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THE ROMAN CHURCH AND THE ANNULMENT OF MARRIAGE.

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1. **T**HE recent decision of the Supreme Court of Appeal in the Roman Catholic Church known as the Rota in the much-discussed Marlborough case has two sides, a private and a public. On the former, it concerns only the parties to the suit. As these persons were divorced in 1920, in so far as the Nullity decree does no more than give ecclesiastical confirmation to the liberty of re-marriage granted by the Divorce Court, it may be held that substantial justice has been done. It is the latter side of the case, the public, which is a matter of general interest. The Roman Catholic Church is so world-wide and so important a body that the larger bearings of its decisions cannot be regarded as affecting its members only; they concern the community as a whole.

2. The question of Divorce *a vinculo*, i.e., Divorce which carries with it the right of re-marriage, has been definitely settled in the negative by the Roman Catholic Church. Even, however, in the Ages of Faith its marriage law was never more than an aspiration: in lawless times it was defied, in settled times it was evaded. It was here, indeed, as it was with the parallel case of the celibacy of the clergy; in proportion as nominal values were inflated, real values declined. It was impossible to impose submission; nor did the attempt to do so have the result of raising the moral standard: those who would make marriage, in Selden's phrase, "a desperate thing," are not its best friends. "The frogs in Æsop," he says, "were extreme wise: they had a great mind to some water; but they would not leap into the well, because they could not get out again."¹ The practical wisdom of the Popes found a way out of the difficulty by the expedient of Declarations of Nullity, which could be obtained easily enough by important persons or for political purposes. Nor were coarser methods of escape wanting: in 1530 Henry VIII's agent at Rome wrote to him—"A few days ago the Pope (Clement VII) secretly proposed to me that your Majesty should be allowed two wives."² There are persons of repute among ourselves who are simple enough to take the rigorism of Rome at its surface value, and to regard it with admiration. When an English Bishop expressed himself in this sense before a recent Royal Commission, "I observe, my Lord," said a Scottish judge, "that you approve of the doctrine of the Roman Catholic Church that marriage is indissoluble. May I ask you whether you also approve of the *subterfuges* to which this Church notoriously has recourse when it wishes to evade the rigour of the law?" Such subterfuges are apt to recoil on those who employ them—with disastrous effect.

¹ *Table Talk*, LXXXIV.

² *Henry VIII*, A. F. Pollard, p. 216.

3. In the well-known lines for the Commemoration of Gunpowder Treason, the *Christian Year*, referring to the Church of Rome, bids us "Speak gently of our sister's fall." We would gladly do so. But she *does* make it difficult! The Gunpowder Plot is ancient history: and if, remembering the *Strages Ugonottorum* medal struck by Gregory XIII on the occasion of the Massacre of St. Bartholomew, we wonder whether, had things gone differently on that memorable Fifth of November, 1605, the Papal mint would not have issued another with the inscription *Strages Anglorum*—well, it would be an endless task to determine the *ifs* of history; and we live in milder times. But we have left the horizons of the *Christian Year* behind us. Anglo-Ultramontanes no longer speak, gently or otherwise, of "our sister's fall"; the fall, they tell us, is on our side. "With her authoritative beliefs most English Catholics have no quarrel: and, if it is merely a question of local corruptions the Church of Rome can show no such corruptions as, from a Catholic point of view, are only too common in the Church of England."¹ The example given is Evening Communion.

Risum teneatis amici!

So that the aspiration of the Lyra Apostolica—

"O that thy creed were sound!

For thou dost soothe the heart, thou Church of Rome,"

is out of date. For we are assured that this creed is, in substance, our own. Efforts are now being made to express this identity of substance in identity of form. We are, it seems, to have a Revised and Amended Prayer Book; and, though the contracting parties appear to be reckoning without their hosts, Parliament and the Pope respectively, certain negotiations between Anglican and Roman Bishops have been, and are said to be still, in process at Malines.

4. To be out of sympathy with these novel features of English religious life is to write oneself down a Victorian. "Jones is sixty." Well, a man is not necessarily a fool at sixty; and he may be one at a less advanced age. What is a Victorian? I am tempted to describe him as a person who believes, and is not ashamed of believing, that two and two are four. Those who do so find the Marlborough case disconcerting. What can be said for a Church which, while it boasts of its refusal to admit divorce by the front door, lets it in, thinly disguised, by the back? The allegiance even of Roman Catholics has been tried. One, writing to *The Times*, signs himself "Bewildered"; another says, "Many Catholic heads are aching, including my own"—though he subsequently withdrew his remonstrance in terms which can only be described as abject, "in view of a communication which he received," we are not told to what effect or from whom. A third, in a letter to a friend,— "It horrifies me. Surely it will arrest conversions?" And again, in an objection which goes to the root of the matter: "they are destroying marriage by way of denying divorce; the defence is worse than the deed."

¹ *The Catholic Movement in the Church of England*, Rev. W. L. Knox, p. 248.

5. On the question of the indissolubility of marriage English opinion is not inclined to rigorism. It regards divorce as an evil ; but as being, under certain circumstances, the lesser of two evils. This attitude was that of the wisest of English Bishops, Bishop Thirlwall.

" I am, indeed, persuaded that in a community regulated by the pure mind and will of Christ, marriage would invariably be held indissoluble. But I am not equally satisfied that all the precepts which would be binding on such a community are likewise applicable to one placed in circumstances so widely different as are those of our age and nation, or were intended to be universally enforced by legislative authority. I am afraid that whatever 'hardness of heart' warranted a relaxation of their rigour under the Mosaic dispensation may be found in an equal degree in modern English society ; and the question how it may best be treated is one of prudence rather than of principle." ¹

But by the Roman Catholic Church the matter is held to have been once for all decided by our Lord's well-known words, repeated, though with an important variation, by each of the Synoptic writers, and by the general practice of the Church. This rigorism undoubtedly leads to hard cases ; and if a Church which is committed to it strains her own laws to meet such cases, and interprets the "diriment" impediments to matrimony in a large sense—well, it may be better to do so than to refuse relief. But casuistry of this sort has its dangers ; in the present case suspicion has been excited and scandal caused. Its aspect of "millionairism" is, to say the least, unfortunate ; the question is being asked on all sides, "*How* were the authorities squared?" For in Italy the decrees of nullity granted by the Church Courts are not taken seriously ; it is believed, rightly or wrongly, that by hard cash and hard swearing the matter can be arranged. A general proposition is not identical with a universal ; there are, no doubt, cases in which such suspicions would be out of place. But, even in reference to a secular tribunal, they would not be thought either so improbable or so discreditable to those concerned, as here. An Englishman, living in Sicily, and acting as agent for a London firm owning property in that island, used to tell the following story. An action was taken in the local tribunal against this firm, and the Sicilian lawyer employed advised that the Court should be "personally approached." The agent communicated this advice to the partners, and received a reply from the firm to the effect that they could not lend themselves to so nefarious a proceeding. The senior partner, however, wrote by the same post instructing him to take whatever steps were necessary. He did so ; with the result desired. And the Roman Rota, great as is its name and universal as is its jurisdiction, does not command the confidence of those who live under its shadow and may be presumed to be best acquainted with its methods and procedure. "Nay, my sons," they say with the venerable Eli ; "for it is no good report that I hear" (1 Samuel ii. 24). Again, the lapse of time between the original marriage (1895) and its annulment (1926) is a further diffi-

¹ Charge, 1857.

culty ; nor has this difficulty been removed by the publication of the evidence received by the Rota in the official *Acta Sanctae Sedis* for December ; and summarized in the English press. Here, of course, as before, presumption yields to fact. But the fact must be established. And, after a lapse of thirty years, memory for detail is unreliable. It is impossible to remember particular facts with precision ; yet it is on particular facts that the case turns and judgment depends. We remember the broad lines of a situation ; but the rest falls into the background : “ the world is too much with us ”—we cannot be sure of more than the outline of things. Few would care to be cross-examined as to events which took place in their own experience at this distance of time—the sayings and doings, the comings and goings, the dates and the daily routine.

6. The decision has undoubtedly discredited the Church of Rome in English public opinion. The answer of its officials will be that the Church is profoundly indifferent to this opinion : “ Hippokleides doesn't care.” But the drastic suppression of criticism from within shows its unreality. Hippokleides cares, and cares greatly. Hence the policy of least said soonest mended. Rome neither is, nor can afford to be, indifferent to English opinion. It is an opinion which, as she is well aware, it is eminently worth her while to conciliate, and which her political interests make it eminently unadvisable to offend. It is, as has been said, possible that substantial justice has been done. But this is not the point. The question is a general one : i.e., whether, after a lapse of thirty years and the birth of children, absence of consent can be pleaded as a ground for nullity. If it can, what marriage is beyond doubt ? As a French correspondent of *The Spectator* puts it—*on n'en est jamais sûr*. Under such circumstances the plea of non-consent falls under the head of those objections of which Paley says that “ they may always be alleged, but are impossible of testimony to be ascertained ” ; and that “ to allow implicit credit to them, and to dissolve marriage whenever either party thought fit to pretend them, would lead in its effect to all the licentiousness of arbitrary divorces.”¹

7. Most married people have experienced previous attachments ; parents are apt to discourage “ detrimental ”—the term is a relative one ; and marriage, when it comes, is by no means invariably the result of overpowering impulse : the decision is often arrived at after deliberation, and with certain searchings of heart, or even regrets. But these feelings are transient ; people settle down, and live in contentment. In Miss Austen's *Sense and Sensibility* there is a happy touch of eighteenth-century wisdom when we read of Willoughby, the villain of the piece, that “ he long thought of Colonel Brandon with envy and of Marianne with regret. But that he was for ever inconsolable, that he fled from society, or contracted an habitual gloom of temper, or died of a broken heart, must not be depended upon—for he did neither. He lived to exert and frequently enjoy himself. His wife was not always out of humour, nor his home always uncomfortable ! And in his breed of horses

¹ *Principles of Moral and Political Philosophy*, p. 216.

and dogs, and in sporting of every kind, he found no inconsiderable degree of domestic felicity."¹

8. No one will quarrel with the casuists when they lay down that *Vis* or *Metus*—i.e., force and the fear inspired by it—is one of the fifteen "diriment" impediments to marriage. But this fear (they tell us), must be "grave"—otherwise "innumerable marriages would be invalidated, to the great detriment of society"; and, where its gravity is open to question, "the marriage must stand, both because the presumption is in its favour—*causa matrimonii favorabilis est*, and because of the reverence due to the Sacrament."² The *metus reverentialis*, or reverential fear, the possible gravity of which is admitted, is characteristic of, or at least more commonly found in, another age and civilization than our own. Manzoni describes this past state of society in *I Promessi Sposi*: it was one of violence and oppression both in private and public life. But he was writing of Italy in the seventeenth century, not of New York of to-day—where deference to parental authority is seldom excessive, and where republican simplicity is not, as a rule, averse to a great European alliance. Hence the incredulous smile with which the "evidence" for compulsion has been received. Better proof of the alleged facts is required than that which satisfied the Rota! "We are much of the mind of Falstaff's tailor. We must have better assurance for Sir John than Bardolph's. We like not the security."

It is not, however, in reference to the parties to this particular suit, but in its bearings on marriage in general, that the judgment calls for comment. For, as a correspondent of *The Times* points out, it justifies the following statements:}

"(1) That the Canon Law has no counterpart to the rules, common alike to the civil and the Common Law, by which a party, whatever his cause of action, is estopped from asserting that to be true which his whole conduct for years belies.

"(2) That, consequently, a married person may blow hot and cold about his marriage by keeping a convenient impediment up his sleeve during years of married life.

"(3) That the impediment need not be one of those grave impediments which are recognized by all Christendom; but may be a minor impediment, which could have been removed by a dispensation before marriage.

"(4) That a decree of nullity obtained in such circumstances answer all the purposes of a divorce *a vinculo*; since it leaves the parties free to marry again without bastardizing the issue of the void marriage.

"(5) That the jurisdiction to grant such decrees is exercised by Courts where the evidence given by the witnesses is not reported, and the grounds on which the decree is granted are not published.

"If any of these conclusions is incorrect, it would be well that it should be corrected. If not, they amply account for the shock which the public conscience has received."³

¹ *Sense and Sensibility*, p. 378. ² Gury, S. J., *Theologia Moralis*, ii, p. 808.

³ *The Times*, November 25, 1925.

9. The word "shock" is not too strong. "We deeply regret that the decree annulling the marriage has been made," says *The Church Times*, to its credit; "it has done much to weaken the sanctity of the marriage tie." Whether it will, as some think, "arrest conversions" is doubtful: once embarked upon the Rome-ward slope, emotion takes the place of evidence, and credulity that of the sense of fact. But, if it has little effect on those in whom the will to believe is stronger than the reasons for believing, it will have much on the independent lay mind. The No Popery cry has a bad record in English history; no sensible person would wish to revive it. But an increasing indifference, I will not say to religion itself, but certainly to "modes of faith" and to religious institutions, has led us of late years to shut our eyes to certain obvious facts. For Giant Pope is by no means as enfeebled, nor Giant Pagan as dead, as honest John Bunyan thought. The magicians of Egypt have worked their enchantments; and both have renewed their strength. The Romanism of to-day does not, indeed, attract those whom Jowett described as "persons of education." Writing in 1912, the late Baron Von Hügel notices that "the conversions to Rome, so numerous and remarkable between 1845 and 1870"—the former date being that of Newman's secession, the latter that of the Vatican Council—"have notably diminished in both respects, especially during the last decade"—i.e., that following the accession of the reactionary Pius X. The seceders of our own times are, for the most part, temperamental persons of both sexes, who find in Catholicism a Cave of Adullam—the refuge of the malcontents of civilization, of "everyone that is discontented, or in distress, or in debt." But their number is larger than could be wished. No community can regard the loss even of its weaker members with indifference: and with regard to Catholicism—I am using the word in its European sense; but the warning applies no less to the backward section of our own Church which claims connection with that great international system—if we see in it nothing more than one of the many other Churches or sects of Christendom, we are making a very great mistake. It is "the ghost of the deceased Roman Empire, sitting crowned upon the grave thereof."¹ And it is a mixed magnitude. Were it wholly evil its power for harm would be less than it is: it is, in fact, a strange mixture of good and evil, of what is false and of what is true. The good attracts, and attracts powerfully; the evil disgests and repels. We are apt to think—and religion has no greater temptation than this—that we can take the good and reject the evil. From the first this has proved impossible. For this Church suffers no divided allegiance; we must trust her "not at all, or all in all."

"Catholicism is much more than a theology or a religion; it is much more than one among the denominations of Christianity. It is a whole habit of mind, founding itself upon deeply-seated principles of philosophy, and striving, like the forms of animal and vegetable life, to develop itself under the given conditions of air and

¹ *Leviathan*, ch. 47.

light and warmth. In this struggle for existence it meets another principle, or set of principles, of no less vigour and vitality than itself; and founded, like itself, on a widely-extended survey of the facts of life. Its rival and competitor is the whole of that science—moral, political, physical—which has been slowly built up by the labour of four centuries, and the results of which tend more and more stringently to govern the conduct both of individuals and of communities. Men of piety and wide views, afflicted at the sight of our unprofitable religious differences, have at different times proposed schemes of pacification among the Churches. There seems no reason why such a reconciliation might not be effected, if not in the way of compromise, at least in the way of comprehension, where these disputes turn only on dogmatic differences. But no amalgamation is possible between the organic forms of social life, which each claim universality, which aspire to possess the whole man, which are impelled by their inward force to realize themselves in fact. Between the Catholic Church and modern civilization, the question is a struggle for existence—a struggle which can only be settled by the survival of the stronger.”¹

Hence the futility of the well-meant “Conversations” of Malines. Only by the renunciation of her birthright, i.e., by ceasing to express the life and mind of the English people, can the Church of England unite, or enter into organic relationship, with the Church of Rome.

10. Since the rise of the Oxford Movement the dream of the Conversion of England has floated before enthusiasts. It is improbable that the officials of the Roman Curia, who know their world, and do not suffer fools gladly, share it. Their present policy is to concentrate their activities on the Near East, where mass secession is still possible, and the *débâcle* of Russian Orthodoxy has left the field free. The communications which occasionally take place between the Vatican and the English Government have been misrepresented, perhaps misconceived, by the continental clerical press which is emotional by calculation and has a genius for advertisement. These communications are political, not religious: such measures as in the recent Roman Catholic Relief Act are complimentary; and the establishment of a Nunciature in London, while no doubt desired at Rome, would be opposed by the Irish bishops, as it was by Cardinal Manning, and is outside practical politics. It is not Roman, but Anglo-Catholicism that is the danger in England. Not to the nation, which is indifferent to both; but to the Church, which sits increasingly loose to the principles of the Reformation: to its loss. For the latest fashion in religion, known as Anglo-Catholicism, or more correctly as Anglo-Ultramontanism, *mole ruit sua*. It is gravitating rapidly and inevitably Rome-ward. And the differences between Roman and Reformed Christianity are not only religious and cultured; but, as the Marlborough case shows, moral.

¹ Mark Pattison, *Sermons*, p. 224.