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THE
CHURCHMAN

JULY, 1896.

ART. I.—DIVORCE AND REMARRIAGE.

PART II.

A MAN is divorced from his adulterous wife by decree or statute. Can they respectively marry another during their joint lives? We now assume that such divorce is good according to the civil law, the law of our Churches, and Holy Scripture, and proceed upon that hypothesis; otherwise, of course, the new marriage would be bigamous adultery. As to the law of the land, the first marriage has become null and void, and it is certain that the parties, whether innocent or guilty, may respectively marry another. All conjugal rights and duties are of full force between the new spouses, their children are legitimate, and may inherit lands and titles of honour.

Does the law of our Churches or Holy Scripture forbid such marriage? Upon the hypothesis that the divorce is lawful, the parties are unmarried, and none can be guilty of adultery save married persons. When Jewish spouses were divorced pursuant to the law of Moses, not the husband only, but the guilty wife, when put away, was "free for another" husband; and when our Lord, as recorded in St. Matthew, spoke to His disciples, chap. v., and to the Jews, chap. xix., He did not repeal the Mosaic law, He merely limited that law to the excepted case, leaving it there in full force. If one put away his wife who is not guilty of adultery, there is no divorce, and therefore he causeth, or giveth occasion to her to commit sin if she shall marry another, and so as to the man, but, *è contra*, if a man is divorced from his wife for her adultery, and then puts her away, this is lawful; the Mosaic rule applies, and each is free to marry another. The parties had been united by God's ordinance, they have been put asunder in conformity with God's declared will, and they may lawfully marry others.

The word 'only' in the canon which forbids remarriage after a decree *only* for a judicial separation by the spiritual court implies the sanction of the Church to remarriage after a decree for a divorce *a vinculo*, and if this implication is disputed, it is at least certain that there is no law of the Church which forbids such remarriages. See *ante*, page 464, and *Corvinus de Divortiis*.

The Marriage Service and other formularies of our Church are silent on the subject of remarriage after divorce.

Bishop King, in his Charge, states, "Many of the writers appear to me to start from a wrong point of view; wishing to maintain the indissolubility of marriage, they begin by saying that God has Himself determined the point by declaring they are no longer two but one flesh. But this only declares what God's original antecedent will is with regard to marriage, of which there can be no doubt. But the question for us to consider is not what is the ideal view of holy matrimony, but what is the duty of the Church with regard to the practice (? law) of divorce which she finds in existence." All Christians desire that the marriage bond should never be violated, that God's ordinance should ever be observed. But the duty of the Church and the authority of the State in cases in which by adultery the marriage bond has been violated and God's ordinance set aside in its most important element, viz., the obligation of mutual fidelity, opens up another and further consideration.

Is it not more abominable—a greater outrage on Christian ethics and law—that a husband should become one flesh with another by domestic, perhaps incestuous, adultery, or that a wife, by sin with a menial in her husband's house, should raise up to him spurious issue, and yet continue husband and wife, than that they should be put asunder by the law of the land and remarriage allowed?

I repudiate all arguments founded on the Roman doctrine that marriage is a sacrament; so long as Article XIX. stands it can have no force with loyal Churchmen and loyal subjects in opposition to the law of the land. It is said the Church has prohibited the remarriage of divorced persons—what Church? I may respect in theory a Church doctrine *quod semper quod ubique quod ab omnibus*, etc., but I have looked for such in vain. I have never heard, or read, or discovered such a doctrine.

Let me refer to the report of the conference to the Convocation of Canterbury, 1885, printed in Geary on "Marriage," p. 583:

1. The canons of the Church of England are silent on the subject of divorce *a vinculo*.

2. The judgment of early Councils is not unanimous on the subject of remarriage.

3. The judgment of early Catholic Fathers has varied.

4. The judgment of learned members of the Church of England has not always been the same. In the "Reformatio Legum" it was recommended that the remarriage of the innocent party should be permitted in the case of adultery.

5. The Council of Trent pronounces its anathema not directly against those who permit remarriage, but against those who affirm that the Church of Rome errs in declaring it to be unlawful.¹

6. The Greek Church recognises divorce *a vinculo*, and allows, but discourages, the marriage of the innocent party.

7. The majority of expositors of Scripture have held that our Lord's words in St. Matthew are to be understood as permitting divorce *a vinculo* in the one case of adultery, and it appears highly probable that in the case of adultery and divorce consequent thereon the remarriage of the innocent party is not absolutely prohibited.

In the Pan - Anglican Conference of 1888 the following resolution was carried :

(a) "That, inasmuch as our Lord's words expressly forbid divorce, except in the case of fornication or adultery, the Christian Church cannot recognise divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law during the life of the other party.

(b) "That under no circumstances ought the guilty party, in the case of a divorce for fornication or adultery, to be regarded during the life-time of the innocent party as a fit recipient of the blessing of the Church on marriage.

(c) "That, recognising the fact that there always has been a difference of opinion in the Church on the question whether our Lord meant to forbid marriage to the innocent party in a divorce for adultery, the Conference recommends that the clergy should not be instructed to refuse the Sacraments or other privileges of the Church to those who, under civil sanction, are thus married."

And what do we learn from the writer on the *present* aspect of this controversy? (page 437): "There are indications, of which the Bishop of Lincoln's Charge is not the least, that our English Bishops are disposed to allow, under certain conditions, the 'marriage' in church of divorced persons, and the admission to the Holy Communion of those who, after divorce, have been remarried in church or before a registrar." This is

¹ See Note A. at end.

nothing new : the great majority of the Bishops in Parliament voted for all the important clauses of the Divorce Bill, 1857. But we learn from the instructive biography of Cardinal Manning and other sources how little weight the opinions of the successors of the Apostles in the Anglican Church have with the sacerdotal party which has set its affections on the Roman Church. The writer adds in a note: "The danger of recognition throughout the greater part of the Anglican Communion of the dissolubility of marriage is not to be ignored. In the Church of the United States the claim of the 'innocent party' to remarriage is allowed. The Bishops of New South Wales have lately issued instructions to their clergy for the purpose of guarding the sacredness of Christian marriage, in which, while forbidding remarriage with the 'guilty party,' they leave a discretion to the Bishop in the case of the 'innocent party.' *The significance of these facts is that these concessions are made by those who are desirous of protecting the interests of Christian morality.*"

Is there a Christian Church, except the Roman, which, declares marriage indissoluble for adultery or forbids all remarriages?

What are the obligations of the clergy of England and Ireland as to the solemnization of the marriage of divorced persons?

There is none which requires a minister to perform the rite in the case of persons whose marriage has been dissolved for his or her adultery. This is an excepted case. But in cases of divorce for adultery the dissolved marriage, unlike the case of prohibited degrees of kinship, is not a lawful impediment civil or ecclesiastical, and it is not lawful for a minister to refuse the service, subject to the exception I have mentioned. A refusal to marry, after due license, banns, or certificate, there being no alleged impediment other than the dissolved marriage, is an offence against ecclesiastical law (*Agar v. Houldsworth*, 2 Lee, 515; *Tuckness v. Alexander*, 2 D. and Small, 640). "He is bound; he has no option." Whether a minister can be civilly sued at law or indicted criminally for such a refusal is not settled. In England an action and a prosecution failed upon technical grounds; but the exception of the case of a guilty party in the English Divorce Act adds strength to the opinion that either of those proceedings might now be taken with success against a recusant clergyman of the Established Church of England. As regards Ireland, there is no reason to doubt that, subject to the exception, a civil action would lie against the recusant minister by virtue of the implied contract created by the Irish Church Act, 1869, sec. 20.

A Bishop is not obliged to issue a license for marriage. It

is a matter of discretion, and some Bishops have declared against granting licenses to persons who have been divorced—*e.g.*, Bishop Philpotts, of Exeter; Bishop Wordsworth, of Salisbury; Bishop Compton, of Ely; and Bishop Stubbs, of Oxford. But the obligations founded on banns and the registrar's certificate are equivalent to those resting on a license. These are recognised by the Irish Marriage Act, 1844, which enacts that any person in holy orders of the united Church of England and Ireland shall be bound to solemnize marriage on the production of the registrar's certificate, in like manner as he is required by any law or canon now in force after publication of banns.

As to the discipline of the Church, it has been alleged that a clergyman not only ought to deny the marriage service to divorced persons, but also ought to excommunicate, *i.e.*, repel from the Lord's Table, persons lawfully divorced, who during the life of a former spouse legally marry any other.

The question depends on the rubrics which precede the order of the administration of the Lord's Supper, and Canon 109, England (1 additional, Ireland), the effect of which is, I assume, in point of law, to justify a minister in repelling persons living in notorious sin, "open and notorious evil livers." Are persons who remarry after divorce persons, therefore, living in notorious sin, *i.e.*, in adultery? This question must be decided, not by the minister or Church authorities, but by the civil tribunals. A civil action lies against a minister who repels one not living in such sin, an action founded on the statute 1 Edw. VI., c. 1, which is law in England and Ireland. The concluding words of the eighth section are: "The saide minister shall not *without lawful cause deny* the same to any person that wood devoutlie and humbly desire it, any law, statute, or custome contrarie thereto in any wise notwithstanding," and, accordingly, in *Jenkins v. Cook* (1 Probate D. 80), it was decided that a minister should be admonished and condemned in costs for repelling a parishioner who was not an open and notorious evil liver. But, according to the law of the land, which is administered in the civil courts, and is supreme, the remarried persons are lawfully married, are not living in adultery, and no lawyer would presume to argue, no judge would venture to decide, that they were therefore notorious evil livers. The minister has no right of appeal to the Bishop of the diocese, or to throw on another the responsibility of rejection. But the repelling from the holy table of persons who have been remarried after lawful divorce, as if they were bigamists and adulterers, seems plainly illegal and intolerably presumptuous.

I do not discuss the subject of expediency, upon which so

much has been written. Clergymen may at their peril, and on their responsibility for the consequence to themselves and their Church, set up against the State their opinions as to the right and the wrong of divorce and remarriage, but ecclesiastics cannot justify resistance to the civil law on any notions of expediency; martyrdom from expediency is suicide; the duty is submission and obedience or departure. Let them pray, if they will, for change from what they think inexpedient to the expedient—strive for it, agitate, if they will, but they violate their duty when they presume to set up their judgment as to expediency against the law which with authority declares that divorce for adultery and the power of remarriage are expedient and right.

In my argument upon the construction and effect of our Lord's words recorded by St. Matthew, I have only spoken of the adultery of the wife. It remains to add that these words imply the lawfulness of divorce for the adultery of the husband. Our Lord was dealing with the single question proposed for His solution, viz., the putting away of a wife, and question and answer are alike silent as to the putting away of the husband, but the reasons assigned by our Lord apply equally to the cases of husband and wife. They are mutually one flesh, and mutually bound to cleave one to the other, and accordingly the spiritual courts, even of Rome, have held that adultery is a legitimate ground for divorce *a toro*, whether it is sought by a husband or a wife: Corvinus writes (title xvii.): *Propter adulterium alterutrius conjugum*, and so "Sanchez Aphorismus," 226.

Here, again, we find the civil law not enabling, but limiting the right of divorce. The State will not dissolve a marriage by reason only of the adultery of a husband. It grants it when the adultery is accompanied by incest, cruelty, or desertion. The sin is not less in the one case than the other, but the law makes a distinction, partly because reconciliation is more probable when the husband is the offender, and partly because the consequences are less grievous; a man cannot raise up spurious issue to his wife.

The absence of allusion in the Old Testament to divorce for the sin of the husband is fully accounted for when we remember the belief in those ages in the inferiority of woman.

ROBERT R. WARREN.

NOTE A.

Does the Roman Church declare that marriage is absolutely and without exception indissoluble, and valid remarriage impossible? We have seen how the Council of Trent curses, not those who permit the remarriage of the innocent parties, but those who affirm that the Church

of Rome errs in declaring it to be unlawful : a distinction taken to meet the case of Greeks under Venetian rule. Corvinus, in his "Aphorisms on the *Jus Canonicum*," title xvii., writes : "Divorce is the lawful separation of husband and wife before a competent judge. It is 'vel toro vel vinculo, cum matrimonium quoad substantiam, penitus et in perpetuum rescinditur.'" Corvinus then discusses divorce *a toro*, and proceeds : "Quoad vinculum fit divortium. Propter infidelitatem cum scilicet alter infidelium conjugum ad fidem Catholicum convertitur et infidelis sine fidei nostræ injuria vel scandalo continuo cum eo cohabitare non vult. Matrimonio per divortium dissoluto conjuges liberi ad secunda vota transire, vel religionem alterâ parte invitâ possunt intrare"; and Bellarmine, quoted by Cosin, admits that the marriage of infidels is dissoluble. Now the Roman Church recognises the validity of marriage between persons not members of that Church—infidels. Another doctrine of the Church of Rome, says Cosin (cited by Macqueen, p. 561) is that dissolution is lawful when the parties desire to transfer themselves into a monastery or priory. Moreover, the Roman Church holds that its Pope, by decree, could dissolve the most regular and formal marriage that was ever entered into, and that without consulting the law of the country where such marriage had been solemnized.

Errata.—In the CHURCHMAN for June, on page 460, line 3, after the word "adultery" insert "or a husband has been guilty of." On page 462, line 7, for "obolum" read "ob solum."

ART. II.—THE CHARISMA.

Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the presbytery.—1 TIM. iv. 14.¹

THE history of the Church of God in the past and her existence to-day attest that she possesses a Divine presence and is instinct with the life of her risen Lord. Nations have risen and flourished, have decayed, fallen and disappeared, but the Church has remained. "Every power has touched it, every science has scrutinized it, every blasphemy has cursed it,"² but the gates of hell have never prevailed against the Church because her Lord who was dead is alive for evermore. She saw the last days of the Roman Empire ; she stood at its grave, and bestowed upon it a parting blessing. She stood at the cradle of the English nation, fostered its infancy and youth, and has preceded every national advance as the pillar of fire before the host of Israel. Her forms have changed, her appearance is altered, but her nature has ever been the same. Her creed is what it was in the days of the Apostles. In the age of Voltaire and Frederick II. her approaching decease was announced, but she will exist when the name of Voltaire is forgotten. In Nebuchadnezzar's dream the feet of the image of earth's monarchies were of clay, even when its head seemed resplendent with gold ; this spiritual kingdom is as the stone

¹ Sermon preached at a recent Ordination in the Diocese of Wakefield.

² Lacordaire.