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The Borden Government in Peril over Ne Temere Bill

Fifty Tory Members were in Favor of the Principle of the Measure but all Except Five were Finally Whipped into Line under Ministerial Pressure---Extraordinary Session Enacted in the House of Commons

(Montreal Herald)

Ottawa, Jan. 22--A young government was never nearer death than the Borden administration was in parliament last night. If Sir Wilfrid Laurier had declared flatly for the Lancaster bill the house almost certainly would have voted against the government by a small majority. However, Quebec would have been antagonized on the Ne Temere decree and as Sir Wilfrid believes the constitutional question should be decided by cold impartial decision of the courts, he sacrificed a great chance of overthrowing his conquerors for the sake of keeping faith with his belief and for the sake of keeping religion out of the political arena of Canada. Then, too there is a question whether Sir Wilfrid would have succeeded at the polls. He would have had some Ontario Orangemen with him but he would have had more strongly than ever the influence of the Church against him in Quebec.

A DANGEROUS MOMENT

The government in the evening recognized the danger it was in and frantic efforts were made to bring followers into line.

The Lancaster bill on the Ne Temere decree was on. Mr. Lancaster had argued the passage of this bill as a measure of right. Premier Borden said the measure should be dropped so the government could ask the Privy Council if the bill was constitutional or if it infringed provincial jurisdiction. The proposal of the Premier was not well received by his own side. One after another Conservatives got up and declared that Mr. Lancaster was right, that a marriage was a marriage and wherever performed by an authorized person should have legal status. Thomas Wallace of Centre York, William Northrup, W. F. MacLean, Col. Hugh Clark got up one after another and declared for Lancaster and against Borden.

Then Sir Wilfrid said the question should not be shelved by an adjournment and should not be referred to the Privy Council as a hypothetical question should be sent there as a practical case from the action now in the Quebec courts.

Though Sir Wilfrid did not go to the extreme measure open to him of endorsing the bill the government still realized that it was in danger from the half-hundred Conservatives who had pledged themselves to kill Ne Temere.

HURRIED RESCUE WORK

Rescue work was started, Hon. Robert Rogers and Hon. Mr. Cochrane stationed themselves outside the chamber and sent in for the rebels to come out and interview them.

The whips led them out one by one and then the third degree was administered.

Some yielded to ministerial persuasion. Some did not. William Northrup declared he was for Lancaster and against Borden. He was dealt with and succumbed. Capt. Thomas Wallace had declared he would vote against Borden. The struggle with him was long and strenuous but he succumbed.

Mr. Lancaster refused to leave the house to take his interview. Major Currie argued with him and was brushed away to the amusement of the house. Both sides of which were well aware of what was going on and were watching. Capt. Wallace tried and was turned down by the member for Lincoln.

Chief Whip Stanfield spent two solid hours arguing and proclaiming to Mr. Lancaster that the government was in actual peril and still he refused to go to the corridors to take counsel from the ministers. Finally Mr. Burnham of Peterboro got him out. He came back smiling and started to do some missionary work with Mr. Blain, of Peel. He resisted while the ministers talked against time to give the workers a chance to rally their followers. The vote was put off by steady talking until after two o'clock in the morning and then the half hundred opponents of the marriage decree had been sent home won or despaired of.

A WAVERING MAJORITY

The government's majority should have been fifty with full strength. It was just twenty-five, Lancaster, Kidd Blain, W. F. MacLean and Edwards voted against their leader in spite of all persuasion. Captain Wallace

and W. B. Northrup voted against their declaration.

This bill was shelved and the government saved.

The evening was one of the most dramatic parliament has seen.

EVIL REQUIRES REMEDY

In moving the second reading of his bill Mr. Lancaster declared that the unchallenged validity of marriage was so important to the national life of Canada that no one else having acted in parliament on the operation of the Ne Temere decree, he had done so. "We have," said he, "in the present state of affairs an evil which requires an immediate and effectual remedy." The evil arose, not because the courts of Quebec had held the Church decree to be law--although he believed that such was not a legal pronouncement--but because a doubt had been cast upon the validity of certain marriages, "and it is the duty of Parliament to remove that doubt if we can. Such doubt would sap the national life of the country and was of more serious moment than any trade or immigration policy."

"Because," declared Mr. Lancaster "of certain ecclesiastical decrees issued from a foreign country in respect to married by certain judges in Quebec marriages in Canada it has been deemed that marriage ceremonies solemnized regularly were not binding and the legitimacy of the children called in question." His bill was drawn to remedy that evil. He acted upon national grounds, not upon any religious considerations. He was not prepared to go as far as the Orange Sentinel. "We are not in Italy yet," quoted Mr. Lancaster, "but if we do not apply some remedy we may get to be in Italy."

Continuing, Mr. Lancaster read the statement of Rev. Father Comeau, a Roman Catholic priest at Winnipeg, as published in the Toronto press and condemned it as "advocating a policy of polygamy, bigamy and conspiracy to commit both and claim the proceeding right in the eyes of God and the Church. He called upon Parliament to repudiate the 'false silly, unstatesmanlike and un-British doctrine of that gentleman.'"

BLAMES SIR ALLEN

The member for Lincoln charged that Sir Allen Aylesworth, late minister of justice was to blame for the present situation. When questions were put to him in the house by Mr. Sexsmith and Col. Sam Hughes "Sir Allen Aylesworth, with all respect I say it trifled with the matter." As for Sir Wilfrid Laurier, he said Mr. Lancaster was "so busy smashing Confederation in favor of the United States that he had nothing but masterly inactivity for the serious situation that threatened to disrupt Confederation by clash of provincial marriage laws as interpreted by the judges."

GOVERNMENT VIEW.

"What is the view of the present minister of justice?" enquired Mr. Caisoim, Antigonish.

"He can speak for himself," retorted Mr. Lancaster. "That's what I am doing. He may or may not agree with me. He may not know at this moment what his views are."

"Hear, hear," put in Sir Wilfrid, amid roars of Liberal laughter.

"The leader of the opposition says 'hear, hear,'" exclaimed Mr. Lancaster warmly, "but neither he nor the whole horde behind him--"

Speaker Sproule interposed. "Such an expression is not permissible in parliament, and must be withdrawn," he decreed.

Mr. Lancaster withdrew. The Liberal party, he said, had such blind faith in its leaders that it would applaud anything they said or did.

Continuing, he read from The Catholic Register of January 8 an editorial which, he said, "sneered at the Anglicans for respecting the laws of the land."

He was a Church of England man himself and gloried in the fact that the Anglican Church bowed to parliament. If parliament did not take action, generations to come would "cure the cowardice of 1912."

To Mr. Devlin he explained that he was seeking to over-ride or annul article 127 of the Civil Code of the Province of Quebec in so far as it affected the validity of marriage on the grounds of the religion of either of the contracting parties. To Mr. MacLean, Prince Edward Island, he said that the bill would not affect or supersede the divorce laws of the Maritime Provinces or of British Columbia.

THE LAW OF THE MATTER.

In concluding after recess, Mr. Lancaster argued that it was constitutionally unsound to have one law for Quebec and another for Ontario, one for Catholic and another for Protestant. Only by uniform federal action

could the spirit of confederation be carried into effect. Under the British North America Act, he argued, marriage and divorce were left specifically to the federal parliament, while the "solemnizing of marriages," a matter terminating with the ceremony and not dealing with its effect was delegated to the provinces. He moved the second reading of his bill.

PREMIER'S REPLY.

Premier Borden rose in silence. He agreed with the importance of the subject under consideration. Everyone knew, he said, that under the laws of Canada, the decrees of any church could not over-ride the civil law. If the decrees of the church had any effect it must be by reason of the laws of the province giving effect to them. Mr. Borden took as an illustration of the effect of Mr. Lancaster's bill a supposititious British Columbia case.

"If," said the Premier, "in the province of British Columbia law were passed that a person of European descent and a Japanese or a Hindu should be married with certain formalities before a certain official, that marriage, if performed before some other official in contravention of the law of the province, should be valid under this statute passed by the parliament of Canada. That, as I understand, is the object and intention of the bill which my honorable friend has placed before the House."

"That is what I mean so far as religion is concerned. It does not deal with difficulties of nationality. I am speaking only of religious differences," exclaimed Mr. Lancaster.

The Premier retorted that he was dealing with the constitutional aspect of the case. Mr. Lancaster's bill would confer just as full power to over-ride the statute of British Columbia in that regard as would the legislation he suggested. The same might apply to the marriage of a white and a colored person.

PREMIER'S STATEMENT.

The Premier then read the following carefully prepared statement:

"By the Canadian constitution as embodied in the British North America Act, section 92, sub-section 26, the exclusive legislative authority of the parliament of Canada extends to and includes marriage and divorce. The constitution declares, however, in section 72, sub-section 12, of the same act, that in each province the legislature may exclusively make laws in relation to the solemnization of marriage in the province. It is perfectly clear that the words 'marriage and divorce' would include the solemnization of marriage if that subject had not been assigned to the exclusive jurisdiction of the province under the language just quoted. The result has been expressed by the Judicial Committee of the Privy Council in these words: 'solemnization of marriage in a province is enumerated among the classes of subjects under section 92, and no one can doubt, notwithstanding the general language of section 91 that this subject is still within the exclusive authority of the legislatures of the provinces.'"

"It has also been held by the Privy Council that a provincial legislature has authority as plenary and as ample within the limits described by section 92 as the Imperial parliament in the plenitude of its power possessed or could bestow. Within these limits of subject and area the provincial legislature is supreme and its jurisdiction exclusive."

"The formalities prescribed by a provincial legislature as necessary to constitute a valid marriage come undoubtedly within the meaning of the word 'solemnization.' It thus appears that with respect to those formalities the jurisdiction of the provincial legislatures is exclusive."

"The opinion of the late minister of justice, Sir Allan Aylesworth, the opinion of the present minister of justice, and the opinion of the deputy-minister of justice, Mr. Newcombe, K.C., are to the effect that legislation such as that now proposed is not within the legislative competence of this parliament."

"To the same effect is the opinion of an eminent lawyer of the Ontario bar, whose opinion upon the case submitted I will lay upon the table for the information of the House."

"On the other hand, the honorable member who has introduced this bill is himself a lawyer of eminence and great experience, and he is strongly of opinion that this bill is within the competence of parliament. Other lawyers who are members of this

(Continued on page seven.)

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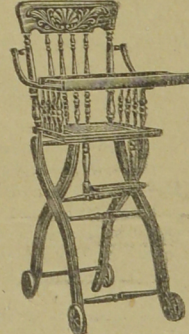
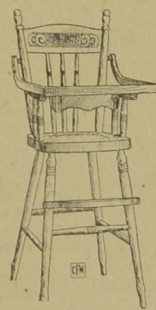
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