"Opto magis sentire compunctionem quam scire ejus definitionem."—à Kempis.

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CIVIL DIVORCE.

"Si quis dixerit causas matrimoniales non spectare ad judices ecclesiasticos, anathema sit."—Concil. Trid. Sess. XXIV. de Sacr. Matr. can. XII.

Pertinent to the late decision of the Holy Office, quoted Vol. IV. p. 368, are the following:

Of Catholic judges called on to deal with matrimonial causes.

By a law enacted by the Swiss Confederation regarding marriage, it was decreed that matrimonial causes of all kinds are to be henceforth tried in the lay courts and according to the forms followed in civil suits; that no ecclesiastical jurisdiction over matrimonial causes shall be recognized; that decisions in regard to them shall conform to the common law and the law just passed. Now, according to this new law the marriages even of Catholics can be definitely annulled and dissolved, even quoad vinculum, for some specified but very trivial reasons; and after sentence of divorce has been pronounced by the secular judges the parties so divorced can, if they so wish, contract new marriages. Hence the queries:

5. Can Catholic judges and lawyers, with a safe conscience, accept and defend, or hear and judge matrimonial causes in these law courts?

6. Can those Catholic judges and lawyers, with a safe conscience, advocate the dissolution of marriage—divorce—in the sense of the recent Swiss law, or pronounce the marriage dissolved? and, further, can they

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"De judicibus catholicis, qui in laico tribunali causas matrimoniales tractare debent.

Lex Confœderationis Helveticæ de statu et matrimonio civili lata sancivit: causas matrimoniales omnes et singulas, suppressa ex nunc et deinceps ecclesiastica jurisdictione, in tribunalibus laicorum ad normam tractandas esse, quæ in causis civilibus statuitur, sententiasque in iis proferendas esse secundum præscriptiones juris communis et novissimæ latæ legis, qua matrimonia etiam catholicorum sub certis rationibus valde levibus perpetuo dirimi atque quoad vinculum dissolvi possunt, ita ut ejusmodi conjuges litigantes, post latam judicum sæcularium sententiam divortii, ad alia matrimonia contrahenda, si voluerint, possint transire. Quæritur igitur:

Dubium quintum: Utrum judices catholici et advocati in ejusmodi tribunalibus laicis causas matrimoniales tuta conscientia suscipere ac defendere, sive cognoscere et judicare possint?

Dubium sextum: Utrum iidem judices catholici et advocati, secundum recentem Helvetiæ legem, matrimonii vinculum *ut dissolvendum proponere* seu *ut dissolutum declarare tuta conscientia possint*, necnon declarare ejusmodi conjuges ad aliud matrimonium contrahendum posse transire, sicut lex civilis hoc in causu judicare et declarare judices expresse jubet et urget?

declare that the parties may contract new marriages, as the civil law in such case expressly orders, and compels the judges to decide and declare?

In treating this question, it must not be forgotten that the secular courts, established for the trial of civil suits, are the self-same courts in which, according to the new law, matrimonial causes are to be heard and decided. Now if it be forbidden Catholic judges to preside in such courts, we shall see that, to the great detriment of the citizens, the courts are deprived of those judges,—men with the fear of God in their hearts, whose decisions are given religiously and justly.

On the third of April, 1877, the Holy Office thus replied:

"To queries 5 and 6: With regard to judges, apply for a decision in each case. As to advocates, be guided by the decisions forwarded to the bishop of Southwark, May 22, 1860:—To the query: *May a Catholic advocate undertake the defence of a party sued for divorce, when the object of the suit is to annul the marriage quoad vinculum?* The answer was: *It can be tolerated, provided* (1) *the bishop can vouch for the integrity of the advocate; and* (2) *provided the advocate do nothing contrary to the natural law or to the ecclesiastical.*

And to a second query: *May Catholics bring suit or plead for divorce when the end to be attained is only simple separation and the deci-*

In disserenda hacce quæstione obliviscendum non est quod tribunalia sæcularia, quorum est judicare de causis civilibus, *eadem* sunt quibus nova lege incumbit causas matrimoniales cognoscere et judicare. Quod si ergo judicibus catholicis vetitum fuerit ejusmodi tribunalibus interesse, in magnum damnum civium ea tribunalia iis judicibus privari experiemur, qui timore Dei repleti pie et juste judicant."

Die 3 Apr. 1887, S. Officium decrevit: "*Ad quintum et sextum.* Quoad judices, recurrat in casibus particularibus. Quoad advocatos, dentur responsa jam data Episcopo Suthwariensi, nempe: Feria III. loco IV. die 22 Maii 1860, ad dubium: Utrum advocatus catholicus possit defendere causas partis conventæ contra actorem vinculi solutionem exquirentem? Responsum fuit: Dummodo Episcopo constet de probitate advocati, et dummodo advocatus nihil agat, quod a principiis juris naturalis et ecclesiastici deflectat, posse tolerari.—Et ad aliud dubium: Utrum liceat advocati et actoris partes agere, quando finis litis est simplex separatio absque ulla sententia matrimonii nullitatem secum ipsa trahente? Responsum fuit: Provisum in præcedentibus, et feria IV. 19 Decembris ejusdem anni: Dummodo pars catholica nullum aliud tribunal adire possit, a quo sententiam obtineat separationis quoad thorum et mensam, et dummodo sententia hujus tribunalis nullum alium habeat effectum quam separationem prædictam, posse tolerari ut catholici in eo foro actoris et advocati partes agant, et dummodo adsint justæ separationis causæ judicio Episcopi; et si quid habeat prætərea dubii recurrat exponens omnes circumstantias et legis dispositiones.

sion of the court will not imply the nullity of the marraige ? The answer was: Reply already given and also in decision of Dec. 19, of the same year, 1860: (1) *If there be no other court from which the Catholic party can procure a separation* a mensa et thoro; *and* (2) *if the decision of the court have no further effect than this separation; and* (3) *if in the judgment of the ordinary there be grounds sufficient for a separation, it can be tolerated for Catholics to institute suit for or plead for divorce in such court:* if, notwithstanding these decisions, a doubt arise, apply again, explaining all the circumstances of the case and the dispositions of the law.

[This was an answer to the bishop of St. Gall (Switzerland). In a recent number of the Nouvelle Revue Theol. Mgr. Planchard draws attention to the fact that the Holy Office, in 1877, declined to rule as regarding judges, while laying down the law very clearly as regards the lawyers. Perhaps, he suggests, because while lawyers are free to accept or reject briefs, the judges must hear all cases as they come before them; and Switzerland, being a small country and the Catholic judges being few, it would not be very difficult to apply to the Holy Office in the case of each individual judge.]

The following *Instruction* was issued June 25, 1885, to all the bishops of France. As will be seen from the concluding sentence, it was not intended for publication. But to use the words of Planchard "L'Instruction de 1885 est maintenant devenue du domaine public. . . . . Elle est imprimée en plusieurs documents que nous avons sous les yeux. Les prescriptions de la S. Congregation ne peuvent donc plus soustraire à la publicité cette pièce importante, et son intention ne saurait être de nous défendre de profiter d'un texte désormais connu pour mieux faire comprendre sa pensée."

Letter of the Holy Roman and Universal Inquisition to all the ordinaries of France.

Since the re-introduction of the divorce laws into France, in 1884, several *dubia* were proposed by bishops of that country to this Holy Office, to wit, whether it would be lawful for lay judges to act and pronounce sentence in divorce suits, be the suits either for the annul-

Sanctæ Rom. et Univ. Inquisitionis Epistola ad Omnes in Gallica ditione ordinarios.

Post nuper restitutas penes Gallos an. 1884 divortii leges, plura a nonnullis Episcopis Galliarum dubia huic S. R. et U. Inquisitioni proposita sunt, utrum nempe fas esset judicibus laicis in causis de separatione conjugum, sive circa vinculum sive circa habitationem tantum, jus dicere; utrum advocatis et procuratoribus hujusmodi causas agere penes judices laicos; utrum his, ad quos de jure

ment of the marriage or for separation merely; whether lawyers and solicitors can endeavor to procure divorces from lay courts; whether men, whose official position imposes on them certain duties in connection with court trials, can fulfil those duties in divorce cases; finally, whether the mayors can pronounce a couple divorced.

Their Eminences the Inquisitors General having carefully considered the matter, on the twenty-fifth of June, 1885, thus resolved:

In view of the very grave state of affairs, and weighing all circumstances of time and place, it can be tolerated that magistrates and lawyers can deal with matrimonial causes in France, nor be required to throw up their positions rather than do so; provided (1) they make open profession of the Catholic doctrine regarding matrimony and openly admit that matrimonial causes should be tried before ecclesiastical judges exclusively; and provided (2) their minds are so firmly fixed, both regarding the validity and nullity of marriage, and regarding mere separation—on all which they are required to judge,—that they will never give a decision nor maintain a decision, nor induce nor work for a decision repugnant either to divine or ecclesiastical law; and provided (3) that in doubtful and complicated cases they will have recourse to their ordinary, be guided by his judgment, and if need be refer through him to the Apostolic Penitentiary.

This decree the Holy Father ratified. Hence it is communicated by this circular to all the archbishops and bishops of France for their guidance. This circular is not to be made public.

R. *Card.* Monaco.

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pertinet, defensores officiosos, quos vocant, deputare; utrum denique syndicis (vulgo *maires*) divortium pronunciare.

Eminentissimi PP. una mecum Inquisitores generales, re mature perpensa, in feria v. loco IV. die 25 Junii 1885 ita decernendum esse consuerunt:

Attentis gravissimis rerum, temporum ac locorum adjunctis, tolerari posse, ut qui magistratus obtinent et advocati causas matrimoniales in Gallia agant, quin officio cedere teneantur: dummodo catholicam doctrinam de matrimonio deque causis matrimonialibus ad solos judices ecclesiasticos pertinentibus palam profiteantur; et dummodo ita animo comparati sint tum circa valorem et nullitatem conjugii tum circa separationem corporum, de quibus causis judicare coguntur, ut nunquam proferant sententiam, neque ad proferendam defendant, vel ad eam provocent vel excitent, divino aut ecclesiastico juri repugnantem; et in casibus dubiis vel difficilioribus suum quisque Ordinarium adeat, ejus judicio se dirigat, et quatenus opus sit per ejus medium ad Apostolicam Pœnitentiariam recurrat.

Hoc decretum Sanctissimus Pater ratum habuit: ideoque omnibus in Gallia Archiepiscopis et Episcopis notum fit pro eorum norma per has litteras, ceteroquin non evulgandas.

R. *Card.* Monaco.

The latest decree on the subject is that which we published Vol. IV. p. 368. To ascertain the extent of the tolerance accorded in the above circular epistle some bishops inquired: 1. If a judge, knowing a marriage to be valid, pronounce a divorce according to the law of the land, is he within the limits of the tolerance? 2. After such decision, can the mayor act and declare the couple divorced? 3. After the divorce, and both parties still living, can the mayor unite either in marriage to another? To all three questions an abrupt and unqualified *Negative* is given: and the *Negative* was approved by His Holiness. It will be found worth while to look over that decree again in the light of the circular epistle to the French bishops which we give above.

Even within recent times some theologians thought that the priest was the minister of the sacrament of marriage, and that the sacrament was conceivably separable from the marriage contract. This theory would leave the contract a *res in se profana* and as such subject to the action of the civil power. Such is what may be called the *State doctrine* in regard to marriage. It is heretical. Now, if we examine all the decisions of the Holy Office, we shall find that they are levelled against this heretical teaching. The civil powers claim that they are only dealing with the *res profana* of marriage, not meddling with the religious bond. No Catholic can be allowed *verbis aut factis* to profess this doctrine.

A word now on the decisions of 1877, 1885, and the latest, May, 1886.

In the decision given the bishop of St. Gall there is no difficulty. Only separation was in question; and unquestionably the ecclesiastical authorities could so far waive their right to weigh the gravity of the reasons therefor, as to delegate the duty to a conscientious layman. But even that much was not granted, unless the case had been formally or informally tried beforehand in the bishop's tribunal, "dummodo adsint justæ separationis causæ judicio episcopi."

And here we may remark in passing that when a Catholic sues for a separation in this country, the Catholic judge has a right to presume quod "adsint justæ separationis causæ judicio episcopi." For no Catholic will do so without consulting his or her confessor; and no confessor can permit or advise the institution of such a suit, since such permission is an actus fori externi. The confessor must refer the case to the person's pastor. And the pastor cannot give permission, because all matrimonial causes are causæ majores, reserved to the ordinary, even to the exclusion of the vicar general, as we have elsewhere shown. The first and third conditions, therefore, of that decision of 1877 are

not wanting with us. The second "dummodo sententia nullum alium habeat effectum quam separationem," creates little difficulty. The sentence of a divorce court here, as in Switzerland, has a further effect than a sentence of mere separation. It permits the parties to marry again. This is exposing one or both to grievous temptation. However, that is a matter for the bishop to take into account when considering "utrum adsint justæ separationis causæ."—"Licet ponere causam bonam aut indifferentem, ex qua immediate sequitur duplex effectus, unus bonus alter vero malus, si adsit ratio *proportionate* gravis, et finis agentis sit honestus."—Sabetti.

As a condition of a Catholic lawyer being allowed to plead for or against separation, that second condition can hardly be said to be one of the Sacred Congregation's own. It is but repeated from the query of the bishop—"simplex separatio absque ulla sententia matrimonii nullitatem secum ipsa trahente." The reply is "juxta petita."

The circular of 1885, addressed to the bishops of France, permits what?—only that, under the guidance of the proper ecclesiastical authority, men of sound Catholic belief as regards marriage and marriage causes, may do the work which it is no longer possible for ecclesiastics to perform in person. Men "qui catholicam doctrinam de matrimonio palam profitentur," will contradict that doctrine neither *verbis* nor *factis*. In the mouth of such a lawyer or such a judge the word *divorce* does not mean the dissolutio vinculi; and he publicly declares —palam profitetur—that he does not use the word, now become to him a mere legal expression, in any such sense. In all he does he is acting under his bishop and the Sacred Penitentiary. In effect he is a substitute for the ecclesiastical judges and professes that *except as such*, he has no right to meddle with matrimonial causes. With him the technical word *divorce* means simply separation. As judge he grants it, or as a lawyer pleads for it. If ulterior effects follow—"Licet ponere causam &c."

We may now turn to the decision of the 27th May last, Vol. IV. p. 368. Is not the first query strangely worded at this late day? "Judex qui licet matrimonium validum sit coram Ecclesia *ab illo matrimonio vero et constanti animo abstrahit*, et applicans legem civilem pronuntiat locum esse divortio, modo solos effectus civiles *solumque contractum civilem* abrumpere intendat." Did the proponent believe there are two contracts in marriage? Did the circular of 1885 mean that the judge can annul one of them? The marriage contract is one, indivisible, spiritual, sacramental. This contract is indissoluble and the S. Congregation gave no power, can give no power to any judge, lay or

ecclesiastical, to annul it. To such a question so worded, there could be only one answer. We request the reader to inspect the text of the query again.

The word *divorce* is evidently used by the proponent in the commonly accepted sense of the word, not in the technical, in which alone Catholic judges employ it in official proceedings.

The second query is similar to the first and the abrupt *Negative* of the S. Congregation easily understood.

Of the third—well, "pronuntiato divortio" supposes what is false; for *separation*, not divorce, was what was granted,—all that could be granted.—There is no such thing recognized as "civiliter cum alio jungere," whether the words be spoken of persons single or married. After the mayor's act the parties—mas et fœmina—are no more *juncti*, so far as Christian marriage goes, than they were before. As mayor he can perform his official functions, no doubt—enter names and pronounce the official language—"dummodo catholicam doctrinam de matrimonio palam profiteatur." The wording of this and the implication that the Church can recognize a so-called civil marriage, easily explain the *Negative* of the Holy Office.

Our Catholic judges in the U. S. "catholicam doctrinam de matrimonio palam profitentur." They know and profess the indissolubility of Christian marriage. They believe, either explicitly or implicitly, that matrimonial questions, being questions concerning a sacrament, should be dealt with by ecclesiastics. There is little danger of their giving decisions "divino aut ecclesiastico juri repugnantes." When in doubt about questions of Church law, they inquire of the proper authorities. *Divorce*, as commonly understood, they know they cannot grant; and by making open profession of their religion, they practically announce as much to the public. If the sentence they pronounce have an effect ulterior to separation, they are not responsible, and in regard to Catholics applying for divorce (separation) the Catholic judge or lawyer is justified in believing that he is only carrying into effect a decision already arrived at by the ecclesiastical judges.

But while the Church permits Catholic lay judges to hear marriage causes, she never recognizes their decisions. No matter how careful the lay judge, and how overwhelming the proofs laid before him, his decision that a marriage was valid or not, counts for nothing. Hence on the strength of a divorce obtained in a civil court, a person can never be married in the Catholic Church.