

# THEOLOGIA MORALIS SANCTI ALPHONSI

Reduced into a Compendium, and Adapted to the Use of the Venerable American Clergy  
by Anthony Konings, C.SS.R.

## MATRIMONY

The Treatise on the Sacraments in General and the Treatise on Matrimony, from Volume II

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# TREATISE ON THE SACRAMENTS IN GENERAL

We must treat concerning the Sacraments: 1° their nature and division; 2° matter and form; 3° the Minister; 4° the subject.

## CHAPTER I: ON THE DEFINITION, NUMBER, AND DIVISION OF THE SACRAMENTS

**1206. - I. Definition.** A Sacrament is a sensible sign instituted by Christ for signifying and conferring grace.

Hence three things are necessarily required in every Sacrament, namely: 1° a sensible sign; 2° divine institution; 3° the power of producing the grace promised by Christ.

All Sacraments are perfected by three things: 1° by things as matter; 2° by words as form; 3° by the person of the Minister confecting the Sacrament with the intention of doing what the Church does. - This is clear from the Council of Florence in the Decree of Union.

Sacraments, besides sanctifying grace, produce grace which is called sacramental, i.e. they confer, if due conditions are not lacking, helps for obtaining the special end for which each Sacrament was instituted. Sacraments operate *ex opere operato*, i.e. by force of the divine institution independently of the work of the one operating, namely of the Minister and subject of the Sacraments.

**1207. - II. Number.** The Sacraments are seven, as is clear from Trent:<sup>1</sup> If anyone shall have said that the Sacraments of the New Law were not all instituted by our Lord Jesus Christ, or that there are more or fewer than seven, namely Baptism, Confirmation, Eucharist, Penance, Extreme Unction, Order, and Matrimony; or that even some one of these seven is not truly and properly a Sacrament, let him be anathema.

**III. Division.** Sacraments according to various properties are thus distinguished:

1° **Necessary, or not necessary.** Again, necessary Sacraments are necessary either by necessity of means, or by necessity of precept. By necessity of means, at least in implicit vow, Baptism is necessary, which is the gate of the Church and of the kingdom of heaven; Penance is necessary for those who have fallen into mortal sin after Baptism; and, according to St. Alphonsus,<sup>1</sup> probably also the Eucharist, both on account of the words of Christ:<sup>2</sup> Unless you shall have eaten, etc., you shall not have life in you; and because the Eucharist is the end of all the Sacraments. - By necessity of precept all the others are necessary, with the last two excepted, which are not necessary for private persons, but only for the community.

2° **Imprinting, or not imprinting,** character in the soul. Baptism, Confirmation, and Order imprint character; the others do not imprint. - Trent.<sup>3</sup>

3° **Formed, or unformed,** according as they produce grace while they are received, or, with an obstacle intervening, suspend their effect until the obstacle is removed.

4° **Sacraments of the living or of the dead,** according as they already suppose sanctifying, or first, grace, and only increase it; or, from their primary institution, confer that same grace.

Notes to n. 1207 - note sequence 1. (1) Session 7, Canon 1. Notes to n. 1207 - note sequence 2. (1) L. VI. 192. (2) John 6. 54. (3) Session 7, Canon 9.

**1208. Questions. - Query 1°** Can the Sacraments of the dead confer second grace?

Resp. Affirmatively. But this can happen in a twofold case: 1° when venial sins alone are subjected to the keys, which frequently

happens; 2° when a penitent, guilty of mortal sin, approaches the Sacrament of Penance with perfect contrition; because perfect contrition with the vow of the Sacrament, even before reception of the same, justifies a man: therefore then the Sacrament confers not first grace, but second grace only.

**Query 2°** Can Sacraments of the living sometimes avail to confer first grace?

Resp. Affirmatively, more probably; not indeed *per se*, as is clear from their institution, but *per accidens*, or by means of Charity infused by force of the Sacrament in a subject not voluntarily opposing an obstacle. The case would be if someone of good faith, about to approach a Sacrament of the living, approaches in mortal sin, either because he is ignorant of this, or because he thinks himself contrite, or because he thinks that he approaches licitly in that state; now, in these circumstances the Sacrament of the living infuses grace into the soul, and therefore blots out the sin. For Sacraments always confer grace on those not placing an obstacle.<sup>1</sup> But an obstacle is not placed by him who approaches thus in good faith.<sup>2</sup>

**1209. - Query 3°** Is attrition required or does it suffice, that Sacraments of the living may confer first grace?

Resp. Affirmatively to each: 1° indeed it is required, because first grace cannot be infused except by the destruction of mortal sin; but the destruction of mortal sin cannot happen without detestation of the same, namely without contrition or at least attrition; 2° it suffices, because from the things said Sacraments of the living can sometimes confer first grace: but this could not happen if attrition did not suffice, since a sinner justified by perfect contrition would always approach the Sacrament.<sup>3</sup>

**Query 4°** Is original sin blotted out in Baptism valid indeed, but unformed because of defect of disposition in the adult baptized?

Resp. Negatively. The reason is, because no sin dissolving from the friendship of God is forgiven except through reconciliation with God, i.e. through justification. But this cannot happen unless first grace is infused; but this first grace is not infused if dispositions are lacking. Therefore. But once the obstacle has been removed, whether by perfect contrition with the vow of the Sacrament, or by the Sacrament with attrition, the sacramental grace of Baptism revives, or its suspension ceases, and it blots out original sin, and at the same time all actual sins committed before Baptism. But the Sacrament of Penance blots out sins committed after Baptism, and, according to the sentence which St. Alphonsus<sup>1</sup> calls most common, but whose foundation does not seem convincing to him, the sin of fiction, or of depraved disposition, with which the Sacrament of Baptism was received. Yet insofar as this depraved disposition persevered after Baptism, it is certainly blotted out through the Sacrament of Penance.

Notes to n. 1209 - note sequence 1. (1) Trent, Session 7, Canon 6. (2) L. VI. 6. 269. St. Thomas, Part 3, q. 72, a. 7 ad 2; q. 79, a. 3. (3) L. VI. 6. Notes to n. 1209 - note sequence 2. (1) L. VI. 142. ## CHAPTER II.

## ON THE MATTER AND FORM OF THE SACRAMENTS.

### I. ON THE NATURE AND UNION OF MATTER AND FORM.

**1210. - Definitions.** Matter is a sensible thing to be determined to the notion of a Sacrament through form. Hence matter is that which in the Sacrament is more indifferent, and has a less perfect signification; and therefore it must be determined through another thing for signifying.

Matter is twofold: one remote, and another proximate. The former is the sensible thing itself, which is employed in the Sacrament, or the thing about which the sacramental action is exercised. The latter is the very application, or use, of the remote matter in the sacramental action. Thus in Baptism water is the remote matter, ablution the proximate matter.

But form is the part of the Sacrament which determines the matter for effecting the Sacrament, and which ordinarily (n. 1554. II.) consists in words uttered by the Minister.

**1211. Principles. - I.** Matter and form are altogether necessary for the validity of a Sacrament; therefore, with either one lacking, Sacraments cannot be confected. The reason is, because a Sacrament cannot be confected except in that mode in which Christ instituted it, who alone is the author of the Sacraments. It is of faith. It is clear besides from dogmatic definitions, especially from the Council of Florence in the Decree of Union, etc.<sup>1</sup>

**II.** In confecting a Sacrament, outside the case of necessity, matter and form ought to be employed morally certain. The reason is, because, unless necessity urges, it is not lawful to use probability which does not remove the danger of invalidity. Cf. n. 60. I.

**III.** Matter and form ought to be united, or applied, by the same Minister and toward the same subject. "The reason is, because if one should place the matter, and another the form, the words of the form would not be verified; for the Minister, who, for example, should say: I baptize thee, while another pours out the water, would utter what is false, since he himself would not baptize.

**IV.** That a Sacrament be valid, there ought to be so great a conjunction or simultaneity between matter and form that one affects the other. The reason is, because otherwise the words would not fall upon such a thing, nor therefore with it constitute one total sign.

1. In the Eucharist physical simultaneity is required between matter and form; for the demonstrative pronoun THIS and HERE cannot be verified unless the matter is present.

2. In the other Sacraments moral simultaneity suffices, and that diverse according to the diverse nature of the individual Sacraments. Hence:

a) In Penance absolution can be deferred for some little time, for example for an hour; for it was instituted in the manner of a forensic judgment, in which sentence is not always immediately pronounced.

b) In Matrimony the consent of one party can follow the consent of the other for as long as this is morally judged to endure, as happens in contracts, whose nature Matrimony imitates.

c) In the other Sacraments, for validity, it suffices that the matter be applied immediately (i.e. within a space less than one *Pater*) before the form is pronounced, or immediately after it has been uttered. - In practice, however, as safer, the sentence of Cajetan is to be advised, which requires that the form be begun before the application of the matter is completed, or conversely.<sup>1</sup>

Notes to n. 1211 - note sequence 1. (1) L. VI. 427. Notes to n. 1211 - note sequence 2. (1) L. VI. 9.

## II. ON THE CHANGE OF MATTER AND FORM.

**1212.** - There is given a twofold change both in matter and in form, namely substantial and accidental.

The change will be substantial in matter, if according to the use and estimation of men this cannot be called the same as that which was determined by Christ, as if in Baptism you should employ wine instead of water; but in form, if the sense of the words intended by Christ is changed into another, as if in Baptism you should say: I anoint thee in the name, etc. But the change is called accidental which is concerned only with the qualities of the thing, as if you baptize with water not blessed; or which does not change the sense of the words, as if in place of: I baptize, you should say: I wash.<sup>1</sup>

**Principles.** - **I.** Every substantial change in the matter and form of a Sacrament invalidates the Sacrament, because it is no longer the rite instituted by Christ; and, if it is voluntary, constitutes grave sin, because it inflicts grave injury upon the author of the rite.

**II.** No accidental change in the matter and form invalidates a Sacrament; yet it induces grave or light sin, according as it is, or is not, notable.

The form of the Sacraments can be changed substantially in many ways:

1° By subtraction of an essential syllable or words, as if you say: I baptize, omitting that word thee; but not of accidental words, as if in Latin you say: I baptize thee, omitting that word I.

2° By addition, by which the truth of the Sacrament is taken away, as: I baptize thee in the name of the greater Father, of the lesser Son; but not by that addition by which only the error of the Minister is expressed, in a separate proposition, and not as an explicit or implicit condition, as: by the authority conferred upon me by Calvin, I, etc.

3° By variation of words through others not synonymous, as if in place of: I absolve, you say: I change.

4° By transposition of words, which ordinarily is only accidental, as: Thee I baptize.

5° By corruption of the same, for example by changing letters, which will more easily be substantial at the beginning than at the end of the words; because more easily for hearers the sense will be changed, for example in "in the name of the mother" for "of the father," than in "of the chalice" for "of the cup."

6° By interruption, by which the unity of the sentence is taken away, as if, after having said: This is, you should recite a Psalm or delay long; but not if, after having said: I thee, you should cough, impose silence, saying: Be silent, chatterers, and then at once conclude: baptize, etc.

Notes to n. 1212. (1) L. VI. 11.

## III. ON THE REPETITION OF THE SACRAMENTS IN DOUBT CONCERNING THE VALID APPLICATION OF MATTER AND FORM.

**1213.** - A threefold rule must be established:

**I.** Sacraments can be repeated whenever there is a prudent doubt concerning their value. The reason is, because if perchance the Sacrament were not valid, those who approach to receive it would be deprived of its fruit. But that a prudent fear of so great an inconvenience is a sufficient reason why

the Sacrament should be repeated is clear from the very well-known axiom: Sacraments are on account of men.

**II.** Sacraments generally cannot be repeated without grave sin, when there is no prudent doubt concerning their value. The reason is, because without cause they would be repeated, and therefore a grave injury would be inflicted upon them.

**III.** Sacraments ought to be repeated whenever, a prudent doubt concerning their value having arisen, charity, justice, or religion demands this; that is, whenever from justice, charity, or religion they ought to have been conferred or administered. The reason is, because the nullity of the Sacrament, if perchance it were present, would turn to the harm of the neighbor, and sometimes to contempt or irreverence of Religion. But then they are to be repeated only conditionally, that reverence for the Sacrament may be provided for.<sup>1</sup>

Notes to n. 1213. (1) L. VI. 27 sq.

**1214. Resolves.** - 1° The Sacraments more necessary, and those which are conferred only once, namely Baptism and Order, are more easily to be repeated, even if a much greater probability makes for the value of the Sacrament against doubtful or only slightly probable reasons in the opposite direction. - Thus commonly.

2° Absolution is to be repeated with a penitent guilty of mortal sin, if there is prudent doubt concerning the due utterance of the form. But if the penitent is not in the state of mortal sin, it will not be necessary to repeat the form, since Communion can be permitted to him even without absolution.

3° The Minister who doubts lightly, and does not know why he fears, or only does not reflexively remember that he pronounced the words of the form, sins mortally *per se* if he repeats the form, or even one word three or four times. The reason is, because he changes the form, and introduces a new rite concerning the gravest action of all. Moreover he exhibits Christ, whom he represents, as speaking ridiculously. In practice, however, the scrupulous who repeat the form are for the most part excused from mortal sin, indeed often also from venial sin, because, too much agitated by scruples, from perplexity or without advertence, they act so foolishly. - Thus Voit.<sup>1</sup>

4° If in Mass after the Consecration a doubt arises for you concerning the due utterance of the form, or concerning its total omission, you ought not, nor can you, repeat anything, since otherwise you are not accustomed to omit these things; for one must judge from things commonly occurring, unless nevertheless you doubt very probably, as the Rubric speaks. - See St. Alphonsus.<sup>2</sup>

Notes to n. 1214. (1) P. 2. n. 27. 31. (2) L. VI. 224.

## CHAPTER III: ON THE MINISTER OF THE SACRAMENTS

The Minister of the Sacraments is he who, in the name of Christ, whose place he bears, performs the sacramental action.

We must treat: 1° of the requisites in the Minister for conferring the Sacraments; 2° of the office of the Minister in the administration of the Sacraments.

### ARTICLE I: ON THE REQUISITES FOR THE ADMINISTRATION OF THE SACRAMENTS, OR ON THE ATTENTION, INTENTION, FAITH, AND PROBITY OF THE MINISTER

#### § I. ON THE ATTENTION OF THE MINISTER

**1215. - Definition.** Attention is the application of the mind to the things which are being done, or it is an act of the intellect by which a man considers that which he is doing.

**Division.** Attention is distinguished as twofold: one internal, which consists in the advertence itself of the mind to that which is being done; another external, which excludes every action physically incompatible with internal attention. - See the things said at n. 402.

**Principles. - I.** For the validity of the conferral of Sacraments no other attention is required except that which is found in every truly human act. Therefore Sacraments can be validly ministered even by a distracted Minister, or one thinking at the same time about other affairs. The reason is, because in order that an act be and be considered human, what is looked to is not actual attention, but the procession of the act itself from an act of the rational will. Moreover attention often does not depend upon the will of man; but Christ could not require in the Minister of the Sacraments a condition which is sometimes impossible.<sup>1</sup>

**II.** For the licit conferral of Sacraments attention is required, so that every voluntary distraction be absent. The reason is, because the reverence due to the Sacrament demands that it be treated diligently, and that the danger of erring be avoided. Nevertheless, according to the common sentence of theologians, voluntary distraction ordinarily does not exceed venial sin, unless one exposes himself to a danger of gravely erring in the form.<sup>2</sup>

They except the Eucharist, i.e. the canon, and especially the Consecration and Communion, during which every notable voluntary distraction, on account of the greatest dignity of the Sacrament, is probably mortal. Others, however, deny this. St. Alphonsus adheres rather to the former sentence.<sup>3</sup>

Notes to n. 1215. (1) Ib. (2) Ib. (3) Ib. and n. 410. Dub. 5. Exam. Ord. n. 125.

#### § II. ON THE INTENTION OF THE MINISTER

**1216. - Definition.** Intention is an act of the will tending toward some end, or an act of the will by which one intends to do or omit something.

**Division.** It is manifold, namely: 1° actual, virtual, habitual, and interpretative (n. 5. 4°); 2° internal or true, or external, which regards only the external act; 3° determinate or indeterminate, or in a

confused way; 4° absolute or conditioned.

**Principles. - I.** For the validity of a Sacrament there is required in the Minister some true and serious will at least of doing that which the Church does. - It is clear from Trent.<sup>1</sup>

**II.** Nevertheless an actual intention is not required, but a virtual one suffices. The reason is, because actual intention, although best and desirable, is sometimes morally impossible; but a virtual intention sufficiently flows into the action of the Minister, so that this can be called truly human and deliberate. - Thus all.

**III.** A habitual intention does not suffice, nor an interpretative one; not the first, because it is neither actually elicited by the will, nor, although sometimes elicited, does it endure in some effect or in a series of actions; not the second, because it is neither actually elicited, nor was it ever actually elicited, but it would only be elicited if the mind were thinking about the thing to be done (n. 5. 4°).

Notes to n. 1216. (1) Session 7, Canon 11.

**1217. Questions. - Query 1°** Is an internal intention required?

Resp. Affirmatively; because, if the Minister should intend only the external act, that act - for example, ablution, which can be referred both to cleansing stains and to baptizing - would not be determined to its being.<sup>1</sup>

**Query 2°** Is there required in the Minister the intention of doing what the Roman Church does?

Resp. Negatively, provided he has the intention, at least implicit, of doing that which the true Church does, even if from error he should think his own heterodox church to be the true Church.<sup>2</sup>

**Query 3°** Is there required in the Minister the intention of confecting a Sacrament?<sup>3</sup>

Resp. Negatively, at least explicitly, provided this intention is not excluded. For it suffices that he intend in general and implicitly to do what the Church does.<sup>4</sup>

Notes to n. 1217. (1) L. VI. 16. (2) Ib. 20. (3) Ib. 21. (4) Ib. 22.

**1218. - Query 4°** Must the intention of the Minister be determined to a certain matter and person?

Resp. Affirmatively. The reason is: 1° as regards the matter, because, as was said above in q. 1°, otherwise it would remain in a state of indifference; for it cannot be drawn from that state and determined to the Sacrament except through the intention of the Minister; 2° as regards the person, because the effect of the Sacrament cannot be applied in general, but to some subject; otherwise no application would be made. - Nevertheless an error in the person does not stand in the way of the validity of the Sacrament, except in Matrimony, or unless the Minister should bind his intention exclusively to a certain person. But even in this case he would validly administer the Eucharist, as is clear.<sup>1</sup>

**Query 5°** Is a Sacrament valid when conferred with a conditioned intention?

Resp. 1° With Matrimony excepted, as being a contract (concerning which later), negatively, if the condition added is either concerning an impossible thing and is seriously added, as: I absolve thee, if thou hast touched heaven with thy finger, because then no intention of absolving is present; or concerning a future contingent thing, because such a condition suspends the intention of the Minister, and prevents the form here and now from being applied to the matter; nor afterward can it

be applied, the condition having been verified, since then the matter and form have already ceased to be present.

Resp. 2° Affirmatively, if the condition is either concerning a future necessary thing, and the suspension of the Sacrament is not really intended, because the intention under such a condition passes over into an absolute intention; or concerning a past or present thing, and in fact this exists, because even then a conditioned intention passes over into an absolute intention; but if the condition is not verified, then there is no intention, since it has been restricted to a non-existing condition.<sup>2</sup>

Notes to n. 1218. (1) Ib. 19. (2) L. VI. 26.

**1219. - Query 6°** Is it lawful to confer Sacraments with a conditioned intention, in doubt whether they have been validly conferred?

Resp. 1° As regards Sacraments imprinting character, it is certain that this is lawful. For it is established by Canon Law, where in doubt of Baptism this form is indicated: If thou hast not yet been baptized, I baptize thee, etc.<sup>1</sup>

Resp. 2° Also as regards other Sacraments it is lawful, if a sufficient cause adds the condition. The reason is, because Sacraments are on account of men, and, by adding a condition, reverence due to the Sacrament is sufficiently preserved, provided also that the consultation of the Sacrament itself be looked after as much as can be done, and with the good of those who receive the Sacrament, if perhaps they are capable of it, and with reverence toward the Sacrament. - Thus more commonly with St. Alphonsus, against some.<sup>2</sup> But it is certain that in extreme necessity, where nothing is present except doubtful matter, the Minister not only can, but also is held under grave obligation, to minister the Sacrament conditionally.<sup>3</sup>

**Query 7°** Must the condition be expressed in words?

Resp. Negatively. The reason is, because it is enough for reverence toward the Sacrament if it is conceived in the mind. Indeed Gobat thinks that it is not necessary for him who administers the work to have the condition explicitly and formally in mind, but it is enough if it is held implicitly and virtually, as he who wishes to hear Confessions according to the institution of Christ or the intention of the Church has it; because thus also reverence due to the Sacrament is sufficiently preserved. Yet it is to be added by mouth also where the Rubric prescribes this, as in conditioned Baptism, especially if it is conferred publicly, lest, namely, bystanders believe Baptism to be repeated absolutely, and, on account of the sentence, although little probable (and contrary to the Rubric of the Missal), of those who hold that the value of a Sacrament does not depend on the intention of the Minister, but only on the serious conferral of it, it is more right to express the condition also in words.<sup>4</sup>

**Note.** - 1° More rightly, according to St. Alphonsus, it is held that Sacraments are invalidated by a condition humanly unknowable. - 2° If the Minister has two intentions contrary to each other, and at the same time, the predominant one prevails; and so, whatever uniting incompatibles may have been chosen beforehand, if neither is predominant, the Sacrament does not subsist. - But if they have been successive, the later one prevails, unless the first, not revoked, had virtually excluded any subsequent one beforehand. - If doubt remains, the Sacrament will be doubtful.<sup>5</sup>

Notes to n. 1219. (1) Decr. L. III. T. XLII. c. 2. (2) L. VI. 27. 28. (3) L. VI. 29. H. A. Tr. XIV. 8. Quaest. Retr. Rec. n. 17. Miss. de def. V. 2. (4) L. VI. 24. 26. (5) Session 7, Canon 12 on Sacraments in general, and Canon 4 on Baptism.

### § III. ON THE FAITH AND PROBITY OF THE MINISTER

**1220. Principles.** - **I.** For the value of the Sacraments neither faith, nor probity, or state of grace, is required in the Minister. It is clear: 1° from the perpetual practice and tradition of the Church, which has never wished those baptized by heretics and the wicked to be rebaptized. It is clear: 2° from the definition of the Church. - Trent.<sup>1</sup>

**II.** For the licit administration of the Sacraments, however, faith and probity are required in the Minister, at least if he has been consecrated for conferring Sacraments, and confects solemnly, i.e. with the whole rite prescribed by the Church. Therefore he sins gravely who ministers Sacraments in mortal sin; for a Minister destitute of faith, or unworthy, inflicts grave injury on God and Christ, by treating sacred things unworthily, and, as much as is in him, by contaminating them. Moreover, since the Minister of the Sacraments represents Christ, the primary Minister, who is the Saint of saints, and bears his person, it is necessary that he himself also be holy.

Notes to n. 1220. (1) Session 7, Canon 12 on Sacraments in general, and Canon 4 on Baptism.

**1221. Questions.** - **Query 1°** Does a Minister sin gravely who confers a Sacrament in mortal sin, in a case in which he has not been specially ordained or consecrated for this, for example, if a woman ministers Baptism in the state of sin?

Resp. Negatively, probably; because the obligation of having holiness in a Minister does not arise precisely from the very holiness of Christ and of the Sacrament according to itself, but from the consecration of the Minister for conferring the very holiness of Christ and of the Sacrament. - Billuart,<sup>1</sup> St. Thomas,<sup>2</sup> and many others.

Yet not a few others affirm, both on account of the reason diametrically opposed to the negative sentence, namely on account of reverence due to Christ, whose minister also in this case is a lay person, although he is not a minister of the Church, and on account of the Sacrament, since here too sacred things, and indeed in a grave matter under grave obligation, are being handled. Thus Collet, Lacroix, Lugo, etc. - St. Alphonsus adheres to the affirmative sentence as intrinsically and by far more probable.<sup>3</sup>

**Query 2°** Does a priest, or consecrated Minister, sin gravely when he ministers indeed a Sacrament in mortal sin, but not solemnly, for example, Baptism without ceremonies in a case of necessity?

Resp. It is disputed, as in the preceding question; but St. Alphonsus adheres to the affirmative.<sup>4</sup>

**Query 3°** Does a Minister sin gravely in mortal sin, if grave necessity urges?

Resp. Negatively, speaking rigorously, namely if the danger is so urgent that no time is allowed for an act of contrition to be elicited by him. But this hypothesis must generally be denied. Moreover, a Minister conscious of mortal sin is not excused who can foresee such a case of necessity, as a Pastor and others (for example, priests exercising the care of souls subsidiarily, or ministering in large hospitals or in camps), who by office are bound to minister the Sacraments, and by an almost special obligation are held to remain habitually in the state of grace.<sup>5</sup> Resolve the same concerning midwives.

Notes to n. 1221. (1) Diss. 5. a. 4. (2) Part 3, q. 64, a. 6; and in 4 Dist. 5, q. 2, a. 2. (3) L. VI. 32 and Retract. 61. Conf. diretto per le genti di campagna, cap. 17. n. 7. Vind. p. 928. 2. Ed. 2a. T. II. p. 587. LXXXIII. (2). (4) L. VI. 32. (5) L. III. 27.

**1222. - Query 4°** Does he sin who, outside the celebration of Mass, ministers the Eucharist in mortal sin?

Resp. Affirmatively, probably. The reason is, because grave injury is done to the Most Holy Eucharist. For although he does not act as an efficient cause in confecting the Sacrament, nevertheless he is its dispenser, and for this is specially consecrated, and he undertakes a ministry by which he cooperates immediately in sanctification (n. 219. § Otherwise).<sup>1</sup>

**Query 5°** Do they sin who in mortal sin touch or carry the Most Holy Eucharist, whether mediately or immediately?

Resp. It is disputed. There is a threefold probable sentence:

**I.** It affirms in each case, because the thing is most holy, or the Body of Christ, which they handle unworthily. St. Alphonsus calls this very probable.<sup>2</sup>

**II.** It denies, because here there is no administration of a Sacrament, nor does matter so grave appear that it would induce mortal sin. - Thus Lacroix,<sup>3</sup> Salmant.,<sup>4</sup> Busemb.,<sup>5</sup> and St. Alphonsus says that this is not improbable.<sup>6</sup>

**III.** It thus distinguishes: They who immediately touch the Most Holy Eucharist in mortal sin do indeed sin gravely, but not they who touch mediately. The reason is repeated from the very diverse grade of irreverence between the first and second case. - Thus Billuart.

Notes to n. 1222. (1) L. VI. 38 and Retr. 62. (2) L. VI. 35. (3) L. VI. 35. (4) n. 101. (5) Tr. I. c. 7, p. 11. n. 106. (6) L. VI. 37.

**1223. - Query 6°** Do they sin gravely who exercise other sacred functions in mortal sin?

Resp. Negatively; because all other exercises of Orders besides the confection and administration of Sacraments do not seem to require holiness under grave obligation, since they are not proximately ordered to the sanctification of the soul. - Thus more commonly and more probably Salm., Mazzotta, and St. Alphonsus says that this is sufficiently probable.<sup>1</sup> - Nevertheless a preacher exercising from office is with difficulty excused from mortal sin, who from office preaches, and inveighs against that very vice of which he is publicly defamed, since the scandal impedes the fruit of doctrine.<sup>2</sup>

**Query 7°** Is a Minister confecting a Sacrament held to confess beforehand, if he is guilty of mortal sin?

Resp. 1° Affirmatively, if there is question of the celebration of Mass, and the availability of a confessor is not lacking to him; because all the faithful who are guilty of mortal sin and about to communicate must first make Confession, from the Decree of Trent.<sup>3</sup>

Resp. 2° But negatively, more probably, if there is question of other Sacraments; because by no law is he obliged to Confession; and therefore it suffices that he elicit an act of contrition.<sup>4</sup>

**1224. - Query 8°** Does he sin gravely who hears Confession in mortal sin, but does not absolve, or with the purpose of eliciting contrition before he absolves?

Resp. Negatively, more probably; because a confessor, by hearing Confession, does not confect the Sacrament.<sup>5</sup>

**Query 9°** How many sins does a confessor commit by absolving several penitents successively in mortal sin?

See the response at n. 219.

Notes to n. 1224. (1) L. VI. 41. (2) L. VI. 41. (3) Session 13, cap. 7. (4) L. VI. 34. (5) L. VI. 36.

## ARTICLE II: ON THE OFFICE OF THE MINISTER

1° As regards the obligation of ministering Sacraments; 2° as regards the obligation of sometimes denying them; 3° as regards the mode of conferring them.

### § I. ON THE OBLIGATION OF MINISTERING SACRAMENTS

**1225. Principles. - I.** Those who have the care of souls are held under grave obligation from justice to minister the Sacraments to their subjects reasonably asking. For by taking up the care of souls they have obliged themselves to this by a tacit contract entered into with the subjects, from whom they receive support or at least honor.

Therefore they are held if the common precept of receiving them urges, or if the private necessity or utility of the one asking demands the administration, for example, if the one asking foresees some danger, or is placed in temptation and needs the grace of the Sacrament, or if he wishes to exercise a devotion suitable to his state, or to gain an Indulgence, etc.

**II.** Others not having the care of souls are not held to minister Sacraments from justice; yet sometimes they are held from charity, namely in a grave necessity of the neighbor.<sup>1</sup>

**1226. Questions. - Query 1°** Who are considered to have the care of souls?

Resp. All those who from office, or by a special title of spiritual jurisdiction or delegation, ought to feed or care for some part of the fold of Christ. Therefore such are Bishops, Pastors, and whoever have subsidiary care of souls from a commission or public office, as among us are quasi-pastors and their coadjutors. Likewise, with respect to Regulars, their own Prelates or Superiors.<sup>2</sup>

**Query 2°** Which Sacraments are to be ministered in necessity, even with danger of death, whether by those having the care of souls or by others?

Resp. 1° Those who do not bear the care of souls certainly are held only to minister the Sacraments absolutely necessary for salvation, namely Baptism and Penance, or Extreme Unction when someone can in no way confess, and is more probably known to be in mortal sin. The reason is, because they are held only from charity alone to assist the neighbor in the gravest danger of salvation. But only the aforesaid Sacraments are necessary for salvation. Therefore, etc. - Thus most commonly theologians with St. Alphonsus.<sup>3</sup>

Resp. 2° Even those bearing the care of souls are very probably held to minister only the aforesaid Sacraments with any danger whatsoever. The reason is, because the other Sacraments are not of such necessity that one is held to confer them with grave danger of life. - Thus St. Alphonsus,<sup>4</sup> relying on the Declaration of Gregory XIII (12 Oct. 1576), and the Declaration of the S. C. C. approved by the same Pontiff. (O) p. 399. Nevertheless those who bear the care of souls are held to expose life not only in extreme necessity, but also in grave necessity, while other Ministers are obliged to this only in extreme necessity.<sup>5</sup> Cf. the things said at n. 279. 3rd Rule.

**Query 3°** Is one held to expose life for ministering the aforesaid Sacraments with probability only of success or of necessity?

Resp. It seems it must be denied, because it is too hard to exact so heroic an act for aiding the neighbor, unless there is morally certain hope of success and the necessity is sufficiently certain. Hence you are not held to expose life in order to baptize or absolve someone, if you probably must perish before you can fulfill this, or if you legitimately presume that he is baptized, or is not placed in the state of mortal sin, or even that he can easily assist himself by an act of perfect contrition.<sup>1</sup> Cf. n. 279. 2nd Rule.

Notes to n. 1226 - note sequence 1. (1) L. VI. 58. (2) Ib. (3) H. A. Tr. VII. 28. L. VI. 58, 233, 729. (4) L. VI. 233. (5) L. III. 27. Notes to n. 1226 - note sequence 2. (1) L. III. 27. Appendix annotation (omicron), to n. 1226. q. 2°. R. 2°. p. 10. col. 2. Benedict XIV speaks otherwise in de Syn., L. XIII. c. 19, not mentioning the Decree of S. C. Conc. of the year 1576 approved by Gregory XIII, by which it is declared: "that the Pastor is held to minister to his parishioners laboring under plague only the Sacraments necessary for salvation, namely Baptism and Penance." But he adduces the Response to the postulate of the Vicar Apostolic of Julia Caesarea (Algiers), by which Viaticum also and Extreme Unction are declared to be ministered by them in time of plague. l. c. n. 1. 10.

**1227. Resolves.** - 1° Those having the care of souls sin gravely not only if they deny their ministry without reason, but also if they often show themselves morose and difficult; because thus they deter the faithful from the Sacraments, and the matter falls back to the same as if they denied the Sacraments.

2° Nevertheless it is not mortal to deny the Sacrament of Penance or of the Eucharist to one or another, or to the same person once or twice, asking without necessity; because the harm can easily be repaired, nor is the subject therefore judged to be gravely unwilling. Yet Confession is rarely deferred for men, especially those rarely confessing, particularly today, without grave danger to the soul.

3° If subjects ask irrationally, there is no sin. Hence the pastor is not held daily to spend time with a scrupulous person or little devout souls, nor is this expedient for them.

4° If the pastor has suitable coadjutors, he will not be held so rigorously to receive the Confessions of his subjects; yet he ought to satisfy the faithful who request him by name, unless either he is impeded, or the penitents are readily going to approach another confessor.

5° Generally speaking, those bearing the care of souls sin gravely who do not wish to receive the Confessions of their subjects except on a few determined days within the month; because they are the cause that the faithful remain long in the state of sin and are kept away from receiving the Sacraments.<sup>1</sup>

See more where the individual Sacraments are treated; and recall the things said concerning the office of Pastors in the Treatise on States, n. 1141. IV.

Notes to n. 1227. (1) L. VI. 58.

## § II. ON THE OBLIGATION OF DENYING SACRAMENTS TO THE UNWORTHY WHO ASK

**1228. Principles.** - I. The Minister is held under grave obligation, *per se* speaking, to deny Sacraments to the unworthy, because the natural law obliges a dispenser faithfully and according to his will to dispense the goods of the Lord; but the certain will of Christ is that Sacraments not be conferred upon the unworthy, according to that saying of Matthew:<sup>1</sup> Do not give the holy thing to dogs, nor cast your pearls before swine.

**II.** Sacraments, in which the Minister acts the part of dispenser alone, can be ministered to those asking without prior inquiry into their disposition, and can be denied only to those concerning whose unworthiness it is certain. The reason for the first is, because in these he does not act the part of judge, and therefore is not held to inquire. The reason for the second, because each one is presumed good until he is proved evil.

I said: 1° *in which the Minister acts the part of dispenser alone*. For it is otherwise if at the same time he ought to act the part of judge, and thus in Penance he is held to inquire concerning the acts of the penitent; in the Baptism of adults, concerning consent and dispositions; in Order, concerning the dignity of the one to be ordained; in Matrimony, concerning impediments. 2° *concerning whose unworthiness it is certain*. But it is certain if a) the crime is certain, or public suspicion concerning it is so vehement that it is equivalent to moral certitude, which cannot be laid aside by a probable reason; b) the penance is doubtful.<sup>2</sup>

Notes to n. 1228. (1) 7. 6. (2) L. VI. 43. 48.

**1229. Special Rules. - I.** A Sacrament is not to be ministered to a public sinner, even one asking secretly, not even from fear of death, as St. Alphonsus thinks; because no reason is present why an exception should be made to the general rule; indeed a grave scandal of the faithful would follow. - Except: 1° Penance, unless someone is prohibited from it, for example, on account of reserved censures;<sup>1</sup> 2° if someone has given a sufficient indication of conversion, such as is Confession made at least before several by one who is not notoriously placed in an occasion or in habitual scandal.<sup>2</sup>

**II.** To an occult sinner, asking secretly, the Sacrament is likewise to be denied;<sup>3</sup> because reverence toward the Sacrament and charity toward the neighbor in these circumstances entirely demand this.

**III.** To a truly occult sinner, asking publicly, the Sacrament is not to be denied. The reason is drawn from the inconveniences which would follow from the denial of the Sacrament; for scandals and disturbances would arise in the Church, and especially the faithful, having been led into suspicion, lest they be prohibited from the Sacraments, would withdraw from them. - Thus all with St. Thomas,<sup>4</sup> St. Alphonsus.<sup>5</sup>

Except nevertheless: 1° the Sacrament of Order, from which, on account of the public good, the unworthy man is to be repelled even with his own infamy, if he cannot otherwise be kept away, and this although the offense cannot be proved juridically. Nor is the Bishop obliged to the manifestation of the cause of the repulse, nor does an appeal belong to the one repelled, but only recourse to the Holy See.<sup>6</sup>

2° Matrimony, if the pastor outside Confession knows some impediment, or knows that the spouses are ignorant of the rudiments of the Faith, and this on account of protecting the legitimation and education of offspring.<sup>7</sup>

Notes to n. 1229. (1) Scav. T. III. n. 40. (2) L. VI. 44-49. q. Ref. 63. (3) L. VI. 50. St. Thomas, Part 3, q. 80, a. 6. (4) Part 3, q. 80, a. 6. (5) L. VI. 50. (6) Ib. 52. Benedict XIV, de Syn. L. XII. c. VIII. n. 3. 4. (7) L. VI. 54.

**1230. Questions. - Query 1°** When is a sinner considered public or notorious, or occult; or secretly asking for a Sacrament?

Resp. 1° That sinner is called public whose crime or very bad life is notorious, either by law, or by juridical proof or sentence, or by fact, as if the crime was committed in a public place, or by fame

among many, arising nevertheless from sufficient indications.<sup>1</sup>

Resp. 2° A sinner secretly asking is called one who is found alone with the Minister, or with a few others of whom deservedly no account is had, as are little children, etc. Otherwise he is considered to ask publicly. (X) p. 414.

**Query 2°** Is the Sacrament to be denied to an unworthy person asking publicly, whose crime is not simply public, but known nevertheless to most of those present, not to all?

Resp. Negatively, more probably; because he still possesses fame among those few who do not yet know his crime. Except if one or another upright person is ignorant, who is thought not likely to divulge it (n. 519. R. 3°).<sup>2</sup> - Hence only then is the Sacrament to be denied to an unworthy person publicly asking, when either his unworthiness is absolutely public (by fame, by law, or by fact), although perhaps known to none of those present; or respectively public, or known to all those present, which very rarely happens in great cities, especially ours, on account especially of the defect of personal knowledge; but it can happen more easily in small places.

Notes to n. 1230. (1) Ib. 44. (2) Ib. 45. Appendix annotation (X), to n. 1230. q. 19. p. 19. col. 1. Lest on account of notoriety, undeservedly judged to be such, a Sacrament be publicly denied, I have judged it useful to hand down a fuller exposition of notoriety. What the notorious is, in general, was said in n. 522, Resp. 2°. I say that something is notorious by law by juridical proof or sentence. Here proof is understood as full, such as that is called which produces as much faith as suffices for defining controversies; for example, the spontaneous Confession of the accused made in judgment and not revoked; the depositions of two witnesses greater than every exception, etc. - Sentence in this place is understood as definitive, or one which has passed into a thing judged. Something is notorious by fact when it is done so publicly that it cannot be concealed by any tergiversation. As that fact itself is, so this notorious is threefold: namely, notorious of a permanent fact, which continually presents itself to the sight of men, as the concubinage of one who is publicly seen retaining a concubine in his house; notorious of a fact immediately passing or momentary, as heresy publicly uttered; notorious of an interpolated fact, which is done publicly indeed, not continuously, but nevertheless is repeated rather often at intervals, as, for example, drunkenness by a drunkard. That something be notorious by fact, it is required that it be public by reason both of place, which must be public, for example a street, and not some private house; and of time, therefore not committed at night, unless on account of the multitude of those present in the public place where the crime is committed the night seems to be equated to day; and of the multitude of bystanders; for by defect of this the crime perpetrated by day and in a public place could be equated to one admitted at night. Fame, by reason of the notorious about which there is question here, is not that which is called fame of name, "reputation," and about which there was speech in n. 516, but fame among men, which is so called with respect not to the man made infamous, but to those among whom it prevails or is circulated, that which people say or tell; the common talk, report, saying. Therefore the notorious of fame is public insinuation or proclamation, from suspicion indeed alone, yet proceeding from a certain author; and this, in the present matter, not concerning the general quality of some man, that he is good or bad, but concerning some particular fact, for example, that Titius admitted such a crime. Fame of this kind, or fame arisen concerning some particular fact, by reason of its origin can still be distinguished in three ways: 1° As it is the vain voice of the populace and rumor among the people, which has no certain authors nor probable causes or reasons for believing thus, "rumor; hearsay"; 2° As it arises from some malicious, suspect persons, or those seeking their own advantage and utility. Neither the former nor the latter is to be attended to; 3° As it has drawn its origin from persons worthy of faith, grave, and concerning whose advantage there is no question, or, as St. Alphonsus says, from sufficient indications, so that it appears from what reason and cause the fame had its origin; and concerning this fame alone there is speech for the present. Fame accepted in such a way differs from rumor. For fame properly is when the whole city, or neighborhood, or the greater part of a community asserts something; but a community ought to consist of at least ten persons. But rumor is when some smaller part, for instance a half, a third, or a fourth part, speaks thus. Then fame proceeds from a certain author, for instance when it has arisen from certain and honest persons who said among the people that they had seen something and were present; but rumor proceeds from an uncertain author. Resolves. - 1° In order that some crime be held as notorious, and this, as is required in our matter, in the reason of crime or as formally criminal, it suffices, if there is question of the notorious by notoriety of fact, that the fact be permanent or even interpolated. But if the question is about a fact immediately passing or momentary, for example, someone publicly

utters heresy, from the very crime publicly perpetrated, from the very fact of heresy uttered, it is not yet established that he who perpetrated the crime, uttered the heresy, admitted the crime in the reason of crime, the heresy in the reason of heresy or as formally evil. Therefore in this case the Sacraments are not immediately to be denied, but inquiry must first be made whether, just as the fact itself, so also the formal malice of the fact is publicly certain. 2° In order that, on account of the notoriousness of an interpolated fact, for example in the case of a public customary sinner, a Sacrament can be publicly denied, it is required that perseverance in the evil custom be evident and publicly known. Wherefore the Sacrament is to be conferred if either the custom has been interrupted for a longer time, by the work of the customary sinner himself or even by some physical cause, for example illness, or nothing more has been publicly heard about it for a longer time. 3° The notorious of fame, in order to the denial of a Sacrament, is not to be attended to unless the fame, that is, the public insinuation or proclamation itself, is uniform, solid, constant, and perpetual, that is, not vague, light, or contrary, or, as Canonists have it, shaken by contrary allegations. It can be proved by two witnesses greater than every exception, deposing that they have heard it said so publicly, and indeed by the greater part of the people; for it does not suffice to depose that they heard it said so publicly, since it can happen that one alone said this publicly. Besides, they must express the certain persons, at least two, from whom they heard it, so that it may be known whether these are such that faith can be had in them. Finally, they must assign the probable causes by which the people was induced to believe: for example, because those persons, to whom faith can be had and from whom they heard it, asserted that they had seen it thus with their own eyes. 4° Before how many persons a crime ought to have been committed in order to be notorious by fact, and by how many, especially in a more populous community, it ought to be publicly insinuated or proclaimed in order to be notorious by fame, is defined rather by the judgment of a prudent man than by some general rule; compare nn. 522, 1564. But since this matter in practice is not without difficulty, and the judgment concerning the requisites for the notorious both of fact and of fame is also often arduous, in a matter of as much importance as the public denial of a Sacrament, the Ordinary is to be consulted if time permits; but if time does not permit this and the notoriety is doubtful, the Sacrament is not to be publicly refused. > Notes to appendix annotation - note sequence 1. > > 1 Reiffenstuel, L. 2. T. 19. n. 11. | 2 An apt, legitimate witness greater than every exception is one who can be repelled by no legitimate exception; and if anything differs here from those, it differs only as the comparative from the positive. Reiffenstuel, L. 2. T. 20. n. 7-11. But exception is the same as exclusion, for example of a witness, judge, etc. Id. T. 25. n. 1-5; and it is called legitimate if it is granted by law. | > Notes to appendix annotation - note sequence 2. > > 1 A sentence is said to have passed into a thing judged when it has not been appealed from. Reiffenstuel, L. 2. T. 27. n. 2 sq. | 2 Cf. Schmalzgrueber, T. 10. P. 1. Tit. 1. § 1. | > Notes to appendix annotation - note sequence 3. > > 1 Lib. VI. 44. | 2 Reiffenstuel, Lib. 2. T. 20. n. 387 sq.

**1231. - Query 3°** Is the Sacrament to be denied to a sinner when his crime is not public where he asks, but is public elsewhere?

Resp. Negatively, at least more probably; because on the one hand, by ministering the Sacraments to him, there is no scandal of others, and on the other hand, if they were denied, those inconveniences and harms would arise which proceed from denial made to an occult sinner. - But one must say otherwise if knowledge of that crime is easily about to come into that place.<sup>1</sup>

**Query 4°** How ought Pastors to conduct themselves in the celebration of Matrimony of those who notoriously have incurred ecclesiastical censures?

Resp. The Sacred Penitentiary, 10 Dec. 1860, dub. 10: "Care is to be taken with all strength that those bound by ecclesiastical censures be reconciled with the Church in the due manner; but if they refuse to be reconciled, and unless the marriage is celebrated, grave harms seem to be imminent therefrom, the Pastor should consult the Ordinary, who, having considered the account of things and circumstances and weighed all things which are handed down by approved authors, and especially by St. Alphonsus (L. VI. 54), should declare those things which he shall have judged more expedient in the Lord." Namely, according to the Holy Doctor, the Pastor will be able to assist "in order to avoid death, or other graver evils of the community, or of the contracting parties themselves, for example, lest they themselves persevere in sin."

**Query 5°** Is it lawful to simulate the administration of a Sacrament, lest it be conferred on an unworthy person?

Resp. Theologians distinguish a twofold simulation: one formal, by which the Minister directly intends to deceive; another material, by which someone does not directly intend to deceive, but from another motive is induced to simulate, for example, if he is compelled by grave fear, etc.

I say: It is never lawful, not even materially, to simulate a Sacrament. The reason is, because every simulation is an injury and grave irreverence toward Christ, whom the Minister mocks by abusing sacred things instituted by him.

**1232. - Query 6°** In what precisely does simulation of a Sacrament consist?

Resp. Theologians do not agree. Some say that generally it consists in this, that it can lead those receiving or others into error. More probably, according to the common sentence, it seems to be present only when something is put fictively which pertains to the essence of the Sacrament, so that the neighbor is necessarily deceived; and thus they distinguish simulation from dissimulation, which is had when the fiction or defect is exterior and, *per se* speaking, can be recognized, as, for example, if in the confection matter or form is not placed, but something else is substituted in its place, so that something other than the Sacrament is done. This dissimulation is lawful from a licit cause, since thus truth alone is hidden, and the Sacrament is not treated irreverently, scandal, contempt, intention of deceiving, etc., being excluded. (Cf. the number immediately following, 1233. 6° and 8°.) Hence the C. S. O., if ever it happened that infidel parents offered infants for Baptism, not so that they might become Christians, but so that they might be preserved from certain diseases, never permitted the pouring of water without the utterance of the form, so that the parents might thus desist from importunate prayers, since "Baptism is the gate of all the Sacraments and the profession of the Faith, and can in no way be feigned."<sup>1</sup>

**1233. Resolves.** - 1° Among those who, as publicly unworthy, are to be kept away from Communion, the Roman Ritual enumerates excommunicates, interdicted persons, and the manifestly infamous, as harlots, concubinaires, usurers (at least public by law, or condemned by sentence of a judge), magicians, sorcerers (among whom fortune-tellers also are to be held), blasphemers (as also are to be held those who by writings or words are accustomed to assail God, or the Saints, or Religion and the Church with calumnies). "But as often," says Kenrick,<sup>2</sup> "as the exterior composition of the body denotes a humble soul, it can be had as a retraction of those things which one has contumeliously uttered"), and other public sinners of this kind, such as public customary impenitents, those publicly known as enrolled in some condemned society, actors and actresses exhibiting impious or base plays. - "Public sinners," says Kenrick,<sup>3</sup> "who resist the legitimate authority of their prelates, or behave badly with grave offense of the faithful, are unworthy to be admitted to the Eucharist; but whenever the manner of acting, even if unjust, can be extenuated from error of mind or some other reason, it is better to repel no one approaching, but to leave him to the judgment of God and of the confessor." - Nor are all those to be barred who have publicly committed some grave sin, since scandal is regularly removed by Confession made or presumed. Yet, as is clear *per se*, those are to be barred who are publicly and actually in sin, for example, those manifestly and here and now drunk, or women so immodestly denuded that the denudation is mortal *per se* (n. 295. 11°).

2° To a public sinner, even one dying but nevertheless still master of himself, the Sacraments are to be denied, unless he repents not only before God, or in Confession, but also before men, unless perhaps the matter has been erased by oblivion. But this penitence before men ought to be exhibited outside Confession, and in such a way (for example, before witnesses), that it can come to the knowledge of others. Cf. Rit. Rom. on the Communion of the sick.

3° If Sacraments are to be denied publicly, let them be denied in a prudent manner. Hence all those things must be guarded against by the Minister by which either he would become liable to laws punishing defamation, or a greater impediment would be put in the way of the conversion of the unworthy person. Hence the motives of the refusal are not to be publicly exposed; and the priest, as he is assisting at the Sacred Table with others, should pass by without signifying anything either by words or by a nod. But if he comes alone during Mass, the priest will remain at the altar, announcing to the unworthy person through another that he may go away, but not why.

4° A priest would sin most gravely who in Mass should pronounce the consecratory words over bread and wine while excluding the intention of consecrating. Nor can those be excused by good faith who, laboring under crass ignorance and celebrating in mortal sin, simulate Consecration lest they become guilty of sacrilege, even if they omit the words of Consecration altogether.

5° A confessor would sin gravely who should utter the words of absolution without the mind of absolving, even if he were doing this in order to free himself more easily from an indisposed penitent instantly and importunately asking absolution, or even exacting it by most grave threats. - Several say that in this case a confessor can say: I do not absolve thee..., pronouncing the word *not* so softly that it is not heard by the penitent. St. Alphonsus does not judge this improbable;<sup>4</sup> but the confessor could more easily pronounce other words or prayers rather than the form of absolution; moreover this case seems to be almost chimerical.

6° A confessor, however, does not simulate the Sacrament of Penance when he recites prayers over an indisposed penitent, lest bystanders perceive that he is dismissed without absolution; for it is established among all that penitents are often dismissed by only a blessing, and sometimes without the intention of confessing or completing the confession they approach the sacred tribunal.<sup>5</sup>

7° A priest sins gravely who offers a host not consecrated for a consecrated one, even to a person knowing and consenting, as sometimes happens to miserable priests when an accomplice, who is a woman, comes to the Sacred Table to save reputation. The reason is, because thus a host not consecrated is exposed to adoration both by bystanders and by the one receiving herself knowingly with external reverence, which constitutes external and material idolatry, and therefore something intrinsically evil.<sup>6</sup>

8° Yet according to the common sentence they do not sin, at least not gravely, who from grave fear simulate entering Matrimony. The reason is, because since voluntary consent is lacking, according to the sentence now certain, which holds that spouses themselves are the ministers of this Sacrament, matter and form are lacking, and therefore there is no simulation of the Sacrament, but only of the matrimonial contract. Otherwise the error could be sufficiently perceived from the circumstances, and thus deception would not necessarily be present.

Notes to n. 1233. (1) Anal. J. P. Ser. 2. col. 1807. (2) Tr. XVII. 37. (3) Tr. XVII. 37. (4) L. VI. 59. (5) Ib. (6) Ib. n. 61.

### § III. ON THE MODE OF CONFERRING SACRAMENTS

**1234.** - It is not enough if the minister diligently observes those things which regard the matter and form; but he ought carefully to keep all the laws of the Holy Church concerning the administration of the Sacraments. Hence the Minister sins who contemns them, omits them without sufficient cause, or changes them;<sup>1</sup> and this according to the gravity of the matter, and therefore gravely, if either he neglects integral ceremonies (namely those which complete the sacramental action and indicate its effects more clearly, as exorcisms in Baptism), or even accidental ceremonies (which pertain to the ornament and decorum of the act, as genuflections), in great quantity, or with grave scandal, or from contempt.

**1235. Questions. - Query 1°** Is the use of the Roman Ritual of precept in the administration of the Sacraments?

Resp. Affirmatively, as regards our Provinces, yet with the modifications conceded by the Holy See,<sup>2</sup> it being forbidden:

1° That priests depart from it "under the pretext of custom or any other pretext whatsoever."<sup>3</sup>

2° That "if they have judged it expedient, for the sake of explanation, to add a version in the vernacular language of those things which" in administering the Sacraments and in the burial of the dead they recite in the Latin language, "they use any other than that which shall have been sanctioned by the Ordinary."<sup>4</sup>

3° That the Latin form of the prayers never be omitted.<sup>5</sup> (I) p. 400.

I said: affirmatively as regards our Provinces; but whether the use of the Roman Ritual in the administration of the Sacraments is of precept everywhere, disputed on each side, see, if you please, in De Herdt.<sup>6</sup>

Appendix annotation (pi), to n. 1235. 3°. p. 14, col. 2. In a Capuchin case it was asked: "Whether the custom of saying Agnus Dei and Domine non sum dignus in the vernacular language is to be eliminated." ...? And S. R. C. responded: "The custom is to be eliminated," May 23, 1835, ad 5, n. 4748. - And most recently as regards the aforesaid custom S. R. C., in a Ratisbon case, April 15, 1880, ad 6, declared: "The formulae which pertain to the administration of the Sacraments must be expressed altogether in the Latin language, except the responses of the godfather and godmother in the Sacrament of Baptism, and the words of consent of spouses in the Sacrament of Matrimony." I believe the priest must recite in the Latin language, but the recipients can recite in the vernacular, as the same De Herdt notes, Pr. Rit. Rom. p. 32 under 9, from Martinucci.

**1236. - Query 2°** What sacred vestments are required for the administration of the Sacraments?

Resp. With the case of urgent necessity excluded, a stole and surplice are generally required. - It is said, *surplice*; for "the rochet is not a sacred vestment to be employed in the administration of the Sacraments, and therefore for administering them the surplice must necessarily be used."<sup>7</sup>

But the stole ought not to be worn except in the confection of Sacraments and Sacramentals, and in the act of preaching where custom prevails, and also in certain other functions, as is prescribed in the Roman Ritual. But the use of wearing the stole as a sign of jurisdiction and preeminence is reprobated as an abuse.<sup>8</sup>

More things concerning the mode of administering Sacraments will be treated where the individual Sacraments in particular are considered. - Generally let the following admonition of the Second

Plenary Council of Baltimore be kept before the eyes:<sup>1</sup> "While they minister Sacraments, let the words be pronounced distinctly and articulately; let their approach, countenance, motions of the body, and modulation of the voice express consciousness of the most holy thing which is being done, and excite the faithful to firm faith and inward devotion. Moreover, according to their strength and the circumstances of things, let priests take care that those things which are required for the dispensation of the Sacraments be clean and becoming. Let Pastors instruct the flock committed to them concerning the Sacraments and the religious preparation to be put before these, as often as occasion is offered."

Notes to n. 1236 - note sequence 1. (1) Trent, Session 7, on the Sacraments, Canon 13. (2) Conc. Plen. Balt. II. a. 210-212. (3) Ib. a. 213. (4) Ib. a. 214, 215. (5) Ib. a. 215. (6) S. Lit. Prax. T. III. p. 369. ed. 1870. (7) S. R. C. 10 Jan. 1852. n. 5165. (8) S. R. C. 7 Sept. 1816; 11 Sept. 1847; 7 Sept. 1850. n. 4524. 5107. Notes to n. 1236 - note sequence 2. (1) a. 208.

## CHAPTER IV: ON THE SUBJECT OF THE SACRAMENTS

**1237.** - The subject of a Sacrament is called he who receives the Sacrament, and is capable of the effect of the Sacrament.

The subject of the Sacraments is man alone as a wayfarer; because, as is clear from Sacred Scriptures and tradition, the Sacraments were instituted for wayfaring men alone. Yet not all men are capable of all the Sacraments. For neither can women receive the Sacrament of Order, nor can children not yet using reason receive the Sacraments of Penance and Extreme Unction.

The reason *a priori* why man alone as a wayfarer is capable of the Sacraments is the will of Christ the Lord, the institutor of the Sacraments. But the reason of fittingness is, because, according to the order of the present Providence, man alone as a wayfarer is capable of first grace or of the increase of grace; but the Blessed or souls detained in purgatory are not of this kind, since for them there has already been determined a measure of glory corresponding to the grace which they had in mortal life. Much less are the damned capable of grace, as being now separated from God for eternity.

These things having been posited, we must treat of the requisites both for the valid and for the licit reception of the Sacraments.

### ARTICLE I: ON THE REQUISITES FOR THE VALID RECEPTION OF THE SACRAMENTS

**1238. Principles.** - **I.** For validly receiving the Sacraments no probity is required, nor properly Faith in the subject, if you except the Sacrament of Penance. This is clear from the practice of the Church, which has never permitted heretics and wicked men, duly baptized and ordained, to be baptized or ordained again. It is also clear, as regards Faith, from the express definition of the Council of Trent<sup>1</sup> concerning the Baptism of infants.

**II.** In infants or perpetually insane persons no disposition is required, nor intention, so that they may validly receive the Sacraments of which they are capable, namely Baptism, Confirmation, Order, and the Eucharist, which formerly was ministered to them. This is clear from the practice of the Church, and from the common sentence, etc.

**III.** In adults, for the valid reception of Sacraments, some intention is required; because it is not fitting that an adult be sanctified unless he wills it. Hence a neutral intention does not suffice, by which someone is so disposed in mind that he neither consents nor dissents.<sup>2</sup> For of such a one it cannot be said that he wills to receive the Sacrament. But for most Sacraments a habitual intention suffices, even sometimes one only confused, or implicit, with the nature of each Sacrament considered; because the conferral of Sacraments is a certain donation and benefit, for accepting which habitual intention suffices. I say: 1° *for most Sacraments*: on account of the exceptions concerning which n. 1240. I say: 2° *implicit*: i.e. contained in the will to live, or at least to die, as becomes a Catholic, and, as regards Baptism, in the will of doing all things necessary for salvation, but according to the things to be said at n. 1240. R. 1°.

**IV.** For validly receiving the other Sacraments, reception of Baptism is pre-required; therefore an unbaptized man is in no way capable of the other Sacraments.

The reason is, because the other Sacraments were instituted for the Church alone; but through Baptism alone men become members of the Church. Therefore, etc. Thus Eugene IV defined in the Decree for the Armenians.

Notes to n. 1238. (1) Session 7, on Baptism, Canon 13. (2) L. VI. 81 from St. Thomas, Part 3, q. 68, a. 7, c.

**1239. Questions. - Query 1°** Is attention required in the adult subject, that he may validly receive a Sacrament?

Resp. Absolutely negatively. For intention suffices, as has already been explained, even in Sacraments which require a virtual intention; the reason is, because a human act does not proceed from attention, but from the will or from intention. - Besides, most Sacraments, as was said, do not require even a virtual intention; therefore *a fortiori* they do not require attention on the part of the subject. Moreover attention is not required in the Minister for confecting a Sacrament, as is clear from the things said above at n. 1215; therefore *a fortiori* it is not required in the subject.<sup>1</sup>

Hence penitents are sometimes tormented by scruples in vain from this, that they suffered distractions while they were being absolved, or that they were absolved without having noticed this.

Notes to n. 1239. (1) Sporer, n. 157.

**1240. - Query 2°** What intention is required in adults for the individual Sacraments to be received?

Resp. 1° For validly receiving Baptism in adults, there is required an intention at least habitual, which has been expressed beforehand and never retracted. Yet some say that an implicit will of Baptism suffices, such as would be in him who would have the will of doing all things necessary for salvation, provided nevertheless that this implicit will in an unbeliever is not likewise implicitly excluded through gravely culpable ignorance of the true Faith.<sup>1</sup>

2° For Confirmation an interpretative will suffices. Thus it can be conferred upon a dying person deprived of his senses. - The same will suffices in one receiving the Eucharist.<sup>2</sup>

3° For Penance there is required either an actual intention, or at least a virtual one; and therefore a habitual intention does not suffice, at least in practice.<sup>3</sup>

4° For Extreme Unction there suffices a habitual, or implicit, or interpretative intention, as theologians commonly say, and as is clear from the Roman Ritual, where concerning it it is said: "This Sacrament is to be supplied to those deprived of their senses, who beforehand asked for it, or likely would have asked for it;"<sup>1</sup> "and the same," says St. Alphonsus,<sup>2</sup> "Lugo, etc., say concerning the Sacrament of the Eucharist."

5° For Order, certainly in an adult an interpretative intention does not suffice, because without an explicit will no adult can undergo the gravest obligation of the Clerical State. Yet a habitual intention suffices. But in practice, in one receiving Order, there will always be an actual intention, or at least a virtual one.<sup>3</sup>

6° For Matrimony there is required an intention at least virtual, because Matrimony is perfected by a contract, for which deliberation and full will are necessary.<sup>4</sup> (p) p. 400.

Notes to n. 1240 - note sequence 1. (1) L. VI. 82. (2) L. VI. 82. (3) Ib. Notes to n. 1240 - note sequence 2. (1) L. VI. 82. (2) Ib. (3) Ib. (4) Ib. (5) Ib. 86. Appendix annotation (rho), to n. 1240. 6°. p. 16, col. 2. To the question: Of what Sacraments, and of which ones, are deaf-mutes capable? Craisson responds, Manuale, n. 3239-3241. "Either they have been taught according to modern methods, or not; if the former, they can validly receive all the Sacraments just like other men, indeed also licitly receive them (Order excepted), provided no other impediments are present. "If the latter, the Sacrament of Baptism can validly and licitly be conferred on them" and Confirmation, "at least if, insofar as can be done, they are taught Christian doctrine. "As regards the other Sacraments: concerning Matrimony Innocent III speaks thus (cap. Cum apud sedem 23 de spons.): 'If such a person wishes to contract, it cannot or ought not be denied to him, since what he cannot declare by words, he can declare by signs.' "It is also supposed by most Doctors that other Sacraments can be administered to the deaf and mute, if in them the required dispositions appear, or nothing appears from which they are to be judged indisposed; but almost all those Doctors wrote before the time in which the modern method of teaching the deaf and mute was invented. Moreover, by many experiments it seems to be established that the deaf and mute who are not taught by this new method have no true knowledge of God and of the rules of morals, and a fortiori do not arrive at the knowledge of the mysteries and supernatural truths; consequently they cannot have any human will of receiving the Sacraments, nor the dispositions necessary for receiving them with fruit (see Montaigne, Recherches sur les sourds et les muets). Nevertheless the Ritual of Belley, at the end of the first volume, thinks that the Sacraments of Confirmation and the Eucharist can be conferred on them, since these were administered of old (and still today in the Eastern Church) to children; but it says that Penance and Extreme Unction can be conferred on them under condition; as regards Matrimony, that the question was solved by Innocent III above reported; but that it is not lawful to admit them to Orders, because they are irregular. "Although we would not wish to reject those who think the aforesaid solutions are to be embraced, nevertheless in practice we would not dare, especially, to join in Matrimony mutes and deaf persons not taught according to modern methods. For although Innocent III says that they ought not to be repelled from Matrimony, if they wish to contract, nevertheless the Pontiff supposes or requires that they wish to contract; but in this, today especially, is the difficulty: since, as we have already said, from many experiments it seems to be established that such deaf and mute persons, not taught, do not have a moral will, on account of defect of moral cognitions; but the contract of Matrimony is a human and moral act, for which true human will is required." (Yet not all agree with Montaigne. See Philosophia Christ. of Sanseverino, reduced into compendium, T. I. n. 82. 3°.) "Whatever may be the case concerning Matrimony, Penance and Extreme Unction are not to be administered to deaf and mute persons not taught except under condition."

## ARTICLE II: ON THE REQUISITES FOR THE LICIT RECEPTION OF THE SACRAMENTS

**1241. Principles.** - I. For receiving Sacraments of the living licitly and fruitfully, besides the intention of receiving them, the state of grace is pre-required. For these, from their primary institution by Christ, are ordered not to conferring first grace, but its increase, since they suppose first grace already in the subject. Hence they sin gravely who knowingly receive Sacraments of the living in the state of mortal sin, and indeed more gravely than those who unworthily minister or confect them.<sup>1</sup> But the state of grace must be procured through Confession, if one is to approach the Eucharist; or at least through perfect contrition, if there is question of other Sacraments, as was said above concerning the Minister. Yet it is safer, as much as can be done, always to put Confession before the reception also of other Sacraments.

I said: *for receiving Sacraments of the living licitly and fruitfully*, etc. For although in a case of grave necessity they more commonly assert that it is lawful to receive Sacraments of the living in the state of mortal sin even without contrition, when time for eliciting it is not available, nevertheless thus no fruit would be perceived from it. This would happen, for example, if a layman kneeling at the bench of communicants suddenly remembered a mortal sin not yet blotted out.<sup>2</sup> But the case, as it is posited, will be very rare, either because time remains for eliciting contrition, or because the sin has already been indirectly blotted out through Confession.

II. For Sacraments of the dead to be received licitly by adults, there are required acts at least implicit of Faith and Hope, according to the things said by the Apostle:<sup>3</sup> He who comes to God must believe that he is, and that he is a rewarder to those who seek him. Cf. the things said at nn. 257-261, 270. Moreover an act of sorrow concerning sins is required, because remission of sins is given to no one without retraction or sorrow for sins committed. But these things in the Sacrament of Penance are necessary also for validity, because they pertain to the disposition of the penitent.<sup>4</sup> But attrition suffices, as will be said in its own place.

Notes to n. 1241. (1) L. VI. 86. (2) Ib. (3) Heb. 11. 6. (4) Trent, Session 14, on Penance, c. 4. St. Alph. L. VI. 86.

**1242. Questions. - Query 1°** Do Sacraments received validly but illicitly, the obstacle having been removed, revive, or produce the graces proper to them?

Resp. Affirmatively, at least for most Sacraments. The reason is, because it happens only *per accidens* that they do not produce their proper effects, namely on account of the obstacle; and therefore those effects indeed remain suspended while the obstacle remains; nevertheless, once this has been removed, they ought to be applied to the soul. This is admitted as certain for Sacraments imprinting character. The same must more truly be said also of the Sacrament of Penance (as will be said at n. 1348, q. 7°), and *a fortiori* of Extreme Unction (at least if the obstacle was involuntary) and Matrimony, which cannot be repeated in the same illness or the same marriage.<sup>1</sup>

**Query 2°** What disposition is required in the subject, that an unformed Sacrament may revive?

Resp. This general rule is commonly established: that disposition is required which was lacking, and whose absence caused the obstacle to the effect of the Sacrament, or precisely that must be placed which was necessarily required in the reception of the Sacrament. Hence *per se* attrition suffices for the reviviscence of Baptism, Penance, and Extreme Unction. But perfect contrition, or attrition with Confession, is required for the other Sacraments, namely for Confirmation, Order, and Matrimony. - Likewise if Baptism was unformed on account of the defect of Faith alone, it will revive through an act of Faith with attrition for the sin of unbelief. The reason is, because, just as the obstacle was induced because of the lack of some required disposition, so it is removed through the placing of the same: for no reason then remains why the effect of the Sacrament should remain suspended. - Thus St. Thomas (for Baptism),<sup>2</sup> Lugo,<sup>3</sup> Lacroix.<sup>4</sup> But the Eucharist does not revive, unless perhaps while the obstacle is removed before the species are consumed. Otherwise, the more frequently someone had communicated sacrilegiously, so much more abundantly would he be enriched with graces when he became contrite, or, being attrite, confessed.<sup>5</sup>

**Query 3°** Does attrition suffice that unformed Baptism may revive, if the one receiving has committed other grave sins after Baptism?

Resp. Negatively; because sins committed after Baptism are the necessary matter of the Sacrament of Penance, and therefore cannot be remitted except through that Sacrament, or through perfect contrition with the vow of the Sacrament of Penance included in it. - Lugo,<sup>6</sup> Lacroix.<sup>7</sup>

Notes to n. 1242. (1) L. VI. 6. 87. 444. 707. Exam. Ord. n. 4. (2) Part 3, q. 69, a. 10. (3) D. 9. n. 50 sq. (4) n. 207. (5) L. VI. 87. (6) D. 9. n. 55 sq. (7) n. 207.

**1243. - Query 4°** Is it lawful to ask for a Sacrament from an unworthy Minister?

Resp. 1° It is not lawful without cause; because thus without reason an unworthy Minister would be induced to sin gravely. But this is illicit *per se*, because charity demands that we impede the sin of the neighbor which we can easily impede.<sup>1</sup>

Resp. 2° But it is lawful if the Sacrament cannot easily be asked from another priest, nor can its reception easily be deferred; for no one is held, with great inconvenience, to yield his right for impeding the free sin of another. Therefore then the one asking for the Sacrament simply permits the sin, but is not the cause of the sin. But a sufficient cause would be necessity or notable utility of the Sacrament, which will be present more easily in the Eucharist and in Penance, and a lesser cause suffices if it is asked from one prepared, or from a pastor.<sup>2</sup>

**Note.** - The faithful a) are not held to inquire concerning the dignity of the Minister; b) outside the case of danger of seduction, they can always ask Sacraments from a priest who is not certainly known to be unworthy, and who, with the Bishop knowing and approving, performs the functions of the sacred Ministry; nor c) are they held to abstain from asking precisely because they know that the Minister not long before fell into mortal sin; for it can be presumed (not, however, against the truth) that it was blotted out by penitence. See L. VI. 89. § fin.

**Query 5°** Is it lawful to ask for a Sacrament from a Minister unworthy on account of some censure or canonical inability?

Resp. Distinguish. Either there is question of ecclesiastical right alone, or of divine right. In the former case, subdistinguish. - If he has been publicly and by name censured or rendered unable, it will not be lawful except in extreme or very grave necessity, as if there is question of Baptism; of Penance; of Viaticum; of Extreme Unction, in the case in which the sick person could not receive another Sacrament; of Order, if the community needed priests; of Matrimony, if it were necessary either for the spiritual salvation of one dying, or for a great temporal utility of children. - If not publicly and by name, it is more truly lawful, because the Council of Constance absolutely conceded to the faithful communion with those tolerated.<sup>1</sup> (Which persons today are to be called tolerated, see n. 1673. § But.) Yet it is supposed that the Minister is not unworthy on account of sin, in which case the resolution handed down in the immediately preceding question holds.

If there is question of divine right, it must be said that ordinarily it is prohibited to receive Sacraments publicly from a Minister, even one tolerated, at least on account of the contempt and disdain of censures which would proceed from this. - This is to be extended by a stronger right to those excommunicated who are enrolled in some heretical or schismatic sect. For although it cannot be doubted that these same persons commonly ought to be numbered among the tolerated, nevertheless the Church has always judged communication in divine things with them illicit in general; since through it divine or natural right is almost always harmed, on account of the danger of perversion or participation in a heretical or schismatic rite, or on account of the danger and occasion of scandal.<sup>2</sup>

Notes to n. 1243 - note sequence 1. (1) L. VI. 89. (2) L. III. 79. L. VI. 89. Notes to n. 1243 - note sequence 2. (1) L. VI. 88. (2) Gury, Edit. in Germ. 4a P. II. n. 964 (1).

## APPENDIX: ON SACRAMENTALS

"Besides the Sacraments properly so called, the Church also has other sacred things, which formerly, indeed in a broader and less proper sense, were also called Sacraments. But for many centuries it has come into usage that they be called Sacramentals."<sup>1</sup>

**1244. Various Species of Sacramentals.** - Universally they are: 1. Rites and ceremonies which the Church uses in the administration of the Sacraments. 2. Blessings and Exorcisms outside the dispensation of the Sacraments. 3. Sacred things, to which, either from divine institution - as to the Most Holy Name of Jesus and to the Sign of the Cross - or from the blessing of the Church, as to lustral water, some salutary power is annexed. 4. Certain pious exercises, as the Lord's Prayer, striking of the breast, the *Confiteor*, almsgiving.

**1245. The Power and Efficacy of Sacramentals.** - "The origin of the name" of Sacramentals, says the Second Plenary Council of Baltimore,<sup>2</sup> "is from this, that although they are far inferior to the Sacraments in power and merits, nevertheless in effects they imitate them in a certain way."

It is said: 1° "they imitate them in EFFECTS." For a), like Sacraments of the living, they confer grace, namely actual grace and an increase of habitual grace; b), like Sacraments of the dead, they remit sins, especially light ones; c), like Sacraments imprinting character, so some Sacramentals constitute things strictly sacred.

It is said: 2° they imitate them in effects IN A CERTAIN WAY. For according to the more common sentence, and, according to St. Alphonsus,<sup>3</sup> the truer one, they cause their effects, i.e. remission of sins and temporal benefits which we expect from them, not *ex opere operato*; and therefore not infallibly, but by way of impetration, i.e. on account of the prayers and blessings by which the Church obtains, for those using Sacramentals, pious motions of sorrow or charity, through which sins are remitted, and benefits, even temporal ones; but these only insofar as they are salutary for us.<sup>4</sup>

Notes to n. 1245. (1) Conc. Pl. Balt. II. a. 341. (2) Ib. (3) L. VI. 92. (4) St. Thomas, Part 3, q. 87, a. 3, c.

**1246. Administration of Sacramentals.** - 1. The obligation of ministering them, according to Suarez,<sup>1</sup> is present "on the supposition of the necessity of a man possessed by a demon, or another similar necessity, ... because" the Ministers of the Church "are held to assist the necessities of their faithful by suitable remedies, and those instituted by the Church." Possevin also suitably admonishes:<sup>2</sup> "In remedies for the good of the people, for example against hailstorms, locusts laying waste the crops, not only should" the priest "be readily available, but even of himself, without being asked, he should propose them. Let him do the same in the mortality of animals and in like things; not because he is held to these things from precept, but because by acting thus he will acquire the benevolence of the people and will increase its devotion, and will merit by an act of charity."

2. They are to be ministered with faith and confidence; with a clean heart and pure intention; worthily and devoutly; lest the mockeries of unbelievers either be feared, or be provoked by an unbecoming mode of administering.

3. "Let preachers and rulers of souls especially take care that they explain to the faithful, and more often inculcate, the nature, signification, and right use of these things. Let them

persuade those who lean too much on their own wisdom and ability that these things, although they seem light and minute, are not to be contemned, since they profit not a little for living piously and obtaining salvation. But let them again and again warn the ruder common people, who are carried away by the contrary error, lest they attribute too much efficacy to the things themselves, and keep them with a certain blind and immoderate confidence, and pursue them with superstitious veneration, as if they could do very much of themselves, without a pious disposition of mind. But let them most sharply rebuke those who have sacred things of this kind, as will be the custom among the Heathen, almost in place of amulets, which would keep them, even when involved in the most foul mire of vices, immune from the anger of God and vengeance."<sup>3</sup>

Notes to n. 1246. (1) De Rel. Tr. V. L. IV. c. IV. n. 5. (2) Praxis Curae Past. c. XII. n. 47. (3) Conc. Pl. Balt. II. a. 350.

**1247.** - Exorcisms hold the principal place among Sacramentals; these were treated at nn. 375-377; and Blessings. Of these, some are private, which are given also by lay persons, for example, by parents to children; others are liturgical, which are given by Ministers deputed for this. These are divided in various ways.

**I. By Reason of Effects.** Some blessings are invocative, namely of the benignity of God upon persons - for example, upon a woman after childbirth - or upon things - for example, upon foods - and are counted among transitory Sacramentals, because persons or things blessed in this way do not change their state, or from profane things do not become strictly sacred, and therefore can be applied to profane yet honorable uses, as before the blessing, as foods and drinks, a house, a ship, etc.; likewise, according to St. Alphonsus,<sup>1</sup> blessed water and blessed candles (I think, outside the day of Purification?) - others are constitutive or consecrative, which are numbered among permanent Sacramentals, because persons or things blessed in this way change their state and from profane things become strictly sacred, nor can they any longer be applied to profane uses, even honorable ones, as chalices, vestments, altar stones, Agnus Dei, etc.

**Note.** - Missals and Sacred Bibles, as also sacred images, ought not to be applied to a profane use; but one must say otherwise concerning other papers on which sacred names are incidentally and accessorially inscribed.<sup>2</sup>

**II. By Reason of Rite.** Some are verbal, in which anointing is not employed; others real, in which it is employed.

**III. By Reason of Objects.** Some are of persons, as of an Abbot; others of things, as of a Church.

**IV. By Reason of the Minister.**

**A.** Some are Papal, as the blessing of the Agnus Dei, of the Pallium, etc.

**B.** Others pertain to Bishops, and to them alone, and indeed in such a way that without Pontifical Indult they cannot be delegated to simple priests; but things which had been blessed with a faculty delegated without an indult of this kind ought to be blessed anew before use, if this can be done without scandal.<sup>3</sup> They are real blessings, and are found only in the Pontifical. Of this sort are the consecration of a chalice, of an altar, of a bell. Which of these our Bishops can delegate, see p. LXXIII. n. 6. 12; and which things, when the See is vacant and in a case of necessity, are delegated to the administrator, p. LXXII. n. 28.

C. Others pertain to Bishops, but in such a way that they can be done also by others having the faculty. They are found in the Ritual and Missal under the title: "Blessings to be done by Bishops or by others having the faculty." They are the following:

1. Blessings of sacerdotal garments, of cloths and corporals, under which also are palls; of the tabernacle, i.e. the pyx and lunula (but by the rite of the Ritual, not of the Pontifical. S. R. C. 16 March 1876. Acta, t. 13. p. 33); of a solemn cross or images, which is done publicly, with a concourse of the people, with solemnity, chant, several ministers, etc.; but not the private blessing, which is done without the said apparatus by one priest with one minister.
2. The blessing and reconciliation of a church not yet consecrated, and of a public oratory and cemetery, and also the blessing of the first stone.

**Note.** - a) It is certain that a Bishop by his own right can delegate even a simple priest for the blessings enumerated under 2), because this faculty of delegating is specially expressed in the Ritual. But whether he can also delegate those which are listed under 1) is disputed;<sup>4</sup> yet our Bishops have an Apostolic indult for this (see p. LXXI. n. 13).

b) By the Superiors of those religious Institutes which communicate in privileges with the Mendicants, the blessings concerning which under C. can be done, provided there is not question of churches, oratories, or cemeteries belonging to others, nor of garments, vestments, or vessels for the use of churches belonging to others, nor of crosses or images to be blessed solemnly in places not subject to them.

D. Others pertain to simple priests, which nevertheless again are of a twofold kind; for:

1° Every priest can give certain ones, namely those which in the Missal or Ritual are prescribed to be done by "a priest," with no addition. Yet a simple priest will not be able to impart these: 1) in another's church, or in chapels or oratories annexed to a church, against the will or contradiction of the pastor or rector; 2) publicly and solemnly in places of another's jurisdiction; 3) if in favor of the pastor there stand an immemorial custom, or a synodal law, or an agreement.

2° Certain ones only a pastor, or one delegated by him, can give, namely those which are marked in the Ritual as to be done by the Pastor, or by another priest; for then it is understood: by another priest with the permission of the Pastor.<sup>5</sup> But by the right of the Pastor are: the blessing of houses on Holy Saturday; the common blessing over crops and fields, at least if it is done solemnly; likewise perhaps the blessing of houses to be done at another time outside Holy Saturday, because in the Ritual for this blessing mention is made of the Pastor; nevertheless Cavalieri denies this;<sup>6</sup> finally the blessing of the baptismal font, of nuptials, and, except in the case of a legitimate contrary custom, of women after childbirth. - Moreover the distinction between parochial and non-parochial blessings can scarcely be of use here. Yet see n. 1138.

**V. Finally, by Reason of Necessity,** blessings are divided into prescribed and non-prescribed.

To the prescribed pertain:

a) Episcopal blessings of each kind (see under IV. B. C.), except the blessing of a cemetery - since the blessing of the place or sepulcher suffices - and the solemn blessing of crosses or images. - From sacerdotal garments and vestments:

1° The purificator, veil, and burse are not necessarily to be blessed.<sup>7</sup> 2° Probably the cincture and pall are to be blessed.<sup>8</sup> 3° But certainly the corporal, amice, alb, maniple, stole, chasuble, and cloths.<sup>9</sup> 4° The pyx and lunula ought not to be consecrated, but nevertheless probably to be blessed. The monstrance is laudably blessed.<sup>10</sup>

b) Parochial blessings, except the blessings of a woman after childbirth, of fields, of fruits, and of houses.

c) Those which according to the Rubrics are prescribed on certain days of the year, for example on the day of Purification, or on Sundays before the principal Mass (concerning which see De Herdt<sup>11</sup> or our Ceremonial<sup>12</sup>).

Notes to n. 1247. (1) L. VI. 94. (2) Benger. Comp. der Past. Theol. p. 498. (3) Decr. 22 Sept. 1703. 3. (4) L. VI. 378. Dub. 4. De Herdt. T. III. n. 129. (5) Scav. T. IV. n. 350. Gury, Ed. in Germ. 4a, p. II. n. 233. (4). (6) De Herdt. T. III. n. 129. (7) S. R. C. 7 Sept. 1816. n. 26. L. VI. 389. (8) L. VI. 376. 388. (9) Ib. 384. 385. De Herdt. T. I. n. 173. 2°. (10) T. III. n. 184 sq. (11) T. III. n. 134 sq. (12) P. II. ch. VII. p. 122. Ed. 1875.

**1248. With What Rite Blessings Are to Be Done.** - Blessings which either from precept, or publicly in churches or public oratories before the people gathered for this, are done outside Mass, are to be given with surplice and stole according to the reason of the season,<sup>1</sup> standing and with head uncovered, hands joined, with a minister carrying the vessel of blessed water and the sprinkler, and with the formula prescribed in the Missal or Roman Ritual or approved by the S. C. Rit. - For blessing those things for which a special blessing is not had, the Blessing for all things can be used (see *Exc. ex R. R.*, Ed. 1872, p. 260; Ed. 1874, p. 252), or the Sign of the Cross is to be made over the thing to be blessed with the formula: In the name of the Father, etc.; then the thing itself is sprinkled with blessed water.<sup>2</sup>

If the cross has the image of the Crucified, the blessing for images is to be employed. Craisson, *Elem. Jur. Can.*<sup>3</sup> If the blessing is done at the altar, all things are recited at the Epistle corner, and the priest uses a cope. The things to be blessed, if they are sacerdotal vestments, can be placed upon the altar; but otherwise, if they are candles and other things of this kind, which are to be placed upon a table before the altar, or at the Epistle corner.<sup>4</sup> - The church is the more proper place of blessings, although not necessarily of all; for the blessings of certain things, as of water, sacerdotal vestments, and the like, can from a reasonable cause be done in a profane or honorable place.<sup>5</sup>

Notes to n. 1248. (1) i.e. with a stole of the color of the office of the day, unless otherwise in the proper places of the liturgical books something is noted as regards the color. De Herdt, Pr. Rit. Rom. C. 10. § 3. n. 2. (2) Scav. T. IV. n. 344. 356. (3) n. 703. (4) Ib. n. 705. (5) De Herdt, l. c. n. 1.

## Treatise on Matrimony

Matrimony is so called from the office of the mother, as Theologians commonly have it with St. Thomas; because in this society the principal parts seem to pertain to the mother. Matrimony is also called *conjugium* from the common yoke to which man and woman are subjected. Likewise it is called *nuptiae* or *connubium* from the word *nubere*, because spouses formerly were veiled when they were handed over to their husbands. Likewise it is called consortship, because man and woman have a common lot.

We must treat 1° of betrothals; 2° of the proclamation of banns; 3° of the nature and properties of Matrimony; 4° of its matter and form; 5° of its minister and subject; 6° of the impediments of Matrimony; 7° of the revalidation of an invalid Matrimony; 8° of the conjugal debt.

## Chapter I. On Betrothals

1° Of the nature; 2° of the effects; 3° of the dissolution of betrothals.

### ARTICLE I. ON THE NATURE OF BETROTHALS

**1525. - Definition.** Betrothals are a deliberate, mutual promise, expressed by a sensible sign, of future Matrimony between capable persons.

It is said: **1° deliberate**, namely with the deliberation required for a vow (see n. 379).

It is said: **2° mutual**. Hence, if one only of the contracting parties promises, the other simply accepting but not promising in return, there will be no betrothals. - Nevertheless acceptance is equivalent to a return-promise if a woman, who is honorable, is led into so great a dishonor to herself that after acceptance of the promise she suffers defloration, at least if it is not clear that she acted thus merely for the sake of fulfilling lust.<sup>1</sup>

It is said: **3° expressed by a sensible sign**. Hence there is no need of words; but tacit consent, not expressed by a suitable sign, does not suffice, unless, as Canon Law<sup>2</sup> disposes for the external forum, parents (i.e. father or mother) contract for children present and not contradicting, although they could easily contradict. - I said: **a)** for the EXTERNAL forum; for for the internal forum betrothals cannot be valid unless the children positively (i.e. not only by conducting themselves negatively) and internally consent. - I said: **b)** father OR mother; for the value of the betrothals, or the consent of the children, is presumed in Law, not from paternal power, by which children cannot be compelled to these things (see n. 425), but from parental affection, which is equally in the mother and in the father, and whose dispositions, as having been made in their favor, children are judged to admit. - I said: **c)** for children PRESENT; for although to St. Alphonsus the more probable opinion is that which affirms that parents can also contract for absent children (to be made more certain by themselves, or by letter or messenger), nevertheless he also holds the negative as probable. - I said: **d)** not contradicting, ALTHOUGH THEY COULD EASILY CONTRADICT; for betrothals would not be valid if there were a reason why they do not contradict, e.g. fear.<sup>3</sup>

It is said: **4° of future Matrimony**. Hence betrothals would not be valid if the parties pledged only that they would never enter Matrimony with some other person, unless from the circumstances it is clear that such persons truly wished to contract betrothals, as if the words are of the present, namely: *I want no one but you*.<sup>1</sup>

It is said: **5° between capable persons**, i.e. persons prohibited by no impediment, whether diriment or impediens. Hence they are not valid if they are made between a Catholic and a non-Catholic, unless their execution has been remitted to the time at which this latter will have received the Catholic Faith.

Notes to nn. 1525-1528 - note sequence 1. (1) Acta T. I. p. 77 sq.; p. 342 sub fine n. 2. T. II. p. 145 sq. (2) L. IV. T. II. c. unic. § finali. in 6°. (3) L. VI. 838, 839. H. A. Tr. XVIII. 5. Notes to nn. 1525-1528 - note sequence 2. (1) L. VI. 842. (2) Kenr. Tr. XXI. 27. Notes to nn. 1525-1528 - note sequence 3. (1) L. VI. 840. Acta. T. I. pp. 336, 525. T. II. p. 142. (2) L. VI. 834. H. A. Tr. XVIII. 3. (3) Cf. Vind. p. 925 and 789. Ed. 2a. T. II. p. 583 and p. 449. (4) L. VI. 859. Vind. pp. 945, 946. 1). Ed. 2a. T.

II. pp. 605, 606. 1). (5) L. VI. 882, 883. (6) Knopp. Eherecht. § 34. S. 324 and Ferraris. V. Sponsalia, n. 12, 16 sq. H. A. Tr. XVIII. 1. Notes to nn. 1525-1528 - note sequence 4. (1) L. VI. 885. (2) Acta, T. I. p. 342. note 2 sub fine.

**1526. - Division.** They are: **1° Ecclesiastical** or solemn, and private, according as they are celebrated either in the face of the Church, i.e. before the Pastor and witnesses; or are perfected privately by the consent alone of the contracting parties, or before parents in the midst of the family. **2° Absolute** and conditioned, according as they are made without any condition, or with some condition added.

**1527. Principles. - I.** For the validity of betrothals all the conditions contained in the definition are required, so that, if one of them is lacking, the betrothal contract must be held as null. The reason is clear from what was said concerning the nature of a contract, n. 828, 845.

**II.** Betrothals are valid in the same way, whether they are solemn or ecclesiastical, or private or clandestine, because the consent of two suffices for a true contract; nor has the Church ever invalidated private betrothals. Indeed now in most places solemn betrothals have gone into desuetude, nor are they ever contracted among us.<sup>2</sup>

**III.** Betrothals entered under a condition concerning the present are valid here and now, if the condition is verified; but if they are contracted under a condition concerning the future, they will be valid as soon as the condition is fulfilled, without a new consent of the contracting parties, provided neither has revoked the consent previously given. Meanwhile the contracting parties are held to await the fulfillment of the condition, if it is honorable and possible, and does not oppose the nature of this contract or of future Matrimony.

**IV.** When the words or signs are doubtful, in the forum of conscience one must stand by the intention of the contracting parties, if it is clear; but in the external forum, by the common understanding and sense of the words. But if doubt remains, one must incline in favor of liberty.<sup>1</sup>

**1528. Questions. - Quaer. 1°** Are betrothals contracted from grave fear valid?

**Resp.** Negatively, more probably, provided the fear is from without, unjustly, and inflicted in order to contracting. The reason is because Matrimony contracted from such fear is null, as is clear from Canon Law, and will be explained below. Therefore by that very fact betrothals entered from such fear also ought to be null. Cf. n. 854.

**Quaer. 2°** Are betrothals entered from light fear valid?

**Resp.** See n. 853. III.<sup>3</sup>

**Quaer. 3°** Among those having a diriment impediment, without new consent, are betrothals valid under the express condition: if the Pope shall have dispensed?

**Resp.** Affirmatively, once the condition has been fulfilled and the dispensation committed to execution. The reason is because the consent perseveres until the fulfillment of the condition.<sup>4</sup>

**Quaer. 4°** Are fictitious betrothals valid?

**Resp.** The question is to be resolved in almost the same way as the question concerning a fictitious oath (see n. 367. 1°. 2°). Therefore they are valid if someone had the intention of celebrating betrothals and binding himself, but not of satisfying the obligation. But otherwise, if internally he did not wish either to contract betrothals or to bind himself. Nevertheless through a fiction of this kind

he sins gravely, and is bound to repair damages, indeed also to celebrate Matrimony if damages cannot otherwise be repaired.<sup>5</sup> See nevertheless what was said n. 810.

**Quaer. 5°** Are betrothals valid: 1) of those not of puberty; 2) of those not seven years old?

**Resp. to the 1st.** Affirmatively in itself, because even in the betrothals of those not of puberty all essentials (n. 1525) can be present.

**Resp. to the 2nd.** Affirmatively, more probably, by natural law, if the one promising has the perfect use of reason and in some way comprehends the burdens of the conjugal state.<sup>6</sup>

**Quaer. 6°** Are they valid between absentees through an intermediary, letters, or procurator?

**Resp.** Affirmatively, provided, if there is question of a procurator, he 1) has a special mandate; 2) the mandate is concerning contracting with a determinate person; 3) the procurator contracts by himself; 4) the mandate has not been revoked by the mandator before the betrothals were contracted, whether mentally or tacitly, e.g. by celebrating betrothals with another; 5) the procurator does not exceed the limits of the mandate.<sup>1</sup>

**Quaer. 7°** Must promises which are customarily made concerning entering Matrimony always be held as true betrothals?

**Resp.** It seems they must be denied; for often those promises bear the appearance rather of intention than of true promise. Therefore in practice attention must be paid to the particular intention of the promisors.<sup>2</sup>

## ARTICLE II. ON THE OBLIGATION AND EFFECTS OF BETROTHALS

**1529. Principles. - I.** Betrothals oblige from justice, under grave obligation, to enter Matrimony, at the determined time, if any has been determined; but if no time has been fixed, as soon as one party reasonably demands. The reason is because, where there are true betrothals, there is a true contract in a grave matter, and thence follows a grave obligation. But this obligation presses both in the forum of conscience and in the external forum. Therefore the one withdrawing can be compelled by the judge to Matrimony, even by censures,<sup>3</sup> although exhortations and admonitions ought first to precede,<sup>4</sup> and coercion also must be abstained from if, the circumstances having been inspected, the judge prudently judges that from unwilling nuptials grave evils and scandals are to be feared, e.g. perpetual quarrels, the departure of the man from the wife, or even the murder of the spouse; for it is expedient that a lesser evil be permitted in order to guard against a graver one, and thus favor is also bestowed by the judge upon the Plaintiff.<sup>5</sup>

**II.** Betrothals induce an impeding impediment of Matrimony, or one prohibiting lest Matrimony be contracted licitly with another person, unless the prior betrothals have been legitimately dissolved. The reason is because, from what has been said, betrothals beget an obligation of justice.

**III.** Betrothals induce also an impediment which in law is called public honesty, by which, namely, one of the betrothed persons is rendered incapable of contracting Matrimony with the blood relatives of the other in the first degree.

**IV.** Betrothals, in places where the decree of Trent concerning the form of Matrimony does not have force, when carnal copula follows, become betrothals of the present or presumed Matrimony,

concerning which below more fully.

**Note.** From betrothals among us there is no action in the civil forum, except for the reparation of damage coming to the innocent party from their dissolution.<sup>1</sup>

Notes to nn. 1529-1532 - note sequence 1. (1) New Amer. Encyclop. v. Marriage. (2) L. VI. 848. Cf. Ben. XIV. Inst. XLVI. § Secundo illud. (3) L. VI. 848. (4) Ib. 852. Notes to nn. 1529-1532 - note sequence 2. (1) L. VI. 853. (2) Ib. (3) L. IV. Decr. T. II. c. 7. 8. (4) L. VI. 855, 856. (5) Ib. 857, 858. (6) Ib. 869-874. Notes to nn. 1529-1532 - note sequence 3. (1) L. VI. 860-862. H. A. Tr. XVIII. 18. (2) L. VI. 865. (3) Sanchez. de Matrim. L. I. Disp. 62. n. 6. Pirhing. L. IV. T. I. n. 63. Schmalzgr. eod. tit. n. 188. (4) L. VI. 863, 865 § Ad videndum. (5) Arguit. L. IV. Decr. T. I. c. 22. (6) L. VI. 846. (7) Ib. 866. (8) H. A. Tr. XVIII. 19. L. VI. 876. Vind. p. 797 sq. Ed. 2a. T. II. p. 457. Notes to nn. 1529-1532 - note sequence 4. (1) L. VI. 873. (2) Ib. 877. (3) Tr. XXI. 11. (4) Tr. XXI. 6. (5) L. VI. 864. Notes to nn. 1529-1532 - note sequence 5. (1) L. VI. 865. (2) Ib. (3) H. A. Tr. XVIII. 13. Cf. Vind. p. 946. Ed. 2a. T. II. p. 606.

**1530. Questions. - Quaer. 1°** If someone has contracted betrothals with two women, and has sinned with the second, which one ought he to marry?

**Resp. 1°** Certainly Matrimony is to be contracted with the first, if, when the second was contracting, she was conscious of the prior betrothals. The reason is because then the second was not deceived, but wished to be deceived.

**Resp. 2°** More probably Matrimony is also to be contracted with the first, although the second was not conscious of the promise made to the other. The reason is because the promise made to the second is always null, as being concerning an illicit thing; nor does an injury inflicted upon another take away the right of the first; and this is valid even if the second promise was confirmed by oath.<sup>2</sup>

**Quaer. 2°** Must the prior betrothed woman then yield her right, if the other is going to suffer grave damage from defloration?

**Resp.** Negatively, not improbably. Namely, the second betrothed woman ought to impute damage of this kind to her own weakness. Nevertheless it would be advisable to the first that she renounce her right spontaneously, unless perhaps she herself would incur notable damage from this.<sup>3</sup>

**Quaer. 3°** Are earnest-gifts licit in betrothals?

**Resp.** Affirmatively. The reason is because they are neither prohibited by Canon Law, nor opposed to natural law.<sup>4</sup>

**Quaer. 4°** Must a penalty attached to betrothals be paid by one withdrawing, and can it, having been paid, be retained?

**Resp. to the 1st.** Affirmatively, more probably, if there is question of one withdrawing unjustly, since the attaching of a penalty against one unjustly withdrawing is prohibited by no law. Nevertheless the opinion of St. Alphonsus<sup>1</sup> denying is sufficiently probable, because even by the just attaching of a penalty the liberty of Matrimony suffers some lesion. - But negatively, if there is question of one withdrawing justly.

**Resp. to the 2nd.** Negatively, more probably, if there is question of a penalty paid by one justly withdrawing; because no title legitimizes retention of this kind.<sup>2</sup>

**Quaer. 5°** Must a betrothed woman return gifts accepted from the betrothed man, if Matrimony does not follow?

**Resp. 1°** Negatively, if the betrothals are dissolved from the fault of the betrothed man; because he, by culpably withdrawing from the promise, is deservedly judged to make the loss of these gifts. Thus common practice.

**Resp. 2°** Affirmatively, speaking in itself, if the betrothals are dissolved without fault of the betrothed man, and, a fortiori, if from the fault of the betrothed woman; for the betrothed woman cannot retain them without injustice, since they were conferred only in view of Matrimony. The same would have to be said if one of the betrothed persons, who accepted gifts or earnest-gifts from the other, is overtaken by death before Matrimony is entered; for according to what has just been said, the parents of the deceased are held to restore all things to the surviving betrothed person.

I said: speaking in itself; because, if, in view of the condition of the betrothed man, the gifts are of little moment, and he does not reclaim them, he is judged to remit them.

**Quaer. 6°** Must he who promised Matrimony to a girl, on the condition that he sin with her, marry her?

**Resp.** See n. 810.

### ARTICLE III. ON THE DISSOLUTION OF BETROTHALS

**1531.** - Betrothals, according to the opinion of all, can be dissolved for just causes. But the principal causes are:

**1° Mutual consent**, freely emitted (without grave fear and deceit [see n. 1528. q. 1°. 2°]) between persons of puberty. I say: between persons of puberty; for the betrothals of those not of puberty, when puberty has been reached and either one only reclaims within three days before a judge or witnesses, are dissolved, namely from the privilege conceded by Law.<sup>1</sup> But that triduum begins to run from the time not now of puberty, but of the acquired knowledge of the privilege.<sup>2</sup>

**2° A supervening impediment**, namely a diriment one, and indeed one diriment by divine law, as e.g. a valid Matrimony contracted with another, at least while it lasts. I say: by divine law; for, if the impediment is diriment only by ecclesiastical law, the obligation indeed ceases on the part of the innocent party, even by the mere report of the impediment; nevertheless it does not cease on the part of him who induced the impediment by his own fault, but is only suspended; so that he, even excluding the damage of the innocent party (cf. n. 810), is held, if the injured party still wishes, to seek dispensation of the impediment, if it can be obtained easily and shortly, and once this has been removed, to fulfill the faith given to her.<sup>3</sup>

**3° The choice of a more perfect state**, e.g. religious Profession, reception of Sacred Order, a vow of Religion, and, probably, even of chastity or of receiving Orders. But by the mere entrance into Religion before Profession, betrothals, according to the opinion which St. Alphonsus calls the more common and to which he adheres, are dissolved only on the part of the one remaining in the world.<sup>4</sup>

**4° A grave crime of the other**, e.g. grave theft, homicide, or the like, which begets grave damage or infamy; likewise fornication of the betrothed woman, whether it preceded the betrothals (provided it was then unknown to the betrothed man, or even known, but the report was afterwards spread), or followed them; whether it was voluntary, or (according to the common and truer opinion) involuntary. I said: of the betrothed woman; for fornication of the betrothed man, even after the

betrothals, according to the more common and more probable opinion, does not give the betrothed woman a right of withdrawing. The reason of each is that fornication renders the betrothed woman, but not likewise the betrothed man, more base according to the common estimation of men. - What was said concerning the betrothed woman who committed fornication, say the same of her who after the betrothals so conducts herself that she makes doubtful faith concerning her virtue, permitting herself to be touched immodestly by others, or otherwise acting less cautiously. - For the same reason the betrothed woman can withdraw if, after the betrothals have been celebrated, she learns that the betrothed man "has had offspring from another woman, or has frequently fallen" into fornication, "by having intercourse with many"; or even if, after betrothals, kisses or touches have intervened so frequently between the betrothed man and another "that they indicate a mind of the betrothed man very inclined toward the other," and "it can deservedly be feared that he will not keep faith with the betrothed woman."<sup>1</sup>

**5° A notable change of state**, namely a circumstance which, if it had been known or foreseen, would have deterred from the betrothals.<sup>2</sup> For the external forum this can be determined by the judgment of prudent persons, or, if that cannot be had, by oath.<sup>3</sup> But if ignorance did not give cause to the contract, i.e. if the betrothed man would have contracted even if the cause had been known beforehand, it would by no means be lawful to withdraw from the betrothals.<sup>4</sup>

**6° An excessive delay of Matrimony.** But delay is made either with a time for celebrating Matrimony having been attached to the betrothals, or without such a time having been attached; and, if a time is attached, it is attached either to end the obligation of the betrothals, or only to urge it.

If: **a)** to end the obligation, once the term has elapsed through the fault of one, certainly the other party is liberated;<sup>5</sup> indeed, according to the more common and more probable opinion, even if the term has elapsed without fault of the betrothed man, suppose because he was detained by a just impediment. The reason is because the term is attached precisely for this, lest the party prepared remain long without nuptials. I said: the other party is liberated; for, according to the opinion which St. Alphonsus calls by far the more common and, with attention to the intrinsic reason, by far the more probable (although the opposite, as he says, "is not lacking in its probability, especially from the authority of St. Thomas"), the party who culpably placed the delay does not remain free. The reason is because no one ought to derive advantage from his own fault.

If: **b)** a time has been added to the betrothals only for urging the obligation, once the term has elapsed the betrothals still oblige. But when, in the case of further delay by one party, it is lawful for the other to withdraw, seems to have to be decided especially from the circumstances.

If: **c)** no time has been established, and the nuptials are delayed excessively, nor can dissolution of the betrothals by mutual counsel be obtained, the cause will better be remitted to the ecclesiastical judge, so that he may establish the things which he judges suitable.<sup>7</sup>

**Note.** - If the Confessor sees that Matrimony has been deliberately delayed without sufficient cause, let him not importunately exact the fulfillment of the faith given, but sometimes according to the circumstances let him rather advise reparation of damage or a free composition, since an unsuccessful Matrimony is to be feared.<sup>1</sup>

**7° The departure of the betrothed man to a far country**, without the other having been consulted; for he who so departs is judged to yield to his right. But if he has gone to a nearby country, a

distinction must be made. For either he has thus gone without the intention of returning, or with it. In the former case, it is to be resolved as concerning him who has gone to a far country; but in the latter, either his return must be awaited for a time to be determined by the judgment of a prudent man (or, if it can be done, of a judge), or he is to be admonished, and a certain time, as above, is to be fixed beforehand, within which he should return, and, once it has elapsed, the betrothed woman is liberated.<sup>2</sup>

**1532. Questions. - Quaer.** 1° Is it a sufficient cause of dissolving betrothals if a rich inheritance comes to the betrothed man?

**Resp.** Some affirm; others most commonly deny, because the betrothed man has not been deceived in the condition of the betrothed woman, in which no change has occurred. But in the case in which a marriage with another richer woman is afterwards offered to the betrothed man, St. Alphonsus would not dare wholly to condemn the betrothed man, if the quality of the other betrothed woman were exceedingly better; but nevertheless he concludes that he would never dare to advise departing from the contrary opinion.<sup>3</sup>

**Quaer.** 2° Are betrothals dissolved by a vow of chastity, or a vow of receiving Sacred Orders?

**Resp.** 1° If the vow precedes the betrothals, it is certain that they are invalid. The reason is because the promise of Matrimony is concerning an illicit thing, and therefore does not oblige. - Thus commonly.

**Resp.** 2° If the vow follows, likewise the betrothals are probably dissolved. The reason is because the promise of betrothals is always judged to have been made under the tacit condition, unless a better state is chosen. But certainly they are dissolved on the part of the one not vowing.<sup>1</sup>

**Quaer.** 3° Is dissent of parents a sufficient cause of withdrawing from betrothals?

**Resp.** Negatively, if the parents dissent unjustly, because the right of the children would be injured. But otherwise, if the dissent of the parents is just, e.g. if the other party does not befit the family by reason of condition, honor, etc.<sup>2</sup>

For our provinces, nevertheless, Kenrick<sup>3</sup> notes the following: "Betrothals are for the most part made without the parents knowing, whose rights, according to our customs, can scarcely be said to be gravely infringed; and therefore those promising are excused from grave sin, although not from every fault, if nothing else occurs that is to be reprehended."

But as regards the dissent of parents on account of disparity of condition, the same author remarks:<sup>4</sup> "In this region indeed, where no noble stock is acknowledged, all are judged to be of the same grade, although in reality they are very much distinguished among themselves either by birth, or by wealth, or by public office. The diversity of conditions having been neglected, for the most part it will be lawful to fulfill betrothals; for the objections of parents and relatives ought not" (here) "easily to obtain force against a certain right arising from betrothals; nevertheless sometimes they will have to be rescinded."

**Quaer.** 4° Is a party laboring under an occult defect held to disclose it before betrothals, or, these having been contracted, before Matrimony?

**Resp. 1°** Affirmatively, if that defect would be harmful or injurious to the other party, e.g. if the girl is pregnant, if the betrothed man labors under venereal disease, or is burdened with debt, etc. The reason is because, just as he sins against justice who, to one believing himself to be buying good wares, sells harmful ones, so a fortiori does he who with a harmful defect wishes to contract Matrimony. Therefore if he does not wish to disclose the defect, he ought to abstain from contracting. Except, unless the other party labors under the same defect.<sup>5</sup>

**Resp. 2°** But negatively, if the defect does not render the nuptials harmful, but only less desirable, e.g. if a girl who is thought to be a virgin is corrupted. The reason is because it has been received by custom that no one is held to manifest defects of this kind to the other. Besides, no one is held to manifest his own defect with his own infamy, when the defect does not injure the grave right of the other.<sup>1</sup> Nevertheless the other party, once the defect is known, has the right of withdrawing.<sup>2</sup>

**Quaer. 5°** Are betrothals dissolved by a subsequent Matrimony, so that, once the Matrimony is dissolved, they do not revive?

**Resp.** Negatively, with the opinion which St. Alphonsus thinks absolutely more probable.<sup>3</sup> - The reason is because it is proved by no law that betrothals are altogether dissolved by a subsequent Matrimony; whence only the obligation of the betrothals is suspended while such Matrimony lasts, as happens in one who contracts Matrimony with a vow of chastity. Moreover in practice the betrothed person unjustly abandoned will rarely seek such an unfaithful one, nor would a happy outcome of a Matrimony of this kind be hoped for.

Concerning the judge in a cause of betrothals, see L. VI. 878.

## Chapter II. On the Proclamation of Banns

A bann is a German word which signifies the same as public proclamation. Therefore banns are public announcements by which the faithful are admonished concerning Matrimony to be contracted between certain persons.

We must treat 1° of the necessity of banns; 2° of their circumstances; 3° of their dispensation; 4° of the revelation of impediments.

### ARTICLE I. ON THE NECESSITY OF BANNS

**1533. Principles.** - **I.** From the precept of the Church there is a grave obligation of proclaiming banns. This is clear 1° as to the precept from the Fourth Lateran Council and from Trent.<sup>4</sup> - It is clear 2° as to grave obligation, because a general discipline prescribed by two General Councils, and supported by grave motives, begets grave obligation. - Nevertheless the decrees of the Lateran and Tridentine Councils differ in this: that from the Lateran at least one announcement had to be made; from Trent, three, and these in the way which the Tridentine law, which also had to be introduced among us after the Easter feasts in the year 1853,<sup>1</sup> prescribed. As regards the number of proclamations in places where Mass is not celebrated on single Sundays, consult the diocesan statutes.

**II.** The proclamation of banns is not required from the necessity of the Sacrament. For no law can be cited from which it is clear that the proclamation is required for the validity of Matrimony.

**1534. Questions.** - **Quaer.** 1° Does the Pastor sin gravely by omitting the announcement, if he knows that no impediment is present?

**Resp.** Affirmatively. The reason is 1° because with difficulty can a Pastor be altogether certain that no impediment of Matrimony is present; 2° because, even if no impediment appears before the proclamation of banns, it can happen that, when they have been proclaimed, some impediment supervenes; 3° because, even if these reasons did not subsist, there always subsists the reason that the end of the law in the case ceases only privatively, as was said n. 165. 2°. I say: 2).<sup>2</sup>

**Quaer.** 2° Does the Pastor sin gravely if he omits only one proclamation without dispensation?

**Resp.** It is controverted. Some affirm, because one proclamation out of the three is to be held as a grave part of the whole precept. But others deny, whose opinion St. Alphonsus calls probable.<sup>3</sup> It is more probable, however, that the omission of two announcements is a mortal sin.<sup>4</sup>

**Notes near nn. 1533-1534, necessity of banns and omitted proclamations (printed pp. 224-225).**

1 Conc. Pl. Balt. II. a. 331-333. | 2 L. VI. 990. | 3 Ib. | 4 Ib. | 5 Sess. 24. c. 1. de Ref. Matr.

### ARTICLE II. ON THE CIRCUMSTANCES OF BANNS

A threefold circumstance must be considered here, namely 1° of time; 2° of place; 3° of persons.

## I. CIRCUMSTANCE OF TIME.

**1535.** - Proclamations must be made on feast days of precept - continuously - during the solemnities of Masses. - Trent.<sup>5</sup>

It is said: **1° on feast days**, i.e. on feast days of precept, at least in the place of the proclamations. Among feasts of precept can be numbered those suppressed feasts on which the functions and solemnities still have to be performed as before the suppression, and the people still come frequently to the churches. Thus from various resolutions of the Sacred Congregation of the Council, which the illustrious Feije reports and explains.<sup>1</sup> - Indeed, St. Alphonsus<sup>2</sup> teaches that probably this can be done also on a ferial day, at least without mortal sin, if for some reason a great concourse of people is made to the Church, because thus also the end of the Council is sufficiently obtained.

It is said: **2° continuously**, i.e. with no feast day omitted from the first proclamation to the last. Nevertheless St. Alphonsus judges probable, and several others hold, that there is no grave sin if the feast days, with one or another interposed, are not continuous. The reason is because the danger that the people forget is slight, and the matter of transgression is judged light. But whether proclamations can be made on feast days immediately succeeding one another, if they occur, is controverted: there is a twofold probable opinion.<sup>4</sup>

It is said: **3° during the solemnities of Masses**, i.e. in the parochial or conventual Mass, from the Decree of the Sacred Congregation of the Council. - Proclamations cannot be made in private Masses, nor at Vespers. - Roman Ritual. If nevertheless the Pastor had forgotten to make the last proclamation at Mass, and the nuptials press, he could supply it at Vespers. This is permitted from the Decision of the Sacred Congregation of the Council, October 25, 1586. - Ferraris. St. Alphonsus admits that probably proclamations can also be made in a sermon or on the occasion of a procession, when the people have been gathered.<sup>5</sup>

If, the proclamations having been made, Matrimony is not celebrated within two months, the proclamations are to be repeated, unless it seem otherwise to the Bishop. - Roman Ritual. - It is also advisable not to contract Matrimony immediately after the last proclamation, or on the same day on which this was made.

## II. CIRCUMSTANCE OF PLACE.

**Notes near nn. 1535-1536, time and place of banns (printed pp. 225-226).**

1 De Imp. n. 241-245. | 2 L. VI. 992. | 3 L. VI. 992. | 4 Ib. | 5 Ib. 991.

**1536.** - From the Council of Trent, the proclamations of banns must be made in the Church, i.e. in the parochial Church of the contracting parties; but not in chapels, whether public or private, unless they hold the place of a parish, and parochial Mass is celebrated there. - The Pastor can make them either by himself or through another; nevertheless care must be taken lest they be made by a layman. - The opinion of several Doctors seems probable to St. Alphonsus, who say that proclamations can be made (at least without mortal sin, and, with cause, even without venial sin) outside the Church in a place of great concourse, because thus the end of the Council is already obtained.<sup>1</sup> But by parish is not understood the parish in which someone was born, or the parish of origin, but the parish of actual domicile, if the one to be proclaimed has lived there for a notable time.

Hence: 1° If the betrothed persons dwell in different parishes, the proclamation must be made in each. 2° If one or both have approximately equal domicile in two places, the banns also must be proclaimed in both. But if one of the two domiciles is principal, or properly so called, a double proclamation is not for that reason required. If someone, however, besides domicile, has quasi-domicile elsewhere, proclamations must be made also in the quasi-domicile.<sup>2</sup> 3° If the contracting parties have recently fixed domicile in the actual parish, the banns, much more probably,<sup>3</sup> must also be published in the parish where they previously lived. But what domicile in this matter is to be called recent must be known from the diocesan statutes, or, these failing, from usage, Feije teaches.<sup>3</sup>

### III. CIRCUMSTANCE OF PERSONS, NAMELY OF MINORS, SOLDIERS, WANDERERS, AND SERVANTS.

**1537. - 1° Minors.** The banns of minors (n. 836), for the sake of prudence, ought not to be proclaimed except with the express consent of parents or tutors. I say: for the sake of prudence; but not from the necessity of any ecclesiastical law. Proclamation is to be made both in the domicile of fact and in the domicile of law, that is, both in the place where the minors here and now dwell, and in the place where the parents or their tutors live. But minors, by Canon Law, are males who have not yet completed the twenty-fifth year of age, and females who have not yet completed the twenty-first. Nevertheless a male orphaned of ascendants becomes a major as soon as he has completed the twenty-first year.

**2° Soldiers.** The banns of soldiers are to be proclaimed 1° in the place where they are in garrisons; 2° besides in the domicile of the parents, if they are minors; but if they are majors, in the place where they were residing before they took up military service; because they have not acquired another domicile of law. - Thus commonly.

**3° Wanderers and foreigners.** Their banns, according to the common opinion, are to be published in the domicile of fact and in the place of origin, if they have not obtained true domicile elsewhere, or at least in the place in which they dwelt for a longer time. Besides, authentic testimony concerning their free state is to be had, nor are wanderers to be joined in Matrimony without the license of the Ordinary, as Trent has.<sup>1</sup>

**Note. - I.** Around those things which we have said in this and the preceding Number, the illustrious Heiss<sup>2</sup> remarks the following: "Since in these regions it is too difficult to observe this law strictly, it seems to us that this at least must be insisted on in diocesan statutes: **1)** that announcements must always be made in each parish, if the betrothed persons are from different parishes; **2)** that, if the betrothed persons besides true domicile also have quasi-domicile in some place, and it is not too distant, the nuptials should be announced in each place; **3)** that, if because of too great a distance or a similar cause the announcements cannot be made in the way said, the defect should be supplied by some precaution, whether through witnesses or through oath."<sup>3</sup>

**II.** The form of the announcements ought to be such that with intelligible voice and accurately the persons and their parish are indicated, and which announcement it is, and this especially when dispensation has been made in some one, so that then it is expressed, e.g. that the one which is now made is the first and second. It is also preferable to make mention of the end of the announcements, namely, that those who know an impediment disclose it; but if this is done, let it be done uniformly

for all, lest, if only sometimes, the Pastor seem to suspect an impediment, as "Past.-Blatt für Nordamerika" rightly admonishes.<sup>4</sup>

### ARTICLE III. ON DISPENSATION OF BANNS

**Notes near nn. 1537-1538, persons and dispensation of banns (printed p. 226).**

1 L. VI. 991. | 2 Ib. | 3 De Imp. n. 251. 3°. | 4 Sess. 24. c. 7. de Ref. Matr. Collect. p. 437. n. 968. | 5 De Matr. § 21. V. p. 64. 4). | 6 Feije, de Imp. n. 252. | 7 7 Jahrg. S. 68.

**1538. Principles. - I.** For a just cause dispensation can be made from the law of banns - Trent.<sup>1</sup> - But dispensation is made more easily from one or another proclamation than from all. But Benedict XIV<sup>2</sup> forbade Bishops to dispense from all, "unless a legitimate, most grave, and inescapable cause presses, as is clear from the Tridentine." But such a cause, since it is relative, will exist much more easily among us than elsewhere.

**II.** Dispensation of banns pertains to the Bishop as Ordinary. - It is likewise drawn from the Tridentine,<sup>3</sup> where it is said that the faculty of dispensing is left to the prudence and judgment of the Ordinary.

**III.** But the legitimate causes of dispensation are some on account of which the Bishop ought to dispense, and others on account of which he can. Of the former kind are: 1° lest Matrimony be maliciously impeded; 2° grave damage, infamy, or scandal imminent from delay of Matrimony; 3° fear lest the man abandon a girl violated by him; 4° if, Matrimony already having been contracted civilly, the betrothed man does not wish to consent to three proclamations, and other similar things.<sup>4</sup> - Of the latter kind are: 1° if nuptials are to be contracted among the great; 2° if the betrothed persons are very old, or very disparate in condition, age, wealth, or quality; 3° if it is morally certain that no impediment is present.<sup>5</sup>

**Notes near n. 1539, delegation and epikeia for dispensation of banns (printed p. 227).**

1 Sess. 24. c. 1. de Ref. Matr. | 2 Bulla, Nimiam licentiam. 18 Maii 1743. Item C. Satis vobis. 17 Nov. 1741. | 3 Sess. 24. c. 1. de Ref. Matr. | 4 L. VI. 1005. | 5 Ib. 1006. | 6 Ib. Vide Feije, n. 266.

**1539. Questions. - Quaer.** 1° When the betrothed persons are from different dioceses, must dispensation be obtained from each Bishop?

**Resp.** Affirmatively, as it seems. The reason is because there is no connection between the dispensation of one and that of the other. From another source, only the Ordinary of the place can know concerning the cause of dispensation: for there can be reasons for dispensing for one party, without their being present for the other; and, if impediments are not detected from one side, it does not follow that they cannot be detected from the other. - Nevertheless St. Alphonsus<sup>6</sup> does not correct those teaching the contrary.

**Quaer.** 2° Can the Vicar General, and likewise the Capitular Vicar (or among us the Administrator of the diocese), dispense from the proclamations of banns?

**Resp. to the 1st.** Affirmatively, more probably, according to the most common opinion, provided the Bishop has not reserved this to himself, or does not contradict. The reason is because the Synod

concedes this faculty to the Ordinary; but under the name of Ordinary, if the matter belongs to his office and he himself is not expressly excluded, comes also the Vicar General, since he constitutes one tribunal with the Bishop.<sup>1</sup>

**Resp. to the 2nd.** Affirmatively, and this is certain from the decree of the Sacred Congregation of the Council, March 2, 1624.

**Quaer. 3°** Whether and by whom can this faculty be delegated?

**Resp.** Affirmatively, by those who have it by ordinary right; therefore by the Bishop, by the Vicar General and Capitular Vicar, and, since his jurisdiction is quasi-ordinary or to the universality of causes, also by the Administrator of the diocese. Cf. n. 149, 150. - In very many dioceses this faculty is delegated, at least as regards one or another announcement, to all priests. Let each consult the letters of his Jurisdiction or the diocesan statutes.

**Quaer. 4°** Whether and when can proclamations be omitted through epikeia, without a preceding dispensation of the Ordinary?

**Resp.** Affirmatively, VERY probably, provided the following conditions concur: **1st** that there be present a cause on account of which the Bishop ought to dispense (n. 1538. III.); **2nd** that he (or, if he unjustly refuses dispensation, his Superior) cannot be approached; **3rd** that there be danger in delay; **4th** that it be clear that no impediment is present.<sup>2</sup> - Nevertheless Reiffenstuel<sup>3</sup> rightly warns that omission is almost not to be advised when the Ordinary (outside the case of a concubinary dying, Feije<sup>4</sup> aptly adds) has denied dispensation; for it belongs to the Ordinary to judge whether the alleged cause is of such a kind that dispensation is owed. - I add that it is also to be dissuaded in States in which proclamations are prescribed by civil law.

Here again I admonish that the aforesaid conditions occur more easily among us. Wherefore I adhere to the resolutions which Smith hands down on this matter.<sup>5</sup>

**Note.** - The Tridentine sometimes posits that dispensation be made in such a way that the announcements have place after Matrimony has been contracted, but before it has been consummated. Nevertheless it leaves to the judgment of the Ordinary that, if he prefers, he dispense simply. But today generally only this latter mode is used.

#### **ARTICLE IV. ON THE REVELATION OF IMPEDIMENTS**

**Notes near Article IV, revelation of impediments before Matrimony (printed p. 228).**

1 L. VI. 1007. H. A. Tr. XVIII. 59. | 2 L. VI. 1007. | 3 L. IV. T. III. n. 46. | 4 De Imped. n. 268. | 5 Notes on the Sec. Plen. Counc. n. 302-304.

**Notes near nn. 1540-1541, obligation and limits of revealing impediments (printed p. 228).**

1 L. VI. 994. | 2 c. 3. | 3 c. 4. art. 4. | 4 n. 409. | 5 L. VI. 995. | 6 Ib. 994. | 7 De Imped. n. 269. | 8 Ib. | 9 L. VI. 995.

**1540. Principles.** - **I.** There is in itself a grave obligation of revealing impediments of Matrimony, however occult. The reason is drawn from the motive of Religion and charity, and also from the precept itself of banns.<sup>1</sup>

**II.** The obligation generally regards all the faithful of whatever sex, age, parish or diocese, etc., and also blood relatives and friends. The reason is because that law is borne in the name of the Church, to which all Christians are subject, and it rests upon the natural precept of Religion and charity, which regards all. Indeed, although, once Matrimony has been celebrated, the positive law of announcing ceases, nevertheless the law of charity can, according to the circumstances, demand the said revelation.

**III.** That obligation is to be fulfilled as soon as morally possible; because, if the betrothed persons perhaps obtain dispensation from one or another proclamation and contract sooner, time for making the revelation will not remain, etc.

**1541. Questions. - Quaer. 1°** Must impediments known under even a committed secret be revealed?

**Resp.** Affirmatively, even if an oath not to reveal them has been added. The reason is because a natural secret, even committed and sworn, does not oblige when grave damage threatens the community or a third person. - If nevertheless the impediment is infamous, those about to marry themselves must first be admonished, unless either the admonition is probably not going to be profitable, or there is danger in delay.<sup>1</sup> Cf. n. 541. q. 1°.

Except, more probably, the secret of counsel, or a secret committed to a man exercising a public office for the sake of seeking counsel, e.g. to a physician, advocate, Pastor, etc., provided this is done by reason of their profession. For thus the common good seems to demand. - Collet,<sup>2</sup> Bouvier,<sup>3</sup> Carriere,<sup>4</sup> and others, against others. But even those who under a secret of this kind know the impediment ought at least to admonish the betrothed persons that they desist from Matrimony, unless the admonition probably is not going to be profitable.

**Quaer. 2°** Are you held to reveal an impediment with your grave inconvenience or detriment?

**Resp.** Negatively, generally speaking, because the law of the Church and charity do not oblige with so great an inconvenience. - Thus commonly.<sup>1</sup> The Doctors commonly excuse also in these other cases, namely: 1° when someone has only heard of the impediment, but does not know from whom, or has heard of it from a person not worthy of faith; - 2° if he probably judges that revelation is going to beget grave scandal among others; - 3° if he knows that the contracting parties have obtained an occult dispensation for the forum of conscience in an impediment whose report is not public,<sup>2</sup> and (Feije adds)<sup>3</sup> which probably cannot be brought to the external forum; 4° if in another way he can impede the Matrimony and truly does impede it, or efficaciously sees to obtaining dispensation.<sup>4</sup>

**Quaer. 3°** Are you held to reveal an impediment if you alone know it and cannot prove it?

**Resp.** Affirmatively, because in the present matter the testimony of one person can suffice, at least for further investigation. - Thus the most common and truer opinion.<sup>5</sup>

**Quaer. 4°** Are the contracting parties themselves held to reveal an impediment?

**Resp.** Affirmatively. The reason is because here there is no question of a penalty to be inflicted, but of sin to be avoided; wherefore it is necessary either that they abstain from Matrimony, or disclose the impediments.

**Quaer. 5°** What must the Pastor do if he has knowledge of an impediment which is known or probably feared to be present, whether by himself or through others?

**Resp. 1°** If he acquired the knowledge outside Confession, he cannot pass on to the celebration of Matrimony, but must communicate the affair suitably to the betrothed persons, and, if doubt remains, refer it to the Ordinary.

**Resp. 2°** If it is clear to the Pastor concerning an occult impediment outside Confession, but the one who is bound by the impediment denies it, he will not be able to assist, whether Matrimony is sought secretly before witnesses, or (more truly according to St. Alphonsus) publicly. Cf. what was said n. 1229. Rule III. Except 2°.

**Resp. 3°** If he knows an impediment outside Confession, and at the same time knows that dispensation has been obtained for the forum of conscience, he can assist if the impediment is of such a kind that it cannot be brought to the external forum, or at least no probable reason for fearing this is present; otherwise, before he assisted, dispensation would have to be obtained for the external forum.

**Resp. 4°** Whether he ought immediately to cease from continuing the proclamations depends on the certitude or likelihood of the impediment. See Bangen.

**Resp. 5°** If he acquires the knowledge in Confession, see what is to be said n. 1556. q. 3°.

**I. On the Inquiry into Impediments to be Premitted. - II. On the Necessary Instruction of the Contracting Parties in Christian Doctrine. - III. On the Confession to be Premitted to Nuptials.**

**Notes near the appendix to banns, inquiry and preparatory duties (printed p. 229).**

1 L. VI. 1002. Dub. 1°. | 2 p. 71 sq. | 3 Bulla: Nimiam licentiam, 18 Maii 1743. § 10.

**Notes near n. 1542, inquiry into impediments before proclamations (printed p. 229).**

1 L. VI. 54. | 2 Heiss. de Matr. § 68. I. | 3 De Syn. L. VIII. c. XIV. n. 5. 6. | 4 Tr. VIII. 48.

**Notes near n. 1542, Tridentine admonition and impediment inquiry (printed p. 229).**

1 Sess. 24. c. 1. Ref. Matr. De hujus Tridentini moniti fine agit Nouvelle Revue Theol. T. V. p. 301 sv. | 2 Cf. Conc. Pl. Balt. II. n. 329. 330.

## Appendix

**1542. I. - 1.** The obligation of inquiring into impediments is clear both from the very nature of the matter, or of the Sacrament (n. 1228. II. I said: 1°), and from the Roman Ritual.<sup>1</sup>

**2.** The time, from the Roman Ritual, is that very time at which the Pastor is admonished concerning some Matrimony to be contracted in his parish. Therefore at least before he proceeds to the proclamations.<sup>2</sup>

**3.** The following mode, or one similar, is to be used, Benedict XIV<sup>3</sup> admonishing. Witnesses having been removed, let the priest strive to explore carefully, and, as it is said, at the ear, both the betrothed man and the betrothed woman separately concerning the impediments which perhaps can be present; and let him especially press those things which, according to his own knowledge of the betrothed persons, he can prudently suspect to be present. First, let him inquire whether those about to marry have already given faith to another; whether thence an impediment of public honesty has not occurred; whether some impediment of cognation or affinity does not intervene? Likewise with due prudence and modest words let him advert to the impediment of affinity from illicit copula (but concerning this rather in the preparatory Confession), and, if one party has already been married, to the impediment of bond, crime, etc. - Then, if it can conveniently be done, let him also call witnesses, or relatives, or others well known to the betrothed persons, and similarly ask of them whether they have knowledge of some impediment intervening between the betrothed persons.

**Note.** - Prudence also demands that the Pastor inquire whether those things have been observed which are established by the civil law of the State in which Matrimony is contracted.

### **Notes near n. 1543, instruction of the contracting parties (printed p. 230).**

1 Feije, de Imp. n. 276, 277. | 2 L. VI. 54. Cf. Vind. Ed. 2a. T. II. 607. CLVII. | 3 Feije, de Imp. n. 277. | 4 De Matr. § 69. III. p. 264. 2).

**1543. II. - 1.** The obligation of instructing those about to marry before the proclamations in Christian doctrine: **a)** does not press in the case in which those about to marry are sufficiently instructed; **b)** as regards the rest, it presses, even by divine law, concerning those things which must necessarily be known by necessity either of means or of precept. For Matrimony is a Sacrament of the living; therefore no one can, without grave sacrilege, celebrate it in the state of mortal sin, nor can a Pastor licitly assist at the same Matrimony; but he who is ignorant of those necessary things, so long as he does not learn them when he can, remains in the state of mortal sin.<sup>1</sup> - I said: when he can; for, as Benedict XIV<sup>2</sup> remarks, those who are of dull mind, so that they do not admit of fuller Catechesis, should be taught at least the principal heads of faith. - But as regards those who lack knowledge of those things which are necessary by necessity of precept, the things which we said n. 261 can sometimes be used, especially among us. For, as Kenrick<sup>3</sup> rightly observes, "since there is so great an ease of entering Matrimony before a heretical minister or magistrate, it is generally not expedient to repel them, although every effort must be applied that they be instructed as much as possible." I add that it is necessary that for the present they know, or be taught, those things which they ought to

know in order that they may validly and licitly receive the Sacraments which they are to receive here and now. Cf. n. 260. 4).<sup>4</sup>

2. In the instruction of those about to marry, especially in these Provinces, the things on which one must especially insist are nearly the following.

The indissolubility of the matrimonial bond, - the right mode of baptizing offspring or a fetus in necessity, - the calling of a truly Catholic midwife, if she can be had, in childbirth, - the timely Baptism of offspring, - a nurse, if one is to be used, endowed with good morals, - the timely instruction of offspring in those things which must be known by necessity either of means or of precept, - the dangers of public schools, and how much it matters that, when they change residences, they prefer those places where a Catholic school can be approached, - the evils which are accustomed to follow from intemperance and frequenting taverns, - the horror with which secret societies are to be fled, - the obligation of contributing according to one's means to the support of Religion.

Besides these things, which are more proper to our regions, these things must be inculcated: - due preparation for the Sacrament through sincere Confession, and, if it can be obtained, a general one, the betrothed persons having been taught that those things which perhaps have been committed by them against chastity are equally sinful as if they had been perpetrated among persons not betrothed, and they having been admonished concerning avoiding suspected or solitary conversation both between themselves and with others, and cohabitation before Matrimony having been most severely interdicted, - the use of Matrimony commanded and licit, - concerning what things one must beware in time of pregnancy, - the danger of suffocation of offspring if, before the first year of age has been completed, it sleeps in the same bed with the mother, - the danger of perversion of children in the case in which they are not corrected when they transgress against modesty, even lightly, - the danger of the same perversion when those seven years old, or often even six years old, sleep in the same bed with parents or with children of the other sex, - caution to be applied when necessity compels that they sleep in the same room with the parents, - the obligation of going before one another and the offspring with good example, - mutual love and fidelity of the spouses, and the things contrary to these.

Nevertheless not all are to be taught all things, nor all in the same way; for the uneducated are to be instructed one way, but the cultivated another; the more honorable one way, the common people another.

Nor all things at the same time. For although instruction is not to be deferred to the day which immediately precedes Matrimony, nevertheless those things which pertain to the commanded and licit use of Matrimony must almost necessarily be remitted to that Confession which immediately precedes Matrimony. But the things which regard the choice of a truly Catholic midwife and of a good nurse, and also the danger of suffocating offspring, generally, and unless there is fear lest the occasion otherwise slip away, are more prudently deferred to the last months of pregnancy. Finally the dangers which threaten the offspring from modesty not very well observed, or from the same bed or room with parents or with children of diverse sex, generally can be relegated to that age of the children at which the danger is accustomed to arise.

The mode by which they are to be taught the commanded and licit use of Matrimony ought to be various according to the various condition of those about to marry. For if they have been of a freer

life, that instruction can be somewhat more open, but always honorable, in words of this kind, e.g.: "In those things which pertain to receiving offspring, the consort is to be obeyed, and all things which conduce to this are lawful. If any doubts afterwards arise for you, disclose them candidly to the confessor; but meanwhile" (if there is question of instructing the betrothed woman) "obey your husband, as Superior, unless you clearly understand that something evil is being prescribed to you or demanded of you." - To betrothed persons who were not of a freer life, the same things can be said; but in place of the words: *to receiving offspring*, these are rather to be used: *to the end of Matrimony*; and in place of: *to this*, let it be said: *to this end*.

**Notes near n. 1544, premitted Confession and Communion before Matrimony (printed p. 231).**

1 Apud Heiss. de Matr. § 73. | 2 Heiss, de Matr. § 69. V. | 3 Past.-Bl. für N. Amer. 12th Jahrg. S. 140.

**1544. III.** "It must also be striven for, and the Council of Trent earnestly exhorts, that those about to marry, before the celebration of Matrimony, and that not immediately but at least three days before" (its consummation) "approach the Sacraments of Penance and Eucharist. In many diocesan statutes there is also found either a counsel or a precept concerning this matter. That also is an excellent means of opportunely detecting an impediment, especially an occult one" (see above n. 1542 under 3), "or a circumstance to be expressed in the petition for obtaining dispensation, and of preventing grave inconveniences otherwise going to arise."

"If either party refuses to approach the Sacrament of Penance, the pastor will labor that he change his mind; but if he profits nothing, he will exhort that party at least to elicit contrition for sins before the celebration of Matrimony. But if each party refuses to approach the Sacrament of Penance, and the pastor does not profit by his admonitions, the judgment of the Ordinary must be invoked in places where Confession is prescribed; but outside this case the pastor will assist."<sup>1</sup>

But if there is question of public sinners, the Pastor will be able to assist at their Matrimony "to avoid death, or other graver evils of the community, or of the contracting parties themselves, for example lest they themselves persevere in sin."<sup>2</sup> Therefore generally in this case assistance is to be denied, and it "will always be denied ... if each party openly refuses to confess in contempt of Religion or the Church, or if the very celebration of Matrimony of this kind is going to be a true scandal."<sup>3</sup> Kenrick also excuses the assistance of the Pastor if there is reason to fear that those about to marry approach magistrates or heretical ministers; which opinion seems deservedly less probable to the illustrious Heiss,<sup>4</sup> at least (I add) if there is question of places where the impediment of clandestinity does not have force.

In the case in which there were question of those who have notoriously incurred ecclesiastical censures, apply what was said n. 1231. q. 4°. But if there is speech concerning these, the celebration of Mass must always be excluded, as the Sacred Penitentiary adds in the Response which is related in the cited n. 1231; and, on account of parity of reason, it seems to me that the same must be applied also to the case of public sinners, although they have not notoriously incurred censures.

I said: that Confession be made advisedly at least three days before Matrimony, etc.; and this not only that impediments, especially occult ones, may be opportunely detected, but also that the contracting parties, who up to this point were living in the state of sin, not rarely as in quasi-concubinage, may

more securely be disposed to receive the Sacraments worthily and fruitfully. Hence several advise that already before the first promulgation of the banns the contracting parties be induced (for the first time) to Confession, and indeed, if it can be done, to a general Confession, to be made either in the place of the contract, or elsewhere; and then again on the day before the celebration of Matrimony, on which occasion the altogether necessary instruction concerning the licit and due use of Matrimony can suitably be handed down. Holy Communion, if it is received, according to the Rubrics of the Missal (in the Mass for spouses, where it is read, "after the priest has received the Blood, let him communicate the spouses") ought to be received on the nuptial day itself, and this, if the nuptials are solemnly blessed, within the Mass, and indeed, as is inferred from the Response of the Sacred Congregation of Rites, June 23, 1853, in the case of Limburg,<sup>1</sup> by way of the Sacrifice, namely in this way, that two small hosts be consecrated in this Mass itself for the betrothed man and the betrothed woman.<sup>2</sup> - Nevertheless Mass can be celebrated and within it the blessing given, although the spouses do not communicate within this Mass. S. C. R. March 21, 1874.<sup>3</sup>

## Chapter III. On the Nature and Properties of Matrimony

### ARTICLE I. ON THE NATURE OF MATRIMONY

**1545. - Definition.** Matrimony can be considered in two ways, namely as contract, and as Sacrament.

1° Matrimony as contract is a convention by which a man and a woman legitimately hand over to one another dominion over their bodies in order to acts of themselves apt for the generation of offspring, and oblige themselves to an undivided society of life.

2° Matrimony as Sacrament is defined: A Sacrament of the new law conferring grace for sanctifying the legitimate conjunction of man and woman, and for piously receiving offspring and educating it holily.

But Matrimony is of precept as regards the community in general, but not as regards the individual members of the same, except accidentally on account of some other debt of justice or charity, for instance for legitimating offspring, for repairing the damage of defloration, or if someone were unwilling to employ other means for preserving continence. L. IV. 209.

Appendix annotation (35), to n. 1545. q. 8°. p. 235. col. 2. The conditions which the Church imposes in conceding a dispensation for mixed Marriages or upon the impediment of disparity of cult express obligations to be assumed in the celebration of the union, rather than conditions properly so called concerning the future which are able to suspend the value of the Matrimony.

**1546. - Division.** Matrimony can be considered both as regards the conjunction of man and woman, and as regards the bond which arises from it; hence it is called:

1° **In fieri or in facto esse.** Matrimony *in fieri* is called the actual contract itself, which is perfected by the mutual consent of man and woman. But the continuing wedlock in the bond which proceeds from the matrimonial contract is called *in facto esse*.

2° **Legitimate, ratified, and consummated.** Matrimony is called legitimate when it is contracted according to the norm of natural and civil law, yet does not have the ratification of the Church or the character of a Sacrament, such as was once entered in the law of nature and the Mosaic law, and even now is entered among Jews and Gentiles. - Matrimony is ratified when it is contracted between Christians entangled by no impediment, between whom, however, after the contract, conjugal intercourse has not yet intervened. It is called ratified because not only nature and civil law, but also the Church approves it and holds it ratified. - Matrimony is called consummated when it has been completed by the copula of the spouses had after Matrimony has been contracted, and that, for the internal forum, probably perfected on each side; such copula is always presumed in the external forum, and in doubt is to be presumed also for the internal forum.<sup>1</sup>

3° **True, presumed, and putative.**

It is called true when it has really and validly been contracted, and as such is proved by some one of those arguments by which other affairs also are wont to be proved, of which kind is the testimony of the Pastor or others, the book of Marriages, the confession of the spouses, etc.

It is called presumed when it is presumed by law; and this presumption of law has place especially in a threefold case, but only in places where the decree of Trent concerning the form of Matrimony is not in force, namely: 1° when, after betrothals absolutely entered between two capable persons, copula has followed, even if imperfect;<sup>2</sup> for then the consent concerning the future is presumed to have passed into consent concerning the present, and the copula is presumed to have been admitted with conjugal affection.<sup>3</sup> 2° When, after betrothals entered under a condition, before the event of that condition, carnal intercourse has intervened between the betrothed persons; for then the Church presumes that the betrothed persons have receded from the condition, and therefore have wished purely and absolutely to contract Matrimony.<sup>1</sup> 3° When, after betrothals concerning the present invalidly contracted by the impubes (in whom malice does not supply age), signs of ratified consent intervene between the same persons when they have attained puberty; of which kind are not only carnal copula, but also kisses, embraces, cohabitation, etc.<sup>2</sup>

Finally, Matrimony is called putative when it is thought to have been legitimately contracted, while nevertheless on the side of the thing, on account of some latent impediment, it is null. The Doctors therefore inquire concerning this, that it may be clear when it has the force of legitimating offspring thence received, and the other effects of law. Moreover two things are necessary for this: 1° that it was contracted in good faith at least by one of the spouses, who was unaware of the impediment.<sup>3</sup> Indeed neither error of law, nor doubt concerning the value of the Matrimony, excludes this good faith, as Covarruvias<sup>4</sup> proves; but in doubt this good faith is presumed. 2° That the Matrimony was contracted publicly and in the face of the Church, i.e. before the Pastor and witnesses, and with the denunciations premitted, or at least dispensed.<sup>5</sup>

#### **4° Canonical, political or civil, of conscience, and morganatic.**

They call that canonical in which all things concur which are prescribed by the Sacred Canons for Matrimony.

They call that political or civil in which those things also concur which are required by civil law, namely certain solemnities, dotal agreements, etc.; without these Matrimony indeed is canonically valid, yet civilly is reputed illegitimate, and accordingly lacks civil effects.

Matrimony of conscience is celebrated secretly before the Pastor or another priest deputed by the Bishop, with two faithful witnesses, the banns omitted. Besides a most urgent cause (e.g. Matrimony to be contracted by concubinaries who are held as legitimate spouses), there is also required the license of the Bishop, to whom there must be sent a written document of the Matrimony so celebrated; this is to be kept by him and inscribed in the book of secret Matrimonies, with those things observed which Benedict XIV prescribes on this matter in the constitution *Satis vobis*, November 17, 1741, §§ 10, 11.<sup>1</sup>

Morganatic Matrimony is that which a noble man enters before the Pastor and witnesses, with dispensation from the banns obtained, with a woman of a lower order, with this condition added: that both the woman and the children to be born from that Matrimony can acquire nothing of the right which coheres with the nobility of the man, and that they be content with those things which are necessary for living, or with a nuptial gift, or with a certain portion of goods determined by antenuptial agreement.<sup>2</sup>

Notes to n. 1546 - note sequence 1. (1) L. VI. 958. 1086. 1075. (2) Collect. p. 459. n. 989. (3) L. IV. Decr. T. I. c. 30. Notes to n. 1546 - note sequence 2. (1) L. IV. Decr. T. V. c. 6. (2) L. IV. T. II. c. unic. § Idem quoque in 6°. (3) L. VI. Decr. T. XVII. c. 14. (4) De Spons. P. II. c. VIII. § 1. n. 9. (5) L. IV. Decr. T. III. c. fin. § 1. Cf. Feije, de Imped. n. 264. Notes to n. 1546 - note sequence 3. (1) Cf. Heiss, De Matr. § 74. II. Feije, De Imp. n. 343 sq. Van de Burgt, De Matr. n. 412 sq. (2) Cf. Feije, De Imp. n. 346, where p. 228 (1) are cited authors who treat of the origin of the word morganatic. (3) L. IV. Decr. T. I. c. 31.

**1547. Principles. - I.** The Matrimony of Christians, celebrated by the legitimate rite, is a true and properly so called Sacrament of the new law. See the arguments among the Dogmaticians.

**II.** For the validity of Matrimony there is required true consent on the part of each contracting party; because Matrimony, as contract, is a convention between a man and a woman: but consent constitutes the essence of convention.

**III.** But the consent must be:

**1° Mutual;** for it consists in a contract, which is essentially the consent of two, or mutual consent. Hence, if it is lacking on one side, the Matrimony will be null.

**2° Concerning the present;** because by a promise concerning the future there are made only betrothals, not Matrimony.<sup>3</sup>

**3° Deliberate and voluntary;** because it is a contract concerning a grave matter, and therefore inducing a grave obligation; but no one is judged to impose a grave obligation on himself unless he freely and fully consents. This is clear from Canon Law, which invalidates Marriages contracted from grave fear, as will be said below concerning impediments.

**4° Manifested by external signs;** because every convention among men ought to be known by some external sign; for convention necessarily supposes mutual acceptance among the contracting parties.

**1548. Questions. - Quaer.** 1° What manner is to be observed with those faithful who, in those places of our Provinces where the Tridentine decree concerning the form of Matrimony is not in force, after absolute and valid betrothals and copula had with one party, either wish to enter, or have entered, nuptials with another either civilly or in the face of the Church?

**Resp.** The copula was had either with marital affection, or with fornicatorial affection. - If with marital affection, they are to be prohibited from any other Matrimony. The reason is clear from what was said n. 1546. 3°. Yet in the external forum they would be compelled to remain with her with whom they had contracted nuptials in the face of the Church, if they could not prove the copula had with the first; but they could exercise no carnal intercourse with the second. - If with fornicatorial affection, distinguish between the external forum and the internal. - If the copula has been brought into the external forum, they could be held by the ecclesiastical judge as in the likeness of legitimate spouses, and therefore be prohibited from any other Matrimony, and, if they had already contracted nuptials with another, be compelled to return to the first, with whom, nevertheless, they will be able to exercise no carnal intercourse. The reason is because in the external forum a delict is not presumed, and therefore the copula is presumed to have been had with marital affection. - But that carnal intercourse cannot be exercised with the first is from this, that the copula, although presumed to have been had with marital affection, in reality was had with fornicatorial affection. - If there is question of the internal forum, the Matrimony with the other will be valid, and also licit, if a legitimate occasion for dissolving the preceding betrothals has offered itself. - See the Instruction of

the Congregation de Propaganda Fide, p. LXV sq., which was communicated also to the Bishop of Alton, for the information of one recurring. Likewise Heiss.<sup>1</sup>

**Note.** - 1° In the question it is said: after VALID betrothals; for while, e.g., Titius, after having contracted betrothals with Anna, contracted betrothals with Maria against Anna's will, and then knew each woman, that copula had with Maria could not be a sign of Matrimony contracted with her, because the betrothals with her were null; but that copula had with Anna could be a sign of Matrimony contracted with her; for although he had the will of receding from her betrothals by contracting betrothals with Maria, yet in fact he did not recede, and having copula with her, he must be judged to have approved the aforesaid contract and to have amended the attempted recession.<sup>2</sup>

2° For the internal forum the persuasion of the penitent that he can enter a valid Matrimony with another, in doubt, will be an argument that the copula was had with fornicatorial affection.

**Quaer.** 2° Must consent be expressed in words?

**Resp.** 1° Negatively, as regards validity, because by natural law in a contract it suffices that consent be certainly expressed by some sign,<sup>1</sup> e.g. by marital cohabitation or by writing.

**Resp.** 2° Affirmatively, as regards liceity, because otherwise one would act against the Rubric and the custom of the Church. Nevertheless it does not seem to exceed a venial sin if words are not employed; indeed shame or another reasonable cause would excuse from every fault.<sup>2</sup>

**Quaer.** 3° Does consent through a procurator suffice?

**Resp.** 1° As regards validity, affirmatively, provided the required conditions are present, because Matrimony has the whole character of a natural contract. But any contract can be made through a procurator.

But the conditions for contracting Matrimony in that mode are the same as those which are required for valid betrothals to be contracted in that mode (see n. 1528. q. 6°); to which, for places where the decree of Trent concerning the form of Matrimony is in force, there is to be added this sixth: that the procurator appear with the other party before the Pastor and two witnesses.

**Resp.** 2° As regards liceity, negatively, unless a very grave cause urges. The reason is because this mode of contracting is contrary to the ordinary practice of the Church, and scarcely are Marriages so made among others than Princes and Magnates. Hence the Pastor ought not by his own authority to bless Matrimonies of this kind, as is clear from the practice of the Church and the Ritual.<sup>3</sup>

**Quaer.** 4° Is Matrimony entered UNDER A CONDITION valid?

**Resp.** 1° It is certain that it is valid if the condition is concerning the past or concerning the present, and it is verified. The reason is because that conditioned consent immediately passes into absolute consent, and therefore nothing is lacking to the value of the Sacrament.<sup>4</sup>

**Resp.** 2° If an honest and possible condition concerning the future is added, I say: 1° The Matrimony is not perfected until the condition is fulfilled; because the contract ought to transfer a mutual right over the bodies concerning the present, as I said n. 1547, and hence, if one before the verification of the condition retracts consent, the Matrimony is null, since at the time in which the contract is perfected, mutual consent is lacking. I say: 2° But when the condition has been fulfilled, the Matrimony is valid; because a conditioned contract, when the condition has been accomplished,

passes into an absolute contract, and by that very fact is valid by reason of the Sacrament, because among Christians the contract of Matrimony cannot be disjoined from the Sacrament. Hence more probably there is then no need of new consent; nevertheless more advisedly it is renewed.<sup>1</sup> (35) p. 423.

**Quaer. 5°** Is it licit to contract with conditioned consent?

**Resp.** Negatively. Such a mode of contracting is illicit, especially if the condition is concerning the future, unless perhaps, as St. Alphonsus<sup>2</sup> has it, there is present a most urgent cause which does not suffer delay, as if there is question of Matrimony with a dying person for legitimating offspring, in a case in which the death of the prior spouse is doubtful. The reason is because many and grave inconveniences can easily follow from such a mode of contracting, namely scandal, quarrels, complications, difficulties, etc. - Thus the more common opinion.

**Quaer. 6°** Is Matrimony entered under a base condition valid?

**Things to be noted beforehand.** - As regards the ends of Matrimony they distinguish: 1° intrinsic essential ends, namely a) the mutual handing over of bodies with the obligation of rendering the debt, if the other asks by right, and b) the indissoluble bond; - 2° intrinsic accidental ends, and indeed, as primary, the procreation of offspring; as secondary, the remedy of concupiscence; - 3° extrinsic accidental ends, as are, e.g., the peace of families, the obtaining of riches, etc.

Moreover the positive exclusion of essential ends in the celebration of nuptials renders Matrimony void; but not of itself the exclusion of accidental ends; indeed principally (with the relation of works to God saved) to seek nuptials either as a remedy of concupiscence (without, however, the end of procreating offspring being excluded), or on account of an extrinsic end, provided it is in itself honest, is no sin.<sup>3</sup>

With these things noted beforehand:

**Resp. 1°** Negatively, if the condition is repugnant to the substance or essence of Matrimony, namely to its threefold good, i.e. 1° to the good of Sacrament; 2° to the good of fidelity; 3° to the good of offspring; as it would be if the spouses, in contracting Matrimony, excluded the generation of offspring in the very use of Matrimony (but not if, out of love of continence, they excluded the use itself), or fidelity in marriage, or perpetuity in Matrimony. But for this it is required that a condition of this kind (namely for the external forum) be expressly posited, as is done in the formula of certain sects, by which perpetuity is excluded,<sup>1</sup> and that the spouses intend in mind to oblige themselves in no other way. But the Matrimony will be valid if this condition has itself concomitantly, and therefore is not the motive why the Matrimony is contracted, and otherwise there is present some general will of validly contracting. - Hence:

a) "The error of non-Catholics, by which very many think marriages can be dissolved by reason of adultery, or on some other account, by the authority of the State, does not obstruct the value of the contract; for the intention of contracting according to the law of nature and of Christ is stronger."

b) Matrimony is valid, although one of the spouses afterwards says that he had been ignorant of the Matrimonial debt, and, this having been known, affirms that he would not have entered Matrimony.<sup>2</sup>

c) The marriages of former "slaves, if the condition were added, 'so long as you shall have conducted yourself well,' are void."<sup>3</sup>

d) There was related to me the case of those contracting Matrimony before a magistrate or little heretical minister for this reason, that they believed the bond would thus be dissoluble, persuaded that it would be indissoluble if they contracted before a priest, whose ministry for that precise reason they did not use. I do not at all doubt that this Matrimony is null in the internal forum; for in this case error has itself antecedently to the contract, or they did not wish to enter any Matrimony other than a dissoluble one. But for the external forum, it would have to be clear concerning that matter from the confession or declaration of each spouse, against which the presumption of collusion does not militate. But if, as can easily happen among us, the confession of one party cannot be had, either because it is unknown where the party is, or because he refuses to appear, the sworn declaration of the other seems to suffice.<sup>4</sup>

**Resp. 2°** But if the base or impossible condition is not repugnant to the substance of Matrimony, distinguish. 1° It is judged valid in the external forum, unless the condition is proved to have been seriously posited; the reason is because in that case the condition is held as not added. 2° As regards the internal forum, distinguish. If it has been indubitably and seriously posited, it will be invalid: otherwise not. But in doubt a condition of this kind is presumed either not to have been posited, or not seriously, since in doubt judgment must always be made in favor of the value of Matrimony. Cf. n. 870. 2°. (36) p. 424.

**Quaer. 7°** What must be done if someone says that he consented fictitiously?

**Resp. 1°** As regards the external forum, faith is not given to him, unless either from the circumstances it is clear that he was deceived by fraud or induced by grave fear to contract, or by conjectures (which nevertheless is most difficult) fictitious consent is sufficiently proved. The reason is because it cannot be supposed that he who freely entered Matrimony consented fictitiously.

**Resp. 2°** As regards the internal forum, he who asserts that he consented fictitiously is to be obliged 1° to abstain from asking and rendering the debt until he truly consents; 2° ordinarily also to posit true consent, that thus he may repair the injury brought upon the other party. I say: ordinarily, because if the other party consents to separation, or fiction intervened also on the part of this party, or no damage is going to come to the party, or he who consented fictitiously was forced to contract, he is not held to supply consent.<sup>2</sup>

Besides, the spouse who posited true assent is not obliged to believe the other asserting that he consented fictitiously, even though he confirmed it by oath; and therefore would licitly ask the debt until the defect of consent was sufficiently proved.<sup>3</sup>

**Quaer. 8°** Is the consent of parents required for the validity or liceity of the matrimonial contract?

**Resp. 1°** As regards validity, negatively altogether; because the consent of parents is required neither by natural nor positive law. And 1° not by natural law; because the contracting parties have power over their own body, nor do parents have power over the body of their children in order to Matrimony; otherwise they could void the Marriages of these, whether justly or unjustly, which is altogether repugnant and adverse to the common sense of men. 2° Nor by positive law; for Trent<sup>1</sup> struck with anathema those who "falsely affirm that Marriages contracted by children of a family without the consent of parents are void, and that parents can make them ratified or void." But if civil law required the consent of parents for the value of Matrimony, its force would extend only to merely civil effects.<sup>2</sup> - Thus commonly all Catholic Theologians. Cf. n. 425.

**Resp. 2°** As regards liceity, affirmatively, generally speaking. This is clear from natural law, because children owe parents honor, reverence, and obedience, especially in those things which look to the whole family, of which kind is Matrimony, upon which very often depend the honor and peace of families, etc.

**Quaer. 9°** Can children sometimes contract Matrimony against the will of parents?

**Resp.** Affirmatively, if the parents unjustly refuse consent. But, since in this matter children of a family easily deceive themselves, before they celebrate nuptials they ought to consult prudent men and especially confessors, lest in a matter so grave and full of such great dangers they act imprudently, trusting their own judgment.

**Quaer. 10°** What must be done by the confessor or Pastor when children of a family wish to enter Matrimony against the will of parents?

**Resp. 1°** As regards the confessor, if he judges the reclamation of the parents just, he will persuade the children to accommodate themselves to the will of the parents. But if they are unwilling, and the conditions required by law in some State do not obstruct, he ought not to disturb them; for it would be imprudent, in a matter so difficult, to constitute himself judge between the father or mother and their children. Thus Gousset<sup>3</sup> practically resolves the matter. But if the children, while the parents are unjustly opposing Matrimony, "betake themselves outside the limits of the State ... for contracting nuptials, or seek by another compact to evade the penalties of the laws, with truth uninjured, they do not seem to be blamed; otherwise if they accomplish the matter by false oath or false witnesses." Thus Kenrick.<sup>4</sup>

**Resp. 2°** As regards the Pastor, he ought not to assist at Matrimony unless the conditions prescribed by civil law have been fulfilled, on account of the inconveniences otherwise going to arise. See n. 426. q. 4°. R. II. a).

Notes to n. 1548 - note sequence 1. (1) De Matr. § 16. (2) Heiss, de Matr. § 16. p. 51. Notes to n. 1548 - note sequence 2. (1) L. VI. 887. (2) Ib. 888. (3) Ib. 885. (4) Ib. 890. Notes to n. 1548 - note sequence 3. (1) L. VI. 892. 895. (2) Ib. 892. (3) Ib. 882. 883. Notes to n. 1548 - note sequence 4. (1) S. C. O. Instr. 18 Dec. 1872. (2) Kenr. Tr. XXI. 40 and Letter of Pius VI to the Archbishop of Prague, July 11, 1789. (3) Acta, T. V. p. 551 sq. (4) Kenr. Tr. XXI. 40. Notes to n. 1548 - note sequence 5. (1) L. VI. 891. (2) Ib. 887. 1113. (3) Ib. 907. 908. Notes to n. 1548 - note sequence 6. (1) Sess. 24. c. 1. de Ref. Matr. (2) L. VI. 849. 850. (3) n. 839. (4) Tr. XXI. 41. 42. Appendix annotation (36), to n. 1548. q. 6°. R. 2°. p. 235. col. 2. Some contend that an agreement, on the occasion of a mixed Matrimony, of educating all or part of the offspring in heresy, is repugnant to the substance of Matrimony; but the sentence denying this is most common. The reason is that the good of offspring, insofar as substantial to Matrimony, is to be understood as the physical good. Thus Feije, n. 566, who adds: "in practice we judge that Matrimony" with such an agreement "can safely be held as valid, but cannot be held as invalid without consulting the Apostolic See."

## **ARTICLE II. ON THE PROPERTIES OF MATRIMONY, NAMELY, ON ITS UNITY AND FIRMNESS**

### **§ I. ON THE UNITY OF MATRIMONY**

**1549.** - The unity of Matrimony is placed in this, that Matrimony is the conjunction of one man with one woman.

**1°** It is certain that polyandry conflicts with the natural law, because it is adverse to the principal ends of Matrimony, namely the generation of offspring and its good education. - Thus all.

2° It is certain that simultaneous polygamy is prohibited and void in every case, at least by the positive divine law of the new law, as is clear from Luke<sup>1</sup>: *Everyone who dismisses his wife and marries another commits adultery.* It is likewise clear from Trent.<sup>2</sup>

3° It is certain that second nuptials and further ones are licit both for the man and for the woman, even under the Evangelical law. This is clear from the authority and practice of the Church, and also from Sacred Scripture<sup>3</sup>: *A woman is bound to the law for so long a time as her husband lives; but if her husband shall have fallen asleep, she is freed: let her marry whom she wishes, only in the Lord.*

Notes to n. 1549. (1) Luke 16. 18. (2) Sess. 24. can. 2. (3) 1 Cor. 7. 39.

## § II. ON THE FIRMNESS OF MATRIMONY

A twofold firmness of Matrimony is distinguished: for one regards the bond, the other the bed.

### POINT I. ON THE FIRMNESS OF MATRIMONY INSOFAR AS IT REGARDS THE BOND.

1550. - Matrimony is indissoluble, i.e. once Matrimony has been contracted, divorce as regards the bond cannot be made, at least by positive divine law. It is of faith. It is proved: 1° from the words of Christ<sup>4</sup>: *Therefore now they are not two, but one flesh. What therefore God has joined, let not man separate.* 2° From the words of the divine Paul<sup>5</sup>: *But to those who are joined in Matrimony I command, not I, but the Lord, that the wife not depart from the husband; but if she departs, that she remain unmarried, or be reconciled to her husband. And let not the man dismiss his wife.* 3° From Trent.<sup>1</sup> Cf. n. 456. 9°, and n. 1053. q. 2°.

Notes to n. 1550. (4) Matt. 19. 6. (5) 1 Cor. 7. 10. (1) Sess. 24 sub initio.

1551. - Nevertheless a threefold case is to be excepted; for:

1° Ratified and non-consummated Matrimony of Christians can be dissolved, for a most grave cause, by dispensation of the Pope, from power divinely conceded to him. This is clear from this, that the Supreme Pontiffs have already very many times used this power, as can be seen in the illustrious Feije.<sup>2</sup> Nevertheless dispensation is not granted unless full proof is exhibited to the Holy See that the Matrimony has not been consummated, and sufficient causes are alleged. - The *Acta*<sup>3</sup> hand down what particular causes today are held sufficient. But the consent of the other party is not needed. - Non-consummation is to be proved judicially, yet only summarily. On this matter the *Collectanea juris missionis*<sup>4</sup> will usefully be consulted.

2° Ratified and non-consummated Matrimony of the faithful can be dissolved by solemn religious profession<sup>5</sup> of one spouse entering Religion within the first two months, and this from a special privilege conceded by Christ and declared by the Church.<sup>6</sup> Cf. also the things to be said in this number under 3°. 9.

I said: within the first two months. Namely, that the spouses may deliberate concerning the use of this privilege, the two months after the nuptials are conceded to them by the Law itself<sup>7</sup> (it can be prolonged by the judge, the cause being known), during which time they are not obliged to render the debt, provided nevertheless that Matrimony perhaps is not necessary for repairing scandal or the honor of the bride.<sup>8</sup> - Fornication had between the betrothed persons before the celebration of Matrimony does not impede this privilege, if nothing else obstructs. - Nevertheless he sins in kind who contracts Matrimony with the intention of entering Religion, without warning the other party.<sup>9</sup>

See several other things pertaining here, if you like, in the illustrious Feije.

3° Even consummated Matrimony of infidels<sup>1</sup> can be dissolved from divine concession when one of the spouses is converted to the Christian Faith<sup>2</sup> through the reception of Baptism, and the other, having been interrogated, refuses peacefully to cohabit with that one, or does not cohabit except with injury of the Creator and contempt of the Christian Religion, or applies an attempt to pervert the faithful party. This is deduced from the Declaration of Innocent III.<sup>3</sup> But this divine concession is drawn from the words of the Apostle<sup>4</sup>: *If any brother has an unbelieving wife, and she consents to dwell with him, let him not dismiss her; ... but if the unbeliever departs, let him depart; for a brother or sister is not subject to servitude in such things: but God has called us in peace.*

Many decrees and decisions<sup>5</sup> of the Supreme Pontiffs and of the Sacred Congregations exist on this matter. From these with the theologians we conclude:

1. (a) When, after true Matrimony entered in the infidelity of each party, one party or each is converted and baptized, the Matrimony remains valid, and there is no need of new consent. - (b) If there was not a true Matrimony between them, the converted person can enter Matrimony either with that same person, but first baptized and (as regards liceity) Catholic, or with any other baptized and Catholic person, with mutual consent first offered and with those things observed which elsewhere we shall set forth concerning clandestinity.
2. If an infidel has several women, or respectively men, then either after conversion he does not remember which one he first took, and he can, mutual consent first having been offered in due form, retain one of those with whom he truly wished to be joined in Matrimony; or he remembers which one he first took, in which case apply to this one what was said under 1. (a). Yet in this hypothesis there can be place for the case of the Apostle. - But if an infidel, having several women, entered true Matrimony with none, after conversion he can contract with any baptized and Catholic woman, with mutual consent having been offered in due form.
3. When one party has been converted and baptized, the unbelieving one is to be interrogated whether that one wishes either also to be converted to the Faith, or at least to cohabit without contumely of the Creator. If the unbelieving one refuses to do either, or after cohabitation changes mind, or departs without fault of the faithful one (such as, e.g., adultery of this person after Baptism would be [see under 6]), this faithful one will be able to enter a new Matrimony. - But that the unbelieving person can truly be said to wish to cohabit without contumely of the Creator, it is necessary that he not draw the converted party to mortal sin; that he desist from concubinage in which, e.g., he was already living before the conversion of the other party; that he not bring troubles upon the Religion of the converted person or the Catholic education of offspring, etc.<sup>1</sup>

But Matrimony entered in infidelity is not dissolved except at the very moment in which another valid Matrimony is contracted.

4. The faithful party cannot, without dispensation, validly enter a new Matrimony except with a party already baptized; otherwise there would be present the diriment impediment of disparity of cult, from which Bishops, by force of faculties Form D. n. 3 (T. I. p. LXXIV.), cannot dispense, and the Holy See does not dispense except for most grave causes.<sup>2</sup> Besides, that a new Matrimony be licitly entered, it must be contracted with a Catholic woman. By dispensation, indeed, it could licitly be

contracted with a non-Catholic, but concerning this dispensation also what was said around disparity of cult is valid.

But when a faithful person by dispensation has contracted Matrimony with an infidel, and that one thereafter refuses to cohabit peacefully and without contumely of the Creator, Kenrick<sup>3</sup> thinks that there is place for the case of the Apostle; but the contrary is certain from the Holy Office, June 14, 1708; August 1, 1759, to 4; year 1854, Dub. II, to 2; August 21, 1878.

#### 5. The interrogation of the infidel:

a) Is altogether necessary (even if in reality it could not be made or would be useless), and that one's response, with a competent term fixed for the same, must be had, so that one can proceed to new nuptials, unless dispensation has been made by the Holy See, or among us, in the case set out p. LXX. 11, by the Bishop. Yet Bishops will be permitted to use this faculty only according to the norm of the Brief *Populis* of Gregory XIII. In this case it suffices to interrogate concerning the will of conversion.<sup>1</sup>

b) It is to be made: in the presence of two witnesses; by the converted person himself or by another in his name, with the Ordinary intervening; the purpose of the converted person being notified (in the case in which the unbelieving person is going to refuse both conversion and cohabitation without injury of the Creator) either of passing to other nuptials, or, if this is the person's intention, of entering Religion, receiving Sacred Orders, or living in celibacy.<sup>2</sup>

c) Dispensation from the interrogation can be obtained from the Holy See as often as the unbelieving person, after being interrogated, has not responded within the time prefixed, or cannot be interrogated; for instance because it is unknown where that one is living, whether still alive, or because it is judged morally impossible that due interrogation should reach that one, or because from the interrogation most grave inconveniences are feared. But concerning these things it must be clear by summary process, the omission of which nevertheless renders the nuptials only illicit, if it is clear to the delegate for dispensing concerning the circumstances rendering interrogation impossible or difficult or useless.<sup>3</sup>

d) If a new Matrimony with a faithful person, the interrogation having been omitted or the response not having been received, had been celebrated without permission of the Holy See, this See alone could define whether one may remain in it.<sup>4</sup>

e) The interrogation is to be made (or dispensation from it sought) after Baptism,<sup>5</sup> and it cannot be made before Baptism except for a grave cause and with previous permission of the Holy See.<sup>6</sup>

6. The privilege of the Faith remains to the converted party, even if because of adultery or another criminal cause posited by that party before conversion, the unbelieving one denies cohabitation; for crimes committed before Baptism can never be objected.

But adultery committed in infidelity by the party who, having been interrogated, wishes indeed to cohabit without injury of the Creator, but not to be converted, does not furnish to the converted person the faculty of a new marriage; nevertheless, in that case this converted person is not held to cohabit with the unbeliever, although asking pardon, as will be clear from things to be said n. 1552. III. under 3°. <sup>1</sup>

7. After a new Matrimony has been entered by the faithful person, the unbelieving party, if thereafter also converted, can contract Matrimony with another Catholic. - But whether, if the person remains an unbeliever, he can enter a new Matrimony with another, even an unbeliever, is disputed.<sup>2</sup> "Today," says Feije, "the common doctrine is that in this case the unbeliever enters Matrimony with another unbeliever both validly and licitly."

8. But if the faithful person has not entered a new Matrimony, the unbelieving one invalidly marries another, nor can Baptism be conferred upon that one if afterwards converted, unless, with adulterous bonds cast off, the person has separated from the new party. Holy Office, January 23, 1805. And this is true even if this new party also is converted, and the prior spouse consents.

9. The converted person who has not entered a new Matrimony cannot after the conversion of the other party enter Matrimony with another; indeed from charity<sup>3</sup> he is held to return to the other party if otherwise this person's conversion would be endangered. Is he also held from justice? It is disputed.<sup>4</sup>

But what if the other party is converted after the party first converted has either professed Religion, or received Sacred Orders, or even only vowed perpetual chastity?

**Resp.** Without pontifical dispensation, or, if among us there were question of only the simple vow of chastity, without dispensation of the Bishop, he cannot return to the other party.

**Note.** - If among us one of the three cases occurs in which, according to the things said in this number, Matrimony can be dissolved, prudence will require that, before the free party pass to other nuptials, civil divorce be obtained. (6), p. 394.

Notes to n. 1551 - note sequence 1. (2) De Imp. n. 601. p. 490 (1) and p. 808. VII. Cf. Vind. p. 800 sq. Ed. 2a. T. II. p. 461 sq. (3) Tom. XIV. p. 154. sub IV-VI. (4) p. 434. col. 2. § Instructio; p. 435. n. 965; p. 436. n. 966, 967. (5) Trid. Sess. 24. Can. 6. Ben. XIV. de Syn. L. XIII. c. XII. n. 9. (6) Trid. Sess. 24. Can. 6. (7) Sanchez, de Matr. L. II. D. 24. (8) L. VI. 870. Dub. 2. 958. (9) Feije, n. 520. Notes to n. 1551 - note sequence 2. (1) L. VI. 958. (2) De Imp. n. 519. (3) L. IV. Decr. T. XIX. c. 7. L. VI. 956. (4) 1 Cor. 7. 12. 15. (5) Feije, n. 472 sq. Collect. p. 407 sq. Notes to n. 1551 - note sequence 3. (1) Collect. p. 424. n. 946 and p. 427. col. 2. § Praeterea. (2) Ib. p. 425. n. 949 and p. 430. col. 2. Quaesit. secund. (3) Tr. XXI. 110. Notes to n. 1551 - note sequence 4. (1) Feije, n. 481. 494 sq. (2) V. d. Burgt, de Matr. n. 462. (3) Feije, n. 488. (4) V. d. Burgt, ib. n. 459. (5) Collect. p. 429. n. 955. (6) Ib. p. 432. n. 958-960. Notes to n. 1551 - note sequence 5. (1) Feije, n. 492. (2) Vide Ben. XIV. C. Probe, February 28, 1747. (3) De Imp. n. 501. (4) Feije, De Imp. n. 499. Appendix annotation (delta), to n. 1551, p. 239, col. 1. It is pleasing here to add a double case. John and Paulina, unbelievers, entered legitimate Matrimony. Paulina, after obtaining from a civil judge a sentence of divorce on account of John's adultery, is converted to the Catholic Faith. It is asked whether, since Paulina is not held to cohabit with John on account of his adultery, she ought to interrogate him before she can contract with another? I respond yes; for the end of the law of interrogation has ceased only partially, since the unbeliever is to be interrogated so that it may be known both whether he wishes to be converted, and whether he wishes to cohabit peacefully; and in the case in which he is converted, cohabitation cannot be refused on account of adultery committed in infidelity, which is washed away through Baptism. Cornelius, a Jew, took Iphigenia, an unbeliever, as wife. A sentence of divorce having been issued by a civil judge, Cornelius after some time embraced the sect of the Episcopalians, and, Iphigenia having been interrogated in vain for cohabitation, contracted with Lucia, a follower of the same sect. But after several years Iphigenia is converted to the Catholic Faith; afterward, however, Cornelius and Lucia also desired to be received into the bosom of the Catholic Church. - It is asked whether they can be received without being separated? - Resp. "Those are not lacking who opine(1) that then also the privilege of faith is valid when someone passes from infidelity to non-Catholics and is validly baptized. This can deservedly be defended for cases in which all things required by divine law as regards interrogation have been fulfilled, and in which no license of the Roman Pontiff or declaration of divine law is needed, at least so that the new Matrimony may safely be held as valid. But in the remaining cases it seems that the privilege of faith cannot be acknowledged, at least in such a way that the new nuptials may safely be held as valid. But that license, or dispensation, or declaration of divine law, that new Christian certainly would never obtain

from the Roman Pontiff, and the faculties of dispensing granted by him to others are restricted to converts to the Catholic Faith." (2) After I had written these things, I learned from a certain Bishop that the Matrimony of Cornelius with Lucia, in the year 1876, had been declared valid by the Holy See. Cf. n. 1551. p. 238, col. 1 under 4. > Notes to appendix annotation - note sequence 3. > > 1 Cf. Perrone in Giovine, T. I. p. 528. Ballerini on Gury, T. II. n. 759 under 8° at the end. | 2 Feije, de Imp., n. 502.

## **POINT II. ON THE FIRMNESS OF MATRIMONY INsofar AS IT REGARDS THE BED, AND ON DIVORCE FROM THE BED.**

**1552. Principles. - I.** By reason of the Matrimonial bond spouses are held to cohabit together and to lead a social life. The reason is drawn from the very definition of Matrimony.<sup>1</sup>

**II.** Nevertheless divorce, or separation from bed or habitation, can be made for grave causes, while the conjugal bond remains nonetheless, so that neither party can enter another Matrimony before the death of the other. This is declared by Trent.<sup>2</sup>

**III.** Causes giving honor to a divorce of this kind are: mutual consent, grave danger of soul or body, and adultery or heresy of either party (concerning which see n. 1521. 10°); you will understand these causes thus for practice.

**1° Mutual consent:** namely, each spouse together can renounce his or her proper right as regards the bed, whether for a time or perpetually, provided that, mature deliberation and long experience having been premitted, it is clear that the danger of incontinence is absent, and they are separated from bed. Likewise they can be separated even as regards habitation, whether for a time on account of business, or perpetually on account of a desire for a more perfect life; this desire can be fulfilled in two ways, namely either by the reception of Sacred Orders (concerning which mode see n. 1521. 10°), or by entrance into Religion. Concerning this note that it is necessary that the other party also enter a monastery and there emit regular profession, unless perhaps already of advanced age and immune from every suspicion of incontinence; for then it suffices if the person bind himself or herself by perpetual simple vow of chastity (before an ecclesiastical Superior and witnesses). Except if pontifical dispensation frees from this vow.<sup>3</sup>

Can spouses by mutual consent enter a Congregation in which only simple vows, yet of themselves perpetual, are emitted? - I think that, prudence being observed in individual cases, nothing obstructs; for even while remaining in the world both can vow continence.

**2° Grave danger of soul,** if danger of perversion in one from the cause of the other is present; or of body, if danger of life or mutilation is imminent, or if cohabitation on the part of one toward the other is made so troublesome that it is rendered morally impossible. This would happen if a spouse were compelled to suffer relatively grave or frequent cruelties, or if the wife were expelled without cause.<sup>4</sup>

**3° Adultery of either party,** namely such that it is: **1°** morally<sup>1</sup> certain; **2°** voluntary, and not perpetrated from violence inflicted;<sup>2</sup> **3°** not condoned either expressly or implicitly, e.g. by the conjugal act, or by other signs, exhibited by the innocent party knowing and remembering the adultery (for the internal forum, with the mind of condoning);<sup>3</sup> **4°** not mutual, because then compensation would exist;<sup>4</sup> **5°** as St. Alphonsus thinks more probably, consummated;<sup>5</sup> **6°** committed without the consent of the other party.<sup>6</sup> - This is clear from the words of Christ<sup>7</sup>: *He who shall dismiss*

*his wife, except for the cause of fornication, makes her commit adultery*, etc. But what is licit for the man ought by the same reason to be licit also for the woman.

Observe from the more common and at least extrinsically more probable opinion of the Doctors that under the name of adultery here comes any division of the flesh, even if it does not have the character of adultery properly so called, of which kind is sodomy and bestiality.<sup>8</sup>

Notes to n. 1552 - note sequence 1. (1) V. Acta. T. I. p. 218. (2) Sess. 24. Can. 8. (3) L. VI. 968. H. A. Tr. XVIII. 92. Ben. XIV. de Syn. L. XIII. c. XII. n. 10 sq. (4) L. VI. 970-974. Acta, T. II. p. 136. 1). Notes to n. 1552 - note sequence 2. (1) L. VI. 961. Acta, T. II. p. 136. (2) L. VI. 966. (3) Ib. (4) Ib. (5) Ib. (6) Ib. (7) Matt. 5. 32. (8) L. VI. 962. (9) Ib. 963. (10) Ib. 963. 964. Notes to nn. 1552-1553. (1) L. VI. 967. (2) Sanchez, de Matr. L. X. Disp. X. n. 12. 18. (3) L. VI. 969. (4) Ib. (5) Tr. XXI. 115.

**1553. Questions. - Quaer. 1°** Is a man, when the adultery of his wife is known, held to dismiss her?

**Resp. 1°** It is certain that he is not held by reason of adultery, because divorce was conceded in favor of the innocent party, not for his punishment. - Thus commonly.<sup>9</sup>

**Resp. 2°** Sometimes the man can be held to dismiss an adulterous wife by reason of fraternal correction or avoiding scandal, and say the same of the wife, if founded hope of amendment is present and the husband can be dismissed without grave inconvenience; but this former case is rare, both because other means can be employed for correcting the wife or avoiding scandal, and because grave scandal or another grave inconvenience to be feared from separation can excuse. Besides, the wife cast out would be exposed to greater danger, at least for the most part. But the latter case will be most rare.<sup>10</sup>

**Quaer. 2°** Once divorce has been made, can the innocent party compel the other to return to himself or herself?

**Resp. 1°** Affirmatively, if there is question of non-juridical separation, because this is not strengthened by sentence of the judge.

**Resp. 2°** Affirmatively, more probably, even in the very case of juridical separation. The reason is because the sentence of juridical separation is borne in favor of the innocent party, and therefore does not take away the right of recalling the other; nor for this is a new sentence of the judge needed. Nevertheless an adulterous woman is not to be compelled to return as often as she can reasonably fear that she will be treated harshly, bitterly, or even cruelly.<sup>1</sup>

Nevertheless one must observe:

1) Although after divorce juridically made, according to the common doctrine, the innocent party can, even against the will of the adulterous party, enter Religion or receive Sacred Orders, nevertheless this is not conceded to the adulterer dismissed; who therefore can neither enter Religion nor be initiated in Sacred Orders unless the innocent party either expressly consents, or has already assumed an irrevocable state; and if the adulterer were to enter Religion, he could be recalled by the innocent party even after profession.<sup>2</sup> Nevertheless St. Alphonsus<sup>3</sup> admonishes that tacit consent also suffices for this, namely if the innocent party knows this and does not contradict when he or she can; nevertheless in the case he or she is not held either to enter Religion or to bind himself or herself by a vow of chastity. St. Alphonsus concedes this very thing to the guilty party when the

innocent party, having been asked, was unwilling to admit reconciliation, or even if the innocent party has not recalled the guilty party after two years have already elapsed.<sup>4</sup>

2) "If divorce has been made by civil authority" as regards the bond, "the spouses renewing domestic intercourse, without new nuptials, will be liable to the penalties of adultery. But this can be asked: whether, for escaping the penalties of the law and recovering rights, it is licit to give consent again to Matrimony. It seems licit before the priest to refer to consent once given, so that he can testify concerning the Matrimony; but the consent itself must not be renewed, since it is the form of the Sacrament; for the rest, words can be used in a broad sense for satisfying the law. While care is employed that civil testimony be had concerning the Matrimony, caution must be taken that no sacred rites be performed again, or that anything be done by which favor is given to the error of a bond dissolved." Thus Kenrick.<sup>5</sup>

**Quaer.** 3° Once juridical separation has been made on account of adultery, is the innocent spouse held to return to the other party recalling him or her, if he or she afterwards has also fallen?

**Resp.** Negatively, more probably. The reason is because the first adulterer, by the sentence of the judge, was already entirely stripped of every right toward the innocent party.<sup>1</sup>

**Quaer.** 4° Can divorce be made by private authority?

**Resp.** 1° Affirmatively as regards the bed, if a grave cause underlies, as was said above; and specifically by reason of adultery, even occult adultery, because the rights of Matrimony can be denied perpetually to the unfaithful spouse.

**Resp.** 2° As regards habitation: 1° affirmatively, by reason of adultery, even if the crime is occult (at least more probably, if the adultery is on the part of the woman), because Christ, by permitting divorce for this cause, did not distinguish between public and private adultery. But for this it is required that the crime be certain, and that scandal not intervene from the separation which cannot be otherwise repaired.<sup>2</sup> - Yet several say that divorce is not licit on account of occult adultery; because it is not licit to injure the fame of the adulterer by making manifest, even tacitly, a secret crime. 2° Affirmatively also, by reason of danger either of soul or of body, provided the danger is in delay, or the innocent party cannot litigate, or approach the judge, or easily prove the cause.<sup>3</sup> But in practice it is expedient that the counsel of a prudent man, especially of the confessor, be sought. But the confessor ought to proceed very cautiously in this matter. Let him beware lest too easily he believe the complaints of wives against husbands; and let him strive to restrain them, and avert them, insofar as it can be done, from divorce. - Besides, diocesan statutes, if there are any, are to be observed. - "Nor do I think those spouses should be disturbed," says Müller, Th. Mor. III. § 227. n. 4, "who have been separated by civil authority only, if they are in good faith; for scarcely any fruit of admonition is to be hoped for."

Notes to n. 1553. (1) L. VI. 967. (2) Ib. 968. (3) Ib. 971.

## Chapter IV. On the Matter and Form of Matrimony

**1554. Principles.** - **I.** The remote matter of Matrimony is the bodies of the contracting parties, insofar as they are mutually handed over to one another in order to the generation of offspring. - Thus commonly.

But the proximate matter is the handing over itself of the bodies, which is perfected by the words or signs expressing consent. - Thus commonly. Benedict XIV, Constitution *Paucis abhinc*.

**II.** The form consists in the mutual acceptance of the contracting parties expressed by words or signs. - Thus likewise more commonly.

See the Dogmaticians.

## Chapter V. On the Minister and Subject of Matrimony

### ARTICLE I. ON THE MINISTER

**1555. - I.** It is certain that for the value of Matrimony the presence of the Pastor or delegate is required wherever the Decree of the Council of Trent concerning clandestine Marriages has been duly published.

**II.** Even if somewhere this decree of Trent has not been promulgated, nevertheless it is certain: 1° that the Church has always willed that the priest deputed for this assist at the Marriages of the faithful; 2° that the Pastor cannot omit his assistance at the nuptials of the faithful, and that he is obliged to impart the blessing according to the rite received in the proper place; 3° that the faithful who enter Matrimony clandestinely sin gravely. This is evinced from Trent.<sup>1</sup>

**III.** Today, whatever some previously said according to an obsolete opinion, it is certain also, and, according to the Annotator of Gury,<sup>2</sup> proximate to Faith, that the contracting parties themselves are the ministers of Matrimony. See the arguments, if you like, in the cited Annotator.<sup>3</sup>

**1556. Questions. - Quaer.** 1° Can the Pastor assist at the Matrimony of those who are public sinners?

**Resp.** See n. 1231. q. 4°. For those things which are there said concerning those who have notoriously fallen into censures are valid concerning public sinners of whatever kind. - But the affirmative exception, if grave damages seem to threaten from this, appended by the Sacred Penitentiary, according to the doctrine of St. Alphonsus, confirms the general rule of denying assistance.<sup>4</sup>

The difficulty would be less if one of the spouses were innocent, or changed into a better life; for then it would be licit for the Pastor to assist at the Matrimony in favor of the innocent party. - Cf. the things said n. 1544.

**Quaer.** 2° What must be observed concerning the nuptial blessing?

**Note beforehand.** The nuptial blessing, which is conferred only in Mass, is to be distinguished from the blessing of the ring, and from the other rites which are expressed in the Ritual. With this noted beforehand:

**Resp.** 1° In contracting Matrimony the rites described in the Ritual always have place. See *Excerpta ex Rit. Rom. Baltim.* 1872. p. 204-212; Ed. 1874, p. 196-204.

**Resp.** 2° "Vehemently," say the Fathers of the Second Plenary Council of Baltimore,<sup>1</sup> "we exhort pastors that they introduce everywhere the practice of blessing Marriages within Mass."

**Resp.** 3° When and to whom the blessing, which is conferred only in Mass, can be given; likewise when, in what manner, and for whom this Mass can be celebrated outside the closed time,<sup>2</sup> see the same *Excerpta*, Ed. 1872. p. 212-214; Ed. 1874. p. 204-206.

Add to these: 1) Provided there is question of first nuptials, the nuptial blessing can be given in Mass, although the woman is pregnant, or has begotten children, whether from a legitimate

Matrimony contracted without such blessing, or has conceived from fornication itself, or even has begotten children, and at present Matrimony is contracted. This is clear from the resolution of the Sacred Congregation de Propaganda Fide, June 5, 1841. (37) p. 424.

2) The use of a white veil to be spread over the bride is prohibited and reprov'd. S. R. C. September 7, 1850 in Rupell.

**Quaer.** 3° What must be done by the Pastor if all things are already prepared for the nuptials and from the Confession of the spouses he detects that an occult impediment is present?

**Resp.** 1° If there is question of an impediment in which the Holy See is accustomed to dispense, and the nuptials cannot be deferred without danger of infamy or other most grave inconveniences, and the penitent is in invincible ignorance of the impediment, the admonition is to be omitted, and the celebration of Matrimony is to be permitted until dispensation or sanation in the root is obtained.<sup>3</sup>

**Resp.** 2° If the penitent is in vincible ignorance, or if he clearly knows the impediment, and the Matrimony cannot be deferred, not even for obtaining dispensation from the Bishop, without infamy or scandal, then the difficulty is very great. - According to the opinion which St. Alphonsus<sup>1</sup> calls not unfounded, the confessor, or Pastor, could declare that the law of the Church concerning impediments does not oblige in such great straits, and proceed to the celebration of Matrimony. Nevertheless as soon as possible, at least for caution, dispensation ought to be sought. - According to others, and, as it seems, also according to St. Alphonsus,<sup>2</sup> simulation of the contract of Matrimony could be permitted with the intention of seeking dispensation from the impediment as soon as possible. But then no small difficulty will arise by reason of the danger of incontinence, unless perhaps dispensation can be had opportunely on the same day. But as often as the Bishop can be approached, he must be approached, because, according to the common opinion, in that case he can dispense from ecclesiastical impediments.<sup>3</sup> - Others have devised besides other ways, which see, if you like, in Feije.<sup>4</sup>

Every difficulty would cease in practice if the Bishop were to delegate to all priests laboring for the care of souls the faculty which he has for a case of this kind, and which, as ordinary or delegated by law (n. 154. 2°), according to the probable and common opinion,<sup>5</sup> he can communicate generally.

**Notes near nn. 1555-1556, minister of Matrimony and nuptial blessing (printed pp. 241-242).**

1 Sess. 24. de Ref. Matr. c. 1. | 2 Ed. Rom. 1873. T. II. p. 644 (E). | 3 Ib. and N. Rev. Th. T. 12. p. 307. (2). | 4 Vind. Ed. 2a. T. II. p. 607.

Notes to n. 1556 - note sequence 2. (1) a. 333. (2) Conc. Pl. Balt. II. p. 310. § fin. (3) L. VI. 613. Notes to n. 1556 - note sequence 3. (1) H. A. Tr. XVI. 114. (2) L. VI. 62. III. H. A. Tr. XVIII. 29. Exam. Ord. n. 17. (3) L. VI. 613. Cf. Vind. p. 807 sq. Ed. 2a. T. II. p. 471 sq. (4) De Imp. n. 640 sq. (5) L. VI. 613. 1125. De priv. n. 58. Appendix annotation (37), to n. 1556. q. 2°. p. 242. col. 1. General decree concerning the nuptial blessing. - S. C. S. R. U. Inq., Wednesday, 31 Aug. 1881. "The Eminent and Most Reverend Lords decreed: "That the nuptial blessing, which the Roman Missal exhibits in the Mass for bridegroom and bride, is always to be imparted in the Marriages of Catholics, yet within the celebration of Mass, according to the rubrics, and outside forbidden time, to all those spouses who, in contracting Matrimony, from whatever cause did not obtain it; even if they ask after they have already lived for a long time in Matrimony, provided the woman, if a widow, has not accepted the blessing itself in other nuptials. "Besides, that the same Catholic spouses who have not obtained the blessing of their Matrimony are to be exhorted to seek it at the first possible time. But it is to be signified to them, especially if they are neophytes or contracted validly before conversion from heresy, that the blessing itself pertains to

the rite and solemnity, but not to the substance and validity, of the union. "All things to the contrary notwithstanding. "Fr. VINCENTIUS LEO SALLUA, "Archbishop of Chalcedon, "S. R. and Un. Inquis. Comm. Gener. "JUVENALIS PELAMI, "S. R. U. Inq. Not."

## ARTICLE II. ON THE SUBJECT OF MATRIMONY

**1557. Principles. - I.** The subject of the Sacrament of Matrimony is every baptized man or woman laboring under no impediment, whether natural, divine, or canonical.

I said: 1° **every BAPTIZED man or woman**; for men not baptized are not capable of the Sacraments of the Church, as is clear. I said: 2° **laboring under no impediment**; for although of itself every baptized man or woman is a capable subject of the Sacrament of Matrimony, yet accidentally many are barred from validly contracting Matrimony on account of diverse impediments, whether of natural law, divine law, or ecclesiastical law, as will be said below in its place.

Hence: 1) The Matrimony of infidels, although it can be valid in the character of a contract, nevertheless is not a Sacrament. Indeed, the faithful person himself contracting Matrimony with an infidel, even by dispensation of the Pope, according to the common opinion against a few, will not receive the Sacrament. For the sign of the union of Christ with the Church, conferring sacramental grace, consists neither in the union of the man, nor in the union of the woman, but in the union of each.

2) Heretics and schismatics, who in entering Matrimony accurately and integrally observe the laws of the Church which pertain to the substance of Matrimony, validly contract and are fortified with the Sacrament, since there is nothing which can obstruct the value of this Sacrament. This very thing is confirmed by the practice of the Church, which in no way forces them to renew consent if, repenting, they return to the unity of the Catholic Church. - Thus all.

**II.** The spouses contracting Matrimony ought to be in the state of grace, because Matrimony is a Sacrament of the living. Those who contract stained with mortal sin become guilty of sacrilege, nor do they perceive the sacramental graces necessary for spouses. More truly, nevertheless, those graces are only suspended and, the obstacle or mortal sin being removed, are applied to the soul, as we said n. 1242. - For practice, if no fruit is hoped for from admonition, it will almost be better not to admonish the unworthy person concerning the sacrilege of the one approaching unworthily, so that thus at least he may sin less; and he will rather have to be induced that at least as soon as possible he approach to confess.

**1558. Questions. - Quaer.** 1° Ought the Pastor to require that Confession be premitted to Matrimony, or that a certificate of Confession be exhibited by the spouses?

**Resp.** See the things said n. 1544.

**Quaer.** 2° Is it licit to enter Matrimony with a public sinner?

**Resp.** Affirmatively, if 1) one cannot recede from Matrimony without grave inconvenience, and 2) there is not question of one excommunicated by name. The reason for the first is because it is only material cooperation and from a proportionate cause; the reason for the second, because with such persons it is not licit to communicate in Sacred things.<sup>1</sup> See the exception as regards one excommunicated by name, n. 1243. q. 5°.

Notes to n. 1558. (1) L. III. 60. L. VI. 55.

## Chapter VI. On the Impediments of Matrimony

**1559.** - The impediments of Matrimony are: 1° diriment or impedient; 2° of divine law (whether natural or positive) or ecclesiastical law; 3° absolute or relative (respective); 4° antecedent or supervening; 5° public or occult.

**1560.** - A diriment impediment is so called, not because it dirimes a true Matrimony, but because it makes the act void by which someone, while it is subsisting, would undertake to enter Matrimony in fact. - Impedient impediments render Matrimony not invalid, but illicit.

**1561.** - Impediments of NATURAL divine law are more strictly taken from the very substance of the thing; and such certainly are defect of consent, impotence, and conditions adverse to the substance of Matrimony. - Impediments of positive divine law and of ecclesiastical law are those which have for their cause the express will of the legislator, whether divine or ecclesiastical. The impediment of bond is more commonly called of positive divine law; nevertheless it is so closely connected with natural law and is derived from it that rather it must be called of natural law. It is also most commonly taught that the impediment of consanguinity in the first degree IN THE STRAIGHT LINE is of natural law; concerning some others there is dispute, as we shall see in their own place; but nearly all the remaining impediments certainly are of ecclesiastical law.

There is by far a different effect of an impediment of natural or divine law upon natural consent than of an impediment of ecclesiastical law. When consent itself is lacking, there can be no speech concerning the effect of natural consent. But if there is question of another impediment of natural or divine law, natural consent indeed exists, but by the impediment it is so radically infected that it can never have any force, and is null as regards every effect, even a future one, because either it is contrary to the substance of Matrimony, or there is no power on earth which can attribute an effect to it. But when the impediment is of ecclesiastical law, natural consent indeed has no effect while it is offered, but it can, if it perseveres, have an effect afterwards, when by competent power, in a certain determined mode to be indicated by us afterwards, the impediment is removed.

**1562.** - Absolute impediments, e.g. Order, render someone incapable with respect to all; relative (respective) impediments, e.g. crime, render someone incapable only with respect to certain persons.

**1563.** - Antecedent impediments exist before the celebration of Matrimony; supervening impediments arise after it has been contracted. Indeed the force of diriming belongs regularly to an impediment only if it precedes Matrimony; if nevertheless it supervenes, it has certain notable, although diverse, effects. There are only three cases in which Matrimony validly contracted is dissolved: religious profession emitted by solemn vows when Matrimony has not yet been consummated; dissolution of non-consummated Matrimony made by the Roman Pontiff; and the case of the Apostle. Nevertheless a supervening impediment in diverse other cases has very notable effects, e.g. privation of the right of asking or rendering the conjugal debt, or privation of each.

**1564.** - **Public and occult impediments.** This division is especially to be noted for dispensations. - For the sake of brevity, for practice, we call public that which in no way is occult. Therefore the only question, for practice, is what here is called occult.

Occult is twofold, namely altogether occult and quasi-occult, or occult without addition. - Altogether occult is that which cannot be proved by two witnesses,<sup>1</sup> or which is known to only one besides the parties and the confessor. - Quasi-occult is that which is known to few. But how many come under the name of few? I respond that circumstances are to be attended to, but chiefly the following:

1° The place, by reason of which that is called occult which in a town is known only to six persons, in a city only to seven or eight. Indeed St. Alphonsus writes that he knows that the Sacred Penitentiary, which dispenses only in occult matters, dispensed in an impediment of consanguinity known to about ten persons.

2° Probable danger, or prudent fear, lest the matter be brought to the external forum or divulged. "Hence," Reiffenstuel<sup>1</sup> rightly says, "in practice one must altogether attend not only to how many persons, but also to what kind of persons, the impediment is known, because it can well happen that with respect to five prudent persons fearing God, who know the impediment, there is altogether no danger of further divulgation; and, on the contrary, with respect to two or three, e.g. talkative persons, or enemies, etc., the danger of divulgation may seem truly present, especially if other circumstances also threaten such danger."

3° The mode by which the fact from which the impediment arises is known; for a public fact which has not become known as criminal does not prevent the impediment from being judged occult.<sup>2</sup> The case would be, e.g., in the impediment of crime from homicide deliberately perpetrated, but which the people judges to have been perpetrated by accident. - But if the crime is public, yet almost everyone is ignorant of the penalty imposed upon it or the impediment annexed to it, some deny that it is occult; others, as St. Alphonsus,<sup>3</sup> affirm. But the holy Doctor seems to rely only on the doctrine of Benedict XIV, whom he supposes to adhere to the affirmative opinion; yet Benedict XIV, in the place cited by St. Alphonsus, namely *Inst. Eccl.* 87. n. 42, sets forth not his own opinion, but that of others; but his own in n. 48, namely the negative, to which the practice of the Sacred Penitentiary, at least in the time of Benedict, was conformed. - For the rest, although Benedict XIV, as a particular doctor, does not accept the affirmative opinion, nevertheless he is forced to testify (*Inst.* cited, n. 42) that it is handed down by nearly all writers. Therefore the Bishop also safely follows it in a case in which he dispenses by force of quasi-ordinary power.<sup>4</sup>

4° The nature of the impediment itself; for if by its very nature it is public, as consanguinity, affinity from licit copula, and spiritual cognation, although accidentally it would be occult, it is judged public as often as there is question of Matrimony to be contracted.<sup>5</sup>

**Notes near nn. 1559-1564, divisions of matrimonial impediments (printed p. 243).**

**1** L. VI. 605. Cf. 1116.

Notes to n. 1564 - note sequence 1. (1) L. VI. 1111. Notes to n. 1564 - note sequence 2. (1) Append. de disp. super imp. (at the end of L. IV.), n. 46. (2) Ben. XIV. *Inst.* 87. n. 48. (3) L. VI. 1111 in fine. (4) Acta, T. XIV. p. 155 sq. (5) Feije, de Imp. n. 97.

## **ARTICLE I. ON IMPEDIMENTS IMPEDING MATRIMONY**

**1565.** - Today four impediments impeding Matrimony are numbered, namely 1° prohibition of the Church made for various causes; 2° likewise prohibition of the Church lest at a certain determined time the solemnities of Matrimony be celebrated; 3° a betrothal contract already entered with another

person and not legitimately dissolved; 4° a vow which, from its nature, cannot be observed in the contract or society of marriage. These four are comprehended in the following verse:

*The Church's prohibition, time, betrothals, vow.*

It will be enough to append a few things concerning each.

### **I. PROHIBITION OF THE CHURCH.**

**1566.** - It is a prohibition, whether particular or general, made by the Church or by some ecclesiastical Superior, lest some Matrimony be celebrated.

1° Particular prohibition is had when, from a just and special cause, Matrimony is interdicted to someone, whether by the Pastor or by the Bishop;<sup>1</sup> e.g. because probable suspicion of a diriment impediment has arisen. But suspicion here will be probable if there is present either rumor, such as moves grave and prudent men, or one witness, sworn nevertheless and not from hearing only; this nevertheless suffices if there is question of the impediment of consanguinity and there is another witness from certain knowledge, even if not sworn.<sup>2</sup>

2° General prohibition is had especially in a threefold case, namely 1° lest Matrimony be contracted between a heretic and a Catholic woman, and conversely; 2° lest it be contracted without the proclamation of banns; 3° lest it be contracted without the duly required consent of parents. Concerning banns we have already spoken above, n. 1533; likewise concerning the consent of parents, n. 1548. q. 8°. 9°. But concerning the impediment of mixed Communion we speak below.

Notes to n. 1566. (1) L. IV. Decr. T. III. c. 3. (2) L. V. 257. I.

### **II. TIME.**

**1567.** - It is some determined time in the course of the year, which is called ferial or closed, and in which the Church forbids the solemnities of nuptials. Trent.<sup>1</sup> Such now is the time which flows from the First Vespers of the First Sunday of Advent up to Epiphany inclusively, and from Ash Wednesday up to the Octave of Easter likewise inclusively.

For the rest, Trent prohibits only the solemnities of nuptials in the aforesaid time, namely to bless them solemnly, to lead the bride home with noise, and to arrange more solemn nuptial banquets. But it does not forbid the Pastor privately to join the spouses, although in various places, because of custom or through Episcopal constitutions, outside the case of urgent necessity or dispensation of the Ordinary, this also is prohibited.

Notes to n. 1567. (1) Sess. 24. c. 10. de Ref. Matr.

### **III. BETROTHALS.**

See n. 1529. II.

### **IV. VOW.**

A fourfold vow impeding Matrimony is distinguished, namely 1° vow of chastity; 2° vow of not marrying; 3° vow of entering Religion; 4° vow of receiving Sacred Orders.

**1568. - I. Vow of chastity.**

1° He who has emitted such a vow sins gravely by entering Matrimony with the intention of consummating it, because he violates the vow.

2° He also sins gravely, even excluding this intention, because he exposes himself to the danger of violating the vow, and deceives the other party.

3° Once Matrimony has been contracted, he can neither ask nor render the debt while the first two months are running, because from divine privilege spouses at this time are exempt from the obligation of the conjugal debt, according to the things said above n. 1551. 2°. But after this time has elapsed, he can (indeed, is held to) render and satisfy the right of the other, yet not ask without dispensation from the vow or without irritation of the vow made by the other spouse.

4° He ought altogether to abstain if the other consents, or loses the right of asking, e.g. on account of adultery or incest. But if he can abstain with difficulty, he ought as soon as possible to seek dispensation or to seek the aforesaid irritation from the other spouse.

5° If the other spouse dies, he cannot proceed to new nuptials unless he has obtained dispensation from his vow also for this effect. - Lacroix.<sup>1</sup>

Notes to n. 1568. (1) n. 357.

#### **1569. - II. Vow of not marrying, or vow of virginity.**

1° He who, after emitting this vow, contracts Matrimony, sins gravely, as is manifest.

2° Once Matrimony has been contracted, he can render and also ask the debt, because the observance of the vow has now been made impossible. - But if he strictly vowed virginity, he cannot ask the first time.

3° For the same reason (namely because the observance of the vow has been made impossible), the spouse having died, he can at least probably contract a new Matrimony. - Heiss<sup>2</sup> excepts, with the Instruction of Eichstaett, if the vow was of not marrying; we assent to him, because the reason of impossibility does not militate for it.

In practice it is sometimes doubtful whether someone vowed virginity or celibacy, or rather chastity. The penitent will have to be interrogated whether he was led by the intention of freeing himself from the burdens of Matrimony and of serving God more holily, or only by love and affection of purity; in the first case he is to be judged to have vowed celibacy and virginity, but in the second truly chastity. - Lacroix.<sup>3</sup>

Notes to n. 1569. (2) § 18. III. 4). (3) n. 358.

#### **1570. - III. Vow of entering Religion.**

1° He who has emitted such a vow sins gravely by entering Matrimony, both because he deceives the other party and because he exposes himself to the danger of violating the vow.

2° Before the consummation of Matrimony he is held to enter Religion; and therefore he sins mortally when for the first time, whether by asking or rendering the debt, he consummates the Matrimony; because he ought to fulfill the vow when he can. But he can fulfill it by not consummating Matrimony in the first two months, since then from divine privilege anyone can enter

Religion, and the other party, the spouse solemnly professing, is freed from the bond of Matrimony, according to the things said above n. 1551. 2°.

3° After Matrimony has been consummated he can ask and render the debt, because the execution of the vow has been made impossible, and the asking of the conjugal act is not against that vow, since he did not vow chastity, but Religion.

4° Even after Matrimony has been consummated, of itself he is held to enter Religion as often as he can do this without injury to the right of the other party, e.g. if the other consents, or loses the right of asking the debt in perpetuity, or if the Matrimony is dissolved by death; because the obligation of the vow always subsists. But in practice, in these cases it is more expedient that recourse be had to dispensation, unless nevertheless the circumstances, by reason of age, offspring perhaps received from Matrimony, the state of fortune, and capability also for religious offices, are so changed that the matter of the vow has certainly been made impossible.

#### **1571. - IV. Vow of receiving Orders.**

1° He who emitted that vow sins gravely by entering Matrimony, as is well known.

2° He is held to receive Orders if he can, e.g. if he obtains the consent of the other. According to several he is held to enter Religion before the consummation of Matrimony, even against the will of the other, so that he can fulfill the vow. But others more probably deny this.<sup>1</sup>

3° Matrimony having been entered, he can consummate it if he can no longer fulfill the vow.

Notes to n. 1571. (1) L. VI. 987.

#### **1572. Questions. - Quær. 1° Who can dispense in impedient impediments?**

**Resp. 1°** No one can dispense [except the Pope. Feije, n. 601 (2)] from the impediment arising from valid betrothals, since in this matter there is question of a strict debt of justice. The same must be said of the necessity of the consent of parents, which is to be taken from natural law; nevertheless this naturally ceases if the parents dissent unjustly.

**Resp. 2°** Bishops, or ordinary Pastors of souls enjoying full jurisdiction in the external forum, can dispense 1° in the obligation of banns; 2° as regards the contract (but not as regards the solemn blessing) of Matrimony during the ferial time, where custom or particular constitution also interdicts this; 3° in a vow of temporary chastity, and of virginity and of not marrying.

But they cannot dispense 1° as regards the vow of perpetual chastity; 2° as regards the vow of entering Religion; 3° as regards the impediment of mixed Communion. For this threefold impediment is reserved to the Pope. - But our Bishops can dispense in 1° and 2° (p. LXX. n. 4), and, if there is question of Marriages to be contracted to which no other diriment impediment obstructs, also in 3° (p. LXXIV. n. 4. 5).

**Resp. 3°** What Regulars can do, see n. 1203. I. 2°. 3°.

**Quær. 2°** Can the Bishop, when necessity is urgent, namely when there is danger in delay, dispense in a vow of perpetual chastity for contracting Matrimony?

**Resp.** Affirmatively, provided that that danger is truly present, and access to the Pontiff is not easily open. For the rest, the question as regards our Bishops is useless, as is clear from the things said in

the preceding question.

## ARTICLE II. ON DIRIMENT IMPEDIMENTS

We must treat 1° of diriment impediments in general; 2° of diriment impediments in species; 3° of dispensation from these impediments.

### § I. ON DIRIMENT IMPEDIMENTS IN GENERAL

**1573. Principles.** - I. The Church has power of constituting impediments not only impeding Matrimony, but also diriment impediments. It is of faith. - See the arguments among the Dogmaticians.

II. The Church alone can constitute diriment impediments of Matrimony, and consequently secular Princes as regards Christian subjects cannot constitute impediments, except as to merely civil effects. Likewise see the Dogmaticians.

III. The subject of diriment impediments of divine law, whether natural or positive, are all men; of ecclesiastical law, all the baptized, except clandestinity in certain cases. - See n. 109. 110.

**1574. Questions.** - **Quaer.** 1° Can the civil legislator constitute impediments diriment of the Matrimony of infidels?

**Resp.** Affirmatively, with the more common opinion. The reason is because the Matrimony of infidels is a natural contract. St. Alphonsus<sup>1</sup> also seems to be of this opinion, although he does not treat the question expressly. - Nevertheless among more recent authors Martin, Perrone, and Feije<sup>2</sup> follow the negative opinion, relying on this reason, that the Matrimony even of infidels is a sacred contract, not to be compared with profane contracts.

**Quaer.** 2° Does an impediment invincibly unknown void Matrimony contracted with that impediment?

**Resp.** Affirmatively. The reason is clear from the things said n. 182. q. 2.

**Quaer.** 3° Are those impediments also incurred, although unknown, which seem to have the character of a penalty, as the impediment of crime?

**Resp.** Affirmatively. Thus more commonly with Lacroix.<sup>3</sup> The reason is because those impediments do not have only the character of a penalty; and consequently they are always incurred, although ignorance excuses from the penalty according to the common opinion where there is question of a merely prohibiting law. Cf. n. 182. q. 2°. § *Except, however.* - Others deny, relying on reasons not to be despised. Nevertheless, since the probability, if any arises from them, is not universally or certainly received, the negative opinion cannot be brought into practice,<sup>4</sup> according to the things to be said q. 5°. R. 1°.

**Quaer.** 4° Do the laws of the Church constituting diriment impediments urge even in a case of most grave inconvenience, e.g. danger of death, etc.?

**Resp.** Affirmatively. See the reason n. 182. q. 3°. - Recall nevertheless also the things said n. 1556. q. 3°.

**Quaer.** 5° Is it licit to contract Matrimony with a doubtful or probable impediment?

**Resp. 1°** Affirmatively, according to the common opinion, in a doubt or probability of ecclesiastical law, provided that that probability is universally or certainly received by Authors. The reason is because, if perhaps the impediment were really present, the Church is judged to supply the defect of a contract void by Canon Law, just as it supplies defect of jurisdiction as often as Doctors commonly hold that she supplies jurisdiction in the Sacrament of Penance, where common error intervenes (n. 60. I.). Moreover the opinion teaching that the Church supplies also in the present case of a doubtful impediment is generally received as probable, and according to several as morally certain, by innumerable Doctors who favor it.<sup>1</sup>

**Resp. 2°** Negatively, if there is question of a probability of divine law, whether positive or natural, e.g. in the impediment of bond or impotence; because then the Church cannot supply the probable defect, since that impediment does not depend on the Church. Therefore Matrimony so contracted would remain doubtful; and consequently it is never licit to receive a Sacrament with such doubt. Therefore. The case can be given with former slaves, "who were sometimes" joined "in several marriages among themselves, with this compact nevertheless, that it would not" be clear "that some true marriage had been entered by them."<sup>3</sup> St. Alphonsus<sup>2</sup> says that it belongs to the Pontiff alone to explain divine law in this matter, in special and rare circumstances of things.

**Resp. 3°** Negatively also, if there is question of probability of fact. The reason is because in probability of this kind the Church is not presumed to dispense. But the contrary opinion is not commonly received as probable; and from another source too many inconveniences would follow if, after Matrimony had been contracted, the error were discovered. - Thus commonly.<sup>4</sup> - For the rest, in more difficult and implicated cases, the Bishop should be consulted.<sup>5</sup> - But in doubt concerning an impedient impediment, the principles of Probabilism are simply to be applied.

**Quaer. 6°** Is it licit for spouses to use Matrimony if, after nuptials have been entered, probable doubt arises concerning some impediment?

**Resp. 1°** Negatively, before due inquiry concerning the truth. Nevertheless, if only one doubts, this one ought to render the debt to the other as to a legitimate possessor, provided the other asks in good faith and does not lack the right of asking (e.g. in the first two months, etc.).<sup>6</sup>

**Resp. 2°** Affirmatively, if, after due inquiry, the doubt perseveres and Matrimony has been entered in good faith (n. 739. II.), indeed, quite probably, even in doubtful faith: for in doubt one must stand for the value of the act. - Except: **a)** the case concerning which n. 1619. under 4°; **b)** the case of doubt concerning the death of a prior spouse, and this, as St. Alphonsus<sup>1</sup> teaches against others, "whether the nuptials were entered with good faith or with doubtful faith." The reason is "because then there remains probable danger of injury to the prior spouse," and "because in that case the prior Matrimony possesses." Nevertheless the one doubting, as was said under Resp. 1°, is held to render the debt to the other party asking in good faith and not lacking the right of asking, although he is prohibited from asking.<sup>2</sup>

**Quaer. 7°** Is Matrimony valid when contracted with a supposed impediment, but one not existing?

**Resp. 1°** If the contracting party is not altogether certain concerning the impediment, but doubts about it in some way, the Matrimony is valid. - Thus commonly with Lacroix.<sup>3</sup> - The reason is because he contracts at least conditionally, namely *insofar as I can*, although he does not reflect on that condition: therefore, the impediment not existing, consent is now absolute.

**Resp. 2°** If he contracts with certainty of an impediment which he little esteems, so that he resolves to live in concubinage, it is certain that the Matrimony is invalid. The reason is because then the will of contracting Matrimony is not predominant.

**Resp. 3°** If indeed he contracts with certainty of an impediment, but grieving over the impediment and not daring to disclose it, lest the Matrimony be impeded, or lest he be defamed, or from some inadvertence, it is controverted. More probably the Matrimony is valid on account of the predominant will of contracting it. - Thus Lacroix.<sup>4</sup> - Nevertheless for caution in practice he would have to be induced to renew consent. (38) p. 424.

Notes to n. 1574 - note sequence 1. (1) L. VI. 956. § certum est 2. and n. 981. (2) De Imp. n. 67. (3) n. 525. (4) Vind. p. 792. 1). Ed. 2a. T. II. p. 452. col. 2 (1). Notes to n. 1574 - note sequence 2. (1) L. VI. 901. Cf. Vind. p. 947. Ed. 2a. T. II. p. 607. (2) L. VI. 902. (3) Kenr. Tr. XXI. 51. (4) L. VI. 902. (5) Heiss. § 12. (6) L. VI. 903. (7) Ib. 904. 906. Notes to n. 1574 - note sequence 3. (1) L. VI. 904. 906. (2) Ib. (3) n. 531. (4) n. 531. Appendix annotation (38), to n. 1574. q. 7°. p. 248. col. 2. Besides the rules handed down in this number, in solving doubts concerning the value of Matrimony let those also be observed which we add here. I. A negative doubt is never to be attended to. The rule is valid both concerning Matrimony contracted and concerning Matrimony to be contracted. Consequently its value or nullity is to be retained according as either liberty or the law of the impediment is in possession, n. 49. I. Wherefore, for example, a spouse negatively doubting about the death of the other party cannot fly to other nuptials; for the law of the impediment of bond possesses. On the contrary, a vain suspicion that a sister contracted betrothal with the bridegroom does not prohibit her from entering nuptials with him, because not the law of the impediment of public honesty, but liberty, is in possession. To a negative doubt is equated, at least practically, that which is conceived from the saying of persons who are not worthy of faith; and this both as regards Matrimony to be contracted and as regards Matrimony contracted. The reason is that such a saying is not a prudent reason of doubting, nor consequently a positive doubt, but merely a negative one, n. 48 under 1. - The same, for the same reason, is regularly to be said concerning a doubt conceived from the assertion of the other party that he or she consented fictitiously. See the things said in n. 1548. q. 7°. I say: regularly, that is, unless, on account of the circumstances, the truth of the assertion is to be presumed. Ib. and St. Alphonsus. The same, again for the same reason, is to be said if there is question of a doubt which would exist from fame arisen from no certain author, or from rumor concerning an impediment. See n. 1566. 1°. Yet in this case, as regards practice, careful inquiry must be made whether the fame truly has arisen from no certain author; in other words, it must be asked from what sources the rumor came forth. But if the rumor stands firm, and the truth cannot be investigated by witnesses, the ecclesiastical Superior, before the celebration of Matrimony, will be able to defer oaths against this rumor both to the relatives and to the contracting parties themselves. II. A positive doubt arisen from the saying of one witness worthy of faith, or from public fame which has a certain author, suffices for the celebration of Matrimony to be inhibited, n. 1566. 1°. But what the effects of a doubt of this kind are upon Matrimony already contracted, see n. 1574. q. 6°. III. A positive doubt, by reason both of Matrimony to be contracted and of Matrimony contracted, is sometimes solved by proofs sought from presumption, and this either for Matrimony or against it. The cases more obvious than the rest are these: 1° The case in which the impediment is established and it is doubted whether a dispensation was given in it. Then namely the presumption stands for the impediment; for in doubt "a fact," the dispensation, "is not presumed, but must be proved," n. 67. 1°. b. On the contrary, if the dispensation is established and there is doubt concerning the value of it, the presumption stands for the dispensation, according to that very well-known principle: "in doubt one must stand for the value of the act," n. 67. 2° and n. 162. 5°. 2° The case about which there is treatment in n. 1589. II. § As regards practice. 3° The case about which there is speech in n. 1601. q. 3°. R. 3°. In that place a vehement presumption is understood as one which renders the death most probable, so that only a tenuous probability remains that the other party is still surviving. 4° The case of the other party asserting that he or she consented fictitiously, as we said above under I, v. I say: regularly. > Notes to appendix annotation - note sequence 12. > > 1 L. VI. 908. § Secunda. | 2 Ib. § Prima. | 3 Ib. § Secunda. | 4 Decr. L. IV. T. I. c. 27. Heiss, De Matr., § 70. III.

## § II. ON IMPEDIMENTS IN SPECIES

**1575.** - Fifteen diriment impediments of Matrimony are numbered, expressed in these verses:

*Error, condition, vow, cognation, crime,  
Disparity of cult, force, order, bond, honesty,  
Age, affinity, if clandestine, and incapable,  
Or a woman has been abducted, and not safely restored to the party:  
These forbid marriages to be joined, and retract them when made.*

We shall institute a discourse concerning each separately.

#### POINT I. ON THE IMPEDIMENT OF ERROR AND CONDITION.

A twofold error concerning Matrimony is distinguished, namely: 1° substantial error, which is concerned with the person; 2° accidental error, which affects qualities of the person. But condition is understood as servile, unknown to the other party.

**1576. Principles.** - I. Every error concerning the person makes Matrimony null by natural law, even if the error is altogether vincible, or only concomitant, or most crass.<sup>1</sup> The reason is because, on the part of the contracting party, it removes the voluntary concerning the object of the contract, and therefore, consent failing, the contract is void. - Except if someone intends actually to contract with the present woman, whoever she finally is.

II. Error concerning the qualities of the person, of whatever kind it is, even if it gave cause to the contract, does not of itself void Matrimony. Thus the common and truer opinion.<sup>2</sup> The reason is 1° because error concerning qualities does not fall upon the object of the contract; for that object is the very person with whom one contracts, as was just said; it is not the person's qualities; 2° because in those things which constitute a state firm and irrevocable from its nature, such as Profession and Matrimony, the will, according to the nature of the thing in question, accommodates itself and consents without restriction or condition, and altogether absolutely and independently of other conditions besides those which are of the substance of the same contract.<sup>3</sup> For from these conditions Matrimonies and Professions would remain uncertain, and accordingly the state itself, which is not according to the nature of the thing in question. Except unless either **a)** a quality is explicitly intended as a condition *without which not* (as they say), or **b)** error of quality redounds into the substance, whether because one errs in a quality not now common, but proper and individual to some determinate person, as if you wished to contract with the first-born and the second-born were presented to you, or because consent is borne directly and principally upon the quality, and less principally upon the person, as if you wished to marry a noble woman, such as you falsely think Titia to be, but not if you wished to marry Titia, whom you falsely think noble. Thus in the internal forum.<sup>1</sup>

III. Error concerning the servile condition of the other party dirimes Matrimony by ecclesiastical law, as is clear from L. IV. Decr. T. IX.

Notes to n. 1576 - note sequence 1. (1) L. VI. 1010. (2) Ib. 1011. 1012. (3) Ib. 1012. Notes to n. 1576 - note sequence 2. (1) L. VI. 1013-1016. Acta, T. I. pp. 257. 371 sq.

**1577. Resolves.** - 1° If someone thinks he is contracting nuptials with Anna, and marries Agatha, the Matrimony is invalid. It is otherwise if, thinking that he has married a noble, rich, virgin, peaceful girl, he finds her on the contrary plebeian, poor, corrupted, quarrelsome.

2° Matrimony is valid if someone marries a widow, thinking that he is marrying an unmarried woman, even if he was induced into this error by fraud; for fraud indeed induces the obligation of repairing the injury, but does not effect that consent is not concerned with the substance of the thing in question. Indeed this is valid even if he certainly would not have contracted if he had known beforehand that she was a widow; for one must attend not to that which perhaps or even certainly someone would have done, but to that which he really did.

3° A noble girl validly contracts with a wandering man who falsely boasts that he is noble and the possessor of many goods, and proves it by false testimonies. But that woman is not held to cohabit with him, and can immediately make perpetual divorce as regards bed and habitation.

4° Since slaves have obtained liberty among us, there can be no speech of the impediment of condition as regards Marriages contracted from this time onward; nevertheless attention must be given when there is question of Marriages formerly entered between free persons and slaves who perhaps were by error held as free; for the contract which did not subsist from the beginning is not strengthened without new and free consent (and in the case which will be treated under n. 1634, q. 2, offered before the Pastor and two witnesses). Resolve the same concerning similar Marriages entered in those places of South America in which slavery still has force, when the parties immigrate into our provinces. For the rest, cases of this kind will be most rare.

Concerning other unions of former slaves entered in servitude, judgment is for the most part difficult; for often they fostered intercourse among themselves without any mind of marriage, or contracted under this condition, that the Matrimony would subsist only so long as each conducted himself or herself rightly, or until the masters separated them, namely by one being sold and the other retained, or each being sold to different masters. At other times they seem to have wished to enter a perpetual partnership; but whether they were then free from a prior bond can scarcely be known. If it is clear that at some time they seriously entered marriage, with the mind of obliging themselves in perpetuity, it will have to be held valid; nor will it be licit to pass to other nuptials until there is certainty concerning the death of the prior spouse. For the rest, most of their contracts did not have the force of marriage, since they lacked the mind of contracting a perpetual bond, or the condition concerning which above was added to the consent. Wherefore those who come to the Catholic Faith, or are reduced to a good way of living, are not immediately to be compelled to desert the person whom they have under the name of spouse, even if others with whom they already had intercourse are living, or there is no certainty concerning their death; but the matter is to be diligently investigated.<sup>1</sup>

Notes to n. 1577. (1) Kenr. Tr. XXI. 141.

## **POINT II. ON THE IMPEDIMENT OF VOW AND ORDER.**

**1578. - I.** The vow diriment of Matrimony is only the solemn vow of perfect chastity (and not of conjugal chastity only, such as is emitted in certain Equestrian Orders), emitted through profession in an approved Religion. For the simple vow of chastity, even perfect and perpetual, does not dirime Matrimony, but only impedes it, according to the things said n. 1568.

**II.** But Order diriment of Matrimony is Sacred Order. Concerning each impediment the Lateran Council I and II and Trent speak.<sup>2</sup>

**III.** The solemn vow of chastity emitted in religious Profession, and Sacred Order, dirime Matrimony in diverse ways. For the former dirimes Matrimony both to be contracted<sup>3</sup> and also contracted, provided it was only ratified,<sup>4</sup> but not consummated.<sup>5</sup> But Order dirimes Matrimony to be contracted, not Matrimony contracted, even if only ratified.

Notes to n. 1578. (2) Sess. 24. Can. 9. (3) Ib. Can. 6. (4) Ib. Can. 9. (5) Extr. Joan. XXII. T. VI. c. unic.

**1579. Questions. - Quaer.** 1° By what law do the aforesaid impediments dirime Matrimony?

**Resp.** 1° The impediment of Order, according to the common opinion, dirimes only by ecclesiastical law. The reason is because, on one side, Order of itself is not repugnant to the conjugal state; nor, on the other side, is there any divine prohibition which is found in the Scriptures or in tradition.

**Resp.** 2° Since the solemnity of the vow is of ecclesiastical law, by that very fact the Pope can dispense, provided there is a sufficient cause, i.e. one proportioned to the gravity of the matter.

**Quaer.** 2° What conditions are required that solemn vow and Order dirime Matrimony?

**Resp.** 1° As regards the vow, it must have been emitted in valid Profession (n. 1159. I.).

**Resp.** 2° As regards Order, there is required: 1° that it was received validly; 2° that it was received voluntarily. - Thus all.

### **POINT III. ON THE IMPEDIMENT OF COGNATION.**

Cognition is distinguished of three kinds, namely: 1° natural; 2° spiritual; 3° legal. Concerning each separately.

#### **SECTION I. ON NATURAL COGNATION.**

**1580.** - Natural cognition, or consanguinity, is the bond of persons descending by carnal generation from the same proximate stock, which namely arises from the unity and participation of the same blood.<sup>1</sup>

In consanguinity three things are to be distinguished, namely: 1° the stock, or the person from whom others draw origin; 2° the degree, or the measure of distance of one person from another; 3° the line, or series of persons descending from the same stock.

The line is twofold: one straight, the other collateral or transverse. The former is the series of persons of whom some descend from others, either immediately, as children from parents, or mediately, as grandchildren from grandparents, or from great-grandparents, etc. But the latter is the series of persons who, although they have a common stock, nevertheless some do not descend from the others, as are brothers, cousins, etc.

The collateral line is equal or unequal, according as blood relatives are equally distant from the common stock, or unequally.

Notes to n. 1580. (1) L. VI. 1059.

**1581. Things To Be Established. - I.** Consanguinity in the straight line, at least by positive law, dirimes Matrimony indefinitely in whatever degree. This is clear from Canon Law in the Response of Nicholas I to the Bulgarians, c. 37.

**II.** Consanguinity in the collateral line dirimes Matrimony up to the fourth degree inclusively, and not beyond. This is clear from Lateran Council IV and many places of Canon Law.

**III.** Consanguinity dirimes Matrimony also between those who were born either only from the same father or only from the same mother; likewise between blood relatives begotten from illegitimate births. The reason is because diversity of father or mother, or illegitimacy, does not prevent carnal consanguinity from existing between them.

**Rule for Computing the Degrees of Consanguinity.**

**1582. - First Rule.** In the straight line there are numbered as many degrees as persons, the stock being removed, or there are as many degrees as there are generations. Hence between father and son there is one degree, because there is one generation, or one person of the son, the father excluded, as being the stock. Between grandson and grandfather two degrees are numbered, because there are two generations, although three persons intervene, namely the grandfather, the father, and his son, or grandson with respect to the grandfather. Suppose likewise a great-grandfather or great-great-grandfather, and you will have three or four degrees.

**Second Rule.** In the equal collateral line there are as many degrees as there are persons on one side, the stock being removed. Hence brother and sister are in the first degree: because, if the common stock or father is set aside, one person remains on each side; and, since each is distant by one degree from the stock, they are also distant from one another by one degree. Likewise paternal cousins, or sons of two brothers, are each distant by two degrees from the common stock, or from the grandfather, and therefore are blood relatives between themselves in the second degree. Thus also must one speak concerning the others.

**Third Rule.** In the unequal collateral line there are as many degrees as there are persons on the more remote side, the stock always being removed. Hence if one is distant from the common stock by two degrees, and his blood relative by three, they will be blood relatives between themselves in the third degree, according to the saying: *The more remote degree draws the nearer to itself*. Therefore Berta will be related by blood in the second degree with her paternal uncle, or brother of her father, because she is distant by two degrees from the common stock, namely from her grandfather, although the uncle himself is separated by one degree from the same stock, since he is the son of the stock, or brother of Berta's father. Thus also concerning all others whatever must it be established.

"In most of the Federal States," says Kenrick,<sup>1</sup> "the Levitical prohibitions have been adopted by the authority of civil law," i.e. Roman law; "in others the prohibition of marrying consists within narrower limits." But these are valid only as regards civil effects.

For computing degrees according to civil law, i.e. Roman law, the number, or sum of all persons in each line, the stock being removed, is taken. Therefore in the straight line they are computed in the same way as canonical degrees; in the equal collateral line the canonical degrees are doubled; in the unequal collateral line the lesser line is doubled and the excess of the greater is added. Cf. n. 905. X.

Notes to n. 1582. (1) Tr. XXI. 153.

**1583. Questions. - Quaer.** 1° By what law does consanguinity in the aforesaid degrees dirime Matrimony?

**Resp. 1°** It is certain that consanguinity in the straight line dirimes Matrimony by natural law in the first degree, but probably according to St. Alphonsus<sup>2</sup> not indefinitely in the remaining degrees. For the rest, the case, as is clear, is very far from practice.

**Resp. 2°** As regards the collateral line, in the first degree, according to the opinion which St. Alphonsus<sup>3</sup> judges equally probable with the opposite, it does not dirime by divine law. In the other degrees, according to all, it dirimes by ecclesiastical law, as is deduced from the practice of the Church, which dispenses from them.

**Quaer. 2°** How can the degrees of consanguinity easily be found?

**Resp. 1°** If the common stock is known, write that person's name on paper, and below it report on this side and that the generations and names of the persons descending, until you arrive at those persons who are to be joined in marriage; from this you will easily compute the degrees.

**Resp. 2°** If the stock is unknown, proceed thus: Write in the lower part of the paper or tablet the name of the bridegroom on one side, and the name of the bride on the other; then above the name of the bridegroom note the names of his blood relatives who perhaps can be the cause why some cognation exists with the bride; do the same as regards the bride. This notation having been made, ascend from one side and see whether they agree in a common principle or stock, from which the bridegroom and bride are mediately begotten. Hence, after you have found it, and at the same time observed whether the spouses are in an equal or unequal line, finally apply the rules proposed below, and the resolution of the doubt will be clear. For these let the following example be given:

| Line                    | Harvey side                          | Johnson side    |
|-------------------------|--------------------------------------|-----------------|
| Great-great-grandfather | Didacus Johnson                      | Didacus Johnson |
| Great-grandparent       | Julia Johnson, wife of Titius Harvey | Arthur Johnson  |
| Grandparent             | Mevius Harvey                        | Maurus Johnson  |
| Parent                  | Paulus Harvey                        | Hector Johnson  |
| Spouse                  | Peter Harvey                         | Mary Johnson    |

In this example Peter Harvey and Mary Johnson are blood relatives in the fourth equal degree. But if Mary Johnson descended immediately from Maurus Johnson, Arthur Johnson would be her grandfather and Didacus Johnson her great-grandfather, and therefore they would indeed be blood relatives in the fourth degree, but touching the third.

Another method is also indicated for discerning degrees of cognation, namely with a table of genealogy, or tree of consanguinity. Inspect the table on p. 254, and see in what line and in what cells you find the persons concerning whose cognation there is question, and attend by how many degrees they are distant from the common stock. Example: You ask, e.g., in what degree the bridegroom Titius is related by blood with respect to the bride Berta, when you already know that the grandfather of the former was the brother of the great-grandfather of the latter. Place Titius in the middle cell N.; ascend to his grandfather; his brother on the right side, in the cell where paternal uncle is noted, will be Berta's great-grandfather; descend through his straight line by numbering the grandfather, father, and bride herself; hence the common stock will be the one who is found in the third cell above the middle line. Thus you will number three degrees on the part of the bridegroom, and four on the part of the bride; hence you conclude that they are blood relatives in the fourth degree touching the third.

Imagine any other similar examples, supposing one or the other spouse in any cell whether middle or at one side, and ascending to the common stock, so that from there you descend to the other spouse; but do not at all attend to the names which you will find in the various cells occurring, because for the selected cell all things will vary, as is clear.

Consanguinity between the same persons can arise from a double or even multiple head, and then there is a double or multiple propinquity, or impediment to be disclosed in the petition of dispensation; thus, e.g., if two brothers marry two women related to each other by blood, the children proceeding from each Matrimony will be related to each other by blood in two ways, and this circumstance must necessarily be declared.

**Quaer.** 3° Who are collateral blood relatives?

**Resp.** They are the following, namely:

**1° On the part of the father.**

| Latin term                                           | English equivalent                                             |
|------------------------------------------------------|----------------------------------------------------------------|
| Propatruus, or brother of the great-grandfather      | great-grandfather's brother, great grand-uncle                 |
| Proamita, or sister of the great-grandfather         | great-grandfather's sister, great grand-aunt                   |
| Patruus magnus, brother of the grandfather           | grandfather's brother, great uncle                             |
| Proamita, sister of the grandfather                  | grandfather's sister, great aunt                               |
| Patruus, brother of the father                       | paternal uncle, uncle by the father's side, a father's brother |
| Amita, sister of the father                          | paternal aunt, aunt by the father's side, a father's sister    |
| Patruales, children of brothers on the father's side | cousins-german, first cousins                                  |

**2° On the part of the mother.**

| Latin term                                            | English equivalent                                             |
|-------------------------------------------------------|----------------------------------------------------------------|
| Proavunculus, brother of the great-grandmother        | great-grandmother's brother                                    |
| Promatertera, sister of the great-grandmother         | great-grandmother's sister                                     |
| Avunculus magnus, brother of the grandmother          | grandmother's brother                                          |
| Matertera magna, sister of the grandmother            | grandmother's sister                                           |
| Avunculus, brother of the mother                      | maternal uncle, uncle by the mother's side, a mother's brother |
| Matertera, sister of the mother                       | maternal aunt, aunt by the mother's side, a mother's sister    |
| Consobrini, children of brothers on the mother's side | cousins-german, first cousins                                  |

**3° On each side.**

| Latin term                    | English equivalent                                                     |
|-------------------------------|------------------------------------------------------------------------|
| Amitini, children of brothers | cousins-german, first cousins, cousins by blood (children of brothers) |
| Sobrini, their children       | children of cousins-german, second cousins                             |

| Latin term                    | English equivalent                        |
|-------------------------------|-------------------------------------------|
| Nepotes, children of brothers | a brother's or sister's children, nephews |
| Pronepotes, their children    | children of nephews, second nephews       |

### Degrees of Consanguinity.

The printed genealogical tree places **N** as the central person. The straight line above and below N is:

| Degree | Ascending straight line | Descending straight line |
|--------|-------------------------|--------------------------|
| 4      | Abavus / Abavia         | Abnepos / Abneptis       |
| 3      | Proavus / Proavia       | Pronepos / Proneptis     |
| 2      | Avus / Avia             | Nepos / Neptis           |
| 1      | Pater / Mater           | Filius / Filia           |
| Center | N                       | N                        |

The principal collateral cells are:

| Degree | Father's side                                                                  | Mother's side                                                                        |
|--------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| 1      | Frater                                                                         | Soror                                                                                |
| 2      | Patruus / Amita; Patruales / Amitini;<br>Fratris filii                         | Avunculus / Matertera; Consobrini / Amitini;<br>Sororis filii                        |
| 3      | Patruus / Amita major; Horum filii;<br>Nepotes; Sobrini; Fratris nepotes       | Avunculus / Matertera major; Horum filii;<br>Nepotes; Sobrini; Sororis nepotes       |
| 4      | Propatruus / Proamita; Horum filii;<br>Nepotes; Pronepotes; Fratris pronepotes | Proavunculus / Promatertera; Horum filii;<br>Nepotes; Pronepotes; Sororis pronepotes |

**Note.** - 1° Persons who are joined by a line are among themselves in the straight line; with the rest, in the collateral line.

2° Where lines are joined, there the stock is had.

Notes to n. 1583. (2) L. VI. 470. (3) Ib.

## SECTION II. ON SPIRITUAL COGNATION.

Spiritual cognation is a certain propinquity which arises from the statute of the Church, from the administration and reception of Baptism or Confirmation, between certain persons determined in Canon Law.

**1584. Principle.** - Spiritual cognation dirimes Matrimony by ecclesiastical law: 1° between the Minister of the Sacrament and the subject and the subject's parents; 2° between the godfather or godmother and the goddaughter or godson, and their parents. Thus from Trent.<sup>1</sup> - See the conditions n. 1265. II; to which add that this impediment arises only from valid Baptism, and, if there is question of Confirmation, it is also required that the sponsor have been confirmed.<sup>1</sup>

Notes to n. 1584 - note sequence 1. (1) Sess. 24. c. 2. de Ref. Notes to n. 1584 - note sequence 2. (1) L. VI. 151. 186. Dub. 2.

**1585. Resolves.** - 1° The godfather and godmother can enter Matrimony between themselves, but not with the father or mother of the baptized person.

2° They do not contract spiritual cognation who exercise the office of godfather and godmother in supplying the solemnities of Baptism, as the Sacred Congregation de Propaganda Fide<sup>2</sup> declared in

express words, nor those who only in the name of another receive the baptized person from the sacred font.

3° Sponsors designated by the parents and unjustly rejected by the Pastor contract true spiritual cognation if they actually hold the infant; otherwise, if they were justly rejected by the Pastor.

4° A man baptizing a girl in a case of necessity and privately can marry neither her nor her mother. Say the same of a woman privately baptizing a boy, and of a parent baptizing illegitimate offspring.

5° To the doubt: "Whether the disposition of the council, c. 2. S. 24. Ref. Matr., decreeing that in the Sacrament of Baptism spiritual cognation is contracted between the one receiving and the father and mother of the one received, has place in Baptism without solemnities, conferred at home on account of necessity? The Sacred Congregation judged: Affirmatively. March 5, 1678." Thus also the same Sacred Congregation of the Council, April 17, 1603.

6° Parents baptizing children in necessity or in good faith contract no spiritual cognation by which they are prohibited from the use of marriage; for this prohibition has the character of a penalty, which is not incurred without fault. Indeed, to St. Alphonsus it is quite probable that they do not contract cognation even if deliberately, necessity excluded, they baptized offspring. Others contradict.

7° From conditional Baptism cognation arises if there is a negative doubt concerning the prior Baptism; for, since no reason urges for the value of this one, the presumption stands for the value of that one. Otherwise, if the doubt is positive (cf. n. 1574. q. 5°. R. 1°), as if Baptism is repeated because it was not conferred on the head.

Notes to n. 1585. (2) Apud Gury. Ed. Rom. 1873. T. II. p. 452 ().

### SECTION III. ON LEGAL COGNATION.

**1586.** - Legal cognation is the propinquity of extraneous persons which arises from legal adoption. A twofold adoption is distinguished:

1° **Perfect adoption or arrogation**, by which a person of his own right, in legal form, passes into the power and family of the adopter, and acquires all the rights of a legitimate son.

2° **Imperfect adoption or adoption**, by which an extraneous person who is not of his own right is assumed as son or grandson, yet does not pass into the family and power of the adopter, and therefore is not made the latter's necessary heir by testament, although he succeeds to him *ab intestato*.

If a question arises whether in this or that case there is an impediment of legal cognation, recourse must necessarily be had to the civil laws of the State, i.e. there will be an impediment if the civil law admits adoption and the solemnities prescribed by it were observed. De Angelis, L. 4. T. 12.

**Principles.** - I. Legal cognation constitutes a diriment impediment by ecclesiastical law, although it was first established in Roman Law. This is drawn from the Response of Nicholas I to the Bulgarians, etc.

II. Legal cognation, after the likeness of natural cognation from Roman Law, dirimes Matrimony between the following persons:

1° As in the straight line, between the adopter and the adopted person and the latter's children, while they are constituted under paternal power; 2° between the adopted person and the children of the adopter, as in the collateral line, while the latter's children are under paternal power; 3° between the adopter and the wife of the adopted person, and conversely between the adopted person and the wife of the adopter, as in the straight line by way of affinity, as is clear from the declaration of the Sacred Congregation in Hortana, September 25, 1734.

**Notes near nn. 1586-1587, legal cognation and adoption (printed p. 257).**

1 L. VI. 154. | 2 Ib. 149. Ferr. V. Bapt. a. 7. n. 20. | 3 Murray, De imp. n. 72 sq. Therefore the opinion of St. Alphonsus L. VI. 149 is to be relinquished. | 4 L. VI. 150. | 5 Ib. | 6 Apud Feije, de Imp. n. 426. 427. | 7 L. VI. 151. 902. H. A. Tr. XIV. 33.

**1587. Questions. - Quaer.** 1° Does legal cognation dirime Matrimony up to the fourth degree between the adopter and the descendants of the adopted person, or conversely?

**Resp.** 1° Certainly it is restricted to the first degree as regards the adopted person and the descendants of the adopter. This is clear from Canon Law.

**Resp.** 2° It is controverted as regards the adopter and the descendants of the adopted person. Probably cognation is not extended beyond the first degree, or beyond the adopted person, unless he has descendants constituted under his power; for nothing is found in law opposed to this decision.

**Quaer.** 2° Does imperfect adoption dirime Matrimony?

**Resp.** Negatively, more probably with St. Alphonsus and several others, because only perfect adoption is to be judged adoption properly so called. Nevertheless De Angelis, in the cited place, contends from the acts of the Sacred Penitentiary that it is sufficiently clear that any adoption which is admitted by the law of the country induces an impediment.

#### **POINT IV. ON THE IMPEDIMENT OF AFFINITY.**

**1588. -** Affinity is the propinquity which someone contracts with the blood relatives of the person with whom he has carnal intercourse; or, it is propinquity arisen from carnal copula between one or the other of the copulated persons and the blood relatives of the other. Therefore affinity arises between the man and the blood relatives of the woman, and conversely.

But multiple affinity can happen with the same person, and then it constitutes just as many bonds necessarily to be expressed, so that the dispensation may be valid. The cause of this multiplicity can be various. For it arises: 1° when copula has been had with several persons related by blood to the other party; 2° when it has been had with a person related by blood to the other party in multiple ways; 3° when copula has been had on each side with a person related by blood to the other party; 4° when copula, both licit and illicit, has been had with a person related by blood to the other party.

Nevertheless in the fourth case, namely when before Matrimony copula was had with a person with whom Matrimony was afterwards contracted and consummated, the Apostolic See removed the necessity of expressing this double affinity by letters of March 29, 1842, communicated to the individual Bishops of Belgium, which are valid everywhere.<sup>3</sup>

This impediment also arises from copula between the old and the sterile; likewise from copula with a woman forced, or not in control of herself, insane, etc.; nor is it dissolved by the death of either.<sup>4</sup>

Hence: 1° Affinity arises both from licit copula, that is, conjugal, and from illicit copula, namely from fornication, adultery, incest, etc.

2° Affinity can also be contracted between the spouses themselves, if either party has relations with someone from the blood relatives of the other.

**Notes near nn. 1588-1589, affinity from licit and illicit copula (printed p. 258).**

1 L. VI. 1027. | 2 Ib. | 3 Acta, T. X. p. 295 sub 7. | 4 Heiss. § 40. I. 2). | 5 Sess. 24. c. 4. de Ref. Matr.

**1589. Principles.** - I. Affinity from licit copula dirimes Matrimony up to the fourth degree inclusively; but from illicit copula only up to the second degree inclusively. This is evinced from Lateran Council IV and from Trent.<sup>5</sup>

II. Affinity is not contracted except by perfect and consummated copula, because otherwise the man and woman are not strictly made one flesh. The Doctors agree unanimously in denying affinity if only the woman has emitted seed; not likewise if the man alone emitted seed. Concerning this controversy St. Alphonsus concludes that each opposite opinion is probable, and it is certain that St. Thomas stands for those who require the act to be perfected on each side. Wherefore, since there is question of an impediment, by the general principle it would have to be defined that the matter is doubtful, and therefore the impediment is not present.

But as regards practice the rules which St. Alphonsus also has ought to be valid, namely: 1° When copula is certain, in the external forum it is always presumed in favor of the impediment contracted; 2° the same is presumed also in the internal forum, when the contrary is not certain, because judgment is prudently made from things commonly occurring, especially if the woman confesses that she experienced a great sense of pleasure, even though she did not advert to seminal emission; 3° if it is certain that in fact emission of seed did not follow on one or the other side, in the forum of conscience judgment cannot be borne in favor of the impediment.

III. Affinity contracted between spouses cannot dirime their Matrimony, since it supervenes upon this as already contracted indissolubly; nevertheless it impedes the use of the same in punishment of the adulterous or incestuous spouse. This is clear from several places of Canon Law. But this, as arising from illicit copula, by force of the Tridentine Decree, is not contracted except from copula with the blood relatives of the other in the first and second degree. This is confirmed from the express Declaration of Gregory XIII in St. Alphonsus.

Nevertheless it is required that the incest be: 1) culpable; 2) consummated as above II.; 3) not coerced by grave fear; 4) committed without ignorance, even crass ignorance, of law, fact, and penalty. The general reason is because there is question of a penal law.

**1590. Rules.** - **First.** Persons who are carnally joined are not properly affinities between themselves, but are the principle of affinity and hold, as it were, the place of the stock.

**Second.** Affinity cannot exist between two persons, neither of whom has had copula with a blood relative of the other; therefore the blood relatives of one spouse have no affinity with the blood relatives of the other.

**Third.** Two brothers can marry two sisters; father and son can marry mother and daughter; indeed the son can marry the mother and the father her daughter. Hence today the axiom: Affinity does not beget affinity.

**Fourth.** The degrees of affinity are computed in the same mode as the degrees of consanguinity; indeed affinity does not have degrees of itself, but only by reason of consanguinity; therefore such as is the degree of consanguinity with one person, such is the degree of affinity with the other.

**Fifth.** He who sinned with two sisters, or with first cousins, or with mother and daughter, can marry none of these. (53) p. 430.

**Sixth.** A man who sinned with the sister, first cousin, or paternal aunt of his other party is held to render the debt to one asking, although he himself cannot ask. The reason is because, since there is question of a merely prohibiting law, the innocent person ought not to suffer from the fault of the guilty.

**Seventh.** He is not deprived of the right of asking the debt who sins with his own blood relatives, because from this he contracts no affinity with his wife.

**Eighth.** If each spouse has contracted affinity with the other through incest, neither can ask the debt, because each has lost his or her right; and therefore neither is held, indeed neither can, render the debt to the other.

### **Degrees of Affinity.**

The printed table shows the consanguine of the man and the consanguine of the woman around the two persons carnally joined. Lines drawn from one center to the opposite relatives exhibit the affinity of one with the blood relatives of the other, and conversely. It represents blood relatives in the straight line up to the fourth degree, with collateral lines such as brothers and cousins to be added in the same way.

### **Notes near nn. 1590-1591, degrees and questions on affinity (printed p. 259).**

1 L. VI. 1075. | 2 Ib. and n. 902. § Dicunt. | 3 L. IV. Decr. T. XIII. c. 1. | 4 Sess. 24. c. 4. de Ref. Matr. | 5 L. VI. 1070. | 6 Ib. 1071-1075.

Appendix annotation (53), to n. 1590. 5°. p. 257. col. 1. From the things said under rules 2, 3, 4, and 5, it is clear whether and how the following persons are connected by affinity. "1. Two brothers with two sisters. "2. Father and son with mother and daughter. "3. A stepfather with the widow of a prior stepchild. "4. A stepmother with the husband of the stepdaughter. "5. The son of Titius from a first wife with the daughter, stepdaughter, of the same Titius. "6. Two co-stepchildren, or the children of spouses received from another marriage-bed. Think, namely, that a widower and a widow, each having children from another Matrimony, were married. "7. The brother of a stepfather with the latter's stepdaughter. "8. Caius with the mother of his stepfather. Lucia with the father of her stepmother. "9. Martin with the widow whom the brother of Martin's wife left behind. "10. George successively with Sophia and Gertrude, whose husbands were two brothers. "11. The surviving spouses of brother and sister. "12. A widower with the daughter of his widow from the prior Matrimony of the widow. "13. With the same daughter, the son of the same widower from a prior Matrimony. "14. That widower with the daughter of the said daughter, or with the granddaughter in the direct line from the prior nuptials of his widow. "The persons designated under the first eleven numbers and under the thirteenth are free from the impediment of affinity; but those described under the twelfth are bound in the first degree of the direct line from matrimonial copula, and those described under the fourteenth are bound by affinity in the second degree of the direct line, likewise from matrimonial copula." Van de Burgt, De Matr., n. 194.

**1591. Questions. - Quaer. 1°** By what law does affinity dirime?

**Resp. 1°** From the certain opinion of all, it dirimes by the law of the Church alone in the collateral line, and much more probably also in the straight line, if perhaps you except the first degree from licit copula.

But since affinity, by reason of the copula whence it proceeds licitly or illicitly, is a certain natural propinquity and as it were mediate consanguinity, therefore whether it dirimes by natural law or not, it is nevertheless as regards the baptized a diriment impediment, although contracted in infidelity. This is clear from the declaration of the Sacred Congregation de Propaganda Fide under the date August 23, 1852. (C), p. 394.

**Resp. 2°** It is controverted as regards the first degree of the straight line. Nevertheless the Church, although she has been very many times earnestly asked, has never wished to dispense if affinity arises from legitimate Matrimony, as Benedict XIV also testifies. Moreover, because very grave Doctors deny that Matrimony with an affinity of this kind is void by natural law, therefore if two infidels, after contracting such a Matrimony, came to the Faith, it would not be safe to separate them without dispensation of the Pontiff, unless perhaps these marriages among infidels were void by positive law. But even in this case it is safer, as I think, to have recourse to the Holy See, on account of the not unfounded opinion of some by which power of establishing diriment impediments of Matrimony, even of infidels, is denied to the civil legislator. Cf. the things said n. 1574. q. 1°. - Not rarely has the Church dispensed in affinity of this kind arisen from illicit intercourse, e.g. if someone marries a wife after he has fornicated with her daughter or mother, provided nevertheless that copula with the mother did not precede the birth of the daughter; this condition is always accustomed to be posited in the dispensation. Nevertheless this condition is judged sufficiently fulfilled if copula with the mother preceded the birth of the daughter at such a time that the danger that she could be the daughter of the spouse is altogether absent, or, as the faculty usually conceded to our Bishops sounds (p. LXXV. 4): "no doubt underlies that the spouse is offspring generated by the other of the contracting parties."

**Quaer. 2°** Who are the various affinities?

**Resp.** They are the following, namely:

| Latin term                                                                       | English equivalent              |
|----------------------------------------------------------------------------------|---------------------------------|
| Socer, father by reason of affinity, whether of the married man or married woman | father-in-law                   |
| Socrus, mother by affinity, as above                                             | mother-in-law                   |
| Prosocer, grandfather by affinity                                                | wife's grandfather              |
| Prosocrus, grandmother by affinity                                               | wife's grandmother              |
| Gener, husband of the daughter                                                   | son-in-law                      |
| Nurus, wife of the son                                                           | daughter-in-law                 |
| Progener, husband of the granddaughter                                           | granddaughter's husband         |
| Pronurus, wife of the grandson                                                   | grandson's wife                 |
| Levir, brother of the husband or wife                                            | brother-in-law                  |
| Glos, sister of the husband                                                      | sister-in-law                   |
| Fratria, wife of the brother                                                     | sister-in-law, a brother's wife |

| Latin term                                                      | English equivalent                  |
|-----------------------------------------------------------------|-------------------------------------|
| Sororius, husband of the sister                                 | brother-in-law, a sister's husband  |
| Vitricus, husband of the mother                                 | step-father                         |
| Privignus, son from the first Matrimony of the father or mother | step-son, step-daughter, step-child |
| Noverca, wife of the father                                     | step-mother                         |

The printed page also gives the following German and French equivalents:

| German                             | French                  |
|------------------------------------|-------------------------|
| Schwiegervater                     | beau-pere               |
| Schwiegermutter                    | belle-mere              |
| Gross-schwiegervater               | aieul par affinite      |
| Gross-schwiegermutter              | aieule par affinite     |
| Tochtermann (Eidam), Schwiegersohn | gendre                  |
| Schwiegertochter, Schnur           | bru, belle-fille        |
| Kindestochtermann                  | mari de la petite-fille |
| Gross-schwiegertochter             | femme du petit fils     |
| des Mannes Bruder, Schwager        | beau-frere              |
| des Mannes Schwester, Schwagerin   | belle-soeur             |
| Bruders Frau, Schwagerin           | belle-soeur             |
| Schwager, der Schwester Mann       | beau-frere              |
| Stiefvater                         | beau-pere               |
| Stiefsohn, Stieftochter, Stiefkind | beau-fils               |
| Stiefmutter                        | belle-mere, maratre     |

**Quaer. 3°** Does affinity from Matrimony consummated, but invalid, dirime Matrimony to the fourth degree, or only to the second?

**Resp. 1°** By reason of affinity it dirimes to the fourth degree if each party was of good faith, as is clear from the declaration of the Sacred Congregation of the Council in *Brixien. Matr.*, December 3, 1667. - But whether only to the second degree, if either each party or one party was of bad faith, or in the case in which Matrimony was invalid because of clandestinity, is disputed. We think with the illustrious Feije that, when the case occurs, the matter is to be referred to the Apostolic See, or dispensation is to be made.

**Resp. 2°** But by reason of public honesty it dirimes up to the fourth degree, because Matrimony, even invalid, by force of public honesty dirimes to the fourth degree. - See the things soon to be said n. 1593. q. 3°.

Appendix annotation (epsilon), to n. 1591. q. 1°. R. 1°, p. 258, col. 1. It is pleasing here to transcribe the declaration of which there is question. Namely, the following doubts having been proposed: "1. Can an unbelieving man, who while still placed in infidelity knew, either publicly or privately, but illicitly, some woman, whether faithful or unbelieving, after receiving Baptism validly and licitly contract Matrimony with the blood relative of that same woman known, if this blood relative received Baptism either before or after the intercourse of which there is question? 2. And insofar as affirmatively (concerning which there is great doubt), could the same unbeliever converted to the faith after the death of his legitimate unbelieving wife contract Matrimony with the blood relative (up to the 4th degree inclusive) of that same deceased wife,

whether that blood relative received Baptism before or after the death of the aforesaid unbelieving wife?" S. C. responded: To 1. negatively. To 2. negatively. The decision given by S. C. O. to the second doubt of the Archbishop of Quebec, Feria V, September 16, 1824, agrees with this; in it the following reason of the decision is given: "For affinity in itself and physically considered must be distinguished from the impediment of affinity. Moreover affinity in itself is contracted even by unbelievers; because even among unbelievers it is true that a man and a woman through carnal intercourse become one flesh. Therefore, as is had in cap. Fraternitatis, 35, question 10, if they shall have been one flesh, how could someone near to one of them pertain to one, unless he pertained to the other? ... This only is the difference, that affinity does not bring forth an ecclesiastical impediment for unbelievers, but it does for the faithful. Therefore, since through Baptism there is not removed from Balbina the affinity already physically contracted by her with Paul, this very affinity radically inhering in her, which for the same unbeliever was not an impediment to contracting, becomes an impediment after Baptism, by which she is subject to the Church, and consequently subject to its laws."

## **POINT V. ON THE IMPEDIMENT OF PUBLIC HONESTY.**

**Notes near n. 1592, impediment of public honesty (printed p. 259).**

1 L. VI. 1069 sq. | 2 Apud Gury. Ed. Rom. 1873. T. II. p. 456 (\*). | 3 De Syn. L. IX. c. XIII. n. 4. | 4 De Imp. n. 377. 378. | 5 L. VI. 1061. | 6 Sess. 24. c. 3. de Ref. Matr.

**1592.** - Public honesty is propinquity, or a certain quasi-affinity, which arises through the conjunction not of bodies but of minds, both from betrothals between one betrothed person and the blood relatives of the other, and from ratified Matrimony between one spouse and the blood relatives of the other party. By ecclesiastical law it dirimes.

**Rule.** - 1° Public honesty arising from valid betrothals celebrated with an individually determined person, by the new law of Trent, dirimes Matrimony only up to the first degree.

2° Public honesty arising from ratified Matrimony dirimes Matrimony to the fourth degree inclusively.

**Notes near n. 1593, questions on public honesty (printed p. 260).**

1 L. VI. 1061. | 2 Ib. 1063. | 3 S. Pen. apud De Angelis, V. 3. L. 4. T. 4. 7°. | 4 L. VI. 1062. C. un. de Spons. in 6°. | 5 L. VI. 1064. | 6 V. n. 1592. 2°. | 7 L. VI. 1064 and De Angelis, V. 3. L. 4. T. 4. 8°. | 8 Acta, T. XIII. p. 126.

**1593. Questions.** - **Quaer.** 1° Does PUBLIC HONESTY arise from conditioned betrothals, or from betrothals dissolved by mutual consent, or for any just cause?

**Resp. to the 1st.** Negatively, unless the condition has been fulfilled; because, the condition not having been fulfilled, true betrothals are not had.

**Resp. to the 2nd.** Affirmatively. The reason is because the impediment is contracted immediately after valid betrothals have been entered, and an impediment once induced cannot be taken away by the will of the betrothed persons or by another supervening cause. Thus from the Declaration of the Sacred Congregation in St. Alphonsus.

**Quaer.** 2° Does PUBLIC HONESTY arise from NON-SOLEMN betrothals?

**Resp.** Affirmatively. The reason is because the Church admits no distinction between private and solemn betrothals.

**Quaer.** 3° Does PUBLIC HONESTY arise from an INVALID Matrimony?

**Resp.** Affirmatively, because before Trent honesty arose from a Matrimony of this kind. But the Council changed nothing concerning this, although it restricted the ancient law as to betrothals concerning the future. Thus St. Pius V declared in the Constitution *Ad Romanum*, July 1, 1568.

Except: 1° if the invalidity arises from defect of consent. Thus from Canon Law. - Hence there is no impediment of public honesty if Matrimony was contracted either from error, or from fear, or with fictitious consent.

Except: 2° if the invalidity comes from a prior impediment of public honesty, arising from validly contracted betrothals; in this case an impediment is not induced to the prejudice of prior betrothals. Hence if Titius, after entering betrothals with Berta, and leaving her, marries her sister, he can, indeed must, return to the first; nor does he need dispensation unless he has consummated the Matrimony. But there is present an impediment as regards other blood relatives of the wife whom he invalidly married, up to the fourth degree.

Except: 3° according to several, a Matrimony null on account of the Tridentine form not being observed. Nevertheless the opinion more true to St. Alphonsus does not admit this exception, "because by ancient law, c. unic. de Spons. in 6., which even now has force, as St. Pius V declared" (*C. ad Romanum*), "only from Matrimony null directly on account of defect of consent, and not from another cause, is the impediment excused."

**Quaer.** 4° Does PUBLIC HONESTY arise from the act which is commonly called civil marriage?

**Resp.** Negatively, "in places where the decree of the Council of Trent, S. 24. c. 1. Ref. Matr., has been promulgated, whether the faithful performing the act intend ... to perform a merely civil ceremony, or intend to enter betrothals concerning the future, or finally from ignorance, or in contempt of ecclesiastical laws, intend to contract Matrimony concerning the present." Thus from the Decree of Our Most Holy Lord Pope Leo XIII, dated March 17, 1879.

## POINT VI. ON THE IMPEDIMENT OF CRIME.

Crime diriment of Matrimony is threefold, namely 1° adultery, 2° homicide of a spouse, 3° each together, provided the conditions which we append certainly concur.

**Note.** - Since this impediment is of ecclesiastical law, and does not suppose, as affinity does, any natural bond, two persons now baptized who perpetrated a crime of this kind while they were still infidels are not affected by it. Sacred Congregation de Propaganda Fide, August 23, 1852.

### I. ADULTERY ALONE.

1594. - To incur an impediment from this head there is required:

1° That the adultery be true, formal, consummated. And first, indeed, true, i.e. that at least one of the fornicators be joined by a Matrimony not merely putative, but legitimate and valid, even if perhaps not consummated. Then formal, and indeed on each side, i.e. that each know, or, as is probable to St. Alphonsus, not affectedly be ignorant, that the other is married. Finally consummated, namely with perfect carnal copula intervening, i.e. such as was described n. 1589. II. I said: consummated and formal on each side, because odious things are to be restricted. - Thus commonly.

2° That there be present a promise of Matrimony, more probably true (not fictitious), and absolute (not conditioned), made by one adulterer and accepted by the other at least by some sign (for probably it does not suffice that the other be silent), as the common opinion has it; whether this promise precedes, accompanies, or follows the adultery. But if it precedes, it is required that it was not retracted before the adultery. More probably a reciprocal promise is not required. But whether a promise under condition, verified before the death of the spouse, suffices is disputed. The intrinsic reason of the affirmative opinion is not approved by St. Alphonsus; yet, since it is common, the holy Doctor remits himself to the wise.

3° That both the promise of Matrimony and the adultery be made while the prior spouse is living, or while the same Matrimony is continuing. - Thus from several places of Canon Law.

Under the same circumstances, the diriment impediment is induced also through adultery with the attempted Matrimony (e.g. through consent concerning the present and the will of celebrating marriage, whether made before or after the adultery; whether before the Pastor, or clandestinely). It suffices also if, knowledge concerning the marriage of the other having been had after the adulterous Matrimony, they use the Matrimony without retracting it. - But the promise of entering Matrimony before the death of the spouse does not suffice.

Notes to nn. 1594-1602 - note sequence 1. (1) L. IV. Decr. T. VII. S. Th. in 4. D. 37, q. 2. a. 2. (2) Collect. p. 381. n. 880. (3) L. VI. 1036. (4) Ib. 1039. (5) Ib. 1040. (6) Ib. 1038. (7) Ib. 1037. 1040. (8) Caus. 31. q. 1. L. IV. Decr. T. VII. c. 1. S. Alph. L. VI. 1037 sq. Notes to nn. 1594-1602 - note sequence 2. (1) L. VI. 1042. Collect. p. 380. n. 879. (2) Heiss. de Matr. § 42. III. Feije, n. 452. (3) Feije, n. 449. (4) Ib. 1033. (5) Schmalzer. L. IV. T. VII. n. 56 sq. (6) L. VI. 1034. H. A. Tr. XVIII. 68. I. (7) Ib. 1031. (8) L. VI. 1035. 1036. Requir. VI. (9) Ib. 1036. (10) Ib. 1044. Notes to nn. 1594-1602 - note sequence 3. (1) Pius IX, November 15, 1858. App. Conc. Pl. Balt. II. p. 311, and S. C. de P. F. March 25, 1868, ib. p. 344. Cf. Collect. p. 401. n. 908. (2) a. 335. (3) a. 336. (4) a. 338. (5) De Imp. n. 569. Notes to nn. 1594-1602 - note sequence 4. (1) L. VI. 1047. 1048. (2) Ib. 1047. (3) L. IV. Decr. T. I. c. 14. (4) In 4. D. 29. Q. 1. art. 3. q. 2. ad 2. (5) L. IV. Decr. T. I. c. 21. (6) L. VI. 1049-1053. Acta, T. V. p. 348 sq. (7) L. VI. 1055. (8) L. VI. 1056. Notes to nn. 1594-1602 - note sequence 5. (1) a. 328 and p. 308. XII. (2) Feije, de Imp. n. 446. (3) L. IV. Decr. T. II. c. 7. 10. 11.

## II. HOMICIDE ALONE.

**1595.** - Three conditions are required that from this an impediment be present:

**1° Mutual conspiracy;** hence it does not suffice that a spouse kills his or her spouse, if the person with whom he or she is going to enter Matrimony is ignorant of this action, or contradicts it, or afterwards approves it and holds it ratified.

**2° Intention of Matrimony.** Thus commonly, although it is not expressed in law. The reason is because the end of the law is that no one kill his own spouse or the spouse of another in hope of Matrimony. - This second condition is verified through intention on the part of one, and it probably suffices that certain indications of this intention preceded, e.g. familiarities, love letters, etc.

**3° Death really following** from the physical or moral action (and therefore from counsel or mandate given to someone) of one or the other accomplice. This is clear from Canon Law. - Thus commonly.

## III. EACH TOGETHER.

**1596.** - When the crimes of adultery and spouse-killing are found conjoined, mutual conspiracy to the killing of the spouse is not required, nor a promise of Matrimony, but these three suffice:

1° Adultery, such as was set forth above (n. 1594. 1°). Hence it ought to precede the killing of the spouse; for if the death of the spouse precedes, adultery, which consists in copula with the spouse of another (certainly living), will no longer be able to have place. - It is not necessary, however, that it precede the machination of death.

2° Machination of death by one of the adulterers from the intention of Matrimony; it suffices, however, that this intention be had by one, which nevertheless more probably must be manifested to the other, for which indications suffice, as above n. 1595.

3° Death following from the machination of one of the adulterers, in the same way as was said above concerning homicide alone. Thus from the same Canon Law.

This impediment, which because of the double united crime is called *each together*, constitutes one impediment. On the contrary, if both adultery and homicide have their own proper conditions separately, as they have been set forth in n. 1594 and 1595 (respectively 1596), they introduce a double impediment.

#### POINT VII. ON THE IMPEDIMENT OF DISPARITY OF CULT.

Disparity of cult is understood in general as diversity of Religion between the contracting parties. But here that disparity is properly understood which intervenes between a baptized and an unbaptized person. Nevertheless here we shall also speak of disparity of cult between baptized persons contracting Matrimony, or of mixed Marriages.

**1597. Principles.** - I. Disparity of cult which exists between a baptized person (whether this person is Catholic or not) and an infidel, or unbaptized person, makes Matrimony invalid. Thus from unwritten law, i.e. from custom having the force of law.

II. But diversity of Religion between baptized persons does not constitute a diriment impediment. It is proved from the fact that by no law or custom are Marriages between Catholics and heretics declared void. - Thus the unanimous consensus of theologians.

III. Diversity of Religion between Catholics and heretics or schismatics constitutes an impedient impediment. This is drawn both from the practice of the Church, which always with the greatest solicitude turns the faithful away from these Marriages, and from the express Declaration of Benedict XIV, who calls these unions detestable, which holy Mother Church has perpetually condemned and interdicted. (Second Plenary Council of Baltimore, p. 314.)

**1598. Questions.** - **Quaer.** 1° By what law are marriages between Catholics and heretics or schismatics forbidden?

**Resp.** By both divine and ecclesiastical law. By divine law, namely as often as in an individual case the danger of perversion of the Catholic party or of offspring is proximate and cannot be removed; but by ecclesiastical law, because the universal prohibition of the Church obstructs. Its motives are forbidden communication in sacred things and the danger mentioned above, and this not particular or existing here and now in an individual case, but common. Wherefore, although the prohibition of divine law ceases when the danger has been removed, nevertheless the prohibition of the Church does not cease without dispensation. Feije, n. 567.

**Quaer. 2°** To whom belongs the faculty of dispensing from such an impediment and from the impedient impediment of mixed communion?

**Resp.** To the Roman Pontiff alone, Bishops being altogether excluded, unless they have obtained this faculty from the Supreme Pontiff. In what manner it is accustomed to be conceded to our Bishops, see p. LXXIV. n. 3. 4. 5.

**Quaer. 3°** Under what conditions is the aforesaid dispensation conceded?

**Resp.** Besides a grave cause, all and single conditions recounted p. LXXIV. n. 3. 4. 5 must also be present. (39) p. 425.

**Quaer. 4°** Is Matrimony entered between Catholics and heretics valid if, dispensation having been obtained, the heretical party is unwilling to acquiesce in the condition imposed by the Church, namely that children OF EACH SEX be educated in the Catholic Religion?

**Resp.** Affirmatively. For there is question of a merely impedient impediment, and consequently this condition does not affect the validity of the Matrimony. But the Pastor ought in this case to abstain from every intervention, as the Sacred Congregation of Inquisition speaks, June 17, 1829.

**Quaer. 5°** In what manner in our Provinces must one assist at mixed Marriages if dispensation has intervened?

**Resp. 1°** See *Excerpta ex Rit. Rom.* p. 208. () and p. 242 sq. Ed. 1872, or Ed. 1874. p. 200. () and p. 234 sq., where among other things it is observed: "In entering nuptials of this kind the Church has generally ordered those things to be omitted by which the Marriages of Catholics are adorned." It is said: generally; for the rite prescribed in the Ritual for Marriages to be contracted can be permitted tolerantly by way only of exception, and always with celebration of Mass excluded, if graver damages and evils are to be feared, by the Ordinary, whose conscience is burdened in this matter. (g), p. 395.

**Resp. 2°** As regards the mode of exacting the prescribed promises, the Fathers of the Second Plenary Council of Baltimore admonish that pastors of souls "conduct themselves indeed strongly in the matter, yet suavely in the manner, lest ... they exasperate each spouse, and thence graver evils arise; and this is to be guarded against the more, since it is clear that rarely in these regions is dispensation for entering nuptials of this kind sought from the Bishop or priest until the matter has already proceeded so far that it can scarcely be hoped that the Matrimony can be broken off through the admonitions of the Church." - "Every effort must rather be placed in this, that the faithful be altogether deterred from these mixed marriages. Therefore we exhort pastors of souls that at least once in the year, especially in the time of Advent or Lent, by grave discourse they teach the flocks committed to them the evils which spring from them." Confessors also should opportunely admonish parents, young men, and girls for this end. (40) p. 426.

**Resp. 3°** "We do not wish," say the same Fathers, "that priests furnish their work to those whom they know are going to approach a little minister for the sake of repeating the matrimonial covenant, or who, after a covenant has been so entered, without signs of penitence, seek the priestly blessing."

**Quaer. 6°** What must be done if a purpose of entering a mixed Matrimony is detected in a Catholic man or Catholic woman?

**Resp.** In every better way, yet with Christian charity and suavity, in all patience and doctrine, not only Ordinaries but also pastors and confessors ought to turn their own away from these. But if the person persists in the purpose, and either **a)** it is clear that not only common danger, but proximate danger which cannot be removed, exists in the individual case, or **b)** no reasonable cause for seeking dispensation can be alleged (in doubt the Ordinary is to be approached), or **c)** Matrimony is intended to be contracted without dispensation or the necessary cautions, or **d)** the penitent, about to seek dispensation and satisfy the cautions, is unwilling to abstain from frequent conversation of such a kind which either is culpable from another source or is going to render empty the hope of the purpose of dismissing the matter in the case that dispensation is denied: indeed the benefit of absolution is to be denied to the penitent, yet care and solicitude concerning his miserable state is not to be cast away, but rather increased. Thus Feije.

**Quaer.** 7° What must be done if, after a mixed Matrimony has been contracted, the condition of educating offspring Catholic is neglected?

**Resp.** The Catholic party cannot be absolved unless that party does or seriously promises to do whatever, morally speaking, he or she will be able to do, that the offspring be duly baptized and instructed Catholic. Indeed, in a public case this person is to be numbered among public sinners. From this principle, which does not need proof, you will resolve:

1. If the father is Catholic and the offspring has not yet so grown up that, although not withdrawn from power, it ought nevertheless to be called withdrawn from paternal influence, he cannot be absolved unless first he sees to it, or, if now he cannot, seriously promises to see to it, that the offspring **a)** if not yet baptized or certainly validly baptized, be baptized; **b)** assist at divine offices in a Catholic church, frequent a Catholic school if this can be done, etc.

Resolve the same concerning a Catholic tutor.

2. If the mother is Catholic, while the non-Catholic father is still living, she is to be judged to perform her office and can be absolved if she applies, or seriously promises to apply, maternal influence upon the offspring and conjugal influence upon the husband, that the offspring, as above, be duly baptized and educated Catholic. For she cannot use power, which by civil law resides entirely with the father.

3. The non-Catholic father having died, the surviving Catholic mother, unless she lacks the office of tutor, is held to the same thing to which a Catholic father is held.

**Quaer.** 8° Are Calvinists and Lutherans, and universally heretics living in places where Baptism is doubtful and suspect, to be held as infidels, so that the diriment impediment of disparity of cult is judged to be present between Catholics and them?

**Resp.** See *Excerpta ex Rit.* Ed. 1874. p. 234 (+), where the rules to be observed in this case are found. (41) p. 426.

**Note.** - If in these regions there is question of a Catholic about to enter Matrimony with a non-Catholic party, one must carefully attend not only to the aforesaid rules, but besides inquire concerning the very fact of Baptism conferred or not conferred. Cf. n. 1264. III.

Appendix annotation (39), to n. 1598. q. 3°. p. 261. col. 2. ### Concerning dispensation in the diriment impediment of disparity of cult, when Matrimony has already been contracted and the unbelieving party refuses to offer the cautions.

Henry, not baptized, contracted before a civil magistrate or petty minister with Ludmilla, a Catholic. After some time she, repenting of the deed, by the persuasion of the pastor approaches the Ordinary, urgently asking from him a remedy for her miserable condition. There is indeed no difficulty in this case if, with a grave cause standing, Henry is prepared to renew consent and to promise what by law in this case must be promised. But what if he wishes to offer neither? Resp. 1° "When from separation grave inconveniences are foreseen as going to follow, - the spouse remaining in infidelity refuses to be baptized," - a dispensation can be indulged to the party "truly" Catholic, yet in such a way that to this party "there be commended and enjoined also the Catholic education of the offspring, and that they ought to take care, in the way in which it can be done, of the conversion of the unbelieving spouse," with consent renewed, and "the nullity of the prior Matrimony being made known, insofar as it can be done, also to the unbelieving party." Thus nearly the Instruction of the Holy Inquisition, 12 Jan. 1769, apud Collect. p. 388. 389. n. 888 under 2. Cf. the same Collect., p. 383. col. 1. § Hucusque. - It is said: with consent renewed; which I understand according to the things said in n. 1633. III. Rule. Resp. 2° If Henry not only refuses to offer the cautions, but is also going to impede, for example, the Catholic education of offspring born or to be born, at least of male offspring, a dispensation can be granted only when Ludmilla is found placed in danger of death and there is no other way in which provision can be made for the salvation of her soul, "provided nevertheless" then "she promises that, if she recovers, she will take care by all means of the conversion of the unbelieving party and of the education of whatever offspring in the Catholic religion." - From the letters of S. C. de Prop. Fide, 8 May 1828, to the Vicar Apostolic of Eastern Tonkin, apud Collect. p. 392. n. 896. Resp. 3° If Henry is conscious of the impediment, no other remedy remains except sanation in the root, n. 1636 under 3. 1°. But this could not be given in this case by our Bishops by force of faculty D, [n. 6, T. I. p. LXXIV](/manuals/konings/iii-faculties#h4), since its tenor, "the party conscious of the impediment having been warned," openly implies that it cannot have place when both parties know the impediment. ### Concerning dispensation from the impediment of mixed religion as regards Matrimony already contracted. Rescript of S. C. of the Holy Office to the Vicar Apostolic of Bombay. "The Most Eminent and Most Reverend Lords Cardinals of the Holy Roman Church, General Inquisitors against heretical depravity, in the General Congregation held on Wednesday, the 9th day of the current month of March, having read the letters of Your Excellency, by which you were reporting to the Eminent Cardinal Prefect of the Sacred Congregation de Propaganda Fide that, in a certain Instruction to your Clergy, you had prescribed to all presbyters exercising the care of souls that they not omit to warn spouses who, grieving and penitent for their mixed Matrimony entered clandestinely, desire to be reconciled to God, concerning the necessity of obtaining from the Bishop a dispensation, so that in the future they may be able licitly to use their Matrimony, contracted validly indeed but illicitly; but that this prescription gave some missionaries occasion to doubt whether an obligation of this kind could be imposed by you: the matter having been carefully and maturely weighed, they judged that the Instruction is to be declared by you thus, namely, that it is fitting that satisfaction be made by the aforesaid spouses to the Church, whose most holy law has been violated, and that the cautions concerning the danger of eternal salvation to be removed from themselves and from their offspring be offered also in the external forum; and that for this end recourse to the Bishop be asked. "While I signify these things to Your Excellency, I wish the devoted sentiments of my soul to be testified to the same, for whom I pray all favorable things from the Lord. "Most devoted as a Brother to Your Excellency, "P. Card. CATALINI. "Rome, 12 March 1881." Appendix annotation (zeta), to n. 1598. q. 5°. R. 1°, p. 262, col. 1. EXTRACTS. 1. From the Letter of I. Cardinal Antonelli, February 28, 1874, to the Archbishop of Oregon. ... S. C. of the Holy Office, Feria IV, May 11, 1864, wrote back to the Bishop of Natchez: "that proclamations can be made in mixed nuptials which are contracted with Apostolic dispensation, but with the mention of the religion of the contracting parties suppressed." And when in the month of May of the year 1871 it called back for examination the Acts and Decrees of the Provincial Synod of Smyrna, this S. Congregation of Propaganda Fide decreed: "the proclamations which are premised in Matrimonies are not to be made in mixed marriages, except when they seem necessary and opportune, in the judgment of the Ordinary, for detecting impediments, and with mention of the religion of those who are to contract nuptials omitted." 2. From the Letter of the Same Cardinal Franchi, September 28, 1874, to the same. After those things which this same S. Congregation was writing to Your Excellency under the day February 28 just past, concerning the authenticity of the letters of the same S. Council of the day July 3, 1847, in that which pertains to proclamations in mixed Matrimonies, you asked again how this can be composed with the Note which appears in the Baltimore Ritual printed in the year 1866, p. 189. But the matter will be easily explained if you observe that that Note was affixed to the Ritual without this S. Congregation knowing it. ... I shall add also that in the aforesaid letters it is not simply read, as the Note reports, "that proclamations be made even when there is question of mixed Matrimonies," which words would contain an absolute precept, "but since this publication of banns ought to be held as having the place of a caution and as a prudential remedy, no sufficiently firm reason seems to stand in the way why proclamations should be made even when there is question of mixed Matrimonies." From this it is clear that the Note is to be rejected from a double head. Therefore, all hesitation being set aside, hold what long ago was signified to

you, namely, that proclamations can be made also in mixed marriages which are contracted with previous permission of the Church, with mention of the religion of the spouses however suppressed, but only when, for detecting impediments, if any there are, the Ordinary in the Lord shall have judged them necessary and opportune. ... 3. From the Letters of the Same Cardinal Franchi to the Archbishop of Baltimore, January 30, 1875. ... It is certain that the Holy See in these most recent times has declared that proclamations can be made in mixed nuptials which are contracted by Apostolic dispensation. Appendix annotation (40), to n. 1598. q. 5°. R. 2°. p. 262. col. 1. You will compose a solid instruction concerning the dangers which are joined with mixed Marriages from the letters of Clement XIII, dated 16 Nov. 1763, to the Bishop of Strasbourg, which Collect. p. 394. n. 902 exhibits. Likewise from the booklet *An Instruction on Mixed Marriages*, by Rt. Rev. Ullathorne, Benziger, New York. Appendix annotation (41), to n. 1598. q. 8°. p. 262. col. 2. But what in doubt whether Baptism, I do not say validly, but in fact, was conferred upon the non-Catholic party? Resp. 1° If there is question of Matrimony to be contracted with a Catholic party, the doubt persevering after diligence has been employed, there can be place for a dispensation in the diriment impediment of disparity of cult, and this, with a grave cause subsisting, is to be procured. It is clear from the things said in n. 1574. q. 5°. R. 3°. Resp. 2° Resolve the same if there is question of a Matrimony contracted in the same circumstances without dispensation. It is clear from Resp. 1°. Resp. 3° Although Matrimony was contracted without dispensation, and not afterward convalidated, nevertheless the party certainly baptized, who has flown or wishes to fly to other nuptials, contracts these nuptials illicitly and remains in them illicitly, unless it has been sufficiently proved that Baptism was not conferred upon the prior party. But sufficient proof of this matter, in my judgment, could also be had from vehement presumption. But a presumption of this kind, as it seems, would be present, for example, if the prior other party had parents who both pertained to a sect which rejects Baptism, for instance to the sect of the Quakers; likewise if they pertained to a sect, for example of the Baptists, which does not admit Baptism of infants; if, namely, in this supposition, the prior other party had been baptized, he or she would have no doubt concerning that matter, as being one which would have been done in adult age; likewise if he or she had parents who never pertained to any sect, who did not belong to any religion, as the common people say. What likewise if in doubt concerning the value of Baptism certainly conferred, Matrimony was contracted, and afterward the presumption concerning value yields to truth, or the invalidity of Baptism becomes certainly known? Ballerini responds: "The validity" of Baptism "is to be retained.... For then the Church is judged to dispense." Finally it is asked "how one must act in the case of the conversion of a non-Catholic joined in Matrimony with another non-Catholic, when a doubt concerning Baptism occurs?" "Resp. It will have to be distinguished whether the doubt is concerning the Baptism of one or of both spouses; likewise whether it is a doubt of law or of fact? "I say: 1) If there is doubt concerning the reception of Baptism on each side, the Matrimony will not have to be revalidated by dispensation, because the ecclesiastical law concerning disparity of cult, until the reception of Baptism is proved, does not oblige them, and consequently the Matrimony previously contracted by them was valid. 2) If there is doubt on each side concerning the value of Baptism certainly received, the Matrimony would have to be held as valid. 3) If there is doubt concerning the reception of Baptism on one side, and concerning the value of Baptism received on the other, the Matrimony would have to be revalidated, and indeed by the sole renewal of consent, if the former were converted; and by dispensation, if the latter party returned to the Church. - But the Matrimony could not be dissolved as to the bond, on account of doubt concerning the bond standing in the way of a new Matrimony. - 4) If it is certainly established concerning the Baptism of one party, but the reception of Baptism is doubtful on the other side, the Matrimony must be revalidated, either by renewal of consent, if the second party is converted, or by dispensation, if the first returns to the Faith." > Notes to appendix annotation - note sequence 13. > > 1 Note (a) to Gury, P. II. n. 881. | 2 "The privilege, however, promulgated by Ap. I. Cor. 7 for non-converts in this case, if one party is converted to the Catholic Faith, would scarcely have place, because this privilege, since it is against divine law, is deservedly to be held of strict interpretation." Heiss, § 36. III. Quær. 2°. | 3 Heiss, § 36. III. Quær. 2°.

### POINT VIII. ON THE IMPEDIMENT OF FORCE OR FEAR.

These things are to be established:

**1599. - I.** Grave fear certainly dirimes Matrimony by ecclesiastical law, and perhaps more probably also by natural law; and this even if the one suffering fear truly consented, or an oath intervened, or fear was inflicted by a third person.

But that fear be grave:

1) It is required that the evil **a)** cannot otherwise be avoided; **b)** be feared prudently (not vainly and lightly), and as to be inflicted proximately; **c)** be grave, such as death or grave torment, exile, long or atrocious prison, loss of status, violation of an honest virgin or widow, removal of reputation, loss of goods of great moment, loss of great profit to which someone has a right or from which at least he is unjustly impeded.

2) It suffices that the evil **a)** be grave with respect to the one suffering fear; **b)** be grave by the common opinion of men; **c)** be absolute, or grave in itself, i.e. it is not required that it be comparatively grave, or graver than that which is chosen; **d)** be feared either for yourself or for your blood relatives or affinities up to the fourth degree.

**Note.** - Whichever law you say dirimes Matrimony by fear, whether natural or only ecclesiastical, this impediment does not admit dispensation, but it is necessary that the cause of fear be removed. Therefore, while the cause of fear perseveres, Matrimony invalidly contracted is not convalidated either by copula or by cohabitation (for these are otherwise presumed to have been extorted by fear); for during fear, just as Matrimony cannot validly be contracted, so neither can it be convalidated when invalidly contracted. It must be said otherwise if copula is admitted altogether freely and with marital affection, as the Doctors commonly have after St. Thomas, or also if cohabitation is spontaneous, which is accepted as ratification of consent.

**II.** But that fear, even grave fear, dirime Matrimony, the following conditions are further required, namely that fear be inflicted 1° by an external and free cause; 2° unjustly; for an injury is not inflicted when the one causing fear uses his right. But he uses his right when these two things concur: **a)** if the person, whether public or private, has the right of exacting this Matrimony, and **b)** if that person has the right of threatening and executing what he threatens; 3° for the end of contracting Matrimony, as is commonly held against a few.

**III.** Light fear, even unjust, does not dirime Matrimony. The reason is 1° because light fear is not judged gravely and efficaciously to influence consent; 2° because by positive law grave fear alone makes Matrimony void; 3° because otherwise innumerable Marriages would become void, with the greatest detriment to society.

**IV.** Reverential fear, according to the common opinion, of itself, i.e. unless to it are joined either blows, or threats, or fear of some grave evil, for instance hatred, lasting indignation, etc., does not dirime Matrimony. The reason is because not only is it not of itself grave fear, but it is not even fear, but rather reverence.

**Case.** Titius several times had relations with Berta. She, after offspring had been begotten, denounces Titius to the Magistrate, because he refuses to enter Matrimony with her and to provide for the offspring. Titius, since he could neither provide for the offspring nor wished to marry Berta, is delivered to prison. Tired of prison, Titius marries Berta.

**Quaer.** 1° Is the Matrimony valid?

2° What if Berta at the same time had fornicated with others?

3° What if under promise of Matrimony Berta gave Titius the use of her body?

**Resp. to the 1st.** It is valid generally speaking, at least for the external forum; because, generally speaking, fear in this case is justly inflicted.

**To the 2nd.** It is not valid, because it is not certain that fear was justly inflicted; for the offspring does not certainly belong to him, and not he, but Berta, by admitting several fornicators, was the cause of doubt concerning the father of the offspring.

**To the 3rd.** This circumstance does not change the case as regards fear justly or unjustly inflicted, unless in favor of Titius in the supposition of the second question. For he is not held to stand by the promise, even a sponsalital one, in the case in which Berta has fornicated with another (n. 1531. 4).

In practice, in this and similar cases, one must carefully attend: **a)** whether the one suffering fear perhaps gave only fictitious consent when he contracted nuptials; **b)** whether cohabitation followed the nuptials so entered or not; **c)** whether there is not given a reason excusing from contracting Matrimony according to the things said n. 810. If this is present, the things said concerning him who asserts that he consented fictitiously, n. 1548. q. 7°, will be able to be applied; or if he really consented and cohabitation did not follow the nuptials, dispensation in a ratified, non-consummated Matrimony will be able to be sought; **d)** whether presumed Matrimony is not present.

#### **POINT IX. ON THE IMPEDIMENT OF BOND.**

**1600.** - By bond is understood the bond of Matrimony by which spouses are so bound together that, while each is living, neither can validly enter Matrimony with anyone else.

The impediment of bond is founded on two attributes of Matrimony, which are indissolubility and unity. Hence it is deduced that the impediment of bond is of divine law.

Cases pertaining here can occur in various ways, especially among us. Hence let the following questions be:

**1601. Questions.** - **Quaer.** 1° What must the Pastor do when, for contracting Matrimony, there presents himself to him a wanderer or foreigner asserting that he is not held by the impediment of bond?

**Resp.** Let him observe those things which we said are to be observed n. 1536, 1537, and, as the case may be, let him advert to those things which are observed in Note I added to n. 1537 for this region.

**Quaer.** 2° What likewise if someone presents himself for second or further nuptials?

**Resp.** Distinguish. Either the other party is certainly still living, or is morally certainly dead, or there is doubt concerning that person's death.

If the first, inquiry must be made whether the Matrimony with the other party still living was perhaps entered invalidly, whether because of the impediment of clandestinity having force in the place or case in which it was entered, or because of the impediment of disparity of cult, or because of the impediment of fear, or because of defect of consent given under fear otherwise not voiding (n. 1599. Case), or because of a condition contrary to the substance of Matrimony (n. 1548. q. 6°). If, on account of one of these, it is certainly detected invalid, it will be licit for the Pastor to assist at the second nuptials; but in doubt let him recur to the Ordinary.

If the second, there is no difficulty.

If the third, either the doubt perseveres after diligent inquiry, or not. If not, let him act as was said in the first or second member of the distinction; if the doubt perseveres, he ought to consult the

Ordinary and await his response.

**Quaer.** 3° Whence in doubt is the Pastor to procure for himself moral certitude concerning the death of the other party?

**Resp.** 1° It is CERTAINLY not procured a) from the mere absence, even long, of the other party; b) precisely from one witness, although by sight; c) precisely from several witnesses by hearing; d) from mere report.

**Resp.** 2° It is certainly procured either a) from the testimony of a legitimate magistrate, ecclesiastical or civil, or of another person having public authority, or of the Pastor testifying concerning burial; or b) from the statement of two witnesses worthy of faith (among whom blood relatives also are admitted, and indeed ordinarily before others, but not the other party), asserting that they saw the death or burial.

**Resp.** 3° Those things which, taken singly (see Resp. 1°), would certainly not suffice for producing moral certitude of the death of the other party, when all are joined together, or, in certain cases, only some of them, do produce it. - Thus one witness, even by sight and worthy of faith, does not suffice of itself; nevertheless his sworn testimony will be able to suffice for the Bishop if there concur with it other likely indications, such as, e.g., that the other party, who disappeared long ago, at the time of departure was already old or sick; that he undertook a dangerous voyage; that he tarried in places where a raging plague was taking many out of the midst. - Thus likewise mere report of itself does not suffice, but it will suffice if with it there concur conjectures which constitute a vehement presumption. Note nevertheless that report itself also, whenever it is invoked, although corroborated by other conjectures, must be proved. But for this 1) it is required that two witnesses greater than every exception depose that they have heard from persons worthy of faith that a report of this kind exists; 2) that there concur a reasonable cause from which the report has its origin, e.g. that the husband sailed the sea and, a storm having arisen, after he was expected for a suitable time and sought through likely places, he did not appear, nor was there any report concerning the ship by which he was carried, or that wreckage was found. For no account is taken of report unless it is proved to draw its origin from a reasonable cause.

See the Second Plenary Council of Baltimore, where there is special treatment concerning doubt of the death of the other party if he has given his name to military service; and this case of doubt can more easily occur among us after the civil war.

**Note.** - 1° Not even the Ordinary, if doubt remains after diligent inquiry, can permit the celebration of Matrimony.

2° The doctrine of a few persons is to be rejected who think that Matrimony contracted without sufficient certitude concerning the death of the other party, who in reality is dead, is void. Nevertheless true mutual consent must have been present (cf. n. 1574. q. 7°), and the celebration of a Matrimony of this kind would besides be gravely illicit.

3° Whether spouses may use Matrimony if after nuptials have been entered doubt concerning the death of a prior spouse arises, resolve from the things said n. 1574. q. 6°. - Whether and when, doubt remaining, Matrimony can be entered under condition, see n. 1548. q. 5°. - Concerning whether or not a spouse is to be left in good faith after nuptials have been entered, see n. 1638.

#### POINT X. ON THE IMPEDIMENT OF AGE.

**1602.** - The impediment of age consists in the defect of age sufficient for fulfilling the offices of Matrimony. It dirimes the Matrimony of the impubes (n. 911) by ecclesiastical law.

Except: if malice (by the judgment of the Holy See or of the Ordinary, so that the Matrimony be licit) does not supply age; which is understood of the impubes who are already capable of generation, and otherwise can sufficiently understand the burden of the conjugal bond.

Since this impediment is of ecclesiastical law, the Matrimony of impubes among infidels is valid (yet here also returns what was said n. 1574. q. 1°), and the Pope can dispense in it. When it has the force of betrothals, see L. VI. 841 and Feije, n. 534.

#### POINT XI. ON THE IMPEDIMENT OF CLANDESTINITY.

**1603.** - A clandestine Matrimony is called that which is contracted without the solemnity required by the Church, namely without the assistance of the Pastor and simultaneously of at least two witnesses. This impediment is of ecclesiastical law alone, since it was constituted by Trent.

For the validity of Matrimony any witnesses whatsoever suffice, whether they are males or females; whether of greater age, or minors, provided they have the use of reason and are able to testify concerning the Matrimony contracted. Hence St. Alphonsus teaches that even infidels can exercise the office of witnesses; nor is it necessary that they be called for this, but even if by chance they pass by or are present there, provided they advert to that which is done; indeed they suffice, although they were called by deceit and for another end; yes, even although unwilling and detained by force they are present.

We must treat 1° of the force of the Decree of the Council of Trent; 2° of the assistance of the Pastor.

Notes to nn. 1603-1607 - note sequence 1. (1) Sess. 24. c. 1. de Ref. Matr. (2) L. VI. 1085. (3) Ben. XIV. de Syn. L. XII. c. V. n. 6. Notes to nn. 1603-1607 - note sequence 2. (1) L. VI. 1081 (1). (2) Feije, de Imp. n. 301. (3) Heiss, de Matr. § 44. (4) L. VI. 1079. (5) Anal. J. P. Ser. 2. col. 1870. Ser. 9. col. 646. n. 51. Notes to nn. 1603-1607 - note sequence 3. (1) L. VI. 1079 (1). Cf. this Comp. n. 182. q. 3°. (2) Trid. Sess. 21. c. 4. Ref. (3) Resp. Mor. L. I. Dub. 36. Tom. VIII, p. 59, Ed. Paris. 1869. Notes to nn. 1603-1607 - note sequence 4. (1) De Imp. n. 335. Notes to nn. 1603-1607 - note sequence 5. (1) VII. Jahrg. S. 3. (2) p. 453. (3) Tr. XXI. 184. 185. (4) Tr. VIII. 44.

#### SECTION I. ON THE FORCE OF THE DECREE OF THE COUNCIL OF TRENT.

**1604.** - The Council thus establishes: "Those who shall attempt to contract Matrimony otherwise than in the presence of the Pastor, or of another priest with the license of the Pastor himself or of the Ordinary, and of two or three witnesses, the holy Synod renders altogether incapable of contracting in this way, and decrees contracts of this kind to be void and null. ... It decrees besides that a Decree of this kind begin to have its force in each parish after thirty days, to be numbered from the day of the first publication made in the same parish."

**1605. Practical Rules for North America. - I.** The Tridentine Decree concerning the clandestinity of Marriages:

a) Is presumed to have been promulgated, or certainly, as if it had been promulgated, has force, where at some time it was observed as a condition *sine qua non* of the validity of Matrimony. The reason is that it would not be observed in this way unless it had been promulgated either formally, or virtually, namely by force of a custom introducing the law.

b) Its obligation is not hindered by the fact that in the place where it was promulgated there is no true Pastor; for it suffices, namely, that the priest who resides near some church exercise care of souls after the manner of a Pastor. This is clear from the Response of the Holy See, May 17, 1804, concerning the priests of Holland, apud P. Heilig.

c) A new promulgation is not at all needed in a parish created by way of dismemberment from another in which the Decree was in force. The reason is that promulgation inheres in the territory. For the same reason, a place remains free in which the Decree was not obliging, if it is joined to a parish where it is in force; while, conversely, a place remains bound in which it was obliging, when joined to a parish where it is not in force.

Appendix annotation (42), to n. 1605. c) p. 266. col. 2. The Bishop of Heliopolis had proposed the following doubt, the third: "Since in some dominion there are very few churches, yet many are to be erected in the future, whether, when the Decree of the Council has been published in those few churches, it is judged published in the whole dominion; or rather, in whatever village in which afterward a church is to be erected, with Christians gathered in some decent house, as is accustomed to be done in celebrations of Mass, publication must be made there, so that meanwhile, since publication is not made in the individual villages, they can contract Matrimony without the pastor and witnesses?" S. C. de Prop. F. responds, 7 July 1670: "That the publication already made suffices, unless new peoples and inhabitants are added and new parishes are erected for them." Collect. p. 446. n. 981.

**1606. - II.** On the contrary, the Decree does not have force:

a) Where either its formal or its virtual promulgation is doubtful. The reason is that a doubtful law does not oblige.

b) If, the parish in which it had been promulgated having been extinguished, a new one was created which cannot be called a continuation of the former one and in which it was not promulgated anew. The reason is that, when the parish has been destroyed, the moral person to whom the promulgation had been made has also been destroyed, and therefore the promulgation also. (gamma), p. 395.

c) Where it was promulgated by a Pastor without the mandate of the Ordinary, for promulgation is an act of supreme jurisdiction of the external forum, which the Pastor lacks. (42) p. 427.

d) Where the memory of the promulgation has been utterly obliterated. But if there exists the memory of a custom of celebrating Marriages in execution of the Council of Trent before the Pastor, etc., promulgation is presumed. For in the former case it is judged to have been abolished by custom, but in the latter to have been introduced by the same.

e) Where it has been abrogated by a Pontifical declaration or dispensation. The reason is clear of itself. See n. 1608-1611.

f) Where there is present a moral impossibility, and one general in a certain place, of observing the Decree, namely when the Pastor or another competent person cannot be approached for a month, or can be approached only with the greatest difficulty and with grave danger, and this difficulty or impossibility is general in some place. Nevertheless the presence of two witnesses is then necessary for validity. Besides, it is expedient that, if another priest can then or afterwards be had, the nuptial blessing be asked from him. (delta), p. 395.

Appendix annotation (eta), to n. 1606. b), p. 266, col. 1. These things are confirmed and illustrated by the following words, which I took from an Instruction of S. C. de P. F. given to the Archbishop of San Francisco in California from the resolution of the Holy Office on Feria IV, December 14, 1859, and kindly communicated to me. "Perhaps the case could be excepted in which, with the lapse of time, Missionaries and Faithful being lacking in the aforesaid territory, others had come, especially

if they were non-Catholics, and knowingly or unknowingly had begun to contract Matrimonies without the form of the Council being observed, bringing the past and published law into desuetude; since the Tridentine law, although territorial, nevertheless affects men, and where they either are lacking, or bring it into desuetude by general non-observance, the sanction of the same would be urged in vain." Appendix annotation (theta), to n. 1606. f), p. 266, col. 2. I said: for a month, as is clear from the Resp. of S. C. Off., Feria IV, given on the day July 1, in the year 1863, to the Most Rev. O'Connell, Bishop of Grass Valley in California, and kindly communicated to me. Namely to question II: "The same Eminent Fathers declared: When access is difficult and not safe, and it is unknown when the Pastor can be had, and it is foreseen that he will be absent from the place for a space of at least one month, and there is no other who may supply the place of the Pastor, the Matrimony is valid without the presence of the Pastor, the form of the Council however being observed insofar as possible, namely by employing at least two witnesses."

**1607.** - And these things indeed are certain; but it can be asked whether the Decree, without a special Pontifical Indult, can be, or could have been, validly published outside parishes properly so called, for instance in so-called quasi-parishes? - I respond that the negative opinion seems to me and to certain others, whose judgments concerning this matter have been communicated with me, to be at least certainly probable. The reason is that, for promulgation to be valid, none of those things must be lacking which are required for its substantial form; but for this it is expressly required by Trent that it be made *in ... the parish* (see the text of the Council, n. 1604); and parish here is to be understood as strictly so called, or in that obvious and single sense in which it was understood at the time of Trent, and in which it is employed in that very decree of the Council in which parishes are ordered to be erected; and this all the more because here there is question of a matter of strict interpretation, namely of a decree which - derogates from the law previously in force, - restricts the liberty of Matrimony, - and makes void an act which from the very beginning of the Church was valid everywhere on earth. - And this reason indeed renders the promulgation of the Decree outside parishes properly so called at least doubtfully valid; but a law doubtfully promulgated does not oblige. Therefore.

**Addendum and Corrigendum.** - I hold as probable the opinion that the Decree *Tametsi*, without a special Pontifical indult, can validly be promulgated only in parishes strictly so called. Yet I add that it would be very desirable for the Holy See to be consulted on the matter. Here is the response given to Bishop N. N. "Bishop N. N., in the Canadian region, set forth to the Sacred Congregation of the Inquisition that now doubts arise concerning the validity of certain marriages contracted without the solemnity required by the Decree *Tametsi* of the Council of Trent in the missions or quasi-parishes of this diocese. For before the year 1872 many places of the diocese N. N., commonly called Cantons or Townships, had not yet been canonically divided into parishes. In these places there were: 1° Missions properly so called, namely without a resident priest, but visited through the year, at times both fixed and unequal, by a missionary delegated for this purpose; 2° quasi-parishes, by which must be understood a territory which, as to external appearance, more or less approached the likeness of a parish, inasmuch as it had a church near which a priest ordinarily, or at least principally, resided, and boundaries designated by the Bishop. - Nevertheless, in these missions and quasi-parishes, just as also in parishes properly so called, the Decree *Tametsi* of the Council of Trent had been published annually by the priests placed over their care. For to this end the Bishops of the Province of Quebec had commanded: 'Since the Tridentine Council, by the solemn decree (*Tametsi*, Sess. 24 de Ref. matrim.), declared null and invalid marriages entered otherwise than in the presence of the parish priest and witnesses, whose number it determines, we judge it a matter of greatest moment that parish priests and missionaries announce so salutary a decree to the people. We will, therefore, that

they read it on the first Sunday after Epiphany, on the occasion of the sermon. In parishes especially, and in newly erected missions, this decree will be published opportunely, as the very tenor of the same decree and the response of the Sacred Congregation de Propaganda Fide, given to the Bishop of Quebec on 16 Nov. 1824, prescribe.' But since there is doubt whether the Tridentine Decree can validly be published outside parishes properly so called, it is humbly asked of the Sacred Congregation to declare: Whether the promulgation of the Decree *Tametsi* of the Council of Trent in the missions and quasi-parishes above mentioned was valid?

"The response was given on Wednesday, 14 Nov. 1883. 'According to the things set forth, affirmatively, and according to the mind. The mind is that in places where a Parish Priest cannot be had, a marriage entered before two witnesses is valid, with the obligation, however, upon the contracting parties of receiving the nuptial blessing as soon as they conveniently can, and of taking care that the marriage be entered in the sacramental registers of the mission or nearer church on which they depend.

"This resolution was confirmed by Our Most Holy Lord on the same feria and day.'

"If I have been rightly, although not authentically, instructed, the reason for the response of the Sacred Congregation is this. The Decree *Tametsi* must indeed be interpreted strictly, but according to the mind of the Tridentine Fathers. But their mind in composing that Decree was not that parishes should be distinguished from missions among Catholics, but that the Catholic assemblies of the same city or region should be distinguished from the assemblies of heretics, because they did not wish heretics to be comprehended in this Decree where they had distinct assemblies and congregations; and this is the simple and true signification of the word Parish in this Decree according to the mind of the Tridentine Fathers."

The opinion is confirmed: a) From the authority of Lugo, who, speaking of the obligation of the Decree, expressly has: "when there is no parish in which publication is made, the obligation never began."

b) From the authority of the celebrated Feije, who has these words: "In ... the case in which the notion of parochiality does not exist, the Matrimony contracted without priest and witnesses must be called valid. ... We judge this to be so true that in a place of this kind not even the publication itself" (of the Decree) "is ever to be made." But for the notion of parochiality to exist, the celebrated Author requires "that the faithful be held by law itself to receive Easter Communion and other parochial rights either from a determinate missionary, or from at least one out of diverse missionaries set over diverse churches within a certain place" (I would add: or for certain families).

c) From the authority of the celebrated Perrone, who in a letter (July 1873), which a theologian friend testifies to me was read by him, embraces the same opinion.

d) From the authority of St. Alphonsus. See the things said n. 1606. b).

e) From the Response of the Sacred Congregation of Inquisition. - Namely, the Archbishop of Quebec had proposed the following doubt: "5° Is the Matrimony of two Catholics contracted between themselves alone, without any witness, valid?" The Sacred Congregation of Inquisition, November 17, 1835, responded: "It is valid for those inhabitants of the diocese of Quebec who use missionaries. For the Sacred Congregation de Propaganda Fide, in the year 1820, decreed: 'for the inhabitants of the

diocese of Quebec who use missionaries only, and as long as they do so, there is no place for the decree *Tametsi* of the Council of Trent, without any respect being had to greater or lesser distance'; from which words" (the Sacred Congregation of Inquisition continues) "it is clear that the aforesaid inhabitants can enter Marriages neither the Pastor standing by, nor any witnesses. ... But the contrary must be affirmed concerning those inhabitants who dwell in places where parishes have been constituted; for they can in no way be held immune from the law of the Tridentine Decree."

That the force of the argument sought from this Response may be clear, I posit a threefold sense which can be attributed to the word *parish* in the Tridentine decree. The first is that strict sense which I attribute to it. The second is that broad one which we attribute to our quasi-parishes, by which we understand a territory which, as regards external appearance, more or less approaches the likeness of a parish, having a church near which the priest ordinarily, or at least principally, resides, and limits designated by the Bishop. The third is that very broad one which excludes no place where there is some congregation of the faithful, and which is proper to simple Missions. - I said: I posit a threefold sense; for I do not admit that it is truly canonical; for there is no strictly canonical difference, but only a customary one, between a quasi-parish and a simple Mission, or in vain would rules be sought in the common law for distinguishing them. - Nor do the Sacred Congregations of the Holy Inquisition and of Propaganda Fide, in the cited Responses, admit that threefold sense; for they do not suppose that some middle thing exists between parishes properly so called and Missions.

**Objection I.** Where the reason is the same, the disposition of the law runs the same; but the reason for publishing the Decree outside parishes properly so called is the same as within them. Therefore. - The minor is proved from this, that from the publication of the Decree outside parishes properly so called no greater inconveniences are to be feared, nor is lesser utility to be hoped for, than from publication within them.

**Resp. 1°** I distinguish the major according to the things said n. 145. For by common law a parish and a quasi-parish cannot be called either correlatives, or equated, or connected, or contained, so that those things which are established concerning the former fully by right pertain to the latter. Thus, e.g., ordinary jurisdiction in the internal forum and the obligation of applying Mass for the people do not pertain to quasi-parishes.

**Resp. 2°** I deny the minor. For an identity of reason with regard to Missions most certainly does not exist; for when recourse to a priest would be impossible, Marriages would nevertheless be certainly valid. But very often, while the Missionary, at certain or uncertain times, passes successively through the parts of his Mission, it will be truly doubtful whether his absence is sufficiently prolonged or the distance sufficiently long that the betrothed be constituted in the impossibility of recurring to him, and accordingly whether the Matrimony entered without him in such circumstances is valid; while on the contrary in parishes properly so called the pastor habitually resides in the center of a small territory. Therefore there is a great disparity. - But as regards quasi-parishes, a twofold supposition can be made; for they either comprehend, or they do not comprehend, a Catholic population so stable and condensed, and such a number of priests, etc., that the normal exercise of the pastoral ministry can have place in them. In the former case let a parish properly so called be erected, not, if it shall so seem to the Holy See, with an irremovable pastor instituted, and the Decree will be able to be promulgated in a manner certainly valid. In the latter case recourse to a priest will indeed be easier than in a Mission; yet other inconveniences of a different kind will arise. 1) Frequently the Bishop

commits to a quasi-pastor a few Missions properly so called or stations, concerning which it will be possible to doubt whether they follow the whole or principal thing by way of accessory or part, or whether they are judged to subsist by themselves, and accordingly whether the publication of the Decree made in the quasi-parish is extended to them. 2° Not rarely it will be doubtful whether such or such a congregation of the faithful is sufficiently similar to a parish properly so called that it deserves to be numbered among quasi-parishes; accordingly the publication of the Decree made there will become doubtfully valid, and likewise all clandestine Marriages to be contracted in that place. - Therefore grave inconveniences follow almost necessarily and of themselves from the publication of the Decree outside parishes properly so called. Therefore parity of reason is rightly denied, and with stronger reason it can be denied that it is certainly proved, as it must be proved by him who wishes to extend a law, and that an irritating law, from case to case; for the liberty of Matrimony is in possession until the contrary is proved.

**Objection II.** There exist several dioceses in which no parish properly so called ever existed, and to which nevertheless, at the request of Bishops, or Bishops consulting for the solution of a doubt, the declaration of Benedict XIV was extended, or in which the Holy See declared that the impediment of clandestinity was established. Therefore the Holy See supposes that the Decree can have force outside parishes properly so called.

**Resp.** In order that this objection might have force, it would be necessary that in consultations or petitions of this kind it had been expressly declared that no true parish existed in those dioceses, and that, notwithstanding such knowledge, the Sacred Congregations had issued their rescripts. - But, at least generally, such a declaration is kept silent; indeed the words *Pastor*, *Parish*, are used by Bishops who request the extension of the Benedictine declaration, or affirm the fact of promulgation or of long observance of the Tridentine Decree; whence the Sacred Congregations, supposing the publication or observance to have been clothed with the conditions required by law, respond only according to the incomplete allegations. - Thus, for several years, many Bishops obtained the faculty of partially dispensing Pastors from the obligation of applying Mass for the people, because the Holy See was unaware that no parish existed in their dioceses, and therefore no priest bound by such obligation.

**Objection III.** The following doubt had been proposed by the Archbishop of Quebec: "Is the impediment of clandestinity to be extended to those places of the Canadian region in which a number of inhabitants has begun to exist, and which, when the abundance of inhabitants has been increased, after a few years will be united to Missions or Parishes in which the impediment of clandestinity is in force? - The Sacred Congregation de Propaganda Fide" (October 16, 1824), "judged that the matter should be determined by a general response in these words: Affirmatively: if there is question of Missions or Parishes already preexisting, publication of the Tridentine Decree is not indeed necessary, but can be expedient; - but if there is question of Missions or Parishes to be erected from the beginning, and those in places where the observance of the Decree is not in force, it is altogether to be published, the erection having been made, that the impediment of clandestinity may be in force." - And, on the same day, the same Sacred Congregation rescribed to the same Prelate: "As regards the shores of Lake Champlain, Marriages are not made void on account of the impediment of clandestinity, but are valid, until, Parishes or Missions having been constituted, the Decree *Tametsi* is

published." - Therefore the Decree can be validly published in Missions after erection has been made, in Missions constituted, namely at least in quasi-parishes, in the same way as in Parishes.

**Resp. 1°** Until the apparent or true contradiction is solved which exists between this twofold response given at the same time and the two decrees cited above, of which one reports and confirms the other, it will be permissible to conclude at most that contradictory decisions cancel one another, and that their authority is doubtful; but nothing follows thence against our thesis, which we establish only as truly and solidly probable.

**Resp. 2°** From the allegations made by the Archbishop, a trustworthy transcript of which I myself have read, it seems to be established that the Missions in the Response cited above signify Parishes having canonical existence, but not recognized by the temporal authority except as Missions, and commonly designated under this title. - For, lest he give offense to the British Government, which tried to arrogate to itself everything which pertained to the complete erection of Parishes, in the same way in which it does this in the pseudo-Church of England, the Archbishop was erecting Missions which gradually, with his favor, were acquiring the name of Parishes, so that, excepting forty Parishes erected formerly in the time of French domination, the rest had only canonical existence and were civilly designated by the name of Missions. Therefore.

After attentively reading the Instructions of the Sacred Congregation de Propaganda Fide of the year 1821, which I report p. LXV, and of the year 1822, which can be seen either in the periodical *Past.-Blatt fur Nordamerika*, or in the work *Notes on the Second Plenary Council of Baltimore*, by S. Smith, I have found nothing which destroys the probability of our opinion; for in each Instruction it is either said or supposed that the question is being treated (at least according to the mind of the Sacred Congregation) concerning places where parishes properly so called are present.

But whether the authority of Kenrick alone stands in the way of the intrinsic probability of our opinion, wiser men than I may see. It is certain that the most learned man erred when, assimilating quasi-parishes to parishes properly so called, he taught that the pastor of a quasi-parish is held, no otherwise than if he were set over a parish properly so called, to apply Mass for the people.

Moreover, what I have said, I have said only for this reason, that concerning this most grave question the Holy See may be consulted, not that anyone by his own motion should draw any practical conclusion from these things; for, as Perrone shrewdly observes in the letter of which I made mention above, "several things there" (i.e. in the regions of Missions) "must be judged from practice and from the custom received there. Nevertheless it would be best that questions of this kind be proposed by the Bishop at Rome, that an authentic response might be had concerning the manner of conducting oneself in regions of this kind which are entangled."

### **1608. - III. In which places of the United States and British America the Decree is observed.**

**A) As regards the United States:** 1° In the ecclesiastical Province of New Orleans<sup>5</sup> (or lower Louisiana) and of San Francisco,<sup>6</sup> everywhere it is judged to have force.

2° In the Province of Oregon<sup>1</sup> it is observed nowhere, and the promulgation made by many Missionaries, at the insistence of the Bishops of this Province, insofar as there was need, was annulled by the Holy See in the year 1850.

3° Nor is it observed in the Province of Baltimore (Florida not excepted)<sup>2</sup> or of Philadelphia.

4° Nor in the Province of New York<sup>3</sup> or of Boston.

5° Nor (as it seems) in the Province of Cincinnati, not even the city of Detroit<sup>4</sup> being excepted; nevertheless the diocese of Vincennes<sup>5</sup> is excepted.

6° Nor in the Province of St. Louis, Milwaukee, Santa Fe, Chicago,<sup>6</sup> a few places being excepted.

**B) As regards British America:** 1° It is observed in the Province of Quebec, in the dioceses of Quebec,<sup>7</sup> Montreal,<sup>7</sup> Three Rivers,<sup>7</sup> St. Hyacinth,<sup>8</sup> St. Germain of Rimouski,<sup>7</sup> and Sherbrooke;<sup>7</sup> but not in the diocese of Ottawa.<sup>9</sup>

2° In the Province of Halifax,<sup>10</sup> namely in the dioceses of Halifax, Arichat, Charlottetown, St. John New Brunswick,<sup>1</sup> Chatham,<sup>1</sup> it is observed nowhere. - As regards the island of Newfoundland, neither promulgation nor observance is established.

3° In the Province of Toronto, or Upper Canada, or Province of Ontario, namely in the diocese of Toronto,<sup>2</sup> Kingston, Hamilton, London, and in the Apostolic Vicariate of Sault Ste Marie, it is observed nowhere.

4° In the Province of St. Boniface (at the Red River, or in the Province of Manitoba) it seems to be observed.

**Note.** - Parishes exist:

1) In the United States, according to the declaration of the Second Plenary Council of Baltimore,<sup>3</sup> resting upon the declaration of the First Provincial Council of Baltimore, one only, namely in the city of New Orleans. Are there also others? The celebrated De Angelis affirms it. Let wiser men see. Concerning the Province of San Francisco, see Vol. I. (zeta) p. 471.

2) In British America:

a) In the greater part of the dioceses of Quebec, Montreal, Three Rivers, St. Germain of Rimouski, and Sherbrooke.

b) In the whole diocese of St. Hyacinth from the year 1872.

c) None exists in the diocese of Ottawa.

d) None exists, nor has any ever existed, in the ecclesiastical Province of Toronto.

e) In the ecclesiastical Province of Halifax there were erected by the Bishop of Quebec the Parishes: Port-Royal, 1684 (now in the diocese of Halifax); les Mines, 1698 (now in the same diocese); Louisbourg, 1726 (in the diocese of Arichat). But one hundred and ten years ago those French Parishes were utterly overthrown and were never restored, so that the universal persuasion prevails that no Parish exists in that whole Province, excepting the dioceses of Havre de Grace and St. John on the island of Newfoundland.

f) In the Province of St. Boniface there are three parishes. Concerning the canonical erection of two of them, however (St. Boniface and St. Francis Xavier), there is doubt.

Notes to n. 1608 - note sequence 1, United States: New Orleans and San Francisco (printed p. 269). (5) In the year 1824 the Holy See permitted slaves to be able to contract valid Matrimony before one trustworthy witness, who could refer testimony to the priest. It was judged that this concession, recorded in a Letter to the Bishop of New Orleans, could, by parity of reason, have been extended to the other States where there were slaves. (6) S. C. O., May 15, 1861 for the diocese

of San Francisco; December 5, 1861 for Monterey and Los Angeles; July 1 for Vallisp., Marriages previously entered clandestinely having been sanated. Notes to n. 1608 - note sequence 2, United States and British America observance list (printed p. 269). (1) It was observed by the first Bishops, who were French-Canadian; but because of difficulties occurring in practice it passed into desuetude. (2) Certainly it was never in use in the old English colonies. In Florida it seems certain that formerly it was observed. But Bishop Verot testified that the Decree, when in the year 1858 he assumed the administration of this region, was not observed, nor, as it seems, had been in force from the time when Spanish priests yielded place to Americans. Nor was its observance afterwards restored. (3) Certain places near Canada, in the dioceses of Burlington, Ogdensburg, and Buffalo, were formerly occupied by the French, and the Holy See responded to the Bishop of Quebec in the year 1821 that in those places the Decree ought not to be judged to oblige. (4) In Michigan it was probably formerly in use; but from the time when the Missions founded by the French were dispersed, it is not observed. (5) As was rescribed in the name of the Most Reverend Ordinary to me when I inquired. (6) It is observed: in the diocese of St. Louis in the city itself and places first occupied by the French; in the diocese of Alton in Kaskaskia, Cahokia, French Village, and Prairie du Rocher. (7) At least in the greater part of the diocese, namely in parishes properly so called. As regards the few places which remain outside canonical parishes, some hesitation seems to exist. (8) It certainly is in force in the whole diocese, which in the year 1872 was wholly divided into Parishes. (9) It is observed nowhere, at least from the time of the erection of the diocese (1848). Formerly it seems to have been observed in the part which pertained to the diocese of Montreal. (10) Formerly it was observed in a few colonies of the French, but for forty or fifty years, namely from the time when those regions were separated from the diocese of Quebec, certainly nowhere was it in use. Notes to n. 1608 - note sequence 3, British America, Toronto, and St. Boniface (printed p. 270). (1) It was published around the year 1825; but it has never been observed from that time. (2) Around the year 1840 the Bishop of Kingston (whose diocese contained the present Province of Toronto and half of the diocese of Ottawa) took care that the decree be published throughout his whole diocese; in fact it was published and observed in some places. But when the Fathers of the Provincial Council of Quebec (1852) doubted the validity of that promulgation, as being made where there was no parish properly so called, they asked the Sacred Congregation de Propaganda that that publication, insofar as there was need, be confirmed; but a response was given, the sense of which, sufficiently obscure, seemed to the Fathers of Quebec to declare that promulgation outside canonical Parishes could not be valid. Thence the decree Tametsi was judged to have no force in the aforesaid region, and from that time such has been the uniform practice. (3) a. 108.

**1609. - IV.** Heretics in North America are not bound by the Decree, and consequently neither are Catholics contracting with them.<sup>1</sup>

Notes to nn. 1609-1611, heretics and Feije's place list (printed p. 270). (1) Kenr. XXI. 186. (2) Ib. 192. 197. (3) De Imp. n. 320 sq.

**1610. - V.** Although they contract validly, nevertheless those sin gravely who in places where the Tridentine Decree is not judged to have been published, the work of the priest being neglected, contract either between themselves alone, or before the civil magistrate, or before a little heretical minister; but in the case in which they have contracted before a little minister, the sacred rites afterwards, as was said n. 1598. q. 5°. Resp. 3°, cannot be supplied, unless they have given signs of true penitence. Yet never, whether they have contracted between themselves alone, or before a civil magistrate, or before a little minister, will it be lawful to receive, much less to exact, consent anew, since this would favor the error as if the contract had been invalid.

"Witnesses also are to be employed; but their omission, if there is need to conceal the nuptials, seems no fault."<sup>2</sup>

"Those also are excused" who "contract before the magistrate, that it may be publicly established" concerning the Matrimony, "whenever there is no supply of a priest, nor will there soon be."

**1611. - VI.** Because of the multitude of those who immigrate into these regions from all parts of the world, I have judged it useful here to append a list of the principal places in which, according to the celebrated Feije,<sup>3</sup> the Tridentine Decree must be held to have been promulgated or not promulgated.

**A)** All clandestine Marriages, i.e. whether of Catholics, or of heretics, or mixed, are invalid in Spain (at Gibraltar, however, Marriages of heretics and mixed Marriages are valid), Portugal, Italy and adjacent Islands, Germany (excepting those to be excepted below), present-day Belgium, the Grand Duchy of Luxembourg, the ecclesiastical Province of Goa, the Republic of Mexico, and the regions of Central and South America, excepting those to be indicated under C) 12°. Finally, in all even present-day colonies of the Portuguese or Spaniards.

The same must be said of France, as it existed before the war of 1870. At Strasbourg, however, clandestine Marriages of heretics and mixed Marriages are valid.

**B)** In various regions of northern Europe, which in the year 1564, in which the Council of Trent was confirmed, had already fallen away from the faith, the Decree concerning clandestinity does not oblige. Thus the matter stands in England, Scotland, Denmark, Norway, Sweden (not to be confused with Swabia, as some confuse it), and in the greater part of northern Germany. The same is commonly handed down concerning the primitive provinces of Prussia and concerning Saxony.

In some Swiss cantons, as Zurich, it does not oblige. - The same holds, as regards Bavaria, in the non-Catholic places of Onoldina and Pappenheim, and in the district of the once imperial cities of Nuremberg and Weissenburg. - In Russia perhaps one or another diocese is not obligated. - In some more remote parts of Turkey it does not seem to be in force. - In some parishes of Persia and of other regions in that part of the East, even Catholic ones, no publication or observance of the Decree has had place. - The same must be said of Greece. - In China, Tonkin, and Cochinchina it is not in force, with only a few places excepted. In Japan, now, nowhere. It is in force in Julia Caesarea, or in Algeria, but not in Abyssinia, and almost all other regions of Africa.

**C)** From the declaration of Benedict XIV for Holland<sup>1</sup> and its extension, or from other Pontifical acts, clandestine Marriages are valid, whether of heretics between themselves or mixed, but not (excepting those enumerated under B) of Catholics between themselves: 1° In all the Netherlands,<sup>3</sup> excepting Limburg, where nevertheless they are valid as regards the inhabitants of the city of Maastricht and the suburb of St. Peter, and likewise excepting certain places of the dioceses of Utrecht and Bois-le-Duc.<sup>4</sup>

2° At Strasbourg in Alsace.

3° In all Ireland. - **Note.** From the Directory of the year 1851, approved by all the Bishops of Ireland, Catholics contracting among themselves are bound by the Decree, and indeed from January 1, 1828, everywhere. Thus Feije.<sup>1</sup>

4° In Silesia subject to Prussia and in the Duchy of Cleves, and, from March 25, 1830 inclusive, in the dioceses of Cologne, Trier, Paderborn, and Munster, with a faculty given to the Bishops for revalidating Marriages contracted before this day.

5° In the Kingdom of Wurttemberg the Benedictine declaration was certainly extended to the city of Ulm. Concerning other places also of the ecclesiastical Province of the Upper Rhine, there can be doubt. See Feije.<sup>2</sup>

6° In Russia and in the whole part of Poland subject to Russia.

7° In Hungary and Transylvania, within the limits which they had in the year 1841.

8° In Turkey, Moldavia, and Wallachia; in Serbia, Albania, Bulgaria, Turkish Bosnia.

9° In Persia and other regions in that part of the East.

10° In Greece.

11° In the Vicariate of Pondicherry and on the whole Malabar coast, in the Apostolic Vicariates of Bombay and Calcutta, and in the Indian possessions (with only some places excepted as regards Catholics) of the English and French. Likewise in Algeria.

12° In the islands and other places of Central or South America formerly existing under the dominion of Catholics, but now subject to the dominion of the English, Dutch, and Danes.

Notes to n. 1611, Feije's list: Europe and pontifical extensions (printed p. 271). (1) Collect. p. 473. n. 998. (2) Conc. Pl. Balt. II. p. 314. XV. (3) See nevertheless Feije, de Imped. n. 320. (1). (4) Ib.

**1612. Questions. - Quaer.** 1° Is the Matrimony valid of those - **a)** who from a place where the Tridentine law obliges pass into a place where it does not oblige, and there contract clandestinely; **b)** who, from a place in which it does not oblige, passing on, contract secretly in a place in which likewise it does not oblige; **c)** who, from a place in which it does not oblige, passing on, contract secretly in another in which it does oblige?

For the solution of the question the following things must be noted beforehand:

- 1) A party exempt from the Decree communicates his privilege to the other party.<sup>1</sup>
- 2) Place governs the act,<sup>2</sup> except in cases excepted by law.
- 3) The exception of fraud, in the case in which a domicile or quasi-domicile has not previously been acquired. See n. 116 at the end, and n. 1614. q. 1°. Resp. ... 2°.
- 4) The sufficiency of a domicile or quasi-domicile acquired by at least one party.
- 5) The sufficiency of the quality of wanderer existing in at least one party. - These things having been noted beforehand:

**Resp.** 1° A wanderer, wherever he is here and now, contracts clandestinely validly with any person whatever, if in the place in which he contracts the Tridentine law does not oblige at all. What if it does not oblige heretics alone there? He contracts clandestinely validly if he himself is a heretic. But if he himself is a Catholic, but the other party heretical, he contracts clandestinely validly when the other party is either a wanderer, or has a domicile or quasi-domicile in the place, or in his own place, from which he departed, was not held by the Tridentine law. These things concern wanderers; in the following there is question only of those having somewhere a domicile or quasi-domicile.

**Resp.** 2° Those domiciled in a place in which each is bound by the Tridentine law, if they pass to a place in which this law is not in force at all, and in this place contract clandestinely, do this invalidly, unless one or the other shall previously have acquired a domicile or quasi-domicile there.<sup>1</sup> - Therefore a man and woman, whether Catholics or non-Catholics, domiciled in Belgium, France, Italy, if they pass to New York and there clandestinely contract Matrimony with one another before at least one of them has acquired domicile or quasi-domicile there, contract invalidly. But what if in the place in which they contract heretics alone are not bound, and one or both of the contracting parties is heretical? The solution is the same. Therefore a man and woman, whether both or one of them is

heretical, domiciled in Belgium, etc., if they pass to Quebec and there, before domicile or quasi-domicile has been contracted by the heretical party, contract Matrimony clandestinely with one another, contract invalidly. - Others say otherwise, who apply to each case the principle: place governs the act; but then only when the contracting parties have not passed into a place of this kind in fraud of the law.<sup>2</sup> (epsilon), p. 396.

**Resp. 3°** Those domiciled in a place in which the Tridentine law does not oblige at all, and contracting in another where it also does not oblige, contract clandestinely validly, even if neither has acquired a domicile or quasi-domicile there. A man, e.g., and a woman, whether Catholics or non-Catholics, domiciled in England, pass to Baltimore and there, neither having acquired domicile or quasi-domicile, contract clandestinely. They do this validly. It is the same if only one or the other is from a place in which the Tridentine law does not oblige at all; as if, passing to Baltimore, one indeed has domicile or quasi-domicile in England, but the other in Belgium. For the principle must be applied that the exemption of one party is communicated to the other on account of the individuality of the contract.

The solution is the same if in each place heretics alone are free, and either each party or one or the other party is heretical. Parties, e.g., non-Catholic, or one Catholic and the other heretical, domiciled in Ireland, pass to Quebec and there contract in the aforesaid manner.

**Resp. 4°** Those domiciled in a place in which the Tridentine law does not oblige, and contracting in another in which it does oblige, do this invalidly clandestinely, even if they have not yet acquired domicile or quasi-domicile there. A man, for instance, and a woman, domiciled in Baltimore, whether Catholics or non-Catholics, and passing into Belgium, invalidly contract clandestinely there, even though domicile or quasi-domicile has not yet been acquired by one or the other.

The solution is the same if each or one or the other party is heretical, and in the place from which they departed heretics alone are not bound by the Tridentine law, but they are bound by it in the place into which they have passed and in which they contract. A non-Catholic, e.g., domiciled in Ireland, passing into France, and there contracting clandestinely, contracts invalidly.

**Quaer. 2°** "When there is question of a Matrimony to be contracted or contracted in places in which heretics are not bound by the Tridentine decree, can the following five classes be comprehended under the name of heretic: 1° Those who, having been baptized Catholics, from childhood not yet seven years old are educated in heresy and profess heresy; 2° Those who are educated not so much in heresy as by heretics, namely having received no, or scarcely any, instruction in heretical doctrine, and not having frequented worship, although sometimes having participated; 3° Those who, while still children, falling into the hands of heretics, are joined to a heretical sect; 4° Apostates passing from the Catholic Church to a heretical sect; 5° Those who, born and baptized by heretics, have grown up without having emitted any solemn profession of heresy, and as persons, as it were, of no religion, etc.?"

**Resp.** The response given by the Sacred Congregation of the Holy Office in the year 1859 to the Bishop of Haarlem in Holland has it thus: "For the effect of Matrimony, the aforementioned are comprehended in ... the Declaration of Benedict XIV."

**Quaer. 3°** Does Matrimony celebrated secretly in places where the Decree of the Council of Trent is in force have the force of betrothals?

**Resp. 1°** Affirmatively, according to the common opinion, when Matrimony has been contracted in this way between two impubes, or one impubes and the other pubes. The reason is that by the ancient law Marriages of impubes contracted secretly had the force of betrothals, and this force has not been taken away from them by the Tridentine.<sup>1</sup>

**Resp. 2°** "Concerning Marriages between puberes entered in this way, it is now certain that they do not have the force of betrothals. Thus, as Benedict XIV reports, the Sacred Congregation of the Council has often declared. - The chief and pressing reason is that Trent not only renders those contracting secretly incapable of contracting in this way, but besides decrees acts of this kind to be absolutely void and null; and this proceeds even if an oath has been added to them."<sup>2</sup>

**Resp. 3°** "Notwithstanding the things said, nevertheless Marriages of this kind can have a threefold effect: a) From them there arises an impediment of public honesty.<sup>3</sup> b) If one contracting clandestinely has had copula, and cannot repair the damage thus inflicted otherwise, he is held to marry her, not by reason of the contract, but by reason of justice. c) If the contracting parties in defect of Matrimony expressly intended to oblige themselves to betrothals, from that contract there would even arise a sponsalial obligation, because Trent does not oppose a contract of betrothal, although it follows or is connected with a null Matrimony." Concerning civil Matrimony see n. 1593. q. 4°.

**Quaer. 4°** Are clandestine Marriages of heretics judged valid where the Tridentine law is in force?

**Resp.** From the letters of Pius VII to the Archbishop of Mainz, October 8, 1803, and to the Vicar of the diocese of Trier, April 23, 1817, "it is drawn that judgment depends on the diverse circumstances of the case,<sup>4</sup> according to the variety of times, places, and persons; and thence it is discerned: 1. why nothing generally has been defined concerning this matter; 2. why (according to the diversity of circumstances) it was resolved sometimes in favor of validity, but sometimes in favor of nullity." Thus the anonymous Annotations to Gury.<sup>1</sup>

**Quaer. 5°** Is the Decree of Trent judged to be in force in a Church recently formed among heretics or infidels?

**Resp.** Affirmatively, if the Tridentine decree has been published in those parishes. But although by ordinary law this Decree must be promulgated, if anywhere it has not been published, nevertheless sometimes, by reason of special difficulty, the founders of a new Church could defer the promulgation of this Decree, namely when in a great province priests are so rare that they cannot at times assist at Marriages. But it would be more advisable in a similar case to have recourse to the Apostolic See, whose office it is to judge what is more expedient in so grave a matter.

Notes to n. 1612 - note sequence 1, preliminary rules for place and domicile (printed p. 271). (1) De Imp. n. 325. (2) Ib. n. 329. Notes to n. 1612 - note sequence 2, domicile and clandestine contracts in changing places (printed p. 272). (1) L. VI. 1080. (2) Apud Feije, de Imp. n. 338. Acta, T. VII. p. 557. Notes to n. 1612 - note sequence 3, effects of clandestine contracts and betrothals (printed pp. 272-273). (1) L. VI. 841. (2) Heiss, de Matr. § 44. S. Alph. L. VI. 841. 1079. (3) According to the opinion more true to St. Alphonsus (above n. 1593. q. 3°. Except: 3°.) (4) Heiss, de Matr. § 44. Notes to n. 1612 - note sequence 4, clandestine marriages of heretics (printed p. 273). (1) T. II. n. 840 (). Ed. Rom. 1873. Appendix annotation (iota), to n. 1612. R. 2°. p. 272, col. 1. Therefore "in practice," says Feije, (1) "the Matrimony could not be held as invalid without recourse to the Apostolic See." - Nevertheless I cannot fail to say that the opinion which denies validity seems to me much more probable. Namely I adhere to the opinion which holds the Tridentine law as both territorial and personal at once, as the Instruction to the Archbishop of San Francisco in California has it, given by S. C. de P. F. from the resolution of the Holy Office on Feria IV, December 14, 1859, and kindly communicated to me. Behold the words of the said

resolution: "Once promulgation has been made, and its observance remaining, the law affects the territory, so that, adequately speaking, it is local and personal, as is confessed by all; insofar as local, it affects the territory and obliges those who are to be joined there in Matrimony; but insofar as personal, it obliges those who, having domicile or quasi-domicile in a place where the Tridentine Decree has been published and is in force, would wish to contract in another place where it does not urge." These things also seem to be confirmed from the New York case, January 25, 1873.(2) > Notes to appendix annotation - note sequence 4. > > 1 De Imp., n. 338. | 2 Acta, T. VII. p. 545.

## **SECTION II. ON THE ASSISTANCE OF THE PASTOR.**

**1°** What kind of Pastor must assist; **2°** in what manner he must assist.

### **I. WHAT KIND OF PASTOR MUST ASSIST.**

**1613. - I.** "That Pastor alone can validly assist at Matrimony who is the proper Pastor of one or the other of the contracting parties, and therefore who has jurisdiction over them, or at least over one of them; such also are all who come under the name of Ordinary, as the Bishop, Vicar General, and, the See being vacant, the Capitular or, among us, the Administrator. For it is proved from the Council of Trent that only the Pastor can validly assist at Matrimony. But that Pastor is to be understood in this way we have ascertained from several Declarations of the Sacred Congregation of the Council of Trent.

**II.** The jurisdiction of the Pastor is constituted by the habitual domicile, or quasi-domicile, of the contracting parties, or of one or the other of them, in his parish, but not by domicile of origin, nor by mere habitation for a short time. It is drawn from Declarations of the Sacred Congregation and Benedict XIV, etc. ... Thus the Theologians by unanimous consent. - Nor can domicile be supplied by simple enrollment among the citizens of a place, whatever the civil laws may establish concerning this." Thus the Sacred Congregation of the Council, August 28, 1864.

Notes to nn. 1613-1616 - note sequence 1. (1) Cf. Feije, De Imp. n. 209. Notes to nn. 1613-1616 - note sequence 2. (1) n. 220 sq. Gury, 1873. T. II. n. 846 (). Acta, T. VII. p. 555 (1). (2) Feije, n. 229. (3) Gury, 1873. T. II. n. 838 () and S. Alph. L. VI. 1086 at the end. (4) Ben. XIV. Inst. 33. n. 11. (5) Anal. J. P. Ser. 4. col. 2258. n. 19. Notes to nn. 1613-1616 - note sequence 3. (1) Ben. XIV. Inst. 33. n. 15. (2) Ib. n. 16. (3) Cf. Feije, de Imp. n. 230 sq. (4) Inst. 33. n. 10. (5) De Matr. L. III. D. 25. n. 3. (6) Ib. n. 1. Notes to nn. 1613-1616 - note sequence 4. (1) De Matr. L. III. D. 25. n. 4. (2) L. VI. 1089. Murray, De imp. n. 387. (3) L. VI. 1082-1084. (4) Thus the opinion more pleasing to St. Alphonsus. Ib. n. 1083. Notes to nn. 1613-1616 - note sequence 5. (1) L. VI. 1088. Acta, T. VIII. p. 667. (2) De Syn. L. VIII. c. XII. and L. XIII. c. XXIII. (3) De Syn. L. XIII. c. XXIII. n. 1. (4) Ib. (5) L. VI. 1092. (6) S. R. C. August 31, 1872. Gard. App. IV. 5503.

**1614. Questions. - Quaer.** **1°** What time is required that some stranger can contract Matrimony in a place not his own?

**Resp. 1°** It is certain among all that no time is required for him who has contracted a true domicile somewhere. But true domicile is acquired by one's own will through two things joined together at the same time, namely through the fact of commoration and the intention of remaining always. The fact of commoration is clear to the eyes; but as regards the intention, three hypotheses must be distinguished. For either the intention was declared by words, or was manifested by deeds (such, for example, are bringing one's family to the place in which one lives; transferring the greater part of one's fortune there; acquiring goods there; constructing a family burial-place; habitation for ten years, etc.), or no sufficient argument is drawn either from words or from deeds, and then the matter is doubtful. But domicile is never contracted if either by words or by deeds, or by conjectures and circumstances, the intention of remaining perpetually is excluded.

I said: by one's own will; for by disposition of law: **a)** he who is not his own master retains the domicile of his father or tutor until, having become his own master, he renounces that domicile either by words or by deeds; **b)** a wife retains the domicile of her deceased husband until she renounces it, unless, however, in the case of legitimate separation, she had already done this before the death of her husband.

**Resp. 2°** If there is question of quasi-domicile, from the Response of the Sacred Congregation of the Inquisition to the postulata of the Plenary Synod of Maynooth ((K), p. 412), that opinion is certain which requires habitation through the greater, and therefore through at least the whole half, part of a year, or at least with the intention of remaining in the place for so long; so that, if either of these is present, Matrimony can be contracted before the pastor of that place, and indeed in the latter case from the first moment of commoration. But quasi-domicile, in this opinion, is acquired even if the commoration takes place for the sole end of entering Matrimony and of departing after the greater or half part of the year has been spent in the place, and although there is question of a rural parish, in which someone remains for the sake of recreation or rustication, provided he dwells in the place after the manner of citizens or true inhabitants, and not after the manner of wanderers or travelers. According to this opinion the decrees of the Holy See by which the rural Pastor is excluded do not regard except that stay which is neither of the greater or half part of the year, nor with at least the intention of this. - But the intention of remaining in the place for an entire half-year, if nothing has been expressly declared, is drawn from circumstances, of which the chief one will be commoration of at least one month (thirty days) in that place. See the arguments apud Feije.

Hence for practice you conclude:

1° Two domiciles can even be had, by dwelling equally or almost equally, after the manner of true domicile, under two parishes, e.g. in winter in the city, in summer in the country; a domicile and quasi-domicile can also be had at the same time. In a founded doubt concerning domicile or quasi-domicile, either let the license of an undoubted Ordinary or pastor be obtained, or let recourse be had to the Ordinary for the norm of acting. - Diocesan statutes as regards the time of commoration in a place required for contracting Matrimony affect the liceity, but not the validity, of the contract.

2° The Constitution of Urban VIII, of which n. 116 at the end, is to be understood concerning him who has contracted no domicile in the place to which he approaches for the sake of contracting Matrimony; but not concerning him who, so that he may be able to enter Matrimony somewhere, contracts domicile there; for this person uses his own right, namely the right acquired by domicile.

3° They acquire quasi-domicile in a certain place, and as regards the Sacraments (Order excepted, as is clear from the things said n. 1519. q. 1°. Resp. 3°) become subjects: **a)** magistrates (e.g. the Governor of a State), judges, professors or students of some faculty; **b)** those who dwell somewhere so that they may convert themselves to the Catholic Religion and receive the Sacraments; **c)** those who are detained in prison for a notable time - not for custody only, namely until their case is determined by the sentence of a judge - but so that they may undergo the penalty established by the judge; **d)** male servants, maidservants, young men who dwell in a seminary or college, girls who dwell in a monastery or another house for the sake of education; **e)** exposed children, and generally boys and girls who have been committed by the administrators of a hospice or foundling hospital to others for the sake of education or service, have quasi-domicile in the place where those to whom they have been committed are staying; **f)** soldiers where they are in garrisons or stations or camps,

but not where they are on expedition. - Nevertheless all these can validly contract also before the Pastor of the place where they have true domicile; yes, girls dwelling for the sake of education in a monastery or conservatory who wish to enter Matrimony are to be sent back to the paternal house, as both the reason of decorum and the decree of the Sacred Congregation of Bishops and Regulars, October 8, 1723, related by Benedict XIV, show must be done. The same assuredly must be observed for young men dwelling for the sake of education in a seminary, college, or other house. (43) p. 427.

**Note.** - Matrimony is more fittingly contracted before the Pastor of the bride.

**Quaer.** 2° Can wanderers contract before any Pastor whatever?

**To be noted beforehand.** - Benedict XIV defines a wanderer as one "who, having left his domicile, seeks a residence in foreign lands"; this is to be understood both if he has determined where he is going to establish his residence, and if he has not yet determined; for still in each case he equally lacks domicile, as Sanchez notes. Add that it is not necessary that he seek a residence; for equally, indeed with stronger reason, he will be called a wanderer who nowhere has, or wishes to have, a fixed and constant residence, as the same Sanchez observes. Besides, as regards the present matter, for someone to be called a wanderer in relation to a parish, there is not even need that he seek a domicile in some remote or foreign region; but generally it is enough that, the prior parish having been left, he has not yet fixed his residence in another, because then he is truly without a parish, as one who has lost the former and not yet acquired another. Therefore: 1° he who, having left a parish, has not yet found the house in which he is to dwell, and meanwhile lodges somewhere in some place, is a wanderer; 2° even if he has found a house in which he will dwell, but nevertheless lodges elsewhere while the house found is being freed from its former inhabitant, he likewise is a wanderer as regards the parish; 3° so also, if he has come into a city and has not yet determined in what part he will dwell, he is numbered among wanderers or those lacking a parish. Sanchez. These things having been noted beforehand:

**Resp.** Affirmatively, because they do not have a proper Pastor - and this whether both contracting parties are wanderers or only one, since the other can use the privilege of this one. Thus St. Alphonsus; who nevertheless, the authors whom he cites having been inspected, seems to be understood according to the opinion (which seems certain today) teaching that they contract validly before any pastor, provided this man is the pastor of the place in which they contract.

**Quaer.** 3° Can a suspended, irregular, excommunicated, or schismatic Pastor validly assist at Matrimony?

**Resp.** Negatively, if he has lost the title, as a heretic excommunicated by name; otherwise, if only jurisdiction: for assistance is not an act of jurisdiction, but of a qualified witness. But a most grave cause is required for asking assistance from a Pastor excommunicated by name, suspended, or interdicted.

**Note.** - From a pastor bound by censure there must be carefully distinguished, especially among us, a pastor whose faculties have been taken away; for this man would even assist invalidly.

**Quaer.** 4° Does a priest whom people falsely think to be Pastor assist validly?

**Resp.** Affirmatively, if he has a colored title and is reputed Pastor from common error. The reason is that then the Church supplies jurisdiction on account of the common good. - Thus all. Thus also it

seems that it must probably be said if only common error is present without a colored title, for the same reason, as was said concerning jurisdiction in the internal forum, n. 1394. q. 3°. Resp. 2°.

**Quaer.** 5° Does any priest whatever validly assist at Matrimony with the presumed license of the Pastor?

**Resp.** Negatively, because it is not true license; tacit license, however, suffices; or even one extorted by fear or deceit, unless the deceit were concerning the final cause, since delegation does not exist without the will of the delegating person.

**Quaer.** 6° Can a Vicar validly assist at Matrimony, the delegation of the Pastor being excluded?

**Resp.** 1° Affirmatively, if the Vicar supplies the place of the deceased or absent Pastor; for then he is certainly delegated to the universality of causes; indeed then he can also subdelegate another; for he who is delegated, as it were by office, to the universality of causes, can subdelegate another to a particular case. Cf. n. 149. 4°; 150. 2°.

**Resp.** 2° But if the Vicar is the cooperator of a present Pastor, the difficulty is greater, nor can the matter be defined by a general and absolute rule. Wherefore attend to the statutes or custom of dioceses. For the Bishop, constituting Vicars, assistants of the Pastor, can either confer on them immediately the right of assisting at Marriages, or leave that right to be committed to them from the delegation of the Pastor.

**Note.** - It is clear of itself that the things which have been said from n. 1613, and which will be said in nn. 1615 and 1616, have force only for places where the Decree is in force.

Appendix annotation (Sigma), to n. 1614. q. 1°. R. 2°. p. 274. col. 1; p. 398. col. 1. under 4°. Responses of the Sacred Congregation of the Holy Roman and Universal Inquisition to the postulates of the Synod of Maynooth, Wednesday, 2 May 1877. To the first postulate concerning the proper Pastor of those contracting Matrimony: "The Eminent and Most Reverend Lords decreed to the first postulate: "Let it be answered: that the Pastor of the domicile or quasi-domicile of the contracting parties is to be held as the proper Pastor. "But for discerning quasi-domicile, the rule handed down in the Instruction of Wednesday, the 7th day of June 1867, to be transmitted to the Bishops of Ireland, is to be attended to. Instruction. "For the Bishops of England and the Federated States of America, Wednesday, the 7th day of June 1867. "For constituting quasi-domicile, which in these cases must necessarily be acquired, two things are required together: namely, habitation in that place where Matrimony is contracted, and the intention of remaining there for the greater part of the year. Wherefore, if it is legitimately established that either both or one or the other of the spouses has the intention of remaining for the greater part of the year, from that first day on which these two things concur together, namely both an intention of this kind and actual habitation, it is to be judged that quasi-domicile was acquired and that the Matrimony which is consequently contracted is valid. "Nevertheless, if the aforesaid intention is not established, recourse must be had to the indications which are at hand and which produce moral certainty. But in an occult and internal matter it is difficult to have indications of this kind which make the judge secure; hence it is that the rule confirmed by the Supreme Pontiff Benedict XIV must especially be applied, namely that it be inspected whether before Matrimony, for the space of at least one month, either both or one or the other dwelt in the place of Matrimony. But if it is found that this was done, from a presumption of law it must be judged that the intention of remaining for the greater part of the year existed, and that domicile was acquired, and consequently that the Matrimony is valid. But if this presumption of law, which arises from monthly habitation, is destroyed by contrary proofs, by which it is certainly and clearly established that the aforesaid intention existed in no way, then it is manifest that a contrary judgment must indeed be rendered, because presumption must yield to truth. Moreover, it is also manifest that actual habitation is unfit for producing quasi-domicile if someone stays in that region after the manner of a vagus and itinerant, and not as one truly and properly dwelling, namely in the manner in which the rest are accustomed, who in the same place have a true and properly so-called domicile." To the third postulate concerning the sense of the clause of the Faculties: outside the limits of the diocese, it was answered: "The words of the related formula are to be understood in this way: that the Bishop can use the faculties toward his own subjects who are actually, at the time when they are to be dispensed, staying in the proper diocese, although the Bishop himself may be outside his diocese."

Appendix annotation (43), to n. 1614. q. 1°. Resp. ... 3°. p. 275. col. 1. What under Resp. ... 3°. ... c), p. 274. col. 2, I say, with Murray, De imp., n. 381, I understand as something commonly occurring, or joined to presumption, namely that those detained for punishment have domicile or quasi-domicile in the prison, since they are to be detained there perpetually or for the greater part of the year; but those detained for custody do not even have quasi-domicile in prison, since they are to be detained only for a few months or perhaps weeks. Wherefore, if you suppose someone to be detained for punishment only for a month, or for custody for a year, I judge that the contrary is to be resolved with Murray, ib.; for presumption yields to truth. "Not a few, especially from the wealthier, merchants, jurisconsults, etc., who inhabit cities or large towns, besides a house in the city, have another in the country, in a different parish, spending the day in the former and the night in the latter. What is to be said of such persons? It would seem that they have two domiciles, for the intention of inhabiting in this way perpetually is supposed; for equally, at least morally, ... they dwell in each parish. I judge that a distinction must be made. 1°. If Caius lives permanently in the country, so that not only does he pass the night there, but also, his family having been transferred there, takes supper, receives friends as guests, etc., while he uses the city house only as a certain office with his ministers, I judge that not the city house, but his villa, 'his country-house,' must be held as his domicile. For in this alone can he be said truly to inhabit; but in the other he only transacts his business. 2°. But if, on the contrary, with the family, etc., remaining in the city house, Caius passes the night in his villa so that he may sleep more quietly and healthily, seeking it late in the evening and departing from it in the morning, I judge that his city house is his domicile and not the villa. 3°. Other middle cases, and more or less doubtful ones, are to be decided from the particular circumstances, or by invoking the due authority." - Ib. n. 383.

## II. IN WHAT MANNER THE PASTOR MUST ASSIST.

**1615. Principles. - I.** It is required, and suffices for the validity of Matrimony, that the Pastor be morally present, as a witness who must give testimony concerning a thing completed. The reason is that the Pastor is employed here as a principal witness deputed by the Church, as is established from Benedict XIV.

**II.** It is required that the Pastor be addressed and warned concerning that which the contracting parties wish to do, or that he be employed by them. The reason is that otherwise the Pastor is not judged to advert to that which is done, nor can he judge that those who act wish to act seriously. Nevertheless it is not required that he have been expressly called for this. For it would suffice if, by chance, he were present there, or had been summoned under another pretext, provided the contracting parties, while they express consent, offer some sign, e.g. by the eyes, by the tone of voice, by a nod, etc., by which they indicate to the Pastor that they wish to have him as a witness. This is clear from the Declaration of the Sacred Congregation apud Benedict XIV.

Hence: 1° the merely physical presence of the Pastor does not suffice, since he must advert to that which is done: whence one drunk, sleeping, insane, cannot assist at Matrimony.

2° It is not necessary that he see the contracting parties, provided he hears them clearly expressing their consent: accordingly a blind man can assist at Matrimony; not, however, one blind and deaf.

3° The Matrimony is valid in the case in which the Pastor, wishing to resist, lest he be able to be held as a witness, closes his eyes, stops his ears, or shouts, and tries to flee, namely so that he may render the act void because he can afterwards affirm that he saw or heard nothing. But already several times the Sacred Congregation has responded this, which is had also in the response to the Bishop of Gien in the year 1581, namely that the Matrimony is invalid if the pastor neither saw nor heard the things which were being done, unless however he had affected not to understand.

**1616. Questions. - Quaer.** 1° Does a Pastor compelled by force and fear validly assist?

**Resp.** Affirmatively, because by law it suffices that he be present and know what is being done, whether willingly or unwillingly; it is manifest from the Declaration of the Sacred Congregation. - See St. Alphonsus.

**Quaer.** 2° In what place can the Pastor, or the priest deputed by him, assist at Matrimony?

**Resp.** He can validly assist everywhere, even outside the parish, yes even outside the diocese. But in order that he may assist licitly in a church not his own, he needs the consent of its rector. - The Roman Ritual exhorts that nuptials be made in a church. "Nevertheless it is not forbidden ... to Ordinaries, if no danger threatens and praiseworthy causes concur, that they sometimes permit, according to their prudence, it to be celebrated" (with nuptial Mass also) "in private oratories in which the Sacrifice can be offered."

#### POINT XII. ON THE IMPEDIMENT OF IMPOTENCE.

**1617.** - Impotence for undertaking matrimonial offices, or incapacity for carnal copula, of itself apt for generation, is distinguished in a manifold way, namely:

1° **Certain or doubtful**, according as it is or is not manifest.

2° **Antecedent or consequent**, according as it precedes Matrimony or follows it.

3° **Temporal or perpetual**, according as it can or cannot be removed by lapse of time or by natural means (i.e. without a miracle) and licit means (i.e. without sin and danger of death).

4° **Natural or accidental**, according as it arises from an intrinsic defect, or from an extrinsic cause, e.g. malefice, disease, a violent act.

5° **Absolute or respective**, according as it exists between a man and all women, or between a man and some determinate woman; or vice versa.

Notes to nn. 1617-1622 - note sequence 1. (1) L. VI. 1095. (2) Ib. (3) Ib. (4) For the external forum see Acta, T. 12. p. 630. (1). Notes to nn. 1617-1622 - note sequence 2. (1) L. VI. 1102. 1103. (2) Ib. 1104. (3) Ib. 1104. (4) Ib. 1095. (5) Gousset. n. 791. (6) Heiss, de Matr. § 43. II. Notes to nn. 1617-1622 - note sequence 3. (1) T. I. p. 15 sq. (2) Schmalzg. L. V. T. XVII. n. 20. (3) Sess. 24. c. 6. de Ref. Matr. (4) L. VI. 1107. (5) T. I. pp. 23. 24. (6) L. VI. 1107. N. Rev. Th. T. 12. p. 392 sq. Notes to nn. 1617-1622 - note sequence 4. (1) L. VI. 1107. (2) Ib. 1032. (3) Ib. 1032. (4) T. I. p. 24.

**1618. Principles.** - **I.** Antecedent and perpetual impotence, whether absolute or relative, renders Matrimony invalid by natural law; relative impotence, however, only with respect to that person with whom copula cannot be completed. The reason is that the object of the matrimonial contract does not exist, since copula is impossible. It is also established from Canon Law.

**II.** Consequent impotence, and antecedent temporal impotence, do not dirime Matrimony; the reason is that actual use of Matrimony does not pertain to its essence, and it suffices that consummation either was possible at the time of the contract, or will be possible in the future.

**III.** Impotence certainly known renders the use of Matrimony illicit, even if only attempted; because, where copula cannot be completed, the end which makes congress licit is lacking. (A) p. 408.

**Note.** - It is now commonly received among physiologists and physicians, because experience has taught it, that for conception and the effect of generation it is by no means necessary that the man inject seminal fluid into the inner parts of the female organ, but that it is enough that fluid of this

kind be poured upon and applied to the external surface of the same organ, or to the mouth, or entrance, of the vagina, as they say.

Appendix annotation (Lambda), to n. 1618. III. p. 277. col. 1. It is said: it renders the use of Matrimony illicit. "But if there is question of consequent perpetual impotence, per se, or with the danger of pollution excluded, those acts are licit which it is lawful for spouses to perform without the intention of completing copula. Which those acts are, see n. 1651. 1°. 3°. But it is clear that the danger of pollution is much more easily present in those about whom there is question here, precisely because they must perpetually abstain from copula; and this is especially true when there is speech of the touches set forth in the cited n. 1651 under 3°. See L. VI. 1095. § Dixi 2."

**1619. Resolves.** - 1° Eunuchs or spadones destitute of both testicles are reputed impotent; otherwise, if they lack only one. (M) p. 409.

2° In doubt concerning antecedent impotence, one must stand for the validity of the Matrimony, and the spouses must be permitted to try copula. Indeed for this a three-year period is conceded to them by Canon Law, notwithstanding the greater probability for perpetual impotence, and although the Matrimony was celebrated with doubtful faith.

3° In doubt concerning consequent impotence, it is likewise lawful for the spouses to try copula until they are certain that it can in no way be completed.

4° In doubt whether certain and perpetual impotence was antecedent or consequent, it is presumed antecedent if it is either natural, or indeed accidental, but the potent spouse complains of this defect of the other one month or another after the Matrimony has been celebrated; but consequent if such a complaint on account of accidental impotence is made a long time after the celebration of Matrimony.

5° Impotence for coition is not to be confused with impotence for generating. Hence sterile persons and the aged who are able to consummate Matrimony contract validly; likewise women who can receive seed, even if they do not retain it. Not, however, those lacking uterus or vagina.

6° "Let the confessor take the greatest care that in a matter of so grave a moment, and subject to so many difficulties, he not proceed rashly, or determine anything by his own authority; but let him refer the case, duly examined with all its circumstances, to the Ordinary, whose office it then will be to establish and determine what ought to be done in a similar matter. Indeed, as it seems to us, a prudent and discreet confessor will not question spouses concerning impotence, nor even forewarn those whom he believes impotent; nor will he answer spouses consulting him on that matter ultimately, unless he himself has first consulted the Bishop." See Van de Burgt, de Matr. n. 206.

Appendix annotation (Mu), to n. 1619. 1°. p. 277. col. 1. In the man, moreover, impotence is present from defect, or even from the extraordinary size of the virile member; and likewise from such contusion of both testicles that neither is fit for its office. In the woman it is present from defect of the uterus or vagina; likewise from constriction, which can be the cause of perpetual and also temporary impotence; for constriction does not always impede fecundation, and can often be removed through the dilating means of the medical art, Van de Burgt, de Matr., n. 202, or is often removed through repeated experiment of copula. Capellmann, Past.-Med., p. 116. Besides these natural impotences existing from organic defects, there are also accidental impotences arising from moral defects, namely from frigidity or excessive heat. In a case of impotence of this kind, it must especially be investigated whence that state draws its origin, so that, when the cause is removed, if it can be done, the impotence may be removed. The cause of that frigidity can be malefice, but often, as several observe, not malefice but other causes produce this state. Zacchias, the celebrated Roman physician, teaches, Qu. medico-legales, L. III. T. I. q. 5, that impotence by reason of moral defect often arises either from shame and modesty, or from excessive love, or from hostile hatred of the wife. It can also arise from the excesses of a lustful life. - Moreover, what Bouvier notes, in Sext. Prec., the cause sometimes is deformity in the wife, a foul-smelling breath, negligence in dress and cleanliness, hatred, contempt. Van de Burgt, ib. Those to whom the name Hermaphrodites or Androgyni is given are not

kept from nuptials by reason of impotence if they possess all things which are necessary for completing the conjugal act; on the contrary, impotence is ascribed to them where they lack the necessary organs; concerning which, and therefore also concerning the sex to which they pertain, it is necessary that physicians or surgeons pronounce judgment. Van de Burgt, ib., n. 203. Most so-called Hermaphrodites, says Capellmann, Past.-Med., p. 116. 117, when subjected to the examination of physicians, have been discovered truly to enjoy only one sex and to have only the appearances of the other. > Notes to appendix annotation - note sequence 10. > > 1 This is not always perpetual, and it can happen that it is only relative, or even not impeditive of fecundation; see n. 1618, Note.

### POINT XIII. ON THE IMPEDIMENT OF ABDUCTION.

**1620.** - Abduction is the violent carrying away of a woman (even an impubes, widow, corrupted woman, etc.) from a safe place into another, where she is detained under the power of the abductor, for the sake of entering Matrimony. - But it is all the same whether the abductor executes the abduction by himself, or through others; and likewise whether by himself and in his own possession, or through others and in the possession of others, he retains the abducted person in his power. This is drawn from the Declaration of the Sacred Congregation of the Council, June 25, 1864, as can be seen in the *Acta*. But he incurs the impediment who abducts for himself, not those who abduct for another.

Abduction dirimes Matrimony by ecclesiastical law between the abductor and the abducted woman. It is established from Trent.

A threefold condition is required for incurring that impediment, namely: 1° that the abducted woman be carried away from place to place; 2° that the woman be abducted only for the sake of Matrimony; 3° that the abduction be made while the woman resists, or is altogether unwilling.

But it makes no difference whether the woman is drawn away by force from her own house, or whether, led around by deceits, she comes unknowingly into the power of the one attempting abduction; and likewise whether she is drawn away from her own house, or, having been led away from it through frauds, is then prevented from being able to return freely to it. For free consent is equally absent, both if by open force, and if through frauds she is no longer permitted to be of her own power. See the Declaration of the Sacred Congregation in the *Acta*.

**1621. Questions. - Quaer.** 1° Does an abduction of seduction induce the impediment, or when a woman is induced by gifts, flatteries, etc., to follow the abductor?

**Resp.** Negatively. The reason is that through the impediment of abduction the Church intends only to provide for the perfect liberty of Matrimony, which is not injured when the woman, consenting with a view to Matrimony, is led away, even against the will of her parents. - Thus commonly, according to St. Alphonsus. Sanchez, the Salmanticenses, Scavini, etc., agree.

**Quaer.** 2° Are betrothals valid which are contracted while an abducted woman is under the power of the abductor?

**Resp.** A twofold probable opinion is given:

**The first opinion** denies, because betrothals require liberty, just as Matrimony itself does; for a penal law is extended where the same reason militates. - Sanchez, the Salmanticenses, etc.

**The second opinion** affirms, and St. Alphonsus with Lacroix, etc., calls this one more probable. But the reason of this opinion is that betrothals, as things which are always rescindable, require less

liberty than Matrimony.

**1622. Resolves.** - 1° The impediment is not contracted if a woman is led away only from bedroom to bedroom in the same house; because in this way she is not properly constituted under the power of the abductor; but she must be led away from house to house. Nevertheless in this case the impediment of fear can be present.

2° The impediment is not contracted if the woman is abducted for another cause, besides the end of entering Matrimony, e.g. for the end of satisfying lust, etc.; because the Council intends nothing else by this impediment than to favor the liberty of Matrimony.

3° The impediment is not incurred if the woman abducts the man, because the Council speaks only of the male abductor.

4° The impediment is not incurred if Matrimony is contracted between the abductor and the abducted woman after she has been freed from the power of the abductor. This is clearly apparent from the text of Trent. But St. Alphonsus rightly notes that this impediment lasts as long as the abducted woman is in the power of the abductor, even if she consents freely. - See, if you please, other things in the *Acta*.

See (x) p. 396 for the synopsis of impediments by which infidels are bound, whether certainly or doubtfully, and the practice to be followed with them when they are converted.

Appendix annotation (kappa), to n. 1622, p. 278, col. 2. I. Unbelievers are bound: 1° directly by all impediments of divine law, whether positive or natural; 2° indirectly by the following impediments of ecclesiastical law, which directly affect the faithful person with whom they are about to contract: - disparity of cult; - consanguinity; - legal relationship; - affinity from conjugal intercourse; - public honesty from ratified Matrimony; - crime from homicide alone(3) (n. 1593), from homicide perpetrated by the faithful person after adultery (n. 1596), and, according to several, from adultery alone(5) (n. 1594); - vow; - Order; - age; - servile condition, abduction, fear, if the faithful person is ignorant of the servile condition of the other party, is abducted, is compelled by fear, and this either because these impediments contain a privilege in favor of the baptized person. - That clandestinity does not affect them even indirectly is a sufficiently common opinion (n. 1612. q. 1°. 1) before R. 1°). II. Baptized unbelievers are bound by all and only those ecclesiastical impediments which either 1° arose in them after Baptism, or 2° rest on a natural bond already existing before Baptism, such as certainly is that which exists from consanguinity, and (see n. 1590. q. 1°. R. 1°) from affinity contracted licitly or illicitly. But, from the Resp. of S. C. Off., April 19, 1837, (1) such is not that on which the impediment of public honesty is founded, whether from betrothals or from ratified Matrimony. On account of parity of reason I opine that this Response holds also as regards legal relationship. - But they are not bound by impediments which arise from another fact placed before Baptism, as I argue by parity from the Response which I allege on p. 260, col. 1. Note. III. It is controverted: - 1° whether unbelievers contracting among themselves are bound by impediments which are not of divine law, whether natural or positive, but are constituted by civil power (n. 1574. q. 1°), - by consanguinity in the direct line beyond the 1st degree, and in the 1st degree of the collateral line, - by affinity in the 1st degree of the direct line from conjugal intercourse, - by fear; - 2° whether an unbeliever is indirectly affected by public honesty from betrothals and by spiritual relationship. Sanchez denies, against others, (2) because these impediments are a relation, arising from a bond, not natural, but one which has been constituted by the law of the Church alone; but a relation cannot be contracted by one party without being contracted by both. Since, therefore, a relation which arises from the law of the Church alone cannot be imposed on an unbeliever, the consequence is that he (also in the case in which he is afterward baptized) is not bound by these impediments. De Angelis(3) agrees with Sanchez at least as regards spiritual relationship, namely when a faithful person baptized (or, I add, held) the child of an unbeliever. (4) - Sanchez also denies(5) (although on account of ecclesiastical custom he assents to the opposite opinion) that an unbeliever is even indirectly affected by affinity from illicit intercourse, as being that from which (he says) no natural bond arises. This reason [as is clear from annotation (epsilon), p. 394, col. 2] is not admitted by S. C. Off. > Notes to appendix annotation - note sequence 5. > > 3 Sanchez, L. 7. D. 78. n. 5. | 4 In St. Alphonsus, L. VI. 1087. | 5 In those species of this impediment which require two acts, e.g., adultery and promise of Matrimony, when one act (e.g., adultery) has been placed by two unbelievers before Baptism, and the other (the attempted Matrimony or promise of Matrimony) after the Baptism

either of both or of one, the impediment does not subsist. The reason is that the impediment cannot arise except from both acts placed at the time when at least one delinquent is subject to the Church. Thus Sanchez, L. 7. D. 79. n. 43 against others. > 1 Collect. p. 379. n. 875. | 2 L. 7. D. 60. a. n. 7. D. 65. n. 7. | 3 V. S. L. 4. T. 11. 39. | 4 Since for contracting this relationship it is required that the one baptizing or receiving be baptized, it is clear that an unbeliever baptizing is not bound by it. | 5 L. 7. D. 65. n. 12.

### § III. ON DISPENSATION FROM THE DIRIMENT IMPEDIMENTS OF MATRIMONY

We set forth beforehand in this place, from Van de Burgt, de Dispens. n. 639, the terminology proper to the matter of dispensations.

**Orator, oratrix, orators, exposer, expositors**, are called those who ask that dispensation be granted with them.

**A supplicatory libellus or supplica** are called the letters by which dispensation is sought.

**Style of the Curia.** Here by Curia is understood the Congregation from which, or through which, dispensation is to be obtained. Style of the Curia denotes those things which are to be written in the supplicatory libellus from the will and practice of that Congregation from which, or by means of which, dispensation is sought from the Supreme Pontiff.

**Subreption, obreption.** Reticence of the true, or of that which, by prescription of laws, by style of the curia, by custom, must be declared, is called subreption. Expression of the false is called obreption.

**A rescript of dispensation** is called the epistle or letters by which the dispensation sought is conceded.

**Clauses.** Under the name of clauses come the orders and conditions placed on rescripts, which regard both the executor and those about to enter nuptials. Many are expressed in conditional form by the conjunction *if, provided, so long as*, by the ablative absolute; and these forms, for the most part, indicate that the value of the dispensation depends upon the observance of those clauses. (H. A. Tr. XVIII. 81.) Those orders and conditions arise from the very nature of the impediments, and from the circumstances which are joined to each impediment. All matrimonial dispensations have certain circumstances in common with one another, but many also have certain ones proper to themselves. Hence it happens that some clauses are accustomed to occur in all, others are written only in some.

**Dispensation for the internal forum**, or for the forum of conscience, or for the forum of heaven, is that which is sought under fictitious names, and which effects that the impediment be removed and that Matrimony can be contracted validly; but it does not suffice that it be proved before an ecclesiastical judge that the impediment has been dissolved.

**Dispensation which they call for the external forum**, or for the forum of the court, is sought with the names of the orators expressed, and effects that Matrimony can be validly contracted, and that it can be proved before an ecclesiastical judge that it was validly contracted.

**Dispensation given in gracious form** is said when the ecclesiastical Superior, who was asked to concede the dispensation, applies it by himself, directly, to the orators.

**Dispensation is said to be conceded in commissory form** when the Superior commits to another the faculty of dispensing with the orators, e.g. to the Pastor, to the confessor.

**Dispensation is given in ordinary form** when, on the occasion of the dispensation, a certain sum of money (tax, composition) is to be paid.

**It is given in the form of the poor** when a monetary tax is not exacted; and then to the rescript of dispensation there is usually added the clause: provided the orators are poor and miserable, and live only from labor and industry. For if they are not poor, they must satisfy the established tax. The distinction between dispensations in ordinary form and in the form of the poor, when it is taken in the ordinary sense, regards those regions in which matrimonial dispensations are to be obtained from the Congregations of the Sacred Penitentiary and Dataria; in which last congregation a certain tax must be paid on the occasion of dispensation of the impediments of consanguinity and affinity from licit matrimonial copula, if the orators are not poor and miserable and living only from labor and industry. As regards dioceses subject to the Sacred Congregation de Propaganda Fide, see below n. 1627. II. at the end.

**Fulmination of the dispensation** is called the act by which the impediment is removed. By another name it is called the application, execution of the dispensation, although this last word also has a broader signification, so that it also comprehends the verification of the petitions, the injunction of certain obligations prescribed in the Rescript, and the acceptance of the dispensation by the orators.

**A public, occult, and altogether occult impediment**, concerning these see the things said n. 1564.

**Note.** - Although among us all dispensations are obtained through the organ of the Sacred Congregation de Propaganda Fide, nevertheless in either asking or executing them there must be observed the differences which, according to the nature of the impediment, intervene between dispensations which are to be asked directly from the Dataria, and those which are to be asked directly from the Penitentiary, in regions not subject to the Sacred Congregation de Propaganda Fide.

We must treat 1° of the power of dispensing; 2° of the causes of dispensation; 3° of the manner of obtaining dispensation.

#### **POINT I. ON THE POWER OF DISPENSING.**

**1623. Principles.** - I. The Pope can dispense from all impediments of Ecclesiastical Law; 1° validly in every case, because he is the primary Superior; 2° licitly, if he does this from a just cause, as right governance requires. What he can do in those things which are of divine law, see n. 158; 1551. 1°; 1574. q. 5°. Resp. 2°.

II. A Bishop cannot ordinarily and by his own right dispense in diriment impediments (as regards impedient impediments see n. 1572). The reason is that a Bishop can do nothing in the common law of the Church unless from concession of the Council or the Pope, or from legitimate custom. But Bishops cannot vindicate for themselves the right of dispensing in such impediments from any of these reasons, as is clear both from the practice of the Church and from various Declarations of the Sacred Congregation, and especially from Pius VII in the year 1809 in the Rescript to the Bishops of France.

I said: 1° **ordinarily**; for he can dispense:

- 1) Probably in doubtful impediments, even with doubt of fact.
- 2) In occult ones: and

I. Indeed, according to the common opinion, in contracted ones, provided there is present a) necessity and danger in delay; b) Matrimony contracted 1) in good faith, namely from ignorance (even crass, provided rashness does not seem present), whether of law or of fact, by at least one party; 2) in the face of the Church, and the proclamations having been premised, or dispensation from them having been granted; c) an impediment in which the Pope is accustomed to dispense; d) at least doubt concerning the impediment in one party; for if each party is in good faith, this is not to be disturbed, and meanwhile recourse must be had to the Sacred Penitentiary.

II. Most probably also in those to be contracted, provided true necessity is present; danger in delay; an impediment in which the Holy See is accustomed to dispense. (A), p. 397.

I said: 2° **by his own right**; for in many matters our Bishops can dispense by delegated right. See p. LXX. n. 6. 7. 8. 9. 10. pp. LXXIII-LXXV. (rho), p. 397.

Appendix annotation (lambda), to n. 1623, p. 279, col. 1. But note that this quasi-ordinary faculty cannot be invoked except for cases in which the faculty expressly delegated does not belong to the Bishop, (1) which indeed belongs to our Bishops for more frequent cases, and does not require all the conditions which the quasi-ordinary one demands. The reason why the quasi-ordinary power then cannot be invoked is that there can be no place for the presumed or tacit will of the Pontiffs, on which it is founded, where the express will is clear. The Acta, T. 14, p. 155 sq., contradict. The things which we have said concerning occult impediments sometimes dispensable by the Bishop are also applied by some to public impediments. "This opinion," says St. Alphonsus, (2) "I think scarcely ever can have place in practice, because, when the impediment is public, the reason of scandal ceases, if the spouses desist from such a Matrimony; indeed, especially for avoiding scandal, they are held to desist from the nuptials." - See also the celebrated Feije, (3) where it is reported that the Sacred Congregation of the Inquisition judged that opinion to be false and temerarious. But what if there is question of an impediment public in its nature, but by accident occult to others, e.g., concerning the impediment of public honesty from occult betrothals? There is a twofold opinion. - See the reasons for each in the same Feije. (4) > Notes to appendix annotation - note sequence 6. > > 1 Feije, de Imp., n. 634 at the end. | 2 L. VI. 1122. | 3 Ib. n. 633. | 4 Ib. n. 638 sq.

Appendix annotation (mu), to n. 1623, § end, p. 279, col. 1. Concerning the meaning of these faculties note the following: 1° The 6th faculty of Form I ([p. LXX](/manuals/konings/iii-faculties#h2)), insofar as it regards converts from heresy or infidelity, is to be understood concerning those converted heretics and unbelievers who entered not just any fornicarious unions, but those which, according to the customs of the regions or of the unbelievers or heretics, had the form and appearance of Matrimony. Thus S. C. O. in Feije. (1) The same faculty, just like the 2nd among the Extraordinary D ([p. LXXIII](/manuals/konings/iii-faculties#h4)), as regards the words: "in simple and mixed degree," understood 1) concerning equality and inequality of degrees, in the case of mixture of unequal degrees, comprehends not the same degree mixed with some nearer one, but with some more remote one only. Feije. (2) 2) Understood concerning multiplicity of impediment, it comprehends both the same degrees multiplied (3) (see above, n. 1583. q. 2°. R. 2° § end. p. 253, col. 2, and n. 1588, § But it can), and the impediments of consanguinity and affinity joined together. (4) This is also clear from the response of S. C. Ing., June 15, 1875, to questions 1 and 2 of the Vicar General of St. Louis: "Bishops who enjoy the quinquennial faculty of dispensing in the 3rd and 4th of consanguinity and affinity in simple degree, and mixed only; and in the 2nd, 3rd, and 4th, but not in the second alone, as regards future marriages, can dispense in the 3rd and 3rd, in the 4th and 4th, in the 3rd mixed with the 4th; and also in the 3rd and 4th mixed with the 2nd, whether the degree arises from one stock or from a multiple stock, once the matter has been spoken of with His Holiness." (5) The same faculty insofar as it regards Catholics not converted from heresy or infidelity holds only for Matrimonies to be contracted; but no difficulty arises from this for our Bishops, since they can also dispense in nearer degrees, both as regards those already contracted and those to be contracted. See [p. LXXIV. Fac. Extr. E](/manuals/konings/iii-faculties#h5). 2° The 7th faculty of Form I, [p. LXX](/manuals/konings/iii-faculties#h2), cannot per se be extended to the impediment of public honesty from ratified Matrimony. I said: per se; for since to our Bishops there is granted the faculty of dispensing even in the first and second degree of affinity of the transverse line, and this includes public honesty, no difficulty arises from this for them. (6) 3° The 8th faculty of Form I, [p. LXX](/manuals/konings/iii-faculties#h2). - The loss of the right of asking the debt indicated in this faculty is that which is induced by adultery. See n. 1647. III. 1°. Cf. Feije. (1) 4° N. 29 Form I, [p. LXXII](/manuals/konings/iii-faculties#h2). - The words: "nor can he use them outside the boundaries of his diocese" are to be understood not only concerning those who have domicile or quasi-domicile in the diocese, but also concerning vagi existing

in the diocese while the dispensation is granted. But it is necessary that he to whom the dispensation is granted exist at that moment - not indeed at the moment when it is handed over for execution, but - at which it is granted, in the diocese of the one dispensing. See Acta. (2) But today it is certain (3) that the one dispensing himself [(Z) p. 412] does not have to be in the diocese while he dispenses. But this clause or these words are not to be understood as implied "in faculties which are granted to Bishops by the Apostolic See, unless they have been expressed or it is otherwise clear from the mind of the Supreme Pontiff, or unless the subject matter requires it." (4) But the faculty of dispensing concerning the impediment of mixed religion, from the mind of the Supreme Pontiff, is granted with that clause. 5° It must be carefully observed that our Bishops do not have the faculty of dispensing in the impediment of disparity of cult in the case of Matrimony with a Jewish man or woman, nor in this same impediment or in the impediment of mixed communion with Italians, concerning whom it is not clear that they have altogether abandoned Italian domicile. See [p. LXXIV. n. 8. 4] (/manuals/konings/iii-faculties#h4). 6° A Bishop cannot use faculties granted for the forum of conscience, as is that which is listed on [p. LXXIII under n. 2] (/manuals/konings/iii-faculties#h4), for the external forum; and conversely Feije thinks it must altogether be said that he cannot exercise faculties obtained for the external forum for the forum of conscience, even if the impediment is occult to others. (5) 7° Whether in Matrimonies contracted nullly among Catholics, in which the Tridentine form was not observed, our Bishops can dispense, because in their faculties there is not found the clause that the faculty is to be understood only of Matrimonies nullly contracted "before the Church," is disputed. There are those who, after a distinction has been made between places in which Matrimony was not invalid on account of clandestinity, and those in which it was also invalid on account of this, opine that in the former case the Bishop can use the faculty, provided the union is of such a kind in which the circumstances indicated under 1° are verified; but in the latter case he cannot use the faculty; indeed Feije thinks that even in the former case one must abstain. (1) Beware, however, lest you confuse this question with that concerning which we treat at n. 1630. q. 2°. 1634. q. 2°. q. 8°. 8° Can a Bishop use faculties with those who rashly neglected proclamations, or who in bad faith, or knowing the impediment and the invalidity of the Matrimony because of it, contracted nullly? - It must indeed be affirmed, both if there is question of a Matrimony formerly contracted in heresy or infidelity, and if there is question of a Matrimony contracted by Catholics, one of whom was in good faith, and therefore celebrated with the proclamations premised or dispensed; for if these are rashly neglected, good faith is judged to be lacking, even if knowledge of the impediment is not had, as Feije proves. (2) But the doubt turns on the case in which each was in bad faith, and there are those who deny the Bishop's power. But others, as Feije, admit it, provided either one now repents, and the things which in their place were indicated, and other things necessarily to be expressed, are expressed in the supplicatory letter. See the reasons in the same Feije. (3) 9° From the letters of S. C. de P. Fide to the Vicar Apostolic of Pondicherry, dated June 7, 1853 (Collect. p. 378. n. 855), it is clear that "the words of Indults are to be understood as they present themselves," and therefore "through a faculty of dispensing," e.g., "concerning the impediment of the second mixed with the first, there has not also been bestowed an Indult of dispensing when the first is found mixed with the third." Hence also faculties cannot be extended from one impediment to another, although less grave, unless this is contained in that one, nor from one species of impediment to another, nor from one line to another, nor from contracted Matrimony to one to be contracted. - Feije. (5) 10° Can our Bishops dispense in impediments diverse in species, by which the same persons about to marry are bound, while the faculty of dispensing such impediments is bestowed on them either in diverse indults (e.g., in the Faculties Form I, [n. 8, p. LXX] (/manuals/konings/iii-faculties#h2), and in Fac. Extr. E. n. 2, [p. LXXIV] (/manuals/konings/iii-faculties#h5)), or in a diverse tenor or period of the same indult (e.g., in Fac. Form I. n. 8 and 9)? Resp. No without a special Indult, as is clear from several responses both of S. C. de Prop. Fide itself and of its Prefect communicated to me by several Bishops. Cf. Collect. (1) The same holds if, with an impediment either diriment or impedient in which our Bishops can dispense, another concurs for which recourse must be made or is made to the Apostolic See. Namely, in this case it does not suffice to have recourse to Rome for this one and to be dispensed in the other by the Bishop, but he lacks his power of dispensing, as is clear both from the Rescript of S. Pont., April 15, 1853, and from the necessity of expressing all impediments in the same supplicatory letter, as was said at n. 1625. q. 2° R. 5. Cf. Feije. (2) - Resolve the contrary if the Bishop dispenses in accumulated impediments not by force of faculties, but by quasi-ordinary law. Therefore S. Paen., June 30, 1873, responded that "the faculty of dispensing, only for the forum of conscience, in Matrimonies to be contracted concerning the occult impediment of affinity from illicit intercourse, when all things are prepared for the nuptials and there is no time for recurring to the Apostolic See, is exercised validly and licitly, even if the aforesaid impediment" (of affinity from intercourse both with the mother and with the sister of the bride) "is multiple." (3) > Notes to appendix annotation - note sequence 1. > > 1 De Imp. n. 625. p. 527. | 2 Ib. n. 626. 3°. 630. c. | 3 Ib. n. 630. c. d. | 4 Ib. c. | 5 Past. Bl. für N. Amer. 9th year, p. 85. | 6 Tr. Mechl. de Matr. n. 101. > Notes to appendix annotation - note sequence 2. > > 1 De Imp. n. 615. N. 5. | 2 T. II. p. 670. | 3 From the Resp. of S. C. I. to the Synod of Maynooth. | 4 Acta, T. II. p. 671. | 5 De Imp. n. 624. 1°. > Notes to appendix annotation - note sequence 3. > > 1 De Imp. n. 625. p. 528, 529.

| 2 Ib. n. 264. | 3 Ib. n. 625. p. 530. | 4 Ib. | 5 Ib. n. 630. a. > Notes to appendix annotation - note sequence 4. > > 1 p. 485, n. 1012. | 2 n. 631. | 3 Past. Bl. für N. Amer. 15th year, p. 108.

**1624. - Quaer.** If the betrothed belong to different dioceses and there is question of an impediment common to each nupturient, must dispensation be obtained from each Bishop, if each enjoys by special Indult the faculty of dispensing?

**Resp.** The opinion probable to St. Alphonsus denies. The reason is that, when the Bishop takes away the impediment from his subject, he renders that subject capable of contracting with the other impeded person. For one person cannot become capable of contracting with another unless that other also becomes capable of contracting with him. And indeed this opinion of the holy Doctor is confirmed by the resolution of the Holy Office, November 22, 1865, with the addition: "unless the tenor of the Apostolic concession stands in the way," and "nevertheless permission for the celebration of the Matrimony having been obtained from the Bishop of the place where the Matrimony itself is contracted." The same addition holds if each nupturient is subject to the one dispensing and the Matrimony is to be entered outside his diocese.

Notes to n. 1624. (1) L. VI. 902. (2) Ib. 1122-1125. (3) Ib. 1142. (4) Acta, T. II. p. 670.

## **POINT II. ON THE CAUSES OF DISPENSATION AND ON THOSE TO BE EXPRESSED IN THE SUPPLICA.**

Recall the things said n. 162, 163 concerning causes of dispensations in general.

**1625. Questions. - Quaer.** 1° What causes are just, so that dispensation may be granted in diriment impediments?

**Resp.** From the Instruction of the Sacred Congregation de Propaganda Fide, May 9, 1877, the "commoner and weightier" causes are:

1. "Straitness of place, whether absolute or relative (by reason only of the Oratrix), when namely in the place of origin, or even of domicile, the kinship of the woman has been so propagated that she cannot find another of equal condition whom she may marry, unless a consanguineous or affine person, but to leave her country would be hard for her." [These last words do not signify that the cause does not exist when the Oratrix is going to transfer her domicile elsewhere, but that it exists although she does not wish to marry someone of equal condition by whom she is asked in Matrimony, but who inhabits another place. By the name of place there does not come precisely a parish, for in one place, in one city, several parishes can be present, and conversely in one parish several places. Wherefore by the name of place is understood a city, town, village, hamlet, indeed several places, provided they are not distant from one another beyond a mile. Sacred Congregation of the Council, December 16, 1876. Every place not having more than three hundred hearths, or 1,500 Catholic inhabitants, is reputed narrow.]

2. "The age of a superadult woman, if namely, having already passed the twenty-fourth year of age, she has not hitherto found a man of equal condition whom she can marry. But this cause does not benefit a widow who desires to pass to other nuptials."

3. "Deficiency or incompetence of dowry, if namely the woman does not actually have so great a dowry that she can marry an outsider of equal condition, who is neither consanguineous nor affine, in the proper place in which she is dwelling. This cause presses more if the woman exists wholly

without dowry, and a consanguineous or affine man is prepared to take her as wife, or even suitably to dower her entirely." [It is indifferent whether the dowry is offered by the bridegroom or by another, but on this condition, that she marry the consanguineous or affine person.]

4. "Lawsuits concerning succession to goods already arisen, or grave or imminent danger of the same. If the woman sustains a grave lawsuit concerning succession to goods of great moment, and there is no other who would take upon himself a lawsuit of this kind and pursue it at his own expense besides the one who desires to take her as wife, dispensation is accustomed to be conceded; for it concerns the commonwealth that lawsuits be extinguished. Another cause approaches this closely, namely a dowry involved in lawsuits, when namely the woman is destitute of another man by whose assistance she is able to recover her goods. But a cause of this kind suffices only for more remote degrees."

5. "Poverty of a widow who is burdened with numerous offspring" [let the number and age of the children be expressed] "and a man promises to support her. But sometimes the remedy of dispensation succors a widow for this reason only, that she is younger and is placed in danger of incontinence."

6. "The good of peace, under which name come not only treaties between kingdoms and Princes, but also the extinction of grave enmities, quarrels, and civil hatreds. This cause is adduced either for extinguishing grave enmities which have arisen among the blood-relatives or affines of the contracting parties, and which would be altogether settled by the celebration of Matrimony; or when grave enmities have prevailed among the blood-relatives and affines of the contracting parties, and, although peace has already been entered between them, nevertheless the celebration of Matrimony would especially conduce to the confirmation of that peace."

7. "Excessive, suspected, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be prevented."

8. "Copula previously had with a consanguineous or affine woman or another person laboring under an impediment, and pregnancy, and therefore legitimization of offspring, namely that provision may be made for the good of the offspring itself and for the honor of the woman, who otherwise would remain unmarried. This indeed is one of the more urgent causes, on account of which dispensation is accustomed to be given even to common people, provided the copula perpetrated was not under hope of an easier dispensation; which circumstance would have to be expressed in the supplication."

9. "Infamy of the woman, arisen from suspicion that she, being too familiar with her consanguineous or affine man, has been known by him, although the suspicion is false, when namely, unless Matrimony is contracted, the woman, gravely defamed, would either remain unmarried, or would have to marry a man of unequal condition, or grave damages would arise."

10. "Revalidation of Matrimony, which was contracted in good faith and publicly, with the Tridentine form observed" [even if there is question of a place where the decree *Tametsi* does not oblige] "because its dissolution can scarcely be made without public scandal and grave damage, especially of the woman. C. 7 de Consanguin. But if the betrothed entered nuptials in bad faith, they by no means deserve the grace of dispensation, as the Council of Trent disposes, Sess. XXIV. cap. V. de Reform. Matrim." [And therefore then they obtain it with greater difficulty, yet today more easily than formerly.]

11. "Danger of mixed Matrimony, or of celebrating it before a non-Catholic minister." [Existing in the individual and on account of particular circumstances. But common danger, arising somewhere from the greater number of non-Catholics, can indeed have the place of an impulsive cause, but not of a final one.] "When there is present danger that those wishing to contract Matrimony even in one of the greater degrees, from denial of dispensation, would approach a non-Catholic minister for nuptials to be celebrated, the authority of the Church having been spurned, a just cause for dispensing is found, because there is present not only the most grave scandal of the faithful, but also fear of perversion and of defection from the Faith in those acting in such a way and despising the impediments of Matrimony, especially in regions where heresies rage with impunity. This Sacred Congregation taught this in the Instruction given April 17, 1820, to the Archbishop of Quebec. Likewise when the Apostolic Vicar of Bosnia had asked whether he could grant dispensation to those Catholics who put forward no other motive than mad love, and at the same time it was foreseen that, dispensation being denied, they would enter marriage before an infidel judge, the Sacred Congregation of the Holy Office, on Wednesday, August 14, 1822, decreed: 'The Orator must be answered that, in the exposed case, he may use the faculties committed to him in Form II, as he shall judge expedient in the Lord.' The same must be said concerning the danger that the Catholic party would dare to celebrate Matrimony with a non-Catholic."

12. "Danger of incestuous concubinage. From the Instruction of the year 1822 mentioned above, it is clear that the remedy of dispensation is to be employed lest someone grow filthy in concubinage with public scandal and evident danger to eternal salvation."

13. "Danger of civil Matrimony. From the things said it follows that probable danger that those who seek dispensation, if they do not obtain it, would celebrate only civil Matrimony, as they say, is a legitimate cause for dispensing."

14. "Removal of grave scandals."

15. "Cessation of public concubinage."

16. "Excellence of merits, when someone has merited very well of Religion, either by fighting against the enemies of the Catholic Faith, or by liberality toward the Church, or by doctrine, virtue, or in another way."

Sometimes it happens that one cause taken separately is not sufficient, but, joined with another, is reputed grave and consequently suffices.

Dispensation is also given "from certain reasonable causes" (i.e. without the causes needing to be expressed), or dispensation "without cause" (i.e. without a cause expressed), namely when from the pious work which is imposed by way of compensation, the cause of dispensation arises.

**Quaer.** 2° What things must necessarily be expressed by law, under penalty of invalidity, in the petition for dispensation?

**Resp.** From the same Instruction, besides the true and legitimate moving cause, the following are to be expressed:

1. "The name and surname of the Orators" [unless fictitious names are to be used, as will be said n. 1627. II], "each to be written distinctly and neatly and without any abbreviation of letters."

2. "The diocese of origin or of actual domicile. When the Orators have domicile outside the diocese of origin, they can, if they wish, ask that the dispensation be sent to the Ordinary of the diocese in which they now dwell."
3. "Also the lowest species of the impediment: whether it is consanguinity, or affinity, arisen from licit or illicit copula; public honesty drawing origin from betrothals, or from ratified Matrimony; in the impediment of crime, whether it came from spouse-killing with a promise of Matrimony, or from spouse-killing with adultery, or from adultery alone with a promise of Matrimony; in spiritual kinship, whether it is between the one lifting and the one lifted, or between the one lifting and the parent of the one lifted."
4. "The degree of consanguinity or affinity, or of honesty from ratified Matrimony, and whether it is simple or mixed, not only the more remote, but also the nearer, as also the line, whether it is direct or transverse; likewise whether the Orators are joined by a double bond of consanguinity, both from the father's side and from the mother's side." [If the Orators are in an unequal line, the nearer degree must also be expressed, and which sex is nearer to the stock. This, however, is not required for validity unless the nearer degree is the first. (upsilon) p. 399.]
5. "The number of impediments, e.g. if there is double or multiple consanguinity or affinity, or if besides kinship there is also affinity, or any other impediment whatsoever, whether diriment or impedient." [Which can be taken away only by dispensation and has not yet been removed. In order that the dispensation be valid, all impediments and circumstances necessarily to be exposed must be expressed conjointly in the same supplicatory libellus, except: **a)** in the case of which n. 1628. q. 1°. q. 2°; **b)** according to the more probable opinion of St. Alphonsus, in the case in which one impediment is not increased by the other, as vow and consanguinity; consanguinity and machination.]
6. "Various circumstances, namely whether Matrimony is to be contracted or has been contracted; if already contracted, it must be opened whether in good faith, at least on the part of one, or with knowledge of the impediment; likewise whether with the denunciations premised and according to the form of Trent; or whether under hope of obtaining dispensation more easily; finally whether it has been consummated, if in bad faith, at least of one party, or with knowledge of the impediment."
7. "Incestuous copula had between the betrothed before the execution of the dispensation, whether before or after its impetration, whether with the intention of more easily obtaining dispensation, or even with such intention excluded, and whether the copula is publicly known or even occult. If these things are kept silent, dispensations concerning any prohibited degrees whatsoever of consanguinity, affinity, spiritual and legal kinship, and also public honesty, are subreptitious and valid nowhere and in no way, as the Sacred Congregation of the Holy Office declared, Wednesday, August 1, 1866. But in asking dispensation concerning an impediment of affinity of the first or second degree of the collateral line, if the impediment arises not only from Matrimony consummated with the deceased spouse of the Orator or Oratrix, but also from ante-matrimonial or fornicatory copula perpetrated with the same deceased person before Matrimony was entered with that person, it is not necessary that mention be made of illicit copula of this kind, as is clear from the response of the Sacred Penitentiary of March 29, 1842, approved by Gregory XVI of holy memory, to the Bishop of Namur; and that this is general, the same tribunal declared by letters of December 10, 1874." [But in order that incestuous copula must be declared, it is necessary **a)** that it was had between those who were

bound by an impediment either of consanguinity, or affinity, or spiritual or legal kinship, or public honesty; **b)** that the female vessel was penetrated. But it is not required that those things followed which are required both for generation of offspring and for perfect copula. Thus Leo XII apud Feije; **c)** that, if there is not question of dispensation in the form of the poor, it was formal, i.e. perpetrated with knowledge of the impediment. Concerning copula, unless there is suspicion, the betrothed are not to be questioned. There is no dispensation for the easier impetration of which copula has falsely been alleged. To St. Alphonsus (L. VI. 1134) it is most probable that, copula already having been exposed, the intention of more easily obtaining dispensation does not necessarily have to be expressed in the case in which other causes sufficient of themselves are set forth in the supplica.]

**Quaer. 3°** What must be done in doubt whether a cause falsely alleged was final or impulsive, or whether it was true or false?

**Resp.** See n. 162. 5°.

**Quaer. 4°** When the cause of dispensation ceases, does the dispensation cease, e.g. if the offspring to be legitimated by Matrimony has died, etc.?

**Resp. 1°** Affirmatively, if the cause is final, and ceases totally and certainly before the dispensation is expedited, or is made by the Bishop or by another to whom it had been committed by the Pontiff. Cf. n. 164. L. VI. 1182.

**Resp. 2°** Negatively, if the cause ceases when the dispensation has already been expedited and communicated by the delegated person to the suppliants, even if it ceases before the celebration of Matrimony. The reason is that through the dispensation the impediment has already been removed. L. VI. 1182.

**Quaer. 5°** Does he who, dispensation having been obtained from the impediment of affinity from illicit copula, e.g. with a consanguineous woman of the bride, again sins with the same woman before Matrimony, need a new dispensation?

**Resp. 1°** Negatively, if the dispensation has not yet been committed to execution by the delegated person; because such dispensations do not take effect from the day of expedition, but from the time of execution. - Thus all.

**Resp. 2°** Indeed negatively, even if the dispensation has been committed to execution. The reason is that the impediment of affinity has already been removed by the dispensation as regards the effect of contracting Matrimony. - Thus, as more probable, St. Alphonsus, L. VI. 1140.

But if, the Matrimony having been contracted, he should again sin with the same consanguineous woman of the wife, he is deprived of the right of asking the debt, because the dispensation, according to the style of the Curia, was conceded for the effect of contracting Matrimony, not for sinning more freely.

But he would need a new dispensation if he sinned with another consanguineous woman of the bride before Matrimony, even after the dispensation had been expedited, because a new affinity would be contracted.

**Quaer. 6°** Is a new dispensation required if, dispensation having been obtained from the impediment of consanguinity, or another of those of which there has been treatment in this number q. 2. Resp. 7,

incestuous copula has intervened between the betrothed?

**Resp. 1°** Affirmatively, if the copula was had before the execution of the dispensation. Thus from common interpretation, and from the style of the Roman Curia requiring the declaration of incest of this kind; for when this has been manifested, the Pontiff imposes a greater penance on the suppliant. It is also confirmed from the Declaration of the Sacred Congregation in the month of May in the year 1634. Then too revalidation of the prior dispensation can be sought simply, which revalidation they call: *Perinde valere*, and the faculty of which is accustomed to be conceded by the Holy See to Bishops asking it. Concerning this faculty see Feije.

**Resp. 2°** But negatively, if the copula was had after the execution of the dispensation. The reason is that, the dispensation having been conceded, and therefore the prohibition of Matrimony having been removed, the malice also of incest ceases. It is also established from the same Sacred Congregation.

**Quaer. 7°** Is a new dispensation required for consanguineous persons, if, dispensation having been sought and the circumstance of incest expressed in the petition, copula is repeated by the same persons?

**Resp.** Affirmatively, as it seems, provided **a)** there is question of a dispensation - not yet fulminated; - of the external forum; - in the form of the poor, or indeed ordinary, but enjoining separation, the copula having been repeated after the separation enjoined; **b)** the letters of dispensation do not contain the faculty "of absolving from the guilt of incest, even perhaps repeated up to the present execution." - Otherwise, it is certainly denied. Concerning the case in which the Bishop dispenses, see n. 1628. q. 6°. § Note.

**Quaer. 8°** If someone seeks a second dispensation in the same matter after first obtaining another, must he express the first?

**Resp. 1°** Affirmatively, if the impediment was contracted from some crime. The reason is that relapse into the same crime draws the Superior back from dispensing.

**Resp. 2°** Negatively, if the impediment is not from some crime or is from a different crime. - Thus St. Alphonsus and others commonly.

Notes to n. 1625 - note sequence 1. (1) The words which in the Responses to this and the following Question are enclosed in brackets were added by us to the Instruction from St. Alphonsus and other approved authors for the sake of explanation. (2) Van de Burgt, de Disp. n. 32. E. (3) Acta, T. IX. p. 571 sq. Notes to n. 1625 - note sequence 2. (1) Feije, n. 677. (2) Ib. n. 678. (3) Ib. n. 666. Appendix annotation (nu), to n. 1625. q. 2. R. 5°, p. 280, col. 1. St. Alphonsus writes, L. VI. 1136, that Benedict XIV in the Brief Etsi matrimonialis declared "that the Matrimony is indeed illicit, but not invalid, provided the relationship is not of the first or second degree of consanguinity or affinity." But Benedict XIV does not say this concerning the second degree, but in § 6 expressly reports that after St. Pius V invalidity was restricted to the 1st degree concealed. Thus also St. Alphonsus, ib. 1030. H. A. Tr. XVIII. 86. If the nearer degree is not the first, declaratory letters must be obtained concerning it, so that the Matrimony may be licit, or so that scandal may be avoided, i.e., letters by which it is declared that concealment of the nearer degree does not obstruct the Matrimony.

**1626. Resolves. - 1°** As n. 162. 1°.

**2°** It is not necessary to say in the petition how often copula has been had with a consanguineous woman of the bride; because from various acts of copula there arises a single affinity; nevertheless copula had with several consanguineous women of the bride must be expressed; because from these

so many different affinities are contracted: and, although these impediments are not diverse in species, nevertheless they are distinct in number. It is manifest from the Declaration of Benedict XIV.

3° Error in the name (if the change is minimal) or surname of the Orators, or of the diocese or parish, generally does not harm validity, provided the body is established, i.e. concerning the impediment, the cause, the identity of the person, etc. I said: generally; for sometimes it does harm, as can be seen apud Feije.

Notes to n. 1626 - note sequence 1. (1) L. VI. 1139. H. A. Tr. XXIII. 85. Notes to n. 1626 - note sequence 2. (1) n. 709. p. 682 (1). And S. C. Inq. February 1, 1882, Acta, T. 14. p. 431. (2) Feije, n. 710. Notes to n. 1626 - note sequence 3. (1) L. VI. 1141. (2) De Imp. n. 729. (3) Ib. n. 715. b). (4) L. VI. 1137. (5) Ib. 1138. Notes to n. 1626 - note sequence 4. (1) De Imp. n. 698. 700.

### POINT III. ON THE MODE OF ASKING AND EXECUTING DISPENSATION.

**1627.** - For conceding dispensations of the Holy See, according to the various quality of impediments, two tribunals have been constituted at Rome, namely the Dataria and the Penitentiary.

**I. Dataria.** Recourse must be had to the Dataria for all notorious impediments, or those which are foreseen as going to come into the knowledge of others, or those which can be manifested without infamy, scandal, and other inconveniences.

**II. Penitentiary.** Recourse must be had to the Sacred Penitentiary for dispensations and faculties which regard the internal forum alone, namely for occult impediments. But in the postulate, the proper names of the spouses being kept silent, fictitious names are placed. - At present, however, it is conceded that the Penitentiary may be approached also for notorious impediments when dispensation is requested in the form of the poor; indeed, in extraordinary and grave cases, even for Orators who are not poor. - But in dioceses which are subject to the Sacred Congregation de Propaganda Fide, all dispensations are obtained through the organ of this Congregation, and this without tax, but not always without alms. Cf. Vol. I. p. LXXV. A. VI. 4°. D. 5°.

Notes to nn. 1627-1628 - note sequence 1. (1) L. VI. 1139. (2) Ib. 1135. (3) Vind. p. 817 sq. Ed. 2. T. II. p. 482 sq. (4) H. A. Tr. XVIII. 87. Notes to nn. 1627-1628 - note sequence 2. (1) Nouv. Rev. Theol. T. V. p. 457 sq. (2) L. VI. 1131. Feije, n. 738. Notes to nn. 1627-1628 - note sequence 3. (1) Nouv. Rev. Theol. T. V. p. 444. (2) Gury, Ed. Rom. 1873. T. II. p. 682. (3) Past. Bl. fur N. Amer. 9 Jahrg. S. 85, 86.

**1628. Questions. - Quaer.** 1° In what way is dispensation to be sought if there are two impediments, of which one is public and the other occult?

**Resp.** If the occult impediment is defaming, the Orators can indeed consent that mention of it also be made in the supplication for the external forum; but then it is necessary to add to the petition of the Orators that this is being done. If their consent is not given, or cannot be sought, or does not seem to be sought, for the external forum recourse must be had to the Dataria, no mention of the occult matter having been made; but for the forum of conscience a supplication is instituted to the Penitentiary, in which for validity even the public impediment must be expressed, adding that its relaxation has been sought or will be sought from the Dataria.

**Quaer.** 2° Must recourse be had to the Sacred Penitentiary so that the circumstance of occult copula had among consanguineous persons, etc., may be manifested?

**Resp. 1°** It is certain that no obligation is given of exposing occult copula in a petition to the Dataria. The reason is that no one is held to defame himself, and besides this public revelation of occult incest is not prescribed.

**Resp. 2°** But this circumstance must be manifested to the Sacred Penitentiary. The reason is that it is generally prescribed that copula had between consanguineous persons, etc., who wish to enter Matrimony, be exposed. Now, since it is certain that no obligation is given of exposing occult copula in a petition to the Dataria - because no one is held to defame himself, nor is it said in the precept that public revelation of occult incest must be made - it follows that occult copula must at least be opened by secret manifestation before the Penitentiary, lest the law become altogether useless and exemption from a certain law be conceded without any cause. Several formerly held the opposite; but today there must be no further doubting concerning this, says St. Alphonsus, after the Bull *Pastor bonus* of Benedict XIV. The Responses of the Sacred Penitentiary of the year 1858 and July 20, 1869 confirm the doctrine of the Saint.

**Quaer. 3°** Is a dispensation sought in the form of the poor valid if the Orators are not poor?

**Resp.** Affirmatively. The reason is that obreption falls only upon the impulsive cause, not upon the motive or final cause; for poverty is not the reason on account of which dispensation is conceded, but on account of which it is conceded gratis. Hence another motive cause must always be present. - Thus St. Alphonsus, who says that this is established from the decision of the Sacred Congregation of September 9, 1679. Except: 1° a dispensation conceded by a Bishop by force of an Indult having the clause: "in favor only of those who are truly poor"; which clause is not found in the faculties which are accustomed to be conceded to our Bishops; 2° a dispensation conceded by the Sacred Penitentiary in a public impediment (n. 1627. II), in which case, according to the practice of this Sacred Tribunal, either another dispensation or a sanation is granted. - Each exception is clear from the Response of the Sacred Congregation of the Council, April 26 and June 28, 1873.

**Quaer. 4°** Who are to be judged poor?

**Resp.** From Canon Law they must be in some way miserable, since according to the style of the Curia the petition must be formed thus: "The Orators exist poor and miserable, and live from their labor and industry." In practice the state of fortune is to be exposed, or one must stand by the rules given by the Bishop.

From the Declaration of the Rectors of the Apostolic Dataria of the year 1841, this side of the mountains, those are to be reputed poor whose fortune does not exceed the value of 3,000 francs (\$600); but those whose fortune does not exceed the value of 10,000 francs (\$2,000) are called almost poor. - Bouvier.

**Quaer. 5°** In what way is dispensation to be executed?

**Resp. 1°** As regards dispensation of the Sacred Penitentiary, let it be done after absolution in these words, or similar ones: "By Apostolic authority I dispense with you concerning the impediment N., which you have incurred, that you may be able to enter Matrimony (or to perfect the one entered), and I render legitimate the offspring received (or to be received). In the name of the Father, etc."

No formula is prescribed under penalty of nullity, indeed not even under precept; for none is had in the Roman Ritual. If the confessor had omitted to legitimate offspring, he could repair this omission;

for then he would continue the cause committed to him and not yet completed. - Bouvier.

**Resp. 2°** As regards dispensation of the Dataria, the one delegated to dispense 1° ought, for validity, to inquire into the truth of the petitions if the clause is present: "If you shall find that the petitions rest upon truth." Benedict XIV, const. *Ad Apostolicæ*, seems at least always to require the verification of causes for validity. They except if, an inquiry having been made before the supplication, after the rescript there is sufficient certainty concerning the truth of the petitions; 2° he should send the dispensation by letters to the Pastor, that the latter may intimate it to the parties.

Dispensation from the Dataria must always be sought through the Bishop. But dispensation from the Penitentiary can be sought immediately by the Orator, or by another in his place. Nevertheless more securely and more easily this too is requested through the Bishop and with the name of the Orator kept silent.

**Quaer. 6°** In what way must dispensation be obtained from Bishops when they can dispense from an Indult?

**Resp.** The same rules which are held in the Roman Curia as necessary must necessarily be observed also in this case; because the mind of the Supreme Pontiff is that Bishops cannot use the Apostolic concession in another way. This is clear from the Response of the Sacred Penitentiary, May 1, 1858. (44) p. 427.

But a Bishop, dispensing by virtue of an Apostolic Indult, does not have to express, under penalty of nullity, as some wrongly suppose, that he dispenses as a delegate of the Holy See from an Indult of delegation conceded on such a day and year, and going to be valid for so many months or years. Except if this is prescribed in the Indult, and indeed under an irritating clause, of which kind is this: otherwise let them be null. - Hence it follows that matrimonial dispensations given informally by our Bishops are valid, and, with sufficient cause acceding, licit also; since form in their faculties, today at least, is not prescribed under penalty of nullity. The conclusion, otherwise evident, is confirmed from the Response of the Sacred Congregation of Inquisition, Monday, June 15, 1875, to doubt 3 from the Vicar General of St. Louis (United States), conceived in these words: "Whether dispensation concerning matrimonial impediments conceded by an Ordinary of this region according to the accustomed Apostolic faculties, although gravely illicit, is nevertheless valid when it is given informally, because the tenor of the faculty delegated by the Holy See, or the time for which, has not been expressed, or because it was conceded telegraphically in few words or only orally. This doubt arises from the omission of the clause: otherwise let them be null, in the faculties now conceded to Ordinaries of America; which clause formerly had been expressly placed in faculties of this kind."

The Sacred Congregation responded - "Affirmatively; provided the woman really has not been abducted, or if abducted, does not exist in the power of the abductor. But the clauses are to be observed to the exact rule, insofar however as the circumstances of things, times, and places can allow."

**Note.** - As regards the question whether a Bishop, dispensing from an Indult, can do this if incest or quasi-incest (n. 1625. q. 2. Resp. 7) or malicious intention (ib.) has intervened, of which there is no mention in the Indult, first indeed the circumstance of incest, etc., is evidently comprehended by those Indults by which the faculty of dispensing is given together with the faculty of legitimating offspring received, as is done for each part n. 6 Fac. Form. I. p. LXX, and for all and singular

Extraordinary Faculties D (n. 7, p. LXXIV) and Extraordinary E (n. 4. § Besides, p. LXXV). Therefore no difficulty exists for our Bishops from this head. - But even if the Indult in no way mentions incest or malicious intention, nevertheless the celebrated Feije does not doubt that the Bishop can dispense. Consequently the same must be said concerning the repetition of incest, and concerning the revalidation of a dispensation conceded by a Bishop and invalid from some aforesaid cause. - But if in a case a double supplication is required, one in the external forum, the other in the forum of conscience, this can be made either to the Bishop or to the Major Penitentiary.

Besides, the Ordinary using an Indult of dispensing will be able to dispense with the clause: that the dispensation is going to be valid, even if incest committed or repeated is detected. But as often as this conditioned form is employed by him, penance also or other things must be conditionally enjoined by him; and these indeed afterwards, according as there is question of a public or occult matter, are imposed absolutely by the pastor or confessor detecting incest committed or repeated before Matrimony. Understand these things concerning strict power. As regards its use, prudence requires this: 1) that it not be employed spontaneously, unless perhaps for repetition of occult incest already expressed in the supplication; 2) if the confessor asks, it is indeed easily to be employed for the case just indicated, more rarely for incest not yet expressed; 3) for the external forum, or if the pastor asks, it seems altogether that one must abstain from a form of this kind. Feije, n. 720. 721.

**Quaer.** 7° What are the clauses which are customarily placed in dispensations from the Sacred Penitentiary?

**Resp.** They are the following, namely:

1° *If it is so.* This, unless he knows it from elsewhere, the executor is bound to inquire into, under penalty of nullity. Faith is to be given to the penitent, unless the delegated one certainly knows the opposite from knowledge received outside Confession. Feije, n. 748.

2° *Sacramental Confession first having been heard.* Therefore, according to this clause, Confession is necessary, and indeed before the delegated one himself.<sup>1</sup> - "Provided," however, "the confessor, executor of the letters of the Sacred Penitentiary, observes," thus the same Sacred Penitentiary, "the things prescribed to him in the same letters, then dispensations given by force of the same letters will be valid, even if it happens that the penitent confesses nullly and sacrilegiously and receives absolution from sins. But if the confessor notices that the penitent, from his indisposition, cannot rightly be absolved from sins, he must take care to dispose the same penitent rightly, or, if he cannot be disposed at present, together with absolution from sins also to defer the aforesaid dispensations, unless perhaps some urgent necessity counsels accelerating the same dispensations."<sup>2</sup> The dispensation must be conceded within Confession. (N) p. 409.

3° *The occasion of sinning having been removed.* It is understood, if the occasion is voluntary, which in fact is to be removed; but if necessary, let it at least be taken away from the soul, by rendering it remote from proximate through the due means.

4° *Provided the impediment is occult.* See n. 1564.

5° *A grave penance having been enjoined on him, etc., besides the sacramental penance.* Grave is that which corresponds to a work which is enjoined by the Church under grave obligation (n. 1382. q. 4°); gravest, if the grave penance is doubled or tripled; salutary, if it is not only proportioned to the

gravity of the sin (according to the powers of the penitent), but also medicinal (n. 1389); long, if it is to be continued weekly for a year (according to the gravity of the sin); lasting, which is extended to 3 years; but perpetual, which embraces the whole life, not as regards individual days (unless this is expressly required in the Rescript), but as regards stated days.<sup>3</sup> - Yet one must beware lest a penance be chosen from which the penitent's crime could be detected. - But if some penance imposed by the Penitentiary itself is found, it cannot be passed over.<sup>4</sup>

**6°** *The present letters having been torn up, under penalty of excommunication latae sententiae.* This tearing-up must be done immediately; but understand this morally, namely at least within three days after the dispensation has been executed. But if in the letters the clause of tearing-up has not been placed, as it is not placed when Matrimony has not yet been contracted, then there is no obligation of tearing them up; but a dispensation of this kind must be cautiously noted by the Pastor in a book which cannot be looked at by anyone else, so that he himself, when there is need, may be able to make proof of the dispensation obtained. (45) p. 428.

**Quaer. 8°** In what way can the monetary tax which is imposed on Orators be reconciled with the Decree of the Council of Trent commanding that dispensation be conceded **GRATIS**?

**Resp.** If money received on the occasion of dispensations turned to the benefit of the one dispensing, the mandate of the Council of Trent would be violated, and the dispensation would be simoniacal; but the matter does not stand thus; for the money is received only as an alms to be expended on pious works. Cf. n. 357. 6°, and, as regards us, p. LXXV. A. 1°. C. 4°. D. 5°.

**Quaer. 9°** In what way is a dispensation of the Sacred Penitentiary to be executed if the impediment is known and common to each contracting party?

**Resp.** In this case each one must be dispensed by his or her respective confessor. This is clear from the response of the Sacred Penitentiary, November 15, 1748. - But the same Rescript can serve two confessors, and is to be torn up by him who later executes it with his penitent. But if the impediment is known only to one, a single execution is required. - Collet, *Traite des Dispenses*. - Bouvier, etc.<sup>1</sup>

**Quaer. 10°** What, especially in these Provinces of the United States, must be observed particularly as regards the mode of 1) procuring, 2) conceding, and 3) executing matrimonial dispensations?

**Resp. ad 1um. 1°** Let the Pastor observe the following: "The mere desire of entering some Matrimony is not sufficient, nor a greater future abundance of temporal things, nor another motive of this kind; but a cause consonant with the canons is required. Therefore the Pastor or confessor should first indeed inquire concerning the cause; if he sees that it is certainly insufficient, let him prudently declare this, and not have recourse; if it is sufficient, or perhaps sufficient, let him not immediately agree, but, if it can be done, let him gently dissuade; but if they do not desist, or the Matrimony is either necessary or advisable, let him assist the parties by his office, yet never inconsiderately making a certain hope of obtaining dispensation."<sup>1</sup>

"If sufficient causes" seem "to the Pastor" to be present, let him "prudently" admonish the Orators, "... that no grace ... will be obtained, unless the petitions rest upon truth. Finally, if, with conscience safe, without respect to gain or favor of the suppliants, all things having been well weighed, he judges that they can legitimately be dispensed, then in the supplicatory libellus let him expose the species of the fact neatly and sincerely, and let him diligently beware lest he alter or change it in any way in

substantial matters, but let him strictly adhere to those things which were exposed to him by the Orators, and much more let him abstain lest he force in, with detriment to his own soul, something false or fictitious invented from his own ingenuity for obtaining the grace more easily. Moreover, let him cautiously admonish the Orators concerning those things which we have said above" (n. 1625. q. 2°. Resp. 6. 7; q. 5°. Resp. 2°; q. 8°) "concerning copula had between them before or after the petition."<sup>2</sup>

2° "Because ... Bishops in these provinces have ample faculties of dispensing by special delegation, it will very rarely happen that application must be made immediately to the Dataria or the Sacred Penitentiary, but rather to the Bishop of the Diocese."<sup>3</sup>

But if recourse cannot be had to the Bishop, either because he lacks the faculty, or because the sacramental seal obstructs it, in the former case recourse should be had to Rome through him, in the latter directly, and indeed through the Sacred Congregation de Propaganda Fide, addressing the Pontiff for the external forum, and the Major Penitentiary for the internal forum.<sup>4</sup>

3° For matrimonial dispensations, even of the internal forum, a written supplication is more prudent; for thus the case and the petitions will be able to be weighed better by the Ordinary.<sup>5</sup>

**Resp. ad 2um.** 1° As often as the Ordinary dispenses from delegated faculty, let him observe those things which were said in this number, q. 6°.

2° If he dispenses by quasi-ordinary right (see n. 1623. II), he will act more prudently if he concedes the dispensation in writing; for thus he will weigh both the case and the petitions better, and will place the due clauses more certainly.<sup>6</sup>

3° "It seems greatly to be desired that ... the Bishop employ some officials in dispensations concerning public impediments, and others concerning occult impediments, because otherwise the secret in occult matters ... sometimes can scarcely be preserved." See other things apud Feije, *de imp.* n. 722.

**Resp. ad 3um.** Let those things be observed which were said in this number, q. 5°. 7°. 9°, and which are to be said below.

See p. 303 for formulas for requesting certain matrimonial dispensations. Concerning defects of dispensations and their sanation, (T) p. 412.

Notes to n. 1628 - note sequence 2. (1) Ben. XIV. Inst. 87. § Disceptabant olim. (2) Knopp, § 48. p. 485. not. 6. (3) Ib. p. 497. Heiss. § 59. (4) Ben. XIV. Inst. 87. § Si dispensatio. Notes to n. 1628 - note sequence 3. (1) L. VI. 1143. Notes to n. 1628 - note sequence 4. (1) Feije, *de Imp.* n. 649. (2) Heiss. § 60. II. (3) Ib. § 60. I. (4) Feije, *de Imp.* n. 688. (5) Reiffenst. App. § 10. n. 511. 524. (6) Ib. Appendix annotation (44), to n. 1628. q. 6°. p. 284. col. 1. It can therefore be asked whether a Bishop using the faculties of Formularies D and E, T. I. [p. LXXIII, LXXIV] (/manuals/konings/iii-faculties#h4), for at least the internal forum himself ought to bestow the dispensation and also validly can do so, since from the practice of the Sacred Penitentiary in the commissory form, p. 279. col. 1, they are granted to the confessor of the petitioner. - The resolution of this question is clear from the Roman response to the following doubts: "The extraordinary Faculties of Form D ... under n. 8 comprehend also the power of subdelegating, etc." "Since there are not lacking among Canonists those who, although they admit that a mandate of the Apostolic See or a faculty of dispensing with a determinate person cannot be subdelegated to another unless the Holy See has permitted this, nevertheless teach that otherwise one must judge concerning an indult or general faculty, namely that this can, by the indultary, as one delegated to a universality of causes, by common law itself, be subdelegated to another in a particular case; but others either deny or doubt, because they think in this matter one must proceed rather from the mind of the Holy See than from some general principle, for the peace of my conscience I humbly seek a response to the following doubts. "1°. Whether I can subdelegate the aforesaid faculties of the

Formulae, whatever they are, in particular cases, to another, or rather ought to dispense myself? "2°. Whether at least, by reason of the style of the curia to be followed by the indultary, I both can and ought to subdelegate the faculty of the aforesaid Formula under n. 2 of dispensing, etc. ... Likewise, at least in a case in which there is question of an impediment of the internal forum, the faculty of the same Formula under n. 6 of sanating, etc. ..." "It was answered in the following tenor: "To the doubts proposed by Your Excellency concerning the subdelegation of faculties which are granted by the Apostolic See to Bishops" - the name of the region follows - "I judge that it is to be answered: To the first, that Bishops in the case cannot be considered as delegates to a universality of causes, and therefore cannot indistinctly subdelegate the aforesaid faculties. To the second, that the extraordinary Faculties of Formula D," and by parity of reason the same is to be resolved concerning the Faculties of Form E, "can be subdelegated only in the mode and terms expressed in n. 8," Form D, "and n. 4," Form E, T. I. [p. LXXIV, LXXV] (/manuals/konings/iii-faculties#h4). "But if Your Excellency in your prudence judges it necessary to subdelegate to confessors the faculties which are comprehended under 2 and 6," see T. I. [p. LXXIII, LXXIV] (/manuals/konings/iii-faculties#h4), "it is necessary that you be fortified by a special Indult for this purpose." Appendix annotation (Nu), to n. 1628. q. 7°. R. 2°. p. 285. col. 1. Dispensations for the forum of conscience conceded by quasi ordinary power, or not by force of faculties of the Holy See, do not necessarily have to be fulminated in Confession, unless the Ordinary has placed this condition. Feije, de Imp., n. 757. § fin. It can sometimes be foreseen that the parties, or one or the other of them, cannot be induced to make Confession; and this same thing sometimes happens in dispensations of the external forum. In a case of this kind, prudently, in the petition itself by which the dispensation is requested, it is asked that the clause not be added. Feije, ib., n. 746. 757. Appendix annotation (45), to n. 1628. q. 7°. p. 285. col. 2. To the doubt of the Vicar Apostolic of Luchu: "Whether Missionaries, before they grant dispensations in the external forum, ought, by way of caution, to absolve those to be dispensed in the internal forum from Ecclesiastical censures, and whether they can and ought in the external forum?" S. C. de P. F., 26 Sept. 1821, responded: "Affirmatively to the first part; to the second, likewise affirmatively, with faculty obtained from the Ordinary." Collect. p. 490. n. 1020. Appendix annotation (T), to n. 1628. q. 10°. p. 286. col. 2. ### Concerning the defects of matrimonial dispensations and the sanation of them. The things which I have handed down scattered here and there on this matter in the Treatise on Matrimony, I wish here to exhibit collected together for an easier understanding of the matter and practical use. The defects of matrimonial dispensations, or causes of nullity of the same, are either extrinsic or intrinsic. Extrinsic ones especially arise from a defect of power in the one dispensing, in which case a competent Superior is to be approached for sanation; from the invalidity of the fulmination, which, if it was caused by the form of the mandate not being observed, the delegate can execute again. See n. 1628. q. 5°. R. 2°. q. 17. q. 9°. What is to be observed then in certain other rarer cases pertaining to this matter, see Feije, de Imp., n. 735. Intrinsic ones are subreption and obreption, n. 1625. Nullity arising from subreption or obreption admits a threefold hypothesis: 1°. If the dispensation was sought in the external forum alone, and a new impediment existing before the fulmination of the dispensation is detected, for that which arises only after this does not require sanation of the dispensation, or a defect to be sanated in the external forum is detected, convalidation is sought for the external forum alone. Examples: an impediment not rightly proposed; one only, although several concurred; public incest not set forth; a false final cause. But if a new impediment existing before the fulmination of the dispensation, or a defect, pertains to the forum of conscience, recourse is had for this alone in the same way in which a dispensation for the internal forum is sought when a public and occult impediment stands in the way of the nuptials, n. 1628. q. 1°. q. 2°. 2°. If the dispensation was sought in the forum of conscience alone, and a new impediment or defect also pertains to it, convalidation is asked for the forum of conscience alone. Examples: a dispensation was sought upon an occult impediment of affinity from illicit copula; when the dispensation has been obtained, the confessor understands that at the same moment, together with the impediment of affinity, incest existed between the spouses; or a dispensation was sought upon occult affinity, upon crime, and afterward it is detected that the alleged cause did not exist, or that the impediment was proposed erroneously, not well. But when an impediment or defect pertaining to the external forum has been detected, recourse is had both for this forum and for the forum of conscience, in which, that is, in the forum of conscience, the occult and public impediment will be set forth according to the things said in n. 1628. q. 1°. q. 2°. 3°. If the dispensation was sought both in the external forum and in the forum of conscience, and a new impediment or defect pertains to the external forum, a double convalidating recourse is necessary: one, namely, for the external forum, in which the new impediment or defect is set forth together with the one already previously declared; the other for the internal forum, in which all the impediments or defects already known are set forth, both public and occult. - But when a new impediment or defect pertains to the forum of conscience, convalidation is to be sought in this alone. From Feije and Van de Burgt. Query 1° What defective dispensations can a Bishop convalidate? Resp. 1° Dispensations granted by himself, as often as the matter newly detected would not otherwise have exceeded his power at the time at which the dispensation was granted. 2° Dispensations also granted by the Holy See, if and insofar as power of revalidating them has been granted to him. But no such power is granted to our Bishops by force of the

Formularies. In the remaining cases he cannot. But although he cannot convalidate dispensations granted by the Holy See, nevertheless in this case he will be able himself to dispense if the dispensation sought and granted by the Holy See was upon an impediment in which he himself could have dispensed, and with which nothing occurs which requires recourse to the Apostolic See. From Feije. Query 2° What is to be done in doubt whether the dispensation was valid? Resp. It is to be held as valid, n. 1625. Query 3° What if there is doubt concerning the very fact of obtaining the dispensation? Resp. A dispensation is to be obtained, as follows from those things which were said concerning a doubtful impediment from a doubt of fact, n. 1574. q. 5°. R. 3°. Query 4° What if the defect of the dispensation is insanable, for example, on account of defect of an impediment of natural law? Resp. The things said in n. 1638 are to be applied. Query 5° Are those about to marry, or, Matrimony having already been contracted, the spouses, always to be admonished concerning the defect, even a sanable one? Resp. Apply the things said in n. 1423. q. 3°. q. 4°. n. 1556. q. 3°. n. 1639.

## Chapter VII. On the Revalidation of Matrimony

**1629.** - Matrimony can be invalid: 1° because of defect of consent; 2° because of defect of the prescribed form; 3° because of incapacity of the parties. (46) p. 428.

Appendix annotation (46), to n. 1629. p. 286. col. 2. In whatever way Matrimony is revalidated, the parties, or at least the conscious party, ought to be in the state of grace. Yet if this cannot be taken care of, or if the revalidation of Matrimony must be hastened, nevertheless this is to be done. Cf. Feije, de imp., n. 739.

### ARTICLE I. ON THE REVALIDATION OF MATRIMONY INVALID BECAUSE OF DEFECT OF CONSENT

It is certain, 1° that Matrimony invalid because of defect of consent alone - that is, celebrated by error, or through force and fear, or fictitiously - can be revalidated by simple renewal of consent.

It is certain, 2° that renewal of consent of each party is required, if each truly did not consent, and at least of that one who did not consent, if it is one only. But concerning several things there is controversy; hence:

**1630. Questions. - Quaer.** 1° Must consent be renewed by both, if one only consented fictitiously or through fear?

**Resp.** Negatively. The reason is that the consent of the other, truly placed, perseveres, so long as it has not been positively retracted. - Thus the Theologians commonly; and St. Alphonsus calls this sentence the truer one.<sup>2</sup>

Nevertheless, some affirm, the sentence of whom to others does not seem probable. But in practice it is better to choose the safer counsel, and, insofar as it can be done without inconvenience or danger, to take care that consent be elicited from each.

**Quaer.** 2° Must the consent to be renewed be before the Pastor and witnesses?

**Resp.** Negatively. It appears from the practice of the Church and the common sentence, namely because of the inconveniences which would follow from that obligation. Except if the nullity has become publicly known. Yet the proclamations are then omitted.

Notes to n. 1630. (1) Heiss. § 60. I. 5). in note. (2) L. VI. 1114.

### ARTICLE II. ON THE REVALIDATION OF MATRIMONY INVALID BECAUSE OF DEFECT OF THE PRESCRIBED FORM

**1631. - I.** It is certain that Matrimony invalid by reason of clandestinity must be entered before the Pastor and witnesses, unless there is obtained from the Supreme Pontiff a dispensation from the law of the Council of Trent, which otherwise is rarely conceded. For that law obliges so long as it has not been fulfilled, since it is a condition *sine qua non*, required in every case for the validity of Matrimony, unless recourse to the Pastor is commonly and morally impossible in some place [n. 1606. f)].

**II.** If both spouses do not refuse to present themselves before the Pastor, before him the Matrimony must be revalidated either publicly or secretly, according as the nullity of the Matrimony was public

or occult. The reason is that in the former case scandal must be removed, but in the latter it must be guarded against, and the reputation of the spouses must be preserved.

"But if the Ordinary," while the invalidity is notorious, "because of peculiar circumstances judges it expedient that it be celebrated secretly before the proper Pastor and two witnesses, it will be able to be celebrated secretly, provided however that public scandal can be removed by another reason, and is removed as soon as possible." Thus Cardinal Caprara in the Instruction on the revalidation of Matrimonies.

But various difficulties occur if one party consents to contracting before the Pastor and the other refuses, or if both are badly disposed. Hence:

**1632. Questions. - Quaer. 1°** What must be done if one party, or each, consents to renewing consent before the Pastor, but refuses to go to the Church?

**Resp.** They are to be joined in their own house or in another place chosen by them, provided grave witnesses are present, by whose help the convalidation of this Matrimony can become public, if this is necessary for removing scandal, namely if the invalidity of the prior conjunction is notorious.

**Quaer. 2°** What must be done if one refuses to contract before the Pastor?

**Resp.** Thus Cardinal Caprara responds in the cited Instruction: "If the refusal arises from ignorance or some error against the laws or doctrine of the Church concerning impediments invalidating Matrimony, let the one refusing be instructed with due prudence and in charity. And insofar as he still refuses to convalidate his Matrimony in the face of the Church, then effort must be made that he constitute a special procurator, who in his name may contract Matrimony in the customary manner; or at least, consent de praesenti having been expressed through a letter directed to the proper Pastor or to another priest having the license of the Ordinary or Pastor, let the Matrimony be renewed."

**Quaer. 3°** What if the indisposed party does not wish to contract even through a procurator, etc.?

**Resp.** Thus the same Cardinal Caprara responds: "If the things thus far prescribed can in no way be obtained, and one party cannot be brought to the celebration of Matrimony to be made according to the things handed down above, ... we judge that recourse can be had to dispensation in the root of Matrimony, or to the sanation of Matrimony in the root, so that at least the salvation of the innocent party's soul, the legitimacy of the offspring, and the tranquility of families may be consulted altogether, and as soon as possible provision may also be made for the salvation of the soul of the one refusing."

**Quaer. 4°** What if neither party consents to contract Matrimony anew?

**Resp.** Nothing at all is to be done here and now, because sanation in the root, although absolutely speaking it could be given by the Pope even in that case, will not be given. Therefore it remains that the Pastor frequently commend the most wretched concubinaries to God, and by assiduous cares strive to procure their conversion.

### ARTICLE III. ON THE REVALIDATION OF MATRIMONY INVALID BECAUSE OF INCAPACITY OF THE PARTIES

For revalidating Matrimony invalid because of an ecclesiastical impediment, before all things the dispensation from the impediment must be obtained. But a dispensation of twofold kind is given, namely: 1° simple dispensation, or in the accustomed mode; 2° dispensation in the root of Matrimony.

#### § I. ON THE REVALIDATION OF MATRIMONY IN THE ORDINARY MODE

**1633. - First Rule.** If each spouse is conscious of the impediment, each is bound to renew consent, after a dispensation has been obtained for revalidating the Matrimony. The reason is that knowledge of the nullity of the Matrimony, because of a known diriment impediment, had necessarily excluded true consent in the preceding contract of Matrimony.

**Second Rule.** If one party only has known the impediment, that one is certainly bound to renew his or her consent, at least alone and separately. It follows from the things just said.

**Third Rule.** The party ignorant of the impediment would not necessarily have to renew consent for the validity of Matrimony, if the impediment regarded the other party only. The reason is that the consent of that one was valid from the beginning, and therefore perseveres; therefore the renewal of consent of the incapable party would suffice. Hence, if a faithful person had married an unbaptized woman who is ignorant of the impediment, it would suffice that, infidelity ceasing or a dispensation having been obtained, the faithful person renew consent; because the consent of the infidel was valid, since the Church could not impress personal incapacity upon her.

**1634. Questions. - Quaer.** 1° Must the party ignorant of the impediment necessarily renew consent for the valid reintegration of Matrimony?

**Resp.** A twofold probable sentence is given:

**The first sentence affirms.** The reason is, 1° because the impediment takes away the efficacy of the consent from the beginning; therefore it remains inefficacious, and hence can produce no effect, since it perseveres in the same mode in which it was given; but a simple dispensation does not heal the defect which preceded, but only renders the parties capable of consenting in the future; 2° because in Rescripts of the Sacred Penitentiary this clause is usually added: *the other party having been certified concerning the nullity of the prior Matrimony*. Therefore. - Sanchez, Sylvius, Navarrus, etc.

**The second sentence denies.** The reason is that the prior consent, although it lacked its effect because of an impediment placed by positive law, nevertheless by the law of nature was valid, since it was furnished toward a person capable by the law of nature of contracting; therefore, the impediment having been removed, the prior consent suffices, which virtually perseveres in effect through conjugal copula, cohabitation, or through other external signs. - Therefore, the internal consent of the spouse conscious of the impediment acceding, expressed at least through similar external signs, the consent of each is united and the Matrimony is convalidated, etc.

In practice the first sentence is to be followed, at least outside the case of urgent necessity, which will be present if sanation in the root cannot easily be obtained, and from manifestation of the nullity of the Matrimony made to the other party, or from separation of the spouses, danger of grave evil, say of

infamy, scandal, etc., is prudently feared. For then it will be lawful to use the second sentence, because in straits of this kind it is not prohibited to use an opinion even slightly probable, even with danger of the frustration of the Sacrament.<sup>1</sup> The present tenor of faculty XII of the schedule of the Sacred Penitentiary adds strength to this sentence: "And insofar as this certification" of the nullity of the Matrimony to the other party "cannot be made without grave danger, consent having been renewed according to the rules handed down by approved authors."

**Quaer.** 2° Must consent be renewed before the Pastor and witnesses?

**Resp.** 1° Affirmatively, if the impediment is public. The reason is, 1° because then the reason of removing or preventing scandal presses; 2° because the Briefs of the Dataria always thus require; 3° because otherwise the validity of the Matrimony could not be proved before the Church, since it is publicly established that the Pastor and witnesses were present only for the celebration of an invalid Matrimony, and thus the end intended by Trent would not be obtained; for the spouses could, after the Matrimony was clandestinely revalidated, separate, and with impunity enter new nuptials with others. Yet in this case the Ordinary can (and, when the impediment, at present occult, was therefore dispensed as public, or for the external forum, because it was prudently feared that it would become public, he must) not only dispense in banns, but also permit secret celebration in the Tridentine form, provided that afterwards (and likewise in the case in which what is now occult afterwards becomes public) scandal is removed by prudent divulgation. When nuptials have been contracted invalidly in a place where at least one of the two was not bound by the Tridentine law, secret renewal of consent, outside the case in which public renewal is imposed as a condition of the dispensation, is valid, and is even licitly permitted, if the other party, especially when non-Catholic, is unwilling to present himself or herself before a priest. But care must always be taken that scandal either not arise, or be removed by prudent divulgation.<sup>1</sup>

**Resp.** 2° Negatively, if the impediment is occult. The reason is 1° because satisfaction has already been made to the law of Trent, or at least to its mind (namely, of meeting the inconveniences which arise from clandestine nuptials), through the presence of the pastor and witnesses in the Matrimony already contracted; 2° because otherwise infamy of the parties, scandal, and other inconveniences would follow; 3° because the practice of the Sacred Penitentiary, the Sacred Congregation of the Council, etc., thus bears. Thus against a few.<sup>2</sup> Yet if it can easily be done, it is sometimes usefully counseled that mutual consent be renewed at least before the confessor.

**Quaer.** 3° At least must a Matrimony, null because of an occult impediment, be revalidated before the Pastor and witnesses, if they at the time of Matrimony were conscious of the impediment?

**Resp.** The denying sentence seems more probable to St. Alphonsus. The reason is that the assistance of the Pastor and witnesses was prescribed by Trent, not so much for testifying to the validity of the Matrimony - which can be unknown to them in many ways - as for proving the external celebration of Matrimony, so that the danger may be met lest the same spouses enter other nuptials.

But the affirmative is also probable to the Holy Doctor; because the Pastor and witnesses, by assisting at Matrimony known to them as invalid, were witnesses only of the nullity of the Matrimony.<sup>3</sup>

**Quaer.** 4° In how many modes can the consent be renewed or exacted from the party ignorant of the impediment, after a dispensation has been obtained?

**Resp.** These are the principal modes assigned by various authors:

**First Mode.** If the spouse simply says: Our Matrimony is null because of some impediment; or: My confessor told me that it is null, ... and therefore let us renew consent.

**Second Mode.** If the spouse says: I did not have true consent when I contracted Matrimony; now I wish to furnish a new one. Do you also wish to furnish it? This mode is commonly admitted by authors, and rightly can be employed without a lie, since null consent is not true consent; and otherwise the spouse ignorant of the impediment thus sufficiently knows the nullity of the Matrimony.

**Third Mode.** If he says: I am troubled by scruples concerning the validity of our Matrimony, and therefore let us renew consent. This mode can be admitted according to the more common sentence with St. Alphonsus.<sup>1</sup> For it suffices that the other party place consent independent of the prior consent; but for this it is enough if he prudently doubts concerning the validity of the first Matrimony.

Various other modes are also presented by several Theologians; for example, if the spouse says to the other party: Say, I ask, if our Matrimony were null, would you not wish to contract again? Or: If you had not married me, would you not now wish to marry? etc. But deservedly those modes are rejected; because thus it is uncertain whether the other party intends to repeat consent into the preceding Matrimony, or rather to consent into a new one. Yet St. Alphonsus admits the former mode: Say, I ask, etc., in the case in which through it the other party would begin to doubt or suspect the validity of the Matrimony.<sup>2</sup>

Notes to n. 1634 - note sequence 1. (1) L. VI. 1115. 1116. Notes to n. 1634 - note sequence 2. (1) Feije, n. 775. 779. (2) L. VI. 1110. Feije, n. 776. (3) Ib. 1112. Notes to n. 1634 - note sequence 3. (1) L. VI. 1117. (2) Ib.

## § II. ON THE REVALIDATION OF MATRIMONY WITH DISPENSATION IN THE ROOT

**1635.** - Dispensation *in the root* is the abrogation of an ecclesiastical law which introduced an impediment, in a particular case, joined with the rendering void of all effects which even before had followed from the law.

Therefore this dispensation produces its effect by removing from the midst the effects of the law, which, because of the nullity of the Matrimony, before the dispensation was granted, and even in the very act of contracting, were produced. - Thus Benedict XIV.<sup>3</sup>

Hence simple dispensation differs from dispensation in the root in this, that the former has its effect only from the time at which it is conceded, or *from now*, and therefore cannot exempt from renewal of consent. But the latter convalidates Matrimony from the time of Matrimony, or *from then*, not in this sense, that it effects that Matrimony, contracted nullly from the beginning because of an impediment, was not so contracted, but by removing from the midst those effects which, because of the nullity of a Matrimony of this kind, before the dispensation was granted, and even in the very act of contracting Matrimony, were produced (namely, defect of consent, nullity of the contract, illegitimacy of offspring, that is, its spiritual and temporal effects), so that, the defect of consent having been healed (which contract is the root), through a fiction of law [T. I. p. 478. col. 1. (6)] these effects before the Church are held as if they had never existed. Heiss, § 64. I.

**1636. Principles. - I.** The Church, or the Supreme Pontiff, can dispense *in the root* of Matrimony as regards all impediments of Ecclesiastical Law. The reason is, 1° because to dispense in the root is nothing else than to take away an impediment not only *for the future*, but also *for the past*, or to take away the effects which it produced, so that before the Church they are held as if they had never existed. But in these things there is nothing which exceeds the power of the Church. Therefore. 2° Because this is established and confirmed from the practice of the Church, which for several centuries has been accustomed to concede such dispensations. Boniface VIII is read to have dispensed thus first, in the year 1301; but in more recent times Pius VI, Pius VII, Leo XII, etc., dispensed more frequently in the same mode.

**II.** But four conditions are required so that Matrimony can be convalidated by the aid of dispensation in the root, namely:

1° That the conjunction of the spouses had an extrinsic species of just Matrimony, and was not manifestly fornicarious. Thus Benedict XIV. The same also Cardinal Caprara requires. The reason is to be sought, not from the essence of the thing, as some wish, but from the pontifical will, as the celebrated Feije proves by examples.<sup>1</sup> - But the extrinsic species of Matrimony is present even in nuptials which, in a place where the diriment law of clandestinity did not oblige one or the other, were contracted invalidly because of an occult impediment - whether before a civil magistrate, or before a minister, or in another mode attesting the intention of Matrimony. Indeed the extrinsic species of Matrimony cannot be excluded from those Matrimonies concerning which it is seriously doubted whether in the place of celebration they were bound by the Tridentine law, and which were contracted in one or another mode said above. Feije.<sup>1</sup>

2° That the consent of each has persevered; for the Church cannot convalidate consent retracted even from one party only. Otherwise, not rarely the Pontiff requires in the Rescript that it be established concerning the permanent consent of each party. But if that is not required, it suffices that no argument of revocation of consent is had, concerning which inquiry must be made not imprudently.<sup>2</sup>

3° That an urgent and grave cause be present. But this can especially be had in a threefold case, namely: 1° when one party cannot be brought to renewal of consent, and nevertheless exhibits consent *de praesenti* of remaining in Matrimony; thus Cardinal Caprara; 2° when the impediment is known to one party only, which could not be manifested to the other without grave inconveniences; 3° when an urgent reason is present for not admonishing the spouses concerning the nullity of the Matrimony.

This third condition is not required for the validity of the dispensation, if the dispensation is knowingly conceded without it by the Supreme Pontiff; otherwise, if it is conceded by a Bishop from a particular Indult, as among us.

4° That there is question of an impediment of Ecclesiastical Law; "for the Pontiff cannot heal consent vitiated by an impediment of natural or divine law, for example, of bond. But if an impediment of this kind has supervened after Matrimony celebrated invalidly because of an ecclesiastical impediment, for example, perpetual impotence, nevertheless the Matrimony can be sanated in the root; for with respect to future Matrimony this impotence would be antecedent, but with respect to the one already contracted it is subsequent. It is indeed difficult to conceive sanation in the root, since Matrimony

truly does not become valid except *from now*, or when the sanation is applied, and therefore the impotence can truly seem to precede the Matrimony; but the reason of explaining is to be sought from the peculiar nature of sanation in the root, by which consent once actually furnished is healed through the abrogation of the impediment *from then*. We have at hand a sanation in the root of this kind conceded by Our Most Holy Lord Pius IX in the year 1848. Nevertheless the parties certainly cannot use Matrimony." Thus the celebrated Feije.<sup>3</sup>

**Note.** - Although ordinarily sanation in the root is given for occult nullity, nevertheless in some very difficult circumstances, and certain conditions being posited, it is also conceded for public nullity.<sup>1</sup> See n. 1632. q. 3°.

Notes to n. 1636 - note sequence 1. (1) De Imp. n. 768. (2) Acta, T. I. p. 186. (3) Feije, de Imp. n. 769. Notes to n. 1636 - note sequence 2. (1) Feije, de Imp. n. 769.

**1637. Questions. - Quaer.** 1° Can dispensation in the root be obtained and applied, each party being ignorant of it?

**Resp.** Affirmatively. The reason is that knowledge of the dispensation is in no way required so that the Church can take away the effect of the law, or the obstacle which was standing in the way of the efficacy of consent; for the power of the Church is altogether independent of such knowledge. It is confirmed from the practice of the Church. For Clement XIII, as Collet reports, conceded to a certain Procopius (who seems to have been a Bishop) the faculty that he might sanate in the root, the parties not having been admonished, many Matrimonies entered invalidly because of too great an extension of faculties received. Other examples also of similar revalidation of Matrimonies are reported by others.

**Quaer.** 2° Can dispensation **IN THE ROOT** be conceded if both parties, when they contracted, knew the impediment?

**Resp.** 1° Negatively, according to the more common sentence, if the spouses in contracting clearly knew the nullity of the Matrimony. The reason is that, the invalidity of the Matrimony being known, true and properly so-called consent cannot be given into it, but only an intention of living in concubinage is had; and therefore consent cannot be healed, since from the beginning it was fictitious.

**Resp.** 2° Affirmatively, if the spouses in contracting, although they knew the impediment, nevertheless did not doubt that the Matrimony was null, or did not attend to its invalidity. Thus Cardinal Caprara seems to be understood, who supposes that dispensation in the root can be obtained for convalidating a clandestine Matrimony, when one party refuses to renew consent before the Church. In the same mode one seems to have to distinguish concerning Matrimonies contracted only civilly in places where the Tridentine Decree is in force.

**Quaer.** 3° Can a Bishop dispense **IN THE ROOT**, when he can dispense concerning diriment impediments from a particular Indult?

**Resp.** Negatively. The reason is that dispensation in the root requires greater power; and therefore it is not judged to be contained in other faculties. It is also proved from the practice of the Church, which always gives a special faculty when it intends to concede the power of dispensing in the root, as is given to our Bishops. See p. LXXIV. n. 6.

**Quaer.** 4° In what way is dispensation **IN THE ROOT** to be executed?

**Resp.** In the same mode as simple dispensation, adding in the formula the words: *in the root*. Thus, for example: "I, by Apostolic authority conceded to me, sanate and consolidate in its root the Matrimony contracted by you with N., and I declare legitimate the offspring received and to be received. In the name of the Father, and of the Son, and of the Holy Ghost." But no formula is had in the Roman Ritual. - But execution of this kind is not necessary *per se*. Hence it is to be omitted if it is better that neither spouse be made certain concerning the nullity of the Matrimony. Otherwise let it be done for the forum of conscience as regards that party which is conscious of the impediment and prepared to submit himself or herself to the execution of the dispensation; but publicly, or at least in such a way that it become publicly known, if the nullity of the Matrimony is public.<sup>1</sup>

Notes to n. 1637 - note sequence 1. (1) Heiss. § 64. III. Feije, n. 772. Notes to n. 1637 - note sequence 2. (1) 4 D. 40. q. unica. a. 4 ad 6. (2) Nevertheless, the celebrated Heiss (De Matr. § 64. q. 2°) seems not to hold as certain that this is necessary in that case of urgent necessity which we explained in n. 1634. q. 1° § In practice. "The reason," he says, "is that this impediment much more probably is not of natural law" (primarily), ... "and therefore consent ... naturally remains true consent."

#### **COROLLARY FROM THE THINGS SAID CONCERNING THE REVALIDATION OF MATRIMONY.**

There are impediments which can cease by some fact. From the things said it is gathered, and in the following things it is more fully explained, in what way renewal of consent then ought to have place.

**I.** Concerning the case in which the impediment of fear ceases, the cause of fear having been removed, see n. 1599. I. Note, and n. 1630. q. 1°.

**II.** By change of domicile the impediment of clandestinity can cease, namely, when the parties celebrated clandestinely in a place where both were bound by the Decree *Tametsi*, and afterwards acquired domicile or quasi-domicile in a place where at least one party is not bound by it. In that case either sanation in the root is to be sought from the Holy See, if a sufficient cause is present (n. 1636. II. under 3°), or consent must be renewed, and this - by both or by one party only, according to the rules handed down in n. 1633 and 1634. q. 1° - publicly or occultly according as the circumstances (see n. 1634. q. 2°) demand either one; and, if there is question of a mixed Matrimony clandestinely contracted in a place where even heretics are bound by the Tridentine Decree, a dispensation concerning the impedient impediment of disparity of cult having been obtained. - Whether the nuptials of which there is question are convalidated by marital cohabitation alone, if the parties are ignorant of their nullity, is controverted. That the Apostolic See in practice applies the denying sentence is clear from the responses of the Sacred Office, 1842 and 1848, apud Perrone, *De Matrim. Christ.* Ed. Rom. T. II. p. 249-251.

If the parties have before contracted valid betrothals, and in the place where afterwards they obtained domicile or quasi-domicile they have had copula, there will be, for the external forum, presumed Matrimony. I say: "valid ... betrothals"; for invalid ones (for example, between a Catholic party and a heretical one) cannot induce a presumed Matrimony of this kind (n. 1525. § It is said: 5°; n. 1546. 3°. n. 1548 q. 1°. Note).

**III.** The diriment impediment of disparity of cult ceases through the reception of Baptism by the infidel party; in which case concerning the revalidation of Matrimony a determination must be made

as above under II.

**IV.** By the death of the prior spouse the impediment of bond ceases between parties who, while that one was living, contracted. But nuptials in this case are not convalidated through sanation in the root, since this cannot be conceded while there is question of consent vitiated by an impediment of divine law, whether positive or natural (n. 1636 under 4°, compared with n. 1561 § The consent, p. 243 col. 2). Hence new consent is necessary, and that, according to the common doctrine (see Feije, n. 761) and according to the mind of St. Thomas,<sup>1</sup> must be furnished by each spouse, the party ignorant of the impediment having been certified,<sup>2</sup> publicly or secretly according as the circumstances (n. 1634. q. 2°) have demanded. - Note that in this case the impediment of crime can be present, namely when someone, while a legitimate consort was living, attempted and consummated Matrimony with another, each having previously known that bond.

## **Appendix: I. On the Mode of Proceeding if Revalidation Can in No Way Have Place, or Before It Can Be Done**

**1638. - I.** If the impediment is indispensable (that is, such in which dispensation cannot be given or is not given) and public, the parties are to be treated as public concubinaires.

**II.** Say the same if it is public and dispensable. Yet if, in this case, the parties consent indeed to revalidation, but not to separation, the former is regularly to be preferred to the latter (that is, unless a sad outcome is feared from revalidation). Then the pastor in the supplica by which he asks dispensation will expose that the parties do not consent to separation, nor will easily consent, so that the one dispensing, according to his prudence, may enjoin it either not at all, or only for a very brief space of time.

**III.** If it is indispensable (for example, impotence), occult, and known to each party, place can be given to cohabitation after the manner of brother and sister, but only in a very rare case (if the parties are elderly<sup>2</sup>); for almost always that remedy, because of the danger of incontinence, will have to be rejected.

**IV.** If it is dispensable, occult, and known to each party, separation as regards the bed is necessary. But if from the disposition and experience of each or either party it is known that a proximate danger of incontinence exists which cannot otherwise be removed, the parties must also be separated as regards cohabitation, with the separation, if it can be done, colored by some pretext (for example, of a journey), so that sin, scandal, and infamy may be guarded against. But if separation of cohabitation, or even of bed, cannot be obtained, the danger of sinning is to be forestalled in the better mode in which it can be done. But the pastor, or the confessor if the impediment is known from Confession, should hasten the dispensation, which in this case is almost always to be chosen.

**V.** If it is indispensable, occult, and unknown to each party, the parties ordinarily are to be left in good faith, because if they were admonished, no remedy for guarding against formal sins could be employed except either separation or cohabitation after the manner of brother and sister. But very grave inconveniences are accustomed to stand in the way of separation; and a proximate danger of incontinence stands in the way of cohabitation. - But if it is dispensable, and there is hope that the parties, warned concerning the nullity of their Matrimony, will obey those things which must be enjoined upon them (separation of bed and, if it is judged necessary, of cohabitation, until the dispensation has been obtained), revalidation of the marriage is almost always to be chosen and the dispensation is to be hastened. But if fruit from admonition is not hoped for, it will have to be distinguished thus. If there is fear that neither party will obey those things which must be enjoined, each party is to be left in good faith until the dispensation has been obtained, which is regularly to be sought (with the parties, as is clear, unaware). I say: regularly, that is, unless there is fear that the parties will refuse the dispensation, or will not obey its conditions, or, the nullity of the Matrimony having been known, will depart from one another with scandal or with harm to the offspring, etc. Then, the dispensation having been obtained, it is communicated to the parties together with admonition concerning the nullity of the marriage. But if only one party can be admonished without grave inconvenience, but not the other (say, because the crime of the former gave cause to the

impediment or because of another cause), regularly neither is to be admonished and dispensation in the root is to be sought. This having been obtained, let the party who can be admonished be admonished, so that, the sanation having been applied, he or she may furnish new consent. - But if the party who cannot now prudently be admonished is foreseen to be able afterwards (that is, after the relaxation of the impediment has been obtained) to be admonished without grave inconvenience, first, ordinarily with each party unaware, let not sanation in the root but simple dispensation be obtained, so that, this having been obtained, the consort may be admonished by the consort concerning the nullity, the dispensation may be applied, and consent may be renewed by each party.

**VI.** If it is indispensable, occult, and known to one party, this party, as is clear, would illicitly both render and ask the debt; he or she must manifest the impediment to the consort, and nothing remains except either separation, or, in a very rare case, cohabitation after the manner of brother and sister.

**VII.** If it is dispensable, occult, known to one party, and grave inconveniences are not feared from manifestation (for example, separation, or, in the case in which the impediment arises from the crime of the party knowing the nullity, the infamy of this party, etc.), the impediment, or at least the nullity of the Matrimony, must regularly be revealed to the ignorant party by the conscious party. This having been done, the nuptials are ordinarily to be revalidated, and this through simple dispensation. - But if, as will often happen, grave inconveniences are feared from manifestation or the impediment has arisen from the crime of the conscious party, revelation is to be omitted and dispensation is quickly to be procured, and this ordinarily through sanation in the root. Meanwhile, as is clear, to the conscious party both rendering and petition of the debt is forbidden; and therefore the debt is to be denied in the better mode in which it can be done.

Notes to n. 1638. (1) Cf. Feije, Cap. 29. (2) L. VI. 1101.

## **II. ON JUDGMENT IN MATRIMONIAL CASES.**

**1639. - I.** In the internal forum, whether penitential or extra-penitential (n. 149), many matrimonial cases are resolved by confessors, by pastors, by Ordinaries, with no peculiar form of judgment, but only with those things observed which natural and positive law demand according to the species of the fact and the circumstances.

**II.** For the external forum we note these things.

**1) The judge of matrimonial causes.** - **a.** For the whole world, it is the Pope; the Sacred Congregation of the Council; the Sacred Congregation of the Office or Inquisition in certain cases. - **b.** The Metropolitan for inhabitants both of his own diocese and, in the case of appeal, of his own province. - **c.** The Bishop for his own subjects, and, according to the more common sentence, also his Vicar, and, as it seems, the Capitular Vicar (among us, the Administrator), the See being vacant. - **d.** Delegates by the Pope or by the Bishop.

**2) The actor can be:** **a.** For impeding the celebration of Matrimony, whoever knows an impediment (n. 1540, 1541). **b.** For asking divorce as regards bed and habitation, the innocent spouse alone (n. 1553. q. 4<sup>o</sup>). **c.** For asking a sentence of nullity of Matrimony, the impediments because of which this sentence is sought must be distinguished. - In the case of fear and error, only the spouse who erred, who was deceived by fear, is admitted; but he or she is not admitted after, the fear and error having

ceased, he or she has cohabited. - In the case of impotence, the spouses themselves alone are admitted, since they can, if they please, cohabit (not however licitly except in the very rare case, as was said above in n. 1638) after the manner of brother and sister. - In the remaining cases of impediments, all who are conscious of the impediment are regularly admitted, and this if they can prove it fully, or give sufficient indications for inquiry. The ecclesiastical judge himself also, if the impediment is manifest and public, inquires by his own authority, no one denouncing or accusing, and pronounces concerning the nullity. - Who are repelled as actors, see the Decretals.<sup>1</sup>

3) Witnesses for or against a contracted Matrimony are admitted before the rest, who are presumed to have more certain knowledge of the impediment (as parents, blood relatives, relatives by affinity, if there is question of consanguinity or affinity), and are not of suspect faith; and likewise witnesses otherwise suitable according to the general principles which are handed down by the Canonists.<sup>2</sup>

4) Semiplena proof (such as is that which is sought from one trustworthy witness, or from common rumor, or from another indication) suffices so that the celebration of Matrimony may be impeded (n. 1541 q. 3<sup>o</sup>). - But so that the nullity of a Matrimony already contracted may be declared, full proof is required. But although elsewhere one's own confession is called the best proof, nevertheless if the married persons were to confess in court an impediment, the Matrimony would not for that reason immediately have to be defined as null, unless from other proofs the truth appeared: namely lest spouses, weary of cohabitation, be able to collude and feign an impediment.<sup>3</sup> Cf. n. 1548, q. 7<sup>o</sup>.

5) A sentence for or against the value of Matrimony by no lapse of time passes into a thing judged;<sup>4</sup> and therefore if a new matter which was unknown or not deduced is detected, the cause can again be referred to judgment.<sup>5</sup>

6) The judicial form in matrimonial causes is summary; but if there is question of the value or nullity of Matrimony, under penalty of nullity, even when the Matrimony is notoriously and evidently invalid,<sup>6</sup> those things must be observed which are described by Benedict XIV in the Constitution *Dei miseratione*, November 3, 1741, of which the principal dispositions are that, at the individual acts of the trial, a defender of Matrimony, that is, of its value, be present, and that one sentence of nullity not end the case and therefore appeal be made until two conforming sentences concerning nullity are had. Van de Burgt, *De Matr.* n. 525-534.

Notes to n. 1639. (1) L. IV. T. XVIII. c. 2, 4, 5, 6. (2) Ad Decr. L. II. T. XX., especially c. 9, 22. (3) Decr. L. IV. T. XIII. c. 5. (4) Ib. L. II. T. XXVII. c. 7. (5) Ben. XIV. c. *Dei miseratione*, § 11. (6) Except Matrimony notoriously and evidently invalid because of clandestinity. Feije, n. 592.

## Chapter VIII. On the Conjugal Debt

**1640.** - Hear St. Alphonsus, approaching this question:<sup>1</sup> "It grieves me to have a longer discourse on this matter, which carries before itself such foulness that it disturbs chaste minds by its very name alone. But would that this matter were not frequent in receiving Confessions, so that it would not be altogether necessary for the confessor to be instructed by a full treatment, but it would suffice for him to be instructed by a compendium! Let the chaste reader therefore pardon me if I speak of it here at length, and descend to particular cases which exhibit a more deformed turpitude." ...

The conjugal debt is called that common action of the spouses which is necessary for generation, and which has been ordained by the supreme Provider of all things for propagating human society. But this action is situated in carnal copula, by which a man and a woman are made, as it were, one body and one flesh.

An act of this kind is called a debt by the Apostle; for it is that which spouses owe mutually to themselves.

It must be treated: 1° concerning the liceity of the conjugal act; 2° concerning its obligation; 3° concerning the sins of spouses.

Notes to n. 1640. (1) L. VI. 900. Notes to nn. 1640-1644 - note sequence 1. (1) L. VI. 930. (2) Ib. (3) Ib. 917. Notes to nn. 1640-1644 - note sequence 2. (1) L. VI. 917.

### ARTICLE I. ON THE LICEITY OF THE CONJUGAL ACT, 1° IN ITSELF; 2° AS REGARDS CIRCUMSTANCES

#### § I. ON THE LICEITY OF THE CONJUGAL ACT CONSIDERED IN ITSELF

**1641. Principles.** - I. The conjugal act among legitimate spouses is, *per se*, honorable and licit: for it is the means established and ordained by the very Founder of nature for the legitimate propagation of the human race.

II. The ends which render an act of this kind honorable are: 1° the generation of offspring, which is numbered among the principal ends of Matrimony; 2° satisfaction of the obligation toward the other spouse; 3° the calming of concupiscence, and thence the avoidance of incontinence both in oneself and in the consort; 4° the desire of fostering or conciliating honorable love, of disclosing or promoting conjugal affection, etc. - Thus commonly with St. Alphonsus,<sup>1</sup> Sanchez, and others against some few, who do not admit the last two ends.

**1642. Resolves.** - 1° The use of marriage is illicit if it is done for pleasure alone, that is, either by expressly excluding the other ends, or by intending none of them, not even virtually. This is clear from the 9th proposition condemned by Innocent XI (p. XV). Yet *per se* it would be only a venial sin, just as it is venial to take food for delight alone. But the use of marriage is immune from this fault if the satisfaction of pleasure is intended as a remedy of concupiscence, whether expressly or implicitly.<sup>2</sup> Cf. n. 1548. q. 6°, Things to be Noted Beforehand, and n. 29. 31. q. 4°.

2° The use of Matrimony with an adulterous mind is gravely illicit, as if someone, approaching his own wife, represents another to himself. - St. Alphonsus,<sup>3</sup> and others commonly.

3° The use of Matrimony is licit for the sterile, both because no law to the opposite can be shown, and because the sterile are *per se* suitable for completing the conjugal act; but if no generation follows, this occurs altogether *per accidens*; and besides generation there are other honorable ends co-honestating conjugal intercourse.

4° Also for the elderly, whose seed is no longer prolific, or for whom it is for the most part poured outside the vessel, the use of marriage is licit, provided they are able sufficiently to complete copula, or have a hope, not empty, of completing it. For the same reasons favor the elderly which we have adduced concerning the sterile. Moreover this is confirmed from the practice of the Church, which blesses the Matrimonies of the elderly.<sup>4</sup>

Notes to n. 1642. (1) L. VI. 881 sq. (2) Ib. 912. Cf. Vind. p. 822. Ed. 2a. T. II. p. 488. (3) L. VI. 913. (4) Ib. 954. Dub. 2.

## § II. ON THE LICEITY OF THE CONJUGAL ACT AS REGARDS CIRCUMSTANCES

The principal circumstances regard person, position, and time.

### I. ON CIRCUMSTANCES OF PERSON.

**1643.** - A fourfold circumstance, or impediment annexed to the person, can stand in the way of petitioning the debt, namely: 1° a vow of chastity (n. 1568-1571); 2° affinity from incest (n. 1589. III.; n. 1590. 6a. 7a. 8a; n. 1144. II. 2°); 3° spiritual cognation (n. 1585. 6°); 4° impotence, which also forbids rendering (n. 1618. III.; n. 1619).

**Note.** - 1° According to the more common and more probable sentence, a spouse bound by a vow, or by the impediment of affinity or spiritual cognation, can ask the debt, indeed is bound to ask it, when he or she notices that the consort, not daring to ask, is placed in danger of incontinence. He or she can also ask as often as the other asks interpretatively, for example, when the woman is held back by modesty, and the man perceives, as St. Thomas says, her will of asking; because then it is rather to render than to ask.<sup>1</sup>

2° Yet a spouse impeded by the bond cannot exact the debt, not even for avoiding incontinence; for the danger of incontinence is indeed a cause for obtaining a dispensation or suspension of a vow, but not for asking the debt. - Thus Sanchez, and others. Except, not improbably, if there is question of impediments imposed by the Church, and a dispensation cannot be obtained shortly, and great danger of incontinence is in the delay.<sup>2</sup>

### II. ON CIRCUMSTANCES OF MODE OR POSITION.

**1644. - First Rule.** That position is altogether licit which nature herself teaches, namely that the woman be beneath and the man above. - Thus St. Thomas, and others commonly. The reason is that other positions are somewhat opposed to the order of nature, and consequently bring in some violation of order.

**Second Rule.** No position, however unnatural, is *per se* gravely illicit, provided the conjugal act can be sufficiently completed; the reason is that any inversion whatever of position, provided union can be completed, does not impede generation.<sup>3</sup>

**Third Rule.** Any unnatural position, a just cause acceding, is free from all fault; but sometimes an unnatural position is easier, or even the only possible one; and indeed some greater facility or necessity can remove an inordinateness of this kind, which *per se* is slight.<sup>1</sup>

**1645. Resolves.** - 1° Spouses who invert the position do not sin in the least because of danger of abortion in the time of pregnancy; because of the fatness or curvature of the man; because of excessive weariness of the woman; or even because of frigidity, when they are more aroused by an unnatural position, etc.

2° A position which alone is possible, whatever it finally is, is in no way condemned, although a not moderate loss of seed follows; because that part of the seed is not necessary for generation, and is lost *per accidens*, while the spouses are unwilling.

### III. ON CIRCUMSTANCES OF TIME.

These circumstances chiefly regard the time of pregnancy, lactation, menses, sickness, Feast days, and Sacred Communion.

**1646.** - 1° At no time is the conjugal act, *per se*, forbidden under grave sin, because no law is found by which the work of marriage is ever prohibited by reason of time. I said: *per se*; because perhaps sometimes, by reason of circumstances, a proximate danger of abortion or of health could be induced. But this is very rare, and cannot easily be foreseen in some cases.

2° Indeed, according to very many Theologians, the conjugal act is never forbidden even lightly by reason of time; the reason is that no law can be assigned by which it is ever prohibited even under light sin. Yet to St. Alphonsus<sup>2</sup> the opinion is more pleasing which does not excuse from venial fault if copula is had in the time of pregnancy, unless danger of incontinence is present, or another honorable cause, which otherwise can scarcely ever be absent.

3° The more common sentence teaches that coitus had at the time of menses is not excused from venial sin because of the indecency which it seems to bear before itself, unless some co-honestating cause is present, namely for avoiding disagreements, or for forestalling incontinence, etc.<sup>3</sup> - But a prudent confessor will abstain from every interrogation in this matter, since there is nothing that must necessarily be declared by the penitent. The same, by parity of reason, they commonly hold concerning copula had by spouses at the time of purgation, or on the days following birth. Yet this could be mortal *per accidens*, namely if from it grave illness or notable aggravation of illness were imminent for the wife.<sup>1</sup>

4° The act of marriage is not illicit during the time of lactation, because there is no prohibiting law, nor, experience being witness, any danger, at least proximate, of infecting the milk. Hence there is no reason why spouses should be held to abstain from the use of Matrimony for so long a time with continual danger of sinning. Thus most commonly, says St. Alphonsus.<sup>2</sup>

5° The conjugal act in time of sickness, at least for the most part, is illicit neither under grave nor under light sin, because no harm from it happens to the brain for spouses; and the labor which accompanies the act cannot, at least commonly speaking, influence sickness very much.

But generally and wisely as regards all things which precede, the anonymous annotator of Gury<sup>3</sup> warns: "Theological opinions concerning the liceity of the conjugal act, as regards circumstances, rest

on a twofold principle, of which the first regards law or the dictate of natural law, the other regards fact. That, namely, in the use of marriage it is not lawful to place an impediment to generation, or to bring grave harm to oneself, or to the consort, or to offspring, these are so many principles of natural law, to which Theologians deservedly adhere firmly; but whether such a circumstance ordinarily produces grave evils of this kind, this is a question of another order, and is to be resolved only from arguments of physiology and medicine. Wherefore the diverse sentences of Theologians concerning controversies of this kind, not certainly defined, are to be held as hypothetical conclusions."

6° According to the more common sentence, it is not illicit on Sundays and Feast days, even the more solemn ones; both because no law is opposed, and also because marital intercourse does not remove spouses from observing the Feasts of the Church. Most of the Holy Fathers who are objected on the opposite side seem to speak of counsel rather than of precept. Hence you will also deduce that there is no reason why a use of this kind should be prohibited in the time of Advent or Lent. - Thus commonly.<sup>4</sup> See p. XCI. C). 2°.

7° Finally, *per se*, it is not prohibited on the day of Sacred Communion, although spouses approach it from piety only, provided they act from an honorable end. - Thus commonly St. Alphonsus,<sup>1</sup> Lugo, Sanchez, and others, who teach that it is of mere counsel to abstain from copula on the day of Communion, whether before or after Communion, provided it is not had immediately after Communion has been received, nor from the mere cause of pleasure. Cf. n. 1311. 2°.

Notes to n. 1646 - note sequence 1. (2) Ib. 924. (3) Ib. 925. (1) Ib. 928. Notes to n. 1646 - note sequence 2. (2) Ib. 911. Notes to n. 1646 - note sequence 3. (3) Ed. Rom. 1873. n. 918 (). (4) L. VI. 923. Notes to n. 1646 - note sequence 4. (1) L. VI. 924.

## ARTICLE II. ON THE OBLIGATION OF THE CONJUGAL ACT

**1647. Principles. - I.** There is an obligation of justice, *per se* grave,<sup>1</sup> of rendering the debt to the other spouse seriously and reasonably asking it. The reason is that from the very nature of the matrimonial contract the spouses mutually transfer to themselves the power of their bodies in order to the conjugal use. This is also deduced from the words of the Apostle: *Let the husband render the debt to the wife; and likewise the wife to the husband; the woman does not have power of her own body, but the man; and likewise the man does not have power of his own body, but the woman.*<sup>2</sup>

**II.** No obligation, *per se*, urges of asking the conjugal debt. The reason is that neither spouse is bound to use his or her right, and each can remit it. Yet *per accidens* there can be an obligation of asking from charity or another virtue, especially in the man, for example, if he judges that the consort is placed in danger of incontinence because of modesty in asking, or if the asking is necessary for fostering or restoring conjugal love, etc. - See St. Alphonsus.<sup>3</sup>

**III.** The obligation in one spouse of rendering the debt ceases when the right of exacting it ceases in the other: and the right is destroyed chiefly in the following cases, namely:

1° If one of the spouses has committed adultery, provided the conditions enumerated in n. 1552. III. 3° are present. Yet in this case the asking will not be illicit, as it is in the cases of which n. 1643 treats.

2° If the one asking lacks the use of reason, because his or her asking is not human. Yet it is licitly rendered, unless there is danger of scandal, abortion, or another grave harm; indeed it must be

rendered if danger of incontinence, even material, urges in the insane or drunken person (yet with a greater evil excluded), or if the spouse is not perfectly insane or drunk.<sup>1</sup>

3° If the one rendering can reasonably fear grave harm or danger to health, because spouses are not judged to have obligated themselves to render the debt with so great an inconvenience. Hold the same if evils of this kind are to be feared for offspring already conceived, and also universally, if for the one asking.<sup>2</sup>

4° If the one asking, because of incest committed with blood relatives of the other in the first or second degree, or for another cause, has lost the right of asking.

5° If it is asked too frequently (n. 1648. 3°).

6° If the other has given sufficient cause for divorce, namely as long as that cause continues to exist (n. 1552. III.).

7° Within the first two months after Matrimony has been celebrated (n. 1551. 2°).

8° If the other asks illicitly; yet in this case it must be distinguished in the following manner. For the illicitness either holds itself on the part of the one rendering alone, or on the part of the one asking alone, or on the part of the act, so that it affects the one asking and the one rendering.

For the first case (for example, if the one asking exacts the act on this condition, that the one rendering impede conception), let this be the rule: he or she is neither bound to render, nor is it licit with one's own sin, even venial, since no obligation or liceity toward sin can exist.<sup>3</sup> It is otherwise, as is clear, if what must be called a sin *per se* is rendered licit by adjunct circumstances, as can happen in an unnatural position, etc.<sup>4</sup>

In the second case there is an obligation of rendering, if there is question only of venial sin, for example, if the act is asked for pleasure alone; for it will scarcely be able to be demonstrated that there is a right of denying some grave debt of justice because the one enjoying that right will use it with slight malice. - But if it is asked with mortal sin (for example, with an adulterous mind, or by one who is bound by a vow of chastity, or by an onanist), that act is licitly rendered, or rather merely permitted, if a grave cause is present (n. 1653. III.) and the proximate danger of consent in the work, insofar as it is evil, does not urge (n. 1654. 2°; 1655. q. 8°). - Indeed St. Alphonsus says that rendering in these circumstances is more probably simply owed, if the one asking has not been deprived of his or her right, for example, through incest.<sup>5</sup>

In the third case, however, one must distinguish. - It is licit to render, if the act is not so intrinsically evil that illicitness can never be taken away by particular circumstances, and if such circumstances are in fact present (n. 1648. 6°. 8°). Otherwise it is not licit; for it would be participation in the illicit act itself.<sup>1</sup>

**Note.** - If warning, or asking that the one exacting desist from sin, is foreseen to be profitable and can be done without grave inconvenience (which will be present for the most part), it must be premised by the consort before the permission, especially if there is question of mortal sin (n. 1654. 3°. 4°). - But if there is question of one impeded from asking, for example, by a vow, it will be safer if the consort forestalls the impeded person by his or her own asking, or adds his or her own asking to the asking of the impeded person already made. Yet the wife, by reason of modesty, will rarely be bound to this.<sup>2</sup>

Notes to nn. 1647-1648 - note sequence 1. (1) L. VI. 909. 950. (2) H. A. Tr. XVIII. 45. (3) L. VI. 911. Sanchez, de Matr. L. IX. D. 22. n. 14. 15. (4) L. VI. 951. Notes to n. 1647 - note sequence 1. (1) L. VI. 273. 274. 922. (2) I. Cor. 7. 3. (3) L. VI. 928. 929. Notes to n. 1647 - note sequence 2. (1) L. VI. 948. (2) Ib. 909. 911. 950. (3) Ib. 943. (4) Ib. 946. 947. (5) Ib. 944-946. Notes to n. 1647 - note sequence 3. (1) L. VI. 946. (2) Ib. 944. Notes to nn. 1647-1648 - note sequence 2. (1) L. VI. 953. H. A. Tr. XVIII. 49.

**1648. Resolves.** - 1° Spouses are bound to cohabitation, nor can one be absent for a longer time without the consent of the other, or without necessity; for this obligation follows from the very obligation of rendering the debt. But just causes of going away for a long time are the public good, the support or protection of the family, harm from enemies to be avoided, etc. And a man who must remain elsewhere for a long time ought to lead his wife there, if he conveniently can, so that she may cohabit with him. As regards civil law, see what has been said in n. 445. 2°. 3°. <sup>3</sup>

Regularly, however, a wife is bound to follow her husband when he changes domicile, even without a just cause (not, however, if he changes it from a base cause); and this: **a)** notwithstanding a contrary custom, which might exist somewhere; for a custom of this kind, as opposed to the divine law by force of which the man is the head of the wife, <sup>4</sup> would be intrinsically evil (n. 184. 3°); **b)** even if the man goes away into a distant region (from which, however, he is not about to return shortly). - Except if either **1)** by following the man she would be exposed to danger of life, chastity, grave detriment, or - for example, because the place to which the husband withdraws for a long time is destitute of every religious succor - of salvation; or **2)** she would lack nourishment; or **3)** there is question of a husband made a wanderer after Matrimony, or, without the wife's knowing it, already a wanderer before it; or **4)** by an antenuptial pact it was agreed not to change domicile, which pact nevertheless has an included condition: unless a new grave cause should supervene. <sup>5</sup>

2° A spouse denying the debt sins gravely whenever there is danger of incontinence or grave vexation in the other party. Likewise if he or she denies it to the other seriously asking. But it is otherwise if the consort benevolently remits it, or asks remissly. Yet remiss asking must be altogether distinguished from interpretative or virtual asking, which is had by signs indicating a serious will of asking, and from which the obligation of rendering the debt arises. This is verified especially in a woman, who is most especially subject to modesty, and from shame does not ask expressly what she anxiously asks.

3° One denying does not sin when the other asks immoderately, for example, after the third or fourth time in the same night; nor if he or she delays it for a short time, namely until night, or if from night he or she delays it until morning time, yet always with the danger of incontinence excluded. <sup>1</sup>

4° Wives are to be reproved who deny the debt to their husbands without sufficient cause, even if they ask remissly; or who do not concede it except when forced, and who harshly and contumeliously reproach the man for his requests.

5° A wife is not excused from rendering the debt because of the ordinary inconveniences of childbirth, pregnancy, or nursing; - nor even because of pains which are grave but brief in time; - nor because of pains which are long-lasting but moderate, for example, of the head for several months after childbirth; - nor because of health somewhat weakened; because all these things are annexed to the matrimonial condition. It would be otherwise, however, if danger of life or of a most grave disease, from the judgment of a truly prudent physician, had to be feared. <sup>2</sup>

6° There is no obligation of rendering the debt to another laboring under a contagious disease grave in itself, such as plague, venereal disease, or something similar. Likewise, because of notable bodily debility, those laboring under a strong fever or another grave disease are excused from rendering the debt. Probably, however, notwithstanding grave danger to health, a spouse can render the debt, in order to free the consort from probable danger of incontinence for it is licit even to expose life for an excellent work of charity ([n. 279. 461]), or for another grave cause (for example, for fostering mutual love), provided the disease is long-lasting and is not accustomed shortly and easily to bring death; in these cases it is also licit to ask. Yet the one asking or rendering, with a contagious and grave disease, must manifest this circumstance to the party unaware of it. But the consort is not bound to manifest to the consort an infamous disease, e.g., a venereal one, provided he or she abstains both from asking and from rendering; nor is he or she bound to render in the case in which he or she is unwilling to manifest a disease of this kind; for the conjugal debt does not oblige with loss of reputation.<sup>1</sup>

7° Whether a spouse is excused from rendering the debt because of fear of more numerous offspring than he or she can support, if danger of incontinence is absent in the other, is disputed. But since this danger can scarcely be absent, St. Alphonsus is more pleased by the negative opinion.<sup>2</sup>

8° As regards the obligation of abstaining from the conjugal act because of harm which perhaps could befall offspring already conceived or born, the probability and gravity of the harm on the one side, and the difficulty of lacking the conjugal right on the other side, must be weighed. It is not established that the use of marriage is prohibited because of harm of no great moment, which befalls offspring and cannot be guarded against, if long abstinence is very difficult.<sup>3</sup>

The conjugal act would indeed be illicit if from it a proximate danger of death for offspring already conceived would arise, for example, because of abortion proximately to be feared (n. 1646. 1°); for circumstances will scarcely ever concur which render it licit to permit abortion (n. 474. II.). Besides, dangers of this kind must not be imagined: hence the liceity of this act is not to be called into doubt unless in a concrete case there is at least prudent fear.

But if there is question of offspring to be conceived, authors oblige to the rendering of the debt, although it is to be feared that the offspring may be born weak, since for him or her it is better "thus to be, than not to be at all."<sup>4</sup>

Finally, the sentence (certainly the more common one) asserting that a wife who has experienced that she bears children dead cannot render the debt unless there is danger of incontinence seems scarcely probable in the concrete, unless this is established with certainty, for example, from the judgment of an expert physician. For how often will it be licit to experience this? Has not healthy offspring often come forth after unhappy births? etc. Add the danger of incontinence, which will especially be present if, because of this cause, one had to abstain perpetually from the use of marriage.<sup>1</sup>

Notes to n. 1648 - note sequence 1. (3) Ib. 939. (4) I Cor. 11. 3. (5) L. IV. 358. L. VI. 977. Notes to n. 1648 - note sequence 2. (1) L. VI. 940. (2) Ib. 952.

### ARTICLE III. ON THE SINS OF SPOUSES

**1649.** - Sins can be perpetrated between spouses by reason of the conjugal act either by excess, that is, by placing acts useless for generation, or by defect, by not completing the essential act, or by

staining the bed with the crime of onanism. (Cf. also n. 1641. II. 1°. 2°. Besides, modesty and often the reason of avoiding scandal [n. 432. 5°] require the most secret place.)

Hence there is a twofold paragraph.

### § I. ON THE SINS OF SPOUSES BY EXCESS

Acts which, besides copula, but on its occasion or pretext, can be exercised by spouses are distinguished into three kinds. 1° Some are harmful to generation, such as sodomy and pollution, and are against nature. 2° Others are useful, such as touches exciting nature and fostering love. 3° Others are neither harmful nor useful, and are called besides nature.

**1650. Principles.** - I. Whatever is necessary for completing the conjugal act, or useful for exercising it more easily, more quickly, or more perfectly, is altogether licit for spouses. The reason is that he who has a right to a thing also has a right to the necessary or useful means, and means not prohibited from another source; and for those for whom the principal thing is licit, the accessory also is licit, and the means ordered to it.

II. Whatever in the conjugal act is an obstacle to generation, or per se induces pollution outside the natural conjunction, is gravely illicit. The reason is that voluntary effusion of seed is not licit except in order to generation; and therefore Matrimony does not give spouses faculty except for an effusion of seed which can per se serve generation. But otherwise, if men could enjoy pleasure itself without the consequent burden of offspring to be nourished and educated, the generation of children would easily be postponed, indeed would be avoided by set purpose, and thus society itself would incline toward destruction.<sup>1</sup>

III. Whatever indeed is not an obstacle, yet per se is less necessary or less useful for the act of generating, cannot be turned to fault except light fault; yet from this other ends intrinsic to acts of this kind excuse, namely that conjugal affection may be preserved and fostered, or at least that concupiscence may be calmed. See n. 1641. II.

Notes to n. 1650. (1) L. VI. 958. H. A. Tr. XVIII. 49.

**1651. Resolves.** - 1° Modest touches and looks between spouses, with danger of pollution in oneself and in the other excluded, are free from every fault, although sometimes involuntary pollution may follow *per accidens*. But they are venial if they are done for pleasure alone; and mortal if they are done with the aforesaid danger and for pleasure alone or for a light cause. It is otherwise if they are done for a grave cause, say if there is an urgent cause of showing affection for fostering mutual love, or for removing a depraved suspicion from the other.<sup>1</sup>

2° Touches and looks which are less honorable are also free from fault per se, if they are referred immediately to copula. Indeed the same must be held even if they were simply dishonorable, because since they have a right to copula, they also have a right to acts per se necessary or useful for copula. But if the acts by which a spouse disposes himself or herself for the conjugal act are such that they easily provoke pollution per se, they can be culpable, if diligence is lacking for avoiding pollution outside intercourse, or if such an act is such that the proximate danger of pollution cannot be guarded against by any diligence, say if the man inserts the shameful parts into the mouth of the wife. Hold the same if in preliminaries of this kind to copula there is present a sodomitic intention.<sup>2</sup> But if, due diligence having been employed, pollution follows beyond intention, there will be no fault.

3° Spouses do not sin gravely by touches, even immodest ones, although had for pleasure alone and without intention of copula, yet with danger of pollution, even involuntary, and the crime of sodomy excluded. But the one rendering seems always to be excused, although there is danger of pollution in either one (unless the touches are such that pollution seems to have been begun), since then the fault holds itself on the part of the person. - Thus commonly.<sup>3</sup> But light fault, which can be present in acts of this kind, is easily excused because of ends intrinsic to Matrimony itself, or other extrinsic ones, for example, because they are suitable for fostering affection or for calming concupiscence.

But what if spouses, after copula has been begun, restrain semination? St. Alphonsus responds:<sup>1</sup> "If both spouses consent in this, and there is no danger of seminating outside the vessel, that, speaking per se, is not mortal; for that penetration of the female vessel is then reputed after the manner of a touch of the shameful parts, which is permitted between spouses, or at least is not mortal, with danger of pollution excluded. St. Antoninus, etc. I said: **1)** if both consent; for if one withdraws without the consent of the other, he certainly sins gravely, as all the aforesaid authors say. I said: **2)** speaking per se; for Sanchez wisely warns with Veracruz that this ordinarily is mortal, because ordinarily there is danger from such withdrawal of pouring out seed, unless the spouses have experienced the opposite; in which case nevertheless I think that they can in no way be excused from venial sin, whatever Sanchez may say with others."

Likewise what if the husband wishes directly either to pollute the woman, or to pollute himself around the body of the woman without matrimonial copula, as happens too often in practice? - Berardi responds<sup>2</sup> (yet with a certain trembling, as he admits, because he has not found Theologians teaching his opinion in a clear and firm manner): "If the woman can in no way avoid these touches if she sleeps with her own husband, so that to avoid them she would have to leave the bedchamber altogether, provoking the greatest discord and procuring for herself and her children very grave detriments; I would think that she is not held to undergo such and so great inconveniences, and can limit herself to resistance morally possible for her, provided that by positive acts she never accommodates herself to the shameful touches of the man, but only permits them because of the aforesaid grave causes, bearing herself passively. For then the woman on her part does nothing evil, and simply sleeps in her bed with her own husband. The whole malice is on the part of the husband himself, whose illicit touches indeed the woman ought to impede, if she could; but not if very grave inconveniences stand in the way of her impeding them."

Leaving the matter to the wiser, I cannot fail to observe that it is certainly not licit for the woman to bear herself passively if, unless she positively resists, she is in proximate danger of consent (cf. n. 20).

4° A wife does not sin gravely, indeed, according to the more common and more probable sentence, not even lightly, if by touches she excites herself to semination immediately after copula, in which the man alone has seminated; 1° because semination of the woman pertains to completing the conjugal act, so that the spouses may properly be one flesh; and, just as the wife can prepare herself for copula by touches, so also she can perfect it; 2° because, if women after such irritation were held to restrain the natural motions, they would be continually exposed to great danger of sinning gravely.<sup>1</sup>

5° Touches with oneself from venereal delight, the other spouse being absent, cannot be excused from grave sin. The reason is both because a spouse does not have the right of using his or her own

body in order to fulfilling pleasure with oneself, but only in order to copula, and because touches of the shameful parts, when they are done lingeringly and with movement of the spirits, tend per se to pollution and are proximately connected with its danger. And St. Alphonsus<sup>2</sup> calls this opinion the more probable and altogether to be urged in practice, no broad judgment concerning the probability of the opposite sentence being made.

6° Morose delectation concerning copula had, or remotely to be had, with danger of pollution excluded (which nevertheless will be proximately present if titillation of the parts is joined with movement of the spirits), although according to the common sentence it is only venial, nevertheless is to be dissuaded. 1) It is some sin; because in this pleasure, not referred to proximate copula, an inordinateness is found, since an honorable end is lacking and the genital spirits are moved in vain, at least inchoatively. 2) It does not exceed venial sin; because, since copula is per se licit for spouses, it cannot be gravely illicit to be delighted concerning it. Nor, however, is simple thought concerning these things to be had or already had illicit.<sup>3</sup> Indeed neither is desire concerning future copula, nor (except in a widower or widow) joy concerning past copula, per se illicit; because desire or joy concerning a licit thing cannot be illicit.

Notes to n. 1651 - note sequence 1. (1) L. VI. 934. (2) Ib. 916. 934. 935. (3) Ib. 934. H. A. Tr. XVIII. 42. Notes to n. 1651 - note sequence 2. (1) L. VI. 918. (2) De Occas. n. 242. V. Notes to n. 1651 - note sequence 3. (1) L. VI. 919. (2) Ib. 936. (3) Ib. 937.

## § II. ON ONANISM IN PARTICULAR

**1652.** - Onanism consists in this, that the man, after copula has been begun, withdraws himself before semination and pours out the seed outside, in order to impede generation. Everyone sees per se that this is to indulge lust and at the same time to be unwilling to assume the burdens of Matrimony.

It takes its name from Onan, the second son of the patriarch Judah, who after the death of his brother Her, according to custom, was compelled to take his widow Tamar, so that he might raise up seed for his brother; but *going in to the wife of his brother, he poured out the seed upon the ground, lest children should be born in the name of his brother. And therefore the Lord struck him, because he did a detestable thing.*<sup>1</sup>

**1653. Things to Be Established.** - **I say I.** Voluntary onanism is always a mortal sin, as being against nature; and therefore it can never be licit for spouses. The reason is 1° because it plainly fights against the primary end of Matrimony, and per se tends toward the extinction of society, and consequently subverts the natural order; 2° because it was strictly prohibited by the supreme Legislator and Author of nature, as is drawn out from the text of Genesis just related; 3° moreover, this is established from the 49th proposition condemned by Innocent XI, which sounds thus: *Mollities is not prohibited by natural law.* ... Hence thus: Onanism is true and properly so-called *mollities*, or pollution outside the licit use of Matrimony; therefore. This is confirmed by several Decisions of the Sacred Penitentiary and of the Holy Office to be referred to below. - I said: *voluntary*; because the sin of Onanism is not present if in the conjugal act seed can indeed be received by the woman, but cannot be retained, or if, after the work of marriage has been begun, seed is poured out because of necessity, for example because others come upon them and the work of marriage must be interrupted.<sup>2</sup>

**I say II.** An onanist man can never be excused from grave sin, and therefore is never to be absolved unless he sincerely grieves over his sin and proposes to avoid it for the future. The reason is clear from what has been said.

**I say III.** A wife can be excused from sin if, for a grave cause, she renders the debt to an onanist husband, provided that interiorly she does not assent to his sin, and exteriorly shows her repugnance by serious admonitions or other signs of displeasure. The reason is 1° because she is occupied with a licit thing and uses her own right, of which she cannot be deprived because of the malice of the man; nor does she properly cooperate in the sin of another, since she bears herself only passively, and the intrinsically evil action consists only in the act of the man then withdrawing against the order of nature; 2° because she is not bound by charity to impede the sin of her husband with grave inconvenience to herself; 3° because it is clear from the responses by which the Sacred Penitentiary declared that a woman of this kind is not to be disquieted. - See the Decisions to be referred to below, n. 1658. ad 1um. 1659.

I said: *if for a grave cause*; and among grave causes Bouvier enumerates a reasonable fear of death, of grave cruelties, quarrels or blows (measuring gravity according to the condition of the person), divorce, infamy or grave scandal; likewise fear lest the husband should keep a concubine or commit adultery, or lest he should utter blasphemies against Religion, injuries against the confessor, or scandalous words before children or servants.

Notes to n. 1653. (1) Gen. 38. 9. 10. (2) L. VI. 954. Sanchez, de Matr. L. IX. D. 17. n. 22. 23.

**1654. Resolves.** - 1° A woman sins gravely who induces the man to abuse Matrimony, even indirectly or tacitly, for example by complaining about the number of offspring, the labors of childbirth or the education of children, or by repeatedly saying that she will die in the next childbirth, etc. *A fortiori* she sins gravely if, the husband being unwilling, she withdraws herself from copula begun before semination.

2° Likewise, a woman sins gravely by interiorly consenting to the detestable action of the man, even if exteriorly she shows repugnance. For sin is always to be held in hatred. Yet distinguish consent in the very action of the man from joy over the effect thence following, or over immunity from the inconveniences and dangers which accompany generation. Yet that joy is not without danger (see what was said in n. 232). Especially, however, the woman must beware of the manifestation of joy of this kind, lest the onanist man take an occasion from it for sinning in this way.

3° The wife is held, at least ordinarily, to warn an onanist man concerning the obligation of acting rightly, and to turn him away, as much as is in her, from a perverse manner of acting. Nor does it suffice that she has warned him once; but she ought sometimes to repeat admonitions, unless she is certain that a new admonition will profit nothing. Yet even then she ought in some manner to make known her repugnance, lest she seem willingly to consent to the sin of the husband. - Thus commonly, and thus responded the Sacred Penitentiary when interrogated, n. 1659. IV.

4° It will also be the office of the wife to move the husband by caresses, various signs of love, prayers, and exhortations to completing the act rightly, or to abstaining from it altogether. Experience establishes that very many onanist men, thus enticed by their wives, have returned themselves to better fruit.

**1655. Questions. - Query 1°** In what manner should a confessor conduct himself with spouses confessing, asking, or wholly silent concerning the use of Matrimony?

**Resp.** See n. 1425. 2). 3). 4); 1657. Resp. Ad 3um; 1658. § Ad 2um autem.

**Query 2°** Can a wife ask the debt from an onanist man?

**Resp.** Affirmatively, more probably, from a just cause; because she has a right to copula, and is excused from the sin of cooperation. - But "she will have a just cause of asking, if she herself should be in danger of incontinence, or if otherwise she would have to be deprived of her right of asking more than once or twice, with a perpetual scruple whether it is a sufficiently grave inconvenience to her or not, then to contain herself." Thus St. Alphonsus.<sup>1</sup> So also declared the Major Penitentiary Card. di Pietro in the admonition to the aforesaid responses of the Sacred Penitentiary, although he adds that the Sacred Penitentiary refused to give a decision concerning this matter.

**Query 3°** Does the wife sin by furnishing internal consent to pleasure, when she can permit the conjugal act to an onanist man?

**Resp.** Negatively, provided that she does not furnish assent to the sin of the man. The reason is that, since she does not sin in the least by permitting an act of this kind, neither does she sin by admitting the pleasure coming from it, although she foreknows that the man will not perfect copula; for that act is in itself honorable and licit for the woman, and it does not stand through her that it is not perfected in the due mode.

**Query 4°** Do spouses sin gravely who, in order to avoid offspring, have copula only at that time in which conception is not accustomed to have place, e.g., in that space of time which runs from about a fortnight after menses up to the next term of these?

**Resp.** The following doubts were proposed to the Sacred Penitentiary concerning this matter, which, from the French idiom into Latin to the letter, as much as I could, I have translated.

**I. 1°** Can this manner of acting be excused from mortal sin? - **2°** Is it prohibited at least under venial sin by reason of the intention of not conceiving?

**II.** Is it lawful for a confessor to counsel this manner of acting: **1°** to a wife who, although she detests and reproves the onanism of her husband, nevertheless tries in vain to turn him away from it? **2°** To both spouses, who, lest they be burdened by a numerous family, voluntarily give themselves to onanism?

**III. 1°** Can this manner of acting be counseled without danger, by which the diminution of the family is caused more certainly than by onanism, since the very reason of honesty reproves this latter? - **2°** Is that danger compensated, if thus mortal sin is avoided and the conscience of very many wives is pacified, who otherwise, whether by fault of the husband or by fear lest they conceive, will be alienated from the Sacraments?

To these doubts "the Sacred Penitentiary, the things set forth having been diligently weighed, responds: Spouses using Matrimony in the aforesaid manner are not to be disquieted, and the confessor can, cautiously however, insinuate the sentence of which there is question to those spouses whom he has vainly attempted to draw away from the detestable crime of onanism by another reason." Rome, in the Sacred Penitentiary, June 16, 1880.

A. Card. Bilio, P. M.

Hip. Can. Palombi, S. P. Secretarius.

L. + S.

Yet note that the spouses of whom there is question in the Query can be in a bad state: **a)** because of the danger of incontinence, which within the fortnight that immediately follows the menses can be present for at least one of the spouses, and which will more easily be present for those inclined toward venery, especially if they do not greatly abhor sin; **b)** because of the danger of refusing the debt in the case in which the consort should ask it within that fortnight, and this danger will be the greater the more solicitous the party from whom it is asked is to avoid offspring.<sup>1</sup>

**Query 5°** In what manner must one proceed with a wife who is placed in a proximate occasion of sin because of a man abusing Matrimony in any way?

**To be noted beforehand.** - The case would be if, the husband exacting it, she herself directly pollutes him with her hands, or if she herself is accustomed truly to consent to onanism, sodomy, her own pollution, etc.

Berardi responds:<sup>1</sup> "In this case the confessor will employ every zeal, that he may turn away the miserable woman from such horrible sins. Women ordinarily are accustomed to have the greatest affection for sins of this kind, and very difficultly are they accustomed to be induced to elicit a firm purpose of ceasing from them, because, by committing the aforesaid sins, on the one hand they satisfy pleasures both their own and the husband's, and on the other hand they free themselves from numerous offspring and from the inconveniences of gestation, childbirth, lactation, etc. Hence it is necessary that the confessor have ready an efficacious admonition and very grave words, that he may deter them from so great a crime.

"But if the admonitions of the confessor produce no or little amendment, it will not rarely be useful to threaten delay of absolution, and even in fact to defer the same."

**Query 6°** Can the wife of whom there is question in the case be obliged to make a divorce, so that she may be freed from this occasion of sinning with her own husband?

The same Berardi responds,<sup>2</sup> distinguishing: "If the woman in the use of Matrimony commits mortal sins, without the husband tempting her to committing these same sins, then she has no right of making a divorce, and therefore she must use other means for removing the danger of sinning in this occasion, which must be judged as altogether necessary. But if the husband himself compels her, or tempts her to committing the same sins, then Canonists and Theologians very commonly teach that the woman has the right of making a divorce; whence they argue that she even ought to make the same divorce if, because of cohabitation, she is placed in grave danger of sinning. See St. Alphonsus,<sup>3</sup> Sanchez,<sup>4</sup> the Salmanticenses, etc. But this conclusion must be understood with a grain of salt: namely, inasmuch as the woman indeed ought to make a divorce if she can without grave difficulty; but not if she would have to undergo grave harms and grave difficulties; because then there would be question of a necessary occasion, as Hurtado<sup>5</sup> and St. Alphonsus note."<sup>6</sup>

Notes to n. 1655 - note sequence 1. (1) L. VI. 947. Notes to n. 1655 - note sequence 2. (1) There are those who excuse even a wife avoiding the effusion of seed for the sake of conception being impeded, by acting frigidly or by diverting the mind to other things, since, as they say, today it is established that female seed is not required for generation. Notes to n.

1655 - note sequence 3. (1) De Occas. n. 244. Notes to n. 1655 - note sequence 4. (2) Ib. n. 245. (3) L. VI. n. 973. (4) L. X. D. 17. n. 11. (5) T. I. n. 102. (6) L. IV. n. 440.

#### DECISIONS OF THE SACRED CONGREGATIONS CONCERNING ONANISM.

**1656. - I Consultation.** "The Bishop N. most humbly supplicates for the solution of this doubt: 1° whether a woman can be absolved who indeed would suffer the husband, if he acted rightly in conjugal copula, but vehemently desires that the man withdraw himself because that woman fears to have offspring. 2° Whether a woman can be absolved who in conjugal copula could by her caresses obtain from the man that he would not withdraw himself, and does not do it; because that copula displeases her."

**Response.** - "The Sacred Penitentiary, having weighed the doubts proposed by the Venerable Father in Christ, Bishop N., responded: Negatively. Given at Rome, in the Sacred Penitentiary, on the 27th day of May, 1847."

**1657. - II Consultation.** "It is asked of the Apostolic See with what theological note the three following propositions are worthy, namely: 1° for honest reasons it is licit for spouses to use Matrimony in that manner in which Onan used it. 2° It is probable that that use of Matrimony is not prohibited by natural law. 3° It is never expedient to interrogate spouses of either sex concerning this matter, even if it is prudently feared lest the spouses, whether the man or the wife, abuse Matrimony."

**Response.** - "Sacred Congregation of the Inquisition, on the 21st day of May, 1851. To the 1st. That the proposition is scandalous, erroneous, and contrary to the natural right of Matrimony. - To the 2nd. That the proposition is scandalous, erroneous, and otherwise implicitly condemned by Innocent XI in the 49th proposition" (p. XVII). - "To the 3rd. That the proposition, as it lies, is false, too lax, and dangerous in practice."

**1658. - III Consultation.** Petition of the Most Illustrious Lord Bouvier, Bishop of Le Mans, concerning the manner of acting of confessors with spouses, relatively to Onanism.

"Most Blessed Father, the Bishop of Le Mans in France, prostrate at the feet of Your Holiness with the greatest reverence, most humbly represents the things which follow.

"Nearly all younger spouses do not wish to have a more numerous offspring, and yet morally they cannot abstain from the conjugal act.

"Being interrogated by the confessor concerning the manner in which they use the rights of Matrimony, more commonly they are accustomed to be gravely offended; and, when admonished, they neither abstain from the conjugal act, nor can they be determined toward the excessive multiplication of offspring.

"Then, murmuring against confessors, they forsake the Sacraments of Penance and the Eucharist; they give a bad example to children, servants, and other faithful of Christ; a lamentable detriment to Religion arises thence.

"The number of those who approach the Sacred Tribunal of Penance in many places decreases from year to year, especially on account of this cause, as most pastors more conspicuous in piety, knowledge, and experience confess.

"How then did confessors formerly act? many say. No more children were commonly born then than today from individual Matrimonies, spouses were not more chaste, and nevertheless they did not fail in the precepts of annual Confession and Paschal Communion.

"All readily admit that infidelity toward the consort, and the attempt at abortion, is a very great sin. But scarcely, and indeed not even scarcely, can they be persuaded that they are held under mortal sin either to preserve perfect chastity in Matrimony, or to incur the danger of generating innumerable offspring.

"The aforesaid Bishop of Le Mans, foreseeing that immense evils will thence come, and troubled with anxiety, solicitously asks of Your Beatitude:

"1° Whether spouses who use Matrimony in such a manner that they guard against conception exercise an act per se morally evil?

"2° If the act is to be held as morally evil, whether spouses not accusing themselves of it can be considered as constituted in that good faith which excuses them from grave fault?

"3° Whether the manner of acting of confessors is to be approved who, lest they offend married persons, do not interrogate them concerning the manner in which they use the rights of Matrimony?"

**Response.** - "The Sacred Penitentiary, having maturely weighed the proposed questions, to the 1st responds: Since the whole disorder of the act proceeds from the malice of the man, who, instead of consummating, withdraws himself and pours out outside the vessel; therefore, if the woman, after due admonitions, profits nothing, but the man insists, threatening blows or death, she herself, as approved Theologians teach, can simply permit it without sin, and this from a grave cause which excuses her; since charity, by which she is held to impede that, does not oblige with so great an inconvenience.

"But to the 2nd and 3rd it responds: That the aforesaid confessor recall to mind that adage, *holy things are to be treated in a holy manner*; and also weigh the words of St. Alphonsus de Liguori, a learned man and most experienced in these matters, who in the *Praxis Confessariorum* § 4. n. 41 says: 'But concerning the sins of spouses with respect to the conjugal debt, ordinarily speaking, the confessor is not held, nor is it becoming, to interrogate, except wives, whether they have rendered it, in the more modest manner in which he can. ... Concerning other things let him be silent, unless he has been interrogated.' Nor should he omit to consult other approved authors. Given at Rome by the Sacred Penitentiary on the 8th day of June, 1842."

**1659. - IV Consultation.** Question. "Bertha has a man, whom by constant experience she knows to be an onanist. In vain has she attempted every means to draw him back from so nefarious a crime. Indeed very grave or at least grave evils now probably threaten her, so that she must either incur these evils or flee from the house of the husband, unless she permits at least sometimes the abuse of Matrimony, etc."

**Response.** - "Since in the proposed case the woman on her part indeed does nothing against nature, and gives work to a licit thing, but the whole disorder of the act proceeds from the malice of the man, who, instead of consummating, withdraws himself and pours out outside the vessel; and therefore, if the woman, after due admonitions, profits nothing, but the man insists, threatening blows or death or other very grave evils, she herself (as approved Theologians teach) can bear herself permissively

without sin; since in these circumstances of things she simply permits the sin of her husband, and this from a grave cause which excuses her; because charity, by which she is held to impede that, does not oblige with so great an inconvenience. Given at Rome in the Sacred Penitentiary on the 1st day of February, 1823."

**V. Response of the Major Penitentiary.** "Approved and exact moral Theologians agree in this, that ... it is lawful for a wife to render the debt, if from her denial she would be badly treated by her husband, and could fear grave inconvenience to herself thence; for, they say, in this case the wife is not judged formally to cooperate in the sin of her husband, but only to permit it from a just and reasonable cause. Yet let the Orator admonish a wife of this kind, that she not cease prudently to warn her husband, so that he desist from this turpitude.

"Michael, Card. di Pietro,  
Major Penitentiary.

"Given at Rome in the Sacred Penitentiary, on the 19th day of November, 1816.

"There exist also other responses of the Sacred Penitentiary, which are wholly consonant with the preceding; Gousset reports these in the work, *Justification de Saint Liguori*."<sup>1</sup>

Notes to n. 1659 - note sequence 1. (1) p. 272. Notes to n. 1659 - note sequence 2. (2) See the reason, n. 1624.

#### FORMULAE FOR PETITIONING FOR DISPENSATIONS.

**I. For asking a dispensation in a public impediment, concerning which, according to the faculties (p. LXX. sq.), the Bishop can dispense.**

"Most Illustrious and Most Reverend Lord."

"John N." (the family name is put) "and Anna N. ... of the parish (mission) N. ... of this diocese N." ... (if the persons about to marry belong to different dioceses, this is more correctly<sup>2</sup> expressed, and indeed immediately after the family name of each. Moreover, the dispensation is more conveniently petitioned through the pastor of the bride, if the impediment is common to both contracting parties, as, e.g., the impediment of kinship) "being blood-relatives in the fourth degree equally in the transverse line, as appears from the appended chart" (see an example of this, n. 1583. q. 2°. p. 252) "they desire to enter Matrimony with each other" (the impediment of blood-relationship is set forth here; but, as is clear, in this place that very impediment by which the persons about to marry are bound is to be set forth), "and therefore they suppliantly beg from Your Most Illustrious and Most Reverend Lordship the dispensation necessary for themselves. - The reasons are" ... (Here are set forth the causes which exist for obtaining the dispensation, e.g. 1° the age of the girl, who, having now completed 25 years, probably would not find another man whom she could conveniently marry; 2° e.g. danger of heresy, since the Orators live in a place mixed with non-Catholics, etc.). There follow, if any are present, the circumstances which must necessarily be expressed.

"With the greatest reverence and devotion with which it is proper, I remain,

"Most Illustrious and Most Reverend Lord,

"Of Your Most Illustrious Lordship,

"Most submissive,

"N. N.,

"Pastor or Missionary Priest.

"Baltimore, day ... Dec. 1874."

**Note.** - On the back of the sheet, or below the text of the supplicatory petition, let the chart of blood-relationship or affinity be put.

**II. For asking a dispensation in an occult impediment, concerning which, according to the faculties or by law, the Bishop can dispense, and whose dispensation can be asked from him without danger of injuring the seal.**

"Most Illustrious," etc., as above I.

"Titius and Caja, while the first spouse of Titius was still living, knew each other carnally, and gave faith mutually to each other concerning Matrimony to be contracted between themselves if the wife of Titius should die before him; she now being dead, however, neither of the Orators having plotted against her death, they desire to contract Matrimony between themselves. But since the impediment of crime arising from adultery and promise is occult, and unless Matrimony is contracted between them there threatens danger of scandals or of perseverance in sin, therefore, to avoid these things, and for the quiet of their conscience, they most humbly supplicate that Your Most Illustrious Lordship may deign most graciously to impart to them the grace of dispensation."

"With the greatest," etc., as I.

**III. For asking a dispensation from the Bishop, after Matrimony has already been contracted in good faith with an impediment in itself public, and concerning which, by force of the faculties, the Bishop can dispense.**

"Most Illustrious," etc.

"It is humbly set forth to Your Most Illustrious Lordship on the part of the devout Orators John N. ... and Anna N. (see above I.) of the parish (mission) ... of this diocese" ... (see above I.), "that they, otherwise ignorant that some impediment existed between them by which they could not be joined matrimonially to each other, contracted Matrimony between themselves by words of the present, public proclamations having been made in their parochial church, and no impediment having been detected or denounced, and solemnized it in the face of the Church, and consummated it by carnal copula. But afterward it came to their knowledge that they (as appears from the appended chart), proceeding in the third and fourth degrees of blood-relationship from a common stock, are joined to each other, on account of which they abstained from carnal copula" (or "and nevertheless persevered in the same carnal copula"). "But since the aforesaid Orators cannot remain in this Matrimony of this kind without dispensation, and, if separation were made between them, grave scandals could thence arise, they supplicate that, the pardon of ecclesiastical law being most graciously given to them, they may be able to enter Matrimony in the face of the Church, and afterward live in it freely and licitly."

"With the greatest," etc., as above.

**IV. For asking a dispensation from the Bishop, after Matrimony has already been contracted in bad faith with a public impediment.**

"Most Illustrious," etc.

"It is humbly set forth to Your Most Illustrious Lordship, in the name of the Orators John N. and Anna N., of the parish N. of this diocese N., that they, otherwise knowing that they (as appears from the appended chart), in the second degree of blood-relationship proceeding equally from a common stock, are joined to each other, petitioned a dispensation from Your Most Illustrious Lordship" (or "from the Most Illustrious and Most Reverend Lord N.") "for validly contracting Matrimony between themselves, the said impediment notwithstanding; but, having suffered refusal, blinded by mad passion and circumvented by diabolical fraud, they contracted an incestuous Matrimony before the civil magistrate" (or "a heretical preacher") "and consummated it, from which already three children have in the meantime been received by them. But now, from the superabundant mercy of God, greatly fearing concerning the danger of eternal salvation, they have been moved with great sorrow on account of their past life. But since, if separation were made between them, grave scandals would thence arise, and also great harm would come forth for their children; yet in Matrimony they cannot remain without dispensation, they supplicate that Your Most Illustrious Lordship may deign to dispense with them, so that, in the face of the Church, but with public denunciations omitted, they may contract Matrimony with one another, consent having been renewed, and may remain in it freely and licitly; this motive also being added on the part of the undersigned, that unless the dispensation is granted, it is greatly to be feared lest the Orators be entirely perverted in the Faith, and fall away from it, together with the children received, since they live among non-Catholics and infidels."

"With the greatest," etc.

**V. For asking a dispensation from the Bishop in an occult impediment, and indeed with sanation of the Matrimony in the root.**

"Most Illustrious," etc.

"Sempronia, of the diocese N. N., ignorant of the impediment, in the face of the Church and with denunciations having preceded, contracted Matrimony in good faith with a man by whose brother" (or "son") "she had previously been known carnally. Wherefore, since they cannot be separated without scandal, and danger of incontinence or of grave defamation is present, the putative husband being plainly ignorant of the impediment, and therefore the matrimonial consent cannot be renewed without grave danger of quarrels, hence she humbly supplicates for a speedy remedy of dispensation concerning an impediment of this kind, entirely occult, and indeed in the root of the Matrimony, so that, without renewal of consent, the Matrimony can be healed."

"With the greatest," etc.

**VI. For asking a dispensation in a public impediment concerning which the Bishop cannot dispense.**

Let Formula I be taken; but:

1° In place of: "Most Illustrious," etc., let this be written: "Most Blessed Father."

2° In place of: "from the Most Illustrious," etc., write: "from Your Holiness."

3° In place of: "With the greatest," etc., write:

"If Your Holiness deigns benignly to grant this grace to the Orators, they will render the greatest thanks for it with the greatest reverence and devotion with which it is proper,"

"To Your Holiness,

"Most submissive,

"N. N., etc.

"Given at N. N."

**Note.** - 1° If they are poor, after the reasons have been set forth it is said: "They are poor and miserable, and live only from their labor and industry." See n. 1627.

2° Let the supplication prepared by the Pastor of the Orators be sent to the Bishop; but the Bishop, or in his place the Vicar General, sends it to Rome fortified with testimony, seal, and episcopal handwriting.

3° If a dispensation is to be asked from the Holy See in a Matrimony contracted with a public impediment, whether in good or in bad faith, let Formula III or IV be taken, with the things changed which must be changed according to those things which were changed in this Formula VI.

#### **VII. For asking a dispensation from the Sacred Penitentiary in Matrimony to be contracted.**

"Most Eminent Prince."

"It is most humbly set forth to Your Eminence, on the part of the Orators Titius and Caja, that they intend to contract Matrimony, but that Titius, a married man, carnally knew Caja by perfect copula while his own wife Sempronia was still living, and they gave faith mutually to each other concerning Matrimony to be contracted between themselves if Sempronia, the wife of Titius, should die before him; and she indeed died before him by poison administered by Titius. But since from the premises the impediment of crime has arisen, and thence they can contract Matrimony neither licitly nor validly, the Orators supplicate for the grace of dispensation concerning this impediment of crime, so that they may publicly contract Matrimony between themselves, and afterward remain in it licitly and freely, and the offspring may be decreed legitimate. The impediment is altogether occult, and the danger of perseverance in sin is pressing, indeed also of grave scandal, if they cannot be joined in lawful Matrimony. Wherefore, for the quiet of their conscience, grieving greatly over the premises, they humbly supplicate Your Eminence, that concerning these things you may deign to provide by Apostolic authority with an opportune remedy.

"Kissing the purple, with the greatest," etc., as I.

"May Your Eminence deign to direct the response to New York (n. 173 Third Street, New York, U.S. of America) to me, the undersigned."

On the outside let him form the inscription thus: "To the Most Eminent and Most Reverend Lord, Lord N., Cardinal of the Holy Roman Church, Major Penitentiary" (from our Provinces: "Prefect of the Sacred Congregation de Propaganda Fide"), "Rome."

#### **VIII. For asking a dispensation from the Sacred Penitentiary in Matrimony already contracted.**

"Most Eminent Prince."

"Titius, a married man, carnally knew Caja by perfect copula while his own wife Sempronia was still living, and they gave faith mutually to each other concerning Matrimony to be contracted between themselves if Sempronia, the wife of Titius, should die before him; and, after Sempronia had died before him by poison administered by Titius, aware" (or "ignorant" [or "Titius aware" or "ignorant" or "Caja aware" or "ignorant"]) "of the impediment, in the face of the Church, with proclamations having preceded" (or "having been dispensed") "they contracted Matrimony" (or "with no proclamations having preceded, before the civil Magistrate," or "a heretical preacher") "and consummated it by carnal copula." (If each party or one or the other party still perseveres in good faith, let this be expressed; likewise whether each party or one or the other party, aware of the impediment, now abstains from copula, or nevertheless has persevered in the same.) "Wherefore, since the impediment is altogether occult, and separation cannot be made without scandal, I most humbly ask Your Eminence that you benignly indulge dispensation for them, inasmuch as they may be able to contract validly.

"Kissing the purple," etc., as Form VII.

**Note.** - The formulae by which the Bishop grants dispensations, Prelates will find in Heiss, *de Matrim.* p. 406 sq.

#### OTHER FORMULAE.

##### 1. Formula of supplication for dispensation concerning the banns.

"Most Illustrious and Most Reverend Lord."

"It is humbly set forth that" (the names and surnames of the Orators are written, as above Form I., if the cause is honest or public; fictitious names, if the cause is occult and dishonorable; then the cause itself or causes). "Wherefore the Orators, whom, after diligent inquiry, I have found bound by no impediment, earnestly ask that a dispensation be granted to them concerning two (three) proclamations.

"Commending the prayers I remain," etc.

##### 2. Formula of supplication for dispensation concerning the impediment of mixed religion.

"Most Illustrious," etc.

"Constantia N., Catholic, my parishioner, desires to enter Matrimony with Frederick N. from N., attached to the sect ..." (or "a baptized non-Catholic").

"The non-Catholic party before me, as appears from the declaration annexed to this supplication, promised under the faith of an oath that all infants of either sex to be born from that Matrimony are to be baptized and educated in the Catholic Faith, and that to them, equally as to the consort, the exercise of the Catholic Religion will be entirely free. Moreover, the Catholic party promised that she would take care according to her strength that, as much as is in her, the man be converted to the true Faith. Wherefore she most humbly supplicates Your Most Illustrious Lordship that you deign to grant to her by Apostolic authority a dispensation concerning that impediment. The causes are" (the cause or causes are set forth, e.g. vain attempts that the Oratrix renounce such a Matrimony; founded hope of the conversion of the non-Catholic party, etc.).