclesiastical dispensation, which would have been legal with it the marriage was annulled by our Civil Court! A law which makes our Civil Courts the mere registering machine for the judgments of the Ecclesiastical Court, is one that cannot be repealed too soon. As the question of the Ecclesiastical Court is *sub judice*, I cannot discuss that now.

What a degradation of the human body! Both these persons are now free to marry again. We hold up our hands in horror at divorce, but divorce in this Dominion can only be obtained for adultery. Yet *here is the same thing under a different name*. Two persons who have cohabited for years are free to contract another marriage, because they did not get a dispensation from the authorities of the Roman Church, and our Courts uphold it! I do not say that the Courts are wrong, but I do say that the *law* which permits such a thing should be repealed.

I claim for our Anglo-Catholic Church equal rights with the Roman Church in this Province and in this Dominion. Do people realize how far reaching this law is, if the interpretation given by our Courts is correct? Let me give an instance. It is contrary to the law of the Church of England for a man to marry his deceased wife's sister. If a man who had married his deceased wife's sister were to come to me as Bishop, and ask me to declare such marriage null, because it was contrary to the Ecclesiastical Law of the Church of England, I have as much right to do so as the Roman Archbishop. If after obtaining my decree of annulment, he went to the Civil Court, I fail to see how the Court could do otherwise, under the decision referred to, than declare the marriage null; and void *ab initio*. Although the Dominion Act permits such marriages, there would be a conflict not only between the Dominion and the Ecclesiastical Law, but also between that of the Dominion and the Provincial Law, as I maintain, is the case under the decision of Judge Bruneau. Though such marriage is forbidden by the Church, I would never think of declaring it invalid, or saying that the children were illegitimate; because I feel that the authority of the Civil Law must be supreme over Ecclesiastical in respect to the *Civil Status* of the contracting parties. That is the point which is being lost sight of. While the Civil Law cannot alter the law of the Church, the Church cannot make invalid that which the Civil Law declares to be valid in respect to *Civil Status*. It is said that the *Ne temere* only effects the members of the Roman Church, and does not effect us, and, therefore, it is none of our business. It is our business. This decree and the enactments of the Roman Church, in view of recent judgments in our Courts, deal with the *Civil Status* of our citizens, and

what affects the *Status* of any citizen, especially of such a large number as the members of the Roman Church, vitally concerns the whole country. "No man liveth to himself and no man dieth to himself." The Mormons have permitted plurality of wives. It is a tenet I believe of their Church, and taught in their sacred books, that a man may have a number of wives. Does anyone imagine that it does not concern us, because these laws only govern the members of the Mormon Church? It affects the *Civil Status* of the citizens, therefore it affects and becomes the concern of every citizen. The Roman Church is free, as we are, to make laws to govern its members; as long as those laws do not injuriously affect the *Civil Status* of the people or their morality, it is no concern of ours. When they, however, do not content themselves with disciplining the offending members, even to the extreme penalty of excommunication, but go so far as to *annul the marriage*, then it becomes very much our concern, especially when our Courts ratify the annulment.

No State can long permit the *Civil Status* of marriage to be interfered with for ecclesiastical offences of whatever kind. It is a hard thing to think that pure and highminded young women, who think themselves lawful wives, and their children honourably born in wedlock, may suddenly awake to find themselves dishonoured, and their children illegitimatized, because of an ecclesiastical offence, about which they may, or may not, have been cognizant. It is the duty of the State, it is the duty of every man, irrespective of his religious convictions, to defend them from what is the most poignant grief and shame that any right minded person could suffer. What we must work for is a *one-marriage law for this Dominion*. It is right enough to find out beyond peradventure where the authority and responsibility rest and to what parliament we are to look for redress. Let it be clearly understood, that when that is ascertained, we shall expect that Parliament to act, which the Privy Council shall declare has the power to act. There must be no trifling with this question. Whether the *Ne temere* decree is withdrawn for Canada or not, the authority of the State over marriage must be maintained throughout this whole Dominion beyond dispute, so that, in future, no decree of any foreign power, ecclesiastical or political, shall question the *Civil Status* of those marriages which our State recognizes. Churches and religious communities must be free, of course, to make laws to govern their own members. They must be free to punish by their discipline, and to expel the members who violate those laws; but no Church or religious community can be permitted to question the *Civil Status* of any citizen in this Dominion. Whatever legal steps may be necessary to attain this end must be taken, it matters not what they are so long as the desired end is reached, that is, *one Marriage Law for the whole country*.



