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accepts every rite which expresses spiritual aspiration towards God . . . she accepts prayer and icons." It must be allowed that all this is ingenious; also that there is a subtle but somewhat real difference between the images of Rome and the icons of the East.

We have quoted freely, abbreviating, in order to make this possible, but scrupulously careful to take no liberties with the sense. But we must quote no further. It will hardly be denied that our utter (virtual) estrangement from an immense and most ancient communion that can speak for herself as above, is lamentable. "The Russian Church," it is remarked in the volume before us, "is in many ways the most vigorous and powerful of all Christian bodies, with a very clear and definite theology. In numbers it contributes four-fifths, in learning at least nine-tenths, to the whole Eastern Orthodox Communion. It is by far the most important national Church now existing [?], and, next to the Roman, the largest Christian body on the earth's surface. It must be patent to all intelligent observers that the Reunion of Christendom will not be brought about without her."

The remarkable volume of which we have now given some account, if it makes us realize afresh the enormous difficulties in the way of that happy consummation, will certainly stimulate our yearning for it, and we wish there existed some petition in our Prayer-Book equivalent to the third clause of the "Great Ectene" said at Communion, Matins and Vespers in the Eastern Church: "For the peace of the whole world, for the welfare of the Holy Churches of God, *and for the union of them all*, let us make our supplications unto the Lord. *Kyrie eleison.*"

S. BALLARAT.

ART. II.—DIVORCE AND REMARRIAGE.¹

IS marriage dissoluble? Can a marriage be annulled for adultery? Can divorced spouses during their joint lives marry others? Are ministers of the Churches of England and Ireland under any obligation to solemnize such remarriages?

¹ BISHOP COSIN'S Argument. Thirteenth State Trials. MACQUEEN, "Practice of House of Lords."

DEAN LUCKOCK'S "History of Marriage in relation to Divorce."

LORD GRIMTHORPE, "Marriage of Innocent Divorcees," *Nineteenth Century*, February, 1895.

Charge of DR. KING, BISHOP OF LINCOLN, 1895.

"The Present Aspect of the Controversy on Divorce," *Church Quarterly Review*, January, 1896.

According to the law of England and Ireland, these questions must be answered in the affirmative. A marriage may be legally dissolved when a wife has committed adultery and incest cruelty or desertion. In such cases the decree of a civil court as regards English persons, and a special Act of Parliament as regards Irish persons, declares marriages dissolved and void, and enables remarriage during their joint lives. They are made by the divorce unmarried and free to marry others.

The ecclesiastical law of the Churches of England and Ireland is not inconsistent with the law of the State. There is a formal law of the Churches which forbids the marriage of persons within the prohibited degrees of kinship as defined by the State, but there is no law which declares divorces for adultery invalid or prohibits such remarriages. Neither are such divorces or remarriages opposed to the doctrine or discipline of our Churches. I accept Holy Scripture as the doctrine of our Church on every subject on which God in Scripture speaks; but I repudiate the authority of any other Church in this matter, whether it be a true visible Church of Christ or a corrupt pretender. Kindness and gentleness, love, respect, Christian fellowship, with communion when possible, are due to all Christ's visible Churches, but there is no bond of allegiance to any, whether ancient or modern. Canon Knox Little, lately speaking on this subject, said well: "What did the Church of England say? *that is the point.*" Our concern is with the voice of the Churches of England and Ireland, not with the alleged utterances of any indefinite, unknown, inaudible body.

It must not be forgotten that the law of the State is legally and morally the supreme authority, binding clerics and laymen,¹ except in a case, if such there be, in which the civil law is plainly repugnant to the law of God as revealed in Scripture.

The discussions of this paper are limited to divorce for adultery, and remarriage after such divorce.

Marriage is a contract between a man and a woman to live together in matrimony during their joint lives (Lord Stawell, Lord Campbell, Willes, J.). It is a Divine institution. Romanists allege that it is a sacrament. It is frequently solemnized by a religious ceremony, but it is not, therefore, the less a contract to be interpreted according to its terms, and subject to the incidents of other contracts, including liability to be rescinded. This contract is the essence of marriage. But the particular terms in which the contract is expressed,

¹ Rom. xiii.; 1 Pet. ii.

the form of ceremonial, whether ecclesiastical or secular, the impediments to marriage, and all its incidents, are subject to and depend on the laws of each Christian State. France requires a purely secular ceremony, conducted by a State official. England and Ireland permit a mere secular marriage, or, at the option of the parties, a religious ceremony conducted by an authorised minister. There is, however, no difference as regards the validity or effect of these marriage contracts. No ceremonial can protect a marriage from possible dissolution. What contract more solemn than that between a sovereign and his subjects, made sacred by the oaths of consecration and allegiance? Yet this contract is voidable, and may be dissolved by the misconduct of the ruler. Many other cases might be mentioned in which contracts of a permanent character, absolute in terms, have been voided by the conduct of one party, wholly at variance with the spirit of the bond—cases in which the refusal of one contracting party to observe the contract entitled the other party to rescind it when the acts of the defaulter showed an intention on his part to abandon and repudiate the contract.¹ Does not a wife by adultery abandon and repudiate the marriage contract? Does it not thereby become voidable? May not the proper tribunal declare it rescinded and void?

What is the form of the special Acts of Parliament by which marriages are annulled? In a recent case (1886) it was proved that the wife had committed adultery; the preamble of the Act recited that the wife had by her adulterous conduct dissolved the bond of marriage on her part, and that the husband was liable to have spurious issue imposed upon him unless the marriage be declared null. It was then enacted "that the bond of matrimony between W and X, his wife, being violated and broken by the manifest adultery of X, shall be, and the same is hereby from henceforth wholly dissolved and made void, and it shall be lawful for W at any time thereafter to contract matrimony, as well in the lifetime of X as after her decease," etc. The statute proceeded on the proved fact of adultery, and on the principle that thereby the bond of marriage had been broken and the marriage made voidable. The Act of the Legislature was in form and substance declaratory; according to English law the husband of a guilty wife cannot divorce himself; he is not in the position of a Jew under Moses' law, free of his own mere motion to annul the voidable marriage and put away his wife; the law requires a statute or decree by a judge as a condition precedent to divorce, lest men should put away

¹ Law Reports, 9 C. P. 213, 538, 2 Exch. 340, 8 Ch. D. 298.

wives for alleged adultery when, in fact, the wife was not guilty, making themselves judges in their own case. Burnet, writing on Lord Northampton's case, reports a series of questions, and the replies of learned divines in 1549: "Quid dirimit matrimonii vinculum?" "Ad primam respondemus: ipso adulterii facto matrimonii vinculum dirimi. Nam alioquin obolum adulterium non liceret viro uxorem repudiare; voluntas viri sollicitat iudices; iudices palam faciunt ecclesiæ virum licite talem repudiare uxorem." So also Corvinus: "Apud competentem iudicem."¹

The argument of Bishop Cosin in Lord Roos's case (1688) proves conclusively that, according to the opinion of many of the Fathers, and in conformity with the opinions of almost all the Reformed divines, adultery works a dissolution of marriage. If there were no civil law on the subject, it would be lawful for a man by a solemn act of his own, such as the Mosaic bill and consequent expulsion of the wife, to put away, *i. e.*, divorce, the wife guilty of adultery and to marry another. Just as St. Chrysostom: "After the wife's fornication, the husband is no longer a husband; marriage is dissolved by adultery, and the husband *after he has put her away is no longer her husband.*" The civil law is not a law enabling or facilitating divorce, but a law restraining divorce, by forbidding it unless sanctioned in each particular case by an act of legislation or a decree of a lawful tribunal. An analogy will be found in suits for nullity of marriages, voidable but not actually void, except by virtue of a decree made in the lifetime of the parties.

Canon Little says, "The question is, what does the Church of England say?" (The voice of the Church of Ireland is the same.) He refers to the Marriage Service. He is reported to have alleged that the Church declared *many* times in that service it should not be lawful to put man and wife asunder! This I deny. I contend that there is nothing in the service which proves that the civil law of divorce for adultery by the act of the State or its tribunal is repugnant to the law or doctrine of the Church. The Order of Matrimony expresses the terms of the contract four times, in slightly varied words, in the questions proposed by the minister and the plighting of troth by the parties. The man and woman contract to live together in matrimony, including the rendering of due benevolence, to love, comfort, honour, the woman on her part adding to obey and serve, and forsaking all other, to keep them only to one another, and then they agree that the duration of this contract is to be so long as they both shall live.

¹ See Note A at end.

Such is the declared duration of the whole contract and of every stipulation thereof. The agreement to live together in matrimony has the same expressed duration as that to forsake all other. There is not a word in the service to suggest that any one stipulation, positive or negative, might, according to the doctrine of the Church, be repudiated or rescinded more freely than another. On the contrary, "keep thee only unto him" immediately precedes the declaration of duration and immediately follows the covenant to forsake all other. Therefore, according to the terms of this contract, if it is dissoluble as regards the positive stipulation, it is also dissoluble as to the rest, *i.e.*, and may be rescinded. If, notwithstanding the words "till death us do part," the CHURCH permits, nay, sanctions, nay, legalizes, the refusal of a man to live in matrimony with an adulterous wife, it is absurd to say that by virtue of these words of the service, the Church declares marriage indissoluble by the adultery of the wife. What, then, is the doctrine of the Church as regards this contract? There are two species of divorce—that which rescinds the marriage contract, technically called a divorce *a vinculo*; and that which, without dissolving the marriage, separates the spouses, technically named in Ireland, and until 1857 in England, a divorce *a mensa et thoro*. The latter terminates the positive part of the marriage contract. It separates the parties so that they shall no longer live together in matrimony, shall no longer keep to one another, shall not be obliged to comfort, love, honour, cherish, obey or serve. It annihilates all conjugal rights. It rescinds the whole bond except the provision to forsake all other. Is Church doctrine repugnant to these judicial separations? The jurisdiction to decree these judicial separations was not civil, but ecclesiastical. As Cosin says, it was "devised only by canonists and schoolmen of the Latin Church (for the Greek Church knew it not) to serve the pope's turn the better till he got it established in the Council of Trent. Bed and board belong to the essence and substance of matrimony, which made Erasmus and Bishop Hall say that the distinction of these two from the bond is chimerical and fancy."

The invention was adopted by the Churches of England and Ireland, and the jurisdiction was ecclesiastical. The spiritual courts had "sole and exclusive jurisdiction" exercised in England until 1857, and in Ireland until 1870, not by civil courts, but by the tribunals of our Churches, and their jurisdiction was recognised and regulated by the Church Canons of 1603 (extended to Ireland by the Act of Union), Nos. 105, 106, 107, and 108, long subsequent to the forms of our Marriage Service, which in 1549 was adopted from the

Sarum Office. Thus we have the Churches of England and Ireland, by their courts and canons declaring, notwithstanding the terms of the marriage contract, that for adultery all its positive stipulations may be set aside; a proof that for sufficient cause and by proper authority the whole contract may be annulled, for there is no dictum of our Churches to the contrary, the use of the word "only" in Canon 107 distinguishing between such decrees for separation and divorces *a vinculo* which extend in terms to the whole bond.

The principle involved in the action of the Church Courts was this: that as contracts in general may be rescinded and declared void by the proper authority, when one party has been guilty of such a violation of its terms as in the opinion of the court amounts to a repudiation of the contract,¹ so also the marriage bond is made voidable by the adultery of the wife, which is a manifest repudiation of the whole contract, and then the court may declare the contract dissolved and null. According to the civil law, adultery makes the marriage voidable, not void. There may be condonation or forgiveness. There may be collusion or adultery by the husband, which bar his right to a divorce, and a man cannot put away his wife without the express sanction of the law given in the particular case.

The other words in the marriage-service, said to prove that marriage is indissoluble according to Church doctrine, are the quotation, "those whom God hath joined together let no man put asunder." The observations already made upon the action of the Church courts show that the Church does not interpret these words as forbidding divorce for adultery. Do not decrees for judicial separation put *asunder* those whom God has joined in matrimony? Do they not forbid cohabitation? Observe these words are addressed by the minister to the spouses; they are not spoken to any third person, or used with reference to the action of civil or ecclesiastical tribunals. They mean this exhortation by the minister: "Man and woman, take heed, observe your marriage vow; love, honour, obey, as you have promised in this holy ordinance, keep to one another, and forsake all other. Man and woman, dare not by adultery to break this bond. You are knit together in the closest of bonds, being made one flesh; beware and destroy not that bond by becoming one flesh with another" (cf. 1 Cor. vi. 16, Gen. ii. 24). The words quoted do not refer to or forbid sentences of divorce, whether *a mensa et thoro* or *a vinculo*, by lawful tribunals. No; they forbid the misconduct, the adultery, by which the guilty party breaks the bond, repu-

¹ *Ante*, p. 461.

diates the contract, makes the marriage voidable, and on account of which the court declares the marriage null or separates the spouses, according to the circumstances of the case brought before it.

Dr. King, Bishop of Lincoln, who is not suspected of much sympathy or prejudice in favour of the doctors or doctrines of the Reformation, *i.e.*, of the Church of England, wrote thus in his Charge, mentioned at the head of this paper: "More than one writer has lately appealed with confidence to the high and beautiful language of our Marriage Service as deciding the question as to the teaching of the Church of England; now it may be conceded at once that they are right in referring to the service as one of the chief causes, or as the chief cause, of the widespread belief in the indissolubility of marriage, and yet the argument is really of no value as a proof that the Church intended to teach the absolute indissolubility in all cases, as a comparison with the Marriage Service in the Greek Church will show." This utterance of Bishop King is discussed in "The Present Aspect of the Controversy," where we find the admission "that so far as the English Church is concerned there *might be something* in the Bishop's plea if the Prayer-Book stood alone; there are difficulties in estimating the exact force of the language used in services unless there is evidence of some kind from another source," and having made this admission, the writer falls back upon the Canons of 1603, but the argument from the canons is altogether in favour of the position of Dr. King.

These formal recognitions of divorces *a mensa*, as we have seen, are wholly inconsistent with a literal interpretation of the Marriage Service, and Canon 107, by the use of the word "only," distinctly limits the restrictions on remarriage thereby imposed *upon the spouses* to such separations, not suggesting the unlawfulness, nay, implying the lawfulness, of remarriage when the divorce was not only or merely a judicial separation. And such seems to be the view of the Bishop, who says: "I submit that, taken in their literal and simplest meaning, they only express the mind of the Church with regard to separation *a thoro et mensa*, in which security is to be taken for the parties not marrying during each others' lifetime. But at the time when these canons were passed there were other forms of procedure besides those of the spiritual courts." The use of the word "only" points to a divorce *a mensa* in contrast to a divorce *a vinculo*, and these Canons of 1603 were amended, and, therefore, ratified, in 1865, after the Divorce Act of 1857 had become the law of England.

As we have seen, dissolution of marriage for adultery is permitted and effected by our civil law and not forbidden by our

Church law ; nor is it inconsistent with our Church doctrine, unless, indeed, it is forbidden by Scripture, which is the supreme Church law. It lies upon those who allege that the law of the land is repugnant to Scripture to give plain proof in support of their contention.

Is dissolution for adultery forbidden or sanctioned by Scripture ? The answer is contained in the words of our Lord in St. Matthew. In chap. v. (speaking to His disciples) He says : " Whosoever shall put away his wife, saving for fornication, causeth her to commit adultery ; and whosoever shall marry her that is divorced committeth adultery," and in chap. xix. (addressing Jews) our Lord says : " Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery ; and whoso marrieth her which is put away doth commit adultery." Some doubt has been critically raised as to the conclusion of verse 9 (chap. xix.), but none of importance exists as to the rest of our Lord's words quoted (see Revised Version and notes) ; they are certainly genuine, and express a Divine law.

What was the Jewish law ? The definite written law is to be found in Deut. xxiv. 1, 2 : " When a man hath taken a wife, and it come to pass that she find no favour in his eyes, then let him write her a bill of divorcement, and give it in her hand, and send her out of the house, and when she is departed out of his house she may go and be another man's wife." This was the Jewish law of divorce, a divorce dissolving the marriage, for the divorced woman might then be another man's wife. The form of the bill was, " Be expelled from me, and free for anyone else," an expression derived from a Hebrew root, which signifies " to break," " to cut off the marriage."

Our Lord, dealing with the law of Moses as to divorce *a vinculo* submitted to His judgment by the Pharisees, does not say that marriage may not in any case be lawfully dissolved, or that a man, when divorced, may not lawfully marry another wife. No ; he limits the lawfulness of those acts to the case of adultery, and declares that in other cases, except this case of adultery, or saving for the cause of fornication, a man shall not divorce his wife. He distinguishes and separates this particular cause from " every cause." Here, then, we have an undisputed text and a clear interpretation. Bishop Cosin says of the exception recognised by our Lord : " It is alike with others His exceptions, viz., ' except ye repent, ye shall all likewise perish,' upon which text, if I or any Bishop were to preach, I believe we should not discharge our duty unless we should tell the people, that if by the grace of God they did repent they should not perish. The exception ' unless ' is parallel with 1 Kings iii. 18."

Curious arguments are urged against the effects of our Lord's exception. It is said that our Lord was speaking to Jews, and not laying down the law for His Church. The Sermon on the Mount was delivered to His disciples, "the salt of the earth," the representatives of the Church. This argument admits the true meaning of the exception as regards Jews; and did Christ mean that Jews might lawfully divorce their wives for fornication but that Christians might not? The argument is inconsistent with the reasons given by our Lord for His rule—reasons quoted from Genesis when there were neither Jews nor Christians, reasons which apply to the whole human family. Did not Jewish husbands and wives become one flesh?

Again, the words of St. Mark, St. Luke, and St. Paul are contrasted with the more full report of St. Matthew, as if the former, and not the latter, was the exposition of God's law. The view of the wise Churchmen given by Burnet was this: Question V. "*An exceptio illa etiam in Lucæ, Marci et Pauli locis est subaudienda? Exceptio ista viz nisi causa stupri est subaudienda in Lucæ, Marco et Paulo: alioquin manifeste repugnantia inter Matheum et eos.*"¹

And Bishop Cosin observes as regards St. Mark and St. Luke, "The words are not to be taken absolutely, but to be supplied and understood by His words in St. Matthew as in many other cases." The four Gospels are memoirs to be read together, constituting one biography; and as to St. Paul, Cosin argues: "The Rhemists and College of Douay urge for the Popish doctrine Rom. vii. 2, the woman which hath an husband is bound by the law to her husband as long as he liveth; but (1) this place is to be expounded by Christ's words; (2) St. Paul hath no occasion here to speak of divorce, but of marriage, whole and sound, as it stands by God's ordinance; (3) he speaks of a woman who is under her husband, so is not she that is divorced. St. Paul useth this to his purpose of the law being dead to which we are not bound; nor is their doctrine more favoured by 1 Cor. vii. 10, Let not the woman depart, as being in her choice whether she would depart or not, but in the case of fornication she was to depart, or, rather, be put away, whether she would or not." The learned Bishop Bethell said in the House of Lords, as quoted by Lord Grimthorpe, that this passage had no more to do with the case of an adulterous wife than the millennium!

Another device to explain away our Lord's exception is the contention that fornication is not post-nuptial but ante-nuptial

¹ The Gospel of St. Matthew was written long after the Epistles of St. Paul.

sin. But our Lord was speaking of putting away of *wives*—married women—and this distinction abandons the principle that marriage is without exception indissoluble, for it concedes that marriages of wives may be dissolved for *πορνεία*, whatever that may be. But, in truth, though fornication is not adultery in the case of an unmarried woman, adultery is always fornication. The meaning of *πορνεία* is not limited to ante-nuptial sin, either in the writings of the Fathers or in the New Testament. St. John in Rev. v. 20, 21, 22, and St. Paul in 1 Cor. v. 1, used the word in the sense of adultery, and as expressive thereof.

Dean Luckcock, in his Preface, page xix, apologises for the use of an argument of which he is evidently ashamed: "I only put forward the ante-nuptial interpretation of the word in St. Matthew as a *possible* solution of what is necessarily a very great difficulty." If the argument was sound it would not solve this great difficulty.

The *Church Quarterly Reviewer* says: "We do not think it easy to adopt any of the interpretations of the passages in St. Matthew, which have been suggested either by the advocates or the opponents of the indissolubility of marriage." Is not this a pregnant admission that such advocates cannot find a solid foundation in Scripture to justify resistance to the law of the land?

It is faintly suggested that *απολύω*, "put away," does not mean so to put away as to dissolve the marriage, and Hermas is quoted; but not only are the dictionaries against the suggestion (Scapula, 1546, Liddell and Scott, "set free"; see also Selden "Uxor Hebraica," chap. xxii.), but our Lord spoke of the putting away by the bill of divorcement, and this, as we have seen, was a divorce *a vinculo*—a separation other than by dissolution was not known in the days of Moses or our Lord. We see, then, that on the side of the civil law which assumes the power to make marriages void for adultery, and in harmony therewith, there are:

1. Our Lord's plain words, and the utter failure of all attempts at any reasonable interpretation of His words of exception, except that which candidly recognises the exception as an exception.

2. The absence of any law of the Churches of England or Ireland in conflict with the civil law.

3. The conduct of the Church in its spiritual courts, recognised by canons, making decrees for divorce *a mensa et thoro*.

4. The contemptible and unfair arguments sometimes urged against the civil law. Let me here quote Lord Grimthorpe.

"It will be enough," he says, "to give one specimen of the

Dean's 'candid examination' of Cosin's later authorities, and it shall be the most celebrated of them, Chrysostom, who, arguing against divorces for 'impiety,' like Origen, said, 'After the wife's fornication the husband is *no longer a husband*; but in the other case, even if she be an idolater, the right of the husband is not lost.' And again, 'Marriage is *dissolved* by adultery, and the husband, after he has put her away, is no longer her husband.' Thereupon he calmly asks, 'Now, what did St. Chrysostom mean?' The reporter saw so clearly what he meant that he tries summarily to dispose of it as 'rhetorical,' as if 'rhetorical fathers' employed their eloquence in writing 'permission' when they meant 'prohibition.' After five more pages of indescribable conjuring, and omitting two more passages containing '*except for fornication*,' the Dean concludes that the saint must have meant the contrary of what he said. Lactantius, Basil, Epiphanius, and Augustine, are all similarly treated, the first by quoting somebody who called him also 'a rhetorician, with little more than an elementary knowledge of Christian doctrine'; the second by quoting a general statement of his as a contradiction to his specific one on this point; the third by pronouncing his dicta only reconcilable by 'an omission which would greatly simplify the argument.' So would the omission of those two awkward sentences in the Gospel. Finally, Augustine, we are told, was seriously misrepresented by Cosin as saying that 'the lawfulness of divorce for adultery admits of no doubt,' which Lord Lyndhurst, from his own reading, when nearly eighty-five, reminded Bishop Wilberforce of in the debate on the Divorce Bill, who had only quoted his other saying, that 'he had great doubts about re-marriages'; but the doubt of a writer of the fifth century is not worth much, and later he doubted about his doubt."

The sin against God's ordinance of marriage is *adultery*, not divorce. Adultery is the act of rebellion against the command "Cleave to one another"; and that sin, not subsequent divorce, is the act which rescinds and destroys the sacred bond described as "unity of flesh." We do not dispute that, according to God's ordinance, marriage cannot be dissolved except by death or by that which in its very nature is the rupture of the marriage contract, namely adultery.

ROBERT R. WARREN.

(To be concluded.)

