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# MATRIMONY AND NULLITY

By

DOM PETER FLOOD O.S.B.

LONDON: CATHOLIC TRUTH SOCIETY



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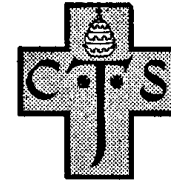
# MATRIMONY AND NULLITY

BY

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BARRISTER-AT-LAW



LONDON

CATHOLIC TRUTH SOCIETY

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#### AUTHOR'S NOTE

The purpose of this pamphlet is not controversial nor is it intended to be a complete and exhaustive account of the law governing matrimony. It is intended on the contrary to be a help to Catholics to understand the ordinary law governing the validity of matrimony and it indicates briefly how marriages, which for one reason or another have been contracted invalidly, may be remedied.

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## MATRIMONY AND NULLITY

If this renovation of matrimony is to yield its desired fruits among the nations of the whole world and in all ages, it is necessary first that the minds of men should be enlightened on the true doctrine of Christ concerning marriage; and that married Christians, with the inner grace of God to strengthen their weakness, should conform their views and conduct to the most pure law of Christ, and so assure for themselves and their families true happiness and peace.

(Pope Pius XI, Encyclical *Casti Connubii*, 1930)

### HOLY MATRIMONY

What is Marriage? Marriage is a state in which two people live together for the primary purpose of procreating children, for assisting one another in mutual help and for bringing up those children, that is to say, for securing their physical, mental and moral development until such time as they are able to carry on for themselves. In the beginning the command was given to men to increase and multiply and fill the earth. It is evident, therefore, that this natural contract of matrimony was instituted by God and it is therefore a holy thing; the state of matrimony is a good state; it follows naturally upon a mutual agreement which we call the contract of matrimony. We read in Genesis, Chap. 2. v. 24: "Wherefore a man shall leave father and mother and shall cleave to his wife, and they shall be two in one flesh." Throughout the Old Testament, therefore, marriage was a natural but a holy contract. Our Lord, on the occasion of His very first miracle by His presence at the marriage feast at Cana, sanctified marriage in a particular way and raised it to the level of a sacrament. Later in the course of His public life He quoted the paragraph from Genesis which we have cited above and added: "Therefore now they are not two but one flesh. What therefore God has joined together, let not man put asunder."

(Matt. 19 : 6). He also pointed out that the permission accorded by Moses, a limited form of divorce, was granted only "by reason of the hardness of your hearts" and that that permission was now at an end.

St Paul (1 Cor. 7 : 10) said: "Not I but the Lord commandeth that the wife depart not from her husband . . . and let not the husband put away his wife." The Church has always taught and the Council of Trent has asserted and defined that marriage is a true sacrament and we know that all the sacraments were instituted by Christ Himself. In fact, this institution by Christ is one of the necessary conditions for constituting a sacrament. Now what do we mean when we say that a marriage is a sacramental marriage? The Code of Canon Law says that Our Lord raised to the dignity of a sacrament the very contract of matrimony between baptised persons. Hence between baptised persons there can be no valid contract of marriage without there being a sacrament. All those who are validly baptised, that is to say, really baptised, when they contract marriage validly between themselves receive the sacrament of matrimony whether they know it or not, whether they will it or not. In a mixed marriage between a Catholic or a baptised non-Catholic and one who is not baptised, there is no sacrament but only the natural bond of matrimony. But if the unbaptised partner should at a later date become baptised then that natural bond, that natural matrimony, becomes a sacramental marriage. It is important to remember this in the case of what are called 'mixed' marriages when the non-Catholic partner is converted at a later date to the Faith, but of course if both parties were validly baptised and married, the marriage is a sacrament from the beginning.

Now what are the advantages of sacramental marriage? Sacramental marriage means that those who enter into it enter into a holy and a sacred state of marriage in which they receive an increase of sanctifying grace; they are raised, as it were, to a higher plane of supernatural activity, and at the same time they have a right to all the necessary graces that their state requires from time to time. And if they ask for them, they will receive them. We all know that the state of marriage requires special graces, special assistance from God,

in order that the partners to the marriage themselves may be able to overcome the difficulties and sometimes the sorrows that come to them in the ordinary course of their lives as married people; that they may be able to be of greater help and mutual assistance to one another; that they may be able to order their passions rightly within the norms of Christian married life, and that they may be able also to fulfill their duty fully to the children whom God entrusts to them, so that these children will grow up in the love and knowledge of God and in their turn become good Christian parents, with the result that, for generations to come, there will be people upon the earth descended from that first marriage who will be good Christians, and members of the Mystical Body of Christ. We see, then, that the primary end or purpose of matrimony is the procreation or begetting of the new generation, but we see also that not merely a new generation is provided, but a family is founded that may go on for many centuries, consisting of countless numbers of human beings who belong to God. In the married state the partners to the marriage, by the power given to them by God, provide the body and God himself infuses the soul into the new human being, His new child, whom He has from all eternity chosen to be given into the care, the loving care, of those particular parents. Marriage is therefore a partnership with God in the multiplication of the human race upon the earth, and the fulfilment of the duties of the married state, both the marriage act itself and all those duties that they perform in regard to one another and that they exercise in the care and upbringing of their children, are good and holy things in the sight of God and bring to each of them an increase of merit which will be a part of their glory for all eternity.

We see, therefore, how holy is that state, when those who enter into it have a proper sense of their responsibility and who enter into it under the conditions laid down by God and who fulfil the duties of that state in life so far as they are able.

It can truly be said that those who fulfil their duties in the married state, both to themselves and to their children, arrive very easily at a high state of sanctity.

### UNITY

It requires very little understanding to realise that one of the necessary properties of matrimony should be what is called 'unity,' that is to say, that each partner has given rights to the other partner over himself or herself *exclusively*, and that each therefore is to be faithful to the other until death separates them. This unity, this monogamy, is certainly necessary to give a sense of security to the partners, and also to enable them to feel secure in regard to their children so that whatever happens to either one of them the other will continue to look after those children. In it they feel certain that neither of them will neglect or desert the other or the children of their union. It is therefore evident that unity is an essential property of marriage.

### INDISSOLUBILITY

We have seen both from the statement of Our Lord and from the divine law announced by St Paul that marriage is indissoluble, that is to say, that neither the parties themselves nor any human authority can separate them, and break or dissolve the bond that unites them in the state of marriage. This indissolubility is necessary for the marriage state because without it there can be no security for one or other partner as to the future. Without it there could be no understanding that differences and difficulties must be put aside and that it is more important for them to grow in loving affection for one another and for their children than to emphasise the natural differences that arise from time to time in the course of married life. Knowing that the bond is permanent each will strive his or her best to make it work and, of course, in sacramental marriage, they have, in addition, a right, a claim, to the special actual graces of the sacrament. It has been truly said that the marriage state has been entered into by, and at the time of, the contract of matrimony, but that the state of matrimony exists for the whole of the life of the two partners; and throughout all that state the sacramental state persists in the sense that they have the added graces of their state and that they have a claim to whatever actual graces may be necessary to enable them to fulfil their duties in it.

### THE CONTRACT

Let us now look at the contract or agreement between the parties which initiates the state of marriage. A young man and a young woman express their intention of getting married and upon a stated occasion formally enter into a mutual contract whereby they interchange rights for the performance of acts which in themselves, if performed normally, lead to the procreation of children. Here we might say that there is a difference between sterility and impotence. Sterility means that although the parties perform the marriage act normally and therefore fulfill their marriage contract, they are unable for other reasons, not connected directly with the marriage act itself, to have children. None the less, in these cases the act is a good thing in itself and is directed to a good purpose—the procreation of children. Impotence is the incapacity on the part of an individual to perform the marriage act.

What is required to make this a *valid* contract? Obviously the very first thing is that the parties should be *free* to make it, that they should not be impeded by law in any way from entering into such a contract. The Canon Law (i.e. the law of the Church) says that everyone who is not impeded by law can contract matrimony. It is obvious, therefore, that any person who is prohibited by law cannot validly contract, that is to say, that if they enter into the contract, it is in fact no contract, it has no effects. Even in civil law there are requirements or pre-requisites to the validity of different classes of contract. Perhaps the very first thing which is necessary in any contract, but particularly in this one, is that the parties making it should know what they are doing. They must therefore be sane and they must have a knowledge of the matter of the contract, that is to say, they must understand what rights they are interchanging. It is not necessary that they understand in detail the nature of the marital act but they must at least know that children may be begotten of them by a physical intercourse. Secondly, they must have attained a certain age. It is the practice of all legislators in the world to lay down a minimum age for matrimony which is usually related to the age at which human beings are capable

of the duties that the state of marriage implies. The Church lays down that the age for matrimony shall be 16 completed years in the case of the male and 14 in the case of the female. At the same time, cognizance is taken of the fact that in different countries the civil law may require a higher age group in certain cases.

### INTENTION

Now the intention of the parties ought to be expressed openly because it is a very difficult thing to know what the intention of a person's mind may be upon a specific occasion. There is therefore a strong presumption in law that the intention of the mind is that which is expressed in the external act of speech. These requirements are necessary because otherwise it would be open to anybody to claim that they had a different intention from that which they expressed in words. Whilst it is true, of course, that the intention in the mind and the intention expressed ought to be the same, if it could be proved that the parties did not have the intention of entering into matrimony at the time, there would, of course, be no true contract and an appropriate Court might declare as much. For example, if at a party, two people pronounce externally the words of matrimony to one another as a joke, the intention of their minds would obviously not be that of entering into the state of matrimony and no bond of matrimony could result from such a statement. Now not merely is it necessary that the parties should have the requisite knowledge and adequate age and the proper intention expressed externally, but they should be expressed in a certain form and under such conditions that a record of it may be taken and filed for future reference. Entering into matrimony is a very serious matter and there should necessarily be a degree of formality about it, not merely because of the thing in itself, but also from the very practical point of view that there will always be some few who will wish at a later date to deny that in fact they entered into that particular marriage. It is therefore a security to both parties to have a certain formality about the entrance into the state of marriage, and therefore all legislators and especially the Church have provided for it.

These desirable formalities we class under the heading of the Form of Matrimony. We shall refer to this more fully later on.

### IMPEDIMENTS

For the moment let us consider the question of those who are prohibited by law from entering into the state of matrimony. Such parties are stated to be 'impeded' or, to possess an impediment to their matrimony. Some of these impediments are more serious than others, in the sense that if a person impeded by a particularly grave impediment enters or purports to enter into the contract, his or her contract will be invalid, that is, it will have no value or meaning. On the other hand, others are less important, and generally speaking only render the contract illegal, unlawful, that is to say, that those entering into it, though they will have done wrong in entering into it in that state, i.e. whilst so impeded, yet the contract will have been validly made, and they will be truly married. Those impediments which are most important are called 'diriment impediments.' We have already seen some of them, notably the requirement that the parties must be of a certain age. Secondly, there is the impediment of what is called 'impotence.' Impotence is the incapacity to perform the marital act on the part of either party. If this incapacity is permanent in a particular individual and present at the time of entering into the contract, the contract is not, and cannot be, valid because no one could contract to perform something which he is incapable of performing. Similarly, one of the parties might be validly married already and his or her partner still living. In this case any new contract of matrimony would be invalid.

Equally, certain relationships whether of blood or of affinity preclude one from entering into a valid marriage. This is most true, and of divine ordinance, in the case of what is called the direct line of consanguinity, ascending and descending. No one can marry one of his own descendants or one of his own grandparents. These as well as the other impediments, which we need not list here, are necessary to safeguard the structure of the divine institution of matrimony which is so rightly

called 'holy matrimony.' There are in fact about a dozen diriment impediments to matrimony. Some of them are not so common as others; for example, a religious who has taken solemn vows, or a priest, has a diriment impediment to matrimony, and if such a one were to attempt matrimony, the contract that he would attempt to enter into would be invalid and there would be no true marriage.

### DISPENSATIONS

Certain impediments can be dispensed. For example, the Church disapproves very strongly of Catholics marrying non-Catholics whether these latter be baptised or whether they are not baptised. And she does everything she can to hinder such marriages because they may lead to loss of faith and because her experience has shown her conclusively that the large majority of them are unhappy and this must be so because in the first place those marriages in which the non-Catholic partner is unbaptised are not sacramental and in the second place a difference of opinion, a difference of belief in a thing so important as the truth of a particular religion, is a barrier to the complete understanding that should exist between two married persons. There is also the further difficulty that as the children grow up questions as to their education will arise and the children themselves will often be confused or puzzled, sometimes even distressed, by the fact that one parent has no religion or has a religion which the other regards as false. There are, however, cases in which the Church is willing to grant a dispensation from these impediments which are called respectively the impediment of mixed religion, and the impediment of disparity of cult when the other party has not been baptised, as for example, a Jew or a Jewess or one who perhaps has no religion at all. But when the Church grants these dispensations she requires from the non-Catholic party first that they should attend a certain number of instructions on the Catholic Religion in order that they may have a general idea of the teaching of the Church in regard to the state of matrimony, and secondly, they must give satisfactory assurances as to their future conduct in that

state and also in regard to the education of any children, should their union be blessed with them.

### THE FORM OF MATRIMONY

As we said, a certain formality of procedure is necessary and required by all legal systems. The Church requires what is called the Catholic Form of Matrimony and by that we mean that the parties must enter into the sacrament of matrimony in the presence of the Bishop of the area or the parish priest or a priest delegated by one of them, and two witnesses. These requirements are obviously of a disciplinary nature only and therefore could be varied from time to time. The Church lays down that all those who were baptised in the Catholic Church or who were converted to it from heresy or schism, even if they should have lapsed, are bound to this form of matrimony as often as they contract between themselves; and also those same persons, if they should enter into matrimony with non-Catholics whether baptised or not baptised, and even if they should have a dispensation from the impediment created by the latter belonging to another religion or being unbaptised, must contract according to the Catholic Form of Matrimony.

### MARRIAGE OF NON-CATHOLICS

Non-Catholics whether baptised or not baptised, when they contract marriage between themselves, are not bound to the Catholic Form of Matrimony and therefore their marriages may be valid. But if someone who was baptised a Catholic but has been brought up as a non-Catholic, or without any religion, wishes to enter into the state of matrimony, he or she is bound to the Catholic Form of Matrimony.

### CONSENT

Nobody will disagree with the statement that the consent of the parties at the time they enter into the contract of matrimony should be given freely. The Church recognises that, in a certain small number of cases, that consent may be forced

but she will not accept that the consent has been defective, unless it be proved, beyond any doubt, that the party who expressed consent at the time was forced by *grave external* violence or persuasion to such an extent that he or she saw no way out of their predicament except by entering into the contract.

### CONDITIONAL CONSENT

Sometimes one of the parties will make his or her consent conditional. If the condition concerns the future and if it is necessary, for example, that 'I will marry you if the sun should rise tomorrow,' or if it is impossible or immoral, so long as it is not contrary to the substance of matrimony, the Church regards such a condition as not having been made seriously, and therefore it is non-existent so far as the contract is concerned. If, on the other hand, the condition concerns the future and is *contrary to the substance* of marriage, then there is no free contract of marriage, and in fact, therefore, the supposed contract is invalid. If, for example, someone were to enter into marriage conditioning his consent to a period of years only, for example, 'I will marry you for ten years' or 'I will marry you only on the definite condition that if it does not work we will have a divorce'—such conditions affect the very substance of marriage. They mean that the individual in uttering his consent is not consenting to a permanent, indissoluble union with his partner and therefore is not in fact entering into a valid or real marriage contract. A vague notion that divorce is a possible escape is not invalidating: it must be a positive act of the will at the time the consent is given. Sometimes, however, a condition may be made as to the future that will not affect the validity of the contract but merely suspend it. For example, if someone were to enter into the contract of matrimony virtually or actually stating 'I will marry you provided you become a Catholic within 6 months,' the marriage is suspended until such time as that condition precedent to the contract is fulfilled. If two parties entered into marriage with the definite condition that they would never have normal intercourse but would always practise

contraceptive intercourse, such a condition might completely invalidate the contract. This is because although they are not bound to have intercourse in matrimony, unless one or other desires to exercise the right, nevertheless, it is contrary to the substance, to the very idea, the very purpose of matrimony, that they should make a condition whereby they would positively exclude the right to normal intercourse and would *only* perform acts in themselves gravely sinful, which would thwart the purpose of the marriage act.

### ERROR

If a person enters into the contract of matrimony in a state of error regarding the other partner to the contract, there will be no true marriage contract. For example, if X who is a blind man believes that he is marrying Mary and in fact Mary has been substituted by her sister Jane, then, even if he would have been willing to marry Jane, there is no contract of matrimony, because at the time of entering into it he consented to marry Mary. His offer to interchange marital rights was directed to Mary who, in fact, has not replied. And the reply of Jane has nothing whatever to do with the offer. An error, however, might be merely an error of quality. He might, for example, believe that the other party possessed certain qualities, physical or otherwise, which in fact, that party did not possess. Such an error does not alter the fact that in the actual interchange of rights, that is, in the actual contract, he intends to marry this other person and his error about that person is not an error as to the identity of that person, but merely as to a particular quality. Even, therefore, if he would not have married the person had he known that they did not possess that quality, the contract is valid.

If, on the other hand, the error with regard to the quality of the other person really amounts to an error as to that person's identity, in such a case there would be no true marriage contract. But if the error concerns something which was made an absolute condition of the consent, for example, if he says 'I will marry you provided you have £10,000 dowry and not otherwise', in such a case, if the other party should not



possess that dowry, the contract is invalid because the condition was made absolutely.

### DISSOLUTION OF THE BOND OF MATRIMONY

Dissolution of the bond of matrimony is not possible in the case of any sacramental marriage which has been consummated, that is to say, in which the parties have already performed the marital act. No human power can dissolve the bond of such a marriage. In certain rare circumstances, however, the bond of a non-consummated marriage between baptised persons or when one party is baptised and the other not baptised, may be dissolved by the Apostolic See at the request of either or both parties, even if the other party be unwilling. It is also dissolved by solemn religious profession of one of the parties, but as the bond of matrimony is an impediment to entering into religion, in these days this latter dissolution is very rare.

### THE PAULINE PRIVILEGE

St Paul, teaching by divine authority, announced certain circumstances in which the bond of a natural non-sacramental marriage might be dissolved. This dissolution is called 'Dissolution by the Pauline Privilege'. Two non-Catholics, that is two persons who have not been baptised validly, are married and one of them becomes a Christian and the other refuses to co-habit or live peacefully with him or her, or to live with the Christian party without obstructing his or her practice of the Christian Faith, then the Christian party may be granted permission to proceed to a new marriage with another Christian and at the time of the contract of the new marriage, the bond, the natural bond, of the old marriage, is dissolved.

### ANNULMENTS

It is sometimes stated that a particular marriage has been annulled. The statement is not strictly accurate. It should be phrased, 'that a particular marriage has been declared null.' It will happen in a small percentage of cases that despite all

the legislation designed to prevent those who are not capable of contracting a valid marriage from doing so, and to secure that at the actual time of the contract all the formalities essential for its validity will be complied with, will have broken down. And therefore whether the parties believe themselves validly married or not, they are in fact not married. It is very important to realise quite clearly that if two persons enter into a contract which is invalid, there is in fact no contract, and since there is no contract of matrimony in such a case, even though subsequently to that attempted contract they should live as a married couple for many years and perhaps have several children, they have not been married initially and therefore they have never lived in the state of matrimony. In some cases this is not their fault and they may not become aware of the original defect in their marriage; in others it is by their own defect.

Now, if the marriage did not exist, it is not open to the parties themselves to declare it officially, but the Church has her special rules to determine the facts in the first instance and then, if the invalidity be proved, to issue a decree of nullity; that is to say, that the Church first investigates the facts, and on it being proved and established to her satisfaction that there was in fact no true contract of matrimony, she then declares so officially. This is called a declaration of nullity. In certain circumstances this can be granted by the Bishop of the Diocese, where the case is comparatively simple and admits of certain proof from documents which cannot be challenged. In other cases a full Court procedure will be required. The unsupported statements of one or both parties are not ordinarily accepted: the facts must be proved by an examination of witnesses. This means that frequently persons, who are quite sure of their statements, may yet be unable to *prove* them. If the case is one which goes to the diocesan court it will be tried before three ecclesiastical judges, and there is an official of the court known as the Defender of the Bond whose duty it is to try and uphold the marriage until the facts prove that it was in fact not validly contracted. If the first court finds that the marriage was in fact invalid, it is his duty to appeal to a higher court, the Court of Second Instance or the

Appeal Court, where the case is again tried and where there is another Defender of the Bond, who, in turn, if he should have any doubt about the finding of the court, may appeal further up. Some cases go directly to the Sacred Roman Rota which is the High Court of the Church. Others go there on appeal from a diocesan or a metropolitan court. The number of such cases is not very great, for example, the cases reaching the Rota from all over the world in 1955 totalled 237 and a declaration of nullity was given in 97. In 1956 there were 257 cases and a declaration of nullity issued in respect of 115 of them. It will be seen therefore that substantially less than half such cases succeed. The facts in such cases have to be proved up to the hilt, and, of course, if the parties in fact have committed perjury or the principal witnesses have done so, the Church has no means of determining this, but the decree in such a case is of no value to the conscience of the parties themselves, if they are aware of the perjury.

We are often asked whether nullity petitions and trials in the Ecclesiastical Courts cost as much or more than such cases in the Civil Courts, and whether there is provision for poor applicants who might be unable to pay the usual fees. The answer is quite simply that such cases in the Courts of the Church cost only a fraction of their costs in the Civil Courts and that there is ample provision made for those whose means do not allow them to pay the usual fees.

### CONVALIDATION

Sometimes when a contract of matrimony was invalid by reason of a particular diriment impediment, that impediment has ceased to exist or perhaps has been dispensed. In such a case what is called a convalidation of the marriage can be granted on application to the proper ecclesiastical authorities. A convalidation renders the marriage, which up till that time was invalid, and therefore not a real marriage at all, a true marriage. The parties should renew their consent. There are certain circumstances in which this is not necessary but the general rule is as stated. A different form of convalidation is called *Sanatio in Radice*, that is to say, that the marriage is

put right from the very beginning. In other words, by a fiction of law the source of the invalidity is removed, retrospectively. The defect in the marriage is deemed to have been healed from the time of the original contract as regards its effects, though in fact, the real marriage begins at the time of the grant of the sanation or declaration. This means, of course, that if there are children of the marriage already in existence they will be deemed to have been born legitimately, and this perhaps is one of the most valuable results of this retrospective healing. Marriages which are invalid from defective consent, defect of form and certain diriment impediments can all be healed in this way. A *Sanatio in Radice* can be granted only by the Apostolic See. It requires a grave reason for validity. The petition for such a declaration may be made by either party to the marriage or even by a third party without their knowledge.

### PROCEDURE

Persons who have reason to believe that there has been some defect in their original marriage, either that perhaps it was contracted outside the Church, that is with defect of form, or that there was some diriment impediment which was unknown or concealed at the time, or for some other reason, should make their case known to their parish priest who will generally be able to advise them as to whether their case is in fact verifiable in law or whether they may perhaps be labouring under a misapprehension as to the true position of their state.

It is the practice and the wish of the Church that in every case where one or other of the parties to an invalid marriage seeks its annulment, that every effort should first be made to secure from them a reconciliation, that is to persuade them, if possible, that it would be better for them to convalidate their marriage, if that is possible. There are, of course, certain circumstances in which marriages have to be denounced as invalid and where there is no possibility of convalidating them, whether because of a diriment impediment of the divine law or for some other reason such as the protection of the faith of one of the partners.

### LEGAL SEPARATION

Married persons are bound to live together unless a just cause excuses them from doing so. In certain circumstances, however, notably in adultery which has not been condoned, the Church may grant what is called a judicial separation and allow the parties to live separately. This permission does not dissolve their marriage and they remain bound by the marriage as long as both live and may not contract another marriage.

### BETROTHALS

The Church only recognises promises of matrimony or betrothals when they are made in writing, signed by the parties and witnessed either by the parish priest or the bishop, or at least by two witnesses. If either of the parties is unable to write she requires the additional testification of a third witness. This is the only promise she recognises. She does not recognise any action for fulfilment arising out of this promise, but where damage can be shown to have occurred to one of the parties, she recognises that the person, who is put at the disadvantage, has a right to be indemnified for the damage so caused.

### PUBLICITY

Catholics ought to beware of publicity regarding marriage cases. In the first place they must not easily take scandal if they read in the newspapers that certain persons known to be Catholics are seeking a civil divorce. It is quite certain that to seek a civil divorce in the ordinary way is wrong and gravely sinful, but in some circumstances, as where a marriage is evidently invalid in the sight of God, the Church may advise the parties to free themselves from the disabilities that they have incurred in civil law by the original contract, and therefore will permit them to proceed to a civil divorce for that purpose.

It is the practice of the sensational press today to seize on matrimonial cases in which the parties are persons prominent

in the social, theatrical or political world and to give them as much publicity as possible. Annulments, that is to say, declarations of nullity, granted by the Sacred Roman Rota or other tribunals of the Church are no exception to this rule. Unfortunately the persons reporting them are very often not skilled in Canon Law and have only an inadequate and partial knowledge of the procedure that they report. The reports therefore are very often misleading; not that it is the intention of the reporters to mislead, but simply by reason of their lack of experience in this particular branch of law.

It may be illustrative if we quote two cases, that received much publicity some years ago. The first case is the Marconi-O'Brien case. William Marconi, who had been baptised in the Catholic Church but had been brought up as an Anglican, married Beatrice O'Brien, an Episcopalian, before a minister of that church in London. They obtained a civil divorce some 19 years later. The case was brought before the Diocesan Court of Westminster and the marriage was declared null because of the positive exclusion of a perpetual union. It was proved conclusively before the court that, at the time of entering into the marriage contract, Marconi inserted an absolute condition to his consent that he would not resist any attempt on the part of his partner to seek a divorce, if the marriage should not work out well. The Defender of the Bond, of course, appealed to the Roman Rota and there the findings of the court of the first instance in Westminster were confirmed and it was stated or declared that there never had been a marriage. In other words, a decree of nullity was issued stating that the marriage contract had been void from the beginning.\*

An even more famous case was the Vanderbilt-Marlborough case. Consuela Vanderbilt, a girl of 17, who was actually in love with a young American, found herself in the position that her mother had selected the Duke of Marlborough to marry her. Her mother brought great pressure upon her, threatening her and even having her locked and guarded in her room. The

\*Before 1st January 1949 baptised Catholics who had been brought up as non-Catholics were not bound to the Catholic form of marriage when they contracted with a non-Catholic party.

engagement was announced without her knowledge and she was forced into the marriage, believing at the time that if she did not marry him she would be undutiful to her mother, that she would cause her mother grave ill-health and perhaps kill her. Other evidence was given that she had not consented except because she saw no other way out of her difficulties, except by marrying the Duke, and she even told him within 20 days of the marriage that she had married him only at the instance of her mother, and that she had not found herself free to do anything else. The marriage was dissolved in the civil courts and finally both parties married again. Some years later she learned that her marriage could be declared null and that her consent at the time had not been that free consent which is necessary for so important a contract as that of matrimony. There was no evidence that she had ever consented at a later date and therefore it was declared that her marriage was null. The fact that she later had children does not affect the original contract. As we have already stated, it is the consent at the time of the contract that determines whether that contract should be valid or not and not what happens afterwards. Of course, she could have provided at a later date the free and necessary consent to the union. In fact, she had not done so. As these facts were established to the satisfaction of the courts concerned, they had no alternative but to declare that there never had been a true contract of matrimony in this case.

Let us conclude with a quotation from the encyclical of Pius XI *Casti Connubii*:

The dignity of chaste wedlock will be best appreciated if we consider that when Christ Our Lord, the Son of the Eternal Father, assumed the nature of fallen man He was not content with giving a special place to marriage in the loving plan by which He completely restored our race; He did more: having re-established it in the perfection in which it had been originally instituted by God, He raised it to the rank of a true and great Sacrament of the New Law, and accordingly entrusted the entire regulation and care of it to His Bride, the Church.

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