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BOTTLENECK IN MARRIAGE CASES

ALBERT BAUMAN, O.S.B.*

ON OCTOBER 22 LAST YEAR, Archbishop Thomas D. Roberts, S.J., formerly of Bombay and now attached to the famous Farm Street Church in London, held a press conference in Rome which made headlines around the world. The Archbishop declared that "perhaps the most urgent of all reforms in the Church concerns the interminable delays in marriage courts, both diocesan and Roman." He added:

"There are thousands of young people spending their lives waiting for a red light to turn green; real inquiry into marriage courts might reveal perhaps one of the greatest causes of leakage in the Church."

Thus the Archbishop made public the gist of an "intervention" submitted in writing to the Second Vatican Council then in session. An "intervention" is similar to a speech by a United States Senator or Representative, inserted in *The Congressional Record* though never actually delivered.

In his press conference Archbishop Roberts went on to say: "We have reached a stage where the faithful are frequently told locally that Roman delays are responsible for inaction whereas Rome itself blames local authority." The Archbishop quoted an old legal axiom: "Justice delayed indefinitely is justice denied."

His Excellency did not say where *he* thought the main trouble lay. His "intervention," therefore, was not just another attack on the Roman Curia. But he did have a suggestion to offer. The point he was trying to make, he said, was that all classes in the Church, from bishops to laity, need some kind of public defender to protect them against abuses of authority.

No doubt a defender of the public such as the Archbishop asked for could be a very busy man in the Church just as he is in secular society where there is an official of this type.

There is no doubt also that a considerable amount of general dissatisfaction does exist with the marriage courts of the Church. The complaints, as the Archbishop revealed, are mostly about the lengthy delays in solving cases presented to the courts.

If there is any way that these delays may be overcome it should be used. Where souls are at stake, legal procedures should not be allowed

* Editor, St. Joseph Magazine.

to stand in the way. Justice must be speeded up so that people are not left in suspense—perhaps to fall into sin while they are waiting for a decision on their case.

Who is to blame? The first thing to note is that the delays do not necessarily occur in Rome. In fact, the feeling among canon lawyers is that the difficulties can very seldom be blamed on officials in Rome. When cases are properly presented, decisions are quick and easy. It is the cases which require correspondence with the parties concerned and with priests and officials in chancery offices that run on for months and even years. When new evidence is required, it has to be rounded up by busy priests who have a hundred other things on their minds. Sometimes those involved are hard to find, and reluctant to testify when they are finally found.

The Church is very careful about marriage cases. When the divine law is involved and when a sacrament is in question, great care must be taken to base every decision on the best possible presentation of all the facts in the case.

It would be an immense benefit to all concerned if there were more experts in the canon law of marriage. Perhaps a greater effort could be made to train men for this exacting work. They might even be laymen, if enough can be found who are interested and willing to take on the work.

To carry this idea a step farther, why not law offices that specialize in this type of case? A corps of lay and/or clerical experts in marriage law might help to clear up the backlog of cases that is said to exist. Then they could relieve overburdened diocesan offices of much of the grief connected with marriage cases.

Discreet advertising in publications for the clergy would soon get the word around,

and a full-time practice might be built up. Of course, expenses of lay attorneys would go up, too, but not more than expenses for other legal proceedings.

Such an office of canon law specialists in various phases of the marriage law of the Church could be a boon to the chancery offices of small dioceses. Small dioceses could avoid altogether the expense of sending priests to universities for advanced studies in canon law. In these small dioceses, even after the priest is trained, he rarely gets enough work to keep up in his field. When a case is presented he has to work twice as hard as the man who is continually handling this type of work.

Another development which could ease the whole situation considerably would be the establishment in the United States of a special marriage court to try cases that would ordinarily have to be sent to Rome. This could save time and effort all around. This suggestion is not as revolutionary as it may sound. Since 1947 (and before 1933) Spain has had its own court of appeal for many so-called "Roman cases": a local Rota (as the Roman marriage court is called) to save the trouble of appeals to the highest tribunal in Rome—except for extraordinary cases.

Lay people would still have the right to appeal to Rome, as they have now, when they feel they are not receiving justice where they live. This is, of course, a last resort and should not be used lightly.

The laity already have the right to also go to any priest who will present their case, or to any attorney. An experienced attorney might be of considerable help. At least he would be familiar with some of the legal procedures and the laws of evidence. Perhaps he might get interested enough to spe-

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cialize in canon law, as some laymen already do.

There is plenty of business. Of all the

legal tangles people get themselves involved in, marriage cases are one of the most common. As mentioned before, in many of these cases the eternal salvation of souls is at stake and they need all the help they can get.