

## Canadian Protestant Reaction to the *Ne Temere* Decree

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Eleven decades lie between Pius IX and “Papal Aggression” and John XXIII’s revolutionizing Vatican II Council. Throughout the first halfcentury of that period the relations of Protestant and Roman Catholic in Canada were repeatedly inflamed by such events as the Guibord Affair, Riel’s rebellions, the Jesuit Estates controversy, and the Manitoba schools question. Most of these episodes involved the crosscurrent of language as well as religion. “Looking back over the record of controversy,” John W. Grant has written, “one might wonder how Canada held together through the first decades of confederation.” Appeals to religious prejudice, he continues, “long a stock in trade of Canadian politics tapered off rapidly towards the end of the nineteenth century... Many of the controversies ... had already become obsolete, although as yet few Canadian were aware of their demise.”<sup>1</sup> Two issues, however, which did not die soon or easily were the relation of religion to education, and the marriage of Roman Catholics outside the Roman Catholic church. This latter issue became a source of confrontation between the two major Christian groups on the eve of World War I, but has attracted no attention from Canadian historians, probably because it virtually coincided in time with the heated debate over bilingual schools in Ontario that culminated in the contentious Regulation 17.

On Easter Sunday, 19 April, 1908, the decree *Ne Temere*, promulgated by Pius X in August, 1907, became effective universally except in Germany and Hungary. Intended to remedy the confusions of the *Tametsi* decree of the Council of Trent, particularly relating to clandestine marriages, *Ne Temere* declared in its own words, “Only those marriages are valid which are contracted before the parish priest or the Ordinary of the place or a priest delegated by either of these and at least two witnesses.”

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<sup>1</sup> J.W. GRANT, *The Church in the Canadian Era*, Toronto, 1972, pp. 87, 88.

TAMETSI DECREE. A ruling (1563) of the Council of Trent on matrimonial law. It stipulated that any marriage that took place outside the presence of a parish priest or his representative and two witnesses would be null. Places where priests were not available were excepted, and it was not binding where the laws of Trent were not promulgated. It was extended almost universally in a modified form by the *Ne Temere* decree (1908) of Pope Pius X.

“NE TEMERE” DECREE. A declaration of matrimonial law issued by Pope Pius X; it went into effect Easter 1908. It was the *Tametsi* decree of the Council of Trent in a modified form. It took its name from the opening words and decreed that: 1. marriages involving a Catholic are invalid unless performed by a parish priest in his parish or one delegated by him, or by a bishop or appointed delegate in his own diocese; 2. no pastor can validly perform a marriage outside the limits of his own parish without delegation of the proper pastor of the parish in which he is to perform the wedding, or the bishop in whose diocese he is to perform the wedding. A bishop cannot validly perform a wedding outside his own diocese without delegation from the pastor of the parish in which he is to perform the wedding or the delegation of the bishop of that place; 3. it is also decreed that the marriage ought to be celebrated in the parish of the bride; 4. under certain circumstances a marriage may be licit and valid without a priest; 5. all marriages must be registered in the place or places where the contracting parties were baptized. There must be at least two other witnesses for validity beside the pastor or bishop. This decree did not affect persons who had never been Catholic when they married among themselves. It applied to every marriage of a Catholic, even when marrying someone who was not of his or her faith.

The excitement later aroused among Canadian Protestants by the practical application of this decree must have taken authorities of the Roman Catholic Church by surprise since the decree was in force for three years before it attracted public attention in Canada. Through 1908, 1909 and 1910 the Canadian Protestant press contained no specific reference to *Ne Temere* – the sporadic sniping between Protestant and Roman Catholic in those years simply reflected the established two religious solitudes of the country. On 8 February, 1911, however, the Methodist *Christian Guardian*, under the heading “Mixed Marriages,” recounted the woes of a Presbyterian woman in Belfast whose Roman Catholic husband deserted her and arranged the kidnapping of their two children when she rejected the demand of a priest that they be remarried (or married in the priest’s view) in the Roman Catholic Church. Condemning “the inhumaness of the whole proceeding,” the *Guardian* said, “The plea that the church forbids such marriages by a Protestant minister does not enter into the case at all. The church has a right to excommunicate the man, but it has no right to counsel him to break the solemn and binding vow which held him to his wife.”

Five weeks later the *Guardian* made its first direct reference to *Ne Temere*. Neither Protestant nor Roman Catholic churches favoured mixed marriages, but this new regulation by the Vatican required “a more hostile attitude” because it defined marriages by non-Roman clergy as legal but not valid.<sup>2</sup> “Rome in this most sacred of all contracts, publicly justifies her children in not keeping faith with heretics.” Roman Catholic partners of mixed marriage were now commanded to break their marriage vows, and in the Belfast case the judge had exonerated the Roman Catholic husband because the man had acted conscientiously! “We wonder what a Canadian Roman Catholic judge would do if a Roman Catholic who had legally married a Protestant woman were to leave her on the advice of his priest, and mar again!” *The Christian Guardian* did not have to wonder overlong before the ramifications of the *Ne Temere* decree began to unfold in Canada.

In a matter of days the *Guardian* was answered by Father Lancelot Minehan of St. Mary’s church, Toronto, and by the Very Reverend Alfred Edward Burke, editor of the *Catholic Record*. Protestant critics of *Ne Temere* were being either willfully or stupidly unjust. The church wanted to comply with the civil law of the land but she could never accept dictation from the state. “She is asked to deny the sacramental character of marriage, to regard it as a purely civil contract...”<sup>3</sup> There in a single sentence the theological difference of Catholic and Protestant views of marriage was fully stated. What remained uncertain was the explicit relation of church and state in the recognition of matrimonial estate. In the opinion of the *Christian Guardian*,

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<sup>2</sup> *Christian Guardian*, 22 March, 1911.

<sup>3</sup> Quote in *ibid.*, 5 April, 1911.

the Roman Catholic church was free to teach its sacramental doctrine and to use legitimate means to enforce obedience, “But holding over the head of those who choose to break with their church at this point the club of “adultery” and “illegitimacy,” telling them that there has been no marriage when the law of the land says most explicitly that there has, is the kind of enforcing of a dogma that the people of Canada are not likely to stand for.”<sup>4</sup>

By this time – early April, 1911 – the journalistic fray had attracted the attention of other Protestant church organs. *The Canadian Baptist* refused to discuss the recent case in Belfast and another in Montreal, involving two Roman Catholics, Eugene Hébert and E. Cloutre, married by a Methodist minister in July, 1908, but a Toronto case involving a mixed marriage did provoke a discussion of the legalities and of Protestant reaction. The Roman Catholic church could discipline its members ecclesiastically, but to defy the civil law “is to defy our constitution.” Ontario’s Roman Catholics could rest assured that public opinion would ensure them their full rights but for the Roman Catholic church to press this matter “is only laughable, and the penalty for their folly will not be the crown of martyrdom but the reputation for utter foolishness.”<sup>5</sup> Father Burke, who had defended *Ne Temere* in a recent interview with the *Globe*, was “A very pleasant and capable man,” but if he thought that “the people of this Province will permit a violation of their laws even after the issue of the “Ne Temere” edict, he and others like him will find out that the just and fair element in Ontario is also very determined when once aroused.”

*The Presbyterian* of 6 April rehearsed the issue at greater length and with almost legalistic detachment, warning that “the new decree opens a prospect of almost inevitable conflict.” Unlike the *Canadian Baptist*, the *Presbyterian* was prepared to comment on the legal complications in Quebec. “[There] the civil law follows the law of the Church, so that the marriage of two Roman Catholics is not considered valid unless performed by a priest of their own Church.” Those were the grounds for the annulment of the Hébert marriage by Archbishop Bruchesi in November, 1909, and the confirmation of that annulment by Judge Charles Laurendeau of Quebec’s Superior Court in March, 1911, just one day after the *Christian Guardian*’s hypothetical question about the practical effects of *Ne Temere*. “The State should not permit any such distinction between the powers of the ministers of the various Churches. Whatever the Roman Church may say, the State should maintain the validity of a marriage performed in a legal manner by any ordained Canadian minister. The law of Quebec in this respect ought to be changed.” In a less detached tone the *Presbyterian* added, “The whole trouble arises from a narrow and arrogant theory of the Church, a matter in regard to which

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Canadian Baptist*, 30 March, 1911.

Romanism, for the present, at least, is willfully and all but hopelessly blind.” As for the *Catholic Record’s* remark that a Catholic husband was obligated in conscience to his wife only if their marriage had been performed by a priest, the editorial commented, “this is not flattering to the Roman Catholic sense of honor but it has at least the merit of frankness.”

*The Canadian Congregationalist*, also dated 6 April, was less restrained in its language. Regarding *Ne Temere*, it advised the pope, “this self-constituted autocrat at Rome, kindly mind your own business and allow us to mind ours ...” “Rome sometimes forgets she is not now mistress of the world, and cannot do what she once did.” “We frankly admit that the old devilish spirit of persecution still lies slumbering in her courts... All Rome wants today is opportunity, and she would repeat her bloody history in increasing ferocity...” Rome had been sneaky, dishonest and persisted in wooing Protestants who must remember their duty to withstand all attempts to interfere with civil and religious liberties in Canada. In fact any interference with valid marriages should be seen as “high treason and punished accordingly.” *The Canadian Churchman*, voice of the last of the major Protestant denominations, the Church of England, did not speak of *Ne Temere* until 4 May, and then only to call the decree an attempt to exercise an authority which constituted a “usurpation of a Constitutional right which the free people of Canada will not submit to.”

The focus and *cause célèbre* of the Protestant press’s concern with the *Ne Temere* decree was of course the Hébert case. That marriage, performed by a Methodist preacher three months *after* the formal declaration of that decree, had been both blessed with a child and declared void by the Archbishop in 1909. Immediately after the civil court upheld the annulment in 1911, John Cragg Farthing, the Anglican bishop of Montreal, attacked the whole process in a Sunday evening service at Christchurch cathedral.<sup>6</sup> Farthing cited the decision of Justice Archibald in the Delpit case of 1901 which upheld the legality of just such a marriage as the Héberts’. He supported this by referring to *Burns vs. Fontaine* where Mr. Justice Torrance had delivered the same decision. The Roman Catholic church could impose its ecclesiastical penalties, but it “cannot be allowed to touch the legality of the marriage so contracted, nor to affect the civil status of the man and wife, nor of their lawful issue.” Bishop Farthing demanded that the Hébert case be appealed to the Privy Council.

To Farthing’s demand the chancellor of the Roman Catholic Archdiocese of Montreal, Canon Emile Roy, replied, “In asking that this impediment be upheld we are asking no favour. We simply ask that sacred agreements be

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<sup>6</sup> *Christian Guardian*, 26 April, 1911; J.C. FARTHING, *Some Recollections of John Cragg Farthing*, n.p., 1945, p. 128. ff Farthing says it was a morning sermon, but he also dates the Delpit decision incorrectly as 1909.

observed. We simply demand rights guaranteed us by the constitution of the country.” The Treaty of Paris had granted “full liberty in religious matters” to Roman Catholics, and the B.N.A. Act confirmed these rights “in their entirety.” If the Church “comes into conflict with the legislation prevailing in certain countries, one cannot throw the blame on her shoulders. *One could hardly expect her to accommodate her rulings to the laws of each country.*”<sup>7</sup> *The Christian Guardian* promptly pointed out that the church *did* accommodate in Germany and Hungary on the very grounds that the church rejected in Canada. “Surely it is rather hard for British subjects to be asked to submit to such a state of affairs.” The *Guardian* agreed with Bishop Farthing that a test case should be sent to the Privy Council.<sup>8</sup> The late major of Toronto, G.W. Howland, had described Burke as a man “who knows how to interest, captivate and convince all kinds of audiences”<sup>9</sup> but Burke’s response to the *Guardian’s* campaign was not likely to convince many Protestants by its diplomacy or logic. “That pious old Pharisee, the CHRISTIAN GUARDIAN, is also worried over the decree “*Ne Temere*,” and its article on that decree is just the oily and hypocritical effusion one would expect from such a source.”<sup>10</sup>

An appeal case to a higher Quebec court was in fact being prepared at that moment, but the discussion of *Ne Temere* was now passing from the pages of the religious press into the courts of the Protestant denominations. A Special Committee of the Methodist Church’s General Conference spoke first. After lengthy quotations from the offending decree the Committee asserted on behalf of all Methodists, “We deny the right of any church, our own or any other, to declare invalid or cast doubt upon the validity of any marriage solemnized according to the law of any of the provinces of Canada.” “We maintain that in every province of Canada each religious denomination should have equal rights before the law on the question of the solemnization of marriage...” “Any and all attempts to give effect to the provisions of this *ne temere* decree ... must meet our firm resistance...”<sup>11</sup>

The Congregational Union followed suit at its annual meeting in early June. Its first resolution “solemnly and emphatically protest[ed]” against any denominational inequalities regarding the right to solemnise marriages, and “against the annulments of marriages entered into in good faith,” by either religious or civil courts. The second resolution instructed the Union’s

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<sup>7</sup> *Christian Guardian*, 26 April, 1911, italics probably added by editor.

<sup>8</sup> *Ibid.*

<sup>9</sup> H.J. MORGAN, *The Canadian Men and Women of the Time*, 2nd ed., Toronto, 1912, pp. 172-3.

<sup>10</sup> *Christian Guardian*, 3 May, 1911.

<sup>11</sup> *Ibid.*, 26 April, 1911.

Executive Committee “to seek co-operation with other religious bodies in making this protest effectual by the means which may be found best in order that the recent situation in Quebec may be changed and the sanctity of the home and the rights of all religious bodies may be properly recognized and protected.”<sup>12</sup>

The following week the General Assembly of the Presbyterian Church met and a committee was struck to examine the *Ne Temere* decree “which is now much occupying the public mind.”<sup>13</sup> The Committee’s report when adopted rehearsed the theological and civil grounds for the institution of marriage and then called on the provincial legislatures to remove “all ambiguities in the law affecting the validity of marriages” and “to provide that the legal hindrances to marriage should be defined by the Civil Law, and not by any Church or other religious body whose rules do not apply to the whole community.”<sup>14</sup> Because *Ne Temere* greatly disturbed “the peace and harmony of our Canadian life” and “the civil rights of the people [were] greatly interfered with” by its publication, the General Assembly recorded its “respectful protest against the enforcement of that decree in Canada, and call[s] all good citizens to resist the same, and our legislators to render it impossible by law.” As long as *Ne Temere* was apparently being enforced, however, the Assembly warned “all our people” against entering into mixed marriages. Another committee was appointed to cooperate with other denominations, “to give effect to the sentiments expressed by the various denominations, by presenting to the different Legislative Assemblies of Canada, their united convictions, of the rights of the common citizenship in relation to the marriage law.”

The General Synod of the Church of England did not meet until September, but then it had before its memorials from eight dioceses respecting the *Ne Temere* decree. The memorials referred variously to the “grave situation,” to the “great hardship to families,” to the necessity of “protection from the State.” The memorial from Algoma declared that “Roman ecclesiastics ... have endeavoured to override the civil law of our country, thus bringing, in certain cases, humiliation and suffering into legally sanctioned family life.”<sup>15</sup> According to the *Canadian Churchman* of 21 September, 1911, a “battle royal” followed between two legal giants, Dr. L.H. Davidson, McGill’s Dean of Law, and S.H. Blake, as to whether the decrees of the Council of Trent were in effect in Canada. The temper of the Synod strongly supported Blake’s demand that legislation must be sought to end this

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<sup>12</sup> *The Congregational Yearbook*, 1911, pp. 34-5.

<sup>13</sup> *Acts and Proceedings of the Thirty-seventh General Assembly of the Presbyterian Church in Canada, 1911*, p. 53.

<sup>14</sup> *Ibid.*, p. 87.

<sup>15</sup> *The General Synod of the Church of England in the Dominion of Canada. Proceedings of the Sixth Session ... 1911*, Toronto, 1912, pp. 158-62.

“serious interference” with marriages in Canada. As in the Presbyterian Assembly the various documents were referred to a committee with instructions to cooperate with other religious bodies, but the General Synod went one step further by memorializing the Parliament of Canada for definitive legislation regarding the validity of marriages.<sup>16</sup>

Since the Methodist General Conference did not meet in 1911, only the opinion of lower courts and individual Methodists were heard. The Montreal Conference suggested that it should be a crime for a clergyman as much as for a layman to try to separate husband and wife, parents and children. The solid opposition of the regional conferences against *Ne Temere* moved the Church’s General Superintendent, Albert Carman, to comment, “it is time for us to shut our teeth and say to the Pope of Rome, ‘not under the British flag’,”<sup>17</sup> to which the *Catholic Record* replied that Carman had “set up a man of straw and resolutely knocked him down.”

The desired interdenominational co-operation in opposing *Ne Temere* was organized by the Evangelical Alliance, itself a product of anti-Catholic sentiment three generations earlier. After a meeting in Toronto on 26 May the Alliance had issued a condemnation of the decree in the form of five resolutions, the most important being a demand for the amendment of Section 127 of Quebec’s civil code if that section did, as was claimed, invalidate marriages outside the Roman Catholic Church.<sup>18</sup> Late in the autumn of 1911 the Toronto Branch of the Alliance distributed a thirteen-page pamphlet that analyzed the legal complexities of the civil code of Quebec as it concerned marriage law. The pamphlet demanded that the Roman Catholic Church cease coercing its members in the matter of marriage and described as an “unreasonable assumption” that Church’s claim that baptism by a priest “forever deprived [a person] of ... freedom in making free choice in marriage.”<sup>19</sup> In conclusion the authors insisted they were only defending religious liberty, not attacking the Roman Catholic Church. “The question raised under the *Ne Temere* Decree must not be permitted to degenerate into a strife in which the Protestant citizens of the Dominion, on the one side, are ranged against their Roman Catholic brethren on the other. This would leave no part of our great Dominion untouched by faction contests.”<sup>20</sup>

During the late autumn and early winter of 1911-12 the Protestant press

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<sup>16</sup> *Ibid.*, pp. 130-51.

<sup>17</sup> *Christian Guardian*, 14 June, 1911.

<sup>18</sup> *Canadian Congregationalist*, 1 June, 1911. Section 127 read, “The other impediments recognized according to the different religious persuasions, as resulting from relationship or affinity or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities.”

<sup>19</sup> *The Ne Temere Decree*, [Toronto ?, 1911 ], p. 12.

<sup>20</sup> *Ibid.*, p. 13.

kept the issue alive with occasional reminders of the presence of *Ne Temere*. The Ontario government had announced that 1509 or twenty percent of 7351 Roman Catholics married in that province in 1910 had married outside their church.<sup>21</sup> Under the title “Wrecking the Home” the *Christian Guardian* reported on 6 December three cases outside Quebec where Roman Catholic husbands had left their wives at the urging of their priests and under the sanction of *Ne Temere*. A later issue of that weekly insisted the trouble lay not in the laws of the Roman Catholic Church “but in the wholly unjustifiable and mischievous interference of some of her clergy.”<sup>22</sup> Soon after the New Year rumours were circulating that prominent Canadian Roman Catholic prelates were about to ask the pope to defuse the growing resentment against *Ne Temere*, presumably by suspending the operation of the decree in Canada.<sup>23</sup>

On 18 January, 1912, the *Presbyterian* reported that the Evangelical Alliance had collected almost 300,000 signatures on petitions against *Ne Temere* and was planning a protest meeting in Massey Hall. *The Presbyterian* noted that all the resolutions from the Protestant bodies called for “stronger action than mere protest” – they called for legislation to prevent the enforcement of the decree. “Presumptuous as it may appear,” the editors of the *Presbyterian* continued, “we venture the opinion that such a demand ought not to be made.” The decree concerned only discipline within the Roman Catholic Church – “it does not declare any legally contracted marriage to be null and void in a legal sense.” The Church simply insisted that marriages involving Roman Catholics and performed by other than a priest were not valid in the eyes of God. “The marriage which [the Roman Catholic Church] declares to be invalid we believe to be valid in every sense ... But the Church of Rome has a right to her views, though they may be wrong views, and she has a right to enforce her views upon her members by such discipline as she sees fit to use.” “Let us consider carefully then whether as Protestants we shall be acting wisely if we attempt to place Roman Catholics in the position of martyrs for what they claim to be a religious principle.”

*The Presbyterian*, however, did offer four points of constructive criticism. The uncertainty of the marriage law in Quebec should be removed at once and “one uniform marriage law for the whole Dominion should be enacted as soon as possible.” Such a law should “secure those ends which the *Ne Temere* decree is intended to secure in the Roman Catholic Church, namely the prevention of secret, clandestine and improper marriages.” Roman Catholic dignitaries should avoid using such terms as “concubinage” and

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<sup>21</sup> *Christian Guardian*, 29 November, 1911.

<sup>22</sup> *Ibid.*, 28 February, 1912.

<sup>23</sup> *Ibid.*, 31 January, 1912, quoting the *Mail and Empire*.

“illegitimacy” when discussing mixed marriages – applied to a valid marriage such language constituted defamation of character. Finally, the *Presbyterian* felt the Roman Catholic Church should voluntarily refrain from enforcing the *Ne Temere* in Canada – after all the Church had admitted that the decree was “binding upon conscience, not as a law of God, but only as an order of the Church.”

Similar sentiments of moderation had already been expressed by the *Canadian Baptist*<sup>24</sup> which stressed the “mutual good feeling with only very occasional outbursts of ill-will” that it claimed had characterized Protestant-Catholic relations since the beginning of Canada’s history. As for the present imbroglio over *Ne Temere*, however, the *Canadian Baptist* felt called upon to warn Roman Catholics that “the non-fanatical Protestants of Canada can be just as firm here as they are reasonable in other things,” and a settlement must be found to prevent the stirring up of “bad feelings.” A possible settlement of some sort was actually on the horizon at the turn of the year because Madame Hébert was appealing her case before Judge Napoleon Charbonneau of the Quebec Superior Court. In the original civil suit Madame Hébert had not presented a defence because she had been told her child might be taken away from her if she did.<sup>25</sup> In this appeal suit the husband claimed he had no money to defend himself.<sup>26</sup> Madame Hébert’s lawyer insisted that the court deliver a verdict on the legality of the contested marriage, and Charbonneau made his judgement on 5 December although the ruling was not made public until 22 February. Briefly, the judge declared that the *Ne Temere* decree had “no civil effect on said marriage,” that Archbishop Bnichesi’s ecclesiastical decree had “no judicial effect in said case,” and the previous judgement by Laurendeau was herewith nullified.<sup>27</sup>

Charbonneau’s decision in the Hébert case “will be hailed with delight by Protestants everywhere,” announced the *Canadian Baptist*. This ruling “has given general satisfaction to the Protestants of Canada,” echoed the *Presbyterian* of the same date, and would please “a considerable number of Roman Catholics” as well. *The Canadian Churchman*, also issued on 29 February like the *Baptist* and *Presbyterian*, expressed Anglican approval of Charbonneau’s decision too. “From the Protestant point of view [the decision] seems to leave little to be desired,” commented the *Christian Guardian*,<sup>28</sup> but unaccountably the *Canadian Congregationalist*, which had previously been so militant on the subject of *Ne Temere*, made no reference

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<sup>24</sup> *Canadian Baptist*, 7 December, 1911.

<sup>25</sup> *Christian Guardian*, 14 June, 1911

<sup>26</sup> *Ibid.*, 29 November, 1911.

<sup>27</sup> *Canadian Baptist*, 29 February, 1912.

<sup>28</sup> *Christian Guardian*, 28 February, 1912.

to the court decision in this case. The Hebert decision, however, did not end the discussion of *Ne Temere* – the uncertainty of Quebec’s civil code regarding such marriages let the *Presbyterian* and the *Canadian Baptist* to call for the presentation of a test case before the Privy Council in England.

Action had already begun on the legislative front, although it was not precisely what the Protestant press might have liked. In January Edward A. Lancaster, Conservative member for Lincoln-Niagara, had introduced to the Commons a private bill to validate all marriages legally performed in Canada. According to the *Canadian Baptist* of 12 September, 1912, the bill had “at one time almost threatened to defeat the Government,” presumably from internal strains caused by the absence of Quebec Protestants in Borden’s cabinet. The government had now, however, got a suspension of Lancaster’s bill and referred three questions to the Supreme Court. In June the Court decided that the Dominion parliament could not pass uniform marriage legislation for the whole country – because of provincial rights concurrent legislation by every province would be required.<sup>29</sup> On a second question, the legality of mixed marriages performed by Protestant ministers in Quebec, the Court decided in favour of the ministers, but on the third – whether Protestant ministers of that province could marry Roman Catholics, the court divided on denominational lines. Three Protestant judges answered in the affirmative while one Roman Catholic judge said no, but Chief Justice Sir Charles Fitzpatrick declined to comment, claiming that the Hébert case should be considered as still sub judice.

Of all the Protestant newspapers only the *Canadian Baptist* gave these decisions any lengthy attention. “Taking the deliverance as a whole, therefore, we have, in our opinion, every reason to be satisfied with it.” With the Chief Justice’s abstention, however, the *Baptist* was not so happy. “Sir Charles Fitzpatrick is known to be an ardent Roman Catholic... [and] the ordinary Canadian will think that the Chief Justice has kept silent because he is a Roman Catholic, and neither Sir Charles nor his friends can afford to have this impression go abroad.<sup>30</sup> *The Christian Guardian* noted almost in passing that in the present circumstances a man could be married in Ontario but single in Quebec!<sup>31</sup>

The government was determined to have an equally definitive answer on this last question so it was placed before those final arbiters, the Law Lords of the Privy Council. The Law Lords in their turn declined to answer, and the *Canadian Baptist*, which alone of the Protestant newspapers was still reporting on the issue, suggested that C.J. Doherty, Borden’s Minister of

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<sup>29</sup> *Ibid.*, 26 June, 1912.

<sup>30</sup> *Canadian Baptist*, 27 June, 1912

<sup>31</sup> *Christian Guardian*, 26 June, 1912.

Justice and “a Quebec Roman Catholic,” might have influenced the Law Lords since he had been in London when the case was being considered in July 1912.<sup>32</sup> Thus, without a final settlement, the uncertainty continued and less than a year later the Tremblay-Despatie case, where the marriage of fourth cousins was annulled by the civil court, raised again the question of the relation of canon law to Quebec’s civil code.

*The Canadian Baptist* was now the only Protestant paper to comment and as before it called for a final resolution by putting this case and the Hébert case before the Privy Council.<sup>33</sup> It was the Orange Order that paid for the Despatie-Tremblay appeal to the Privy Council (with a financial assist from the Anglican dioceses of Quebec and Montreal).<sup>34</sup> *Ne Temere* had receded into the shadows and its name was no longer mentioned, but the basic issue of civil enforcement of ecclesiastical law remained. In this appeal, however, the Privy Council upheld the legality of the marriage in a judgement finally rendered in 1921. This decision was “exceedingly favourable” in the eyes of Quebec Protestants<sup>35</sup> – outside of Quebec, Protestants had apparently lost interest after Charbonneau’s ruling on the Hébert case settled the original question regarding *Ne Temere*.

The story, however, did not end with the Despatie-Tremblay ruling. Quebec Protestants were surprised and frustrated but without much support from beyond the province when Superior Court Judge Alfred Forest continued to grant annulments on the grounds that he was not bound by any precedents, even those established by the Privy Council.<sup>36</sup> A suggestion that Forest be impeached proved to be politically impractical, and when one Anglican clergyman tried to circumvent the court by obtaining a licence to marry named parties, he was advised that he had performed an illegal act by obeying the Crown's order! Once again the non-Roman churches closed ranks and formed a joint Marriage Committee in 1935 which in time managed to put another test case before the Quebec Court of Appeal, to determine the legality of Protestant clergy marrying Roman Catholics. The decision rendered in this Bergeron Kirklaw case in 1940 by three Roman Catholic and two Protestant judges unanimously upheld the legality of such marriages. “We trust,” commented Bishop Farthing, “that this judgment ... will go down in history

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<sup>32</sup> *Canadian Baptist*, 12 September, 1912, 25 September, 1913.

<sup>33</sup> *Ibid.*, 10 April, 1913.

<sup>34</sup> Farthing, *op. cit.*, p. 133 ff

<sup>35</sup> *Ibid.*, p. 132. The full text of the judgement was reprinted in the *Proceedings of the Sixty-second Annual Synod of the diocese of Montreal, Canada, 1921*, pp. 59-74.

<sup>36</sup> Farthing, *op. cit.*, pp. 132-3.

as the last of these unhappy episodes in our life in Quebec.”<sup>37</sup> Perhaps it is fitting that Farthing should have the last word here since it was he who, almost thirty years earlier, had first spoken from the pulpit a Protestant denunciation of the legal and social impact on Canada of the *Ne Temere* decree.

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<sup>37</sup> *Ibid.*, p. 135.