THE SACRED ROMAN ROTA

AND THE JUDICIAL SYSTEM OF THE CATHOLIC CHURCH.

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Some background – Questions put to a Catholic radio Evangelist.

After being refused a divorce by the civil courts, did not the Duke of Marlborough secure one from the Pope?

No. Charles Richard John Spencer-Churchill, 9th Duke of Marlborough secured a civil divorce, which was granted in 1921, and both parties, Charles, and Consuelo Vanderbilt, had married again before the case was put to Rome in 1926.

The Duke became a Catholic and promptly secured an annulment.

The Duke was a Protestant when the decision was given. Nor was it promptly given. The application was made to the Southwark diocesan court in 1925. This court, after scrutinizing all the evidence, gave judgment in February, 1926, that the first marriage was invalid from the beginning. Rome, not opposing the decision, but lest it might have been given too easily, called the case to the Holy See. The whole matter was reviewed, sworn testimony being obtained in America and England. The Holy See arrived at the same decision as Southwark and decreed nullity accordingly, six months later. You can hardly call that promptly.

Why was the Duke's first marriage invalid?

On November 6th, 1895, the Duke of Marlborough went through a marriage ceremony with an American girl, Consuelo Vanderbilt. Both were Protestants, and normally such a marriage would have been valid. However, Miss Vanderbilt had secretly promised to marry another man of her own choice, but the mother forced the girl to marry the Duke. The marriage was not a success, and they separated in 1905, by mutual consent. In 1921, they secured a civil divorce, and both married again. In 1925, the decision of the Catholic Church was sought as to whether the first marriage had ever been valid according to Christian principles. Rome sought all the evidence possible. Miss Vanderbilt's mother deposed on oath, "I forced my daughter to marry the Duke, thinking her objections merely those of an inexperienced girl." Her aunt deposed on oath, "This marriage was forced on

the girl, who desired to marry someone else altogether." Another friend of the mother deposed that "it was no question of persuasion, but of absolute constraint." Rome could not but decide that, abstracting altogether from the civil decree of divorce, the parties had never really been married at all.

It looks as if money had weight with Rome.

Not at all. Not all the money in the Bank of England would be of any avail to secure an annulment from the Church if the first marriage had ever been valid. Meantime the trial at Southwark, with three judges and two other officials, lasting three months, cost $40 (United States dollars) in expenses. The retrial in Rome lasted six months. There was much more expense in securing sworn testimonies from America and England, and in the number of legal men employed. This trial cost $200 in expenses; not a very great burden to the parties concerned. Moreover, the law of the Church is that litigants bear expenses only if they are able to afford them. In the ten years between 1920 and 1930, nearly 120 matrimonial cases were tried in Rome. In 69 cases, the litigants paid ‘full’ expenses. In nine cases a nominal fee only was paid. In 40 cases, the expenses were totally remitted. Nor did the offerings make any difference in the decisions given. Sixty-six per cent, of those who paid, and 90 per cent, of those who could not pay, obtained favorable decisions.

It comes to the same thing. We Protestants get a divorce from the state whilst Catholics get an annulment from their Church.

There is all the difference in the world between the two positions. A civil divorce claims to break the bonds of a valid marriage, bonds, which the Catholic Church rigidly declares to be unbreakable. A decree of nullity does not break the bonds of a valid marriage at all. It declares that the marriage was never a true marriage and that there is no bond to break. It declares that the reputed marriage was null and void as a contract from the beginning. Had it been valid, the bond could not be broken save by the death of one of the parties.

A NEWSPAPER SENSATION.

THE recent (1927) decision of a Roman Court declaring invalid the marriage of the Duke of Marlborough and Consuelo Vanderbilt, was seized on by some newspapers as material for a first-class journalistic sensation. The decision was featured in prominent headlines for days: its legal and religious aspects were discussed at length. The fact that the parties were of high social position and belonged to some of the wealthiest families of England and America attracted attention to the case. But what was chiefly enlarged on was that the court, which pronounced judgment, was a court of the Catholic Church, acting with jurisdiction from the Pope himself. Two inferences were commonly made – firstly, that the decision was a dissolution of the marriage; secondly, that the wealth of the parties had something to do with the verdict.

Taking these two points for granted, the critics proceeded to impeach the Roman Court and the whole Catholic Church. They declared that the Church does not really exclude divorce and is not sincere in its teaching of the "indissolubility of the marriage bond," if it possesses a court, which grants dissolution of marriage just as the divorce courts of England and America do. Again, it

was stated that Rome has one law for the rich and another for the poor. Catholics who cannot afford the expense of a costly trial in Rome must endure their matrimonial difficulties, while the wealthy are able to secure an accommodating decision from the Rota. Many critics apparently believe that the Catholic authorities are ready to grant exemption from their laws to those who can pay for it. Others, indeed, do not accuse the Papal court of greed for money: they represent the motive of the proceedings at the Rota to be the desire to win over to the Catholic fold persons of influence and high social status.

In many instances, it is quite obvious that these charges are the product of bigoted hostility. The type of person who identifies the Roman Church with anti-Christ, and who will seize any pretext to whet this venom, is not yet extinct. But in all instances, the charges could have been made or believed only because of ignorance or misunderstanding of the Catholic position. The feature of the discussions in the Marlborough case in the Press or outside, which was most impressive and significant, was the widespread extent of this ignorance. It is true, of course, that many of the points at issue were legal and abstruse. Questions of procedure and jurisdiction, of the validity or nullity of contractual obligations, may present difficulties to the ordinary man. But even those who pretend to a high degree of culture, betrayed the most hazy conceptions of the teaching and law of the Church on marriage, not to speak of the nature and functions of the Rota. If the discussion has had the effect of arousing, in Catholics at least, a desire to know more of the system of courts through which the Church administers justice, it will have produced one good result.

Within the limits of a pamphlet such as this it is clearly impossible to give a full account of the Rota and that system, but even an outline will suffice to rebut charges that are based solely on misunderstanding.

THE PLACE OF THE ROTA IN THE PAPAL GOVERNMENT.

The Sacred Roman Rota is part of the great system of government established in the city of Rome, by means of which the Pope discharges the duties, which devolve on him as the Supreme Ruler of the Catholic Church. That government is divided into three sections, the administrative, executive, and judicial. The Congregations of Cardinals, with their officials and consultors, form the administrative section. Their function is to secure the observance of laws, the proper supervision of dioceses and ecclesiastical affairs, the appointment of officers, and such matters. The executive section consists of the Offices of the curia: they deal with the diplomatic and secretarial work. The third section is composed of the tribunals, which administer justice. They are as distinct from, and independent of, the Congregations, as, in England, the King's Bench is from the Departments of State at Whitehall.

The Rota belongs to the judicial section: it is one of the tribunals through which the Pope exercises his sovereign power of administering justice in ecclesiastical matters: its sole function is to hear and decide, according to the law, cases duly submitted to it. The Court has its seat in the Palace of the Dataria, [now in the Palazzo della Cancelleria] which lies adjacent to the famous

Quirinal Palace, formerly the residences of the Popes but now (1928) occupied by the King of Italy. [It is now the residence of the President of Italy.]

How or why the Court was called by the name Rota cannot now be satisfactorily explained: there are, at least, four theories put forward, but the origin of the title is lost in antiquity. The Latin word Rota means a wheel or circle, and the Court may have received its name from the round table at which the judges sat; just as an English court is called the King's Bench. The Rota consists ordinarily of ten judges whose official title is *Auditores*: they are of equal status and authority, and the senior, or Dean, as he is called, obtains precedence, but no jurisdiction, over the other judges. The appointment of a judge is made by the Pope in person. The qualifications required by law for the office are that the candidate be in priest's orders, have obtained the doctorate in canon and civil law, be of mature age, and be distinguished for moral integrity, prudence, and legal skill. These are the only conditions prescribed by law; there are others, based on custom and tradition. It is a recognised rule that the Rota includes judges of different nationalities, as befits a tribunal that has to deal with cases from all parts of the Catholic world. The English, French, German, Polish, or Slav races are each represented by at least one judge. It is also the custom that judges are appointed from among those who have been distinguished advocates at the Bar of the Court, and have thereat given abundant proof of legal ability. A judge of the Rota occupies one of the highest judicial offices in the Church: he is endowed with the ecclesiastical status and dignity of the prelacy, and with a number of important personal privileges, such as exemption from the jurisdiction of the local Hierarchy.

The constitution of the Rota includes also a number of Court officials. First of these is the Promoter of justice. He is a Rota advocate of the foremost rank, who is appointed to defend the side of law and justice, to conduct criminal prosecutions, and to intervene in all civil cases where the interests of public order are affected. The office corresponds to that of Crown Prosecutor or *Procureur General* in the lay courts. Next in order is the Defender of the Bond. His functions are akin to those of the Promoter of Justice, but they are confined to cases in which the validity of a marriage, ordination, or religious profession is impugned. It is his duty to uphold strenuously the validity of the bond in all such cases, in order that a wrong decision be not given through collusion of the parties or lack of proper legal defence. Of the other officials of the Rota – the Registrar and Assistant-Registrar, the Archivist and Accountant, it is not necessary to speak. Their functions are evident from the names, and resemble those in exercise in every well-organised tribunal.

A word must be said about the Counsel or Advocates, who can undertake the defence of cases in hearing before the Rota. They form an important and interesting body. Only those who have been inscribed on the Roll of Rotal Advocates have the right of pleading as counsel for a litigant. Admission to the Roll, which is equivalent to the call to the Bar in our civil courts, is granted only to those who have fulfilled a number of conditions. They must have obtained the degree of Doctor in Canon Law, at least; have completed a three years' course of special training in the procedure and law of the Court, and have undergone a special examination held in the presence

of all the judges. The call to the Roll is given by the Dean of the Rota, and the successful candidate must take an oath to discharge his duties faithfully in conscience. The Roll of Advocates at present includes over a hundred distinguished lawyers, both clerical and lay, some of whom are also Professors in the Faculties of Law in Rome. At the head of the corps is the special and exclusive group of the Consistorial Advocates, all of whom are laymen. They are constituted a Bar Council, and have disciplinary power over all members of the Bar in their professional capacity: on representation from the Council, the Court will fine, suspend, or remove advocates from the Roll for unprofessional conduct. The fees to which advocates are entitled are determined in the Rules of the Court within minimum and maximum rates for the different proceedings.

THE PROCEDURE BEFORE THE ROTA.

From this outline of the constitution of the Court, we may now proceed to describe its procedure or manner of working. Cases are tried not by a single judge but by a bench of three, selected according to a fixed rule of rotation. If the case be of particular difficulty or importance, or have given rise to several appeals, it will be tried by the whole court of ten judges sitting together. Proceedings are opened by the presentation of a bill of petition setting forth the names of the parties and the matter of complaint. If it be found in order, a citation or summons to appear is issued to the parties. On the date fixed, the Court assembles, and the exact issue on which a decision is to be given is determined by agreement between the parties, or, failing that, by the Court, and a day is then appointed for the examination of the parties and their witnesses.

This examination is not open to the public, and is conducted by a judge, not by an advocate. Counsel submit to the judge the points on which they wish the witness to be questioned. This seems strange to those who are accustomed to the system which allows advocates liberty to cross-examine witnesses as vigorously or ruthlessly as they please. The rule, however, that the judge conducts the examination is well known in the civil courts on the Continent, and is the most logical, as well as the fairest, method. For it is the judge's function to sift the value of the evidence and appraise the character of the witness. This he can do most effectively by putting questions directly, as may frequently be observed to happen in our civil courts when the barrister has concluded his examination.

The evidence of each witness is taken down in writing by the clerk of the Court and read over to, and signed by, the witness. A copy of this evidence is given to the other party, who may then impugn it on the ground of irrelevance, obscurity, or contradiction, and ask to have it set aside.

When the case before the Rota is one of appeal from a lower court, and no new evidence is produced, the written record of the evidence given in the lower court is examined, so that parties are saved the trouble and expense of going over the same ground. It is of interest that in the New Rules established for the courts of *Saorstat Eireann* (the Irish Free State) this method has been adopted for the hearing of appeals.

When all the evidence has been submitted, the next stage is that of the arguments of the advocates. These must be in writing: they are exchanged between the different sides and replies submitted, also in writing. If the Court permit it, a free oral discussion on some point of the case may take place. Oratory and appeals to sentiment are ruled out in favour of cold and reasoned argument.

The judges then retire for deliberation. Each judge brings his written conclusions on the facts and law of the case. The sentence is drawn up according to the view of the majority. It must give the reasons in fact and law on which it is based: otherwise, it is of no legal force, according to Canon Law.

The procedure followed by the Rota is elaborate and painstaking to a degree, precisely because it is a most faithful presentation of the great Roman tradition of law. What Europe has of law today, it owes almost entirely to Rome. The real greatness of the Republican or Imperial City was not in its military conquests or its architecture, but in its unique legal and political genius. In the history of civilization, Rome stands for law, just as Greece for philosophy. The system worked out by these sturdy Latins has been accepted by all modern States: it is recognised as the almost perfect expression of the rule of reason: its maxims are of the highest authority in the law-school and in the court.

The Sacred Roman Rota is not an institution of recent growth. It counts its years not in decades but in centuries, and can compare in point of antiquity with the most venerable courts of any country. It was already in existence in 1331, when a law, the text of which is still extant, was made concerning it by Pope John XXII. But even before that date, we have historical evidence of its existence, in the frequent mention of cases heard in the Papal Court by the *Auditores causarum Sacri Palatii Apostolici* – the Judges of the Sacred Apostolic Palace. During the whole of the Middle Ages the Rota was the most celebrated tribunal in the Catholic Church, – or, for that matter, in Europe. Histories of it have been written from different aspects: the most recent – by Cerchiari, in four volumes – is based on the diaries and records of the Court preserved in the Vatican Archives, and contains among other things a fully documented list of the 684 judges who can be traced in unbroken succession from 1870 back to the thirteenth century. The mass of historical material that centres round the Rota is immense. There are vast collections of its Decisions going back to the year 1374, which form the most imposing mass of case-law in existence.

Men rightly respect and cherish institutions, which have their roots deep in the past. There is a prestige attached to antiquity. In the case of a tribunal of justice, it has not merely a sentimental but a very practical value.
A Court that has endured the vicissitudes of centuries is one whose rules are the concrete expression of wise experience; whose name has become a symbol of public confidence; whose

traditions are a force that maintains unsullied the fair name of true and impartial justice from one generation of judges to another.

RELATION OF THE ROTA TO OTHER ECCLESIASTICAL COURTS.

We have already mentioned that the Rota is mainly engaged in hearing cases of appeal. It was for such cases precisely that it was founded, and with such it was occupied during all the centuries of its existence.

It is pre-eminently a court of appeal. To understand its functions, therefore, it is necessary to glance at the other ecclesiastical courts with which it has contact.

Every properly organised Catholic diocese is bound by canon law to have a regular tribunal for the hearing and decision of ecclesiastical cases. It is presided over by the diocesan judge-in-ordinary who is called the *Officialis*; he is assisted by a body of assessors, entitled the synodal judges. The Court-Registrar or Notary, the Promoter of Justice and the Defender of the Bond are the other officials who are necessary for the constitution of the court. Their work is precisely the same as that of their namesakes at the Rota.

The diocesan court is what the lawyers call a court of first instance. It is the court at which cases must first be tried and which, from the point of view of appeal, is the lowest court. If an appeal be made from the court of first instance, it goes to the court of second instance. In the ecclesiastical system, this is the court of the Archbishop of the Province in which the diocese is situated. If appeal be made again, it goes to the court of third or last instance – which is the Rota, the Court of the Pope. It is, however, always open to the litigant to appeal directly from the diocesan court to the Rota.

There are some classes of cases in which the lower courts are incompetent, for the hearing is reserved even in the first instance to the Rota. Such are the civil cases of Bishops, and cases affecting dioceses or religious orders or other bodies who are exempt from the diocesan authority.

There are also some cases, which are reserved to the Pope in person, for example, the criminal trials of Bishops, and all cases affecting Cardinals or temporal sovereigns.

Outside such exceptions, the Rota is for all ecclesiastical cases the Court of Appeal. If, then, the Rota gives a wrong decision or refuses to reopen a case, is there no redress? There still remains a tribunal which fulfils an important, though unobtrusive, function. It is the Supreme Tribunal of the Apostolic Signatura. It consists of six Cardinals of the Roman Church assisted by a number of subordinate assessors and officials. This is, properly speaking, the highest tribunal in the Catholic Church, except when the Pope sits in person, which happens rarely. But it is not a court which hears and decides cases of appeal: it is a court which tries judges themselves, and petitions for a retrial of a case by a lower court. If a charge be brought against a judge of the Rota of having violated secrecy, of having given an invalid or unjust sentence, or if he be objected to on suspicion of partiality, it is the Apostolic Signatura which hears the charge. Again, if petition be

made for a new trial of a case already decided by the Rota, the Apostolic Signatura decides whether the petition be granted; if the decision be favourable, the case is sent back to the Rota to be tried by a new bench of three, or by the whole body of ten judges.

It is obvious that the mere existence of such a tribunal is a great safeguard against any form of judicial corruption. We have not in this country any court which is an exact parallel to the Apostolic Signatura, but such exact parallels do exist in Continental countries – in the *Cour de cassation* of France and the *Corte di cassazione* of Italy, for instance. In these countries, any plaint against the decision of a court of appeal is made before the Court of Cassation, and if it be successful, the case is sent back to a Court of Appeal for a re-trial.

THE CHRISTIAN COURTS IN HISTORY.

From this brief outline, it can be seen that the Sacred Roman Rota is not merely a fully organised tribunal of great antiquity, but also that it is an integral part of an elaborate and world-wide system, which provides extensive facilities for the efficient administration of justice in ecclesiastical matters. It comes as a surprise to many people that the Catholic Church possesses a judicial organisation that can compare with that of any of our modern States. Their surprise is due to ignorance of the Church and her history – we should rather say, of the history of Europe. For several centuries there were in all civilised Christian countries two classes of public courts, the courts of the king and the courts of the Church, the former for civil or temporal cases, the latter for ecclesiastical or spiritual cases. They functioned side by side; the limits of their competence were clearly marked; their decisions were held in equal respect and enforced by the executive authority of the land. The courts of the Church tried cases affecting the spiritual rights of her subjects, disputes about ecclesiastical benefices, and violations of ecclesiastical discipline.

Outside these bounds, they did not claim jurisdiction, or interfere in that of the civil courts. In England, we find that they were given jurisdiction in some matters which are only remotely spiritual and which the Church elsewhere did not claim – in wills and bequests and in all cases of widows and orphans. Public confidence in the *Courts Christian*, as they were called, was evidently high when their sphere of action was extended to matters of such general importance. In these days of Pre- Reformation England, appeals from the diocesan court went to York or Canterbury, and thence to the Rota in Rome. It was at times not a pleasing thing for the English king that his subjects sought justice outside his realms – especially when he was at war with France, and the Papal Court was at Avignon. His resentment went so far once as to prohibit such appeals, but the prohibition soon became a dead letter.

The full ecclesiastical system was in force down to the time of Henry VIII. When that monarch wished to impugn the validity of his marriage, it was in a Papal Court the case was pleaded – and without avail. Henry broke in anger with the Holy See: the ecclesiastical courts continued to function, but they were no longer independent. Thenceforth their authority was derived not from the head of the Catholic Church of Christ, but from Henry or Elizabeth, head of the Church of

England: appeals went no longer to the Rota but to the King's Court of Chancery (*The Act of Submission* 25 Henry VIII. 1533). The fact that ecclesiastical courts were maintained long after the break with Rome shows how necessary they were felt to be.

Similarly, in France, the Courts of the Church were publicly recognised down to the time of the Revolution of 1789. Thereafter, they did not cease to exist: they ceased merely to have the support and backing of the State; their decisions were no longer enforced by the police. So wherever the old union of Church and State was abolished, the *Courts Christian* merely lost legal status, but they continued in all countries to function by virtue of the same authority on which they were always based – that of the Catholic Church; and if they lost status in the eyes of the law they retained their binding force in conscience.

The history of the Church shows that the holding of courts by her is not a modern development, but can be traced back to the earliest centuries. That is a matter for the history-books: what is more to our purpose now is to show that this practice is part of the very life and constitution of the Church, which she is bound to maintain.

THE RIGHT OF THE CHURCH TO HOLD COURTS.

Every society or organised group, be it only a club, has rules for its government, and has some tribunal or authority to interpret these rules and decide whether they have been violated. It is a principle necessary for the existence of such bodies that all matters pertaining to their internal life shall be judged by an internal tribunal. As it is usually stated, members must accept the decision of the domestic umpire as final. So it is, that every religious group or sect has its own tribunal for the settlement of its domestic affairs. It may be called a court, synod, presbytery, conference, or Sanhedrin. The principle is the same in all. The more numerous and highly-organised is the sect, so much the more precision and solemnity will its judicial system display. The courts of the Catholic Church surpass in splendour and dignity those of other religious bodies, because the Catholic Church is the most numerous and widely-diffused body, and because nineteen centuries of thought and zeal have been devoted to the perfection of her organisation.

Merely on this ground, therefore – that she is a voluntary association – the Church has the right, which every club has, of possessing a domestic tribunal. But there is another ground also which exists in her case, and in her case alone, it is one of particular significance and weight.

When Christ established His Church, he gave the power and right to govern it not to the Roman Emperor but to the Twelve Apostles. It is only those who have received full spiritual power by the imposition of hands in the Sacrament of Orders, and who have obtained the commission of authority that has come down unbroken from the Apostles that have the lawful right of governing the Church. They are the Bishops, united under their Head, the successor of Peter. By the will and decree of the divine Founder of the Church, they and they alone have authority to rule the Church. The State has its own function – to provide for the temporal prosperity of its citizens – and it is enough. It has no right to govern or interfere in the Church, simply because that power

was not given it by Christ. Hence, the Church is not a department of the State. No Parliament has the right to decide what her faith, doctrine, or prayer- book should be.

The Church of Christ, furthermore, is for all men of all races, and however widely it spreads, it is to remain one united Church. Now, if the Church were to become subject to, or part of, the State, it could never fulfil its divine mission of teaching all men; it could never become an international, universal church. It would split up into national or racial divisions, its activity would be hampered by national jealousy and political intrigue, its unity of faith and discipline would be lost.

The spiritual independence of the Church is, therefore, its very life-blood, its divinely-appointed heritage. The Catholic Church will maintain that heritage at all costs. She is not a national church nor subject to any State: has never consented to be such, and will never consent. To imagine her to consent is to imagine her as false to the teaching of Christ, and Christ as false to His promise to her. Throughout all her history, she has fought with wonderful tenacity and courage for her independence. When she could have secured peace and worldly comfort by accepting the dictation of the State, she has, with indomitable resolve, refused to sacrifice her liberty. The Greek and Protestant Churches accepted dictation and have paid the penalty. The Catholic Church remains independent from the day of Nero to the day of President Calles of Mexico.

By virtue, therefore, of her divine constitution she has the right to provide freely for her own government. It is not through ambition or worldly seeking but because it is the will of her Founder. She does not thereby subvert or interfere with the authority of the State. Quite the contrary!

By none is the authority of the State more reverenced or its laws more respected than by Catholics, for the Catholic Church teaches that the authority of the State within its proper sphere is from God, and that citizens are bound in conscience to uphold and obey it.

THE LIMITS OF ECCLESIASTICAL COMPETENCE.

The Courts of the Church do not oust the jurisdiction of the civil courts. They deal only with matters, which are within the proper sphere and competence of the Church. The bounds of that competence are very clearly defined in canon law: they comprise only what is required for the regulation of the life of the Church. The opponents and critics of the Church have represented her as interfering in purely civil matters and dividing the allegiance of the subject. They do not state the truth, as they can find it clearly expressed in canon 1553 of the 1917 Church Code of canon Law. That canon enumerates the classes of cases in which the Church claims sole competence. They are: *firstly*, cases which deal with spiritual objects; *secondly*, cases of violation of ecclesiastical laws and of violation of the divine law, in so far as the determination of guilt and the infliction of ecclesiastical penalties are concerned; *thirdly*, cases affecting ecclesiastical persons in so far as they are not subject to the civil tribunal.

This is the complete list of the matters in which Canon Law claims exclusive competence for the Courts of the Church. It includes all that follows necessarily from the fact that the Church is a spiritual society. It is based on a full recognition of the rights of the State and the proper relations between Church and State. It supplies no pretext for the charge of interference or disloyalty.

MATRIMONIAL CASES.

Within the first of the classes enumerated are comprised matrimonial cases, about which there is much discussion. In all the loose and ill-formed discussion that goes on, the question that is never raised, but which is the crucial question that should first be answered, is – *Is marriage a spiritual or a merely temporal thing?*

Non-Catholics are vague or contradictory on the point. The Catholic Church is clear and definite. It teaches that the marriage of Christians, that is, of baptized persons, is a spiritual thing, for it is a Sacrament. Christ our Lord raised the 'contract of marriage between his followers to the dignity of a Sacrament whereby it possesses a deep spiritual symbolism and a wonderful spiritual efficacy.' The Sacraments of Christ belong to the jurisdiction of the Church instituted by Christ. Only the Church, therefore, can determine the conditions requisite for the validity and lawfulness of the Sacrament of Marriage. The State is not competent. In Christian times, before the Reformation – so-called – it never even claimed competence. Since then, in Protestant countries, it has usurped that power and set up divorce courts. The Protestant Churches still teach that marriage is a holy bond; but they have acquiesced in the usurpations of the State. The Catholic Church has not acquiesced. She maintains without compromise that marriage is a spiritual entity and belongs to the sphere of spiritual jurisdiction.

Now if a question be raised whether a particular marriage is valid and binding, the Church must answer that question herself. She cannot hand it over to the State, and, at the same time hold that marriage is a Sacrament. She is, therefore, bound to provide a tribunal to decide that question fully and formally, according to the written law of Christian marriage. Otherwise, she would be false to the divine teaching that the marriage of Christians is a Sacrament and false to her duty to Christians.

CASES OF NULLITY OF MARRIAGE.

The decision of matrimonial cases is, therefore, for the Church the discharge of a duty. The only cases which are considered by an ecclesiastical court are cases of nullity, those in which it is contended that the marriage was from the beginning null and void because of the absence of some of the conditions required for marriage; and in which the decision sought is a declaration of that nullity. Thus, one of the obvious conditions required for a valid marriage is that each of the contracting parties be sane: lunatics cannot contract marriage. Now if a question be raised about a particular marriage, and if it be proved that one of the parties was insane at the time of the ceremony, the Court will give a declaration of nullity. It does not dissolve the marriage: it merely gives an official recognition of a fact – that there was no marriage there from the beginning.

Decisions of nullity do not affect the sanctity or indissolubility of the marriage bond: they do not break, lessen, or weaken that bond: they are not opposed to the doctrine of the indissolubility of marriage, for they are concerned only with the preliminary question whether a valid marriage had been contracted at all.

They are totally distinct in law and in practice from divorce cases. In law, a divorce case is one in which the marriage is admitted by both parties to have been valid, but, for some reason which has supervened since the marriage, a dissolution or breaking of the bond is sought. In these cases, the Court does not merely recognise a fact; it claims and exercises a power, to make what has been good and binding no longer of any effect. Sentences of divorce are contrary to the indissolubility of marriage: they are directly opposed to, and destructive of, the teaching that a valid marriage cannot for any cause be dissolved.

That there is a world of difference between divorce cases and cases of nullity is quite clear to any person who reflects. The difference is of vast theoretical and practical importance. Divorce in theory is based on a denial of the sacredness of the marriage tie: in practice wherever it has been introduced it has led to the breaking up of countless marriages and homes, and to a general lowering of public moral standards. Neither of these objections attach to cases of nullity: they do not impugn the binding force of marriage, and they are of their nature so rare and infrequent that they cannot by any stretch of imagination lead to abuse.

The difference between divorce and nullity cases is so obvious that a person of ordinary intelligence cannot be sincere in denying it, or in saying that it is a legal quibble. No one who has any knowledge of English law, at any rate, will pretend to deny the difference or to say that it is a quibble. In English law, the distinct nature of nullity and divorce is very clearly recognised. The conditions under which nullity of marriage arises and the procedure to be followed are dealt with in full in every legal hand-book.

One will find there, in fact, two kinds of nullity cases contrasted: the first class is those, which are so clearly and absolutely void that their nullity can be pleaded in any court by any person and even after the death of the parties. To quote from a famous judgment given in 1812, which has become the classic text on the subject: "Civil disabilities such as prior marriage, want of age, idiocy, and the like make the contract void *ab initio* (from the outset): they render the parties incapable of contracting at all; and if any persons under these legal incapacities come together, it is a meretricious and not a matrimonial union."

The other kind of nullity cases are those in which the plea of nullity can be put forward only during the life-time of the parties. To quote from the same judgment: – "The canonical disabilities such as consanguinity, affinity, and certain corporal infirmities only make the marriage voidable, and not *ipso facto* (by the fact itself or obviously) void until the sentence of nullity be obtained: and such marriages are esteemed valid unto all civil purposes unless such sentence of nullity is actually declared during the life-time of the parties."

Proceedings for nullity exist in English Law side by side with divorce. It is evident that those English writers who suggested that cases of nullity were something peculiar to canon law and were an insidious Papal device for a profitable traffic in marriage, showed themselves to be ignorant not merely of canon law but of their own English law. One does not hear often of nullity cases in the English courts: they still occur, but in comparison with divorce cases, they are insignificantly few. For nullity is exceptionally difficult to prove, and the effect can be obtained now more easily through proceedings for divorce, by merely proving the fact of adultery [or other civil cause].

In fact, since divorce has become prevalent, the same attention is not paid as formerly to securing all the conditions antecedent to a proper, valid marriage. People do not bother about these conditions, for they know that if difficulty arise, a divorce can be obtained. It is quite the contrary with the Catholic Church. She does not recognise or admit divorce. Once a marriage has been validly contracted, there is no release till death. Hence, she is particularly careful to see that marriages are validly contracted. Hence, too, she is so careful not to impose the obligations of marriage on any but a valid marriage. One of the conditions she requires for a valid marriage is full freedom of the contracting parties – freedom from violence and intimidation. Marriage means a bond that will end only with death: it involves obligations and restraints of a most serious personal nature. Every individual has an inalienable right to decide freely for himself whether he will marry or not. He has a right to decide to whom he will get married. These rights are essential to the liberty of the subject: they are recognized by every civilised State. Every State requires freedom as an essential condition of marriage. Without freedom, there is no willing consent, no acceptance of obligation, no binding contract. If, therefore, a case occur in which intimidation is alleged, the Church must be prepared to examine it fully and judicially. If intimidation is proved, she must be as firm in denying any force to that invalid ceremony as she is in upholding the sanctity of a free, valid marriage.

Hostile critics of the Church pretend that the requirement of conditions for validity of marriage provides a loophole or pretext by means of which a great number of marriages are rendered invalid, so that afterwards, if need arise, they can be impugned. They forget – or pretend to forget – that even the State requires such conditions, and that there must be conditions. How could there be such a thing as marriage, if it were not made up of certain essential elements? How could we define it, or distinguish it from such an act as that of engaging a housekeeper? Conditions there must be in the absence of which the act is not a marriage; and they must be defined in detail. English Law requires a number of them. Thus, in the *Encyclopedia of the Laws of England*, volume 10, page 94, we read: "To render a marriage legal according to English Law it is necessary that it should be entered into by single persons, not being within the prohibited degrees of consanguinity or affinity, both of whom are of consenting and sound mind, and able to perform the duties of matrimony. Consent being, therefore, one of the necessary ingredients to the contracting of a valid marriage, on the principle that, according to the laws of this country *consensus non concubitus facit matrimonium* (consent, not cohabitation, makes a marriage),

instances occur now and again of petitions for nullity on the ground of want of consent or duress: Miss Turner's Case, *House of Lords Journals*, 1827, 308" – and a long list of cases tried before English courts is cited, in which the validity of a marriage was impugned on the ground of intimidation or fraud.

These conditions of English law are identical with those required by canon law – for the simple reason that the marriage law of England was borrowed almost entirely from the mediaeval canon law. There are two important differences, however, between the two systems as they now stand, and they are both in favour of the canon law. Firstly, the conditions in canon law are clear and precise: in English law the requirements under the head of consanguinity are anything but clear: "To ascertain what 'the prohibited degrees' are, we are left to grope among the statutes of Henry VIII, and are then, as we have seen, thrown back upon the old Mosaical Law as laid down for the guidance of our forefathers in the 18th chapter of Leviticus" – is the statement of a learned authority. But then, it matters little, as long as a divorce can be obtained by the expedient of adultery [or other civil expedient]. Secondly, when the Church lays down conditions, she also sees to it that they are observed. Hence, she requires marriage to be celebrated in public, in the presence of a parish priest or his delegate. Hence, the elaborate precautions that are taken to ensure that everything is in order – examination of parties, publication of banns, letters of freedom, certificates – precautions which the officiating clergyman is bound in conscience to adopt (Canon 1020 of the 1917 Code), and, in addition, all the faithful are bound to reveal to the parish priest or Bishop any impediment that they may know to affect a contemplated marriage (Canon 1027 of the 1917 Code).

That these regulations are faithfully and successfully carried out is proved by the small number of cases of nullity that come before ecclesiastical courts. Last year (1927) from the Catholic world, which comprises over three hundred million of subjects, only fifty-three petitions of nullity came before the Sacred Roman Rota, and in only twenty-eight of these was the marriage held to be invalid. Twenty-eight out of hundreds of thousands of marriages is surely a remarkable number. Compare it with the thousands of divorces granted each year in a single European country or a single State of America, and one will recognise that critics from these countries have no cause for fear about the attitude of the Catholic Church toward marriage.

[In 2015, Catholics number 1.2 billion. Annulment applications have grown enormously in recent years due to a break-down in society’s acceptance of Christian sexual standards and a deepening awareness of the lack of maturity in huge numbers of marriage candidates. Worldwide, diocesan tribunals completed over 49,000 cases for nullity of marriage in 2006. Only some of them were appealed to Rome. (In 2002, only 135 cases went to Rome, of which 73 were judged to be ineligible for annulment.) Over the past 30 years, since 1985, about 55 to 70% of annulments have occurred in the United States. This indicates that something is rotten in the Pastoral practice of the Church in that nation. The growth in annulments has been substantial; in the United States, 27,000 marriages were annulled in 2006, compared to only 338 in 1968. Pope John Paul II and Pope Benedict XVI were worried about the ease with which annulments are granted by courts,

especially when premised on ill-defined grounds such as "immaturity or psychic weakness" or "psychic immaturity". It is a situation, which requires the active prayers of you, the reader, to obtain the effective intervention of the Holy Spirit in this crisis.]

There is no ground for the pious apprehensions of outsiders that the matrimonial courts of the Church will sink into the slough in which their own divorce courts wallow. There is no sign of a marked increase in the number; there is no change of policy in the Church. The law of the Church on what is required for the validity of marriage is quite clear: it has been fixed for centuries. The tribunals, which administer that law, have been working for centuries. At this or any other hour of her day, there can be no change in this part of the Church's policy. [This wonderful paragraph was written in 1928. Clearly, in the United States, and regrettably in Oceania, something HAS gone astray in the pastoral practice of the courts and their supervising shepherds, the bishops. It is something about which we must offer fervent prayer.]

Now let us suppose that for some reason or other a Catholic believes that his marriage was invalid and wishes to have it declared invalid. He has a serious proposition before him, a long and difficult road to travel. In the first place, he has to prove that the marriage was invalid. The burden of proof rests on him. It is a maxim of canon law that "marriage enjoys the favour of the law: wherefore, in case of doubt the validity of the marriage must be upheld until the contrary be proved" (Canon 1014 of the 1917 Code). Hence, if the plaintiff does not prove his case to the hilt, the decision of the Court will be *Non constat de matrimonii invaliditate in casu* – The invalidity of the marriage has not been established in this case. It is not necessary in an ecclesiastical court to say any more: the case has failed.

In the second place the plaintiff will have to deal with a gentleman already referred to, the Defender of the Bond. Matrimonial proceedings in which he has not been cited or appeared are null and void. His function is to defend at all costs the validity of the marriage and to prevent fraudulent or collusive proceedings.

Even if the other party does not defend the case, the Defender of the Bond will, and must by law, undertake the work. He will be present at the examination of witnesses and have them closely questioned: he will produce witnesses and evidence for the defence, will submit pleadings and counter pleadings. Finally, if the decision be given that the marriage is invalid, he will immediately appeal to the higher court. When for the first time sentence is given for the nullity of the marriage, he is in fact bound to appeal, and if he fails, will be compelled to do so (Canon 1986 of the 1917 Code). If the second sentence be likewise for the nullity of the marriage, he is not bound to appeal again: it is left to his conscience; if he has still a genuine doubt about the invalidity, he is expected to appeal.

THE RIGHTS OF THE POOR.

These are very serious legal obstacles for the Catholic who wishes to contest the validity of his marriage. But there is one handicap under which he will not lie, namely, poverty. The fact that he

has little of the world's goods will not debar a Catholic from prosecuting his claims at the Courts of the Church.

Comparisons are odious but everyone knows that proceedings at the civil courts even in these democratic days are not as inexpensive as people generally would desire. If the case be a difficult or protracted one, costs will run to a high figure, even though the counsel employed be not of the eminent rank of these politician-lawyers who command enormous fees. And worse still, if the case be appealed to the higher courts, the handicap of the poor man becomes crippling. In Canada there is said to be a strong feeling against the appellate jurisdiction of the English Privy Council on the ground that wealthy individuals or corporations will carry a case to London in order to break the poorer litigant with costs and make him abandon the case. As things stand in the civil courts, how embarrassed is a poor litigant against a wealthy opponent, who will heap up law costs!

In the ecclesiastical courts it is not so. The rights of the poor are carefully safeguarded in theory and in practice. It is laid down in canon law (Canon 1914 of the 1917 Code) that those who are quite unable to bear the expenses of their case have a right to entire release from costs: those who are partially unable, have a right to a reduction of the costs. It is not a question of a favour or condescension, but a strict right conferred by law, which the judge is bound to respect, once the litigant supplies proof of his financial condition. The judge must also appoint one of the advocates of the Court to undertake the defence of the poor person's case, and the advocate so appointed must faithfully discharge the trust under penalty of suspension from the Roll, if the judge so decree (Canon 1916 of the 1917 Code). These regulations bind on all ecclesiastical courts, from the highest to the lowest.

In fairness to the civil courts of this country (Ireland), at any rate, it should be stated that they have a regulation by which a poor person may claim to plead *in forma pauperis*, (in the form of a poor person), which means that he is free of judicial expenses, and may ask the gratuitous services of a barrister. Equality of citizen rights – the charter of democracy – demands that regulation. But in how many cases do we hear of it being availed of?

In the case of the Roman Rota, we have precise statistics of the number of cases in which it was availed of.

Last year (1927) of the sixty-one cases, which were decided, (an unusually busy year) in twenty-five the proceedings were gratuitous.

Last year was in no way exceptional. Thus, for the six years preceding 1921, when there was little public interest in the Rota, the percentage of cases, which were decided free of costs and with the free services of an advocate, was 30 per cent – one out of every three. Such statistics speak for themselves. Are there any other courts, which show such consideration for the poor, as do the Courts of the Holy See? Yet the Holy See is not an enormously wealthy power like England or America, but depends for its revenues on the alms of the faithful – the pence of Peter.

The charge that the Rota discriminates in favour of the rich, that its decisions can be obtained only by the wealthy, is an utter and complete falsehood. Those who made the charge knew nothing of the Rota, and did not take the trouble to enquire. The journalists who wrote so glibly about the Marlborough case knew nothing about the Rota, its history, law, procedure, or practice. The attacks that were made on that decision, received an official reply, the publication of the evidence of the case. It was a dignified and crushing reply.

In conclusion, this should be stated. It is very natural that the Rota is an object of great interest to non-Catholic as well as Catholic. For it is a unique institution. It is the only international tribunal that is in permanent session and that functions daily. Yet it is independent not merely of individual States but of all of them. It is a striking visible symbol of two outstanding qualities of the Church, its universality and its independence. It is because it represents these startling qualities, that it has attracted so much attention, especially from hostile quarters. For there is nothing that the enemies of the Church have striven so hard to destroy, as her claim to freedom from political domination and her right to preach the truth of God to all men. The Rota is a living, visible proof of the success that the Catholic Church has won in that conflict.

[Postscript: The 1917 Code of Canon Law was revised in 1983. The Law is the same in substance, but the reference numbers will be found to be different.]

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