MIXED MARRIAGES IN MALTA (1800-1900)

The Law of Malta with regard to the formalities required for the validity of a Marriage, even as a contract, has always been the Canon Law, of which the decrees of the Council of Trent are an integral part.

Since the beginning of British occupation in Malta (1800), the frequent contact between Maltese inhabitants and English residents in the Island brought forth as a consequence marriages between Catholics and Protestants. Such are known as 'Mixed Marriages'. At first they were very rare: one in 1801, another five up to 1810 inclusively, two of which celebrated before the Protestant Minister. The Holy See was at that time very reluctant to grant dispensations for the celebration of such marriages. It permitted them just to avoid great disorders. For a period, the Governor was induced to refuse the celebration of such marriages before the Protestant Minister.

The number of dispensations for mixed marriages, however, increased in the course of time. In the span of fifty years (1800-50), 152 mixed marriages were contracted in Malta, out of which 104 were celebrated in facie Ecclesiae with a Papal dispensation, the other forty-eight were not celebrated in facie Ecclesiae.

In the next forty-one years, the number of mixed marriages recorded amounted to 682. Of these 367 were celebrated before Roman Catholic priests, 299 before Anglican clergymen, six before Presbyterian ministers and ten before the Wesleyan ministers. One-hundred-seventy-seven of the said uncanonical marriages were also celebrated, or convalidated later, before the Roman Catholic priest.

The sources used in this article are either the original, or extracts faithfully transcribed from the original and given as Appendices in the works quoted in the article.

1 In the Privy Council - Case on behalf of the Crown Advocate of Malta on Mixed Marriages (1891), App. XI, p. 167.
2 Ibid., App. XVIII, Correspondence: Rev. Laverack - Ch. Secretary, pp. 291-6.
3 Ibid., App. XI, pp. 167-9. Of those 104 marriages, sixty seven were contracted by Maltese Catholics and thirty seven by foreign Catholics (Ibid.).
4 Ibid., App. XI, p. 176. Of the forty eight marriages, twenty two were contracted between Maltese Catholics and Protestants, three between non-Maltese Catholics and Protestants, twenty three between presumably non-Maltese Catholics and Protestants (Ibid.).
5 Of the 299 marriages, forty-seven were contracted by non-Maltese Catholics (Ibid.).
Wisely foreseeing the possibility of an increase in the number of mixed marriages before Protestant ministers in his diocese, on August 30, 1808, Bishop Ferdinand Mattei asked some questions to the Holy See, regarding the validity of such marriages. The Inquisitor-General answered that all marriages contracted between two Catholics, or between a Catholic and a non-Catholic, before a Protestant minister were to be reckoned null and void without any exception, and the parties thus engaged were to be considered as living in concubinage. Bishop and parish-priests were bound to eliminate that evil by their zeal, and to persuade the parties to marry according to the form prescribed by the Catholic Church, and pray for them. The Bishop was authorized to exempt foreign parties from producing the certificate of freedom to marry, in lieu of which the supplementary oath (*iuramentum suppletorium*) was to be administered.  

In his report to the Governor — Sir Henry Knight Storks — dated January 5, 1865, the famous Maltese jurist Sir Adrian Dingli, then still Crown Advocate, asserted that the presence of the Roman Catholic priest, as a religious minister and public officer, was required by the General Law in marriages between two Catholics, or between a Catholic and a non-Catholic: otherwise the marriage was null and void for all legal purposes.  

But a doubt arose as to the validity of marriages between non-Catholics which were not celebrated before the Roman Catholic priest. Sir Adrian held their validity. The Crown-Lawyers in England supported the doubt. So did, later, the Chief Justice Sir Antonio Micallef, in his letter of August 1884, addressed to the Governor Sir Lintorn Simmons. Crown-Lawyers and Sir Antonio suggested the enactment of some kind of legislation to regulate similar future marriages and to convalidate those already celebrated. No legislation was, however, enacted.  

On August 1st, 1889, the Marquis of Salisbury informed Sir Lintorn, who had retired from the Governorship of Malta, that Queen Victoria had chosen him as Her Representative and Minister Plenipotentiary on a Special Mission to the Holy See, on questions affecting the internal government of Malta. The second item to be dealt with in the Mission included the various questions which had previously arisen concerning Marriage.

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6 ARCHIEP. ARCHIVES — Correspondenza, 1807-10, n. 118.
The British Envoy and the Papal Secretary of State, Cardinal M. Rampolla, met and opened their talks on the 31st December 1889. The questions proposed by Simmons were referred to a Special Commission of Cardinals named by the Pope. Sir Lintorn entertained great hopes, that, despite the great difficulties, a formula acceptable to the British Government would have been presented by the Holy See. In a memorandum, he explained to the Cardinal that, since the Canon Law was also the Law of Malta with regard to the form required for the validity of a marriage, a doubt had arisen, whether marriages celebrated in Malta, before other than Roman Catholic priests were valid. Consequently, need was felt of a legislative interference to define the mode of celebrating marriage, when one or both of the parties were not members of the Catholic Church. It was, however, the earnest desire of the British Government that any such legislation should have the concurrence of the Holy See.

On Pope Leo XIII's behalf, the Secretary to the Sacred Congregation for Extraordinary Affairs gave some instructions, which were communicated by Cardinal Rampolla to the British Envoy on the 17th January 1890. The directives were: (i) marriages celebrated in Malta by two Catholics, or by a Catholic and a non-Catholic, are not valid, if they are not celebrated according to the form established by the Council of Trent and (ii) persons professing any other Religion may validly celebrate their marriage without the form established by that Council. The Holy See was not opposed to any legislation by Her Majesty's Government to regulate the civil effects of Marriages. Simmons informed the Papal Secretary that Her Britannic Majesty's Government would cause a project of Law to be introduced in the Council of Government in Malta to that effect.

Simultaneously, he reported to the Marquis of Salisbury that in a confidential and unofficial Note, dated 17th January 1890, Cardinal Rampolla had stated that the Holy Father was ready to declare (i) that marriages between parties who profess, or have formerly professed, the Roman Catholic Religion are not valid, unless they are celebrated according to the form of the Council of Trent; (ii) that mixed marriages celebrated in

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accordance with the decrees of that Council are valid; but since Ec-
clesiastical Laws expressly prohibit the Catholic party to renew the
consent before the Minister of the non-Catholic party, the Government
is invited to declare, by a legislative act, that such renewed consent is
not necessary to the validity of the marriage; and (iii) that all those
who do not profess, and have never professed the Catholic Religion will
be able to contract marriage validly without the form established by the
Tridentine Council.\textsuperscript{14}

Simmons would have that Papal decision in the form of an 'expression
of opinion' with regard to future legislation, rather than of a 'declaration'
respecting the present state of the law; he would also have it expressed
that in marriages one should take into consideration the Religion which
the parties profess at the time of the celebration of that marriage, be-
cause - he said - the Courts of Law in the British Empire might inter-
pret otherwise the law as laid down by His Holiness, and this would be
greatly regretted. He, moreover, suggested the provision regarding the
prohibition of the renewal of consent before a non-Catholic Minister.

The Cardinal insisted upon the form of a 'declaration' and upon the
three above-mentioned paragraphs; but, as Simmons alleged, he finally
consented with much reluctance to leave the question of the parties'
Religion prior to marriage as a matter of conscience. The British Envoy,
promised the enactment of a proviso in the law, that would remove all
doubts concerning the validity of marriages contracted before the Roman
Catholic Minister and the civil effects of such marriages.\textsuperscript{15}

The Pope gave his final decision through Cardinal Rampolla. Sir
Lintorn informed H.M.'s Secretary of State. Copies of the final notes of
agreement were laid before the Queen. The British Government approved
the Envoys proceedings.\textsuperscript{16}

At the request of the Governor's Chief Secretary, on the 23rd October
1890, the Chief Justice Sir Adrian Dingli repeated the same views he
had expressed in 1865, when he was still Crown Advocate, and con-
firmed them.\textsuperscript{17} The Crown Advocate Dr. Giuseppe Carbone, too, reported
that mixed marriages celebrated in Malta otherwise than before the
Roman Catholic priest had always been considered null and void by all
those who were in a position to give opinion on the matter.\textsuperscript{18}

\textsuperscript{14}ibid., Simmons - Salisbury, App. IX, pp. 392-5.
\textsuperscript{15}ibid., Simmons - Salisbury, App. IX, pp. 393-5.
\textsuperscript{17}IN THE PRIVY COUNCIL - l.cit., App. XVIII, pp. 297-302.
\textsuperscript{18}ibid., pp. 309-11.
But before the lapse of two years, on the 27th June 1892, the Foreign Marriage Act (55 and 56 Victoria, c. 23) was enacted, making marriages between British subjects abroad as valid as a marriage duly celebrated in England, if celebrated in accordance with the local law (*lex loci*), or in the presence of a Governor, High Commissioner, or other Marriage Officers (e.g. Ambassador, consul, etc.). That Act induced the British Government to consider any local legislation in Malta unnecessary.\(^{19}\)

Archbishop Pace saw in the aforesaid Marriage Act a departure from what had been agreed to between the British Envoy and the Holy See in 1890. Consequently, on the 14th October 1892, he addressed a letter to the Marquis of Ripon, Secretary of State for the Colonies, complaining that the application of that Act in Malta would be a grievous insult to the Supreme Head of the Church, would stir up the Clergy and the people against the Government and would disturb the religious and civil peace of the faithful. The Bishop reminded him, also, of the solemn promises made by Great Britain to keep all the liberties and rights of the Roman Catholic Religion. He, finally, asked for a prompt answer to his letter in order to quiet the people, who were already much excited.\(^ {20}\)

The Maltese Judges Mifsud, Chapelle and Debono, on the same occasion, revealed their minds to the Chief Secretary to Government, stating that marriages between Catholics, or between a Catholic and a non-Catholic, should be celebrated according to the Civil rules and forms and to Canon Law.\(^ {21}\)

The people, indeed, were astir. As a matter of fact, on November 22, they addressed a petition, signed by 27,000 persons, to the Queen in protest against any marriage law in conflict with the Catholic Church’s legislation. Lord Ripon answered that their protest was premature and that they should wait the opinion of H.M.’s Privy Council on the matter.\(^ {22}\)

It is to be noted here that on the day following the enactment of the mentioned Foreign Marriage Act the Queen gave a special order to the Lords of the Privy Council to study the Maltese Marriage Question. After taking into consideration the Case and relative appendices on behalf of the Crown Advocate of Malta and after hearing the Crown Advocate, as well as the Counsel instructed by the Protestant Communities, on the 18th July 1895 the Lords of the Committee of the Privy Council gave answers to the diverse questions laid before them. They stated (i)

\(^{19}\) *LAFERLA A.V. - British Malta*, II,128.


\(^{22}\) *Ibid.*, App. XI, p. 155
that unmixed marriages in Malta before English Clergy, Presbyterian Ministers and Wesleyan Ministers were valid; (ii) that, notwithstanding the elaborate character of the argument addressed to them, it was possible that, in the event of the question (of mixed marriages celebrated in Malta before non-Catholic ministers) coming before them judicially, additional information and authorities might be produced, tending to shake the conclusion they had derived from the material before them; and (iii) that marriage contracted in good faith and in the mode sanctioned by a British Governor, but under such circumstances as might render their validity doubtful, should be set at rest by a legislative declaration, the nature of which they were not in a position to suggest.

On the 13th August, the Queen approved that Report by an Order in Council, bidding all concerned to take notice and govern themselves accordingly.23

The same Order was officially communicated to the Archbishop by the Governor, on March 6th, 1896.24 Evidently, that decision went against some points already agreed upon during Sir Lintorn’s Mission at Rome in 1890. An outcry soon burst in Malta and Gozo. Archbishop Pace, who unofficially was made aware of its contents (the Times of London published it on February 29), wrote a Pastoral Letter on the 3rd March, which was followed by that of Bishop Camilleri of Gozo, dated 13th March. In their Letters, the Bishops insisted upon the sacramental character of Marriage and upon the necessity of its being celebrated according to the forms prescribed by the Catholic Church.25

Archbishop Pace’s Letter was read on the evening of the 6th March in the churches of Valletta. The church of St. John was packed with people from all ways of life, who loudly protested and showed signs of sorrow through their tears.26

The next day the Archbishop communicated to Cardinal Rampolla a copy of the Order and gave an account of what happened at St. John’s. On the 8th and 15th of the same month, two ‘Monster’-meetings (as they were called), 60,000 and 70,000 strong, were held at the Floriana Granaries. Clergy and people raised a cry of protest against the Order in Council and insisted upon the implementation of the Rampolla-Simmons agreement.27 The Hon. Sigismondo Savona, a leading political figure of

23 LAFERLA A.V. - op.cit., II.125.7.
24 ARCHIEP. ARCHIVES - Corrispondenza, 1896, n. 35.
the time, introduced in Council an Ordinance to the same effect. The Ordinance was approved by the elected majority on the 18th March. 28

A petition was, moreover, filled in the people’s name to the Queen, reminding Her of their former protest and petition, and of Lord Ripon’s reply, which they had interpreted in a favourable sense. In their petition they asked Her Majesty to sanction Savona’s Ordinance, which was even approved by the Pope. 29 The latter, through His Secretary, asked the Archbishop to thank all those persons — and they were many — who had sent Him telegrams showing their feelings of loyalty and solidarity with the Holy See. 30

On the 24th May, Archbishop Pace wrote to the Hon. Secretary Mr. Chamberlain on the same subject. The latter answered that letter and the people’s petition through two despatches addressed to the Governor on the 14th October. Mr. Chamberlain authoritatively stated that the Report of the Judiciary Commission was not a Legislative Act; but the Judges’ view — that mixed marriages celebrated, or to be celebrated not in accordance with the Tridentine form were to be considered valid — was correct and in consonance with the Law, and accepted as such by Her Majesty. The members were consequently unable to advise the Queen to assent to Savona’s proposed Ordinance, which would invalidate marriages which were valid as regards their civil effects under the ‘existing’ Law. And, indeed, the Queen did not approve the Ordinance. 31

The Bishop wrote to the Governor that he was glad to learn that the mentioned Report had not the binding force of a Law, but, after the oft-repeated protestations of H.M.’s Government — that with regard to Marriage the Canon Law is the Civil Law of Malta — and after the agreement Rampolla-Simmons of 1890, he was surprised to hear of another ‘Law’, which was neither customary, nor written. He reminded him of the views in favour of Canon Law expressed by the Legal Authorities in Malta, who were the persons most informed on that matter; and protested in a way most solemn and formal against that ‘sham’ law, offensive to the Holy See and encroaching upon the vested rights of the Catholic Church and of Catholics in Malta. He, finally, asked the Governor to lay that protest on the table of the Council. 32

The Pope continued to refute the opinion of the Privy Council and

28 ARCHIEP. ARCHIVES — l.cit., n. 39; LAFERLA A.V. — op.cit., II.127.
29 Ibid., no. 92; BORG PP. — op.cit., App. XI, pp. 154-6,
32 Ibid., pp. 152-4.
urged the Maltese people to do all they could to harmonize the civil and ecclesiastical laws in Malta. Following that agitation, the parties in mixed marriages realized the importance of celebrating their marriage according to the dispositions of the Tridentine Council. The British Government did not insist upon the application of the Foreign Marriage Act in Malta. The people’s anxiety calmed down, so that, when Sigismondo Savona tried again to raise up the matter in the Council on April 1st, 1898, the majority of the House voted for an adjournment of the debate on the subject. The issue was dropped. Canon Law continued to be the Law of Malta in Catholic and in Mixed Marriages up to the present day.

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33 LAFERLA A.V. – op.cit., II.128.