

SYNOPSIS OF MORAL AND PASTORAL THEOLOGY

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according to the Code of Canon Law

VOLUME I

On Marriage, with the Civil-Law Appendix and the Supplement

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On Marriage (Volume I)

On Marriage: Preliminary Notes

ON MARRIAGE — PRELIMINARY NOTES

The sacrament of Matrimony, like the sacrament of Order, contributes greatly to the good not only of the individual but also of society. For as by Order the ministers of God are propagated, who rule spiritual society, so by Matrimony the union of man and woman is sanctified, from which are begotten citizens who form each society, civil and ecclesiastical. How important it is to discuss this sacrament all those know who are persuaded that the happiness and prosperity not only of individuals, but also of families and societies, depends altogether on the procreation and good education of children.

667. 1° The various names of marriage. Matrimony (*matris munium*) is so called because the mother regularly expends greater labor than the father in receiving and educating offspring, since the infant is known to have been for the mother "burdensome before birth, painful in birth, laborious after birth."¹ It is also called *conjugium* (*cum, jungere*), because it is, as it were, a common yoke, to which those who contract marriage spontaneously submit themselves; *connubium*, or *nuptiae* (from *nubendo*, that is, veiling), because in antiquity brides, when they were handed over to men, covered the head with a veil for the sake of modesty;² *consortium* (*cum, sors*), by which is signified the very close society of bodies and souls by which man and woman are joined together.

¹ Gregory IX, *Decretal.*, l. III, tit. 33, c. 2.

² Gen., XXIV, 65.

668. 2° Marriage as contract and sacrament. Matrimony can be considered as a natural contract and as a sacrament.

Matrimony as contract can be defined: a legitimate agreement between a man and a woman, conferring upon them a mutual, exclusive, and perpetual right both to acts of themselves apt for the generation of offspring, and to the fellowship of common life.

It is said: (a) a legitimate agreement... that is, entered into according to the laws, whether natural or positive, by which marriage is governed; and this is entered into between a man and a woman, who otherwise are by law capable of a contract of this kind.

(b) A mutual and perpetual right to acts... By these words the primary end of marriage is declared, namely the procreation of offspring and consequently education. But for the essence of marriage it is not required that children actually be begotten, since sterile persons lawfully marry; nor even the use of marriage, since the Blessed Virgin and St. Joseph were joined in lawful marriage, although they never used matrimonial rights; but a right suffices to those acts which of themselves are apt for the generation of offspring, although by accident generation sometimes does not follow, or the spouses do not use their right. Moreover that right is mutual, as is clear, and perpetual, so that thus vague and fornicatory mingling of the sexes is excluded.

(c) To the fellowship of common life: here is signified the secondary end of marriage, mutual help which arises from the love and society of each, according to that word of Scripture:¹ "It is not good for man to be alone; let us make him a helper like himself." - Wherefore spouses ought to be not only one flesh, so that they may generate offspring, but also one heart and one soul, so that they may bring help and solace to each other.

¹ Gen., II, 18.

Matrimony as sacrament is nothing other than the contract itself raised to the dignity of a sacrament, and is customarily defined: a sacrament of the New Law, by which, through the consent of the contracting parties legitimately furnished, grace is conferred upon spouses for rightly fulfilling the duties of marriage. The definition will be clearer from the things to be said below.

669. 3° On other divisions of marriage. Matrimony can be considered under a multiple respect:

1° By reason of validity, it is distinguished into valid and invalid: (a) the former, which is also called true, is that which in reality has been contracted, without any diriment impediment; (b) the latter, which is also called null, is that which, on account of some defect or impediment, was not truly contracted; it is called attempted, insofar as one or the other party with knowledge of the impediment has dared to enter it; putative, when by the spouses themselves, or at least by one or the other, it is considered valid, although on account of a hidden impediment it is invalid.

2° By reason of dignity, it is legitimate or ratified: (a) legitimate, when it has been entered into according to the laws of natural and positive law, so that it is valid as a contract, although it does not attain to the dignity of a sacrament;¹ such is marriage lawfully contracted between infidels or the non-baptized; (b) ratified, that is received, when it is validly entered into between the faithful, so that it has the nature of a sacrament.²

¹ Formerly even the marriages of the faithful were called legitimate, when all the solemnities of law had been observed; but today the sense set forth above has prevailed. Cf. Benedict XIV, *De Synodo*, lib. VIII, c. 12, n. 5.

² Sometimes, however, but in an improper sense, even clandestine and consequently invalid marriages of the faithful are called ratified. Cf. Gasparri, n. 235.

3° By reason of effect, it is called ratified or consummated: ratified, when it has been celebrated, but not yet completed by carnal copula; consummated, when it has been completed by carnal copula of itself apt for generation, whether conception really follows, or not.

4° By reason of duration, marriage is an act or a state: the former is the passing agreement itself by which a right over bodies is mutually handed over in order to generation (*matrimonium in fieri*); the latter is the permanent state resulting from this passing act (*matrimonium in facto esse*).

670. 4° Division. There will be four chapters: in the first, we shall treat of the contract itself of marriage; in the second, of the sacrament; in the third, of the impediments which sometimes stand in the way of the celebration of each; in the fourth, of dispensations which are customarily granted from these impediments. The two former chapters will be especially dogmatic, and in them we shall chiefly set forth natural and divine law concerning marriage. In the two others, we shall explain practical questions, namely moral and canonical ones, chiefly

pertaining to positive law. Yet even in the former part, when occasion is given, we shall examine certain practical conclusions, lest we be compelled to treat twice of the same matter.

This division will be better understood from the following schema.

On marriage as contract

Its nature:

- It consists in a stable contract.
- The essence of the contract consists in consent.

Its properties:

- unity.
- indissolubility.

On marriage as sacrament

On the sacrament itself:

- Existence.
- Nature.
- Effects.
- The power of making laws concerning marriage.

On the celebration of marriage:

- On the preliminaries to the celebration.
- On the rite of celebration.

On the impediments of marriage

- Prohibiting.
- Diriment.

On dispensations

- On dispensations themselves.
- On the revalidation of marriage.

Appendix: On civil law with respect to marriage.

Chapter I: On Marriage as Contract

ON MARRIAGE AS CONTRACT

671. Errors to be refuted. Today errors concerning the matrimonial contract are multiplying. (a) Many, especially evolutionists and materialists, holding that man descends from a brute animal, contend that promiscuity prevailed among the first men, as among the other living things, so that men were mingled indiscriminately with women and women with men, as occasion presented itself; and that to this promiscuity succeeded polygamy and polyandry, and only after long ages did monogamy prevail.¹ (b) Yet many moderns, even among evolutionists, admit that monogamy is more perfect than the other matrimonial contracts, and therefore is to be retained, provided, however, that divorce be easily admitted, and that it be permitted to spouses thus separated to seek new nuptials.² (c) Yet not a few, especially among socialists, favor free union: according to them, the chief end of union between man and woman is mutual pleasure; therefore for this union mutual love is required and suffices: those who mutually love each other, by that very fact, have the right to cohabit together; when love ceases, the union must be broken off. But the offspring born from free union will be nourished and educated by the care of the civil State, without the intervention of the parents.³

¹ Lubbock, *The origin of civilization*; Morgan, *Systems of consanguinity, affinity and of the human family*; Mac Lennan, *Studies in ancient history comprising a reprint of Primitive marriage*, London and New York, 1886; Giraud-Teulon, *Les origines du Mariage et de la famille*, Geneva and Paris, 1884.

² Thus, among others, Naquet, Dumas, Paul and Victor Margueritte, and others enumerated below where divorce is treated.

³ A. Bebel, *La femme dans le passé, le présent et l'avenir* (translated from German by H. Ravé), 1891; B. Malon, *Le socialisme intégral*, Paris, 1892, vol. I, ch. 7; G. Renard, *Le régime socialiste*, 1898, p. 59; Ch. Albert, *L'amour libre*, Paris, 1900; and others whom Turgeon enumerates, *Le Féminisme français*, Paris, 1902, vol. II, pp. 259-288.

Against these errors we shall set forth Catholic doctrine: 1° concerning the nature; 2° concerning the properties of the matrimonial contract.

ART. I. ON THE NATURE OF THE MATRIMONIAL CONTRACT

To weigh the nature of this contract, we shall show two things: 1° that marriage consists in a stable contract; 2° that the essence of this contract is to be placed in consent.

§ I. ON THE STABILITY OF THE MATRIMONIAL CONTRACT

672. Thesis: By natural and divine law, marriage ought not to consist in a free and revocable union, but in a stable union apt for constituting a family. It is certain against socialists and other patrons of free union.¹

¹ Cf. Card. Billot, *De Sacramentis*, vol. II, th. 33.

Since our thesis is attacked by those who reject the authority of revelation, we shall first use historical and philosophical arguments, by which the way will be prepared for an exposition of

Catholic doctrine.

673. 1° Historical arguments. The adversaries contend that the union of the sexes in antiquity was free and promiscuous², and therefore that the modern manner of contracting marriage, as introduced only by customs and by civil law, can and ought to be abolished.

² Their arguments are enumerated and refuted by G. Fonsegrive, *Mariage et Union libre*, Paris, 1904.

They argue: (A) from the laws of evolution: they suppose that man descends from a brute animal, and thence infer that the first men were not alien to the morals of brute animals, among which promiscuous union prevails, not stable union; (B) from the present state of uncultivated tribes, which, they say, retain the morals of primitive men; for among them, they say, there prevails promiscuity of the sexes, or traces of the same remain, such as: matriarchy, or the state in which the mother enjoys principal authority in the family; the practice of drawing the genealogy of children not from fathers, but from mothers; polygamy and polyandry, or the union of several women at the same time with one man or conversely; (C) from certain ancient facts, which seem to be traces of primitive promiscuity, as were sacred prostitution, which flourished in certain temples, and also the right of the first night or the practice of handing over one's own wife to guests.

674. But we reply that many of the things alleged are not universal facts, but exceptions, and from them it is not inferred that promiscuity of the sexes or free union once prevailed; but on the contrary it is historically established that already from the first times the union of man and woman was ordered to constituting a stable family.

(A) Evolution, to which the adversaries appeal, is not a fact, but a hypothesis which the most distinguished transformists admit to be by no means proved, especially if there is question of the origin of man, as was said in the Treatise on God the Creator, nn. 838-839. But among those who think that man descends from a brute animal, the most learned say that the first men were not given over to promiscuity, and prove this from the very laws of evolution. For, according to Darwin,¹ the apes from which many evolutionists assert that man arose do not indulge in promiscuity, but some are monogamous, others indeed polygamous. For among them, as among men, the greatest jealousy concerning females prevails, and the males fight with the greatest zeal against others in order that they may exclusively possess the females which they have joined to themselves. Therefore if promiscuity of the sexes had prevailed among the first men, these would have been inferior to the apes themselves, and there would not be ascent and progress, but rather regression: which indeed openly contradicts the laws of evolution.

¹ Darwin, *Descent of man*, P. II, ch. 19; in French, *La Descendance de l'homme*, Paris, 1893, vol. II, p. 392. Cf. Letourneau, *Evolution du mariage et de la famille*, Paris, 1888, ch. 3; Westermarck, *Origine du mariage dans l'espèce humaine*, Paris, Guillaumin, 1895, chs. 5-6; G. Fonsegrive, *Mariage et Union libre*, Paris, 1904, pp. 19-29.

675. (B) But from the morals of uncultivated peoples it is not only not established that the first men were given over to promiscuity or free union, but it is inferred that among them a stable contract of marriage prevailed. For if the testimonies of those are weighed who lived for a long time, and not for only a few months, among them, these things are worthy of note: (a) promiscuity does not exist among uncultivated tribes except very rarely, and indeed especially where most corrupt men from Europe have brought in corruption of morals; almost

everywhere the family is held as the foundation of society and the protection of the tribe; wherefore, even where divorce and polygamy are permitted, the matrimonial contract is entered into as of itself stable; (b) likewise exogamy, or the practice of seeking a wife outside the family and tribe¹, the custom of acquiring a wife or of assigning a dowry to her, show the will of constituting a stable family; (c) by strict laws provision is made for the chastity of girls and wives²: in many regions they inhabit the most remote rooms of the house, lest they be seen by strangers; elsewhere their faces are disfigured by mutilations lest they please other men; generally girls remain separated from men until nuptials; those who are seduced before marriage, and their corrupters, are punished with severe penalties; and adulteries are altogether reprov'd and strictly punished; all of which things indeed are very alien from promiscuity and free union.

¹ Cf. Msgr. A. Le Roy, *La Religion des primitifs*, Paris, 1911, pp. 106-109.

² Fonsegrive, *op. cit.*, pp. 21-29.

676. (C) The same is established from the history of ancient peoples. (a) The most ancient code of laws, enacted about the year 2200 before Christ by Hammourabi, king of Babylon, not only excludes promiscuity, but also supposes that monogamy already prevails. The matrimonial contract must be entered into publicly; a man cannot take a concubine unless his wife is infirm or sterile: then he goes to the maidservant whom the wife substitutes for herself; if the maidservant likewise is sterile, he can take another wife. Divorce indeed is permitted, at the nod of the man: but if he dismisses his wife without sufficient reason, he must restore her dowry to her, indeed sometimes furnish her some compensation. Adultery, incest, and rape are strictly prohibited under grave penalties.³

³ *Mémoires publiés sous la direction de M. de Morgan*, vol. IV, *Textes élamites-sémitiques*, 2nd series, by P. Scheil, Paris, Leroux, 1902, pp. 145-150.

677. (b) Among the Egyptians, although polygamy and divorce were permitted under some restrictions, generally the custom prevailed of taking one wife only, as Herodotus relates⁴; moreover free union was by no means recognized, but adultery was strictly prohibited by civil law. - (c) Among the Indians, fifteen centuries before Christ, one lawful wife was taken, who could never be dismissed, yet several concubines were permitted. But promiscuity was by no means admitted; for adultery was held as one of the three greater sins. Afterwards, however, license was given to men of dismissing a wife if she was sterile or had borne only daughters, or suffered from defects which the man could not tolerate.¹ (d) In the Chinese empire, according to the law of Confucius, only one lawful wife must be taken; divorce indeed is permitted to the man, but only for a grave cause determined by law. (e) Among the Greeks and Romans, notwithstanding divorce, monogamy prevails, and adultery even of the man is considered as something indecorous and shameful; illegitimate children are not members of the family, nor can they have a part in domestic worship. Yet concubinage under certain conditions is permitted by law.² How honorable marriage was held among the Romans is established from the manner in which it is defined among the old jurists:³ "the fellowship of all life, an undivided custom of life, a sharing of divine and human law."

⁴ J. G. Wilkinson, *A popular account of the ancient Egyptians*, London, 1854, vol. II, p. 224; Maspero, *Histoire ancienne des peuples d'Orient*, 4^e ed., Paris, 1897, vol. II, pp. 502-503.

¹ La Mazelière, *Essai sur l'évolution de la civilisation indienne*, Paris, Plon, 1902, vol. I, Introd.; vol. II, pp. 15, 306, etc.

² F. de Coulanges, *La Cité antique*, l. II, chs. 2-3; Denis, *Histoire des théories morales dans l'antiquité*, Paris, 1856, vol. I, pp. 69-73. - At Sparta, according to the laws of Lycurgus, the same woman could be possessed by several brothers; cf. Fonsegrive, op. cit., p. 36.

³ Modestin., *Digest.*, XXII, 2.

From these testimonies and very many others which could be brought forward, it is clearly established that among ancient peoples promiscuity of the sexes did not prevail, nor free union, but that union of man and woman which is apt for constituting a family.

678. The facts alleged by the adversaries do not necessarily suppose promiscuity. (a) They say indeed that matriarchy was in use among many tribes, and that genealogies of children were drawn not from men, but from women. - A fact of this kind was not universal, but prevailed only among certain tribes; it is rather easily explained from the fact that, among those peoples, the man was absent for a long time for the sake of hunting, fishing, or making war; wherefore children, whose father was sometimes uncertain, and who moreover cohabited with the mother longer than with the father, were accustomed to receive the maternal name. But from this it by no means follows that promiscuity or free union was in common use.

(b) Sacred prostitution, which flourished in certain temples, and also the right of the first night or the practice of handing over one's own wife to guests, and other things of this kind, are abuses which arise from innate lust and a false conception of hospitality, but they cannot be called traces of ancient promiscuity.

But the few facts of polyandry or promiscuity which are alleged among certain tribes have themselves by way of exception, and do not weaken the general rule of stable marriage¹: polyandry was had where women were fewer in number than men; promiscuity, where it existed, is rather easily explained from a certain corruption of morals, without its being necessary to suppose that the first men were addicted to this vice.

¹ This is testified by Westermarck, otherwise an evolutionist, op. cit., ch. 6, pp. 128-129: "It is naturally not impossible that, among some peoples, the relations of the sexes have approached promiscuity. But there is not an atom of proof that promiscuity has ever been a general phase of the social history of humanity. The hypothesis of promiscuity, instead of belonging, as Giraud-Teulon thinks, to the class of hypotheses which science may permit itself, has no real foundation, no scientific character."

679. 2° Philosophical arguments. From the very ends of marriage it is logically inferred that marriage demands some stability.

(A) The primary end of marriage is the procreation and education of offspring: for to this end the diversity of the sexes and conjugal society were instituted, that the human race might be propagated, as nature itself indicates; moreover, offspring having been conceived, by the law of nature the duty rests upon the spouses of rightly educating children, by providing them not only with food, but also with intellectual and moral nourishment, which the young could procure for themselves by their own powers only with difficulty and after a long time. But for each of these a stable union of parents is

required², and a promiscuous or even free union does not suffice. For: (a) with respect to the generation of offspring, experience establishes that women who are mingled with several men rarely conceive; but free union, rescindable at will, given the mutability of the human will, often induces some promiscuity and voluntary sterility: for then pleasure rather than offspring is sought. (b) The right education of offspring requires still greater stability: 1) physical education: for in the last months of pregnancy, at the time of birth and lactation, the woman needs the cooperation of the man for providing for her own necessities and those of the offspring; 2) intellectual and moral education, for which the child needs not only the gentle love of his mother, but also the severe authority and prudence of his father.

² This St. Thomas lucidly sets forth, *Contra Gentiles*, lib. III, c. 122, where he shows, from a comparison between brute animals and man, that marriage among men ought to be stable. For he observes that animals remain together as long as is necessary for the education and instruction of the offspring, as is clear in certain birds, whose chicks cannot seek food for themselves immediately after they are born. "But it is manifest," he says, "that in the human species, the female would by no means suffice for the education of the offspring, since the necessity of human life requires many things which cannot be prepared by one alone... Again it must be considered that, in the human species, offspring does not need only nourishment as to the body, as among animals, but also instruction as to the soul; for other animals naturally have their prudences by which they can provide for themselves; but man lives by reason, which must come to prudence through the experience of a long time: whence it is necessary that children be instructed by parents as though already experienced; nor are those just born capable of this instruction, but after a long time, and especially when they shall have arrived at the years of discretion. For this instruction also a long time is required; and then also, on account of the impulses of the passions, by which the estimation of prudence is corrupted, they need not only instruction, but also repression. But for this the woman alone does not suffice, but in this the work of the man is more required, in whom there is both more perfect reason for instructing and stronger power for chastising. Therefore in the human species it is necessary to devote oneself to the advancement of offspring not for a short time, as among birds, but through a great space of life."

680. The Socialists indeed object that the duty of educating little children rests upon the State, which will gather all infants and hand them over to nurses to be educated.

Resp. Nature itself clearly shows that the work of physical and moral education is primarily to be performed by the parents themselves, insofar as this can be done. In truth, nature gave breasts to the mother for nursing children, strength to the father for seeking food and other necessities of life; to each parent, love at once tender and generous, by force of which they willingly hand over not only their own things, but even themselves and their own life for the welfare of the offspring. The same can be said of moral education: for there is implanted in parents a certain natural instinct and love, by force of which they are able to look into the mind of their children and detect their inclinations and direct them to the good; moreover, by a certain native inclination, children more willingly obey the commands and counsels of their own parents than of strangers. Therefore the duty of educating children rests primarily upon parents, and naturally flows from the very act of generation, and therefore supposes a union of itself stable.

681. (B) The secondary end of marriage is the mutual help of the spouses and the remedy of concupiscence. (a) By a certain natural instinct man and woman desire to be joined to each other by a special bond of love, "so that, one being helped by the aid of the other, he may more easily bear the inconveniences of life and sustain the weakness of old age."¹ The reason is because man and woman complete each other not only in order to the generation of offspring,

but also with respect to mutual assistance and solace: the endowments of one are, as it were, the complement of the qualities of the other; therefore man by a certain natural instinct seeks the society of woman, who herself is delighted by the society of man. But they cannot provide this mutual help to each other unless by a contract of itself stable they are able to constitute a family and perceive the lawful joys of the family.

¹ *Catech. Rom.*, On the sacrament of matrimony, n. 12.

682. (b) Another secondary end of marriage is to soothe and restrain concupiscence. In the state of fallen nature, concupiscence often burns forth, and only with difficulty is it contained within the limits which both the health of the body and the honesty of morals demand. Now stable marriage checks and restrains concupiscence within the limits of honesty. On the one hand, through the lawful use of marriage the ardor of concupiscence is soothed; and on the other, copula is had only with the person into whose body a lawful power has been handed over, to whom fidelity is owed in marriage, and indeed in that manner which is apt for procreating offspring. - But if free union revocable at will is admitted, concupiscence, far from being tempered, is increased not a little by the hope of entering new unions and experiencing new pleasures, with the greatest detriment to body and soul.²

² In this matter there is a great difference between man and brute animal: animals, led by instinct, mate only at certain times; but man experiences libido at every time, and only by the exercise of right reason and will can he check the abuse of venereal delight.

Therefore, having inspected the ends of marriage, whether primary or secondary, it is clear that conjugal union ought not to be promiscuous or free, but to enjoy that stability which is required for constituting a family.

683. 3° It is confirmed by theological arguments. (a) For God, after the first man had been created, seeing that it was not good for man to remain alone, made for him a help like himself. Therefore He took one of the ribs of sleeping Adam, and built it into a woman and brought her to Adam. He said: "This now is bone of my bones, and flesh of my flesh; she shall be called woman, because she was taken from man. Wherefore a man shall leave his father and mother, and shall cleave to his wife; and they shall be two in one flesh."¹ For there especially five things are declared: 1) the formation of the woman made by God, that she might become the companion of the first man and a help like him; 2) the intimate union which ought to exist between man and woman both for the generation of offspring and for the fellowship of life; 3) yet a certain dependence of the woman upon the man, because she was taken from the man; 4) the unity of the matrimonial bond: for they shall be two in one flesh; 5) the stability of the same: a man shall leave his father and mother and shall cleave to his wife. Deservedly, therefore, Leo XIII says:² "That union of man and woman, in order that it might respond more aptly to the most wise counsels of God, even from that time bore before itself two chief properties, and these especially noble, as though deeply impressed and inscribed, namely unity and perpetuity."

¹ Gen., II, 18-24.

² *Encycl. Arcanum*.

(b) We indeed admit that this excellent form of marriage was adulterated among the Jews themselves, chiefly through polygamy and divorce. Nevertheless vague and free unions were strictly prohibited; thus girls who, at the time of the nuptials, were found to have lost their virginity were punished with death, as were those who committed adultery.³ For the union of spouses, even when several wives were permitted, was ordered primarily to procreating children and constituting a family, as is established from the whole history of the Israelite people, among whom stable families were held as the safest protection of the nation.

³ Deut., XXII, 20-22.

(c) But Christ recalled Christian marriage to its ancient unity and indissolubility; for, having been asked whether it was permitted to put away one's wife, He responded that this was not permitted, because God from the beginning said: "For this cause a man shall leave father and mother and shall cleave to his wife, and they shall be two in one flesh. Therefore now they are not two, but one flesh. What therefore God has joined together, let not man separate."⁴ This also St. Paul teaches, asserting that the woman who, while her husband lives, has been with another man is an adulteress¹, declaring the unity of marriage thus:² "Let each one have his own wife, and let each woman have her own husband." Now the unity and indissolubility of the matrimonial contract altogether exclude vague and free unions.

⁴ Matt., XIX, 4-6.

¹ Rom., VII, 3.

² I Cor. VII, 2. - This is proved more fully below, nn. 709, 716 sq.

(d) The Church not only retained this doctrine of the Master, but also strove with all its powers to bring it into practice, unceasingly teaching that nuptials are to be entered into not for the sake of lust, but for procreating and educating children in a Christian manner, and also for mutual help and solace. This, among others, St. Augustine declares, writing of wives:³ "For they were married for this purpose: that that concupiscence, reduced to a lawful bond, might not float about deformed and dissolved, having from itself the unrestrainable weakness of the flesh, but from nuptials the indissoluble society of fidelity; from itself the progress of immoderate intercourse, but from nuptials the measure of chaste procreation." - But how strenuously the Church fought against the lust of kings and peoples for protecting the sanctity and perpetuity of the matrimonial bond, we shall set forth below, n. 720.

³ *De bono conjugali*, cap. 5, P. L., XL, 377.

684. Corollaries. (a) Fornication and free and temporary union are opposed to the natural and at the same time divine law, since they are not only prohibited by divine law, but are also opposed to the essential ends of marriage, as is established from what has been said, n. 679.

(b) Marriage is impossible between persons who are not apt for generating, such as eunuchs, since the primary end cannot be attained.

(c) A marriage in which the primary end of marriage itself, that is, the end of the work, were positively excluded by the contracting parties would be illicit, indeed null; but the intention of the contracting parties (the end of the one acting) can be that of not pursuing the execution of such an end, provided that the right to that end is not excluded, or the right to the body (can. 1081, § 2).

(d) It is licit and valid, although less perfect, to contract marriage with this explicit end alone, not however exclusive, that poverty be removed, help and solace be found, passions be quieted, lawful delight be had, provided that the primary end is not excluded, in the sense already stated.

§ II. ON THE ESSENCE OF THE MATRIMONIAL CONTRACT

685. Preliminary notes. From what has already been said it is permitted to infer that the essence of marriage, as contract, consists in mutual consent, by which a man and a woman, otherwise capable of marriage, hand over to each other in the present² a stable right over the body of the other for generating offspring, and for the fellowship of common life. Consequently the matrimonial contract does not consist directly in use or copula, but in the consent by which the right to copula is handed over. For, as St. Thomas rightly observes, "one does not receive power over that which is freely another's except through his consent. But, through matrimony, each spouse receives power over the body of the other... since previously each had free power of his own body. Therefore consent makes marriage."

¹ St. Thomas, *Supplem.*, q. 45-48; Sanchez, lib. II-V; Salmantic., cap. 6-7; Billuart, diss. III, a. 1-5; St. Alphonsus, nn. 885-896; Carrière, nn. 455-505; Gasparri, nn. 770-870; Rosset, vol. I, nn. 88-237; Pesch, nn. 731-752; Billot, th. 34-35; Ball. P., nn. 262-305 (3rd ed.); Wernz, S.J., *Jus Decretal.*, vol. IV, *Jus Matrimoniale*, Rome, 1904, nn. 45-47 and nn. 291-306.

² It is said *in the present*, because consent concerning the future indeed suffices for betrothals, but not for marriage.

686. Certain ancient authors taught that copula is necessary for constituting perfect marriage: "It must be known," says Gratian,³ "that marriage is begun in betrothal, perfected in commingling. Whence between bridegroom and bride there is marriage, but begun; between those joined by copula there is ratified marriage." A few commentators of Gratian proceeded further, teaching that copula is required for the essence of marriage. Freisen renewed this opinion, writing that the matrimonial contract is nothing other than a promise of future copula, and therefore does not differ from betrothals; but marriage properly so called is made through copula had with marital affection.⁴ - It is indeed true that marriage simply ratified is not so perfectly indissoluble as consummated marriage, as will be said below; yet it is true marriage and properly so called, as the common and certain opinion holds. (a) For the Fathers often teach this, when they write that Mary and Joseph were truly spouses, although they never used marriage: thus, for example, Origen, St. Basil, St. Ambrose, St. Jerome, St. Augustine;¹ hence Benedict XIV says: "Those who affirm that the marriage of the Blessed Virgin with St. Joseph consisted only in betrothals, think rashly and falsely. Therefore it must be held as certain that the marriage contracted between them was true and ratified."² (b) Pontiffs and Councils teach the same expressly, when they establish that marriage is perfected by the free consent of the contracting parties. Thus Nicholas I:³ "Let the consent alone of those concerning whose unions there is question suffice according to the laws. If this consent alone perhaps has been lacking in nuptials, the rest, even celebrated with intercourse itself, is frustrated, John Chrysostom, the great Doctor, bearing witness, who says: intercourse does not make marriage, but will." To the point is Trent:⁴ "There is no doubt that clandestine marriages made by the free consent of the contracting parties are ratified and true marriages." Afterwards it declares that ratified

marriage, not consummated, is dissolved by solemn profession of religion; now a contract is not dissolved unless it already exists.

³ *Dictum* in Caus. 27, q. 2, c. 34; cf. c. 45. - There the word *ratified* from the context seems to signify a marriage which cannot be dissolved in any way.

⁴ *Archiv für kathol. Kirchenrecht*, LIV, 1885, p. 361 sq. - Yet he later retracted this error in the same periodical, LXVII, 1892, p. 381 sq.

¹ Origen, homil. VI on Luke, *P. G.*, vol. XIII, p. 1814 sq.; St. Basil, *De sancta Christi generatione*, nn. 3-5, *P. G.*, vol. XXXI, pp. 1463-1467; St. Ambrose, *De instit. virg.*, c. 6, n. 42, *P. L.*, vol. XVI, p. 316; St. Jerome, *Contra Helvid.*, n. 4, *P. L.*, vol. XXIII, p. 185; St. Augustine, *De nuptiis et concup.*, l. I, n. 12, *P. L.*, vol. XLIV, p. 420.

² *De Synodo dioecesis.*, l. XIII, c. 32, n. 13.

³ In Mansi, *Concilia*, vol. XV, p. 403.

⁴ Trent, Sess. XXIV, *de Reformat. matrim.*, c. 1.

It remains, therefore, that we accurately declare the qualities of matrimonial consent; therefore we shall speak: 1° on the endowments of this consent in general; 2° on conditioned consent in particular.

I. ON THE ENDOWMENTS OF MATRIMONIAL CONSENT

687. Since marriage is a certain contract, the consent furnished in it follows the general laws of contract. But because it is a contract *sui generis*, in which a right over the very persons of the contracting parties is handed over, certain special things must be noted concerning it. We shall declare this by setting forth in what sense matrimonial consent ought to be internal, free, mutual, and externally manifested.

688. 1° Internal, that is: (a) truly elicited by the will, (b) with a true intention, at least implicit, of handing over a right over one's own body and of receiving a right over the body of the other in order to the generation of offspring. This indeed is clear from the very nature of marriage; for this consists essentially in the right to acts of themselves apt for generating offspring; and moreover such a right cannot be handed over without the true consent of each party. Hence a union between man and woman entered into on account of other ends, for example, only for mutual help and solace, without the intention of granting the aforesaid right, is not truly marriage. Yet implicit consent suffices, such as, for example, is given by those who intend to do what others about to marry do, provided that they exclude nothing of those things which are required for the essence of marriage. What error vitiates consent will be declared below, nn. 934-936.

689. Corollaries: (A) He who simulates consent, while indeed seriously and duly pronouncing the words, but internally dissenting or jesting, contracts invalidly. Hence he cannot licitly use marriage; but the other party, who furnished true consent, is not bound to believe the simulator saying that he did not consent, but can ask for the debt.

(B) In the external forum, consent seriously given externally is presumed to be true and internal, unless the contrary is proved by certain arguments. (*Codex*, c. 1086.)

This proof is altogether difficult; for the affirmation even sworn of the simulator, or even of each spouse, does not suffice; but besides, two things are required: (a) the cause or motive of simulation must be explained, for example, it must be proved that consent was extorted by fear or fraud, or that the simulator willed nothing other than to obtain money or seduce the girl; (b) the simulation itself must be demonstrated from various circumstances preceding, accompanying, or following the marriage, which are such that they render the fiction morally certain; this can be done, for example, either by letters, or by words pronounced before witnesses, clearly manifesting this intention.¹

¹ You have examples in Gasparri, nn. 801 and 804; *Acta S. Sedis*, vol. XVIII, p. 14; vol. XXII, p. 529.

690. (C) He who consents only fictitiously, or simulates consent, sins mortally, unless he is excused by a most grave reason.

For, even if it is admitted with many theologians that in this case sacrilege properly so called is not committed², nevertheless one certainly sins against truth, by deceiving the other party and the witnesses; against justice, by inflicting grave damage on the other party, who will remain unmarried if the fraud cannot be proved, or will contract other nuptials only with difficulty if the fraud is detected; against chastity, if the consummation of this fictitious marriage is intended.

² For simulation of a sacrament it is required that some essential part be posited, while the other is omitted or mutilated; but he who simulates consent posits neither the matter nor the form of the sacrament, since each consists in consent itself; therefore he does not properly simulate the sacrament, nor under this head is he guilty of sacrilege. Cf. St. Alphonsus, n. 62.

Yet he is excused from sin who simulates consent on account of a grave and urgent reason, for example, because of grave fear, or to avoid scandal, if a diriment impediment is detected a little before the celebration of marriage, from which dispensation here and now cannot be obtained, and moreover to defer the ceremony is morally impossible.

691. (D) Grave injury brought about by deception of this kind must be repaired from justice, when the deceiver is the unjust, efficacious, and culpable cause of the damage which the innocent party suffers.

(a) Often the damage cannot be repaired except by furnishing true consent and thus revalidating the marriage; for since it is difficult and sometimes impossible to prove the fiction in the external forum, the innocent party is prohibited from passing to other nuptials, and a continued injury is done to him or her unless the marriage is revalidated.

(b) Yet the deceiver is not bound to marry the deceived party whenever this is morally impossible, for example, because one or the other party has already entered another valid marriage, or if unhappy outcomes are feared because the deceiver is of much higher condition; - or when the damage brought about can be compensated in another way and the injured party admits this compensation; - or if the deceiver himself was induced to contract by grave fear; - or if by his manner of acting he gave manifest signs of fictitious consent.

692. 2° Free, that is, with advertence on the part of the intellect and consent on the part of the will, such as is required for mortal sin. For the matrimonial contract induces grave obligations, and

indeed for the whole course of life; moreover no one is judged to undertake obligations of this kind unless he fully consents. Hence consent given in hypnotic sleep would not be valid.

This freedom is taken away by insanity, error, force, and fear, concerning which there is treatment where impediments are discussed.

693. 3° Mutual, or given and accepted by each party; for here there is question of a bilateral contract, by which mutual rights are handed over and accepted, and mutual obligations are undertaken; but these two suppose the consent of each party, since no one can hand over rights and undertake obligations unless he wills.

Therefore it is required that the consent of one be intimated to the other and accepted by him or her; but it is disputed whether it is necessary that the very acceptance of consent be intimated to the other. The matter is controverted as for all contracts (see Treatise on Contracts, n. 624). Many and grave authors¹ required the intimation of consent. But the matter now has little importance in practice, since marriage cannot be contracted by letter, but the contracting parties must be present themselves in person or through a procurator (*Codex*, c. 1088).

¹ Lugo, Sanchez, D'Annibale, Gasparri.

Nor is it required that the consent of each party be given at the same instant; but that moral union suffices which exists whenever consent given by one still endures at the time when the other furnishes his or her consent. But how long consent once elicited perseveres, whether namely for a year, or for three years, or longer, cannot be determined absolutely, but depends on the various circumstances, and must be left to the judgment of prudent persons.

694. 4° Externally manifested: for this is required by the nature of a contract, which among men is not valid unless it is expressed externally; and also by the nature of a sacrament, which consists in a sensible sign.

By natural and divine law any signs clearly manifesting consent suffice; by ecclesiastical law words regularly must be employed whenever this can be done, but not under penalty of nullity;² indeed, according to St. Alphonsus (n. 888), words are required only under venial fault, and shame or another reasonable cause excuses from this. Nevertheless the parish priest should require that those about to marry express their consent by words, if they can, and indeed clearly, so that thus he may meet many doubts and quibbles.

² *Codex*, c. 1088, § 2.

695. Therefore validly, and, a just cause being present, licitly, consent is expressed by various signs which suffice in other contracts; namely:

(A) By words which, according to received signification, express matrimonial consent in the present, for example, *I receive thee as wife, as my own; as husband, as my own; I contract marriage with thee*, etc. - It is said "in the present," because consent concerning the future signifies betrothals only. Yet sometimes words which, as they sound, seem to be concerning the future sufficiently designate consent in the present from the circumstances, for example, *from now on, henceforth I shall have thee as wife*. If the words

are ambiguous, the sense in the internal forum depends on the intention of the one speaking; in the external forum it must be determined from the circumstances.

(B) By signs or acts, for example, if the woman nods by inclining the head to the parish priest or man questioning her; or if, while the man expresses consent, the woman of her own accord extends her right hand so that the man may put on the ring; likewise if the spouses, after the celebration of marriage, freely approach the sacristy with the witnesses so that there they may be inscribed by the parish priest in the book of marriages. But it is not permitted to spouses to use equivalent signs if they can speak.

696. (C) By letter marriage was contracted validly before the promulgation of the Code; but, from the Code, c. 1088, this cannot be done, since the contracting parties must be present in person or through a procurator. This indeed was wisely established so that frauds may more easily be guarded against.

697. (D) Through a procurator or through an interpreter marriage can be contracted, provided that "a just cause is present, and it is in no way permitted to doubt the authenticity of the mandate or the fidelity of the interpreter, the license of the Ordinary having been had, if time allows."¹

¹ *Codex*, c. 1091.

For marriage to be entered validly through a procurator, ") there is required a special mandate to contract with a certain person, signed by the mandating party and either by the parish priest or Ordinary of the place in which the mandate is made, or by a priest delegated by either of them, or by at least two witnesses; 2) if the mandating party does not know how to write, this is to be noted in the mandate itself and another witness is to be added who himself also signs the writing; otherwise the mandate is invalid; 3) if, before the procurator has contracted in the name of the mandating party, the latter has revoked the mandate or fallen into insanity, the marriage is invalid, although either the procurator or the other contracting party were ignorant of these things; 4) for the marriage to be valid, the procurator must perform his office himself in person."² Besides, the procurator must not exceed the limits of the mandate, and, where solemn form is required, he is bound to exhibit the mandate to the parish priest and witnesses, and to contract before them in the name of the mandating party.³

² *Codex*, c. 1089.

³ *Codex*, c. 1091.

II. ON CONDITIONED CONSENT

698. 1° On its liceity. Since marriage is a contract, nothing of itself prohibits that it can be entered into under a condition, provided that the condition is not repugnant to the substance of marriage. Yet regularly nuptials of this kind are not to be permitted, both because the Roman Ritual, handing down the form of marriage, describes no other than the absolute form; and because very great inconveniences are customarily born from added conditions, since from this certain marriages become doubtful, and moreover the contracting parties are exposed to the danger of living more freely before the condition has been fulfilled. Yet they can be permitted

for a most grave cause and with the consent of the Bishop acceding; indeed, if there is question of revalidating a doubtfully contracted marriage, a condition must be added.

⁴ From the Code, c. 1092, "a condition once added and not revoked: 1° if it is concerning a future necessary event, or impossible, or shameful, but not against the substance of marriage, is held as not added; 2° if concerning a future event against the substance of marriage, it renders it invalid; 3° if concerning a future licit event, it suspends the validity of marriage; 4° if concerning the past or concerning the present, the marriage will be valid or not, according as that which is under the condition exists or not."

699. 2° On its validity. Here a multiple distinction is needed.

(A) If the condition is concerning the past or concerning the present, whether it is honorable or not, (a) the marriage is valid immediately, if the condition is verified; and immediately invalid, if it is not fulfilled; for example, *I contract with thee if my father is dead, or if thou hast truly killed my enemy, or if thou art a virgin*, etc. In these or similar cases consent is, as it were, bound to the condition, and consequently the conditioned contract immediately passes into an absolute one if at that instant the condition itself has been fulfilled. Moreover, since this is concerning the past or concerning the present, it is not to be feared that the apposition of the condition, even one less honorable, is an incitement to crime.

(b) But as long as it is unknown whether the condition has been fulfilled or not, it is not permitted to use marriage, on account of the danger of fornication.

(c) In the external forum, if the condition has not been explicitly brought into the pact in the very act of marriage, it is difficult to prove its existence;¹ and for the marriage to be declared null under this head, three things must be clearly demonstrated: that a true condition *without which not* was added, - that the same was not revoked before the celebration of marriage, - and that it was not fulfilled.

¹ Gasparri illustrates this by various examples, n. 869.

700. (B) If the condition is concerning the future, likewise a distinction must be made:

(a) If it is concerning a future honorable and possible event (for example, *I marry thee if my father consents*), the marriage remains in suspense until the condition shall have been verified; but when the condition has been fulfilled, the marriage becomes valid, provided that the consent previously given perseveres. In this case the marriage is valid without any renewal of consent, according to the common opinion, safe in practice, which the Roman Congregations follow in their decisions;¹ for marriage, even if it has been raised to the dignity of a sacrament, has the nature of a contract, and therefore is perfected when the condition arrives, just as other conditioned contracts.

¹ Cf. Fagnanus, *Commentar.*, cap. 5, *De Conditionibus...*; Gasparri, n. 850.

Yet according to all it is better, when the condition has been fulfilled, to renew consent. Indeed this is necessary if the marriage was contracted under this condition: "If the Pope shall have dispensed from such a diriment impediment"; for those who contract in this way are incapable of marriage before the dispensation is obtained, and their consent is null; whence new consent, once the dispensation has been obtained, must be expressed.²

² Lugo, *De Sacramentis in genere*, disp. VIII, n. 98.

701. (b) If the condition is concerning a future impossible or dishonorable event, yet not against the substance of marriage (for example, if you receive a golden mountain as dowry, if you kill your brother), the marriage is valid, and the condition is held as not added. For it is presumed that the contracting parties seriously wished to contract, and did not bind consent to such a condition. - Yet this is only a presumption of law, which admits proof to the contrary in the internal forum; whence if the contracting party bound consent to this condition, the marriage is null if the condition is not fulfilled, but valid when the condition has been fulfilled. But in the external forum, according to can. 1092, 1°, proof to the contrary does not seem ever to be admitted by the judge, lest jesting or a depraved intention prevail against marriage.

702. (c) If the condition is concerning a future event against the substance of marriage, and is brought into the pact by the two contracting parties, or consent is expressly bound to it by either one, the marriage is invalid. For then true matrimonial consent is lacking, since at least one of the essential properties of marriage is excluded.

But if a condition of this kind is posited by only one, the other contradicting, or at least manifesting dissent by silence, the marriage is presumed valid, because the former is judged to have withdrawn from the condition and to have contracted absolutely. Yet that presumption yields to the truth, if it is certainly proved that the former bound consent to this condition.

Likewise, if the condition is merely concomitant, so that consent is not bound to it, the marriage is judged valid. For in the conflict of two intentions opposed to each other, that one is efficacious which prevails in the mind of the contracting parties; but in the present case there is a twofold opposed intention, namely the intention of marrying and at the same time of doing something contrary to the essence of marriage; moreover the intention of marrying, from things commonly occurring, prevails in the mind of the spouses; therefore it is truly efficacious and marriage is contracted. Yet this is a presumption which yields to the truth, when this is certainly established from elsewhere.

Let us declare the matter by examples. 1) If a condition is added against the good of offspring, for example, "provided that we avoid the generation of offspring until we become richer, - provided that after one or another child we exclude offspring"; the intention of the spouses must be explored: if they intend to exclude the right to the legitimate use of marriage, the contract is invalid, because they do not grant a perpetual right over their own body in order to generation, which nevertheless is essential to the essence of marriage; but if, as generally happens, the intention of handing over that right prevails, with a secondary intention of abusing marriage, the contract is valid.

2. Likewise, where the law of divorce is in force, if those about to marry contract under the condition of dissolving the matrimonial bond in the case of adultery or disagreements,¹ so that they would not wish to marry unless divorce were permitted to them, the marriage is invalid; for they do not consent to a perpetual bond, which is of the essence of marriage. But if they are so disposed that they would wish to marry even if divorce were prohibited, the contract is valid.¹

¹ Thus the Congregation of the Holy Office declared, May 20, 1754, that a marriage entered before a Calvinist minister was invalid, because he is accustomed to use a formula contrary to the perpetuity of marriage, in Gasparri, n. 854. See also Instruction of the Holy Office to the Bishop of S. Alberti, December 9, 1874, in *Collect. P. F.*, n. 1301.

¹ Thus the Sacred Congregation of the Council, January 31, 1891, declared valid a marriage in which the bridegroom had wished to contract only a soluble bond, but nevertheless truly to marry. Cf. *Acta S. Sedis*, vol. XXIII, pp. 711-736.

3. The same must be said of conditions against the unity of marriage, for example, provided that I may take another, - provided that for money you prostitute yourself. - In individual cases an investigation must be made to detect whether or not consent was bound to this condition, and this cannot be supplied by a general presumption. But to detect the intention of the contracting parties, not only must the words by which consent was expressed be considered, but also the facts and circumstances from which the sense of the words can be known.²

² Thus Congregation of the Holy Office, 1877, to the Bishop of Nesqually, in *Collect. P. F.*, n. 1302.

But when doubt remains, one must stand for the validity of the marriage, until the Holy See has decreed otherwise. If the spouses wish to renew consent, this is altogether to be advised.

703. (d) If an honorable condition is added of abstaining perpetually from the use of marriage, for example, for preserving chastity, it is controverted whether the marriage is valid or not. Not a few affirm that it is, because a right over one's own body can be conferred and at the same time the exercise of the right can be excluded, on account of a good motive:³ for then there is a radical right, although bound, and this suffices for the essence of marriage. In this way it is easily explained how there was true marriage between the Blessed Virgin and St. Joseph, although they had vowed virginity. But others deny it;⁴ for a right is the power of using; now if a power of this kind is prohibited, no right is conferred. Moreover the marriage of the Blessed Virgin with St. Joseph was valid: for no condition was added, but the Blessed Virgin was made divinely more certain that St. Joseph had proposed to himself to preserve virginity, and therefore by contracting nuptials absolutely, she in no way committed herself to the danger of violating the vow.

³ Palmieri, *De Matrim.*, p. 17; Ball. P., nn. 225-233; Lehmkuhl, II, n. 690; Gasparri, n. 858.

⁴ St. Thomas, 4, dist. 30, q. 2, a. 1, quaestiunc. 3, sol. 2; Benedict XIV, *De Synodo*, l. XIII, c. 22, n. 10. D'Annibale, III, 443, note 4.

704. Corollary. From these principles the question can be solved whether a marriage contracted by one who falsely thinks himself bound by a diriment impediment is valid. Certain authors deny it, because one cannot seriously will that which is impossible; moreover, he who is certain that he is laboring under an impediment of this kind, by that very fact knows marriage to be impossible. But others affirm it, because in this case the contracting parties consent insofar as they can; but in fact marriage is possible, since in reality there is no impediment; therefore they furnish true consent; and this must be held from the Code, c. 1085.

According to the principles set forth above, attention must be paid to the intention of the contracting parties: if they think themselves to be so bound by an impediment that they seek nothing other than concubinage, the marriage is not valid; but if they intend to contract insofar as they can, the marriage is valid.

ART. II. ON THE PROPERTIES OF MARRIAGE

"The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a peculiar firmness by reason of the sacrament" (*Codex*, c. 1013, § 2.)

§ I. ON THE UNITY OF MARRIAGE

705. Preliminary notes. The unity of marriage consists in the conjugal union of one man with one woman. To this are opposed polyandry and simple polygamy. The former is the conjunction of one wife with several men; the latter is the conjunction of one man with several wives.

We premise a few things concerning polyandry, which exists very rarely. Simultaneous polyandry, or the conjugal union of one wife with several men at the same time, according to all, is repugnant at least to the secondary natural law. For although, strictly speaking, it does not render absolutely impossible the procreation and education of offspring, nevertheless it is opposed to the principal ends of marriage: (a) to the procreation of offspring, for the fecundity of the woman, although it is not altogether destroyed by carnal commerce with several men, is nevertheless greatly diminished; (b) to the education of offspring, because it renders the father uncertain, and consequently renders uncertain his obligation of educating the children; (c) to the natural subjection by which the woman ought to be subject to the man; for no one can perfectly serve several masters at the same time.¹

¹ St. Thomas, *Supplement*, q. 65, a. 1, ad 8.

Nevertheless a certain polyandry has flourished and still flourishes among certain tribes, especially where women are fewer than men. Sometimes the matter stood thus: when a woman had married the firstborn, his younger brothers approached her successively, according to certain defined rules and customs; and sometimes two or three men married the same wife and dwelt together in the same house. But facts of this kind occur rarely, and among the husbands generally one is principal, who presides over the whole household. Yet even among those tribes monogamy generally prevails.¹

¹ Westermarck learnedly discusses the extension and causes of polyandry, *op. cit.*, ch. 20-22, pp. 425-485.

I. ON SIMULTANEOUS POLYGAMY

706. Polygyny, before Christ, flourished among most peoples, although not all men were polygamous. Today also among unbelievers it prevails, especially among the richer, who can support several women. But among Christian nations monogamy is acknowledged as the foundation of the family. - Yet Luther taught that simultaneous polygamy, even under the New Law, was licit, and, with P. Melancthon and M. Bucer agreeing, kindly granted Philip, Landgrave of Hesse, that while his lawful wife was still living he might marry another, Margaret de Saal. The Anabaptists defended the same error, and in our century the Mormons,³ who very recently nevertheless declared that they had taken leave of polygamy, so that thus they might submit themselves to the laws of the State. But on the opposite side Calvin contended that simultaneous polygamy, even under the Old Testament, was illicit, and therefore that the ancient Patriarchs, who had several wives at the same time, were guilty of adultery. To refute this calumny, some theologians said that polygamy is not opposed to the natural law, nor before the evangelical law was it prohibited by divine law. What we think the following proposition will declare.

² St. Thomas, *Supplement*, q. 65, aa. 1-2; Bellarmine, c. 10-11; Drouin, l. IX, q. III, c. 1; Billuart, diss. V, a. 1; Perrone, l. III, c. 1, aa. 2-4; Carriere, p. II, sect. 2, c. 1; de Augustinis, a. 7; Palmieri, th. 13 sq.; Billot, th. 40; Watkins, *Holy Matrim.*, ch. IX, p. 591 sq.

³ Concerning the Mormons, who call themselves "The Church of Jesus Christ of Latter-Day Saints," see *Book of Doctrine and Covenant* (1880), *Book of Mormon* (1881); *Encyclop. Britan. with American Supplement*; H. Lyon, *A Study of the Sects*, p. 187 sq.

707. Thesis: Simultaneous polygamy, contrary to the primitive institution, but permitted to the Patriarchs after the flood, was prohibited by Christ, and is opposed to the secondary precepts of the law of nature.

(A) Simultaneous polygamy is contrary to the primitive institution of marriage. Thus more commonly. For (a) when God created man, He made one man and one woman;¹ now, as Chrysostom² rightly observes, if the Lord had willed that one man be joined to several wives, when He made one man, He would have made many women. But afterwards Adam, seeing Eve, exclaimed: "Wherefore a man shall leave his father and his mother, and shall cleave to his wife; and they shall be two in one flesh"; there, however, as Innocent III says,³ "he did not say three or more, but two; nor did he say he shall cleave to wives, but to his wife"; which indeed exclude polygamy. (b) Hence, before the flood, Lamech alone is said to have had two wives, and on that account he is severely reprov'd by the Fathers; thus Nicholas I writes:⁴ "but the crime of adultery, which Lamech first of all perpetrated in two wives, stood as abolished only by the blood of Christ"... (c) On this account Innocent III (*loc. cit.*) says: "Nor was it ever permitted to anyone to have several wives at the same time, except to him to whom it was granted by divine revelation"; and these words indeed manifestly suppose that polygamy was prohibited by the primitive law.

¹ *Gen.*, II, 7, 22.

² *Hom.* 62, al. 63, in *Matt.*, n. 1, P. G., t. LVIII, p. 597.

³ *Decretal.*, l. IV, t. 19, Cap. *Gaudemus, de Divort.*

⁴ *Ad Consulta Bulgar.*, n. 51, in Harduin, *Act. Concil.*, t. V, p. 37.

708. (B) Yet polygamy after the flood was permitted to the Patriarchs and to the Jews under the Mosaic law, indeed very probably also to the Gentiles. (a) For the Patriarchs, who enjoyed the friendship of God, such as Abraham, Jacob, and others, had several wives, nor are they reprov'd on that account, but rather they are exhibited as men outstanding in piety. (b) The Mosaic law likewise supposes plurality of wives to be licit, since it establishes that the sons born from either wife are to be equated.⁵ In reality Elkanah,⁶ David,⁷ Joash,⁸ and other men had several wives; and while David is gravely chastised on account of adultery with Bathsheba, the wife of Uriah, he is never reprov'd on account of the other wives whom he had married.

⁵ *Deut.*, XXI, 15.

⁶ *I Reg.*, I, 2.

⁷ *II Reg.*, II, 2.

⁸ *II Parap.*, XXIV, 3 sq.

Nor let it be said that some of these wives are called concubines and therefore were not legitimate; for in Scripture sometimes legitimate wives are called concubines, and conversely; thus Hagar and Keturah are now called wives, now concubines.¹ Indeed among the ancients two kinds of wives were distinguished: some were married not only for the procreation of offspring, but also for the society of all goods and the governance of the house, and these were called mothers of families; but others only for the generation of offspring, and these were called secondary wives or concubines. (c) But the chief reason why polygamy was permitted after the flood was the multiplication of offspring to be educated for the worship of God. For, as St. Thomas says (*loc. cit.*, a. 2): "The more principal end must always be observed more than the secondary. Hence, since the good of offspring is the principal end of marriage, where the multiplication of offspring was necessary, the impediment which could occur in the secondary ends had to be neglected for a time."

¹ *Gen.*, XVI, XXV.

It is commonly handed down by theologians that the dispensation from the primitive law concerning the unity of marriage was given only after the flood; nevertheless nothing certain can be defined concerning this matter. Nor was it necessary that the dispensation be expressed in writing; for the law concerning unity of wife, as St. Thomas observes (*loc. cit.*), had not been handed down by word or letters, but impressed on the heart; and therefore the dispensation could take place through internal inspiration, which indeed was principally made to the holy fathers, and from their example derived to others. From this also it can be gathered, with Bellarmine and others against Sanchez, that the same dispensation was given to the Gentiles; for since it was granted in the time of the patriarchs, there is no reason why it should have been limited to the Jews alone, especially because it was more difficult for pagans than for Israelites to preserve the perfect unity of marriage. Hence Esther was joined to Ahasuerus, who already had a wife, and she is not reprov'd on that account; likewise Abimelech, who had a wife, wished to marry Sarah, and was not blamed except because he had taken the wife of another.

709. (C) Simultaneous polygamy was prohibited by divine law under the New Law. This is of faith from Trent:² "If anyone shall say that it is lawful for Christians to have several wives at the same time, and that this is prohibited by no divine law, let him be anathema."

² Trent, sess. XXIV, can. 2.

(a) For Christ recalled marriage to its first institution; for when asked whether it was lawful to put away a wife, He answered that it was not lawful, and added this reason: "Have you not read that He who made man from the beginning made them male and female? And He said: For this cause a man shall leave father and mother and shall cleave to his wife, and they shall be two in one flesh: therefore now they are not two, but one flesh."¹ But the primitive institution of marriage excluded polygamy, from what has already been said, and from the words of Christ Himself: "they shall be two in one flesh." It is confirmed by other words of the Lord: "Whoever shall put away his wife, and marry another, commits adultery";² for he who puts away his wife and marries another commits adultery for this reason, that the former does not cease to be his wife; but when she has not been put away, a fortiori she remains his wife; therefore he who marries another truly commits adultery. Hence St. Paul, as often as he speaks of marriage, supposes it to be of one man with one wife, and says: "The woman, while her husband lives, shall be called an adulteress, if she be with another man";³

moreover, from the same Apostle,⁴ the rights of the spouses are equal: "The woman has not power over her own body, but the husband: and likewise also the husband has not power over his own body, but the woman"; therefore neither can the man, while his wife is living, marry another.

¹ *Matt.*, XIX, 3 sq.

² *Luke*, XVI, 18; *Matt.*, XIX, 9.

³ *Rom.*, VII, 3.

⁴ *I Cor.*, VII, 2 sq.

(b) The same is proved by the unanimous testimony of the Fathers and the constant practice of the Church. Thus St. Augustine⁵ writes that in the Church it has been commanded "that it is not lawful even to leave a sterile spouse, so that another fruitful one may be married. But if anyone shall do this... by the law of the Gospel he is guilty of adultery." Hence the Roman Pontiffs have always stood forth as strenuous defenders of the unity of marriage, even against the lust of Princes; thus, in the ninth century, Nicholas I openly reprovved King Lothair, the husband of two wives at the same time, and deposed the Bishops who in the Council of Metz had dissolved the bond of the first marriage.⁶

⁵ *De Nuptiis*, l. I, c. 10, n. 11, P. L., t. XLIV, 420.

⁶ J. Roy, *Saint Nicolas I*, Paris, Lecoffre, ch. 3.

Nevertheless two facts are alleged to the contrary. The first is that of Socrates, who reports⁷ that the Emperor Valentinian had two wives at the same time, and established that the same should be permitted to anyone who wished. But testimony of this kind is commonly rejected by learned men, both because some things in this narration are false, and because Ammianus Marcellinus, although sufficiently hostile to Valentinian, praises him because¹ "with every cultivation of modesty he was chaste at home and abroad." Besides, a fact of this kind, even if true, would prove nothing against the unanimous tradition of all centuries. The second is the response of Gregory II,² declaring that it is lawful for a man to marry another wife, because this one, on account of bodily infirmity, was not able to render the debt. But likewise there is doubt concerning the genuineness of this response, which was diligently sought in the Roman archives and nevertheless not found; but if it were authentic, perhaps it could be understood of an impotence which makes marriage invalid. Moreover the Roman correctors noted concerning this decree: "That decree of Gregory is found to be wholly opposed to the sacred canons, indeed to evangelical and apostolic doctrine"; therefore nothing can be gathered from it against the constant doctrine and practice of the Church.

⁷ *Histor.*, l. IV, c. 31.

¹ Lib. XXX, circa finem.

² *Epist.* 13 *ad S. Bonif.*, in Labbe, t. VI, col. 1448. Here is the text as it is alleged: "For as to what thou hast proposed, that if a woman, overtaken by infirmity, should not wish to render the debt to her husband, what should her spouse do? It would be good if he so remained, so that he might be free for abstinence. But because this belongs to the great, he who cannot contain himself, let him rather marry: yet let him not withdraw the assistance of support from her whom infirmity hinders." Cf. Kuth, *S. Boniface*, Paris, Lecoffre, p. 55.

710. (D) Simultaneous polygamy is opposed not to the primary natural law, but to the secondary. Thus commonly. For the matter stands so if polygamy, although saving the primary end of marriage, harms the secondary ends; but polygamy (a) neither totally removes nor in any way

impedes the first end of marriage, since one man suffices for fecundating several wives and for educating the children born therefrom; (b) however, the secondary ends it does not indeed totally remove, but it greatly impedes them: for peace can not easily exist in a family where several wives are joined to one man, since one man cannot suffice for satisfying several wives according to their wish; namely, each one will endeavor to draw the man's affection to herself, and if the man does not pursue all with equal love (which can scarcely happen), thence quarrels will arise, inimical to peace, as is clear from the history of the Patriarchs. Likewise it is to be feared lest the husband, intent especially on the children of the wife preferred, neglect the rest. Finally the third end of marriage, namely the remedy of concupiscence, will not rarely be frustrated, since one man cannot satisfy several wives at the same time. Therefore plurality of wives is opposed not to the primary, but to the secondary natural law.

II. ON SUCCESSIVE POLYGAMY

711. Successive polygamy, or second and further nuptials as illicit by divine law, were once condemned by the Montanists, to whom Tertullian adhered (*De Monogamia*), and also by the Novatians. Some Fathers, especially Greek ones, spoke too harshly concerning second and especially third and further nuptials. Indeed, among the Greeks, already from the tenth century, by ecclesiastical law, fourth nuptials are held as invalid.²

¹ St. Thomas, *Supplement*, q. 63; Drouin, l. IX, q. III, c. 2; Billuart, diss. V, a. 1, § 3; Carriere, n. 203 sq.; Perrone, l. III, sect. 1, c. 2; de Augustinis, *loc. cit.*; Palmieri, th. 12.

² "The Orientals also disapprove successive polygamy... For second nuptials indeed there is in the Euchologia a prescribed rite, which nevertheless they disapprove after the forty-fifth year of age; third nuptials were subjected to ecclesiastical censure, but fourth were condemned as brutal... According to present practice, help is given by dispensation of the bishop, when it is sought." (Papp-Szilagyi, *Enchiridion juris eccles. orient.*, p. 414.)

712. Thesis: Successive polygamy, although less approved by the Church, is licit by divine law, nor was it ever universally prohibited in the Latin Church. It is certain.

(A) Scripture. St. Paul expressly affirms that repeated nuptials, the prior spouse being dead, are licit: "A woman, if her husband shall have died, is freed from the law of the husband, so that she is not an adulteress if she shall be with another man";³ "But I say to the unmarried and to widows: it is good if they so remain, even as I. But if they do not contain themselves, let them marry; for it is better to marry than to burn."⁴ Indeed elsewhere⁵ he exhorts younger widows to marry again: "Therefore I will that the younger marry, bear children, be mothers of families, give no occasion to the adversary for the sake of evil speaking." From these it is clear that, according to the mind of the Apostle, it is indeed better to remain in the state of virginity or widowhood; yet nevertheless nuptials are licit for virgins and widows, indeed sometimes expedient for restraining concupiscence.

³ *Rom.*, VII, 3.

⁴ *I Cor.*, VII, 8.

⁵ *I Tim.*, V, 14.

713. (B) Tradition. (a) Explaining the aforesaid text of the Apostle, St. Augustine writes:⁶

"Concerning third and fourth and still further nuptials men are accustomed to raise a question.

Hence, that I may answer briefly, I dare condemn no nuptials... For who am I, that I should think something must be defined which I do not see that the Apostle defined? For he says: A woman is bound as long as her husband lives. He did not say first, or second, or third, or fourth; but, he says, a woman is bound as long as her husband lives: but if her husband shall have died, she is freed; let her marry whom she will, only in the Lord. But she shall be more blessed if she so remains.¹ What can be added to or taken from this sentence, so far as this matter is concerned, I do not know." We indeed acknowledge that some Fathers, especially Greek ones, disapproved third or further nuptials, indeed said that they were worse than fornication. In speaking thus they principally condemned the affection of those who, not content with first or second nuptials, wished to enter a third or fourth marriage, not from the intention of receiving offspring, but for the sake of satisfying lust.² Yet they never said that these spouses were to be separated, but they receive them to communion after penance has been performed.

⁶ *De bono viduit.*, c. 12, P. L., t. XL, p. 439.

¹ *I Cor.*, VII, 39-40.

² As to the principal texts of the Fathers which seem to condemn repeated nuptials, cf. Drouin and Perrone, *loc. cit.*

(b) Eugene IV³ states the doctrine of the Church concerning this matter thus: "We declare that not only second nuptials, but third and fourth and further ones, if some impediment does not stand in the way, can be contracted licitly. Yet we say that those are more commendable if, abstaining further from marriages, they remain in chastity."

³ *Decret. pro Jacobitis.*

(C) Theological reason. With the nature of things alone inspected, nothing prohibits that repeated nuptials be licit; for on the one hand the first bond, when one of the spouses is dead, has been dissolved; and on the other a new matrimonial consent can be furnished between parties otherwise capable; indeed, sometimes nature itself counsels that, whether for the procreation of offspring or for avoiding incontinence, a new covenant be entered.

§ II. ON THE INDISSOLUBILITY OF MARRIAGE

714. The other property of marriage is indissolubility, by force of which the bond entered between the spouses cannot be dissolved except by the death of either spouse. To this indissolubility divorce is opposed, which is usually distinguished as threefold: divorce as to the bond, or full divorce, by which the matrimonial union is so dissolved that new nuptials can be entered; divorce as to the bed, or separation from bed, where, while the conjugal bond remains, the spouses are immune from rendering the conjugal debt; divorce as to habitation, by which the spouses are freed from the obligation of cohabiting together. Here we treat especially of divorce properly so called, or as to the bond, yet adding a few things concerning separation as to bed and habitation.

Therefore we shall speak: 1° of the indissolubility of the matrimonial bond from divine law; 2° of the same indissolubility from natural law; 3° of the cases in which the bond can be dissolved even under

the evangelical law; 4° of the manner of acting with regard to civil divorce; 5° of separation as to bed and habitation.

I. ON THE INDISSOLUBILITY OF MARRIAGE FROM DIVINE LAW

715. Among Christians it is commonly acknowledged that marriage was indissoluble from the beginning, but that in the time of the Mosaic law it could be dissolved under certain conditions, and that it was recalled by Christ to its primitive indissolubility. Nevertheless the schismatic Greeks and Protestants teach that marriage, even as to the bond, can be dissolved by adultery, or even, according to many, on account of the obstinate desertion of either spouse.²

¹ St. Thomas, *Supplement*, q. 67; Sanchez, l. X, disp. 1; Drouin, l. IX, q. IV, c. 1; Bellarmine, c. 16; Billuart, diss. V, a. 2, historical digression; Carriere, n. 228 sq.; Perrone, l. III, sect. 2, cc. 1-4; de Augustinis, a. 8; Palmieri, th. 17-22; T. Wolsey, *Divorce and Divorce Legislation*, 1882, c. 1; J. Cauviere, *Le Lien conjugal et le Divorce*, Paris, 1890; *Congres scient. internat.* 1894, Sc. jurid., p. 133 sq.

² As to the doctrine of the Greeks on this matter, see Jos. Selinger, *Divorce a vinculo in the schismatical churches*, in *Amer. Eccles. Review*, April 1892, p. 264 sq. But the doctrine of the Protestants is exhibited thus by the Westminster Confession of Faith (cap. XXIV, 5-6): "But if adultery is committed after marriage, it will be lawful for the innocent party to seek and obtain divorce by law; and indeed after the divorce has been made to be joined in marriage to another, just as if that person who was violating the fidelity of marriage were dead... Nevertheless, outside adultery and desertion so obstinate that by no remedy can help be given to it, either by the Church or by the civil Magistrate, there can be no sufficient cause for dissolving the bond of marriage." (In Schaff, *Creeds*, vol. III, p. 656.)

716. First Thesis: Marriage, from the primitive institution of God, was indissoluble; but under the Mosaic law it could be dissolved through a bill of repudiation, even in the forum of conscience, under certain definite conditions. Thus commonly.

(A) The first part is proved. (a) For when the Pharisees asked whether it was lawful for a man to put away his wife for any cause whatever, Christ answers that God Himself is the author of marriage, and that it is not lawful for man to dissolve this union: "What therefore God has joined, let not man separate." But when they objected that a bill of repudiation had been permitted by Moses, the Lord adds: "Because Moses, for the hardness of your heart, permitted you to put away your wives: but from the beginning it was not so."¹ These words indeed manifestly suppose that from the beginning marriage was not so instituted that license was given to the man of repudiating his wife. (b) This is confirmed by Trent:² "The first parent of the human race, by the impulse of the divine Spirit, pronounced the perpetual and indissoluble bond of marriage, when he said: This now is bone of my bones, and flesh of my flesh"...

¹ *Matt.*, XIX, 3 sq.

² Trent, sess. XXIV.

717. (B) The latter part is clear; for it is read in Deuteronomy:³ "If a man takes a wife, and has her, and she does not find favor before his eyes on account of some uncleanness, he shall write a bill of repudiation, and shall give it into her hand, and shall send her out of his house. And when, having gone out, she has married another husband, and he also hates her and gives her a bill of repudiation, and sends her out of his house, or certainly has died, the prior husband

will not be able to receive her again as wife" ... Now by these words either the faculty of divorce as to the bond is granted, or it is supposed already granted; for the dismissed wife is exhibited as marrying another man, and moreover priests are prohibited from marrying a repudiated woman;⁴ from which it is gathered that this was permitted to others.

³ *Deut.*, XXIV, 1 sq.

⁴ *Levit.*, XXI, 7.

(a) But it is disputed among the Fathers and theologians whether a concession of this kind was valid not only in the external forum, but also in the internal forum.⁵ The opinion affirming that this was a true permission valid in the forum of conscience seems to us more probable; for he who marries a dismissed wife is called husband, and he himself can give a bill of repudiation, which right belonged only to a legitimate husband; besides, the prior husband is prohibited from receiving the dismissed wife again; but if the bond had not truly been dissolved, why that prohibition? Moreover, if a permission of this kind had not been valid in conscience, the law would have furnished occasion for many adulteries; the condition of women would have been most unjust, since, after receiving a bill of repudiation, they would have had to observe continence perpetually; finally, all the Jews embraced this interpretation, and although two schools, Shammai and Hillel, disputed concerning the causes on account of which divorce could be granted,¹ yet in this they agreed, that sometimes it was lawful.

⁵ St. Bonaventure, Soto, Estius, Sylvius, Card. Billot think that divorce was only civilly tolerated, and therefore immune from civil penalty but not from sin; nevertheless this opinion seems less probable.

¹ According to Hillel, the sufficient cause was any thing displeasing to the husband, as if the wife had prepared the foods negligently; but, according to the school of Shammai, a certain immodesty on the part of the wife was required.

(b) Only under certain definite conditions was the faculty of divorce granted; first, it belonged not to the wife, but only to the man; indeed it was not permitted to the man when, before marriage, he had had carnal commerce with the wife, or had unjustly accused her of not being a virgin.² Besides, the man could not dismiss his wife for any cause whatever, but only on account of some uncleanness (*'ervat dabar*), a word which designated something base and dishonorable. Nor was he permitted to dismiss her without a written bill of repudiation, by which not only was provision made for the state of the wife, but divorce became more difficult. Finally, when the woman thus repudiated had entered a new marriage, she could not again be received as wife by the prior husband; by which it happened that the man acted more cautiously. By these various formalities the sacred legislator sufficiently showed that divorces are something less perfect, and he confined them within certain limits. But the reason why God gave such a faculty is indicated by the words of Christ, "for the hardness of heart," or, as St. Thomas explains (a. 3), "on account of restraining a greater evil, namely wife-murder, to which the Jews were prone on account of the corruption of the irascible power."

² *Deut.*, XXII, 19, 29.

718. Second Thesis: The marriage of the faithful, ratified and consummated, cannot, under the evangelical law, be dissolved as to the bond, even on account of adultery. It is certain and proximate to faith against the Greeks and Protestants from Trent:¹ "If anyone shall say that the Church errs when she has taught and teaches, according to evangelical and apostolic doctrine, that the bond of marriage cannot be dissolved on account of the adultery of either spouse; and that both, or even the innocent one, who gave no cause for the adultery, cannot contract

another marriage while the other spouse is living; and that he commits adultery who, having dismissed an adulterous woman, marries another, and she who, having dismissed an adulterer, marries another, let him be anathema." The canon is directly directed against the Protestants, who were accusing the Catholic Church of error concerning this matter; therefore it is of faith that the Church does not err when she teaches that, on account of adultery, the matrimonial bond cannot be dissolved; only indirectly is it against the Greeks, because the Council did not wish to condemn their opinion as heretical,² and on that account employed such a formula as places the doctrine of the Church in safety, without this being proposed as of faith; for it is one thing to define that the Church does not err when she teaches, another to say that what she teaches is of faith: for the Church can teach truths which are certain, although they are not of faith.

¹ Trent, sess. XXIV, can. 7.

² According to Pallavicini (*Hist. Concil. Trid.*, l. XXII, c. 4, n. 27), the canon had first been composed so that it also struck the Greeks with an anathema; but, at the request of the Venetian orators, it was reformed as it now stands, lest a new obstacle be placed before the union of the Greeks.

In the proposition we said the marriage of the faithful, ratified and consummated, because if there is question of the marriage of unbelievers, or of the marriage of the faithful ratified only and not consummated, exceptions can be present, as will be declared below.

719. (A) Scripture. (a) In three places Christ openly declares that adultery is committed by him who marries a dismissed wife: "But I say to you: that everyone who puts away his wife, except for the cause of fornication, makes her commit adultery: and he who marries her who has been put away commits adultery";³ "Everyone who puts away his wife, and marries another, commits adultery: and he who marries her who has been put away by a man, commits adultery."⁴ But if marriage could be dissolved as to the bond, adultery would by no means be committed by him who married a dismissed wife.

³ *Matt.*, V, 32.

⁴ *Luke*, XVI, 18; cf. *Mark*, X, 11-12.

(b) The same is clearly drawn from the words of the Apostle:¹ "But to those who are joined in marriage I command, not I, but the Lord, that the wife not depart from the husband; but if she has departed, let her remain unmarried, or be reconciled to her husband. And let not the husband put away the wife." Now these words are entirely general and manifestly suppose that a dismissed wife, for whatever cause, cannot marry again.

¹ *I Cor.*, VII, 10.

(c) Indeed the words of the Lord are objected: "Whoever shall put away his wife, except on account of fornication, and shall marry another, commits adultery: and he who shall marry her who has been put away, commits adultery";² from which both the Greeks and Protestants gather that in the case of fornication, or adultery, the matrimonial bond can be dissolved. We indeed acknowledge that a text of this kind, if taken by itself, apart from the context and parallel places, is obscure and can be understood in either sense; but, with the context and parallel places inspected, it cannot be understood of divorce as to the bond, but of dismissal alone without dissolution of the bond. This is

clear from the context. For the Pharisees were asking Christ concerning dismissal alone; for since they were disputing among themselves whether it was lawful to put away a wife for any cause, or only for adultery, Christ answers that the wife can be dismissed (perpetually) only on account of fornication; and because He wished to abolish divorce from the bond, He adds that it is not lawful, even in this case, to marry a dismissed wife under pain of adultery. In other words, the words "except on account of fornication" constitute an incidental proposition, which is referred to the preceding words "shall put away his wife," but not to the following words "and shall marry another," so that the sense is: whoever shall put away his wife (which indeed is not lawful except on account of fornication), and shall marry another, commits adultery. Therefore fornication, or adultery, is indeed a sufficient reason why the wife may be dismissed, that is, why separation from table and bed may be made, but not why a new covenant may be entered.³

² *Matt.*, XIX, 9; cf. Fillion, *Evang. selon S. Matthieu*, in this place.

³ This can be illustrated by an analogy. Let some law be supposed to be conceived thus: "Whoever shall strike his son, except on account of a grave crime, and shall kill him, will be punished"; surely the incidental proposition in this case affects only the prior part of the sentence, not the latter; nor will it be lawful to conclude that the father can, on account of grave crimes, kill his son. Cf. Rene de Kerallain, *Revue gen. du droit*, 1884, p. 481.

In reality, a little before He had said: "what God has joined, let not man separate," and had declared that the bill of repudiation was no longer granted under the New Law, by these words sufficiently showing that the matrimonial bond is dissolved in no case. - There are added the parallel places already cited, in which without any restriction it is asserted that he who puts away his wife and marries another commits adultery, and again that he who marries a dismissed wife commits adultery. Now it is an unshaken principle that obscure places must be understood through other clearer ones.¹ Finally every doubt, if any remained, is removed by Catholic tradition.

¹ Some Protestants have understood this, for example, E. J. Phelps, *Forum*, December 1889, p. 359.

720. (B) Tradition. Three times can be distinguished in the history of this dogma. (a) It is certain that the Fathers, in the first three centuries, with unanimous mouth teach that Christian marriage is indissoluble, even in the case of adultery. It will suffice to report a few testimonies.² Hermas indeed has these things concerning the manner of acting toward an adulterous woman:³ "What therefore, I said, lord, should the husband do if the wife remains in this lust? Let him dismiss her, he says, and let the man remain by himself; but if, after his wife has been dismissed, he marries another, he himself commits adultery." In the same sense wrote St. Justin,⁴ Athenagoras,⁵ Clement of Alexandria,⁶ and many others. - But although the Fathers agreed concerning this matter, certain rulers of the Church, according to Origen's testimony, sometimes tolerated divorce permitted by civil law, in order to avoid worse evils. He censures them, saying: "Against the law of Scripture, certain rulers of the Church permitted a woman to marry while her husband was living, acting against that which is written: The woman is bound by the law for as long as her husband lives." Yet he excuses them in some way, without approving their manner of acting: "Nevertheless they did not permit this altogether without reason; for it is likely that, against the law established and written from the beginning, they permitted these things, to avoid worse evils, accommodating themselves to the judgment of another."¹ Thus the way was being prepared, in the Greek Church, for the abuses of a later age.

² See the matter thoroughly discussed in Perrone, l. III, c. 3; Roskovany, *op. cit.*, *De Indissolubilit. matrimonii*, c. IV, Doctrine of the Church, § 101 sq. Cf. A. Esmein, *Le Mariage en Droit Canonique*, Paris, 1891; Watkins, *op. cit.*, p. 198 sq.

³ *Pastor*, Mandat. 4, n. 6, p. 475, ed. Funk.

⁴ *Apol.* I, n. 15; *Apol.* II, n. 2, P. G., t. VI, p. 350.

⁵ *Leg. pro christ.*, n. 32.

⁶ *Stromat.*, l. II, c. 23, P. G., t. VIII, p. 1095.

¹ Origen, homil. 14 in *Matt.*, n. 23, P. G., t. XIII, p. 1246.

(b) From the fourth century to the decree of Gratian (1115), a distinction must be made between the Eastern Church and the Western Church. In the East, some writers, too easily assenting to civil laws which permitted divorce on account of adultery, a long absence of the husband, and other causes, first timidly, but afterwards more boldly, taught that divorce was to be tolerated, while the bishops at first dissembled and afterwards even approved, especially after the schism had been consummated.² The Holy See more than once disapproved these abuses; and in the Council of Florence, where there was question of union with the Roman Church, Eugene IV, in the decree to the Armenians, again declared the doctrine concerning the firmness of marriage: "Although, on account of the cause of fornication, it is lawful to make separation from bed, nevertheless it is not lawful to contract another marriage, since the bond of a legitimately contracted marriage is perpetual." The Greeks, for the time, gave assent to this declaration, and when there was question of union they did not mention this among the causes of dissension; but a little afterwards they returned to their practice. Today also some Orientals who have embraced the Catholic faith, although speculatively they admit our doctrine, in practice tolerate divorce on account of adultery.

² Cf. Perrone, *op. cit.*, t. III, pp. 359-376; Watkins, *op. cit.*, pp. 346-362.

But in the Latin Church, which strongly resisted the emperors, especially in matters of faith and morals, the firmness of the matrimonial bond was happily preserved. For although civil law permitted divorce, the Fathers refused to admit its force and authority, agreeing with St. Jerome, who wrote:³ "The laws of the Caesars are one thing, those of Christ another; Papinian commands one thing, our Paul another... Among us, what is not lawful for women is equally not lawful for men, and the same servitude is judged by an equal condition." This especially obtained in Italy, where the Roman Pontiffs watched over the indissolubility of marriage so carefully that even Protestants acknowledge that the Church in no way wavered concerning this matter.⁴ Thus Innocent I, in the year 405, wrote to Exsuperius, Bishop of Toulouse:¹ "Your charity has also asked concerning those who, with repudiation intervening, were joined to another in marriage. It is manifest that these are adulterers on both sides. But those who, while the wife is living, although the marriage seems to have been dissociated, hastened to another union, cannot but be seen as adulterers." This letter was often alleged by the Roman Pontiffs as the norm to be followed. But in Gaul, Ireland, and England, there were a few particular councils which, favoring more than was right the authority of kings and of civil laws, admitted some causes of divorce, such as incestuous adultery, incurable leprosy, and the entrance of one spouse into religion.² But the other provincial councils rejected every cause of divorce and constantly defended the firmness of the bond against the dissolute morals of the people and the vexations of princes, so that the few exceptions alleged above rather confirm the general rule.

³ Ep. 77 *ad Oceanum*, n. 3, P. L., t. XXII, p. 691.

⁴ Thus Watkins, *op. cit.*, p. 380, who nevertheless adds that a single Pontiff, Gregory II, admitted a single exception in a particular case; concerning this case, which pertains to bigamy rather than to divorce, we have already spoken above, n. 709; it suffices to add here that elsewhere, in the *Instruction concerning marriages* (year 722), the same Gregory openly sets forth his mind concerning the perfect indissolubility of marriage, as may be seen in Mansi, t. XII, p. 259.

¹ In Migne, P. L., t. XX, p. 500.

² Thus the Synod of Verberie (753) and the Council of Compiègne (756), held under King Pepin, in Harduin, t. III, pp. 1990 sq., 2005 sq.; the second Synod of St. Patrick, in Mansi, t. VI, p. 526, which, although it cannot be ascribed to St. Patrick, nevertheless is very ancient; *Paenitentiale Theodori*, in Haddan and Stubbs, *Councils*, vol. III, p. 188. - Some theologians, such as Perrone, have attempted to understand the aforesaid canons in a Catholic sense, but in vain, as will be clear to anyone attentively reading them. To bring forward one example, canon 9 of the Council of Verberie has itself thus: "If anyone, compelled by inevitable necessity, shall have fled into another duchy or province, or shall have followed his lord, to whom he cannot lie in faith, and his wife, though she is able and can do so, out of love of her relatives or of her goods, refuses to follow him, she shall remain always unmarried for all the time, as long as her husband, whom she did not follow, lives. For that husband of hers, who, compelled by necessity, fled into another place, if he hopes never to return to his own country, if he cannot abstain, can receive another wife with penance." Nor is it astonishing that a few particular councils erred, since only the universal Church, speaking through an ecumenical Council or through the Roman Pontiff, is infallible. Cf. Perrone, *op. cit.*, pp. 323-359; Watkins, *op. cit.*, pp. 362-437.

(c) Finally, from the time of Gratian, no variations can be found in the Latin Church, even in particular Councils. For the authority of the Decree was accepted everywhere; now concerning the indissolubility of marriage it has these things: "The bond of marriage cannot be dissolved by fornication. By no reason is a marriage dissolved which is proved once to have been entered. He commits adultery who presumes to marry her who has been dismissed by a man." Nor indeed can the unconquered firmness of the Church be praised too much: she has always been intent on protecting the perpetuity of marriages, openly reproving civil laws concerning divorce, striking with anathema the Protestant heresy concerning repudiations, resisting most powerful princes when they menacingly demanded that divorces made by them be approved by the Church.

"In this matter all posterity will admire the proofs of an unconquered soul put forth by Nicholas I against Lothair; by Urban II and Paschal II against Philip I, king of the French; by Celestine III and Innocent III against Philip II, prince of the French; by Clement VII and Paul III against Henry VIII; finally by Pius VII, that most holy and most strong Pontiff, against Napoleon I, exulting in favorable circumstances and in the greatness of empire." (Leo XIII, *Arcanum*.)

II. ON THE INDISSOLUBILITY OF MARRIAGE FROM NATURAL LAW

721. 1° State of the question. Most pagan philosophers judged that marriage is dissoluble by natural law, and divorces flourished more or less among most nations.² Nevertheless, even among certain barbarians, the matrimonial union was perpetual. Among the Greeks and Romans, as long as morals flourished, there were only a few divorces; at Rome especially a certain ignominious mark was branded on this practice in the common estimation, and Spurius Carvilius, who is reported as the first of the Romans to have dismissed his wife on account of sterility so that he might marry another, did not lack reproach. But in the time of the Emperors divorces were multiplied. The Christian religion took care to abolish divorces, as we have already proved. But Protestants again opened the way to divorces by teaching that they are licit in some cases; and very many Rationalists taught that the dissolution of the matrimonial bond is not only licit, but also useful and laudable in many cases, among whom were: Diderot in

France, Werkmeister and Braun in Germany, Bentham in England, Ferrari in Italy, and others; hence Politicians in various States established laws by which divorces were permitted on account of various causes.¹ Therefore it is expedient that we set forth what right reason teaches concerning the indissolubility of marriage.

¹ St. Thomas, *Supplement*, q. 67, aa. 1-2; C. Gent., l. III, c. 123; Bellarmine, c. 16; de Rastignac, *Accord de la revelation et de la raison contre le divorce*, 1790; Barruel, *Lettres sur le divorce*, 1789; de Bonald, *Du Divorce considere au XIXe s.*, 1801; Hume's *Essays*, XIX; Carriere, n. 213 sq.; Perrone, l. III, sect. II, c. 1, a. 1; Palmieri, th. 16, 23; Woolsey, *Divorce and Divorce Legislation*, 1882, c. VI; Monsabre, *Careme* 1887, 86-87th Conferences, English *Confer. on Marriage*, II-III; Fonsegrive, *Mariage et union libre*, p. 90 sq.

² On this see Westermarck, *op. cit.*, ch. 23, pp. 486-502.

¹ That the number of divorces increases where the civil law favors divorce is clear from experience:

Thus, in the Federated States of America, according to the official census recently published (1908), divorces were multiplied three times faster than the number of citizens (cf. Howard, *Is the freer granting of divorce an evil?* in *American Journal of Sociology*, May 1909; *The Catholic Encyclopaedia*, Appleton, New York, t. V, pp. 66-69).

Year Divorces Recorded

1867	9,937
1877	15,687
1887	27,919
1897	44,699
1906	72,062

In France:

Year Divorces

1896	7,051
1901	7,741
1906	10,573
1910	12,975
1911	13,058

In Germany likewise the divorces which in the year 1881 were counted as 3,942 were already 6,582 in the year 1891, and in the year 1899 many more, namely 9,333, etc.

R. Lemaire, *Le Mariage civil*, pp. 197-198, shows that the same progress has prevailed in other regions. In the same place, p. 205, it is proved that there are fewer divorces among spouses who have lived longer together than among those who have cohabited only for a few months or years.

Therefore let Catholic deputies strive with all their strength to abolish civil laws favoring divorce, or to prevent them from being established in regions where they are not in force.

722. Now it is certain that divorce permitted simply to the judgment of the spouses, from any motive whatever, is repugnant to the natural law, since the education of offspring requires a certain stable society of the spouses. But if the question is of divorce granted by public authority on account of grave reasons, some theologians, such as Sanchez and Swartz,¹ deny that it is prohibited by natural law alone; others, on the contrary, such as Scotus, Alphonsus

Tostatus, and St. Ligor,² affirm it; finally others with Perrone distinguish, and establish that the indissolubility of marriage does not pertain to the primary natural law, but flows from secondary law. This last opinion indeed seems to us to be embraced. For (a) on the one hand, the primary end of marriage, namely the procreation and education of offspring, even if the conjugal bond is sometimes dissolved, can strictly speaking be obtained; indeed in some cases, for example, when the wife is sterile or suffers from a perpetual disease which prohibits the use of marriage, that primary end is better obtained through divorce; (b) on the other hand, there are so many evil consequences flowing from divorce, especially with regard to offspring, that it is deservedly called contrary to the secondary natural law, as will now be declared.

¹ Sanchez, l. II, disp. XIII; Bellarmine, c. IV, n. 2; Swartz, *Instit. juris publici*, part. II, tit. I, n. 3 sq.

² St. Alphonsus, *Theol. moralis*, l. VI, n. 956, with the authors there alleged.

723. 2° Thesis: The indissolubility of marriage, especially of consummated marriage, rests on the secondary natural law, and therefore divorce, on account of the evil consequences which it introduces, must be altogether rejected.

For that is opposed to the secondary natural law which, although it does not destroy the primary end of marriage, nevertheless prevents this from being obtained integrally, and besides is repugnant to the nature of marriage, greatly harms the secondary ends, and introduces evil consequences for society. But such is the case with divorce.

724. (A) For although it does not absolutely stand in the way of the primary end, as was said in n. 722, nevertheless it prevents this from being obtained integrally. For the primary end is the good education of offspring: for marriage was instituted principally for this, that offspring not only be generated, but rightly educated, and thus the good of the whole of society and humanity be promoted. Wherefore, although in certain cases the spouses would be unhappy by living together, the good education of offspring, which regards the common good,¹ must be preferred to their private happiness. These things being posited, it is easily proved that divorce generally harms the good education of offspring. For the child needs the help of both parents, not only at the time when he is born, but for many years (above, n. 684); in the beginning indeed he is nourished by the mother, but the father must at the same time supply to the mother the necessities of life; as the children grow, not only the sweet love and provident care of the mother are desired for their education, but also the severe authority and outstanding prudence of the father. Now for this there is required a stable, indeed, from things commonly occurring, perpetual union of the spouses; for before the education of all the children has been perfected, which often must be extended even beyond the twentieth year, the parents, now advanced in age, generally will no longer be fit for a new marriage. Besides, if they enter a new covenant, the children will adhere either to the father or to the mother: if the former, they will lack the tender love of the mother, and will suffer many things from the envy of the stepmother, who, intent upon her own offspring, will neglect them or even afflict them in various ways; if the latter, they will be deprived of the enjoyment of paternal love at the time when they will have greater need of his care, and perhaps they will suffer many things on the part of the second husband, who fears lest his own children be neglected; therefore in either

hypothesis their education will be imperfect. - Besides, offspring, in order to be rightly educated, needs not only a family, but its own family, since paternal love cannot be delegated.

¹ Fonsegrive, *op. cit.*, pp. 283-294 and 310-319.

725. (B) Divorce likewise prevents the nature and equality of the contract from being integrally preserved: (a) For marriage by its own nature demands perpetuity: for both spouses by copulation become one flesh, and by generating children are bound by a new and most close bond, namely by the offspring generated, which is common to each parent and from which neither can be separated without losing something of himself or herself: therefore if, while the other spouse is living, new nuptials are entered, what nature had so closely joined is divided. (b) Moreover the equality of the contract requires that, when divorce occurs, one of the spouses not be in a worse condition than the other; but this is morally impossible; for the man has lost nothing or little of his dignity, and can easily enter a new covenant, while the woman, who was married for very many years, and brought forth and nourished children, after she is dismissed by the man generally falls from her dignity, has lost beauty and fecundity, and can scarcely hope that she can contract a new marriage. "If therefore," says St. Thomas,¹ "someone, taking a woman in the time of youth, when both beauty and fecundity are present to her, could dismiss her after she has become advanced in age, he would inflict harm on the woman against natural equity."

¹ *Cont. Gent.*, lib. III, cap. 123.

726. (C) Divorce harms the secondary ends, namely the true happiness of the spouses: (a) It favors unequal marriages and those hastily entered; for, if it is lawful to break the matrimonial bond after some time, many will enter the matrimonial state with a light heart, without diligent and mature consideration,² while marriages will be established with greater care and only after the matter has been diligently weighed, if it is known that perpetual happiness or unhappiness depends on the choice of a spouse. Now nothing harms the union of spouses more than those marriages in which the spouses, unequal in mind, dispositions, and condition, are joined together under the impulse of blind love, or rather passion.

² "Many of the common people contract nuptials, probably considering this with themselves: if they do not obtain happiness in this union, it will be in their power to dissolve it and try fortune again. And in truth it was reported to me by a certain minister that conversations of this kind had been held by some youths of his parish." Woolsey, a Protestant, *op. cit.*, p. 277.

(b) It restricts mutual love; for the happiness of spouses consists chiefly in this, that they be intimately united by perpetual love, and be one heart and one soul, just as they are one flesh; hence, with nature as guide, they promise to each other eternal love, and in that love they find the alleviation of miseries and happiness; for where one loves, one does not labor, or if one labors, the labor itself is loved. But that intimate conjunction of souls can scarcely subsist with the faculty of divorce; for true love wishes to be perpetual, and as soon as we suspect that a friend will probably be unfaithful, we already cease to love him singularly. Who therefore will intimately adhere to a spouse from whom he expects to be separated after some years, and perhaps after some months? Will not suspicions of this kind destroy or retard this perfect friendship? Therefore rightly it can be said with

St. Thomas (*loc. cit.*): "The greater friendship is, the more firm and lasting it ought to be. But between man and woman there seems to be the greatest friendship; for they are united not only in the act of carnal copulation, which also among beasts makes a certain pleasant society, but also for the fellowship of the whole domestic life; whence, as a sign of this, a man because of his wife also leaves father and mother... Therefore it is fitting that marriage be altogether indissoluble."¹

¹ Nor let it be said that it is not lawful for a man to bind himself by perpetual vows, since he is by nature inconstant and changeable; for, as Paul Janet rightly says (*La Famille*, p. 300): "If love is bound by the bond of duty, so that it is held to promise perpetual fidelity, this is not opposed to the nature of love, indeed it is favored. So much does the nature of love demand perpetuity, that no lover would dare to ask anything without promising perpetuity. To strengthen fidelity by oath forever, and to feign the same even when he speaks with fiction, are the first acts of love; if these are lacking, he would waste his effort. - They object the rights of the heart and the perpetuity of vows. We freely acknowledge the rights of love for binding the union of spouses, by no means for dissolving it. Let us oppose fidelity to liberty; and thus the heart has claimed for itself a nobler dignity and more splendid glory than if it were lawful to adhere to another as it pleased, and continually change the object of love... I confess, however, that only on account of grave arguments is the heart to be bound by an indissoluble bond. But these two seem irrefutable to me: the dignity of the wife and the good of the children."

(c) It increases slight disagreements, on account of the hope of finding happiness in another marriage. Indeed it is of the greatest interest to domestic society that spouses forgive many things to each other, patiently bear one another's defects, and indeed anticipate one another by mutual services. But if marriage is indissoluble, spouses fear lest through disagreements the yoke which they cannot shake off become most grave and intolerable; they more patiently forgive one another's defects, and, as the poet says, whatever it is wrong to correct becomes lighter by patience; but on the contrary the hope of divorce provokes dissensions, quarrels, and adulteries; for he who thinks of finding a new and better spouse will soon be seized by a foreign love, and in order that he may break apart the marriage burdensome to himself, he will indulge insults, reproaches, blows, and adulteries, so that, experience bearing witness, divorce is the occasion and cause of the greatest crimes.² Nor let it be said that adultery is so base and wicked that at least on account of that crime the bond of marriage ought to be dissolved; for, if the matter is so, adulteries will not rarely be committed for the purpose of obtaining divorce, as jurists know by experience;¹ therefore it is expedient for the public good that spouses either cohabit peacefully, or be separated as to bed and habitation, without hope of entering new nuptials.

² "How many futile quarrels, how many wearinesses do those endowed only with common prudence wear away by easy forgetfulness, led especially by this reason, that life must necessarily be carried on together by them perpetually! Those very small dissensions would have yielded to the greatest envy, brought to the highest degree by the hope of easy divorce. Therefore we must weigh that nothing is fuller of danger than to join two so intimately, as man and wife are joined to each other, unless we render this union perfect and indissoluble. The least probability of separation would become a most abundant source of dissensions and suspicions; the wife, less secure about her state, will daily turn over in her mind the plan of separation, and the husband, consulting only himself and relying on greater power, would bring the union into greater danger." (*Hume*, Essay XIX.)

¹ "It is known to all that the desire of freeing oneself from that state which has become burdensome has led several men and some women to that manner of life which produces divorce, or at least persuades them that, if it should happen, it will not be unwelcome to the spouses. Chancellor Kent rightly noted from several judgments issued concerning divorce that a man had sometimes committed adultery for the sake of obtaining divorce. Among other nations the history of marriage warns us that corrupt morals are increased to the degree that more causes of divorce are furnished, which not only do not prohibit divorce, but rather prepare the way for it." (E. Phelps, *Forum*, December 1889, p. 363 sq.; cf. Woolsey, *op. cit.*, p. 261 sq.)

727. (D) Divorce introduces evil consequences for society: (a) it disturbs the peace of families; for by marriages families are united with each other, lawsuits and enmities are extinguished, bonds of concord among the various members of society are formed; but on the contrary, from divorce divisions arise, hatreds and acts of vengeance flourish between two or several families for many years, and if they are multiplied, the peace of society itself is disturbed.

(b) It corrupts morals; for the faculty of divorce gradually turns marriage into concubinage: for given the inconstancy of man, the conjugal bond can be broken not once, but three times, four times, or even more often, all the more because inconstancy increases by repeated acts; and history shows that this has already happened: for Seneca speaks of those wives who "reckon their years not by the number of consuls, but of husbands";² and Juvenal says:³ "Thus eight husbands are made through five autumns: a matter worthy of the title of a sepulcher." The same is the case in our days among tribes or nations where divorce flourishes.¹ Now what are marriages that will last for only two or three years, except concubinage covered with a cloak? Nor does it help to say that by divorce disagreements and separations are diminished: for it is clear from undoubted facts that these have increased where divorces have been permitted, and that they grow stronger daily. Besides, a law of this kind furnishes occasion for many crimes, but especially for adultery, which is committed or permitted by some for this purpose, that the conjugal bond may more easily be dissolved before tribunals. Now who is there who does not see that by all these things morals are gradually corrupted?

² *De Beneficiis*, l. III, c. 16.

³ *Sat.*, VI, v. 229.

¹ To the point Westermarck, *op. cit.*, p. 488: "At Cairo, according to Mr. Lane, there are only few people who have not divorced once, if they have been married for some time; and many men, in Egypt, have married twenty, thirty women or more; while there are women, not far advanced in age, who have been wives successively of twelve men or even more."

Leo XIII clearly sets forth all these things thus (*Encycl. Arcanum*): "But indeed it hardly needs to be said how much material of evil divorces contain in themselves. For on account of them marital covenants become changeable; mutual benevolence is weakened; pernicious incentives are supplied to infidelity; harm is done to the protection and education of children; occasion is given for dissolving domestic societies; seeds of disagreements are scattered among families; the dignity of women is lessened and depressed, and they come into danger lest, after they have served the lust of men, they be held as abandoned. And since nothing is so powerful for destroying families and breaking the strength of kingdoms as the corruption of morals, it is easily perceived that divorces are exceedingly hostile to the prosperity of families and states; for they are born from the depraved morals of peoples, and, with experience as witness, they open the entrance and gate to more vicious customs of private and public life. And it will be clear that these evils are much graver if it is considered that there will be no restraints so great that they can keep the faculty of divorces, once granted, within certain or previously foreseen limits. Truly great is the force of examples, greater that of passions: by these incentives it must happen that the desire for divorces, creeping more widely every day, invades the souls of very many, like a disease spread by contagion, or like a mass of waters overflowing after the barriers have been overcome."

728. The adversaries object that not a few spouses lead a miserable life unless they are separated from each other, and that often separation does not suffice, but the faculty of entering new

nuptials is required, so that not only the perpetual unhappiness of the spouses, but also adulteries and scandals may thus be avoided.

Resp. (a) The norm of morals is not the happiness of private persons, but the dictate of right reason, which, from what has already been said, demands the perpetuity of the bond, especially for the good education of offspring, which is one of the primary ends of marriage (n. 724), and for avoiding innumerable evils for the family and society (n. 727). Therefore, although certain private persons must suffer many and difficult things from the indissolubility of the contract, nevertheless the law is not therefore to be changed, because the moral good must be preferred to the temporal good, and the public good to the private good. (b) But adulteries and scandals which are said to arise from the perpetuity of the bond have become not rarer but more frequent in France and other regions from the time when divorces were permitted by law, as experience shows;¹ nor is it astonishing, since the hope of passing to new nuptials is accustomed not to extinguish concupiscence, but rather to inflame it.

¹ Which Fonsegrive proves, *op. cit.*, p. 203.

Therefore prudence demands that other remedies be applied, namely either Christian patience or temporary withdrawal: for time heals many wounds, and often long patience lessens or wholly removes dissensions of souls, especially if it is helped by the virtue of religion: "which brings it about that vices, if there are any in the persons, such as difference of morals and dispositions, the weight of maternal cares, the laborious solicitude of the education of children, the labors that accompany life, adverse events, are borne not only moderately, but even willingly" (*Encycl. Arcanum*).

III. ON THE CASES IN WHICH MARRIAGE CAN BE DISSOLVED

From what has been said, the marriage of the faithful, ratified and consummated, can be dissolved by no human authority; but a marriage contracted by unbelievers, since it is not a sacrament, does not have the same firmness; likewise the marriage of the faithful, ratified indeed, but not consummated, can be dissolved in two ways: by religious profession and by dispensation of the Supreme Pontiff. Concerning these we must now briefly discuss.

1° ON THE DISSOLUTION OF A MARRIAGE CONTRACTED IN INFIDELITY, OR ON THE PAULINE PRIVILEGE

729. Thesis: The marriage of unbelievers, even consummated, can be dissolved as to the bond, if, when one has been converted to the faith, the other is unwilling to cohabit peacefully, or without injury to the Creator or spiritual harm to the faithful party. It is certain from the declaration of Innocent III:¹ "For if one of the unbelieving spouses is converted to the Catholic faith, while the other is willing to cohabit with him either in no way, or not without blasphemy of the divine name, or so as to draw him into mortal sin, the one who is left will pass, if he wishes, to second vows: and in this case we understand what the Apostle says: if the unbeliever departs, let him depart..." - A privilege of this kind is called the privilege of faith, because it was granted in favor of the faith; it is also called Pauline, as promulgated by St. Paul.

² St. Thomas, *Supplement*, q. 69, a. 5; Sanchez, l. VIII, disp. 74; Drouin, l. IX, q. IV, c. 1, § 3, dic. 2; Billuart, Diss. V, a. 2, § 2; Benedict XIV, *De Synodo*, l. VI, c. 4, n. 3; J. Leplat, *Collectio variarum dissertationum casum Apostoli illustrantium*; St. Alphonsus, n. 957; Carriere, n. 256 sq.; Perrone, l. II, sect. 1, c. 7, a. 2; Palmieri, th. 26-27; Ballerini P, n. 429-473; De Angelis, lib. IV, tit. 19, nn. 6-11; Gasparri, nn. 1083-1110; Putzer, nn. 127-132; Wernz, nn. 701-705.

¹ *Decretal.*, l. IV, tit. 19, c. 7.

730. (A) Scripture. For Paul, after promulgating the general law of the indissolubility of marriage, adds these things: "For to the rest I speak, not the Lord.² If any brother has an unbelieving wife, and she consents to dwell with him, let him not put her away... But if the unbeliever departs, let him depart: for a brother or sister is not subject to servitude in such cases"³... Now by these words the Apostle grants the faculty of dissolving the matrimonial bond for the cases expressed in the thesis; for (a) here Paul grants to the converted faithful party a special privilege, and indeed for determinate circumstances; but if there were question only of separation from bed and table, and not of dissolution of the bond, a special privilege would not be given, since separation is the common remedy in a similar case; besides, no declaration was needed that the faithful spouse be freed from cohabitation, since by hypothesis it is impossible; therefore there is question of dissolution of the bond; (b) it is added that the faithful party is no longer subject to servitude; now servitude of this kind, the departure of the unbelieving party having already been carried out, can be nothing other than the matrimonial bond itself, which in reality the Apostle below (27) calls a bond; this is confirmed from the fact that speech of this kind is directed to the newly converted, among whom the dissolution of marriage, but not simple separation, flourished, and who therefore by the word "let him depart" naturally understood the dissolution of the bond; (c) finally the force of the argument grows if one notices the antithesis which Paul establishes between marriages of the faithful, concerning which he says (11) that if the man departs, the woman must remain unmarried, and the marriages of unbelievers, concerning which he writes: "but if the unbeliever departs, let him depart"; for by this opposition he sufficiently shows that in the last case there is question of a true dissolution of the bond.¹ We acknowledge, however, that the argument is not apodictic unless the practice and authority of the Church accede.

² More probably these words are referred not to the following sentence, but to the preceding one, where the Apostle had spoken of widows and virgins; and the sense is that those things which he wrote concerning preserving virginity are not a precept, but a counsel. Cf. Corluy, *Spicilegium*, vol. II, p. 489.

³ *I Cor.*, VII, 12-15.

¹ The Apostle speaks directly only of the case in which the unbeliever does not wish to dwell with the converted spouse; but the two latter cases are included in the first: for he departs morally who does not wish to cohabit except with injury to the Creator, or by drawing the faithful spouse into sin.

731. (B) From the authority and practice of the Church: (a) Most of the Fathers indeed were silent concerning this, because there was no opportunity for them to write concerning this matter; nevertheless some, such as Ambrose, Chrysostom, Theophylact, and others, spoke in such a way that they seem to have held the doctrine set forth above.² (b) Innocent III (1160-1216) openly declared the matter, and from his time this practice became common in all the churches established among recently converted nations. Now a practice of this kind is connected with the dogma of the indissolubility of marriage, and with good morals; it was approved many times by the Roman Pontiffs, who handed down rules to be observed by Missionaries in that case; therefore it is an unconquered argument of truth, since the Church cannot err in a matter of such moment.

² See their testimonies in Carriere, n. 258, note 1.

732. Controversy. Theologians further ask by what law the marriage of unbelievers is dissolved in the aforesaid case.

(A) Some indeed, such as Navarrus, Sanchez, and Palmieri,³ have thought that this is done by the authority of the Supreme Pontiff: for if, they say, the Roman Pontiff can dissolve a ratified marriage, which is a sacrament, he can also *a fortiori* dissolve the consummated marriage of unbelievers, which has less firmness. Besides, the Roman Pontiffs have asserted this power for themselves, namely Pius V (*Romani Pontificis*) and Gregory XIII (*Saepe contingit*); for the latter granted to the Ordinaries of certain places the faculty of dispensing so that any faithful person, "even while the unbelieving spouse survives and his or her consent has in no way been required, nor the response awaited, may be licitly able to contract marriages with any faithful person, otherwise however rightly, and afterwards, these having been consummated by carnal copula, to remain in them as long as they live."

³ Navarrus, consil. 3, lib. III, n. 12 sq., tit. *de Conversione infidelium*; Sanchez, lib. II, disp. XVII; Palmieri, th. 26.

733. (B) Nevertheless the more common opinion, with Benedict XIV,¹ holds that the consummated marriage of unbelievers is dissolved by divine law, as it is set forth by St. Paul. For, they say, at least that principle is very doubtful, namely that a marriage consummated between unbelievers is less firm than a ratified marriage between the faithful: for although it is not a sacrament, nevertheless it is a true matrimonial contract; moreover every contract of this kind was recalled by Christ to its former indissolubility. Nor can the contrary be argued from the Letters of Pius V and Gregory XIII, which are explained in two ways: (a) according to some, they are understood not of the power of dissolving marriage outside the Pauline case, but only of a dispensation from making the interpellation; for in the Brief of Pius V it is read: "especially because it would be most difficult to find the first spouse"; but in the Letters of Gregory XIII: "Provided it is established, even summarily and extrajudicially, that the absent spouse cannot be legitimately warned, or that the husband did not signify his will within the time fixed beforehand for that warning." All these things surely show that there is question there of dispensation from interpellation, and that the aforesaid Pontiffs granted this not outside the Pauline privilege, but as interpreters of divine law. (b) But according to others, the Pauline privilege is indeed founded on divine law, but the dispensation granted by the two Pontiffs mentioned differs altogether from the Pauline privilege; for Gregory XIII granted the faculty of dissolving marriages contracted in infidelity, even in the case where the absent spouse had been regenerated by baptism:² "Which marriages indeed, even if it should afterwards become known that the prior unbelieving spouses, being justly impeded, could not declare their will, and had been converted to the faith even at the time of the second marriage transacted, nevertheless must never be rescinded." Now the Pauline privilege certainly is not extended to this case. Therefore it must be said that the Pontiff granted this special dispensation, not by virtue of the Pauline privilege, but by force of the ministerial power by which he can dissolve the ancient marriages of neophytes not yet consummated after the conversion of one spouse; which power is similar to that by which a ratified and non-consummated marriage is dissolved below, n. 742; since the marriage of which there is question had indeed been consummated in infidelity, but not from the time when it had been ratified by the conversion of both spouses.

¹ Benedict XIV, *De Synodo*, l. VI, c. IV, n. 3; lib. XIII, c. 21; cf. de Angelis, *op. cit.*, l. IV, tit. 19, p. 327 sq.

² This especially occurred at the time when slaves were being carried from Africa to America; for many of them had already contracted marriage and had been violently separated from the spouse. When they were converted to the faith, interpellation was impossible, since where the other spouse was was wholly unknown; sometimes it also happened that the other spouse, left in Africa, was converted to the true faith. In this case, there was no place for the Pauline privilege. Now the Supreme Pontiff permitted that slaves of this kind contract a new marriage, and therefore by his authority he dissolved the prior marriage. Cf. Gury-Ballerini, note to n. 759, p. 736, q. 4; Billot, th. 44.

734. Practical corollaries. (A) The conjugal bond is not dissolved at that instant when one of the spouses is converted to the faith or is baptized; for, as Innocent III says (*loc. cit.*), "through the sacrament of Baptism marriages are not dissolved, but crimes are remitted"; only then is it dissolved when the converted spouse, the other refusing to cohabit peacefully, has entered a new marriage. For Innocent III (*loc. cit.*) openly supposes this: "but if that woman, having been converted, follows the man converted to the faith (the wife, namely, who had previously refused to cohabit), before he, on account of the aforesaid causes, marries a lawful wife, he will be compelled to receive her"; therefore the prior bond remains until a new covenant is contracted. It is also clear from the decision of the Sacred Congregation of the Council, 1680 and 1726, which Benedict XIV, *loc. cit.*, n. 4, reports and approves. The reason is that the privilege is in favor only of the converted person, lest he be compelled to remain celibate: it is enough therefore that the prior bond be dissolved at the instant when the new one is formed.

Hence if the unbelieving spouse has contracted marriage before the new nuptials of the faithful party, this is null. But as soon as the Catholic party has entered marriage, the other spouse, whether he or she remains in infidelity or is converted, can enter another marriage.¹

¹ Sacred Office, July 11, 1886, to the Apostolic Vicar of Natal, in Gasparri, n. 1086; *Acta*, XXII, 747. - We say the Catholic party, so that we may separate certain things from uncertain. Nevertheless, more probably, we think the Pauline privilege is extended not only to those who embrace the Catholic faith, but also to those who embrace a heretical or schismatic sect, provided that they are validly baptized. Thus Palmieri, th. 27; Konings, II, p. 394, where he asserts that this was acknowledged by the Holy See in a particular case.

735. (B) From what was said in the thesis, for a threefold cause the converted spouse can pass to other nuptials: (a) if the unbeliever refuses to dwell with him or her; (b) if he or she wishes to dwell, but not without injury to the Creator, for example by retaining concubines, blaspheming, or educating the children in pagan fashion; (c) if he or she wishes to draw the faithful party to mortal sin against faith or morals: for in these cases he or she does not wish to cohabit peacefully. But the convert can use this privilege not only immediately after baptism but also after several years, if the unbeliever who had previously consented to cohabit peacefully, having changed counsel, no longer wishes to do this.¹

¹ Thus the Holy Office, August 5, 1759, in *Collect. P. F.*, n. 1312.

But if the unbelieving party departs on account of adultery committed by the faithful party after baptism, there is no place for the Pauline privilege, unless the unbeliever himself or herself was guilty of adultery after the baptism of the converted party; for the privilege was granted in favor of faith, not in favor of crime.²

² Thus the Holy Office, August 1, 1759; January 17, 1797, in De Angelis, *loc. cit.*, n. 7, where he clearly explains this matter.

736. (C) The converted party cannot, without dispensation, enter new nuptials except with another Catholic party: if he or she contracts with an unbeliever, the marriage is invalid on account of disparity of cult; if with a heretical or schismatic party, the marriage is indeed valid, but illicit on account of the impediment of mixed religion.

(D) If a faithful person, after a dispensation has been obtained, has entered marriage with an unbeliever, he or she cannot use the Pauline privilege, because he or she spontaneously exposed himself or herself to such danger, and therefore cannot complain. Likewise if either spouse falls into heresy or apostasy, the faithful spouse cannot fly to second nuptials, as is expressly declared by Innocent III (*loc. cit.*), because a marriage contracted and consummated by the faithful can be dissolved by no human authority.

737. On interpellation specifically. (A) That it may be known whether the unbeliever wishes to be converted, or at least to cohabit peacefully, a certain interpellation is required, at least as often as it can be done, so that the new marriage can be contracted not only licitly, but also validly. Thus commonly, against a few.³ The reason is that the faithful person, before marrying again, must be more certain concerning the contumacy of the unbeliever; but regularly he or she cannot be more certain of this except through interpellation.

³ Ballerini P. (n. 438 sq.) thinks that this interpellation is required for liceity, but not for validity of the new marriage. But the Roman Congregations in particular cases declared invalid a marriage contracted without interpellation, in Gasparri, n. 1090. Hence, according to the Instruction of the Sacred Congregation de Propaganda Fide (at the end of the Third Plenary Council of Baltimore, p. 278), the Ordinary must suspend judgment and remit the case with all its circumstances to the Holy See.

This interpellation must be made after baptism has been received, and regularly two things must be asked of the unbeliever: (a) whether he or she wishes to be converted to the faith; (b) whether he or she at least wishes to cohabit peacefully with the faithful party.

738. (B) If the interpellation is morally impossible, or even very difficult, the Supreme Pontiff is accustomed to dispense from it. He likewise dispenses from the second part of the interpellation, "whether he or she wishes to cohabit peacefully," when it is feared that there is danger of perversion; this is especially verified if the unbeliever is a Jew, because the danger in this case is judged much graver.¹

¹ The Fourth Council of Toledo prohibited that a spouse converted from Judaism cohabit with the partner remaining in Jewish perfidy, on account of the danger of perversion and the absence of any hope of the conversion of the unbeliever; today the practice is that this cohabitation is permitted in unbelieving regions, but not in Christian ones. Cf. Gasparri, n. 1088.

Moreover that power of dispensing from interpellation is granted: (a) when grave necessity is pressing, in which there is not time to have recourse to the Holy See, to all Bishops and Apostolic Vicars; (b) outside this case, by force of a special indult, to certain Bishops, as has been granted, for example, in Canada: nevertheless this privilege is limited to the regions to which it was given.

But before one is dispensed from interpellation, its impossibility must be established, by using all means to discover the place where the unbeliever dwells, for example by affixing an edict to the doors of the church, or by sending a notice to public newspapers; besides, an instrument is to be kept in the archives, from which it is established that the absent spouse could not be interpellated.

When a dispensation from interpellation has been granted, if the faithful party has not contracted a new marriage for a year after the dispensation was obtained, a new dispensation is required if afterwards he or she wishes to contract marriage; or the interpellation must be made, if it has already become possible. - But when a negative response has been given to an interpellation made, new nuptials can be contracted at any time, even after several years.

739. (C) Interpellation can be made in two ways: judicially and extrajudicially. (a) If the former, it must be made by the Ordinary, who calls the unbeliever and asks him or her whether he or she wishes to be converted, or at least to cohabit peacefully; the response is reported in the acts and kept in the archive. If the unbeliever asks for delay for deliberating, it must be granted, adding nevertheless that, after the fixed time has elapsed, a negative response is presumed. But if the unbeliever does not appear, a person is delegated to interpellate him or her wherever he or she can be found.

These things being posited, if the unbeliever responds negatively to both questions, the faithful person can immediately pass to other vows, although from charity it is better to propose a second interpellation. If he or she responds affirmatively to both, the marriage stands. If he or she does not wish to be converted, but consents to cohabit peacefully, the faithful person can indeed be separated from the unbeliever as to bed and table, but not as to the bond. If, however, in the judgment of the Bishop, from cohabitation a danger of perversion or of grave sin would threaten the faithful person, a dispensation from the second interpellation can be sought from the Holy See, so that, after a negative response to the first question, the faithful person can contract new nuptials. - If the unbeliever were to say that he or she wished to be converted, but was unwilling to cohabit peacefully, this response is not serious, but must be held as negative.

(b) It is commonly held that an extrajudicial interpellation, made by the converted spouse himself or herself, suffices for validity; indeed also for liceity, if the judicial form cannot be observed. But for it to be valid in the external forum, it is required that the baptized party, by himself or herself, or through a mandatary, before two trustworthy witnesses, question the unbeliever, and that the latter respond seriously before the same; this having been done, the ecclesiastical judge, after hearing the witnesses, will be able to render a sentence, by force of which the baptized person can enter a new marriage. But if this cannot be done, it suffices that the unbeliever clearly manifest his or her will by a letter written before three witnesses and directed to the faithful party.

740. (D) If a converted unbeliever has several wives, he must retain the first legitimate wife, if she wishes to be converted, unless however a special dispensation is obtained from the Holy See.

In reality, in the Federated States of America, Bishops have the faculty of dispensing with unbelievers having several wives, whether simultaneously (as among the Mormons), or successively (on account of civil divorce), so that, after conversion and baptism, they may retain that wife who pleases them more, if she also is baptized, provided that the first wife, having been duly interpellated, has refused

to be converted; in this case therefore they have the faculty of dispensing from the second part of the interpellation, "whether she wishes to cohabit peacefully." - Nevertheless prudence requires that, before a new marriage is entered, the faithful party obtain a full civil divorce, if the prior nuptials are valid before civil law, lest the faithful party be held as guilty of bigamy.

N. B. If offspring has been born from the prior marriage, it is indeed to be handed over to the faithful party, if it is of minor age, so that it may be educated in the Catholic religion; but if it has already attained the years of majority, it must be left to its own judgment.

741. Disputed question. It is further asked whether the marriage of unbelievers, already consummated, can be dissolved by dispensation of the Supreme Pontiff or in some other way, apart from the Pauline case, if one spouse is converted.

Now all admit that the Supreme Pontiff cannot dispense if both spouses are baptized and afterwards consummate the marriage; but it is controverted whether a marriage which was not consummated after baptism can be dissolved. (a) The former opinion affirms that such a marriage can be dissolved, both through religious profession emitted by the baptized spouse, in the manner to be explained below, and through dispensation of the Supreme Pontiff. For Paul III permitted that those who before conversion had several wives, and did not remember which one they first received, once converted, should take one of them whom they wished.¹ St. Pius V granted to a polygamous man that, after receiving baptism, he could marry one of the other wives, who likewise was converted, if the first was not known and it was most difficult to find her.² Besides, Gregory XIII permitted the converted spouse to enter other nuptials when it is impossible to interpellate the unbelieving party; and he declared these nuptials to be valid "even if it should afterwards become known that the prior unbelieving spouses, being justly impeded, could not declare their will, and had been converted to the faith even at the time of the second marriage contracted."³ Now this is not the Pauline case, but is a true dispensation from a legitimate marriage not consummated after baptism, especially because the Supreme Pontiff seems expressly to affirm this in the same place: "For this reason We, considering that marriages of this kind contracted among unbelievers are not to be judged so ratified that, when necessity counsels, they cannot be dissolved." - In reality, if the Supreme Pontiff can dissolve a ratified marriage, which is a Sacrament, as will be said below, he can also *a fortiori* dissolve a marriage consummated in infidelity, but not ratified, which has less firmness.⁴ - There is added that, according to the Code, can. 1125: "those things which regard marriage in the constitutions of Paul III, St. Pius V, Gregory XIII... and which were written for particular places, are extended also to other regions in the same circumstances," and indeed by the law itself, as seems from can. 1121, establishing that in these cases there is no place for interpellations.

¹ Constit. *Altitudo*, June 1, 1537.

² Constit. August 2, 1571.

³ Constit. January 25, 1585, in *Collect.*, n. 1307.

⁴ Thus Sanchez, St. Alphonsus, D'Annibale, Ballerini, Palmieri, and also twelve theologians of the Society of Jesus who in the year 1589 presented to the Holy See a disputation concerning this matter, which you will find in Zitelli, *De dispensat. matrimon.*, pp. 183-197.

(b) The latter opinion denies this⁵ and explains the acts of Paul III, St. Pius V, and Gregory XIII as authentic declarations of the Pauline privilege, insofar as the word *departs* can be understood of moral

departure, which is verified whenever the other spouse cannot be found.

⁵ Thus Pontius, Benedict XIV, De Angelis, etc.

Hence in practice recourse should be had to the Holy See, which alone can solve cases of this kind.

2° ON THE DISSOLUTION OF RATIFIED MARRIAGE OF THE FAITHFUL

742. Principle: The marriage of the faithful, ratified and not consummated, is dissolved by the solemn profession of either spouse in an approved religion, or by a dispensation granted by the Supreme Pontiff for a grave cause.

⁶ St. Thomas, *Supplement*, q. 61; Sanchez, l. II, disp. 18-23; Drouin, q. IV, c. 3, § 1; Billuart, diss. V, a. 2, § 4; Carriere, n. 302 sq.; Perrone, l. III, sect. 2, cap. 6, a.; Palmieri, th. 25; de Augustinis, th. 10; De Angelis, *loc. cit.*, n. 12; Gasparri, nn. 1081-1092; Lehmkühl, nn. 703-704; Ballerini P, nn. 476-488, ed. 3; Wernz, *op. cit.*, nn. 690-700.

(A) The first part has been defined by Trent:¹ "If anyone shall say that a ratified marriage, not consummated, is not dissolved by the solemn profession of religion of either spouse, let him be anathema." It is further proved (a) from the express declarations of Alexander III (1180), and of Innocent III (1210), who writes:² "We, however, not wishing to decline from the footsteps of our predecessors, who, when consulted, responded that before marriage is consummated by carnal copula, it is lawful for either spouse, the other being left without being consulted, to pass to religion, so that from then on the other can legitimately be joined to another"; from which it is clear that this doctrine was received before the twelfth century, since the Supreme Pontiff appeals to his predecessors. (b) From the Code, can. 1119: "A non-consummated marriage between baptized persons, or between a baptized party and a non-baptized party, is dissolved both by the law itself through solemn religious profession, and through dispensation granted by the Apostolic See for a just cause, both parties asking or either one, even if the other is unwilling."

¹ Trent, sess. XXIV, can. 6.

² *Decretal.*, lib. III, tit. 32, cap. 14.

It must be noted, however, that a ratified marriage is dissolved only at the time when solemn profession is emitted, not when someone enters religion or emits simple vows; hence the spouse remaining in the world contracts new nuptials neither licitly nor validly before the profession of the other. Moreover, it is not dissolved by a simple vow of chastity, nor by the reception of sacred order, or vows emitted in a Congregation not approved by the Holy See; but only by solemn profession, namely that which has been recognized as such by the Church; therefore not by simple profession, nor by simple vows emitted in the Society of Jesus. It is further required that the profession be made freely, after a probation of at least three years, and after canonical age has been attained, that is, after the twenty-first year has been completed; but since, from can. 542, a spouse is invalidly admitted to the novitiate during marriage, and, from can. 572, a profession is invalid if the novitiate was not valid, scarcely today can there be place for this case.

Formerly two months were granted to spouses for deliberating concerning entrance into religion. The Code did not renew this privilege, perhaps because, with solemn profession delayed until at least the fourth year after the beginning of the novitiate, the other spouse would be compelled longer to preserve continence. Thus A. Blat, *Comment.*, lib. II, p. 11, cap. 2, p. 522; Noldin, n. 497; Marc-

Gestermann, n. 1980, note 1. This can be confirmed from can. 1111: "From the very beginning of marriage each spouse has an equal right and duty, as regards the acts proper to conjugal life."

743. (B) The latter part, although previously denied by some, today has become certain by the practice of the Church; for it is clear that, already from the time of Martin V (1417), the power of dissolving ratified marriages for grave reasons was exercised by many Pontiffs,¹ and is exercised even in our days, as is clear from the *Acts of the Holy See*, where each year some dispensations of this kind granted from ratified marriage are read. Now it is unlawful to say that the Roman Pontiffs usurped this power, especially since by so acting they would have inflicted injury on the sacrament and permitted adulteries. Therefore one must conclude with Benedict XIV:² "No question can any longer be raised concerning the power of the Supreme Pontiff in that which pertains to dispensing over a ratified and non-consummated marriage, since today the affirmative opinion is common among theologians and canonists, and has been received in practice, as is notorious." - See also can. 1119, reported above.

¹ Cf. St. Antoninus, in *Sum. theol.*, p. III, t. I; Navarrus, *Enchir.*, c. 22; Perrone, vol. III, p. 471, ed. 1861.

² *Quaest. Canon.*, 479.

For the exercise of this power, two things are required: juridic proof of the non-consummation of the marriage, concerning which we shall speak in the Supplement; and a legitimate cause, such as the probable nullity of the marriage, the moral impossibility for the spouses of cohabiting together, fear of future scandal and adultery on the part of at least one of the spouses, a civil marriage already contracted by one party with a third person, etc.

744. Controversy. It is disputed among theologians by what law a ratified marriage is dissolved by religious profession, namely whether by natural, divine, or ecclesiastical law.

(a) Some, with Bellarmine, have thought that this is done by divine natural law; for by natural law it is licit to pass from a less perfect state to a more perfect one, if this can be done without harm to another; but the state of religion is more perfect than the state of marriage, and no harm is otherwise inflicted on offspring, which does not exist, or on either spouse, since each is in an equal condition; therefore. Yet this opinion is commonly rejected; for it is false that it is licit from the law of nature to enter a more perfect state when an obligation already undertaken is opposed to this state; for although the Episcopate is a state more perfect than marriage, it is not lawful to receive it when the spouse is unwilling, nor is ratified marriage dissolved by its reception.

(b) Others, after Suarez, hold that this is done by ecclesiastical law; for the Church can, for a grave cause, dissolve a ratified marriage, as is clear from the things proved; now she has used this power with regard to religious profession; she herself has determined the solemnities of religious profession, and she herself has established that marriage is dissolved by solemn vows but not by simple vows. Yet this opinion is not well reconciled with the Tridentine canon cited above; for if it is of faith that marriage is dissolved by religious profession, this truth had to be revealed by Christ, and therefore the dissolution takes place by divine law, not simply ecclesiastical law.¹

¹ Nor does it help to say that the Tridentine canon is disciplinary, not dogmatic; for the truth proposed by the Council is not that the Church has the power of dissolving ratified marriage, but that marriage is really dissolved by religious profession: which truth indeed is of itself dogmatic, and must always be true; now if such a privilege had been granted

by ecclesiastical law, it could be removed by the same authority, and what is declared in the canon would now become false. Cf. Palmieri, *loc. cit.*

(c) Hence there is a third opinion asserting, with Benedict XIV,² that the dissolution is made by divine law, insofar as Christ placed an exception to the law of indissolubility in favor of the religious state, just as we saw one placed for the marriage of unbelievers. For thus it is understood how Trent could define the matter as of faith, how likewise the Pontiffs who first spoke of this privilege supposed a practice already plainly established, and no protests then arose. The adversaries indeed object that the solemnity of religious profession was instituted by the Church herself; but the difficulty vanishes if it is admitted that marriage in this case is dissolved by law partly divine, partly ecclesiastical. The matter can be conceived thus: Christ determined only in common that marriage can be dissolved by the religious state, leaving to the Church the power of determining in species the conditions which constitute the religious state, and therefore dissolve ratified marriage; for thus it is understood how, with the Church so establishing, solemn vows, but not simple ones, produce this effect.

² Benedict XIV, *quaest. can. et moral.*, q. 546.

745. (d) Finally, a fourth opinion holds that marriage is dissolved by implicit divine law, or by that ministerial power by which the Church dispenses from a vow, an oath, and other impediments, on account of grave necessity. Namely, in the most ample power of the keys conferred by Christ is comprehended a ministerial or instrumental faculty of dispensing from certain obligations induced by divine law, when the spiritual utility of souls requires it. Now the obligation which results from the bond of ratified and non-consummated marriage, although it arises from divine law, is not so perfect that it cannot be dissolved in any way when a grave cause intervenes. This opinion is sufficiently probable, and sufficiently explains why marriage of this kind can be dissolved not only by religious profession, but also by dispensation of the Pontiff, although nothing concerning this matter is found explicitly in Scripture or primitive Tradition.¹

¹ For a fuller exposition of this opinion, see Billot, *th.* 44-45.

746. It is indeed objected that by these exceptions the indissolubility of marriage is destroyed; but undeservedly; for here there is question only of ratified marriage, and therefore the evils which follow from divorce on the part of the spouses and of offspring are not verified here; besides, the dissolution is made not by private authority, but by the Roman Pontiff after a long inquiry, if there is question of a particular case, and only for grave causes; but if there is question of the case of solemn profession, the few inconveniences which perhaps follow from this are compensated by the more excellent good of religious life, nor otherwise is it to be feared that there will be many who renounce pleasures in order to embrace the austerities of religion. Therefore by these few exceptions the indissolubility of marriage is not endangered.²

² Pisani, *L'Eglise et le divorce*, in the periodical *Le Correspondant*, t. 217, October 10, 1904, pp. 20-46.

IV. ON THE MANNER OF ACTING WITH REGARD TO CIVIL DIVORCE

747. Since in many regions civil law permits divorce with the faculty of flying to new nuptials, it remains to speak of the manner of acting with respect to a law of this kind.

(A) The law itself, when it intends to dissolve the natural matrimonial bond, is intrinsically evil: (a) because it involves a twofold dogmatic error, both against the exclusive competence of the Church over the matrimonial bond, and against the indissolubility of ratified and consummated marriage; (b) and it introduces evil consequences for individuals, families, and society by favoring divorces,³ as is clear from what has been said, n. 723. Therefore those who cooperate in establishing a law of this kind sin gravely.

³ According to Mulhall, *Dictionary of Statistics*, p. 217, this is the proportion between marriages and divorces in various regions, through the years 1877-1886: for 10,000 marriages there were counted in Switzerland 468 divorces; in Denmark, 406; in the Federated States of America, 344; in Germany, 152; in France, 127; in Scotland, 29; in England, 19. Now, the laws of these regions being inspected, it is easily clear that divorces are more numerous to the degree that divorce laws are looser both as to the causes on account of which it is granted, and as to the manner of proceeding.

748. (B) But it is further asked whether it is lawful to cooperate in the execution of the law, namely whether a judge can pronounce a sentence of divorce without sin, whether the spouses may petition for it, and whether a procurator and advocate may patronize it.¹ That we may separate certain things from uncertain, these things are granted by all:

¹ Before the month of April 1886, the question was being treated also in France with regard to the syndic (*maire*), because the judge did not properly pronounce a sentence of divorce, but only declared that there was place for divorce, and afterwards the syndic pronounced the divorce; but now from the year 1886, the judge himself pronounces the sentence, and the syndic only orders the same to be transcribed by the actuary (*greffier*) in the acts of civil status; now to transcribe a sentence, even one intrinsically unjust, is very remote cooperation, which is permitted for a reasonable cause. Cf. Gasparri, n. 1234.

(a) A civil judge can accept a matrimonial case and recall it for examination, provided that he pronounces sentence against divorce, and otherwise there are most grave reasons for this manner of acting, for example lest he be held to yield his office.

For the Holy Office declared this, June 25, 1885: "The most grave circumstances of things, times, and places being attended to, it can be tolerated that those who hold magistracies and advocates conduct matrimonial cases in France, without being held to yield their office, provided that they openly profess Catholic doctrine concerning marriage and concerning matrimonial causes as belonging only to ecclesiastical judges, and provided that they are so disposed in mind both concerning the value and nullity of marriage and concerning separation of bodies, concerning which causes they are compelled to judge, that they never pronounce a sentence, nor defend one to be pronounced, nor provoke or incite to one, repugnant to divine or ecclesiastical law; and in doubtful or more difficult cases let each one approach his Ordinary, direct himself by his judgment, and insofar as there is need, have recourse through his mediation to the Apostolic Penitentiary. - The Most Holy Father ratified this decree."²

² In Gasparri, n. 1163; Ballerini P, n. 825; in the same place another similar decree of the Holy Office, December 19, 1860, to the Bishop of Southwark in England, is to be read, concerning causes of semi-full divorce, or of separation as to bed and habitation.

749. (b) Spouses who contracted invalidly, or whose marriage was dissolved by the authority of the Supreme Pontiff, can licitly have recourse to the civil tribunal so that they may obtain divorce (although generally it is expedient that they, after a dispensation has been obtained, if it can be granted, renew consent); for then what is sought is not the dissolution of the matrimonial

bond, which does not exist, but only the relaxation of the civil effects which are attached to the contract which the State holds as valid.

This is clear from the response of the Holy Office to the Bishop of New Orleans,¹ September 9, 1824, where it is declared that in this case the contracting parties are to be induced so that, the canonical defect having been healed, as often as possible they enter a valid marriage; but if each or either one wishes to pass to new vows, liberty of having recourse to the civil tribunal is not to be denied, so that the civil faculty of entering other nuptials may be restored to him or her: "This would not be to approve the custom of civil repudiation, provided that the petitioner is rightly instructed that this is not done for this purpose, that the matrimonial bond be dissolved, since he or she is now detained by no bond, but only that he or she may free himself or herself and the parish priest from legal penalties and civil vexations... But the missionaries ought not to involve themselves in these things to be done before the Government. Let the one who asks to marry conduct his or her own business." In which case the judge, procurator, and advocate concurring in this judgment act licitly.

¹ In Kenrick, n. 111.

750. (c) Moreover it is certain that those spouses who are united by a valid marriage sin gravely when they petition for civil divorce with the intention of flying to new nuptials: for these wish to violate the divine law of indissolubility and to perpetrate adultery.

751. 2° Disputed question. But if one prescinds from the intention of entering a new marriage, and nothing is sought except the dissolution of the civil marriage and of the obligations annexed to it, it is greatly controverted among theologians whether the spouses can seek it, and whether the judge can pronounce the sentence of divorce.

We shall first treat this latter question, reporting the arguments of each opinion.

(A) The former opinion, which Bucceroni, Baudier, Rosset, Aertnys (*loc. cit.*), and others defend, holds that the sentence of divorce pronounced by a judge is intrinsically evil, and therefore can never be permitted. It is proved:²

² We take these arguments as to their substance from the work of Bucceroni, *loc. cit.*

(a) By reason. 1) If there is any law which contains something against natural and divine law, surely it is the law of divorce as to the very bond of marriage. But "if the writing of a law contains something against natural right, it is unjust, nor does it have the force of obliging... and therefore one must not judge according to it";³ otherwise one would judge according to injustice and against natural and divine law, which certainly is intrinsically illicit. Nor indeed is it less intrinsically illicit in this matter of marriage than in any other matter of temporal good and property to pronounce a sentence against natural and divine law.

³ St. Thomas, 2. 2., q. 60, a. 5, ad 1.

2. The law of divorce itself is intrinsically illicit and unjust. Therefore still more intrinsically illicit and unjust is the sentence of divorce. Surely the law is of itself as it were speculative-practical. Insofar as it is considered speculatively, the enunciation of an illicit and unjust law is not illicit, but false and absurd; but insofar as practically, then indeed it is illicit and evil. Now it is the

sentence of the judge which in fact constitutes it practical, or practico-practical: "The sentence of a judge is as it were a certain particular law in some particular fact."¹ - Nor let it be said that the judge does nothing other than declare the law in a particular case, and that otherwise it is not intrinsically evil to declare that which an unjust law contains. This reason has no force at all; for the judge declares the law authentically and authoritatively, defining or determining what is just in a particular case; but it is intrinsically evil to declare authoritatively and juridically, and indeed altogether practically, that what is unjust in itself is just. - Nor let it be said that the cooperation of the judge is only material, and therefore must be permitted for a grave reason. For this cooperation is truly formal, because, as far as it goes, it wholly tends to the granting of the faculty, on the part of the law, of flying to other nuptials, which is evil in itself; it is cooperation efficacious by its own nature, because the aforesaid faculty of marrying in the particular case is the effect only of the sentence of the judge.

¹ St. Thomas, 2. 2., q. 67, a. 1.

Nor does it help to assert that the sentence of divorce touches only the civil contract and the civil effects connected with it, but not the sacramental contract. For the mind of the Legislators is to touch the bond itself and to dissolve the marriage, with the power civilly made of flying to other nuptials: which is intrinsically evil. Now, if the law of divorce is intrinsically evil, the sentence of divorce is also intrinsically illicit, since the judge authoritatively interprets the law by applying it to the particular case.

752. (b) By the authority of the Roman Congregations. For when a doubt arose concerning the interpretation of the decree of June 25, 1885 (above, n. 748), it was asked of the Holy Office: "Whether the interpretation diffused through France and even given in print is right, according to which a judge satisfies the aforesaid condition who, although some marriage is valid before the Church, abstracts from that marriage with a true and constant mind, and, applying the civil law, pronounces that there is place for divorce, provided that in mind he intends to break only the civil effects and only the civil contract, and that the terms of the pronounced sentence regard these alone? In other terms, whether a sentence so pronounced can be said not to be repugnant to divine or ecclesiastical law?
2. After the judge has pronounced that there is place for divorce, whether the Syndic (*le maire* in French), himself also intending only the civil effects and only the civil contract, as is set forth above, can pronounce divorce, although the marriage is valid before the Church?
3. Once divorce has been pronounced, whether the same Syndic can civilly join with another a spouse attempting to pass to other nuptials, although the prior marriage is valid before the Church and the other party is living?"

Now on May 27, 1886, the Holy Office responded: "To the first, second, and third doubt, Negatively."¹

¹ In *Acta S. Sedis*, XXII, pp. 635-636; Gasparri, n. 1242.

Moreover this doubt was proposed to the Sacred Penitentiary: "A woman, separated from her husband as to bed by force of a sentence, would wish to undertake a certain public office (*un bureau de tabac*) for sustaining life; but the Government does not permit this unless she seeks divorce. She

herself would wish to seek it, but, in her intention, always with the bond preserved." - The Sacred Penitentiary, January 5, 1887, replied:² "Nothing else is to be counseled to the penitent woman in the case except that she abstain under grave obligation from seeking divorce."

² In Gasparri, n. 1244.

In the same way the Sacred Penitentiary responded, January 14, 1891, in relation to a woman who wished to obtain civil divorce so that in pecuniary matters she might avoid the greatest damages;³ and on June 3, 1891, in relation to another wife who, already separated from her husband, intended to seek divorce so that, the civil effects of marriage having been removed, she might undertake the tutelage of her niece and thus free her from most grave dangers.⁴

³ In *Ami du Clerge*, XIV, 1892, p. 359.

⁴ In *Ami du Clerge*, XIV, 1892, p. 350.

Now from all these decisions it is deservedly inferred that a sentence of divorce, even by prescinding from new nuptials to be entered, is intrinsically evil, since it is not permitted to seek or pronounce it when there is no intention of marrying again.

753. (B) The latter opinion, which Kenrick, Ballerini, Palmieri, Lehmkuhl, Konings, Sabetti, Allegre, Genicot, De Becker (*loc. cit.*), and others follow, thinks that civil divorce can be sought and pronounced, provided that the spouses and judge declare that they regard only the civil effects and only the civil contract, and otherwise a grave cause is present to compensate the damages that will arise therefrom. They prove this:

(a) By reason. That one may rightly judge concerning the legitimacy of civil divorce, it must be kept in mind that it is nothing other than the dissolution of civil marriage, not of religious marriage. Indeed civil law can do nothing about the sacrament of marriage and therefore nothing about the matrimonial bond between Christians, but only about certain civil effects flowing from the contract; therefore civil marriage, where it exists, begets only a certain legal bond as to these civil effects; and therefore civil divorce destroys only the civil effects created by the law, so that, after the sentence, the matter stands in the same way as if no civil marriage had been contracted. But the dissolution of merely civil effects is an act indifferent in itself, not intrinsically evil.

But from the other side, since from civil divorce certain evils follow from the fact that the religious marriage, which subsists, lacks the protection of civil law, a grave reason is required that such a divorce be sought or pronounced, for example lest the judge be compelled to abandon his office, or lest the innocent spouse leave offspring to be educated by an impious spouse.

754. From this the arguments proposed by the former opinion can be solved. Indeed the law of civil divorce is not intrinsically evil of itself, because of itself it does not touch the matrimonial bond, but only dissolves those civil effects which it had created; therefore the judge, when he pronounces a sentence of divorce, declares only that the matrimonial contract no longer enjoys the protection of the law; and this surely is not intrinsically evil. - In reality the law of civil divorce is not in itself worse than the law itself of civil marriage, since divorce is only the civil dissolution of marriage. But the Church permits, indeed in certain circumstances counsels, the act of civil marriage; therefore the law of divorce is not in itself intrinsically evil.

It is indeed objected that the law is evil from the intention of the legislator, who also wishes to touch the matrimonial bond; - but the intention of the legislator, even if it were such, does not fall under the law; and if the judge altogether prescind from that intention and regards only the civil effects and the civil contract, he does not cooperate in the sin of the legislator.

It is likewise objected that the worst effects follow from civil divorce, especially adulterous unions. - But these effects do not follow *per se* from the sentence of divorce itself, but only *per accidens*, since they must be attributed to the malice itself of the spouses; for when the judge pronounces civil divorce, he does not declare that it is lawful for the spouses to enter new nuptials, but only that they are not punished by civil law as adulterous.

755. (b) By authority; for the Roman Congregations, although they have given no speculative solution of this difficulty, have permitted judges in certain circumstances to pronounce a sentence of divorce.

1. First, the response of May 27, 1886 (above, n. 752), is not universal, nor does it settle the question; for the Apostolic Nuncio of Belgium, September 14, 1886, declared to the Government: "The Eminent Cardinal Secretary of State signified to me, by order of His Holiness, that the Congregation of the Holy Office declared that the decree of the day May 27 does not regard Belgium, and therefore nothing has been changed in this region as to those things which pertain to the matter of divorce."¹ Now in Belgium there is the same law as to divorce as in France, and Catholic judges pronounce sentences according to the law, without their manner of acting being reproved by the Holy See.

¹ In Ballerini P., n. 528; cf. Gasparri, n. 1243.

2. In France, Bishop N. set forth that a Catholic magistrate had been named president of the civil tribunal, but was prepared to yield his office if he could not in conscience pronounce a sentence of civil divorce, because in practice it is not always possible either to deter the plaintiff party from the petition, or to reject the petition against the clear disposition of the law; and, after premising two doctrinal questions concerning divorce, he asked: "Whether he can accept the burden and dignity of president of the civil tribunal, since he has clearly perceived that from this he will be constituted in the stricter necessity of more often pronouncing a sentence of divorce." - The Holy Office, July 26, 1887, replied: "The judge of whom there is question is to be strongly encouraged by Your Excellency to persevere in the office, standing by the restrictions already given by the Holy See, and with the cautions applied which are advised by the virtue of prudence."
3. Likewise the Bishop of Lucon had asked whether the syndic could pronounce civil divorce in a particular case in which otherwise he would be stripped of his magistracy, provided that 1° "he openly profess Catholic doctrine concerning marriage and concerning matrimonial causes as belonging only to ecclesiastical judges; 2° in the very sentence, and speaking as a magistrate, he publicly declare that he wishes to break only the civil effects and only the civil contract, while otherwise the bond of marriage remains altogether firm before God and conscience." The Sacred Penitentiary, September 23, responded: "that the same (Bishop) in this particular case, if, after all its circumstances have been inspected, he shall have judged it expedient in the Lord,

can tolerate that the syndic petitioner proceed to the act concerning which in the petition, with the declarations proposed by him, yet so that in place of the words *that he wishes to break only the civil contract*, he put: *that he can regard only the civil contract*."¹

¹ In Gasparri, n. 1246. - The formula *to wish to break the civil contract* did not please the Sacred Congregation, perhaps lest dissolution of the bond itself seem to be signified, as Ballerini P. notes, n. 825.

Now if in certain circumstances the sentence of civil divorce is permitted, this cannot be called intrinsically evil; for what is intrinsically evil is never permitted. - Nor let it be said that the Congregation uses the word *can tolerate*, so that from this it may be inferred that the matter is illicit in itself; for, as Palmieri rightly says,² "the faithful were asking for a decision, so that they might consult their conscience before God, and the Sacred Congregation intended to consult it. Therefore the tolerance which the Sacred Congregation counsels to Bishops in certain circumstances excludes the malice of the act."

² Ballerini P., n. 531.

756. 3° Practical conclusions. It is not ours to compose the dispute which the Roman Congregations did not wish to decide; but from the arguments and decisions adduced above, certain conclusions can be inferred.

(A) Preliminary notes. (a) Where the law of divorce has flourished for a long time, good faith much more easily exists in those who concur in the sentence of divorce; and otherwise the law is much more difficult to resist than where it has recently been promulgated. Hence the responses of the Congregations were stricter for France than for Belgium, because in this region the law of divorce is more ancient.

(b) In a particular case, attention must be paid to the various circumstances and to the various inconveniences which are foreseen as following from the granting or denial of divorce: for cooperation is more easily permitted or tolerated when motives of spiritual and public good require it than where only motives of temporal and private order are present. Hence also for France there were diverse responses for diverse circumstances, and the Sacred Penitentiary more than once said that "it had in mind to provide for the particular case according to its circumstances and exigencies."¹

¹ Thus, for example, June 4, 1890, in Gasparri, n. 1247.

757. (B) On the spouses. (a) Where the civil law does not admit separation as to bed and habitation, but only divorce (as in many American States), the spouse who has the right to separation can, with the consent of ecclesiastical authority, seek divorce, signifying that he or she understands semi-full divorce, provided that a grave reason is present to compensate the evils that will arise therefrom. - Perhaps the same can be said when simple separation, as understood by the law, would not suffice for the intended effect, for example when full divorce is necessary so that provision may safely be made for the Catholic education of the offspring,² or for excluding adulterine children from the inheritance which is proper to legitimate children.³

² Cf. *Conferences ecclésiastiques de Paris*, 1895, p. 119.

³ This can be inferred from the response of the Sacred Penitentiary, July 30, 1892; since to the question whether a husband can seek divorce from an adulterous wife when no other means is available for obtaining repudiation of paternity concerning adulterine children and their exclusion from the part of legitimate offspring, the response was: let the petitioner consult approved authors.

(b) But where separation flourishes together with divorce, and suffices for obtaining the intended effect, it is not lawful for the spouses to seek absolute divorce, since a sufficient cause for doing this is lacking.⁴

⁴ The Third Council of Baltimore, n. 224, declares that "those are guilty of most grave fault who ask that marriage be dissolved by the civil magistrate," and establishes the penalty of excommunication reserved to the Ordinary, "to be incurred by the fact itself by those who, after they have obtained civil divorce, have dared to attempt marriage."

758. (C) The advocate and procurator, since they represent the spouses themselves, can patronize the cause of divorce as often as it is lawful for the spouses to seek divorce. Therefore when the client seeks dissolution of the prior bond for this reason, that he or she intends to enter new nuptials, they cannot furnish their work for the sake of capturing profit.

759. (D) On judges. (a) They are held to apply every means so that they may be able to abstain from pronouncing a sentence of divorce, for example by persuading the parties to be reconciled or to seek separation only; or by abstaining from pronouncing any sentence, for example by remitting the case to another day and transferring it to another judge.

(b) But if they cannot abstain from pronouncing a sentence of divorce without losing their office, it can be tolerated that they pronounce the sentence, provided that they declare that they regard only the civil effects. For it is not certainly established that this is intrinsically evil, and otherwise a most grave reason of public order is present, since otherwise Catholics could not act the parts of judge, with great harm to the Republic.

(c) The same must be said of the syndic or other magistrates who, after the sentence of the judge, must proclaim divorce; indeed a lesser reason seems to suffice, since their cooperation is less.

760. But if spouses, after obtaining a sentence of civil divorce, attempt to enter other nuptials while the prior bond remains, it is commonly held that it is illicit for magistrates to sanction this adulterous union by the authority of civil law: for thus the rights of legitimate marriage are publicly attributed to adultery. - Some nevertheless say that the assistance of the syndic in this case is not intrinsically evil; for he is present at this marriage only as an official witness, and therefore his cooperation is not very proximate; indeed he cannot furnish this cooperation without a most grave reason, because by the law of charity he is prohibited from concurring in the evil of his neighbor; but if a most grave reason presses, for example danger of losing his office, in order to avoid scandal, let him cautiously warn the parties that this is a merely civil ceremony, which has no force at all before the Church.¹

¹ Thus Santi (*in libr.* IV, tit. 3, nn. 55-58), who for many years was canonist of the Sacred Penitentiary; Gasparri, n. 1231; Genicot, n. 562.

761. (E) On the consequences of divorce with regard to inheritance.² (a) When legitimate children have been born from a prior valid marriage, and adulterine ones from a later invalid marriage,

practically the illegitimate children can accept the part of the inheritance devolved to them, whether by testament or by the civil law of succession. For parents do not sin against justice by leaving some part of their goods to illegitimate offspring, since they are by no means held to hand over the whole inheritance to legitimate offspring; therefore *a fortiori* the illegitimate do not sin against justice by accepting the portion left to them. The same must be said if the parents die without a testament; for since they knew that a part of the goods would pass to the adulterine children, and did not prevent this by a contrary disposition, they consented to it at least implicitly.

² Cf. Lehmkuhl, Appendix to vol. II, pp. 804-805; Genicot, n. 562.

(b) Likewise, if the parents leave only adulterine children, these can with safe conscience accept the inheritance, nor are they held to yield it to other blood relatives: for here the same reason holds.

(c) But if the parents have disposed of their goods by testament, can the adulterine children impugn it as invalid, whether because the legal portion was not left to them, or on account of another cause? - If the defect is such that it renders the last will of the parents doubtful, they can indeed impugn the testament and follow the sentence of the judge. But if the will of the parents is certainly established, it is not lawful to impugn the testament; for they are deservedly judged to have wished to repair their fault by leaving their goods to legitimate heirs; and otherwise the unjust civil law of divorce can confer no right on adulterine children; hence these would sin not only against piety, but also against justice by impugning the testament in this case. - Yet where divorce has already flourished for a long time, adulterine children can easily be in good faith, and sometimes it is expedient not to instruct them, lest graver evils arise therefrom.

V. ON SEPARATION AS TO BED AND HABITATION

762. Having set forth these things concerning divorce as to the bond, it remains to speak of separation as to bed and habitation. That the matter may be better understood, we shall declare four things: 1° the obligation of conjugal cohabitation; 2° the legitimacy of separation for a grave cause; 3° the chief causes of separation; 4° the manner to be observed in separation.

¹ St. Thomas, *Supplement*, q. 62; Sanchez, lib. X, disp. 3-18; St. Alphonsus, nn. 960-977; Carriere, nn. 330-357; Rosset, nn. 3622-3693 and nn. 3850-4062; Ballerini P, nn. 489-518; Wernz, nn. 707-714.

1° ON THE OBLIGATION OF CONJUGAL COHABITATION

763. Principle: Regularly spouses are held to dwell in the same house, and to use the same table and the same bed. It is certain.

(A) For this is deduced from Scripture,¹ as understood by the Fathers: "A man shall leave his father and his mother, and shall cleave to his wife, and they shall be two in one flesh"; for the word *shall cleave* signifies an intimate and constant union, and from the context it is gathered that this is closer than that which exists between parents and children; but the words "and they shall be two in one flesh" rather clearly designate communion of bed.

¹ *Gen.*, II, 24.

(B) The same is clear from the very ends of marriage: for this is required by (a) the conjugal debt, which cannot easily be rendered without regular cohabitation of the spouses; (b) the good education of offspring, which demands the cooperation of each spouse; for for good education there is desired both the tender love and provident care of the mother, and the severe authority and consummate prudence of the father; (c) the fellowship of common life: for they ought mutually to help and console each other; for the man is stronger and more prudent than the woman, who therefore needs the counsels and direction of the man; conversely, the woman is more suited to domestic matters, and therefore the man needs her work;² but they cannot furnish this unless they live together.

² St. Thomas, *Comment. in Ethic.*, lib. VIII, c. 12.

764. The principle is explained: (a) Since man and woman are one flesh, they must not be separated for a longer time without grave cause. But since the man is the head of the woman, regularly the wife is held to follow the husband wherever he goes, even if he is sent into exile or goes away into a distant region, unless there is a grave excusing reason. But on the other side, a man departing for a long time is held to bring his wife with him, unless a grave reason stands in the way. But if the man is going to depart for a short time, he is not held to take his wife with him.

It was said regularly, because the wife is not held to follow the husband if this cannot be done without grave spiritual or temporal harm, for example if she would be exposed to proximate danger of sin, death, or grave detriment. Hence there does not fall upon her the obligation of following a man wandering everywhere, unless before the nuptials she had known his wandering life.

(b) Regularly also the spouses ought to share the same table, so that they may be able to enjoy the consolation of mutual conversation. The man is held to support his wife, unless it has been otherwise agreed, even if she does not have a dowry; but the wife is to attend to domestic matters, according to her condition.

(c) Generally also communion of bed ought to be present: but if the spouses, on account of a reasonable cause, have a distinct room and bed, free access to the other's room should be open to each.

765. Corollary. That spouses may cohabit peacefully and happily, they must cultivate certain virtues, especially chaste love, constant fidelity, mutual assistance; besides, the man must furnish protection to the wife, and the woman obedience to the man.

Leo XIII excellently declares this thus, in the Encyclical *Arcanum*: "Namely, they themselves must always be so disposed in soul that they understand that each owes to the other the greatest love, constant fidelity, and careful and assiduous protection. The man is the prince of the family and the head of the woman; yet she, because she is flesh of his flesh and bone of his bones, is to be subject and obedient to the man, not in the manner of a slave, but of a companion; so that, namely, neither honor nor dignity be absent from the obedience furnished. But in him who presides, and in her who obeys, since each bears the image, the one of Christ, the other of the Church, let divine charity be perpetually the moderator of duty."

(a) They must cultivate chaste love: "Men, love your wives, as Christ also loved the Church, and delivered Himself up for her... So also men ought to love their wives as their own bodies. He who loves his wife loves himself."¹

¹ *Ephes.*, V, 25, 28.

Hence that love must be chaste: for if it is lustful, it will soon become adulterous; pleasure is naturally inconstant and is carried toward various objects, so that those who serve lust, after some time, foster other loves; - patient, by cheerfully bearing mutual infirmities and forgiving each other mutually; otherwise discord arises: the man, abusing his power, treats the wife badly not as a companion, but as a slave; the wife despises the husband and refuses to be subject to him; - full of devotion, insofar as each seeks not exclusively his or her own things, but the man those things which please the wife, and the wife those things which please the man; likewise insofar as each is prepared to sacrifice himself or herself for the other, just as Christ delivered Himself for the Church.

766. (b) They are held to preserve mutual fidelity for each other, not only by avoiding adultery, but also whatever can lead to so great a crime and deservedly excite the jealousy of the other spouse: "The woman has not power over her own body, but the man; and likewise the man has not power over his own body, but the woman."¹ In reality nothing destroys domestic happiness more effectively than the very suspicion of conjugal infidelity.

¹ *I Cor.*, VII, 4.

Moreover, the spouse who, without legitimate cause, nourishes sinister suspicions as to the fidelity of the other party sins gravely: for this is against charity and justice, and often becomes the cause of quarrels and of other evils. Hence let the confessor seriously warn him or her to lay aside so unjust a suspicion, as though it were a suggestion of the devil himself.

767. (c) They must furnish mutual assistance to each other; for God created the woman so that she might be a help to the man: "It is not good for man to be alone; let us make him a help like himself."² And surely the woman herself needs the help of the man.

² *Gen.*, II, 18.

St. Thomas explains this thus:³ "For it is immediately apparent that the human works which are necessary for life are distinct between male and female; so that certain things are fitting to the man, I mean those things which are to be done outside, and certain things to the wife, such as spinning and other things which are to be done at home. Thus therefore they suffice for each other, while each reduces his or her proper works to the common." Therefore let them divide among themselves the works of domestic life; and in all things let them strive to please not so much themselves as the other party.

³ *Comment. in lib. Ethic.*, lib. VIII, c. 12, p. 608, t. XXV, ed. Vives.

768. (d) The man is held to furnish protection to the wife, and the wife obedience to the man.⁴ This flows from these words of St. Paul:⁵ "Let women be subject to their husbands, as to the Lord, because the man is the head of the woman, as Christ is the head of the Church: He is the savior of His body."

⁴ The Gallican civil Code thus sets forth these various duties: "The spouses owe each other fidelity, help, assistance" (a. 212). "The husband owes protection to his wife, the wife obedience to her husband" (a. 213). Cf. Baudry-Lacantinerie, nn. 714-718.

⁵ *Ephes.*, V, 22-23. - It is lawful to advocate the rights and higher education of women, provided nevertheless that those words of St. Paul be kept in a pious mind.

Indeed spouses form a certain society, of which the man is the head or president: therefore there falls upon him the obligation of a president, namely of protecting the whole body; therefore he will furnish himself as a strenuous protector not only in dangers of the body, but also in dangers of the soul, not only in temporal matters, but also in spiritual matters. But the wife must obey the man in all things which are legitimately prescribed by him, "not in the manner of a slave, but of a companion, so that neither honor nor dignity be absent from the obedience furnished." The husband indeed cannot prohibit the wife from fulfilling the precepts of God and of the Church, for example from being present at Mass, approaching the tribunal of Penance and the sacred table; but she herself must satisfy religious works in such a way that at the same time she fulfills the duties of her state. - If these things are rightly attended to, Christian spouses will live piously and happily.¹

¹ On the duties of married life see St. Francis de Sales, *Introd. à la vie dévote*, 3rd Part, ch. 38-39; A. de Margerie, *De la Famille*, Paris, 1869, vol. I, pp. 1-53, 151-225; Devas, *Studies of family life*, London, 1886, part II; P. Janet, *La Famille*, Paris, 1894, pp. 23-106; Landriot, *La Femme forte*, 1868; *La Femme pieuse*, 1874; Baudrillart, *La Famille et l'Education*; Meignan, *Instructions et conseils aux familles*; Turgeon, *Le Féminisme français*, Paris, 1902, vol. II, pp. 80-113.

2° ON THE LEGITIMACY OF SEPARATION AS TO BED AND HABITATION

769. Principle: Separation as to bed and habitation, while the bond of marriage remains, can be permitted for legitimate causes.

It is certain against many Protestants, who assert that a full divorce can be permitted in many cases, but not a simple separation, as if this opened the way to more and graver evils than divorce itself.

(A) Trent condemned the Lutheran error, by defining:² "If anyone shall say that the Church errs when, on account of many causes, it decrees that separation between spouses can take place, as to bed or as to cohabitation, for a determinate or indeterminate time, let him be anathema."

² Sess. XXIV, can. 8.

(B) Scripture declares that for God's sake the closest bonds can be broken: "And everyone who has left house, or brothers, or sisters, or father, or mother, or wife, or children, or lands, for My name's sake, shall receive a hundredfold, and shall possess life everlasting."³ Hence Christ Himself, while, except in the case of adultery, He prohibits divorce as to the bond, allows separation as to cohabitation and bed, when He says: "Whoever shall put away his wife, except for the cause of fornication, makes her commit adultery."⁴ And in fact St. Paul grants the converted spouse that he or she may separate from the other party who wishes to depart: "But if the unbeliever depart, let him depart."

³ *Matt.*, XIX, 29.

⁴ *Matt.*, V, 32.

(C) Reason shows that this separation is sometimes lawful and useful. For the cohabitation of spouses does not pertain to the essence of marriage, but only to its integrity, and therefore it can be

suspended or taken away, if the goods which arise from it are far surpassed by the evils which result from it. But when separation is granted only for most grave causes, it often brings more goods than disadvantages; for the Church, by cares and remedies accommodated to the condition of the spouses, strives to soften the disadvantages of separation; moreover, she never ceases to labor toward reconciling peace; and in reality experience shows that not a few of those who have been thus separated, or even have obtained full divorce, after some time wish to live together again: for when they are placed under the necessity either of observing continence or of returning to the other party, they are more cautious in seeking separation and more ready for reconciliation. - Nor should it be said that in this way a way is opened to adulteries: for while separation endures, spouses can obtain from God, both by prayer and by frequenting the sacraments, the special graces by which they need to preserve continence.

3° ON THE LEGITIMATE CAUSES OF SEPARATION

There are especially four, of which some suffice for perpetual separation, others for temporary separation, as will be clear from what is to be said.

770. (A) The adultery of either spouse, as is clear from the words of Christ related above (n. 85), and from the ecclesiastical canons.¹ Now under the name of adultery there more probably comes any illicit lying together with another, as sodomy and bestiality: for by these crimes, just as by adultery itself, conjugal fidelity is broken; moreover, fidelity is broken without penalty toward the same one who breaks fidelity.

¹ *Decretal.*, lib. IV, tit. XIX, *de Divort.*, cc. 4, 5, 8.

Adultery is of itself a cause of perpetual separation; hence the innocent spouse can depart from the adulterer forever; and, if he or she wishes, enter religion or vow chastity in the world. - Yet this is not immediately to be advised, since charity sometimes counsels that pardon be given. (*Codex*, c. 1130.)

In order that this crime may be a just cause of separation, certain conditions are required: (a) adultery must be *formal* and *culpable*:² otherwise there is not present a voluntary violation of conjugal fidelity. Therefore good faith excuses, for example if a man, thinking his wife to be dead, contracts and consummates another marriage; error, for example if a spouse thought the person with whom he or she had intercourse to be his or her own other party; force, if a woman was oppressed against her will. But it is doubted whether grave fear excuses: wherefore the matter must be left to the sentence of judges.

² Fornication committed before the nuptials, and afterwards detected, is not a sufficient cause of separation, unless it inflicts injury on the husband, as would happen if the woman were pregnant by another. Thus Kenrick, n. 114.

(b) The adultery must be *consummated*; for this embraces, kisses, touches, nor even intercourse only attempted, do not suffice, but there is required an act of itself apt for the generation of offspring.

(c) It must be *morally certain*, for in doubt no one is to be deprived of his or her right; therefore probable suspicion does not suffice, but there are required at least those presumptions which induce moral certitude, for example the confession of the accused, or if a man alone with a woman alone is found in the same bed.

(d) It must *not be mutual*; for equal offenses are taken away by mutual compensation; nor does it matter who first or more often fornicated.

(e) It must *not have been permitted nor pardoned*; for by permission or pardon the injustice is taken away. Therefore there is no place for separation if the other spouse ordered the adultery or consented to it expressly or tacitly, not preventing it when he or she easily could; or pardoned it either explicitly, or tacitly, for example by the use of marriage after the crime was known, or if he or she did not expel or abandon the adulterous spouse within six months or did not legitimately accuse him or her. (*Codex*, c. 1129.)

771. In the case of adultery clothed with these conditions, the innocent spouse is not held *of himself or herself* to dismiss the guilty one, since separation is granted in favor of the innocent one, not for his or her punishment; sometimes, however, *accidentally* a man can be held to dismiss an adulterous wife, by reason of fraternal correction or of avoiding scandal; but rarely, because there are other means for obtaining this, and besides grave disadvantages can be feared from separation. - Moreover, the innocent one can also call the guilty one back to himself or herself, certainly when the guilty one departed by his or her own authority, and at least more probably when separation was made judicially, because it was granted in the innocent one's favor; furthermore, anyone can renounce a favor. - But the dismissed spouse cannot embrace religion or receive sacred orders, unless with the consent of the innocent one, either express or tacit, such as is judged to be given when the innocent one embraces a state incompatible with conjugal life.

But if the innocent party commits adultery after a separation made privately, he or she is held to call the other back, because compensation of injuries takes place; if after a juridical separation, he or she is not indeed held to furnish this, because by the sentence of the judge the adulterer has lost his or her rights; but this is altogether to be advised.

772. (B) Recession from the true religion, which, according to can. 1131, can be manifested by a threefold act: "if a spouse has given his or her name to a non-Catholic sect; if he or she has educated the offspring in a non-Catholic manner; if he or she leads a criminal and ignominious life."

But this separation ought to be temporary, that is, to cease as soon as the dismissed spouse has returned to the true faith: this is certain, if the separation was made privately; and more probable, if judicially, unless nevertheless in this last case the innocent one wishes to enter religion.

773. (C) Grave damage, whether of soul or of body, because the law of cohabitation does not oblige with so great a disadvantage (c. 1131).

(a) There is present a *danger of the soul*, if one of the spouses solicits the other to sin, for example to theft, adultery, sodomy;

(b) a *danger of the body*, if one prepares snares against the life of the other; or suffers from a contagious disease with danger of infecting the other, if there is no other way by which that disadvantage can be met; but generally a disease of this kind prohibits sleeping together, but not cohabitation: in which

case the one who is healthy must minister to the sick one; likewise if the man exercises cruelties against the wife, and indeed grave ones, with regard had to the persons, character, and condition; or has denied necessary foods or medicines.

If the danger is such that it does not admit of delay, the innocent one can depart by his or her own authority, but for a time; for when the danger has been removed, he or she can be compelled judicially to return. But if time is present, regularly recourse should be had to the ecclesiastical judge, who will prescribe temporary or perpetual separation according to the circumstances.

774. (D) Mutual consent, since each person can freely renounce his or her own right, from an honorable end, for example in order to devote himself or herself to prayer or to lead a more perfect life. Yet this must be permitted cautiously, because of the danger of incontinence. Hence in practice: (a) if there is question only of separation as to bed, for a brief time, it can easily be granted;¹ if for a long time, or to be sanctioned by a perpetual vow, it should be permitted only after mature deliberation has been first had and after long experience, because of the inconstancy of the human heart.

¹ "Do not defraud one another, except perhaps by consent for a time, that you may devote yourselves to prayer: and return again to the same thing, lest Satan tempt you because of your incontinence" (*I Cor.*, VII, 5).

(b) If there is question of separation not only as to bed, but also as to habitation, it is to be permitted with more difficulty, since it stands in the way of the secondary end of marriage, namely mutual help, and moreover can easily furnish scandal to others. Yet it is lawful, provided that a grave reason is present, that the danger of incontinence is absent, and that sufficiently provision is made for the education of the offspring.

(c) If there is question of entering religion, or of ascent to orders, there can scarcely be place for separation under the new discipline. Dispensations, however, can be granted by the supreme authority of the Church. See can. 132, § 3; can. 572, § 1, 3°; can. 987, 2°.

4° ON THE MANNER TO BE OBSERVED IN SEPARATION

775. (A) From can. 1130, 1131 these things can be established:

Separation on account of *adultery* can be made by private authority, but it is required that the delict be certain and that it can be proved *in the external forum*; for there is question of separation in the external forum. If it is only certain, separation can be made only as to bed.

On account of other reasons, it must be made by the authority of the Ordinary; nevertheless it can also be made by one's own authority, if they are certainly established and there is danger in delay. - Yet it is expedient not always to urge the obligation of approaching the Ordinary, and to leave the spouses in good faith.

Of themselves unworthy of absolution are those who, without a canonical reason, have been separated by their own counsel on account of mutual aversion or some other reason of this kind; but if they are in good faith, and scandal is absent, and it is foreseen that an admonition will not be profitable, they can be left in good faith and absolved.

776. (B) Strictly speaking, recourse must be had to ecclesiastical judges alone in order to obtain separation: for this is a truly matrimonial cause, in which there is question of relaxing rights arising from the sacrament itself, and therefore it pertains to the ecclesiastical forum. Nevertheless, having regard to the very grave circumstances of things, it can be tolerated that in regions in which civil marriage exists, separation be sought from a civil tribunal: for otherwise before the law spouses remain obliged to cohabit. Yet this regularly cannot be done without consulting ecclesiastical authority.¹ But if spouses in good faith have been separated by civil authority, without recourse to the Bishop, they are not generally to be disturbed, since scarcely any fruit can be hoped for from an admonition.

¹ "We command all those who are joined in marriage that, without consulting ecclesiastical authority, they not approach civil tribunals to obtain separation from bed and table. But if anyone shall have attempted this, let him know that he incurs grave guilt and is to be punished according to the judgment of the Bishop." Thus the Third Plenary Council of Baltimore, n. 126. - Yet a judicial process is not required, but a license granted by the Bishop suffices, where custom so permits: thus Smith, *Marriage Process*, New York, 1893, n. 80.

777. (C) According to can. 1132, unless the Ordinary has decreed otherwise for the good of the children: (a) if one of the spouses is an infidel or heretic, by divine and canonical law the offspring must always be committed to the faithful one, so that they may be instructed in the true religion;² (b) if both are Catholic, the offspring to be educated must be handed over to the innocent one, but expenses are to be paid either totally or in part by the guilty one, especially if this one is the father. - Yet as to expenses, civil laws in various regions do not establish the same thing: and therefore they must be read and carried out, unless they are manifestly unjust.

² "Once separation has been instituted, the children are to be educated with the innocent spouse, and if the other spouse is non-Catholic, with the Catholic spouse, unless in either case the Ordinary, for the good of the children themselves, always saving their Catholic education, shall have decreed otherwise." (*Codex*, c. 1132).

778. (D) Since the separation of spouses is full of dangers, and, where civil divorce is in force, easily prepares the way for full divorce,³ priests should strive by suitable remedies and admonitions to avert it, and should prudently endeavor to reconcile separated spouses, unless greater evils are feared from cohabitation.

³ Thus in France separation as to bed and habitation, after three years, can be converted into a sentence of full divorce, if one of the spouses requests it (a. 310).

But the means of preventing separations and divorces are to instruct the faithful diligently concerning mutual duties and concerning the virtues to be cultivated by spouses (above, n. 765), and especially concerning the practice of the Christian religion, "which brings it about that vices, if there are any in the persons, that differences of morals and characters, that the weight of maternal cares, that the laborious solicitude of educating children, that the labors that accompany life, that adverse events, are borne not only moderately, but even willingly."⁴

⁴ Leo XIII, Encyclical *Arcanum*, near the end.

Chapter II: On Marriage as Sacrament

CHAPTER II. ON MARRIAGE AS SACRAMENT

779. Among many peoples the contract of marriage bore before itself something sacred and religious, and was often celebrated with sacred rites.¹ But Christ raised the same to the dignity of a sacrament, so that, among Christians, it is a sign not only sacred, but also productive of grace. That we may embrace in this chapter questions both speculative and practical, we shall speak: 1° of the sacrament itself; 2° of the celebration of this sacrament.

¹ P. Sauzet, *Reflexions sur le Mariage civil et le Mariage religieux*, Lyon, 1853, p. 11 sq.; Glasson, *Le Mariage civil et le Divorce dans l'antiquite*, Paris, 1880, p. 139 sq.; R. Lemaire, *Le Mariage civil*, Paris, 1904, p. 4-15.

ARTICLE I. ON THE SACRAMENT OF MARRIAGE ITSELF

We shall declare four things: 1° the existence of this sacrament; 2° its nature; 3° its effects; 4° by way of corollary, the power of making laws concerning marriage.

§ I. ON THE EXISTENCE OF THE SACRAMENT OF MARRIAGE — I. THE THESIS IS SET FORTH AND PROVED

780. (A) Errors. Formerly the Gnostics and Manichaeans condemned nuptials as evil, as being an incentive of concupiscence and a means by which original sin is propagated. Protestants indeed are far from the error of those forbidding to marry, since they extol nuptials above virginity; but they commonly deny, Ritualists excepted, that marriage is a sacrament. Luther indeed says:³ "Marriage is not a sacrament of the New Law, since the divine promise is lacking to it"; but Calvin¹ affirms that the notion of a sacrament is no more suited to nuptials than to agriculture or to the shoemaker's art, and that they were not regarded as a sacrament before the times of Gregory I.²

² St. Thomas, *Supplement*, q. 42, a. 1-3; Bellarmine, *De sacr. Matrimonii*, c. 1-5; Sanchez, l. II, disp. 10; Drouin, l. X, *de sacr. Matrim.*, q. I; Liebermann, cap. II, a. 1; Perrone, *De Matrim. christ.*, l. I, sect. I, c. 1; Carriere, *De Matrimonio*, p. I, sect. 2, c. 1; Palmieri, c. II, th. 7-9; de Augustinis, a. 1; Billot, th. 36.

³ *De Capt. Babyl.*, § *de Matrim.*

¹ *Instit.*, l. IV, c. 19, n. 34.

² Modern Protestants willingly acknowledge that Marriage is a religious institution: "Marriage is not a sacrament in the sense in which Baptism and the Supper are, nor in the sense of the Roman Church, although it must be regarded as a holy institution. Its celebration is an act of religion only. Therefore we ought to enter this state with due solemnity and in the fear of God. Let the ceremony be performed by a minister of Christ, who alone can vindicate to himself authority in the law of God; who alone can receive, and in the act refer to God, the vows pronounced by the contracting parties" (Hodge, op. cit., t. III, p. 377). But the Ritualists acknowledge it as one of the lesser sacraments: "The same is to be said of the holy institute of Matrimony. As regards this sacred rite, we are able with willing mind to show that this sacramental title can be applied to it authentically; the *Book of Homilies* speaks of it as of a sacrament, which binds man and woman by the bond of eternal love. From the same book it is gathered that marriage is a certain kind of life instituted by God when man was still enjoying innocence; that it expresses the mystical union of Jesus Christ and the Church; that at the nuptials of Cana in Galilee it was honored by the presence of Christ, and by His first miracle then

performed. Rightly therefore and deservedly among us it is called the sacrament of marriage" (Morgan Dix, *Sacramental System*, p. 87-88).

781. (B) Doctrine of the Church. Before Christ, marriage indeed was not a sacrament productive of grace, nay, nor was it counted among the sacraments of the Old Law; nevertheless it was called a sacrament by some Fathers, but in a broader sense, insofar as it was the sign of a sacred thing, namely of the future conjunction between Christ and the Church; for, according to the doctrine of the Fathers, Adam cast into sleep³ represented Christ dying on the cross, Eve represented the Church flowing from His side; as a man leaves father and mother and cleaves to his wife, so the Word in a certain way left the Father that He might cleave to the Church; as two spouses are in one flesh, so the Word was made flesh, so that from His union with flesh one person arose; as from Adam and Eve men were born, so from Christ and the Church spiritual children are born daily. But Christ raised the matrimonial contract to the dignity of a sacrament properly so called, as we are now about to prove.

³ Gen., II, 18-25.

782. Thesis: Marriage legitimately celebrated among Christians is a sacrament properly so called. It is of faith from the canon of Trent: "If anyone shall say that Matrimony is not truly and properly one of the seven sacraments of the evangelical Law instituted by Christ the Lord, but was brought into the Church by men, and does not confer grace, let him be anathema."

It is not indeed proved from Scripture, but it is suggested. 1° In the Gospel there is indeed found no explicit declaration of Christ concerning the institution of the sacrament of marriage, but from those things which He brought forth concerning the unity and indissolubility of the matrimonial bond, His mind can probably be inferred.¹ For when He was asked by the Pharisees whether it was lawful to dismiss a wife for any cause whatever, He recalls to their memory the words of Genesis concerning the unity and indissolubility of marriage. But when they objected that divorce had been permitted by Moses, He said: "Because Moses by reason of the hardness of your heart permitted you to put away your wives: but from the beginning it was not so." Wherefore He promulgates a new law concerning the indissolubility of marriage: "Whoever shall put away his wife, except for fornication, and shall marry another, commits adultery; and he who shall marry her who has been put away commits adultery." The disciples themselves think this law too difficult: "If the case of a man with his wife is so, it is not expedient to marry." In reality divorce, or at least the privilege for a man of repudiating his wife, flourished among almost all peoples, and, because of the natural inconstancy of the human heart, was regarded as natural and necessary: for from things commonly happening, it was judged morally impossible to cleave to one wife through the whole of life. Yet Christ demands this absolute fidelity not from a few, but from all. But He cannot wisely demand this unless He infuses the grace necessary for furnishing that which commonly surpasses human powers. But given the economy of the New Law, the grace which is necessary for a permanent state of life is usually conferred through a sacrament. - The inference is confirmed from the doctrine of the Apostle.

¹ Matt., XIX, 1-10.

783. 2° St. Paul, treating of the mutual duties of spouses, in order to induce spouses more efficaciously to fulfill the same, brings forward the example of the union of Christ with the

Church: "Let women be subject to their husbands as to the Lord. For the man is the head of the woman, as Christ is the head of the Church: He is the savior of His body. But as the Church is subject to Christ, so also let women be to their husbands in all things. Men, love your wives, as Christ also loved the Church, and delivered Himself up for her, that He might sanctify her... that she might be holy and immaculate. So also men ought to love their wives as their own bodies. He who loves his wife loves himself. For no one ever hated his own flesh: but nourishes and cherishes it, as Christ also does the Church. Because we are members of His body, of His flesh, and of His bones. For this cause a man shall leave his father and his mother, and shall cleave to his wife; and they shall be two in one flesh. This is a great sacrament; but I speak in Christ and in the Church."¹ Now, from these words of the Apostle, Christian Marriage: (a) is a sacred sign; (b) a sign of grace; (c) and very probably produces grace, and thus is truly and properly a sacrament.

¹ *Ephes.*, V, 22-32.

(A) Christian Marriage signifies something sacred; namely, the union of Christ with the Church.

For the Apostle exhorts Christian spouses that wives be subject to husbands, as the Church to Christ (*Ephes.*, V, 22-24), and that husbands love wives as Christ loves the Church (25-28), because in the same way as the husband is the head of the wife and the wife the body of the husband, so Christ is the head of the Church and the Church the body of Christ (23). Hence the things which Adam pronounced of Eve, that she was bone of his bones and flesh of his flesh, are equally true of the Church relative to Christ; for we are members of the body of Christ, of His flesh and of His bones (30). Therefore, as a man leaves his father and his mother and cleaves to his wife, and they are two in one flesh (31), so the Son of God left the bosom of the Father and cleaves to the Church through the communication of grace, and with the members of the Church constitutes one mystical body. This is a sacrament, that is, according to the force of the Greek word *mysterion*, a mystical sign, and indeed a great one, both because it signifies a great thing, namely Christ the bridegroom and the Church the bride, and because it signifies this most sacred thing in a wondrous manner (32). Therefore the marriage of Christians signifies something sacred.

784. (B) It is a sign of sanctifying grace; for it signifies the union of Christ with the Church; but this union is perfected through sanctifying grace, according to that word of the Apostle: "Christ loved the Church and delivered Himself up for her, that He might sanctify her" (25-26); and in reality the union of Christ with the Church brings forth fruits of sanctity; therefore Christian marriage signifies sanctifying grace.

(C) Finally, Christian marriage produces the sanctifying grace which it signifies. This third point St. Paul does not teach openly; nevertheless he suggests it, insofar as he hands down those things which, although of themselves they do not suffice, yet by reason of the Christian economy, which he rightly must be said to suppose, probably persuade the matter. For Christian marriage is presented as a supernatural and permanent union: (a) supernatural, because the mutual duties of spouses, such as are described by the Apostle, are supernatural by a double title, from the exemplar which is proposed, namely Christ's love for the Church and the Church's devout subjection toward Christ, - and also from the motive which is assigned, namely from the fact that the man is the head of the woman as Christ is the head of the Church; (b) permanent, for the love and obedience which the

Apostle commanded to Christian spouses ought to imitate the love of Christ and the subjection of the Church, which are something constant and permanent. But the union of spouses cannot be supernatural without grace, nor permanently supernatural without habitual grace, to which actual graces are joined, especially since such a permanent union presents a special difficulty, because of the inconstancy of human nature, as was noted above, n. 782. Therefore Christian marriage requires habitual grace, together with the right to actual graces. Moreover, given the economy of the New Law, sanctifying grace, with the right to actual graces, is usually conferred through a special sacramental rite, which not only signifies grace, but produces it. Therefore Christian marriage very probably not only signifies sanctifying grace, but also truly produces it; therefore it is truly a sacrament of the New Law.

785. It can be objected: Already from the time of Adam, marriage was a sign of the union of Christ with the Church; therefore from the time of Adam it conferred grace. But the consequent is false; therefore also the antecedent.

Response. From the beginning marriage was only the sign of the future union of Christ with the Church, while Christian marriage is the sign of the union already accomplished. Moreover, the mere adumbration of a future thing does not require so much perfection as a certain reproduction and extension of a thing accomplished. Hence before Christ, the sign of that future union was the matrimonial state alone, without sacramental grace, while Christian marriage, in order that it may be a worthy image both of the physical and of the moral union of Christ with the Church, must, according to St. Paul, be distinguished by special charity and by the virtues which charity begets.

Indeed, the matrimonial state itself before Christ gradually lost the prerogatives of unity and indissolubility, by which it chiefly represents the union of Christ with the Church. On the contrary Christian marriage became necessarily one and indissoluble. Special grace indeed was not required in order that the matrimonial state, disfigured by polygamy, divorce, and also by the tyranny of the man over the wife, might remain a certain very imperfect sign of the union of Christ with the Church; but special grace must altogether be present in Christian marriage, such as is described by the Apostle, namely firm in unity and indissolubility and adorned with constant love between the spouses, so that it can not only recall to mind the union of Christ with the human race, but express to the life His most devoted charity toward the Church and the Church's most faithful charity toward Christ.

Nor is it useful to add that in the cited text there is question only of the marriage of Adam with Eve; for Adam was speaking not so much of himself as of his posterity, when he said: "A man shall leave his father and his mother"...; for he himself did not have parents whom he would leave; therefore he spoke prophetically of the matrimonial union of posterity, and indeed of that union which more perfectly figures the union of Christ with the Church, namely of that which exists among Christians.

786. By Tradition. In the historical progress of this dogma, three stages can chiefly be distinguished.

1° In the four earlier centuries, only implicitly and obscurely do the Fathers teach that marriage is a sacrament productive of grace. For they are wholly occupied in defending the honesty and sanctity of marriage against the Gnostics and Manichaeans, and its indissolubility against the jurists. Nevertheless, when they assert that marriage is a sacred and religious sign, they set forth certain principles which suppose that by the same a certain grace is conferred.

Thus St. Ignatius declares that nuptials are a sacred thing, according to the Lord, to be celebrated with the judgment of the bishop:¹ "But it is fitting that the bridegroom and the bride contract marriage with the judgment of the bishop, that the nuptials may be according to the Lord, not according to cupidity." Tertullian thus extols the dignity of Christian marriage:² "Whence shall we suffice to recount the happiness of that marriage which the Church reconciles, and the oblation confirms, and the blessing seals, the angels announce, the Father holds ratified?" Now so splendid a description, regard also being had to the context where the pious and holy conversation of the spouses is depicted, supposes grace to be annexed to Christian marriage. - This is more clearly inferred from this testimony of Origen:¹ "And indeed God is He who has joined the two into one, so that, from the time when the woman has married the man, they are no longer two, and, because God is the author of the conjunction, therefore grace is in those who have been joined by God." There indeed it is not declared that this grace is bound to marriage itself, but nothing prevents these words from being understood in this way. Ambrose likewise commemorates this grace; after he has treated of the grace of baptism, he writes concerning Christian marriage:² "We know that God is, as it were, the president and guardian of marriage, who does not suffer another's bed to be polluted; and if anyone has done this, that he sins against God, whose law he violates, whose grace he loosens. And therefore because he sins against God, he loses the fellowship of the heavenly sacrament." Elsewhere he asserts³ "that marriage itself is sanctified by the priestly veil and blessing": by which words it is at least suggested that grace is annexed to marriage. - Some Fathers teach that Christ, by assisting at the nuptials of Cana, showed His mind of binding grace to marriage. Thus St. Epiphanius:⁴ "For two reasons Christ seems to me to have been invited. First, that He might bind by the chastity and honesty of nuptials the lust of mad men in the world, like to water and flowing away; then that He might amend what was lacking and soften it with the sweetness and grace of most pleasant wine."

¹ *Ad Polycarpum*, c. 5, p. 293, ed. Funk.

² *Lib. II ad Uxorem*, c. 9, P. L., t. I, p. 1302.

¹ *Comment. in Matth.*, 14, n. 16, P. G., XIII, 1230.

² *De Abraham*, lib. I, c. 7, P. L., t. XIV, p. 442.

³ *Ep. 19 ad Vigil.*, n. 7, P. L., XVI, p. 984.

⁴ *Haeres.* 51, n. 30, P. L., t. XLI, p. 942.

787. 2° From the time of Augustine to the twelfth century, it is more expressly asserted that marriage is a sacrament productive of grace, not indeed in express words, but equivalently. The holy Doctor distinguishes three goods in nuptials, which excuse intercourse from sin: offspring, fidelity, and sacrament: offspring, which is therefore born that it may be reborn through grace; fidelity, by which spouses are joined by a perennial bond; sacrament, "which neither separated nor adulterous spouses lose; let them guard it concordantly and chastely."⁵ But that this sacrament is not an empty sign, but truly efficacious or productive of grace, is clear from these words: "Without doubt the reality of this sacrament is that male and female joined in marriage persevere inseparably as long as they live, nor is it lawful, except for the cause of fornication, that a spouse be separated from a spouse."¹ Now, according to Augustine's manner of speaking, the reality of a sacrament is nothing other than grace; therefore he signifies that through the grace of the sacrament spouses are so helped that, notwithstanding

their natural inconstancy, they persevere inseparably united. And thus that which we were saying in the biblical argument is confirmed, namely that the indissolubility of the bond supposes the conferral of grace.

⁵ St. Augustine, *De nuptiis et concup.*, l. I, c. 17, P. L., t. XLIV, p. 424.

¹ Ibid., c. 10, p. 420.

Elsewhere he speaks of the sanctity of this sacrament, which likewise consists in its indissolubility, and under this respect he compares marriage with baptism and order, by which an indelible character is impressed: "Therefore the good of nuptials among all nations and all men consists in the matter of generation, and in the fidelity of chastity; but what pertains to the people of God consists also in the sanctity of the sacrament, through which it is unlawful even for one departing by repudiation to marry another, while her husband lives, not even for the sake of bearing children... In the same way, if an ordination of clergy is made for gathering a people, even if the gathering of the people does not follow, nevertheless the sacrament of ordination remains in those ordained."² From this he concludes that marriage is indissoluble, even if children have not been begotten; in this consists the sanctity, or grace, of the sacrament.

² *De bono conjugali*, c. 24, P. L., t. XL, p. 394.

788. Almost at the same time, St. Cyril of Alexandria, writing concerning the nuptials of Cana, taught that Christ was present there that He might sanctify the principle of human generation: "When nuptials were being celebrated, chastely indeed and honorably, the mother of the Savior is present, but He Himself also, together with His disciples, came invited; not so much to feast, as that He might work a miracle and moreover sanctify the principle of human generation, that is, as it pertains to the flesh." There indeed it is not asserted that marriage is a sacrament, but only that Christ wished to sanctify the principle of human generation; and surely this could not better be done than by raising marriage to the dignity of a sacrament.

Around the year 458, St. Leo the Great, relying upon the doctrine of Paul, declares that marriage is a sacrament, or a sign of the union of Christ and the Church: "Whence, since the society of nuptials has been so constituted from the beginning that, besides the conjunction of the sexes, it had in itself the sacrament of Christ and the Church (*Ephes.*, V, 32), there is no doubt that that woman does not pertain to marriage, in whom it is taught that there was not the nuptial mystery."³ There indeed nothing is said explicitly concerning grace, but the argument proposed above concerning the text of St. Paul returns.

³ St. Leo, ep. 167 *ad Rusticum*, n. 4, P. L., t. LIV, p. 1204-1205.

789. The thesis is confirmed from liturgies. For in the most ancient Sacramentaries and Orders or Rituals, whether Latin or Greek, there are to be found ceremonies and prayers for nuptials, from which it is inferred that marriage is a thing divinely instituted, joined with sanctification and grace.

Thus, for example, it is declared "that God is He who connects spouses by legitimate society, and pours forth upon spouses the help of His blessing, so that in the conjugal fellowship they may be joined by mutual sanctity, and the rudiments of the woman may be sanctified"; so, for example, in the

Armenian liturgy it is read: "Bless, O Lord, and sanctify the marriage of Thy servants... For Thou hast not prohibited nuptials, but hast sanctified them and blessed them in priestly fashion."¹ - It is confirmed from ancient monuments,² in which the celebration of nuptials is found depicted; for there are shown a man and a woman joining right hands, and between them stands the monogram of Christ, or sometimes Christ Himself crowning the spouses, so that from this it may appear that marriage is a sacred thing; indeed in a Greek coin pertaining to the fifth or sixth century, Christ is shown as joining spouses and imparting grace to them, for this inscription is read: Θεοῦ χάρις (grace of God). Now all these things, which indeed by themselves alone would not suffice to demonstrate the thesis, are nevertheless like traces which show that the Catholic doctrine concerning the elevation of marriage to the dignity of a sacrament was handed down implicitly from antiquity, so that the Church did nothing else, in the definitions of a later age, than to set forth explicitly and distinctly what previously was held obscurely and implicitly.

¹ Gallanus, *De Conciliat. eccles. armenae cum roman.*, t. II, q. 3, § 5. Cf. Martene, *De Ant. Eccl. Ritibus*, l. 1, c. 9, a. 5 sq.; Goar, *Eucholog. Graecorum, De officio coronationis* (i.e., of nuptials, in which the bride was crowned), and other authors cited above; Duchesne, *Origines du culte chretien*, ch. 14.

² Garrucci, *Vetri*, tab. 26-30; Martigny, *Dict. des Antiquites*, word *Mariage*; *Perpetuite de la Foi*, ed. Migne, t. III, p. 965.

790. 3° From the twelfth century, marriage is counted among the seven sacraments, although among theologians even to the fourteenth century it was disputed whether and how it produces grace. Thus, in the year 1181, Lucius III decreed against the Albigensians that those were to be struck with anathema who think and teach otherwise concerning the sacraments than the Roman Church does; now among the sacraments he counts marriage.³ Likewise, in the Second Council of Lyons, 1274, there was read, in the name of the Greeks, the confession of faith of Michael Palaeologus, in which it was declared that there are seven sacraments, among which marriage was counted.⁴

³ *Decretal.*, lib. V, t. 7, c. 9; Denzinger, n. 339.

⁴ Denzinger, n. 388.

Theologians, already from the twelfth century, teach almost unanimously that there are seven sacraments, and they reckon marriage among them. But, because the efficacy of the sacraments had not yet been clearly defined, some doubted whether it conferred grace. Three opinions flourished, according to the testimony of Albert the Great:¹ some said, with Praepositinus and William of Auxerre, that marriage was indeed a sign of grace, but did not produce it; and this seems to have been the opinion of Peter Lombard. Others held that through marriage grace is conferred, but only for avoiding evil. Others finally taught that grace is conferred also in relation to good; Albert adhered to these. - St. Thomas likewise embraced this opinion as the more probable when he explained the book of the Sentences,² and as certain in the *Summa theologica*.³ Scotus likewise held that grace is conferred upon marriage, although he admits that some think otherwise: "Because the Church commonly holds that the sacrament of marriage is the seventh among the ecclesiastical sacraments... therefore it can be said that God has annexed to the matrimonial contract a sacrament properly so called."⁴ Nevertheless, afterwards Durandus, although he admits that modern theologians commonly teach that grace is conferred upon marriage, asserts that certain canonists think otherwise, and therefore concludes that the matter has not yet been defined by the Church.⁵

¹ *In Sentent.*, IV, 26, 14.

² *In Sentent.*, IV, d. 26, q. 2, a. 3; cf. *Supplement*, q. 42, a. 3.

³ St. Thomas, 2. 2ae, q. 100, a. 2, ad 6.

⁴ *In Sentent.*, IV, 26, q. 1, n. 13.

⁵ *In Sentent.*, IV, 26, q. 3, n. 5-6.

From the time of Durandus, not only theologians, but canonists taught that grace is conferred upon Christian marriage, and indeed as something certain.

Soon the Council of Florence, in the Decree for the Armenians (1445), declared that marriage is one of the seven sacraments, and therefore productive of grace. Therefore, when the Protestants denied this, the Catholic Church, not only Western but Eastern, already publicly professed this truth; Trent therefore deservedly defined it as being of Catholic faith.

This argument can also be proposed by way of prescription, as we noted in *De Sacramentis*, n. 23.

791. Reason shows how fitting it is that marriage should truly be a sacrament, productive of grace.

For by this spouses are deputed to a most noble work and one most useful to society, both civil and spiritual, namely the procreation and education of offspring; they are connected by an indissoluble bond, nor can they fly to other nuptials unless the other spouse has died; but obligations of this kind are so grave that not rarely they require not common but heroic virtue. Moreover, the sacraments were instituted for this end, that they may confer grace in those states of life which are of the greatest moment, and upon which the salvation of souls most depends, especially when from the same there arise onerous duties, which scarcely can be fulfilled without special help. Therefore it was fitting that sacramental grace be annexed to Marriage, by the force of which the procreation and education of children would be sanctified, and Christian spouses would be able to bear more easily the burdens imposed upon them.

III. COROLLARIES

792. 1° Marriage, whether ratified or consummated, is in itself an honest and laudable work. It is certain against the Gnostics, Manichaeans, and others cited above.¹

¹ St. Thomas, *Supplement*, q. 41; Drouin, l. IX, q. II; Carriere, p. II, c. II; Billuart, disp. I, a. 2; Palmieri, th. 2; Billot, th. 39.

(A) Scripture. For that is good and laudable which God Himself instituted, Christ confirmed, and the Apostles commended; but thus it is concerning Marriage. (a) God indeed instituted it, both by creating the first parents diverse in sex, and by associating them in a close covenant that they might procreate offspring: "Male and female He created them, and He blessed them and said: Increase and multiply."² Indeed sometimes He commanded the same, by ordering a brother to take the wife of his deceased brother, that he might raise up seed for his brother.³ (b) Christ confirmed it, both by being present at the nuptials of Cana, by raising the matrimonial contract to the dignity of a sacrament, and by recalling the same to its pristine indissolubility.⁴ (c) The Apostles commended the same; thus St. Paul calls marriage honorable;⁵ he says that he who joins his virgin in marriage does well, and he commands spouses to render the debt;⁶ he admonishes younger widows to marry, and reproves the doctrine of those forbidding to marry.⁷

² *Gen.*, I, 27-28; cf. II, 21-24.

³ *Deut.*, XXV, 5.

⁴ *John*, II, 1 sq.; *Matt.*, XIX, 4 sq.

⁵ *Hebr.*, XIII, 4.

⁶ *I Cor.*, VII, 38; VII, 3.

⁷ *I Tim.*, V, 1-3, 14.

(B) We do not institute a special argument from tradition, since it is acknowledged by all that the Fathers, not only in passing, but expressly, in their works, defended the honesty of marriage. Let Tertullian against the Marcionites, Clement of Alexandria, l. III *Stromata*, St. Jerome in the books against Jovinian, St. Augustine *De Bono conjugali*, *De Nuptiis*, etc., be approached, if time is present.

793. (C) Theological reason. That indeed is good and laudable which is necessary for the propagation of the human species, is in itself a noble work, and moreover can be honored by a good end; but marriage (a) in the present order of things, insofar as it has been constituted by God Himself, is necessary for the conservation and propagation of the human species; (b) it is in itself a noble work, since spouses, by giving themselves to the marital matter, together with God procreate a human body, into which a rational soul is infused: which work is akin to creation itself; (c) finally it can be honored by a good end, for example by the virtue of religion, that offspring may be procreated for the worship of God, by love of country, that citizens may be generated who may be a guard for the State, by the motive of justice, that the debt may be rendered, or it can also be intended as a remedy of concupiscence. It is indeed true that the use of marriage is often not without some lust; but this is accidental, and moreover such pleasure is not evil unless it so dominates that it excludes the other honorable ends: and this indeed must be turned as a vice not to marriage itself but to those who abuse it.¹

¹ Tertullian (*ad Uxorem*, II, 9, P. L., t. I, p. 1302) thus splendidly describes the sanctity and happiness of Christian spouses: "Both are brothers, both fellow-servants, no distinction of spirit or flesh. And truly two in one flesh; where there is one flesh, there is one spirit. Together they pray, together they prostrate themselves, and together they pass through fasts, teaching each other, exhorting each other, sustaining each other. Each is alike in the Church of God, alike at the banquet of God, alike in straits, in persecutions, in refreshments; neither hides from the other, neither avoids the other, neither is burdensome to the other; the sick are freely visited, the needy are supported; alms without torment, sacrifices without scruple, daily diligence without impediment; no furtive signing, no trembling congratulation, no mute blessing; psalms and hymns sound between the two, and they mutually challenge one another who may better sing to his God. Seeing and hearing such things, Christ rejoices, sends His peace to these; where the two are, there He also is; where He also is, there also the evil one is not."

794. 2° The state of virginity or celibacy, undertaken for God, is more excellent than the matrimonial state. It is of faith from Trent:² "If anyone shall say that the conjugal state is to be preferred to the state of virginity or celibacy, and that it is not better and more blessed to remain in virginity or celibacy than to be joined in marriage, let him be anathema."

² Sess. XXIV, can. 10.

This proposition is directed against Jovinian (fourth century), and the Innovators who contended that nuptials are either to be equated with virginity or even preferred to it. That the proposition may be

rightly understood, it must be noted that the comparison is instituted between the state of virginity and the conjugal state, not between persons who are found in either state: for there can be married persons who are more perfect than some virgins. Besides, the celibacy concerning which there is question is not only lack of the conjugal bond, which is sometimes combined with a disgraceful life, but celibacy undertaken *for God*, by which a life exempt from the pleasures of the flesh is led.

(A) Scripture. (a) When Christ had explained to the Apostles the various burdens of marriage arising from its indissolubility, they exclaimed: "If the case of a man with his wife is so, it is not expedient to marry"; but seizing this occasion, the Savior asserts that certain ones cultivate virginity on account of God, and yet that not all grasp a word of this kind, because of its sublimity: "And there are eunuchs who have castrated themselves for the kingdom of heaven: he who can grasp it, let him grasp it."² Moreover, these things imply that the state of virginity is more excellent than the conjugal state: for thus, according to Jerome,³ the words of Christ can be understood: "Those eunuchs are pleasing to Me whom not necessity, but the will, has castrated: freely do I receive into My bosom those who have abstained from nuptials on account of the kingdom of heaven, and for My worship have refused to be what they were born... It is of great faith and of great virtue to be the most pure temple of God, to offer oneself wholly as a holocaust to the Lord, and, according to the Apostle, to be holy in body and spirit."

² Matt., XIX, 9-12.

³ *Contra Jovin.*, l. I, c. 7, n. 12, P. L., t. XXIII, p. 228.

(b) The Apostle teaches the same more expressly;⁴ for although there he writes honorably concerning marriage, he proposes virginity, as something better, by way of counsel: "It is good for a man not to touch a woman (1)... for I wish all of you to be as myself (7)... but I say to the unmarried and to widows: it is good for them if they so remain, as also I (i.e., without a wife) (8)... He who is without a wife is solicitous for the things that are the Lord's, how he may please God; but he who is with a wife is solicitous for the things that are of the world, how he may please his wife, and he is divided (32)... Therefore both he who joins his virgin in marriage does well; and he who does not join her does better" (38). These things are so clear that Protestants strive to twist them, asserting that the Apostle there speaks only hypothetically, namely thinking that the second advent of the Lord was already near (29); but in vain, for the reason alleged, namely that he who is without a wife is solicitous for those things which are the Lord's, remains true in all places and times, and luminously demonstrates that the state of virginity is more apt for the service of God.

⁴ I Cor., VII, 1-40.

This also is the open doctrine of the Fathers, as is to be seen from their works: cf. St. Cyprian, *de habitu Virginum*; St. Ambrose, *de Virginibus*; St. Jerome, *contra Jovinianum*; St. Augustine, *de sancta virginitate*, etc.

795. (B) Theological reason. For that state is more excellent than the conjugal state in which the divine good is preferred to the human good, and the good of the soul to the good of the body; but virginity is ordered to the good of God, for whose love the pleasures of the flesh, even lawful ones, are freely despised; and to the good of the soul, since it disposes it to the contemplative life, to prayer, and to the consideration of those things which are God's;¹ while marriage is ordered to the good of the body, which is the multiplication of the human race, and

pertains to the active life, by which a man and woman living in marriage necessarily have to think of the things which are of the world. Hence Christ chose a virgin mother, Himself perpetually cultivated virginity, loved a virgin disciple before the rest, and to him alone, dying on the cross, commended His virgin mother, manifestly showing by His example that the virginal state is of greater price than the conjugal state.²

¹ Hence St. Thomas (*Opusc. de perfect. vitae spiritualis*) teaches that especially those who tend to perfection ought to abstain from marriage, "because through this man is most entangled in secular cares" and is most ensnared by conjugal affection.

² St. Thomas, 2. 2., q. 152, a. 4.

796. Nor should it be said that marriage is a sacrament, and therefore more excellent than virginity, which does not have the notion of a sacrament. For here we compare the state of virginity with the conjugal state, not with the sacrament of Marriage; moreover, although the sacrament of Marriage confers graces *ex opere operato*, it does not follow from this that it is better than virginity: for graces of this kind are given because of the dangers and burdens of marriage, which are absent in the virginal state; besides, in place of the graces which spouses receive by the sacrament of Marriage, virgins are able to obtain much greater ones on account of the fervent acts of love and devotion which, by the Apostle's testimony, they elicit far more easily than the married.

Nor should it be said that celibacy contains itself within the limits of a private good, and therefore is less useful than the matrimonial state. For it contributes much to the common good of society, both by way of example, by teaching how unbridled passions are restrained, from which the sanctity of marriage is imperiled; and by making a continent man most apt for exercising works of charity, namely the care of the poor, orphans, and the sick, or the education of little ones, etc.; and also by recalling to memory that heavenly fatherland, where they neither marry nor are given in marriage.

Nor should it be said, with many Protestants, that continence is morally impossible, and therefore that those who vow virginity fall into the snare of the devil; for to preserve continence for a long time is indeed very difficult, indeed morally impossible for those who reject the means proposed by Christ, but not for those who flee dangerous occasions, give themselves to mortification of the flesh, study or labor, and at the same time are assiduously devoted to prayer, and frequently receive the sacraments, especially the Eucharist; for by these means concupiscence is efficaciously restrained. This the Protestant Leibnitz candidly acknowledged:¹ "Let clerics and religious be firmly persuaded that, for preserving continence, there is scarcely need of any other thing than to avoid idleness and dangerous occasions, and to have a firm will, the grace of which God does not deny to one asking it with fervent zeal." In reality, among the Protestants themselves, are there not widowers and widows and unmarried virgins, upon whom the obligation of preserving continence for a long time lies? Is it permissible to presume that all these are given over to vice? If it is not permissible, why are Catholic priests or others who vow virginity for God accused as though guilty of incontinence?

¹ *Systema theol.*, n. 66. This had already been observed by St. Gregory Nazianzen, *Orat.* 31; Sts. Chrysostom and Jerome on chapter XIX of Matthew; St. Augustine, *l. VI Confess.*, cap. XI; cf. M. Rosset, *op. cit.*, t. I, n. 398 sq.

§ II. ON THE NATURE OF THE SACRAMENT OF MARRIAGE

We shall set forth: 1° that the nature of the sacrament consists essentially in the contract itself; 2° who are the ministers; 3° what are the matter and form of this sacrament.

I. ON THE INSEPARABILITY OF THE SACRAMENT FROM THE CONTRACT

797. State of the question. Christ could have instituted the sacrament of marriage in a twofold way: either by adding to the natural contract some external sign productive of grace, for example a priestly blessing, or by raising the matrimonial contract itself to the dignity of a sacrament. Now, in the seventeenth century, Marcus Antonius de Dominis², Bishop of Spalato, afterwards a heretic, and J. Launoy³, and also in our times J. Nuytz, professor of Turin, taught that the sacrament so supervenes upon the contract of marriage already constituted that it can be separated from it, and therefore that diriment impediments can be established by princes, since the contract of marriage is by its nature civil. Politicians willingly embraced this doctrine, that they might thus more easily be able to make laws concerning marriage.

¹ St. Thomas, *Supplement*, q. 42, a. 1, ad 1; a. 3, ad 2; Bellarmine, *de Matrim.*, c. 7-8; Billuart, diss. I, a. 5; Carriere, p. I, sect. 3, c. I, a. 1; Perrone, sect. I, c. 6; Palmieri, th. 10; Pesch, n. 718 sq.; Billot, th. 37.

² *De Republ. christiana*, l. III and V, c. 2.

³ *De regia in matrim. potestate*, t. I, p. 2, c. 4.

Certain Catholics, as M. Cano,⁴ thought indeed that the contract is the matter of the sacrament, but that the priestly blessing is the form, so that if the blessing is omitted, marriage exists as a contract, but not as a sacrament. A few others, after Vasquez,⁵ indeed acknowledged that the contract is the whole and integral sacrament, but held that contracting parties could by their own intention effect that a natural contract exist without the sacrament.

⁴ *De Locis theolog.*, l. VIII, c. 5.

⁵ *De Sacram.*, disp. 138, c. 5, n. 63-64.

But the Catholic doctrine is that the matrimonial contract itself has been raised to the dignity of a sacrament, so that among the baptized there cannot be given a contract of marriage unless at one and the same time it is a sacrament.

798. Thesis: "Among the baptized a valid matrimonial contract cannot subsist unless it is by that very fact a sacrament" (can. 1012, § 2). It is certain.

It is said *among Christians*; for Infidels can contract valid marriages, which have the notion of a contract, but not of a sacrament.

(A) By Scripture it is not indeed demonstrated but suggested; for from the words of St. Paul to the Ephesians praised above, with the interpretation of the Fathers added, that very marriage was raised to the dignity of a sacrament which God had instituted from the beginning; but what God had instituted from the beginning is nothing other than the matrimonial contract itself; therefore the contract itself, and not some other accessory rite, was truly raised to the dignity of a sacrament. - In reality, no rite, no prayer, no matter or form is determined in Scripture, besides the matrimonial

contract itself; therefore every marriage legitimately celebrated among Christians is a sacrament; and conversely, if the sacrament is not present, neither will there be a true matrimonial contract.

799. (B) Tradition. (a) The Fathers indeed did not directly examine this question, but they so spoke of Christian marriage that from this it can be drawn out that the contract itself was raised to the dignity of a sacrament. All the Scholastics who flourished before the sixteenth century declared this more openly, teaching, after St. Thomas,¹ that the words by which consent or the matrimonial contract is expressed are the form of the sacrament, or, after St. Bonaventure,² that the sacrament of Marriage has legitimate persons for matter, and consent for form: and this indeed implies that consent, or the matrimonial contract, pertains to the essence of the sacrament, and cannot be torn away from it.

¹ *Supplement*, q. 42, a. 1, ad 1.

² *In IV*, dist. 28, a. 1, q. 5.

(b) The same is also inferred from various documents of the Church. First, the Decree for the Armenians has these words:³ "The efficient cause of marriage regularly is mutual consent expressed by words concerning the present." Hence thus: here certainly there is question of Matrimony as sacrament, since the Decree is an instruction concerning the sacraments; but the efficient cause, and therefore the essence, of this sacrament is declared to be mutual consent, or the matrimonial contract; therefore the contract cannot be separated from the sacrament. The same can be drawn from Trent: for it teaches⁴ that clandestine marriages were ratified and true marriages as long as the Church did not make the same null: and this indeed implies that they were a true sacrament, for, according to Innocent III,¹ marriage "exists true and ratified, because the sacrament of faith, which once has been admitted, is never lost, but renders ratified the sacrament of marriage." But in clandestine marriages nothing is found except the matrimonial contract; therefore such a contract truly constitutes the sacrament, and cannot be separated from it.

³ Denzing., n. 597.

⁴ Sess. XXIV, *de Reformat.*, c. 1.

¹ *Decretal.*, l. IV, tit. 19, c. 7, ap. Denzing., n. 351.

(c) Finally the matter has been placed beyond every doubt by the express declarations of Pius IX and Leo XIII.

The former, in an Allocution held to the Cardinals (September 27, 1852), reproving the law by which marriage was held only as a civil contract, gives this reason for the aforesaid condemnation: "Since no one from among Catholics is ignorant or can be ignorant that Matrimony is truly and properly one of the seven sacraments of the evangelical law instituted by Christ the Lord, and therefore that among the faithful there cannot be a marriage which at one and the same time is not a sacrament; and for that reason any other conjunction whatever between a Christian man and woman, made even by the force of any civil law whatever, is nothing other than a base and deadly concubinage so greatly condemned by the Church; and therefore that the sacrament can never be separated from the conjugal covenant; and that it altogether pertains to the power of the Church to decree all those things which can in any way pertain to the same marriage." But the latter, in the Encyclical *Arcanum* (February 10, 1880), where he splendidly sets forth the Catholic doctrine concerning Christian

marriage, has these words: "Nor should anyone be moved by that distinction so greatly proclaimed by the Regalists, by the force of which they disjoin the nuptial contract from the sacrament... For a distinction of this kind, or rather a tearing apart, cannot be proved; since it has been ascertained that in Christian marriage the contract is not dissociable from the sacrament; and therefore that a true and legitimate contract cannot subsist unless it is by that very fact a sacrament. For Christ the Lord increased marriage by the dignity of a sacrament; but marriage is the contract itself, provided only that it is made by law... And so it appears that every just marriage among Christians is in itself and through itself a sacrament: and that nothing is more abhorrent from truth than that the sacrament is some added ornament, or an extrinsically appended property, which can be separated and severed from the contract at the discretion of men."

The Code, can. 1012, thus condenses this doctrine: "Christ the Lord raised the matrimonial contract itself among the baptized to the dignity of a sacrament. Wherefore among the baptized a valid matrimonial contract cannot subsist unless it is by that very fact a sacrament."

800. Corollary. Hence, even if the baptized contracting parties are entirely ignorant that the matrimonial contract is a sacrament, they nevertheless effect the sacrament by the very fact that they intend to contract maritally. But if, well instructed, on account of their impiety they should be unwilling to make a sacrament, a distinction must be made: if their predominant intention is to enter marriage, they effect the contract and the sacrament together; but if their intention is so depraved that they prefer to choose concubinage rather than the sacrament of Marriage, their union is concubinary, not marital.

II. ON THE MINISTER OF MATRIMONY

801. Melchior Cano seems to have been the first who taught that not the contracting parties themselves, but the Priest who joins them in marriage, are the ministers of the sacrament;² many theologians embraced his opinion, among whom are Sylvius, Drouin, Tournely, and others: but today the ancient opinion, which had flourished for so many centuries, is altogether certain from the practice and declarations of the Church.

¹ St. Thomas, *Supplement*, q. 45, a. 5; q. 46, a. 2; Bellarmine, c. 6; Drouin, lib. X, q. II; Billuart, diss. I, a. 6; Carriere, pars I, sect. 2, c. 2; Perrone, sect. I, c. 2; de Augustinis, a. 3; Palmieri, th. XI.

² *De Loc. theolog.*, l. VIII, c. 5. Melchior Cano attributes his opinion to William of Paris, Peter Paludanus, indeed to St. Thomas, but undeservedly, as Perrone shows at length, l. c., p. 48 sq.

802. Thesis: The ministers of the sacrament of Matrimony are the contracting parties themselves, and not the Priest blessing the nuptials. It is certain.

(A) From ancient Rituals. For as Martene,³ a man very well versed in ancient rites, rightly observes, in this way marriage was formerly celebrated: the spouses stood before the priest at the doors of the church; then, right hands having been mutually given, they furnished consent, "in which the ancients placed the whole essence of the sacrament of marriage. For among them those words of the pastor, *I join you*, were unheard of, in which some of the more recent Scholastics constitute the form of this sacrament." In reality these words are lacking in most ancient Rituals. Now if the essence of the

sacrament of marriage consists in the sole consent of the spouses, not in the blessing of the priest, the contracting parties themselves, who furnish the consent, administer the sacrament to themselves.

³ *De Antiquis Eccl. Rit.*, p. II, c. 9, a. 1.

(B) By the authority of theologians. The old Scholastics declared this openly; thus St. Thomas writes:¹ "Consent expressed by words concerning the present, between persons legitimate for contracting, makes marriage, because these two are of the essence of the sacrament; but all other things are of the solemnity of the sacrament, because they are employed for this, that marriage may be made more fittingly." In the same place (ad 2) he adds: "And therefore the blessing of the Priest is not required in marriage, as though of the essence of the sacrament." Now it certainly would be required, if the Priest were the minister of marriage. St. Bonaventure² and other theologians even to the sixteenth century taught the same. Now it is impossible that the teaching Church should have erred in so grave a matter through many centuries. Therefore.

¹ *Supplement*, q. 45, a. 5.

² *In IV Sent.*, dist. 28, q. 5.

(C) By the practice and declarations of the Church. (a) Trent declared that clandestine marriages, contracted without the presence of a Priest, were ratified and true, as long as the Church did not make them null.³ But from ecclesiastical usage of speaking a ratified marriage is the same as the sacrament of marriage; for Innocent III says (l. c.): "Although a true marriage exists among infidels, nevertheless it is not ratified; but among the faithful it exists true and ratified: because the sacrament of faith, which once has been admitted, is never lost, but renders ratified the sacrament of marriage, so that it may endure in spouses while that endures." Therefore, according to Trent, marriages celebrated without the presence and blessing of a priest can be ratified, that is, a true sacrament. Therefore priests are not the ministers of this sacrament, but the contracting parties are.

³ "Although it is not to be doubted that clandestine marriages, made by the free consent of the contracting parties, are ratified and true marriages, as long as the Church did not make them null; and therefore those are deservedly to be condemned, as the holy Synod condemns them with anathema, who deny that they are true and ratified..." (Sess. XXIV, *de Ref. Matrim.*, c. 1.)

(b) Moreover, when the doubt had been proposed whether marriages performed at the time of the Gallican disturbance, without the presence of a Priest, were to be revalidated by the blessing of a Priest, the Congregation deputed for the affairs of the Gallican Church answered (April 22, 1792) "that the faithful are to be exhorted that, when they can have the supply of a Priest, they ask a blessing from him, who nevertheless will declare to them that a blessing of this kind pertains least of all to validity."

(c) This thesis is altogether confirmed from can. 1098, according to which in some cases it is lawful to contract without the presence of a priest.

(D) Theological reason. From what was said in the preceding thesis, the matrimonial contract is inseparable from the sacrament itself, and therefore those truly effect the sacrament who at the same time perfect the contract; but the contracting parties themselves, not the Priest, perfect the matrimonial contract, as is clear; therefore the contracting parties themselves effect the sacrament, or in other words are the ministers of the sacrament.

803. (E) Principles for solving difficulties. Since it would be too tedious to refute one by one the various arguments brought forward by adversaries, let it suffice to set forth some principles, from which they can be solved.

(a) Arguments taken *a pari* from other sacraments have little or no force, since each sacrament has its own proper matter and also its own ministers. Therefore adversaries say in vain that regularly priests alone are the ministers of the sacraments, and therefore of marriage; for the parity is denied, since marriage is a contract and follows the laws of a contract; but besides, is not baptism, ministered by a layman, valid? Why therefore would marriage, ministered by laymen, be invalid?

(b) The minister of the sacrament is one thing and the minister of solemnity another; therefore, if in ecclesiastical documents there is question of the Priest as minister of marriage, it must be determined from the context whether the question is about the minister effecting, or only sanctioning, the sacrament by a special blessing.

(c) Marriages celebrated without the presence of a Priest were called illicit, or sometimes illegitimate, because they were contracted against the laws of the Church; but from this it least of all follows that the same were invalid. Again, some attribute sacramental power to the priestly blessing, but, when the context is inspected, the sense is that a blessing of this kind is a certain sacrament. Sometimes it is asserted that marriage, without that blessing, is not a sacrament of the true name, because the contracting parties, violating the law of the Church, were not receiving the grace of the sacrament. By the help of these principles, the principal difficulties can be solved: but if any authorities remain against our thesis, they cannot weaken the force of the decisions of the Church.

III. ON MATTER AND FORM

804. All theologians hold that the matter of the sacrament of Matrimony is the contract itself. But some, with Melchior Cano, thought that the form was to be placed in the blessing of the Priest: and this opinion indeed remains refuted from the things already said. Therefore the common and certain doctrine is that the matter and form of the sacrament are situated in the matrimonial contract itself. But this is explained in diverse ways.

¹ St. Thomas, *Supplement*, q. 45, a. 5; Bellarmine, c. 6; Drouin, l. X, q. 3; Billuart, diss. I, a. 7; Carriere, p. I, sect. 2, c. 3; de Augustinis, a. 4; Billot, th. 37, corollary I, p. 344.

(A) Certain ones, with Navarrus, said that internal consent is the matter, but that the form consists in the external signs which express the consent; which cannot be admitted, for the matter ought to be in some way sensible, independently from the form; but merely internal consent is in no way sensible.

(B) Others held, with Vasquez, that the bodies of the contracting parties, or dominion over them, are the matter, but that the form is constituted by the words signifying consent. We indeed admit that dominion over the bodies is the remote matter, about which the sacrament is concerned, but we deny that it is the proximate matter; for such dominion in no way signifies grace, but the proximate matter of a sacrament ought in some way to signify the grace produced by it.

(C) Therefore the common opinion is that the remote matter is the right over bodies in order to conjugal acts, that the proximate matter is consent, insofar as it expresses the reciprocal handing

over of bodies, and that the form is the same consent, insofar as it signifies their mutual acceptance. (a) Benedict XIV first declared this:² "The legitimate contract is at once both the matter and the form of the sacrament of Matrimony; namely, the mutual and legitimate handing over of bodies, by words and nods expressing the interior assent, is the matter, and the likewise mutual and legitimate acceptance of bodies is the form." (b) It is confirmed by reason: for that which is determinable holds itself in the manner of matter, and that which is determining in the manner of form; but the mutual handing over of bodies is something only determinable, since it is only the beginning of the contract, and remains in suspense until acceptance comes; but the acceptance of bodies is something determining, since it completes the contract and renders it efficacious; therefore.

² Brief to the Archbishop of Goa, March 19, 1758.

It is indeed objected that the matrimonial contract is not the matter and form of this sacrament, because it least of all signifies grace. But undeservedly; for a contract of this kind signifies the union of Christ with the Church, which is, as it were, the font and cause of the grace proper to this sacrament, and therefore the grace itself by which the spouses themselves are sanctified; but besides, that consent also directly represents that spiritual union of souls which is one of the principal graces annexed to this sacrament.

COROLLARIES

805. From the three theses set forth above, certain corollaries can now be drawn.

(A) Marriage is a contract *sui generis*, bearing special characteristics before itself; namely it is: (a) natural, insofar as it is founded on the natural inclination of men, and is ordered to the good of nature, namely the propagation and education of the human race; but it far excels other contracts, both because it was instituted by God, and because it is concerned not with material things, but with the very persons contracting and their affections, and because it cannot be dissolved by the consent of the contracting parties but of its own nature is indissoluble, as was shown above; (b) sacred and sacramental, since it signifies the union of Christ with the Church and has been raised to the dignity of a sacrament; (c) ecclesiastical, insofar as it is ordered to the good of the Church and is governed by many laws of the Church; (d) civil, as tending to the good of the republic, and in some accessory matters subject to the civil power.

806. (B) Marriage among Infidels is not a sacrament, since Baptism is the door of all the sacraments, so that none can be validly received by the non-baptized. Nevertheless their marriages are valid as natural contracts: "Although a true marriage exists among infidels, nevertheless it is not ratified," says Innocent III (l. c.). But heretics who have been validly baptized, and contract legitimately, validly receive the sacrament of Matrimony, even if they are ignorant of or deny the existence of this sacrament. For provided that they have the general intention of marrying according to the laws instituted by Christ, they validly effect the natural contract of Matrimony, and, since among the baptized this cannot be separated from the sacrament, they truly receive also the sacrament.

807. On the occasion of this matter two questions are discussed among theologians: (a) The former is whether a marriage contracted by non-baptized persons becomes a sacrament, if each spouse

is afterwards baptized. Some deny this, among whom are Vasquez, the Salmanticenses, Carriere¹, etc., because matrimonial consent already validly given cannot be renewed: for a thing once given cannot validly be given anew, since it is no longer under the power of the giver. But others more commonly and more probably affirm this with Sanchez, Bellarmine, Perrone, and others;² for although a new contract is not posited simply, nevertheless there is effected a new contract morally distinct from the former, since converted infidels consent that the marriage previously contracted become indissoluble and represent the union of Christ with the Church; therefore nothing prevents the consent thus renewed, explicitly or implicitly, from being the matter and form of the sacrament and conferring grace. Indeed a renewal of the contract is not required, but the prior consent given in infidelity suffices. For the sole reason why this contract was not at the same time a sacrament is that the Christian character was lacking to the contracting parties; therefore, as soon as they receive the baptismal character, the obstacle is removed, and nothing prevents the contract from being at the same time a sacrament. This moreover is confirmed by the authority of the Apostle; for in the epistle where he treats of the sacrament of Matrimony, he addresses the Ephesians, recently converted, of whom very many had contracted marriage before receiving Baptism, and nevertheless supposes that these same persons have been sanctified by the sacrament of Matrimony.

¹ Salmanticenses, c. 3, n. 82; Collet, c. II, n. 278; Carriere, n. 150.

² Sanchez, l. II, disp. IX, n. 5; Wirceburgenses, n. 285; Benedict XIV, *De Synodo dioec.*, l. VIII, c. 13, n. 8; de Augustinis, a. 5.

808. (b) The latter question is whether the marriage of a faithful person with an infidel is a sacrament. It is of course supposed that such a marriage has been permitted by the Church: otherwise it would be invalid. But, this being posited, many deny it, as Sanchez, Billuart, the Theologians of Wurzburg,³ because marriage is a contract, and just as for one contract there are required essentially two persons able to contract, so for a sacrament there are required two persons able to furnish sacramental consent; but in the case of which there is question, only one of the contracting parties is able for the sacrament. - But others, and indeed more probably in our judgment, affirm that a marriage of this kind is a sacrament in the faithful party; thus the Salmanticenses, Tournely, Perrone¹, etc. For the faithful person who, by dispensation of the Church, enters marriage with an infidel effects a true matrimonial contract, and moreover he or she is capable of grace; but every matrimonial contract effected by a baptized person has been raised to the dignity of a sacrament; therefore in the present case the contract is truly a sacrament. Nor should it be said that a sacrament cannot limp, or be valid in one party but invalid in the other; for this is asserted wholly gratuitously, and, although we admit that the matter depends on the will of God, nevertheless of itself nothing prevents one and the same sacrament from being valid in one who labors under no impediment, but invalid in the other who is incapable of the sacrament; in reality absolution given to two persons at once can be valid for the one who is rightly disposed, but invalid for the one who lacks contrition. It can also be added that it would have been very harsh for Christian women, who in the earlier centuries had to marry pagans, to be deprived of sacramental grace so necessary to them.

³ Sanchez, l. II, disp. VIII, n. 2; Billuart, d. I, a. 5, pet. 7; Wirceburgenses, n. 288.

¹ Salmanticenses, cap. XII, n. 82; Tournely, q. II, a. 2, ed. Veneta 1739, p. 45.

§ III. ON THE EFFECTS OF THE SACRAMENT

809. Since Matrimony is one of the sacraments of the New Law, it produces habitual grace *ex opere operato*, as was expressly defined by Trent:³ "If anyone shall say that Matrimony is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord... and that it does not confer grace, let him be anathema."

² Drouin, l. X, q. 4; L. Habert, *Theol. dogm. et moralis, de matrim.*, c. 5; Carriere, n. 58 sq.; Bonal, n. 84.

³ Sess. XXIV, can. 1.

But the grace which it confers is not first grace but second, since, by the testimony of Trent, it was instituted not for remitting sins, but for sanctifying spouses. Again the grace proper to this sacrament consists in the right to receive, at the opportune time, actual graces necessary for Christian spouses to fulfill their duties rightly: 1° for the Christian procreation and education of offspring; 2° for mutual love and fellowship of life; 3° for restraining concupiscence.

810. 1° For the Christian procreation and education of offspring; for this is the principal end of marriage: for just as Christ was joined to the Church for no other end than that, from this divine marriage, adoptive children of God might be born, so spouses ought to be united that they may generate and holily educate children, who may be useful not only to the earthly fatherland, but also the best citizens of the Church and candidates of the heavenly kingdom. Moreover, for this there is required a special grace, which is conferred through the sacrament of marriage: for men, vitiated by original sin, naturally seek their own pleasure rather than the good of offspring; but, with the help of sacramental grace, they raise their minds higher, and with pious Tobias are able to say: "And now, O Lord, Thou knowest that I take my sister as wife not for the cause of lust, but solely for love of posterity, in which Thy name may be blessed unto ages of ages."¹ Nor is less grace required for educating children holily; for, as Leo XIII says (*Encycl. Arcanum*): In protecting children and especially forming them to virtue, all the cares and thoughts of parents must be vigilant: Fathers, educate them in the discipline and correction of the Lord.² From this it is understood that the duties of spouses are not few nor light; yet for good spouses, on account of the virtue which is received in the sacrament, they become not only tolerable, but even pleasant.

¹ Tob., VIII, 9.

² Ephes., VI, 4.

811. 2° For fostering chaste love; for often nuptials are disturbed by the discord of spouses, when each follows his or her own inclinations: the man, by abusing his power, regards the wife not as a help like himself, but rather as a servant whom he treats badly; the wife in her turn despises the husband and refuses to be subject to him; from this there arise innumerable quarrels, which overturn the peace of the family and render life miserable to each spouse. But the sacrament of Matrimony meets this evil, by the force of which the man loves his wife as Christ loves the Church, and the wife is subject to the man as the Church to Christ, and both more cheerfully bear mutual infirmities and pardon each other mutually: "They themselves,

namely," says Leo XIII (l. cit.), "must always be so disposed in soul that they understand that each owes to the other the greatest love, constant fidelity, and careful and assiduous protection. The man is the prince of the family and the head of the woman; yet she, because she is flesh of his flesh and bone of his bones, is to be subject and obedient to the man, not in the manner of a slave, but of a companion; so that, namely, neither honor nor dignity be absent from the obedience furnished. But in him who presides, and in her who obeys, since each bears the image, the one of Christ, the other of the Church, let divine charity be perpetually the moderator of duty." Moreover, sacramental grace works all these things in those who are rightly disposed.

812. 3° For moderating concupiscence; for those who loosen the reins to the propensities of corrupted nature defile the nuptial bed with every uncleanness, and, not content with one wife, are inclined to many, and, if polygamy is prohibited, have recourse to divorce, and indulge every kind of lust, as is reported of the pagans. But the grace of the sacrament remedies this vice; helped by it, Christian spouses are able to restrain the headlong impulses of lust and to use their rights chastely, not so much from desire for pleasure as for offspring; by the same grace it comes about that they perpetually adhere to each other in such a way that neither fosters adulterous loves: for as "Christ loved the Church and delivered Himself up for her that He might sanctify her,"¹ so the Christian man pursues his wife with chaste love, and the wife her husband, so that from that mutual love they become more holy.

¹ *Ephes.*, V, 25-26.

Nevertheless, that the sacrament of Matrimony may work the aforesaid effects, it must be received with a right intention and in the state of grace. Therefore pastors, both privately and publicly, should exhort adolescents not to approach the sacrament without fitting dispositions, from which they are able to receive such great fruits, so necessary for the whole course of life.

§ IV. ON THE POWER OF MAKING LAWS CONCERNING MARRIAGE

813. Since the contract of marriage has been raised to the dignity of a sacrament, by that very fact it is subject to the power of the Church.

¹ St. Thomas, *Quodlibet.*, V, a. 15; Bellarmine, c. 32; Sanchez, l. VII, disp. III; Drouin, l. IX, q. VI, c. 1; Billuart, diss. VI, a. 23; Carriere, p. III, sect. II, c. 2, n. 520 sq., with the emendations inserted in the sixth edition of the *Compendium*, n. 130 sq.; Perrone, l. II; Palmieri, th. 28 sq.; de Angelis, *Praelect. juris can.*, tom. III, p. I, p. 24 sq.; Cavagnis, *Institut. juris publ.*, 3rd ed., l. V, n. 184 sq.; Billot, th. 47-48; Paoli, *Etude sur les origines et la nature du mariage civil*, Paris, 1890; R. Lemaire, *Le Mariage civil*, 2nd ed., Paris, 1904.

Nevertheless, not only the Innovators, who held that marriage is not a sacrament, denied this authority of the Church, but also M. A. de Dominis, Launoy, not a few Regalists, and also the Jansenists who were present at the Synod of Pistoia (1786): these indeed were not ashamed to teach that the power of making laws concerning Christian marriage, especially for annulling marriages, belongs to secular princes alone, and not to the Church, except perhaps from the indulgence of princes. Moreover, not a few Catholic authors, especially in France, thought that the power of establishing diriment impediments belonged not only to the Church, but also to princes, because marriage is a contract both civil and ecclesiastical. Yet today this opinion cannot be admitted, after

repeated declarations of the Holy See. What the Church and what the civil power can decree concerning marriage, the following propositions will declare.

814. First thesis: The Church has the power of establishing by her own right impediments diriment of marriage, and of judging matrimonial causes which regard the bond of marriage. It is of faith from Trent:² "If anyone shall say that the Church could not constitute impediments diriment of marriage, or erred in constituting them, let him be anathema. - If anyone shall say that matrimonial causes do not pertain to ecclesiastical judges, let him be anathema" (sess. XXIV, can. 4, 12). Now canons of this kind are dogmatic, whatever a few may have said to the contrary; for here there is question of a matter not disciplinary, but pertaining to faith, namely of the very power of the Church and of her infallibility in the exercise of this right. Besides, that this power is in the Church by her own right, and not by concession of Princes, is gathered from the condemnation of the proposition of the Synod of Pistoia, in which the opposite error was defended: for such a proposition was reproved as contrary to Trent and proceeding from a heretical principle.¹

² Trent, sess. XXIV, can. 4, 12.

¹ Ap. Denzing., n. 1422-23.

815. (A) By the practice of the Church. Christ Himself had established the law of indissolubility, contrary to Roman law; Paul had promulgated the privilege of faith, above, n. 730. Adhering to their footsteps, the Church established various statutes concerning marriage; especially by her own right she established diriment impediments, and, when the occasion was given, judged concerning matrimonial causes as to the bond itself. (a) First, the law of the Church is most ancient by the force of which marriages of virgins who had solemnly vowed their virginity to God were held not only illicit but also invalid; thus, for example, Gelasius I writes:² "But we have known that certain men rashly join themselves to sacred virgins, and after the purpose dedicated to God mingle incestuous covenants and sacrilegious ones"; now incestuous covenants surely cannot be called a valid marriage. Moreover, a law of this kind was taken from no civil Code; therefore it was enacted by the Church herself by her own right. (b) Likewise the Council of Neocaesarea (314), can. 2, establishes:³ "If a woman has married two brothers, let her be cast out until death. But at death, on account of humanity, if she shall have said that, if she recovers, she will dissolve the marriage, she will have penance"; by which words it is supposed that the marriage of which there is question was held as null. Now this impediment was not borrowed from civil law, since this latter established the same thing only in the year 355.⁴ (c) The Synod of Macon (585), can. 16, declared that marriages contracted by widows of clerics were null: "let the wife of a subdeacon, exorcist, or acolyte, when he has died, not dare to join herself to a second marriage"; which is found in no civil law. (d) Finally, at Trent, the Orators of the King of the Gauls asked that clandestine marriages, and marriages contracted without the consent of parents, be declared null: the former was granted, but the latter denied; this indeed clearly proves that the authority of the Church in establishing impediments was fully acknowledged, and indeed independent from the right of princes.

² Ep. *ad Episcopos Lucaniae*, c. 20, P. L., t. LIX, p. 54.

³ Ap. Bruns, t. I, p. 71.

⁴ *Cod. Theod.*, l. III, tit. 12, *Etsi licitum*.

Leo XIII (*Arcanum*) briefly gathers this argument thus: "The Church exercised power over the marriages of Christians in every time and place, and exercised it in such a way that it appeared that the power was her own, not sought by the consent of men, but divinely obtained by the will of her Author... No one is ignorant how many things concerning the impediments of bond, vow, disparity of worship, consanguinity, crime, public honesty, were constituted by the prelates of the Church in the Councils of Elvira, Arles, Chalcedon, the Second of Milevis, and others,¹ which often differed greatly from decrees sanctioned by imperial law. Nay, it was so far from the case that ruling men arrogated to themselves power over Christian marriages, that rather they acknowledged and declared that this power, as great as it is, is in the possession of the Church. In reality Honorius, Theodosius the younger, Justinian (*Novel* 137) did not hesitate to admit that, in those matters which touch nuptials, no more was lawful to them than to be guardians and defenders of the sacred canons."

¹ D'Aguirre, *Conc. Hisp.*, tom. I, can. 13, 15-17; Harduin, *Act. Concil.*, tom. I, can. 11, 16-17.

Deservedly therefore the Code, c. 1016: "The marriage of the baptized is ruled not only by divine law, but also by canonical law, saving the competence of the civil power concerning merely civil effects..."

816. (B) Theological reason. Marriage, celebrated among Christians, is a sacrament, and, from what has been said, the contract is so closely connected with the sacrament that one cannot exist without the other; but a sacrament is something altogether sacred, which transcends the power of civil authority and is subject to the power of the Church alone. Nor should adversaries say that marriage is a natural contract and as such subject to civil authority; for Christ, by elevating this contract to the dignity of a sacrament, rendered it sacred and withdrew it from civil authority, since this latter has no power concerning sacred things. "Therefore since marriage is sacred by its own force, by its own nature, of its own accord, it is fitting that it be ruled and moderated not by the command of princes, but by the divine authority of the Church, which alone has the magisterium of sacred things" (Leo XIII, l. c.).

817. Second thesis: The civil power cannot establish laws regarding the bond of marriage, but only concerning the temporal and separable effects of the contract. It is certain. To understand this, it is helpful to note that the temporal effects of marriage are of two kinds, some inseparable from the contract itself, for example the mutual rights and duties of spouses as to bed and habitation, and the legitimacy of offspring; but others separable from the very substance of the contract, for example dowry, donations on account of nuptials, hereditary succession, etc.

(A) The former part is proved: (a) by the practice of the Church; for the Church never acknowledged this power in princes, but on the contrary judged civil laws concerning the matrimonial bond to have no force; thus Gregory the Great reprobated marriages of cousins permitted by princes; Benedict XIV¹, speaking of the law by which Theodosius had prohibited marriages of Jews with Christians, says: "This law, as having been established by a lay prince, ought to have no force in marriages"; likewise Urban VIII and Pius VII² declared that the civil law invalidating marriages entered without the consent of parents had no force in the forum of conscience.

¹ Litt. February 9, 1749, to the Cardinal of York.

² Litt. June 27, 1805, to Napoleon.

(b) By the authority of the Roman Pontiffs; let it suffice to report the words of Pius VI³: "It is a dogma of faith that marriage, which before the advent of Christ was nothing other than a certain indissoluble contract, after the advent of Christ became one of the seven sacraments of the evangelical law... Hence it comes about that to the Church alone, to whom the whole care concerning the sacraments has been entrusted, there belongs every right and power of assigning her own form to this contract raised to the more sublime dignity of a sacrament, and therefore of passing sentence concerning the validity or invalidity of marriages." In the same place he refutes those who say that the canon of Trent (above, n. 814) does not say *ecclesiastical judges alone*, or *all* matrimonial causes: "For the words of the canon are so general that they comprehend and embrace all causes; but the spirit or reason of the law extends so widely that it leaves no place for any exception or limitation."

³ Brief to the Bishop of Motula, September 16, 1788.

(c) Theological reason. For marriage, as Pius VI rightly says, l. cit., is not a merely civil or natural contract, but one of the seven sacraments; but the Church alone, by the force of the power divinely entrusted to her, can make laws concerning the sacraments; therefore. Nor should it be said that in modern societies, which are of mixed religion, the civil power must make laws concerning the very essence of marriage, so that uniformity may be preserved for all citizens. For, to preserve this uniformity, it suffices that the State determine the civil conditions and effects arising from the matrimonial contract, nor is it required that it touch the matrimonial bond itself. Indeed liberty of conscience itself demands that, in mixed societies, no law be made concerning the matrimonial bond itself: for since the statutes of the various spiritual societies concerning this matter are not the same, from any civil law whatever concerning the bond it would happen that some citizens would be held to regard as invalid a marriage which according to their conscience is valid, or conversely. Therefore one thing remains, namely that the State regard only the civil effects of the matrimonial contract.

818. (B) The latter part is declared and proved, namely that the civil power can establish laws concerning the temporal and separable effects of marriage, for example dowries, inheritances, and generally possessions of temporal goods which follow from the marital contract. (a) It can prohibit, not indeed under penalty of nullity, but under other penalties, for example pecuniary fines, loss of civil rights, that marriages be made unless those conditions are observed which the public good requires, for example that minors not contract without the consent of parents, that soldiers not marry except by permission of military authority, etc. (b) It can also deny to marriages prohibited by it the recognition of certain civil effects, for example recognition of dowry, of the right of succeeding in the privileges of the father, where such privileges are acknowledged, etc. (c) It likewise has the right of registering marriages and of considering this registration as legal proof of the existence of the aforesaid marriage, although from equity it has been received that this proof can be supplied by an equivalent one, if the legal one is lacking. The reason why the State can establish all these things is that on the one hand these do not affect the substance of the contract, but are accessory to it, and on the other hand the civil power can determine concerning matters of this kind whatever the public good requires; for it least of all can be denied that all those things which we have enumerated can contribute to the good of society.

It is nevertheless disputed among theologians whether the State can deny to children born from marriages in themselves valid, but prohibited by civil law, civil legitimacy and the right of succession to the paternal inheritance by intestacy. The reason for doubting is that these two rights are partly from nature, partly from civil law. Yet all acknowledge that denial of these rights is foolish and cruel, since there are other more efficacious penalties for impeding those marriages, and it is not expedient to punish in children the offenses of parents.¹

¹ Cf. de Angelis, op. cit., p. 43 sq.; Palmieri, th. 31.

COROLLARY ON THE RIGHT OF CIVIL AUTHORITY OVER THE MARRIAGE OF INFIDELS

819. Some theologians think that the State does not have power to make laws concerning the marriages of infidels, because these, although they are a mere contract, bear something religious before themselves, and moreover it is greatly to be feared that the State, if a power of this kind is conceded to it, may transgress just limits and invade the sanctuary of the family and of religion.²

² Thus Perrone, *De Matrim.*, II, 439 sq.; Feije, *de Impedimentis*, n. 67.

The common opinion, however, holds that this power belongs to the secular prince, so that he can establish diriment impediments for the common good. (a) For this was openly declared by the Sacred Congregation de Propaganda Fide in an Instruction which was issued in the year 1821:³ "Although among infidels marriage is true, nevertheless it can be referred only to the office of nature and of the community, and therefore is plainly to be moderated by natural and civil law. It follows from this that secular princes, whether faithful or infidel, retain the fullest power over marriages of their infidel subjects, so that, by impediments being imposed which are not contrary to natural and divine law, they may rescind the same completely not only as to civil effects, but also as to the conjugal bond." This was also confirmed by several decisions of the S. C. P. F. and of the Holy Office.

³ Ap. *Collectanea*, n. 1447, with note. Cf. Resemans, *De competentia civili in vinculum conjugale infidelium*, Rome, 1887; Cavagnis, l. c., n. 185; Gasparri, op. cit., n. 287 sq.; Sasse, II, p. 470.

(b) For princes can determine all those things which pertain to the common good of civil society, provided that the matter of which there is question, as being sacred, has not been withdrawn from their authority. But it especially concerns civil society that there exist a certain norm constituted by public authority, according to which marriages are rightly contracted; for by the law of nature this was not sufficiently determined in certain circumstances. Moreover, the marriage of pagans, although in some regions it is accidentally consecrated by some religious rite, nevertheless is not a sacrament, nor was it subjected by Christ to the authority of the Church, since the Church vindicates to herself no direct right over marriages of this kind. Therefore civil power can make laws concerning this matter. Nor indeed can the right of princes be denied because they can abuse it; otherwise, how many rights would remain untouched? Nor ought we to be wiser than the Roman Congregations themselves.

ARTICLE II. ON THE CELEBRATION OF MARRIAGE

We shall speak: 1° of the preliminaries to the celebration of marriage; 2° of the celebration itself.

SECTION I. ON THE PRELIMINARIES TO THE CELEBRATION OF MARRIAGE

820. Here we shall treat of those things which are premised for the licit and worthy reception of the sacrament: 1° of espousals, which are sometimes, although not necessarily, premised to nuptials; 2° of the examination of the spouses, by which the pastor inquires whether they are able for marriage; 3° of the proclamation of banns, which regularly ought to precede marriage; 4° of the consent of parents; 5° of the dispositions necessary for the worthy reception of the sacrament.

§ I. ON ESPOUSALS AND THE PROMISE OF MARRIAGE

Division:

¹ St. Thomas, *Supplement*, q. 43; Sanchez, lib. I; Reiffenstuel, lib. IV, tit. I; Schmalzgrueber, lib. IV, tit. I; St. Alphonsus, n. 831-878; Carriere, n. 360-374; Kenrick, n. 1-27; De Angelis, lib. IV, tit. I; Santi, lib. IV, tit. I; Bangen, tit. I; Heiss, p. 44-54; Ballerini A., n. 1-386; Gasparri, I, n. 1-120; Lehmkuhl, n. 657-672; De Becker, p. 7-21; Genicot, n. 440-447; Noldin, n. 34-59; Wernz, op. cit., n. 84-126; Esmein, *Le Mariage en Droit can.*, Paris, 1891, t. I, p. 139-187.

On the nature of espousals.

On the effects of espousals.

On the dissolution of espousals.

On the manner of acting of pastors concerning espousals.

I. ON THE NATURE OF ESPOUSALS

821. 1° Notion. (A) Before the promulgation of the Code, only a bilateral or espousal promise was acknowledged in ecclesiastical law. But from the Code² a promise, whether unilateral or bilateral, is acknowledged, and the same canonical value is attributed to each, provided that the same formalities are fulfilled in each case.

² Indeed "a promise of marriage, whether unilateral or bilateral or espousal, is null for each forum, unless it has been made by a writing signed by the parties and either by the pastor or the local Ordinary, or by at least two witnesses." Code, c. 1017.

A promise of marriage is an internal, free, and externally manifested promise, by which one party toward the other, or each party toward the other mutually, obliges himself or herself from justice to contract future marriage between themselves.

(B) Espousals are premised to marriage, not indeed necessarily, but fittingly: (a) so that the contract of marriage may be entered more maturely, namely with mutual knowledge of the character and morals of each spouse; and so that the parties may dispose themselves more perfectly for receiving the grace of the sacrament; (b) so that impediments may be detected more safely, if any are present; (c) so that honorable relations between the spouses may more easily be fostered, and thus wandering and dangerous loves may be warded off.

The use of espousals, which flourished among the Hebrews, Greeks, and Romans, is most ancient in the Church, as is clear from the Council of Elvira (305), which strikes with canonical penalties those who break espousals.¹

¹ Elvira, can. 54, ap. Bruns, t. II, p. 9.

822. 2° Conditions necessary for the validity of espousals.

The general principle is that those conditions are required which are necessary for a valid contract; namely, the promise of future marriage must be: true, free, externally manifested, between determinate persons and persons able by law.

823. (A) True, that is, with the intention of gravely obliging oneself from justice, and therefore with that advertence and deliberation which is required for mortal sin.

Hence if the promise is made without sufficient advertence (which rarely happens today, since it is made in writing) or without internal intention, by feigning consent, or in jest, it is not valid, because true consent is lacking. Nevertheless one who promises fictitiously is held to repair the damage inflicted on the other.

824. (B) Free, and therefore immune both from substantial error and from grave fear; for since a grave obligation is induced by espousals, it cannot be contracted without the free assent of the will. Therefore whatever destroys liberty relative to marriage likewise takes it away relative to espousals.

825. Some indeed contend that espousals entered from grave fear are only rescindable, and not null by that very fact, provided that it is established that the consent was truly internal; but, since here there is question of a contract requiring full liberty, we think, with St. Alphonsus (n. 844), that they are null in this case.

826. (C) Externally manifested, and indeed, if there is question of Catholics, according to the norm of the decree *Ne temere* and of the Code, "by a writing¹ signed by the parties, and either by the pastor, or by the local Ordinary, or by at least two witnesses. But if each party or either party does not know how to write, this is to be noted in the writing itself; and another witness is to be added, who, with the pastor or local Ordinary, or with the two witnesses of whom above, signs the writing."

¹ This or a similar formula can be used:

On the 15th day of May 1913, before me, pastor of the church N... in the diocese X, there appeared A. C. Boileau, son of N. and N., and D. R. Lenoir, daughter of N. and N., who declared that they wished to enter true espousals between themselves; namely, A. C. Boileau promised that he would take D. R. Lenoir as wife; and she promised that she would accept A. C. Boileau as husband.

Witnesses of this promise, besides the undersigned pastor, were: J. B. M. (whose domicile is inscribed) and F. R. S.

There are indicated there the place, day, month, and year, and afterwards the pastor, spouses, and witnesses sign the writing.

You will find another Gallican formula in *Ami du Clerge*, May 1, 1913, p. 880.

This form is so necessary for validity that, if it is lacking, immediately, without any declaration of a judge, espousals deservedly are held as null in each forum.² - Already from the response of the Sacred Congregation concerning Extraordinary Affairs, November 5, 1901, it had been declared that in Spain and in Latin America espousals celebrated without a public writing are invalid even in the internal forum.

² Code, c. 1017, § 1.

The form required is: (a) A writing signed by the parties; but any writing suffices, even one written previously and separately, composed by anyone whatever, indeed a formula printed in type, provided that there is clearly expressed there the mutual promise of nuptials between determinate persons, whether absolute or conditioned. For validity it is required that the day, month, and year be designated; but not the place, although this is altogether expedient, so that the authenticity of the act may more easily appear. - But the writing ought to be signed by the parties, that is, by the contracting parties themselves, if they are able to write; but if each party or either party does not know how to write, this is to be noted in the writing itself, and another witness, besides those of whom below, is to be added, who signs the writing.

(b) The writing is moreover signed by the pastor of the place, or by the local Ordinary,¹ or at least by two witnesses. - Now competent is the pastor of the place where the act is made, or, where parishes have not been canonically erected, the priest to whom the care of souls has been committed. But the local Ordinary is anyone having ordinary jurisdiction or jurisdiction equivalent to ordinary jurisdiction in the external forum; thus the Supreme Pontiff for the whole world, the Bishop in his diocese, an Abbot nullius or Prelate, an apostolic Vicar, an apostolic Prefect, a capitular Vicar while the see is vacant, the legitimate administrator of a diocese or apostolic Vicariate, the Vicar General of a Bishop; - but not Cardinals in their titles, nor nuncios or apostolic delegates, unless these have obtained special faculties. - But the Ordinary and the pastor cannot validly delegate another priest, even a vicar delegated to the universality of matrimonial causes,² to espousals, as is clear from response V, March 28, 1908. (c) But suitable witnesses can be any persons who are able to testify and are able to subscribe. (d) According to a recent decision of the Sacred Congregation of the Council, July 27, 1908, ad I, for validly entering espousals, the parties are held to sign the writing in one context with the pastor or Ordinary, or with two witnesses; and therefore the witnesses ought to be present while the parties sign, so that they are witnesses of the contract itself, as is customary in writings in which there is the force of a public document; nor does it suffice that a writing, signed by one party with the pastor or with two witnesses, be sent to the other party, who in turn signs with the pastor or with two witnesses.

¹ S. Cong. Concil., March 28, 1908.

² Fournernet, *Le Mariage chrétien*, p. 51.

Corollary: concerning espousals between absent persons. From what has been said it follows that espousals cannot be made between absent persons by letter, or by a writing signed at a different time by the parties, as formerly; and deservedly, lest a way be opened to frauds. But they can be contracted through a procurator specially designated for contracting espousals with such a determinate person: before the required witnesses he will sign the writing together with the other party; nevertheless he would act invalidly if meanwhile the mandator had revoked his consent even internally.

827. (D) Between determinate persons; therefore if someone promises marriage to two or three sisters, saying, *I pledge that I will marry one of you*, the espousals are not valid, because the person is not sufficiently determined.

828. (E) Between persons able by law, that is, who are able to contract marriage both validly and licitly. For a promise concerning a thing which is not in the power of the one promising, or

which cannot be furnished by him without sin, cannot be valid; for example, espousals contracted by one who had already validly promised to marry another person are null, even if the second espousals were confirmed by an oath.

(a) Now infants before the completion of seven years are not able. According to the common opinion, they are able after seven years have been completed; but if they contracted espousals before puberty,¹ they can withdraw from them after puberty has been attained. Besides, since discretion of mind and deliberation are required for the validity of espousals, if they are contracted long before puberty, they will often be invalid. - And surely it is very rarely expedient that they be entered at a tender age, or even immediately after puberty has been attained; for it is fitting that a long time not intervene between espousals and marriage, since otherwise the spouses are exposed to indulging excessive familiarity.

¹ Males juridically attain puberty when the fourteenth year has been completed, females when the twelfth year has been completed.

(b) Moreover, those who are bound by a diriment or prohibiting impediment are not able, unless they have sought a dispensation; but they are doubtfully able before the dispensation has been obtained. (See below, n. 830.)

829. 3° On espousals entered under condition. In a general way, the principles set forth above (n. 698 sq.) concerning conditioned consent are valid here. Yet certain special difficulties must be solved here.

(A) On espousals contracted conditionally between persons laboring under some impediment. (a) Espousals entered with an indispensable impediment are certainly not valid, that is, one in which the superior cannot or does not usually dispense, or also when in the case a just cause for dispensing is lacking: for then the condition is impossible or unreasonable; moreover, there is no obligation to the impossible.

(b) Espousals entered with the intention of contracting marriage at the time when the impediment has ceased, either of itself or from the very will of the contracting parties, without dispensation, are certainly valid; for example, I promise to marry you as soon as the vow of chastity, emitted for two years, has expired, - or as soon as you have embraced the Catholic religion.

(c) It is certain that espousals are valid if, after a dispensation has been obtained, the espousal consent is renewed either explicitly or implicitly, for example by consenting to the publication of banns: for then it takes place between persons able by law.

830. (d) But if the consent given under this condition, "if the superior shall dispense," has not been renewed after the dispensation has been obtained, it is disputed whether the espousals are valid or not at that instant at which the dispensation is granted. The opinion affirming seems more probable, provided that the consent of both still perseveres; for here there is question of an honorable and possible condition; now the general principle is that contracts entered under such a condition are valid as soon as the condition is verified, without any renewal of consent. Nevertheless, since some probably affirm that espousals in this case are invalid, as being

celebrated at a time when the contracting parties were not able in the present, the obligation of standing by the promises cannot be urged, but only advised.

831. (B) If espousals are entered under a base condition, for example of having intercourse, they are indeed not valid before the sin has been committed, since no one can oblige himself to sin; but, once intercourse has been had, there is already an obligation of contracting marriage, not indeed from the promise, which is certainly invalid as not given in writing (can. 1017, § 1), but by the force of the unnamed contract *facio ut facias*: for the woman did not furnish access to her body except on that condition that marriage would be celebrated. But if, because of various circumstances, nuptials are morally impossible, some compensation is owed to the woman.¹

¹ The civil law concerning this matter is not the same in all regions; in some the injured party has a right to exact marriage, as in several States of America; in others only to compensation, as in France, not indeed from law, but from jurisprudence; cf. Baudry-Lacant., t. I, n. 484.

832. (C) If espousals are contracted under penalty, that is, under that condition that a sum of money be paid if marriage is not entered, it is disputed whether this condition is valid. - Now all admit that the penalty is not to be paid by him who justly withdraws from the contract: for penalty supposes a delict. But if someone unjustly withdraws, some affirm that he is held to pay the money; for the matter holds itself thus when earnestes are handed over; moreover, between earnestes and money to be paid there is no substantial difference; - yet many deny this, because a stipulated penalty diminishes the liberty of marriage: and this harms the public good; nevertheless an exception is given when the penalty is to be paid by an outsider, because this stipulation harms liberty less. - In practice, while the controversy stands, the confessor cannot compel one unjustly withdrawing to pay the penalty.
833. (D) Sometimes espousals are entered under earnestes; earnestes are, as it were, a pledge which the spouses hand over to one another under this law, that, if marriage does not follow, the one unjustly withdrawing loses what he gave and is held to return what he accepted. A condition of this kind seems sufficiently just, and renders young persons more cautious in promising marriage; hence it is licit and begets obligation. - But it is disputed whether a stipulation concerning earnestes to be paid double or quadruple is valid; since this does not differ from a contract under penalty, the same must be said of it as concerning a penal condition attached to espousals.

Gifts which the spouses hand over to one another, and especially the man to the woman, differ in some way from earnestes. When they are not of great value, regard being had to the fortune of the contracting parties, they seem to have been given absolutely, and therefore are not to be restored if the espousals are dissolved. But if they are of great price, and given with regard to future marriage, regularly they are to be returned when marriage does not follow, because they were given under condition; nevertheless they can probably be kept by the faithful party, if the other party withdraws unjustly, as compensation for fidelity not observed.

II. ON THE EFFECTS OF ESPOUSALS

Two are enumerated: -

834. 1° The obligation of marrying at the opportune time. (A) A certainly valid promise of marriage, whether unilateral or bilateral (espousals), obliges under grave sin to entering the promised marriage, unless a just cause of dissolution is present. For since it is a contract, it obliges each party from justice or at least from fidelity (when the promise is unilateral); and indeed under grave sin, especially if it is bilateral, since the object of the contract, namely marriage, is a grave matter. - Hence one withdrawing without just cause not only sins, but also from justice is held to repair the damage inflicted on the other.

It was said certainly valid; because if they are doubtful with doubt of fact or of law, the obligation is not to be urged, according to all, since obligations ought not to be imposed unless they are first proved.

835. (B) As to the time at which this obligation must be fulfilled, (a) if it has been fixed in the contract itself, this is to be stood by, unless a just cause of delay intervenes; but if it has not been determined, the promise must be fulfilled according to the custom of the region, by the judgment of a wise man, or when the other party has reasonably demanded it.¹ - If a difficulty arises between the spouses, the ecclesiastical judge can establish a term, and when this has elapsed, the one who does not wish to marry by that very fact renounces his or her right, so that the other party recovers his or her liberty.

¹ "Let Bishops and pastors take care that marriages not be delayed longer than a year after espousals have been entered." S. C. Prop. Fid., April 13, 1807, ap. Gasparri, n. 68.

(b) If one party should unjustly refuse to enter marriage, he or she should at most be admonished by the ecclesiastical judge rather than compelled by censures. Moreover, "from a promise of marriage, although it may be valid and no just cause excuses from fulfilling it, there is not given an action for seeking the celebration of marriage; nevertheless one is given for the reparation of damages, if any is owed."¹

¹ Code, c. 1017, § 3.

(c) When espousals have been entered under an honorable and possible condition, the parties are held to wait for the event of the condition; as soon as the condition is fulfilled, they pass into absolute espousals, provided that neither party has revoked consent, except perhaps in the case in which the condition was "if the superior shall dispense," as was said above, n. 830.

836. 2° The obligation of omitting those things which can impede the future marriage, but especially carnal intercourse with a third person; for espousals give an initial right to the body of the other (a right to the thing, not in the thing), which is violated by intercourse with another person.

Hence fornication in spouses probably takes on a special malice, especially if it is committed by the woman, who is rendered much worse from it. Yet since the contrary opinion does not lack probability,² the burden of confessing this is not to be urged, unless the betrothed woman has conceived and introduces another's offspring into the family of the future husband.

² Cf. Lugo, *de Paenit.*, disp. XVI, n. 178; St. Alphonsus, n. 847; D'Annibale, n. 512, not. 46.

837. Until Pentecost 1918 espousal promises induced a twofold impediment: namely a prohibiting one with any other person, and the diriment impediment of public honesty. Each has practically been abolished.³

³ Code, tit. VII, cap. III and IV.

III. ON THE DISSOLUTION OF ESPOUSALS

Espousals are dissolved not only by death, as marriage is, but also by various causes, among which are enumerated: -

838. 1° Mutual consent of the betrothed; for in contracts which depend on the will alone, the rule of law is applied: by whatever causes a thing is born, by the same it is also dissolved. This is true also of espousals confirmed by an oath; for the oath which is annexed to them is emitted under this tacit condition: unless it is remitted by the other party. Yet the consent ought to be free, just as the espousal consent itself, and therefore extorted neither by deceit, nor by force, nor by fear.

If espousals were entered before puberty, they are prohibited from being dissolved before the years of puberty, lest they be contracted and dissolved rashly; but as soon as either betrothed person has attained puberty, he or she can withdraw from the espousals, without waiting for the other, because a contract entered in tender age lacks firmness. But if within three days after attaining puberty and knowledge of the aforesaid privilege, the betrothed person does not declare before a judge or witnesses that he or she rejects the contract, by that very fact he or she is judged to ratify the same.

839. 2° Violation of espousal fidelity through subsequent fornication, or a grave immodest act by which either betrothed person has become more vile in common estimation; then the innocent party, but not the other, can withdraw from the espousals. The reason is that fidelity is broken without penalty toward the same one who breaks fidelity.

Hence if the betrothed woman fornicates with another man, the betrothed man is no longer bound, for a double reason: because the betrothed woman broke fidelity, and has become notably more vile. Say the same if she has freely suffered herself to be touched shamefully by another man, at least frequently. - If the betrothed man fornicates, the betrothed woman is free to pass to other vows; but if he has committed immodest touches with a third person, only rarely and occasionally, the espousals are not dissolved, because from this he has not become much more vile in common estimation; otherwise, if frequently, so that it can deservedly be feared that he will violate conjugal fidelity. - If each fornicates, according to some, the espousal obligation remains, because a mutual compensation of the delict is had; according to others, the espousals are dissolved for each party; finally, according to a few, the betrothed man is freed from obligation, but not the betrothed woman, because the sin of the betrothed woman is more shameful than that of the betrothed man, and her condition has become more vile. - Therefore, as concerns practice, in these various cases the espousal obligation cannot be urged.

Spiritual fornication also is equated with carnal sin, namely apostasy and heresy, which suffice for freeing the innocent person from the obligation undertaken.

840. 3° The choice of a more perfect state, namely the reception of sacred order, religious profession even without a solemn vow, indeed very probably a simple vow of perpetual chastity in the world. For espousals are entered under the tacit condition "unless I shall have chosen a more perfect state." Yet the case is excepted in which the betrothed man had intercourse with the betrothed woman under a formal promise of nuptials, or inflicted on her damage which can be repaired only by marriage.

(a) As soon as one party has manifested the purpose of entering religion, or sacred orders, or a seminary so as to prepare himself for sacred orders, the other party can pass to other vows. If the former changes his mind and does not enter religion or orders, more probably his obligation, which was only suspended, now revives, provided that the latter has not contracted new espousals;¹ probably, however, this obligation does not urge, because it was extinguished by the sincere intention of choosing a more perfect state; hence if he had deceitfully affected this intention, he would not be freed from the obligation. - Certainly, however, one is freed who, having undertaken a more perfect state, has been legitimately dispensed from it.²

¹ Thus the Salmanticenses, cap. II, n. 21; St. Alphonsus, n. 870; Gasparri, n. 92, etc.

² Thus Bonacina, quest. I, punct. 5, n. 2; Ballerini P, n. 186, ed. 3.

(b) Although a vow of perpetual chastity emitted in the world more probably dissolves espousals in the internal forum, the ecclesiastical judge deservedly is accustomed to compel the one vowing to keep espousal fidelity, or to enter some religion; otherwise someone could easily feign a vow of chastity in order to exempt himself from the obligation undertaken.

841. 4° A notable change supervening, or antecedent though not known.

(A) The general principle is that espousals are dissolved by that change which, if known from the beginning, would have prohibited them; or which would render the marriage unhappy. The reason is that those entering espousals are judged to contract under the clause: things remaining in the same state; otherwise marriage would beget displeasure and would obtain unhappy effects.³

³ St. Thomas, *Sentent.* IV, dist. 27, q. 2, a. 3, ad 3.

(B) But this notable change can occur in goods of the body, of fortune, of the soul, or in external circumstances.

(a) In goods of the body, for example if a permanent chronic disease supervenes upon either party, as syphilis, paralysis, blindness; or a grave mutilation or deformity (especially in the betrothed woman); or if the betrothed woman, even unwillingly, has suffered intercourse, because from this she has become more vile.

(b) In goods of fortune: if each has become poorer, so that they cannot sustain the burdens of marriage; if only one has become much poorer, whether because he or she lost part of the goods or disinheritance is seriously feared, the other party can withdraw. But if each has become richer, the espousals are not dissolved. If one unexpectedly has become much richer, of itself the contract subsists; nevertheless if because of this other nuptials, much more opulent, offer themselves, it is probable that the party made richer is not held to stand by the espousals with the loss of a great gain; therefore in practice the obligation is not to be urged.

(c) In goods of the soul, if either party becomes prone to drunkenness, gambling, pleasure, impiety; or has committed an infamous crime, as homicide, grave theft, etc.

(d) In external circumstances, if enmities have arisen between the families; or if parents obstinately oppose the marriage; or if discord of minds exists between the parties; or if one party transfers domicile to a distant region, without the knowledge or against the will of the other party, and there is no hope that he or she will return shortly.

842. 5° Impossibility of entering marriage, namely when an impediment supervenes, whether diriment or impeding: for no one is held to the impossible.

(a) Marriage validly, although illicitly, contracted with a third person certainly frees the innocent party from every obligation. But it is disputed whether, as regards the other party, the espousals are dissolved or only suspended. St. Alphonsus (n. 875) holds as more probable that the espousals are only suspended; for he who contracts marriage does not become absolutely unable to fulfill the promise, but only for a time; hence, when the spouse has died, the obligation revives, if the innocent party is still free. Yet not a few probably judge the obligation to be wholly extinguished, since the marriage entered is of itself a permanent impediment lest the first promise be fulfilled. - Hence in practice the confessor cannot compel the widower or widow to stand by the promises, nor prohibit the other party from pursuing his or her right before an ecclesiastical judge.¹

¹ Thus Gury-Ballerini, n. 733, note (b).

(b) When an impediment supervenes without the fault of either party, the espousals are dissolved for each party, unless the betrothed man had inflicted on the other party damage which cannot be repaired except by marriage: for then he would be held to seek a dispensation from the impediment. - If the impediment is culpable on the part of each, the espousals are dissolved, and neither is held to ask for or accept a dispensation. - But if the impediment arises from the fault of only one, the innocent party indeed is freed from the obligation, but not the other, lest he or she derive advantage from his or her own iniquity; hence this party is held to seek a dispensation, if the other insists upon his or her right.

843. Corollary. On the obligation of manifesting defects which can stand in the way of marriage. (a) Defects which would render marriage invalid must be manifested to the other party, unless they are such that they can be corrected before the nuptials; otherwise injury would be done both to the sacrament and to the other party. Thus it is if someone labors under an indispensable diriment impediment, or under a defect the absence of which the other party exacts as a condition without which not, for example if the betrothed man expressly said: I contract with you, if you are a virgin, or the first-born of Peter.

(b) Likewise an occult defect must be manifested, if it suffices for dissolving espousals, or is such that it renders marriage harmful or disgraceful; for example an incurable contagious disease; pregnancy of the betrothed woman; defamation which, although now occult, shortly will become public. Say the same very probably, if it is prudently feared that, when the defect is detected, grave enmities and perpetual quarrels will arise, for example if the betrothed woman a little before had intercourse with another, although she is not pregnant. The reason is that he sins against justice who, by voluntary deception, inflicts grave damage on another.

(c) But if the defect does not render the nuptials harmful, but only less desirable (for example if the betrothed woman is falsely thought rich, noble, a virgin), it is not necessary to manifest it, because no one is held to defame himself or herself and deprive himself or herself of hope of marrying, when by silence he or she does not inflict grave damage on another.

844. 6° Dispensation granted by the Supreme Pontiff. If espousals are valid, and not dissolved by any of the causes mentioned above, the Roman Pontiff can dispense from the obligation of contracting marriage for a just cause, namely if, after all things have been diligently weighed, greater goods are expected from dispensation than from the fulfillment of the promise. This he can do as interpreter of divine law, insofar as the public good demands that an obligation not be urged which would obtain unhappy outcomes; nevertheless he is not accustomed to do this except after admonitions and threats that the espousal obligation be fulfilled, and when a grave cause urges, for example when a civil marriage has been contracted with a third person and the first betrothed woman does not wish to renounce her right.

But the Bishop does not enjoy this faculty, but only can judge whether the espousals are valid or not, whether there is a just cause of dissolving them or not.

IV. ON THE MANNER OF ACTING OF PASTORS AND CONFESSORS CONCERNING ESPOUSALS

845. 1° As to the dissolution of espousals. (A) If the cause of dissolution is certain and evident, the injured party regularly can enter new espousals or marriage with a third person, without recourse to the ecclesiastical judge: for neither by the law of nature, nor by the common canonical law, is it prescribed that in this case recourse be had to the authority of the judge.

It was said regularly; for an exception is given: (a) by the law of nature, if recourse to the judge is necessary for avoiding scandal, for example when the espousals are publicly known and the cause of dissolution is unknown; (b) by positive particular law, where diocesan Statutes prescribe this.

846. (B) But if there is some doubt and a complaint is made from one or the other side, the sentence of the Bishop is to be awaited. Now a threefold case can occur:

(a) If each party admits that the espousals were null, or at least dissolved, although the parents contradict, the betrothed are free from every obligation, because in a matter of this kind they are to be believed more than the parents.

(b) If each party confesses that the espousals were valid, and have not been dissolved, these things are to be established: if the betrothed man does not stand by the promises and the betrothed woman does not complain before the pastor or Ordinary, she is judged to renounce her right; - if she complains and demands that the promise be fulfilled, the pastor ought to admonish the betrothed man concerning his obligation: if this does not suffice, he will remit the case to the Ordinary, who likewise will admonish the betrothed man and set a time limit; when this has elapsed uselessly, the betrothed woman will be free; nevertheless he will not coerce him to the nuptials by censures, according to the new discipline, as was said above, n. 835, (b).

847. (C) He who without just cause withdraws from espousals, or by his own fault furnishes a cause for withdrawing, is held to repair the damage thence brought upon the other: whether positive, namely the expenses made in view of the future marriage; or negative, from the fact that, for example, the betrothed woman cannot so easily find another man.

848. 2° As to the visits of the betrothed.¹ Pastors and confessors ought to take care that the visits of the betrothed and of those in love not become a proximate occasion of sin. Visits of this kind are not *per se* illicit; for no one is held to marry an unknown person, but can and generally ought for some time to try what character, what morals, and what qualities he or she is endowed with; otherwise, once marriage has been entered, dissensions, quarrels, and divorces could arise. But since those frequent visits and conversations easily are an occasion of sins, whether internal or external, because of the innate frailty of man, certain cautions are to be suggested to penitents.

¹ Sanchez, lib. IX, disp. 46; St. Alphonsus, n. 452, and *Praxis*, n. 65; Konings, n. 1454; Aertnys, l. VI, n. 340-344; Ciolli, I, n. 95; Berardi, *De occasionariis*, n. 244-261; St. Francis de Sales, *Introduction*, IIIrd Part, ch. 17-22; Wood-Allen, *What a Young Woman ought to know*, Philadelphia, 1898, p. 247-257.

(a) Visits of this kind, especially frequent ones, are licit only for those who can and wish to enter marriage within a reasonable time, namely within a year; for since they are made in view of marriage, and are not without danger, they cannot be permitted unless there is a founded hope of celebrating the nuptials shortly.

Hence generally they are not licit when they take place between persons wholly unequal, since there is no hope of marriage; or between those who can marry only after a long time; or when already from the beginning the young man solicits the girl to sin, because he seems to be impelled by lust rather than by the hope of an honorable marriage.

(b) Let the visits not be too frequent or too prolonged; especially let not a man alone with a woman alone remain for a long time, in places removed from the sight of others, at night: for such a manner of acting, as experience proves, often excites lust, induces excessive familiarities, stimulates depraved motions of the flesh, and also foul thoughts and desires. - Hence, if at some time they are alone together, let no more signs of benevolence be shown than are usually offered before parents.

Wherefore parents themselves are to be admonished not to leave the betrothed for a long time; and deservedly on this matter Ballerini says:¹ "Therefore with parents and especially with mothers one must deal most severely, and the grave obligation of this watchful custody and caution must be urged; to this there ought to impel not only conscience, but also the fear lest daughters, once corrupted, dishonored in the paternal home, grow old."

¹ Gury-Ballerini, n. 413, note near the end.

849. (c) Embraces and kisses had as a sign of benevolence, in an honorable manner, according to the custom of the country, for conciliating and fostering mutual love in order to marriage, are *per se* licit; for the end is honorable, and besides these are honorable signs of love.

But pressed kisses and kisses rather often repeated are not without danger; and immodest touches are not more licit for the betrothed than for the unmarried. Therefore concerning this, younger

persons are to be cautiously admonished, especially girls, who because of the innate sense of modesty more easily shrink from these familiarities, that they carefully ward off whatever passes beyond the limits of decency; and all the more because they are shortly despised by their betrothed if they show themselves too easy in this matter.

(d) In order that these dangers may be removed more efficaciously, the betrothed are to be gently induced to the frequent reception of the sacraments: for strengthened by sacramental grace and the admonitions of the confessor, they will more easily flee the danger of sinning; and if, because of human frailty, they shall have sinned, they will immediately rise, and by using the means which a wise confessor will suggest, they will avoid worse delicts.

§ II. ON THE EXAMINATION OF THE BETROTHED

Before marriage is celebrated, the nuptial banns must be proclaimed, and the examination of the betrothed themselves must precede the banns, by which the pastor can know whether anything stands in the way of the valid or licit celebration of the marriage.

¹ Benedict XIV, Constit. *Nimiam licentiam*, May 18, 1743; Bangen, tit. II, p. 1-26; Scavini, III, n. 937-938; Joder, *Formulaire Matrimonial*, pp. 4-23 and 39-49; Haine, q. 34; Gasparri, n. 126-148; id., *Des Procès d'état libre*, ap. *Canoniste*, 1890, pp. 62; 155; 296 sq.; Konings, n. 1542-1544; Lesêtre, *La Confession des futurs mariés*, ap. *Revue du Clergé français*, t. XXX, March 1902, p. 5-23.

850. 1° The obligation of this investigation is established: (a) from the Ritual itself,² where it is declared that the pastor ought to inquire "who and what sort of persons they are who wish to contract Matrimony; whether there is any canonical impediment between them; whether they wish to contract spontaneously, freely, and according to the honesty of the sacrament, etc."; (b) by the authority of Benedict XIV, who in the Constitution *Nimiam licentiam*, n. 10, has these words: "The burden has likewise been enjoined upon the proper pastor, that before the announcements concerning a marriage to be entered are publicly made in church, he himself should strive to explore both the betrothed man and the betrothed woman separately, cautiously, and, as is said, in the ear, whether by their own will, spontaneously and freely, and with true consent of mind, they are mutually joined in marriage"; (c) from can. 1020, § 1; (d) from the very office of pastor, whose part it is to care that the sacrament of Matrimony be administered not only validly, but also licitly and worthily; but he cannot accomplish this unless he questions the betrothed themselves: for the knowledge which is obtained from others often is insufficient, especially when there is question of occult impediments, or of the subjective dispositions of the parties.

² *De Sacram. Matrimonii*, n. 1.

851. 2° The object of this investigation is threefold: concerning the free state of those about to marry; concerning the impediments which can stand in the way of their marriage; concerning Christian doctrine, in which they must be instructed.

(A) On the free state. (a) Formerly by common law, when the betrothed or their parents notified the pastor concerning the marriage to be celebrated, he had to declare that two witnesses were to be presented for each party, known and suitable, who would depose concerning the free state of those about to marry, that is, would testify that they were immune from every matrimonial bond.

(b) But in practice these things have gone into desuetude in most regions. Now the pastor is held: 1) to exact the testimony of baptism, unless baptism was conferred in his own territory;¹ 2) in the better manner in which it can be done, to inquire concerning the free state of the betrothed, especially of outsiders, from whom testimonial letters will be required, signed by the pastor of the domicile or quasi-domicile, and of wanderers, for whom recourse will be had to the Bishop.² Otherwise it could happen, as in fact it does happen especially where divorce prevails, that the marriage is invalid because of the impediment of ligamen. Nevertheless it is not necessary to have recourse to the Bishop, if there is question of those who, having left a parish, dwell for a time in another parish of the same place, because these are not properly wanderers.

¹ Code, c. 1021, § 1 and 1103, § 2 and 3.

² Code, can. 1029, 1032.

852. (B) On other impediments. The pastor must furthermore prudently investigate whether any canonical impediment, prohibiting or diriment, intervenes between the contracting parties or not.

Therefore he will question the betrothed man and the betrothed woman separately and cautiously: (a) whether by their own will, spontaneously and freely, with true consent of mind, they wish to be joined in marriage; (b) whether they are conscious of any impediment of consanguinity, affinity, etc.; (c) whether they have given fidelity or a pledge to others; (d) whether they have obtained or at least sought the consent of the parents; (e) whether they have satisfied, or are prepared to satisfy, those things which are required by civil law.³ - The manner of instituting this questioning is left to the prudence of the pastor, and must be different according to the different condition and character of the persons.¹

³ Cf. Code, can. 1019, 1020, 1029, 1030, 1034.

¹ You will find a formula of questioning at Joder, op. cit., p. 8-10.

The right of questioning the betrothed belongs to the proper pastor; if the betrothed belong to different parishes, each pastor can question his own subject; nevertheless it is better that the pastor who assists at the marriage (generally the pastor of the betrothed woman) examine both, if they are not too distant from his church.

If from this investigation some public impediment is detected, one cannot proceed to the publications except after a dispensation has been obtained.² - But if the impediment is occult, the pastor will not suspend the publications, lest perhaps from this it become public, but will immediately seek a dispensation from the competent authority.³

² Code, c. 1031, § 2, n. 2.

³ Code, c. 1031, § 2, n. 1.

853. (C) On Christian doctrine. Since, according to the Ritual (l. c.), the pastor must inquire whether "each knows the rudiments of faith, since they must afterwards teach these to their children." Hence the Holy Office decreed,⁴ in the year 1697, "that marriage is not to be proclaimed in church by pastors, unless beforehand they have found the betrothed sufficiently

instructed in the rudiments of the Christian religion." Benedict XIV likewise sanctioned this, l. c.

⁴ Ap. Benedict XIV, *De Syn. dioec.*, lib. VIII, cap. 14, n. 3. - Hence deservedly the Third Council of Baltimore says, n. 125: "An opportune examination should also be placed before the marriages of the faithful, by which the contracting parties are examined and instructed concerning religion."

The pastor therefore will take care that the betrothed sufficiently know: (a) the truths necessary by necessity of means and of precept, namely the Apostles' Creed, the precepts of the Decalogue and of the Church, the Lord's Prayer and the Angelic Salutation, the acts of faith, hope, charity, and contrition, and those things which regard the sacraments; for they are held to know these both for attaining their own salvation, and for instructing their children concerning this matter.

But if some are found who are dull of mind and of scanty memory, so that they cannot retain all these things, it suffices that they know and believe the principal mysteries of faith; but that they perceive in an imperfect manner the other things which are necessary by necessity of precept, provided they are prepared frequently to attend sermons, lest truths of this kind slip away altogether from their mind.⁵

⁵ Thus Benedict XIV, l. c., n. 6.

(b) The duties proper to the state, namely the indissolubility of the matrimonial bond, the mutual duties of spouses, their duties toward children to be begotten, the necessity of educating offspring in a Christian manner, etc.¹ The pastor can seize this occasion for admonishing the betrothed concerning certain vices to be avoided, concerning the dangers which are found in secret societies, concerning the evils which are accustomed to follow from drunkenness or the frequenting of taverns, etc. - Yet this must be done prudently, according to the different condition of those about to marry; which is especially true of the mutual duties of spouses; for nothing must be said which could furnish scandal, with attention paid not only to the customs of each region, but also to the age and authority of the pastor. Hence if the betrothed woman asks what is licit for married persons, it will be enough to answer that all those things are licit which are required for the generation of offspring; and if she desires more, let her be referred to her mother or to another person of proved virtue, adding nevertheless that doubts which arise concerning the liceity of certain acts must be set forth to the confessor.

¹ You will find a form of examination and instruction at Joder, p. 10-24.

Besides, when it is established that the betrothed are well instructed, the obligation of questioning them concerning the truths of faith or the duties of their state does not urge so strictly, and the examination can be carried out briefly.² Nevertheless, when the betrothed refuse to be taught Christian doctrine, they are not to be barred from contracting marriage.³ - Moreover, all are to be admonished that they prepare themselves for marriage by a previous confession, and not defer it to the very day of the nuptials; for thus occult impediments, if there are any, can be detected at an opportune time, and richer fruits are received from the sacrament.

² Sometimes the reading of certain books can be advised, in which the duties of spouses are chastely described; for example, Monsabré, *Conf. sur le Mariage*, rendered into English by Hopper, New York, 1890; F.-A. Vuillermet, *La Vocation au Mariage*, Lethielleux, 1913; Girardey, *Popular Instructions on Mariage*, New York, 1896; Taylor, *A Sure way to a Happy Marriage*, from the German of Sickingher.

³ Response of the Pontifical Commission for interpreting the Code, June 2-3, 1918.

§ III. ON THE BANNS, OR PROCLAMATIONS OF MARRIAGE

Division.

⁴ Reiffenst., lib. IV, t. III, n. 3-51; Schmalzgr., l. IV, t. III, n. 1-88; Salmant., cap. VIII, n. 71-107; St. Alphonsus, n. 989-1007; Carrière, I, n. 375-442; Kenrick, n. 127; Ball. P., n. 572-599; Konings, n. 1533-1540; Lehmkuhl, n. 673-677; Feije, n. 240-279; Génicot, n. 448-453; Noldin, n. 145-149; Gasparri, n. 149-194; Deshayes, *Questions pratiques sur le Mariage*, q. 56-90.

On the notion and obligation of banns.

On the circumstances of promulgation.

On dispensation from the law of banns.

On the revelation of impediments arising from the banns.

Scholion: on morganatic marriages and marriages of conscience.

I. On the Notion and Obligation of Banns

854. 1° Notion. Matrimonial banns (from the German word *bann*, public promulgation) are public promulgations which are sent before a future marriage, especially for this end, that impediments, if there are any, may be detected.

Already in antiquity the practice prevailed of approaching the pastor before the nuptials, so that he could inquire whether there was any impediment or not. Thus Charlemagne, in the year 802, ordered that nuptials not be celebrated before the priests, with the elders of the people, had diligently inquired into the consanguinity of those being joined. Likewise in many places espousals were contracted publicly, so that the future marriage might become known to all: which was equivalent to banns.

But the manner of publicly announcing marriage in churches took its beginning in Gaul,¹ then in England; afterwards it was extended to the whole Church by the decree of the Fourth Lateran Council (1216), which the Council of Trent confirmed and enlarged. According to the Lateran Council, it suffices that the publications be made once; but three are required according to Trent. Therefore where Trent has not been promulgated as to the part which regards the banns, one publication strictly speaking suffices, although a threefold one often is more prudent.

¹ Thus Odo de Subiaco, Bishop of Paris, at the beginning of the thirteenth century, ordered that marriages be published in church, so that all the faithful could denounce to the episcopal court impediments which they knew.

855. 2° Obligation of banns. (A) Principle: The law of the proclamation of banns regularly obliges under grave sin both the pastor and those about to marry. For there is question of a law of grave importance, as is established: (a) from the very end of the law, which is manifold: that impediments, if there are any, may be more easily detected, and clandestine marriages avoided; - that children may not marry without the knowledge of their parents; - that the prayers of friends may be offered for the betrothed.

(b) From the Code (c. 1022-1030), which, although it does not renew the penalties previously enacted against violators of the law, nevertheless sets forth the matter so that from the context it is clearly established that the obligation of proclaiming the banns is grave.

856. (B) The principle is declared. This law obliges under grave sin even if the pastor knows otherwise that those about to marry are detained by no impediment; because the law is founded on the presumption of danger, and therefore does not cease in a particular case where in fact such danger is absent; for great inconveniences generally would follow if the application of the law were permitted to the judgment of pastors.

Certainly it is mortal to omit three publications, without dispensation; to omit only one would more probably be only a venial sin; indeed some think that the omission of two does not exceed venial sin, provided that the danger of a hidden impediment is removed by waiting several days before the nuptials are permitted, so that thus the faithful have time for denouncing impediments, if there are any. Nevertheless St. Alphonsus (n. 990) more probably teaches that the omission of two is a mortal sin.

It was said that regularly the banns are to be promulgated, because certain exceptions are given: -

(a) If the marriage cannot be deferred without great inconvenience, and a dispensation from the banns cannot be obtained from elsewhere, for example if a dying man wishes to marry his concubine: in this case, the sworn affirmation of the contracting parties suffices (can. 1019, § 2); (b) in marriages of princes, by universal custom, because they are so well known that an impediment, if there is any, can easily be detected; (c) in mixed marriages between Catholics and heretics, or between the faithful and infidels, announcements regularly are not made, lest marriages of this kind seem thus to be approved; nevertheless recently the Holy See declared that proclamations can be made in mixed nuptials which are contracted after dispensation has been obtained, with mention of the religion of the contracting parties nevertheless suppressed, if the Ordinary shall have judged them necessary for detecting impediments;¹ (d) in marriages of conscience (below, n. 871).

¹ Code, c. 1026. - Thus the Holy Office responded, July 4, 1874, "that proclamations can be made in the marriages of which there is question, insofar as they are contracted with apostolic dispensation, the religion of the contracting parties nevertheless being suppressed." Yet the S. Congregation adds that it is more expedient to dispense from the banns, if the freedom of state of the contracting parties has been made more certain from elsewhere, in order to avoid danger of astonishment or scandal. (*Collect. P. F.*, n. 1223; Gasparri, n. 621.) - According to the Statutes of the diocese of Baltimore, n. 55, proclamations should not be made except when, because of civil laws, they cannot be omitted; in which case they are to be made after Mass. Now the civil law requires them when those about to marry do not wish to pay money to obtain a license.

II. On the Circumstances of Banns

857. The manner in which banns must be promulgated is described by the Code in these words:²

"The publications of marriages must be made by the proper pastor." "The publications are to be made on three continuous Sundays and other feasts of precept, in church during the solemnities of Masses, or during other divine offices to which the people come in numbers." Four things are declared there: 1° the person promulgating; 2° the place where the banns must be promulgated; 3° the time; 4° the form of promulgation.

² Can. 1023, § 1, 1024.

858. 1° On the person promulgating. Banns must be promulgated by the proper pastor of the contracting parties, who can perform this either by himself or through another priest or cleric;

but not through a layman, except in a case of necessity, for example when, the pastor being absent, the only priest who is present to celebrate the sacred rite can in no way understand or speak the language of the parishioners (which sometimes happens in the United States of America, because of the multiplicity of languages which are used in various churches). Now the proper pastor is the pastor of the domicile or quasi-domicile;¹ but for wanderers, who lack domicile, the pastor of the place where they contract.

¹ Code, c. 94.

859. 2° On the place. The place where banns must be promulgated is the parochial church, or another taking the place of the parochial church, as is a vicarial or annexed chapel to which a territory is assigned; but not a small chapel, whether public or private, unless nevertheless in this particular case it takes the place of the church, and there is a great concourse of people there: for then the end of the law is obtained. - For the same reason, if on the occasion of a sermon, procession, or pious pilgrimage the people were gathered in a place distinct from the parochial church, the announcements could be made there, with the license of the Bishop acceding.

860. Here, however, it is asked whether banns must be promulgated in several parishes.

(A) General rules. (a) If each betrothed person has domicile or quasi-domicile in the same parish, and in that parish only, the publications must be made there only.

(b) But if the betrothed have domicile or quasi-domicile in different parishes, banns must be promulgated in each.

(c) If one or each betrothed has several domiciles, or domicile in one parish and quasi-domicile in another, announcements must be made in all these parishes, unless nevertheless the Bishop dispenses, or one domicile is principal and the other wholly secondary.

(d) "If a party has dwelt in another place for six months after attaining puberty, the pastor is to set forth the matter to the Ordinary, who according to his own prudence either shall require publications to be made there, or shall prescribe that other proofs or conjectures concerning freedom of state be gathered. If there is some suspicion concerning an impediment contracted, the pastor even for a shorter stay shall consult the Ordinary, who is not to permit the marriage unless first the suspicion is removed."¹

¹ Code, c. 1023.

(e) If the contracting parties, after the proclamations have been begun, leave their prior domicile and acquire a new one (which can happen especially as regards servants), it seems more consonant with the end of the law not to interrupt the announcements begun in the former place where the betrothed are known; nor will they have to be made in the new domicile, where they are scarcely known at all. Nevertheless the pastor of the new domicile has the right of assisting at the nuptials, as is said below.

861. (B) Special rules. From the Code: (a) the banns of minors² must be proclaimed both in the place of quasi-domicile, if they have one, and in the place where the parents or guardians

reside;³ but prudence requires that they not be announced without the consent of the parents or guardians,⁴ especially where civil law requires this consent.

² From the Code, both males and females are minors before the twenty-first year has been completed. (Can. 88, § 1).

³ Code, c. 93, § 1, § 2.

⁴ Code, c. 1034.

(b) The banns of soldiers are to be promulgated in the garrisons or places where they reside; and, in addition, in the domicile of the parents or guardians if they are minors, or, if they have become of age, in the parish where they resided before undertaking military service.⁵

⁵ In Gaul, soldiers cannot marry without the consent of the minister of war, or of the President of the corps to which they belong. Cf. Baudry-Lac., n. 528 and 540.

(c) The marriages of wanderers cannot be celebrated unless the pastor has obtained the license of the Bishop and has diligently inquired concerning their free state;⁶ yet this is not to be understood of those who wander about in the same city. The Bishop can also establish in what place the announcements must be made: generally they are made in the parish where the wanderers contract; but sometimes also in the place of origin, or where they have resided for a longer time, especially if there is doubt concerning their free state.

⁶ Code, c. 1032.

N. B. If doubts arise concerning all these things, the Bishop should be approached, who, since he is able to dispense from the banns, *a fortiori* can establish where the proclamations must be made.

862. 3° On the time. Banns must be promulgated (a) on three Sundays and other feasts of precept; but not on suppressed feast days, unless by license of the Ordinary, which can be given if on these days there is a great concourse of people.¹

¹ Which rule can be inferred from various decisions of the S. C. of the Council.

(b) On three continuous feast days, that is, with no feast day omitted; yet this does not oblige under grave sin, since it is not necessary for obtaining the end of the law, and it is free from every fault if a reasonable cause accedes. But if three feast days immediately follow one another (for example, Easter day and Monday and Tuesday after Easter), it is better to interrupt the announcements, so that the faithful can think about impediments for a longer time. Yet the pastor who promulgates the banns on three successive days cannot be blamed, provided that after the last one he waits a longer time, so that impediments can be manifested.

(c) During the solemnities of Masses, that is, during the parochial or conventual Mass. If nevertheless the pastor had omitted the last announcement at Mass because of forgetfulness, and the nuptials were urgent, he could proclaim the banns at vespers, or in another solemn act of religion, if there is a great concourse of people.²

² Thus from the Code, c. 1024.

Once the proclamations have been made, one is not immediately to proceed to the celebration of the marriage; but three days must be awaited "unless a reasonable cause demands otherwise,"³ so that time may be given to the faithful for revealing impediments, if any exist.

³ Code, c. 1030.

If the marriage is not celebrated within six months after the announcements have been made, according to the Code⁴ these must be repeated, unless it seems otherwise to the Bishop. Concerning this matter it is necessary to read the diocesan Statutes, which are varied for various regions.

⁴ Code, c. 1030, § 2.

863. 4° On the form of Banns. No special form was prescribed by Trent; therefore that form is to be observed which is found in the Ritual⁵ or in the diocesan Statutes. There must be expressed in the vernacular tongue the name and surname of the betrothed, and also of their parents, their native place and place of domicile. If there is question of widows or widowers, the name, day, and year of the death of the prior spouse are to be expressed; if a previous marriage has been declared null, or dissolved by the authority of the Holy See, this likewise must be made known; the same must be said if dispensation from some publicly known impediment has been obtained. Finally, the faithful are to be admonished concerning the grave obligation of manifesting impediments to the pastor, if they know any;¹ if a dispensation from some publication has been granted, this is to be manifested, lest perhaps the faithful, expecting another publication, not reveal an impediment at the opportune time.

⁵ "The announcements are to be made in this manner. During the solemnities of Masses let the pastor admonish the people in the vernacular tongue to this effect: Let it be known to all here present that N. man, and N. woman, of such or such family, and parish, God helping, intend to contract marriage with one another. Therefore we admonish each and all, that if anyone has known that there is some impediment of consanguinity, or affinity, or spiritual relationship, or any other impediment between them, which would mutually impede the marriage to be contracted, he ought to denounce it to us as soon as possible; and this we admonish the first time, if it shall have been the first; or the second, if it shall have been the second; or the third, if it shall have been the third announcement." Commonly a shorter form is found in the Statutes.

¹ Code, c. 1027.

But circumstances which can defame the contracting parties are to be carefully omitted; for example, if one is illegitimate, the parents are not to be named; if a woman had been a concubine, although commonly held as a wife, let her be designated under the name by which she is usually called.

Let the promulgation be made in a loud and intelligible voice; otherwise the end of the law is in no way obtained.

"The local Ordinary can for his own territory substitute for the publications the public affixing, at the doors of the parochial church or of another church, of the names of the contracting parties for the space of at least eight days, yet in such a way that, in this space, two feast days of precept are included." (Code, c. 1025.)

III. On Dispensation from the Banns

864. 1° Principle: Not only the Supreme Pontiff, but also the local Ordinary has the power of dispensing from the banns for a just cause. For Trent openly declares this (l. c.): "Unless the Ordinary himself shall have judged it expedient that the aforesaid announcements be remitted; which the Holy Synod leaves to his prudence and judgment." More explicitly the Code: "The proper local Ordinary, according to his own prudent judgment, can for a legitimate cause

dispense from publications, even those to be made in another diocese. If there are several proper Ordinaries, he has the right of dispensing in whose diocese the marriage is celebrated; but if the marriage is entered outside the proper dioceses, any proper Ordinary can dispense."¹

¹ Code, c. 1028.

Now under the name of Ordinaries of places come the Bishop, the Vicar General, the Vicar Capitular or Administrator for his own diocese; the Abbot and Prelate nullius for his own territory; Apostolic Vicars and Prefects, and those who, when the aforesaid are lacking, meanwhile succeed in governance² from the prescription of law or from approved constitutions. But pastors do not enjoy this power, unless they have been expressly delegated to it;³ and therefore if the Bishop denies dispensation, they cannot go against his decision. Nevertheless, "in dangers of death, if other proofs cannot be had, the sworn affirmation of the contracting parties, that they have been baptized and are detained by no impediment, suffices, unless contrary indications are present."⁴

² Code, c. 198.

³ In many dioceses of the United States of America, for example in Baltimore (Statut. n. 55), pastors can dispense from one proclamation, for a just cause, except in the case of wanderers; from two, where Mass is not celebrated every Sunday; from all, in those counties in which there is no church.

⁴ Code, c. 1019, § 2.

865. 2° For granting a dispensation, a legitimate cause is required, according to the prudent judgment of the Ordinary, as is established from can. 1028 already cited, - a greater one if there is dispensation from all, but a lighter one if there is dispensation only from one or two. According to St. Alphonsus (n. 1005), some are causes on account of which the Bishop is bound, but others on account of which he can dispense.

(A) He is bound to dispense as often as this is necessary for avoiding grave damage, common or private, spiritual or temporal; namely (a) if there is a founded fear lest the marriage be maliciously impeded, for example by a guardian or stepmother contemplating other nuptials; (b) if it is feared lest one party withdraw, especially in the case of defloration or espousals; (c) if either of the betrothed is at the point of death and wishes to legitimate offspring; (d) if one party is immediately about to depart into a distant region, and the marriage cannot be deferred; (e) if from the proclamations infamy would arise, or some other damage of soul or body, for example if those about to marry are already held by the community as true spouses, or if infamy threatens on the part of the deflowered betrothed woman.

(B) He can dispense: (a) if those about to marry would be exposed to the mockery of men, because, for example, they are very old, or very unequal in condition; (b) if it is morally certain that no impediment is present; wherefore dispensation is often granted to magnates, because, since they are known, impediments are more easily detected.

IV. On the Obligation of Revealing Impediments

866. 1° Principle: Whoever, certainly knowing that there is some diriment or prohibiting impediment between those about to marry, is held under grave obligation to reveal it, unless a legitimate cause excuses. This is certain.

This obligation arises: (a) from the very precept of charity, by which we ought to impede a grave evil of our neighbor insofar as it can be done; for from an illicit marriage a grave evil is born, namely the profanation of the sacrament; but from an invalid one graver evils proceed, namely concubinage, illegitimacy of children, etc.; (b) from the virtue of religion, which commands that we take precautions against irreverence toward the sacrament; (c) from the positive law of the Church, which, while it orders marriages to be announced, implicitly commands the faithful to manifest impediments known to them; which moreover is explicitly enjoined in the form of announcement such as is found in the Ritual (l. c.)¹ and in the Code, c. 1027.

¹ Besides, in some dioceses penalties are established against those not denouncing, for example in Baltimore an excommunication of *ferendae sententiae*. (Statutes, n. 57.)

867. 2° The principle is declared. It is said (A) whoever, whether he is from the parish, or from elsewhere, of whatever sex or age. Hence the contracting parties themselves are held to this: but if there is question of an occult impediment from which dispensation can be obtained, there is no obligation of manifesting it in the external forum; it suffices that it be declared to the confessor, so that he may seek dispensation.

(B) Certainly knowing; for if there is a mere suspicion arising from an uncertain rumor or from testimony which does not deserve faith, there is no obligation of manifesting the matter. Yet juridical proof is not required, but a well-founded persuasion suffices.

868. (C) Unless a legitimate cause excuses, namely: (a) grave damage or danger of grave damage either to the one revealing, or to a third person; for law does not oblige with so great an inconvenience.

Hence those are not held to denounce who prudently fear that, from the revelation of the impediment, grave dishonor or bodily damages threaten themselves or their own, or grave scandal would be caused, or the infamy of a third person; but one excused from denouncing ought, if he can, to impede the marriage from being contracted without dispensation. - But temporal damage or dishonor coming to the betrothed themselves from the revelation of the impediment does not excuse, because it is less than the spiritual damage which otherwise they would incur. Moreover, that their reputation may be spared, the betrothed themselves ought first to be warned privately; but if they spurn the warning, they ought to impute the defamation to themselves.

(b) The uselessness of denunciation, namely when no fruit is hoped from it, or when it is known that dispensation has already been sought. Some say that he also is excused who knows the impediment only from hearing, and does not remember from whom he heard it; but it is more advisable in this case to reveal the impediment, since this manifestation can be corroborated by other indications or furnish occasion for a serious investigation.

869. (c) The sacramental secret, or that which is committed to someone by reason of public office, for example to a pastor, physician, midwife, advocate, etc.; for the public good, which is preferred to the private good, demands that such a secret be altogether observed.

But if these persons have known the impediment from elsewhere - not by exercise of their office - they are held to reveal it, unless by acting thus they would come under suspicion of violating the

secret committed to them. Besides, all these ought privately to admonish those about to marry themselves concerning the existence of the impediment, and exhort them to manifest it; indeed the pastor can, without violation of the seal, and generally ought, secretly seek a dispensation.

But the confessor, who from the confession of a penitent detects a public impediment, ought to urge him to manifest the same to the pastor, or to grant permission to himself to seek dispensation; but if the impediment is occult, with the license of the penitent, he himself should secretly ask for dispensation.

But the natural secret, promised or committed (not however by office, as above), does not dispense from the obligation of denouncing; for from the secret being kept there would follow damage to an innocent third party, insofar as injury is brought upon one of the betrothed, and also damage to public right, insofar as injury is brought upon the sacrament; now a natural secret does not oblige with so great an inconvenience.

Moreover, the denunciation must be made at the opportune time, that is, before the marriage; indeed it is expedient that it be made as soon as possible, morally speaking, after the first promulgation of bans, so that either the nuptials may immediately be prohibited, or a dispensation obtained.

870. 3° On the manner of acting of the pastor in receiving revelations. The pastor, receiving a denunciation, (A) must weigh the value of the testimony: (a) by inquiring what sort of person the denouncer is, what authority he enjoys, whether he is moved by envy or only by love of the truth; (b) what sort of proofs he brings, whether full or half-full; (c) by questioning other witnesses, if it can be done; by approaching those about to marry themselves and their parents, so that he may see whether they are conscious of the impediment or not.

(B) When these things have been completed:

(a) In the case of a certain and indispensable impediment, he ought to admonish the betrothed concerning the impossibility of celebrating the nuptials; in the case of a certain and dispensable impediment, "if the impediment is occult, he shall carry out or complete the publications, and shall report the matter, withholding the names, to the local Ordinary or to the Sacred Penitentiary; if it is public and is detected before the publications have been begun, the pastor is not to proceed further, until the impediment is removed..., if it is detected after the first or second publication, the pastor shall complete the publications, and refer the matter to the Ordinary." (Code, c. 1031, § 2.)

(b) If there is doubt concerning the existence of some impediment, the pastor should accurately investigate the matter, by questioning under oath at least two witnesses worthy of faith, provided that there is not question of an impediment from the knowledge of which infamy would arise for the parties, and, if it shall have been necessary, the parties themselves also; if the doubt remains, he is not to assist at the marriage without consulting the Ordinary.¹

¹ Code, c. 1031.

(C) If only the pastor or Ordinary knows an impediment, without being able to prove it, it is disputed whether he can and ought to stand in the way of the marriage; the more common and safer opinion affirms this, unless a dispensation can be obtained; for here there is question not of a penalty to be inflicted, but of the gravest evils to be averted.

Scholion: On Marriages of Conscience and Morganatic Marriages.²

² Benedict XIV, Constit. *Satis Vobis*, November 17, 1741; *Quaest. Canon.* 397; *De Syn. dioeces.*, l. XIII, c. 23, n. 12 sq.; F. Mazzei, *de Matrimonio conscientiae*, Rome, 1768; Bangen, II, p. 50-52; Carrière, n. 440-442; Feije, n. 343-346; Rosset, II, n. 1193-1204.

871. 1° On marriages of conscience. (A) They can be defined as those marriages which, with the announcements omitted, are celebrated secretly before the proper pastor, or another delegated priest, and two witnesses, under this law, that they remain secret.

(B) The conditions that they be contracted licitly are recounted by Benedict XIV and the Code: (a) Let them not be celebrated without the license of the Ordinary,¹ nor permitted by the Ordinary except from a most urgent and most grave cause,² for example, for impeding the danger of concubinage; (b) let a diligent inquiry be made by the Bishop, so that it may be established that no impediment stands in the way, especially a prior ligamen; (c) for assisting at the marriage let the pastor of one or the other contracting party be deputed; or, if he is lacking, a priest endowed with doctrine and prudence; (d) when the marriage has been celebrated, let a written document be shown to the Bishop, in which the celebration is described with note of the place, time, and witnesses who were present; let the same be transcribed in a secret book secured with seals; (e) let the spouses be admonished that, if offspring shall have been born, they immediately write to the Bishop, who will describe the name of the infant and of the parents in the secret book, so that the legitimacy of the offspring may be established;³ (f) if they have not given notice concerning born offspring, the marriage must be divulged.⁴

¹ They cannot be permitted by the Vicar General without a special mandate. (Code, c. 1104).

² Code, c. 1104.

³ Code, c. 1107.

⁴ Code, c. 1106.

These things are besides to be noted from the Code: "The permission of the celebration of a marriage of conscience carries with it the promise and grave obligation of preserving the secret on the part of the assisting priest, the witnesses, the Ordinary and his successors, and also of the other spouse, when the other does not consent to divulgence."⁵

⁵ Code, c. 1105.

"The obligation of this promise, however, on the part of the Ordinary does not extend to the case in which either some scandal or grave injury toward the sanctity of marriage threatens from observance of the secret, or the parents do not take care that children received from such a marriage be baptized, or take care that they be baptized with false names expressed, without meanwhile providing to the Ordinary within thirty days notice of the offspring received and baptized, with sincere indication of the parents, or they neglect the Christian education of the children."⁶

⁶ Code, c. 1106.

872. 2° Morganatic marriages, or marriages *ad morganaticam*,⁷ consist in this: that a noble man, after the death of a wife likewise noble, marries another from a humbler order, with the condition added that both the woman and the children thence to be born can acquire nothing from that

marriage besides those things which are necessary for honorable support. Hence the wife and children are not fully admitted into the family of the man, nor do they obtain his nobility or inheritance; and under this respect marriage of this kind differs from marriage of conscience, by force of which the children have a right to the paternal inheritance.¹

⁷ *Morganaticum* arises from two Germanic words (*morgen*, *gabe*, morning gift), because the wife and children must be content with that gift which they receive from the beginning, as it were on the morning day of the nuptials; by some it is also called marriage of the left hand.

¹ St. Thomas, *Opusc. XXXVII, De Erudit. Principum*, l. V, c. 26-29; St. Alphonsus, n. 882-884; Rosset, t. V, n. 3546-3548.

§ IV. ON THE CONSENT OF PARENTS

873. State of the question. (A) It is certain that the consent of parents is not required for the validity of the sacrament of Matrimony; for Trent declared this, against the Protestants, striking 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."³ For children of a family, even minors, provided they are pubescent and enjoy the use of reason, have power over their own body in order to marriage, and therefore validly can, even against the will of their parents, hand this power over to others through marriage. Hence Trent did not wish to agree to the request of the King of France, who wanted marriages of children entered against the will of parents to be held as invalid.

² Sanchez, lib. IV, c. 23; St. Alphonsus, n. 849-850; Carrière, n. 443-452; Kenrick, 41-42; Gasparri, n. 485-488; Génicot, n. 514-516; Vantroys, *Étude historique et juridique sur le consentement des parents au mariage de leurs enfants*, Paris, 1899.

³ Sess. XXIV, *de Reformat. Matr.*, cap. I.

(B) Therefore the question is concerning the liceity of contracting marriage without consulting parents or against their will, and also concerning the mutual duties and rights of parents and children in this matter. Now St. Alphonsus (n. 849) sets forth four opinions: the first teaches that children of a family sin lethally if they enter marriage, whether parents have not been consulted or are unwilling;⁴ the second says that they are held under mortal sin to seek the counsel of parents, but not to follow it;⁵ the third holds that they sin only venially if they contract whether parents have not been consulted or are unwilling;⁶ the fourth distinguishes: if parents are trying to turn a son away from every marriage, with danger of incontinence, he is not held to obey; otherwise, if parents justly impede.⁷

⁴ Pontius, l. II, c. I, n. 26; Sylvius, *Supplem.*, p. 47, a. 6, concl. 4, etc.

⁵ Sanchez, l. IV, disp. 23, n. 10; Laymann, p. I, c. I, n. 14; etc.

⁶ Salmant., c. VI, n. 22; Sporer, n. 206; etc.

⁷ Lacroix, n. 570, with the authors there cited.

What seems more probable to us the following rules will declare.

874. Rule 1: *Per se*, minor children sin gravely who contract espousals or marriage with parents wholly unconsulted.

For such a manner of acting is opposed to the reverence due to parents, since it brings with it a certain contempt in a grave matter; and also to prudence, which demands that the counsel of parents be sought in a matter which, because of the affinity contracted, contributes to the temporal good, peace, happiness, and honor of the whole family.

It is said *per se*, because *per accidens* this omission is free either from every fault, or at least from mortal fault, according to various circumstances:

(a) There is no fault if there is a grave and just cause, for example if the son is far away, and cannot easily seek the counsel of the parents, or if it is prudently feared lest they unjustly impede the nuptials; in this case, however, one must beware of illusions.

(b) Likewise there is no fault if espousals are contracted under the condition that the parents consent, or with the intention and hope of obtaining their consent to the nuptials at a more opportune time.

(c) There will be only slight fault if it is prudently judged that the parents care little about this, because they are little solicitous concerning those things which pertain to the children, provided their own tranquillity is not disturbed. - Hence in practice attention must be paid to the customs of places and to the relations existing between parents and children.

875. Rule 2. *Per se*, children are not held, strictly speaking, to obey parents in order to marriage. For in all things which pertain to the choice of a state, they now do not depend on parents, but are truly of their own right; therefore, provided they have reverently sought the counsel of parents, they are not held, by the command of parents, to embrace the matrimonial state rather than the celibate state or religious life, nor to marry this person rather than that one; parents indeed can use persuasion in this, but not precept.¹

¹ Cf. St. Thomas, 2. 2., q. 104, a. 5; *Supplem.*, q. 47, a. 6.

Yet *per accidens* parents could command that a son or daughter enter marriage, if this were the only means for relieving their grave poverty; or forbid that a daughter marry a young man ruined in morals or impious; for in these and similar cases, children are already held to perform this, since parents do nothing except urge the fulfillment of a natural precept.

876. Rule 3. Parents *per se* sin gravely when they absolutely deny consent to children desiring to enter a suitable marriage. For thus they unjustly affect them with grave sorrow, stand in the way of their happiness, scatter seeds of discords, and expose the children to the danger of sinning basely.

It is said *per se*; because, if from the marriage to be contracted very grave scandals or hatreds are foreseen, because, for example, there is excessive inequality of the betrothed, or the union tends to the damage of an honorable family, they have a just cause of dissenting. Yet it is not sufficient, for denying consent, that one of the betrothed be of mediocre condition, since this can be compensated by other qualities.

Nor *per se* are parents excused from fault because of civil law, which in some regions grants them the faculty of denying consent;¹ for human law cannot confer privileges contrary to divine law.

Nevertheless some, because of civil law, are in good faith, and can be left in it, if it is prudently feared lest they resist the priest admonishing them.

¹ In Gaul, a son and daughter, until they have completed the twenty-first year, need the consent of parents: if these disagree, the father's consent suffices; if one of the parents is dead, or incapable of giving consent, the consent of the other suffices; when father and mother are dead, grandfathers and grandmothers succeed to their rights in this matter; if both lines disagree, that dissent is equivalent to consent. Cf. *Cod. civ.*, art. 148-160, and law of June 21, 1907 (*Dalloz, Mariage*, 9 sq.)

All these things agree sufficiently with can. 1034: "Let the pastor gravely exhort minor children of a family not to enter nuptials without the knowledge of parents, or when parents are reasonably unwilling; but if they refuse, let him not assist at their marriage, unless the local Ordinary has first been consulted."

In most States of the United States of America, minors indeed contract validly, provided they are pubescent, but illicitly, unless the consent of parents given in writing or orally accedes; and in some States, not only the delinquents, but also the ministers before whom the nuptials are entered, are fined with various penalties. Cf. Bishop, *op. cit.*, § 551-559. - Here it is worthwhile to note with Kenrick (n. 44) that children of a family, to whose marriage parents unjustly do not wish to consent, can licitly evade the civil laws by betaking themselves to another State; but it is not licit for them by a false oath or false witnesses to declare that they have reached the years of majority.

§ V. ON THE DISPOSITIONS FOR THE LICIT RECEPTION OF MATRIMONY

877. No one can validly receive the sacrament of Matrimony unless he is baptized,² as was said above. Besides, it is altogether becoming that those about to marry be confirmed,¹ as those who need divine strength for professing their faith in the new state of life which they have chosen; indeed, by usage or particular law, in certain dioceses this is required for the licit reception of Matrimony: there the betrothed must prove that they have not only been baptized, but also confirmed.

² Code, c. 1021, § 1.

¹ Code, c. 1021, § 2.

When these things have been briefly set forth, it remains to speak concerning the dispositions of those about to marry.

They are chiefly four: 1° right intention; 2° prudence in selecting a spouse; 3° the state of grace; 4° competent knowledge; but since it was said above concerning this last disposition (n. 853), we shall note a few things concerning the three former ones.

878. 1° Right intention. (A) The betrothed ought in contracting to set before themselves that intention which God Himself had in instituting marriage.

Now the primary end is the procreation and education of offspring; but the secondary ends are the consolation and help of common life, and also the moderation of concupiscence, as we showed above, n. 679-682: therefore the betrothed can intend these ends, even principally, provided that the primary end is not excluded. Besides, there are other extrinsic ends, such as concord to be conciliated between families, the honor of the family to be preserved, the acquisition of riches, etc.; these it is

licit to seek, provided they are honorable in themselves, and the primary end is not excluded: but if the end is not honorable, as disordered pleasure or immoderate desire of riches, there is a sin more or less grave according to the gravity of the disorder.

879. 2° Prudence in selecting a spouse. Since marriage is indissoluble, an error committed in this matter can scarcely be repaired, and often becomes a perpetual cause of quarrels, domestic unhappiness, and prepares the way for adulteries and divorce. Wherefore: -

(A) In order to proceed cautiously, (a) the one about to marry will pray frequently and fervently, that he may obtain from God a most faithful spouse: "House and riches are given by parents; but a prudent wife is properly from the Lord."² (b) He will carefully weigh the character, qualities, and defects of the one whom he intends to marry; for, if the qualities and defects of things to be bought are attentively inspected, how much more must the qualities and defects of a betrothed person be weighed, since temporal happiness and in some way eternal happiness often depend on this choice; for a wife is a perpetual consolation or a perennial torment; by persuasion and example she can lead the man to the practice of virtue and religion, or on the contrary to sin or infidelity: "Blessed is the husband of a good woman; for the number of his years is double. A strong woman delights her husband, and will fill the years of his life in peace"¹... Every wound is sadness of heart, and every wickedness is the wickedness of a woman"²... It will be more pleasing to dwell with a lion and a dragon, than to dwell with a wicked woman"³... Now to detect vices and virtues is not the work of one day, but requires long and attentive consideration. (c) Besides, since it is difficult for younger persons, especially those taken by love, to form a right judgment concerning the qualities of the other betrothed person, let them seek the counsels of parents and friends, who are not so easily deceived concerning the qualities or defects of the other party.

² Prov., XIX, 14.

¹ Ecclesiasticus, XXVI, 1-2.

² Ecclesiasticus, XXV, 17.

³ Ecclesiasticus, XXV, 23.

880. (B) In selecting a spouse, (a) exterior qualities are not to be regarded exclusively or chiefly: beauty, vain adornment, riches, dignities, or anything of this kind; but rather intellectual, moral, and religious qualities, which can contribute more to the mutual happiness of the betrothed than vain beauty and other fleeting gifts. - Yet health of body is not to be omitted, since for conjugal life a sound mind in a sound body is required; hence those rather are to be kept from marriage who cannot discharge the function and duty of father or mother, at least until they become sufficiently robust.

(b) Attention must also be paid to stock, or progeny and the family of the consort: for offspring not rarely obtain by inheritance the vices or qualities of parents, in the order not only physical, but also moral.

(c) A certain equality, or at least proportion, between the betrothed is desirable: by reason of age;⁴ the man can be older than the woman (by about five or ten years), but not the reverse, since a woman grows old more quickly than a man. But it is not becoming that a young girl marry an old

man: for soon she will hold him as hateful, and perhaps will foster adulterous loves. - By reason of education, insofar as a certain parity is necessary for a true companionship of minds. - By reason of condition; for if a noble man takes a common woman, soon both he himself, and especially his family, will despise her as rustic; if a poor man marries a rich woman, he himself shortly will be contemned both by the wife and by her family. - By reason of character, not indeed in the sense that both ought to be endowed with the same virtues or defects, but insofar as one ought to complete and perfect the other; for example, if one is prone to anger, it is expedient that the other be mild, lest perhaps they quarrel perpetually.

⁴ Concerning the age at which it is becoming for young persons to marry, nothing absolute can be said; generally it is expedient to enter marriage between the twentieth and thirtieth year, and it is not fitting to defer longer except for special reasons. Cf. H. Joly, *La Crise du Mariage*, ap. *Le Correspondant*, January 10, 1902, p. 108-138; Turgeon, *Le Féminisme*, t. II, p. 67-80.

(d) Finally both ought to be joined by mutual love, not indeed by a mad and lustful love, but by an honorable and supernatural one, by which each seeks not so much his or her own pleasure as the happiness of the other. Hence marriages entered on account of riches or honors, without mutual love, or with voluptuous love founded only on exterior qualities, for the most part obtain unhappy outcomes.

881. 3° The state of grace. For marriage is a sacrament of the living, so that one approaching it knowingly and willingly in the state of mortal sin becomes guilty of sacrilege. Indeed it is not prescribed by divine law or by general ecclesiastical law that those about to marry confess before marriage; strictly speaking it suffices that, if they are guilty of grave sin, they elicit an act of perfect contrition. But Trent¹ "exhorts spouses that, before they contract, or at least three days before the consummation of marriage, they diligently confess their sins, and piously approach the sacrament of the Most Holy Eucharist." Indeed, since they are about to enter a new state of life, it is becoming that they make a general confession, so that they may receive richer graces, and begin conjugal life more fervently.

¹ Sess. XXIV, *de Reformat. Matrim.*, cap. I.

In certain dioceses confession before the nuptials is prescribed, and therefore the nuptial blessing regularly cannot be granted unless a certificate of confession has been shown. It is said regularly; for strictly it is not to be exacted when grave inconvenience is seriously feared, for example lest the betrothed, who have already contracted civil marriage, live in concubinage. Moreover diocesan Statutes cannot prescribe confession by way of an impediment.² "Let not the pastor omit, according to the different condition of persons, to teach the betrothed the sanctity of the Sacrament of Matrimony, the mutual obligations of spouses and the obligations of parents toward offspring; and let him vehemently exhort them that before the celebration of marriage they diligently confess their sins, and piously receive the Most Holy Eucharist."³

² Card. Gasparri, *De Matrimonio*, n. 230.

³ Code, c. 1033.

882. Corollary. From this it is permissible to infer what is to be done with the unworthy and those bound by censure who wish to marry.

(A) A betrothed man or woman entering marriage with a consort whom he or she certainly knows to be in the state of mortal sin, much more probably does not sin, provided the nuptials cannot be abandoned without grave inconvenience, which will scarcely ever be lacking; for he or she is indeed the minister of the sacrament, but not by force of a certain consecration, and his or her cooperation in the sin of the other is only material; besides, a sufficient reason is supposed to be present; therefore the cooperation in the case is licit.

(B) The pastor can, and when asked generally ought, to assist at the marriage of those who are occultly guilty of sin or bound by censure: for here he is not the minister of the sacrament, but only an authorized witness, and therefore his cooperation is not so immediate; besides, the sacraments cannot be denied to occult sinners publicly asking. "If a public sinner or one notoriously bound by censure shall first have refused to approach sacramental confession or to be reconciled with the Church, let the pastor not assist at his marriage, unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary."¹ But as regards the marriage of a Catholic party with a party who has cast off the faith without having enrolled himself or herself in a false religion, or has enrolled in Societies condemned by the Church, recourse is to be had to the Bishop.²

¹ Code, c. 1066.

² Code, c. 1065.

Section II. - On the Celebration of Matrimony³

³ *Rit. Rom., De Sacram. Matrimonii; Missale Rom., Mass for bridegroom and bride; De Herdt, t. III, 271-283; O'Kane, Notes on the Rubrics, ed. 5, 1088-1114; Gasparri, n. 1001-1054.*

883. Marriage indeed essentially consists in consent: but this regularly must be expressed in the manner, time, and place prescribed by the Church; hence we shall speak both of the rite and of the time and place of celebration; here, however, there is question only of marriages between Catholics, since below it will be set forth what is to be done in mixed marriages.

I. On the Rite of Celebrating Matrimony

This rite consists of a twofold part: 1° the celebration itself, described in the Ritual; 2° the nuptial blessing, which is found in the Missal.

1° On the Celebration of Matrimony

884. (A) The pastor, or another priest delegated by him, is vested in surplice and white stole, - or, if he is immediately about to celebrate, in alb, stole, and chasuble of the color corresponding to the Mass, but not in maniple, which he receives immediately before the Mass. - Let at least one minister be employed, vested in surplice, who carries the book and the vessel of blessed water with the sprinkler.¹

¹ The use of spreading a white veil over the betrothed, which prevailed in some dioceses, was reprov'd by the S. Congregation of Rites, September 7, 1840, ap. Gasparri, n. 1010.

(B) Marriage is customarily celebrated before the high altar, or, if this is impeded, before another altar. The bridegroom stands at the right of the bride; the witnesses stand nearby either beside or

behind the betrothed, so that they can see and hear; after them, parents and relatives, by whose presence it is becoming that the nuptials be honored.

(C) Constrained neither by force nor by grave fear² (which condition also is required for validity), the priest before the altar asks for and receives the consent of the contracting parties. - Let the betrothed clearly express their consent in such a way that the pastor and witnesses cannot doubt concerning it.

² Code, c. 1095, § 1, n. 3.

885. (D) When the mutual consent of the contracting parties has been given and accepted, let the priest order them to join right hands with one another, saying: "I join you in matrimony. In the name of the Father +, and of the Son, and of the Holy Spirit. Amen." Afterwards let him sprinkle them with blessed water, saying nothing.

Yet the Ritual continues: "Or let him use other words according to the received rite of each province"; from which it follows that legitimate customs prevailing in this matter can be observed.³

³ Thus in the United States of America, the betrothed, while they join right hands, give faith to one another with these words: "I, N., take thee N. for my lawful wife (husband), to have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, till death do us part." (*Excerpta*, ed. 8, p. 207.) A similar formula is employed in Hibernia and England, as O'Kane, n. 1107, attests.

(E) Afterwards the ring will be blessed, even in second nuptials, with the prayers described in the Ritual, and it is sprinkled with blessed water in the manner of a cross. The bridegroom, having received the ring from the hand of the priest, places it on the ring finger of the left hand of the bride, in sign of mutual fidelity and love.⁴ - If the ring is broken or lost, a new one can be blessed by the same formula, at any time. - After the handing over of the ring, the priest reads certain prayers over the betrothed.

⁴ In certain regions two rings are blessed, one for the bridegroom, the other for the bride. Others are blessed together with the ring: coins; which is laudable; others a ring (*pièce de monnaie*, coin): which is less laudable.

When several are joined in marriage at the same time, after first having received the consent of each one, the priest, having said the formula for each: "I join you..." there is nothing to prevent the blessings of the rings and the remaining blessings from being made in common by words in the plural number.¹

¹ Thus S. Office, September 1, 1841, ap. *Acta S. Sedis*, XXVI, p. 635.

886. Ceremonies (and indeed customs from c. 1100) oblige in conscience; the omission of all, without cause, would be a grave sin; the omission of one would be only a venial sin. Yet some think with St. Alphonsus (n. 899) that the words "I join..." or similar ones cannot be omitted without mortal sin.

2° On the Nuptial Blessing

887. (A) When the ceremonies described above have been completed, a votive Mass for bridegroom and bride is celebrated as often as this is permitted; and the nuptial blessing is given:² namely, after the *Pater noster* has been said, the priest, standing at the Epistle corner turned toward the betrothed kneeling before the altar, says over them two prayers which are found in the Missal;

then, after *Benedicamus Domino* or *Ite Missa est* has been said, before he blesses the people, having turned toward the betrothed, he recites over them the prayer *Deus Abraham*; finally he admonishes them with a grave sermon that they preserve fidelity to one another, and sprinkles them with blessed water.

² Sometimes the ceremonies of the Ritual are also called the nuptial blessing; but properly this name is reserved for the prayers contained in the Missal.

(B) But this blessing cannot be given outside Mass, notwithstanding contrary custom. For thus the Ritual prescribes and the S. Congregation of Rites decreed³, by mandate of Pius IX, and the Code again sanctioned.⁴ Moreover a votive Mass for the betrothed can be celebrated in closed time when, by permission of the Ordinary, the nuptial blessing is given, with only Sundays and feasts of precept excepted, feasts of the first and second class, privileged Octaves of the first and second order, privileged Ferias, and the Vigils of the Nativity of the Lord.⁵

³ The S. Congregation, on September 1, 1838, had permitted this blessing to be given outside Mass; but, on June 23, 1853, it revoked this decree, and mandated that the blessing be imparted only in Mass. Cf. *Decreta authentica S. C. Rit.*, nn. 3016 (formerly 5190), 3079 (5275), 3380 (5640).

⁴ Code, c. 1101, § 1. The nuptial blessing: a) can be given to spouses even after they have long lived in marriage; b) can be given only by a priest or by the delegate of a priest who can validly and licitly assist at the marriage (Code, c. 1101).

⁵ S. C. Rit., June 14, 1918. Cf. Code, c. 1108.

And when Ordinaries, by license of can. 1108, permit the nuptial blessing on the Nativity of the Lord and the Sunday of the Resurrection, to the Prayer of the Mass of the respective Feast there is added, under a single conclusion, the commemoration for the betrothed, as on the Feasts of Epiphany, Pentecost, the Most Holy Trinity, and Corpus Christi.¹

¹ S. C. Rit., June 14, 1918.

From the decree of the Holy Office of September 1, 1841, the priest is not held to apply the Mass for the betrothed, unless he receives an alms from them; in the same Mass the priest can bless several betrothed couples;² the celebrating priest, but not another, must sprinkle with blessed water the betrothed kneeling before the altar; it is not licit to bless the betrothed in a Mass of the dead, but rather the blessing is to be transferred to another day.³

² In this case, according to De Herdt, n. 282, the prayers are not to be said in the plural, but as they are placed in the Missal.

³ S. Office, September 1, 1841, ap. *Acta S. Sedis*, XXVI, p. 635.

888. (C) According to the common opinion, a Mass with the nuptial blessing is of precept, not of mere counsel, unless a reasonable cause excuses. Yet more probably it does not oblige under mortal sin, as St. Alphonsus rightly teaches (n. 988). - The blessing is to be granted as often as the bride has not received it, whether she is a virgin, or a widow, or deflowered, even if the bridegroom is a widower and previously received the blessing; but not if the bride is a widow and has already once received the blessing. The reason is that the blessing, as it lies in the Missal, is properly uttered over the woman, and therefore it must be recited as often as the bride has not been blessed. - When the blessing is not given, the Mass for bridegroom and bride must be omitted.

According to the rubrics of the Missal, the priest, "after he has consumed the Blood, communicates the betrothed"; therefore this communion must be made within the Mass, and, according to the mind of the rubric, by way of sacrifice, insofar namely as two small hosts must be consecrated in this Mass for the bridegroom and bride. This indeed is altogether becoming, but does not strictly oblige; for the solemn blessing can be given even when the betrothed do not communicate; but Pastors ought to exhort those about to marry that they communicate in the nuptial Mass.

(D) The votive Mass for the betrothed, as we have already said, is permitted on any days, except Sundays, and also feasts of the first and second class, privileged Octaves of the first and second order, privileged Ferias, and the Vigils of the Nativity of the Lord, Epiphany, and Pentecost.⁴ - It must be said as a private votive Mass.

⁴ *Il Monitore eccles.*, XXX, 235; Cong. of Rites, June 14, 1918.

On days on which the Mass for bridegroom and bride is prohibited, the Mass of the day must be said with commemoration of the nuptial Mass.

II. On the Time and Place of Celebration¹

¹ Thus S. Rit. Cong., March 21, 1874, ap. *Acta S. Sedis*, XII, p. 474.

889. 1° On the time. From the Code, marriage can be contracted validly and licitly at any time;² but the solemnities of nuptials are prohibited in the closed, or forbidden, time, that is, from the first Sunday of Advent to the day of the Nativity inclusively; and from Ash Wednesday to Easter Sunday inclusively; in each case the closed time begins from midnight. - Yet local Ordinaries can, with liturgical laws preserved, permit the nuptial blessing even in the aforesaid times for a just cause, after admonishing the betrothed that they abstain from excessive pomp.³

² Code, c. 1108. Therefore the custom by which, in our region, the matrimonial contract itself is prohibited "in closed time" is contrary to common law.

³ Code, c. 1108, § 2 and 3.

The reason for this prohibition is that the aforesaid times are devoted to prayer and penance or spiritual gladness, from which nuptial solemnities distract minds.

890. 2° On the place. "Marriage between Catholics is to be celebrated in the parochial church; but in another church or oratory, whether public or semi-public, it can be celebrated only by license of the local Ordinary or pastor. The Ordinaries of places can permit marriage to be celebrated in private houses only in some extraordinary case, and with a just and reasonable cause always acceding; but in churches or oratories, whether of a Seminary or of religious women, Ordinaries are not to permit it, unless necessity urges, and opportune cautions have been employed. But marriages between a Catholic party and a non-Catholic party are to be celebrated outside the church; but if the Ordinary prudently judges that this cannot be observed without graver evils arising, it is committed to his prudent judgment to dispense on this matter (the celebration of Mass always excluded)."⁴

⁴ Code, c. 1109.

"When the marriage has been celebrated, the pastor or he who takes his place shall as soon as possible describe in the book of marriages the names of the spouses and witnesses, the place and day of the marriage celebrated, and other things according to the manner prescribed in the ritual books and by the proper Ordinary; and this even if another priest, delegated either by himself or by the Ordinary, assisted at the marriage. Besides, the pastor shall note also in the book of the baptized that the spouse contracted marriage on such a day in his parish. But if the spouse was baptized elsewhere, the pastor of the marriage shall transmit notice of the contract entered to the pastor of baptism, either by himself or through the episcopal Curia, so that the marriage may be entered in the book of the baptized."⁵

⁵ Code, c. 1103.

Chapter III

Chapter III: On the Impediments of Matrimony

ON THE IMPEDIMENTS OF MATRIMONY

891. An impediment of marriage in general is everything which stands in the way of marriage being contracted licitly or validly. Hence impediments are of a twofold kind: (a) prohibiting, or impeding, which forbid that marriage be contracted licitly, but do not stand in the way of its validity; (b) diriment, or invalidating, which forbid that marriage be entered not only licitly, but also validly. Therefore they are called diriment, not because they dissolve a valid marriage, but because they bring it about that it is not contracted validly from the beginning.

ART. I. ON PROHIBITING IMPEDIMENTS

892. That the Church has the right of establishing prohibiting impediments is certainly inferred from the fact that it can also decree diriment ones, as was proved above, n. 814. Now in the Church there enjoy this power both the Roman Pontiff and a general Council, in whom resides full power of enacting laws, and indeed exclusively for the baptized, so that Bishops cannot establish impediments by way of law¹. Yet they can, for a particular case, for a time, for a just cause, prohibit some marriage, and punish with severe penalties those violating this interdiction². - Besides, from the Code, c. 1041, "a custom introducing a new impediment or contrary to existing impediments is reprobated."

¹ Code, c. 1038, § 2.

² Code, c. 1039.

By the old law there were several impediments of this kind, which have now departed from the court³.

³ Such were catechism, that is, the impediment which was contracted by him who answered for the infant, when the ceremonies of baptism were supplied, in almost the same manner as a sponsor today contracts the impediment of spiritual relationship, as will be set forth below; and certain graver crimes, namely incest, spouse-killing, killing of a priest, killing of an infant; an attempted marriage with a nun, abduction of another's betrothed woman, conferral of baptism on one's own offspring outside a case of necessity, public penance. Cf. Clericati, *Decis. 37 de Sac. Matrim.*, n. 19 sq., Ballerini P, n. 534 sq., ed. 3; Feije, n. 548; Gasparri, n. 433. - On the origin and historical evolution of the various impediments of marriage see J. Freisen, *Geschichte des canonischen Eherechts bis zum Verfall der Glossenliteratur*, Tübingen, 1888; a summary of which is to be found ap. *Canoniste*, 1890, p. 433; 1891, p. 214; 1892, pp. 268, 344, 407, 459, 584, 705; 1893, p. 65; 1895, pp. 409, 667, etc.; Esmein, op. cit., t. I, p. 203-402.

Today, since espousals are no longer a prohibiting impediment, there are three, besides the prohibition of the Church, of which we shall treat: vow, mixed religion, and legal relationship.

I. ON THE PROHIBITION OF THE CHURCH

893. The prohibition of the Church, which is not enumerated by the Code among impediments properly so called², is a prohibition, made by a legitimate superior for a grave cause, against contracting some determinate marriage. Therefore it is distinguished from a general law by which it is forbidden that nuptials be entered with some class of persons.

¹ Reiffenstuel, Schmalzgr., De Angelis, Santi, and other Canonists, lib. IV, tit. 16; St. Alphonsus, n. 982; Ball. P., n. 535, 538, ed. 3; Carrière, II, n. 916-917; Feije, n. 549-551; Noldin, n. 64.

² Impediments properly so called are those which render a person unable to contract marriage.

Now the legitimate superior in the case is: (a) the Supreme Pontiff, who can prohibit some marriage and even "add an invalidating clause"³ in the universal Church, either by himself, or through another, for example through the Roman Congregations; (b) the Bishop for his own diocese; (c) the pastor himself also, but not by an act properly judicial, because of defect of jurisdiction in the external forum: namely, he can deny his assistance to some marriage, when he judges that the nuptials cannot be entered because of a grave cause.

³ Code, c. 1039, § 2.

894. The causes on account of which nuptials can justly be forbidden are chiefly three, namely: (a) a founded suspicion of a hidden impediment, whether prohibiting or especially diriment; thus the Roman Congregations sometimes add this clause to a sentence in a matrimonial case when there is doubt concerning the impotence of either party: *Vetito transitu ad alias nuptias, inconsulta S. C.*; (b) fear lest the right of a third party be harmed, for example while a lawsuit concerning the value of a prior marriage or espousals is pending, *a fortiori* if valid espousals were contracted and not dissolved; (c) scandal, or some other grave damage to be avoided.

He sins gravely who contracts marriage against this prohibition of the Church; unless nevertheless the prohibition is made for a light cause and for a time, or when it is certainly established to the betrothed that the reason for the interdiction no longer subsists: for then the sin is only venial.

II. ON THE PROHIBITING IMPEDIMENT OF VOW

895. Not every vow prohibits marriage, but only a vow which is opposed to the celebration or use of marriage. Now a fivefold vow renders marriage illicit: 1° the vow of perfect chastity; 2° the vow of virginity; 3° the vow of not marrying; 4° the vow of receiving sacred orders; 5° the vow of entering religion: concerning these one must speak separately.

¹ St. Thomas, *Supplem.*, q. 53, a. 1; Sanchez, lib. IX, disp. 33-34; St. Alphonsus, n. 986-987; Carrière, n. 925-935; Baller. P., n. 561-566, ed. 3; Feije, n. 559-565; Lehmke, n. 719-723; Génicot, n. 512-513; Gasparri, n. 434-441.

896. 1° On the simple vow of perfect chastity. Here there is question of a simple vow, not of a solemn one, which not only prohibits, but invalidates marriage, as will be said below. Now, whether it is emitted privately, or in a religious Congregation, it consists in a promise made to God perpetually and absolutely to abstain from every venereal delectation, whether external or internal.

(A) He who emitted such a vow regularly contracts marriage illicitly; for either he intends to consummate the marriage, and therefore to violate the vow; or at least he exposes himself to the danger of violating the vow, since, when the other spouse asks, he is held to render the debt. It was said regularly, so that the exceedingly rare case may be excepted in which each party intends to preserve virginity in marriage.

(B) But when marriage has been entered, (a) the one vowing cannot without sin ask for the debt, since this is directly against the vow; but he can and must render it as often as he is held to this by conjugal obligation. Hence, if the other spouse has lost the right of asking, because for example adultery was committed, neither can ask or render. - Therefore it is expedient to seek dispensation from the vow as soon as possible, lest the one vowing remain in perpetual danger of sinning.

(b) If the other spouse dies, the one vowing cannot fly to second nuptials, unless he has obtained dispensation from his vow. Generally dispensation is given only for entering marriage once, so that a new one is required for entering other nuptials.

N. B. If someone has emitted a temporary vow of chastity, he cannot enter nuptials except after the vow has expired; if he marries before, the same must be said as concerning him who is bound by a vow of perpetual chastity, as long as the prescribed time has not elapsed.

897. 2° On the vow of virginity. Most often one vowing virginity intends nothing other than perfect chastity: in which case the principles set forth above are to be applied. But taken strictly, a vow of virginity consists in the promise of abstaining from that first carnal work by which virginity is lost, or from voluntary effusion of seed for the man, and for the woman from intercourse or other acts by which the virginal seal is culpably broken. - In practice, however, he who vows virginity commonly intends either chastity or celibacy: wherefore his intention is to be explored cautiously.

These things being posited, (a) a vow of virginity is gravely harmed by the first consummated act by which virginity is lost; (b) after the first sin of this kind, marriage is licit, since the vow has now become impossible; (c) but he who after the vow has remained a virgin sins gravely by entering marriage, as one who exposes himself to grave danger of acting against the vow; except the case in which both contracting parties have promised virginity, as above; (d) when marriage has been contracted, he cannot ask for the debt as long as he has preserved the integrity of the flesh¹; but, once virginity has been lost, he can licitly render and ask for the debt, since the fulfillment of the vow has now become impossible; (e) when the consort has died, if he has remained a virgin, he is still bound by the vow; otherwise, he can pass to new nuptials.

¹ Thus indeed objectively speaking: for not a few are ignorant of this, and indeed sin by marrying, but not by asking for the debt.

898. 3° On the vow of not marrying, or of celibacy. (a) This vow directly consists in the promise of not contracting marriage; therefore he sins gravely who marries with such a vow; (b) but when marriage has been entered, he can consummate it, since this is not opposed to this vow; (c) but when the conjugal bond has been dissolved, the vow revives and impedes second nuptials.

899. 4° On the vow of receiving sacred orders. (a) This vow renders marriage illicit, since a married man can no longer receive sacred orders, unless perhaps he intends, before consummation of the marriage, to enter and profess Religion; but in this case he deceives his wife; (b) when marriage has been entered, he is held to seek the consent of the spouse so that he can receive orders, after those things required by law have been posited; if consent is denied, now he can render and ask for the debt, since he did not directly vow chastity, and besides the vow of receiving orders has become impossible; (c) if the wife dies, or loses the right of asking for the

debt (for example by vow or adultery), now the obligation of the vow revives, unless dispensation has been obtained.

900. 5° On the vow of entering Religion. Here there is question of the vow of entering Religion with solemn vows, or a Congregation with simple vows: for each renders nuptials illicit. (a) The one vowing cannot licitly marry, since thus he exposes himself to the danger of breaking the vow or of deceiving the other spouse; (b) by the first consummation of the marriage he sins gravely, because he renders the fulfillment of the vow impossible¹; but, once the marriage has been consummated, he can licitly render and ask for the debt, since he did not vow chastity, and besides entrance into Religion is impossible; (c) but when freedom has been recovered, because, for example, the spouse has died, or has lost the right of asking, or consents that the one vowing enter Religion, he is held to do this, unless dispensation is obtained, or the matter is morally impossible.

¹ Yet some do not advert that they sin by consummating marriage, because by marrying they already intended to have intercourse; they indeed sinned by marrying, but, judging the marriage to be valid, they do not think that marital intercourse is a sin.

901. To be noted. Most often it is expedient to seek dispensation from these vows. By common law, from can. 1309, before Matrimony only the Pontiff can dispense from the vow of perfect and perpetual chastity or of entering Religion properly so called; hence Bishops cannot dispense from the same by ordinary law, unless there is danger in delay.

After marriage has been contracted, the Bishop dispenses for asking the debt: (a) if there is question of a non-reserved vow (can. 1313); (b) if of an urgent case even in a reserved vow (can. 81); (c) likewise concerning a reserved vow by force of the faculties ordinarily granted by the S. Penitentiary. (Cf. de Smet, *De Sponsalibus et Matrimonio*, ed. 3, I, n. 231).

Besides, by force of Indults, they often receive broader faculties; thus in the United States of America they have the power "of dispensing for a reasonable cause in simple vows of chastity and religion"²; which in many dioceses they impart to all confessors.

² Ap. Putzer, n. 106-107, where this faculty is accurately explained.

III. ON THE IMPEDIMENT OF MIXED RELIGION

902. Mixed marriages, understood in the broad sense, are those which are entered between a Catholic and a non-Catholic, whether baptized or not. But in the strict sense, the impediment of mixed religion, as it is distinguished from the impediment of disparity of cult, is that which exists between two baptized persons, of whom one is Catholic, the other heretical or schismatic; marriage indeed it renders illicit, but not invalid. We shall speak: 1° on the illicitness of mixed marriages; 2° on dispensation from this impediment; 3° on the manner of celebrating them.

¹ Roskovany, *De Matrimoniis mixtis*; Feije, *De Matrim. mixtis*, Louvain, 1877; id., *De Impedimentis*, n. 566-574; Mazzei, *De Matrim. personarum diversae religionis*, Rome, 1771; Carrière, n. 753-765; Baller. P., n. 1084-1113; Gasparri, n. 442-472; Rosset, III, n. 1734-1769; De Becker, p. 258-267; Wernz, n. 573-590; Ullathorne, *An Instruction on Mixed Marriages*; Lambing, *Mixed Marriages*, 1876.

903. Principle: Mixed marriages, entered without dispensation, are gravely illicit. This is certain.

(A) In Scripture we already find the foundations of this prohibition. (a) For it carefully prohibits association with heretics: "A heretical man after a first and second correction avoid"²; "If anyone comes to you, and does not bring this doctrine, do not receive him into the house, nor say Ave to him. For he who says Ave to him communicates in his evil works."³ Now he who contracts marriage with a heretic not only says *ave* to him, but has intimate and permanent association with him. (b) Besides, Paul being witness⁴, Christian marriage is the symbol of the perfect union of Christ with the Church: women ought to be subject to their husbands as to the Lord, and husbands to love their wives as Christ loved the Church and handed Himself over for her; but if husband and wife are not of the same faith, their union is very imperfect, since it is not a union of minds in the same faith, nor in the same hope or charity; therefore it represents the union of Christ and the Church only very imperfectly and remotely.

² Titus, III, 10.

³ II John, I, 10-11.

⁴ Ephesians, V, 22-32.

904. (B) Councils and Roman Pontiffs not only in a general way strictly prohibited and severely condemned association with heretics, but also especially marriages with them. Thus the Council of Elvira (A.D. 305) decreed¹: "Heretics, if they are unwilling to transfer themselves to the Catholic Church, Catholic girls are not to be given even to them: but it was pleasing to give them neither to Jews nor to heretics; because there can be no association of the faithful person with the unbeliever." Many other Councils, both particular and general, established the same.

¹ Can. 16, ap. Labbe, *Concilia*, I, p. 973. The Council of Laodicea established the same (around A.D. 364), can. 10, 31, ap. Labbe, I, p. 1510-1511.

Nor did the Supreme Pontiffs hold otherwise. Urban VIII, December 30, 1624, declared that "marriages of Catholics with heretics must be altogether fled"²; Clement XI³, June 25, 1706, prohibited the same, "unless the good of the whole Republic demands this"; Benedict XIV, November 4, 1741, calls them detestable marriages, which Holy Mother Church perpetually condemned and interdicted, and he greatly praises the zeal of those Prelates who strive by more severe penalties to deter Catholics from these sacrilegious bonds; Clement XIII, November 16, 1763, writes that from conjugal unions of this kind a great disaster is brought upon the Church; Pius VIII, March 25, 1830, declares that the Church abhors marriages of this kind, which bring with them no little deformity and spiritual danger; Gregory XVI, April 30, 1841, says: "She herself has always held such nuptials as illicit and plainly pernicious, both because of the criminal communion in divine things, and because of the impending danger of perversion for the Catholic spouse, and the depraved institution of offspring." Leo XIII confirms their doctrine, writing in the Constitution *Arcanum*: "That such conjugal unions are chiefly to be abhorred is most clearly seen from this, that they furnish occasion for forbidden association and communication in sacred things, create danger for the religion of the Catholic spouse, are an impediment to the good education of children, and very often impel minds to become accustomed to holding all religions in equal account, with the distinction between true and

false removed." All these things have been gravely sanctioned by the Code: "Everywhere the Church most severely prohibits that marriage be entered between two baptized persons, of whom one is Catholic, but the other enrolled in a heretical or schismatic sect: but if there is danger of perversion of the Catholic spouse and of the offspring, the union is forbidden even by divine law itself."⁴

² Apud Rosset, n. 1739.

³ Ibid.

⁴ Code, c. 1060.

905. (C) Theological reason⁵. (a) Mixed marriages harm the intimate union and happiness of spouses. There ought to be an intimate union between spouses, and true concord of minds; the husband ought to love the wife as Christ loved the Church, and the woman to obey the man as the Lord. But this intimate union and friendship can scarcely exist where unity of faith is lacking; for friendship receives or makes equals, or in other words demands that friends feel the same and wish the same; now where faith is diverse, there will be discrepancy of minds not only in religious matters, but also in many historical or ethical questions which are indivisibly connected with religion, especially in those which concern the education of offspring. Thence frequent dissensions arise, which disturb the peace of the family.

⁵ Here it is worthwhile to note that by the same arguments it can be shown how full of dangers are conjugal unions entered between Catholic girls and men who are irreligious.

This posited, the perfect happiness of spouses cannot exist. For true beatitude is enjoyed when they pray together, attend the same divine offices in church, receive the same sacraments, are made participants of the same divine banquet, provoke one another to the practice of the same virtues, are strengthened by the same hope, are united by the same charity. But these things are impossible when the spouses are not of the same faith: for then either each prays separately, or one or the other acts against conscience by exercising acts of religion which inwardly he does not approve. - Besides, since, from the things said, each differs in many things, mutual diffidence steals into their souls, and mutual love grows cold, without which nevertheless there is no true conjugal happiness.

906. (b) Marriages of this kind are very dangerous to the Catholic party as regards faith, and sometimes as regards morals. First of all, to enter nuptials with heretics is a communication in divine things, insofar as the Catholic party administers the sacrament to the heretic, and conversely. Besides, a Catholic, often associating with the heretic and his family, can easily be imbued with not a few errors, and conceive doubts concerning certain truths of faith, or at least blush over some acts of religion, especially since it not rarely happens that the ignorance and simplicity of Catholics are mocked. The danger becomes greater when, notwithstanding the promises made at the time of the nuptials, the husband prohibits the Catholic wife from attending Mass and other divine offices; nor is it less when a heretical woman by perfidious persuasion gradually turns the man away from the practice of religion; for, as Bellarmine rightly writes¹: "Such indeed is the nature of women, that it is much easier for them to draw men into error, than for men to lead them to truth." The danger of indifferentism also is very great: for when in the same family there are found persons cultivating a different religion, and frequent and intimate relations are had among them, the persuasion easily arises that the various forms of religions are worthy of the same estimation. - Nor are dangers lacking as

regards morals; for since the abuse of marriage very greatly prevails among Protestants, as is established from their own testimony¹, the Catholic wife can more easily be drawn by a heretical husband to illicit acts.

¹ Letter among the familiar letters 35, ap. Ball. P., n. 1093.

¹ Cf. Sinclair, *The Crowning sin of the Age*, Boston, 1892, p. 16 sq.; Pomeroy, *The Ethics of Marriage*, New York, 1895, ch. III; Storer, *Is it I?* Boston, 1868, p. 104-112.

907. (c) Often the dangers are greater for the children who are born from marriages of this kind. Sometimes the non-Catholic party stands in the way of their Catholic education. Even when they are instructed in a Catholic manner, they easily slip into indifferentism: for they see that the same religion is not cultivated by the parents, and thence they are prone to infer that it matters not much what religion is observed; for if the parents themselves do not think the same concerning religion, who can be certain concerning the absolute truth of religion? Are not all religions of equal value? - Not rarely the heretical party mocks certain Catholic dogmas or practices, and thus excites doubts in the minds of the children. - Besides, if the mother is heretical, she can scarcely instill the sense of true piety into the hearts of the children; if the father is Protestant, the children, even when imbued by the mother with Catholic principles, when they grow up, are too prone to embrace the errors of the father, or even more often to bid farewell to every religion.

This indeed is established by lamentable experience; for although mixed marriages do not always obtain unhappy outcomes, but sometimes produce good effects, either by drawing the non-Catholic party to the true faith, or by removing prejudices; nevertheless more often greater evils than goods arise from them, especially as regards the offspring². For from a computation recently made in the United States of America, sixty-six young people per cent, born from these marriages, cultivate no religion; while, when both parents are Catholic, only eight per cent bid farewell to religion¹.

² Cf. *Americ. Eccles. Review*, vol. I, 1889, p. 61-74; vol. II, 1891, p. 9-23.

¹ That reckoning was instituted by the Protestants themselves; cf. *Association Men*, New York, November 1901; *Literary Digest*, January 4, 1902, p. 17.

908. Corollaries. (A) Catholics who, without dispensation, enter marriage with heretics sin gravely. Nor does custom even of the longest time render it licit, as the Holy See declared many times, especially the Holy Office², January 3, 1871: "Wherefore although, as you affirm, the opinion has long since grown up there, that mixed nuptials can licitly be entered without dispensation of the Holy See, nevertheless this opinion, notwithstanding any custom whatever, cannot be tolerated." - This is true even if in the case the danger of perversion is absent; for there are other dangers, and besides, even when the natural precept ceases, the positive precept of the Church remains, founded on the presumption of danger.

² Ap. *Collect. P. F.*, n. 1434.

Hence, when they have contracted without dispensation, they ought to have recourse to the Bishop, so that they may satisfy for the violation of the law and promise to employ the necessary cautions for

removing the danger of perversion from themselves and their offspring³. These cautions are to be exacted even at the point of death⁴.

³ Thus S. Office, March 12, 1881, ap. *Collect. P. F.*, n. 1440.

⁴ S. Office, March 18, 1901, ap. *Acta S. Sedis*, XXXI, p. 52.

909. (B) Pastors sin gravely when they assist even passively at marriages of this kind, because they cooperate in the sin of the contracting parties; thus the S. C. of the Council⁵ decreed: "Catholic pastors cannot be present at the celebration of these marriages. For it is shameful for them to be witnesses of so great a crime, and by some rite or by their presence to confirm a sacrilegious marriage."

⁵ Ap. Roskovany, II, p. 102; Gasparri, n. 446.

Yet passive assistance of the pastor is tolerated by the Holy See in certain regions: (a) if it is required by civil law under grave penalties; (b) as often as a mixed marriage cannot be impeded without graver damage, and besides it seems to be expedient for the utility of the Church and the common good if it is contracted before the pastor rather than before a non-Catholic minister, to whom the parties would easily flee⁶. - Moreover in these cases the pastor should have recourse to the Bishop, and the Bishop himself to the Holy See, if there is time and there is question of places for which this declaration was not given.

⁶ Thus from the Letter of Gregory XVI, April 30, 1841, to the Bishops of Hungary, ap. *Collect. P. F.*, n. 1428, p. 522.

910. (C) Pastors ought with all their strength, by exhortations, persuasions, and also rebukes, to try that marriages of this kind not be entered. This is clear from the Code, c. 1064: "Let Pastors, as much as they can, deter from mixed nuptials."

To the matter the Third Plenary Council of Baltimore says, n. 133: "To attain this end, however, these things especially conduce: (a) the frequent instruction of pastors by which the faithful are taught concerning the prohibition of the Church against mixed marriages." - This instruction indeed ought to be given at an opportune time, that is, before the Catholic party has been captivated by love toward the non-Catholic party; therefore in the sacred tribunal, when the confessor knows that the penitent rather often frequents non-Catholics, - before Sodalities of young people, where it is established that amorous dealings are had with heretics, - before parents, so that they themselves may watch over adolescent offspring.

(b) "The uniform practice of the same pastors in occurring cases, of impeding with all their strength, by exhortations, persuasions, and also rebukes, that marriages of this kind be entered." This cannot be efficacious unless priests deter younger persons from excessive frequenting of Protestants; and therefore furnish occasions to Catholic youth for coming together, and for devoting themselves to honorable recreation, with certain parents or persons of mature age and proved virtue present: for unless Catholic adolescents come together, they will go to the gatherings and associations of heretics.

(c) "An accurate examination concerning the canonical and grave causes which are required for a dispensation to be granted upon this impediment of mixed communion." Wherefore pastors should not always and easily acquiesce to those seeking dispensation; but they should inquire concerning the

canonical causes, and not immediately believe whatever those about to marry say, but accurately investigate the matter.

911. (D) "After mixed nuptials have been celebrated, let pastors know that they are burdened by a grave charge of conscience to watch that the conditions promised by the spouses be observed and obtain effect."¹ For unless pastors do this, and therefore sometimes visit families of this kind, often those promises will fall into oblivion, and the religious education of children will be little attended to. - Likewise, according to the Holy Office², since in this most grave matter nothing is to be left to the judgment of the priest alone, priests should as soon as possible make the Bishop more certain concerning any mixed marriage to be contracted, with all the circumstances of things, places, and persons most accurately reported.

¹ Thus S. C. de Prop. Fide to the Archbishop of Baltimore, June 25, 1884, ap. *Collect. P. F.*, n. 1442; Code, c. 1064, n. 3.

² Instruction to the Bishops of the East, December 15, 1888, n. 13, ap. *Collect. P. F.*, n. 1444.

2° On Dispensation from the Impediment of Mixed Religion

912. On the faculty of dispensing. Nevertheless, when these marriages cannot be prevented, or when in some particular case it is foreseen that greater goods than evils will come from them, or at least that the dangers will be sufficiently removed, the Supreme Pontiff is accustomed to dispense from the impediment of mixed religion, for a just cause. He indeed alone can do this by his own authority, since here there is question of a general law; but sometimes he grants the faculty of dispensing to Bishops, especially in those regions where many heretics are found¹.

¹ Thus in the United States of America, Bishops enjoy the faculty "of dispensing with their subjects upon the impeding impediment of mixed religion, provided that provision has been made for all the conditions prescribed by the Church." If, however, there is another impediment, for example of consanguinity or affinity, they cannot dispense unless they have an Indult of cumulating and at the same time the faculty of dispensing upon this other impediment. Besides, they enjoy the power "of dispensing in mixed marriages already contracted, not likewise to be contracted, upon the degrees of consanguinity and affinity, upon which they have already obtained apostolic faculty for Catholics, insofar as the Catholic party, with absolution first given from the guilt of incest and censures, can contract marriage anew duly and legitimately with the non-Catholic party, and of declaring legitimate the offspring received and to be received, provided that provision has been made for the conditions prescribed by the Church." - Formerly the prior faculty could not be exercised as regards Italians concerning whom it was not established that they had wholly abandoned Italian domicile; but that restriction was removed by a decree of the Holy Office, May 4, 1887. Cf. Putzer, n. 217; Zitelli, *Dispens.*, p. 94.

A mixed marriage contracted with dispensation, and with the due cautions to be set forth below, becomes legitimate, nor can it be called sacrilegious.

913. On the conditions necessary for dispensation. (A) A grave and canonical cause is required, without which it cannot be permitted that the faithful expose themselves to grave dangers of faith and morals. Now this cause can be (a) any reason tending to the public good, for example if it can probably be hoped that the heretical family, or at least the non-Catholic party about to marry, will embrace the true faith; if Catholics are few and mixed marriages can contribute to removing the prejudices of heretics; if otherwise great scandals would arise; if mixed marriage is the only means that children, born from another marriage, be instructed in the Catholic

religion; (b) also a reason of the private good of the contracting parties, provided that, after all circumstances have been carefully inspected, it can be foreseen that greater goods than evils will come from this marriage; which especially occurs when the Catholic party excels in faith, virtue, prudence, and fortitude.

(B) Besides, certain cautions are prescribed¹. The non-Catholic party must promise (a) that he or she will leave full liberty to the Catholic spouse for the exercise of his or her religion; (b) that all offspring of each sex will be instructed in the Catholic religion, even if it should happen that the Catholic consort is snatched away by premature death². - But the Catholic party is held to strive, according to the laws of charity and prudence, to promote the conversion of the other party.

¹ Code, c. 1061, § 1, n. 2.

² In certain regions, as in Prussia, it is provided by civil law that children of each sex be educated in the religion of the father, or at least according to his judgment, and at the same time it is forbidden to priests to exact any promise concerning offspring to be religiously instructed; which is opposed to canonical law. Then indeed it is tolerated that pastors assist at mixed marriages entered without these cautions; but they must do nothing which may seem to approve nuptials of this kind, nor mingle with them prayers or religious rites. Thus Pius VIII, March 25, 1830, ap. *Collect. P. F.*, n. 1426.

In the Code, c. 1061, it is established that promises of this kind must regularly be made in writing. If this cannot be obtained, it suffices that they be made so seriously that the Bishop has moral certitude that they will be faithfully fulfilled; but when, because of various circumstances, such certitude cannot be acquired, he can by right require that the promises be confirmed by oath³. Sometimes it is also expedient that they be made in writing and be preserved in the parochial archive⁴, so that at an opportune time they can be shown to those whom the matter concerns.

³ Thus the Holy Office, February 17, 1875, ap. *Collect. P. F.*, n. 1437.

⁴ Which is prescribed in some dioceses, for example in Trent (*Statutes*, n. 144); in Wilmington (*Excerpta*, n. 167); in Baltimore for a non-Catholic man, but not for a woman (*Statutes*, n. 61).

3° On the Manner of Celebrating Mixed Marriages

914. (A) Even when dispensation has been granted, and the necessary cautions exhibited, by common law the pastor can offer only the assistance necessary for validity, avoiding all those things which savor of a religious rite. Therefore the priest, with the witnesses, outside the church, without sacred vestments, should ask for and receive the mutual consent of the parties⁵, and afterwards inscribe the marriage in the book.

⁵ Code, c. 1064, n. 4.

In certain places it is permitted that nuptials be entered in the sacristy or in a private chapel¹, and that the priest question the parties concerning consent and declare them united in marriage; likewise the blessing of the ring and a brief allocution can be permitted with the consent of the Bishop².

¹ Thus S. Office, January 17, 1877, ap. Wernz, n. 588.

² Thus S. Office, January 17, 1877, ap. Gasparri, n. 463; cf. *Collect. P. F.*, n. 1443; *Statuts Synodaux de Paris*, n. 482.

Besides, where grave inconveniences are feared from assistance of this kind, the Bishop can permit more active assistance³, with certain religious rites, the celebration of Mass and therefore the nuptial

blessing always excluded⁴: according to the decree of the Holy Office, January 17, 1872, not only in this case is the Mass for bridegroom and bride prohibited, but also any Mass which could be held as the complement of the ceremony of marriage.⁵ - Hence in all these things the pastor will faithfully follow the Statutes and precepts of the Bishop.⁶

³ On the question whether it is expedient or not to offer active assistance to mixed marriages, cf. *Amer. Eccles. Review*, VIII, 1893, p. 172-179; 354, 364.

⁴ Instruct. Antonelli, November 15, 1858, ap. *Collect. P. F.*, n. 1450; Code, c. 1102.

⁵ S. Office, January 17, 1872, ap. Gasparri, n. 463.

⁶ In the United States of America, the manner of assisting at mixed marriages is described in the *Excerpta*, ed. 8, p. 242-247: "First the priest should question the man concerning consent in this manner: 'N. N., wilt thou take N. N. here present for thy lawful wife?' - The bridegroom responds: 'I will.' - Then the woman: 'N. N., wilt thou take N. N. here present for thy lawful husband?' - The bride responds: 'I will.' - Then with right hands joined to one another, they give mutual faith to themselves by the following formula, the bridegroom first saying: 'I, N. N., take thee,' etc., as above (n. 885, note 1). - When these things have been carried out, the priest shall say: 'By the authority committed to me, I pronounce you united in the bonds of matrimony.' - Then the bridegroom will place the ring on the ring finger of the left hand of the bride, saying: 'With this ring I thee wed, and I plight unto thee my troth.' - After these things, the priest should address the spouses with the words added in the Appendix, or similar words..."

915. (B) The spouses cannot either before or after the marriage entered before the pastor approach a non-Catholic minister, unless he acts the part of a civil magistrate, and the law prescribes this for obtaining the civil effects of marriage. Now he acts the part of a civil magistrate when he receives and addresses the spouses not in a temple, but in a hall, and without sacred vestments⁷.

⁷ Code, c. 1063.

The Catholic party who enters marriage before a non-Catholic minister, as one assigned to sacred things, sins gravely, insofar as he or she communicates in sacred things with a heretic and furnishes scandal; and incurs excommunication reserved to the Ordinary⁸. - Hence "if the pastor certainly knows that the betrothed are about to violate or have already violated this law, let him not assist at their marriage, unless from most grave causes, scandal being removed and the Ordinary first consulted."¹ But if he does not certainly know that they are about to go to the heretical minister, he can be silent concerning the law of the Church, when he foresees that the admonition will not be profitable, for avoiding greater evils².

⁸ Code, c. 2319, § 1, n. 1.

¹ Code, c. 1063, § 2.

² Thus S. Office, December 12, 1886, to the Bishops of the East, ap. *Collect.*, n. 1444 (9).

(C) On this occasion it was also asked whether it is licit for a Catholic priest to act as a civil minister in the celebration of the marriage of two heretics; now the Holy Office responded³, December 20, 1837: "Although an intervention of this kind is not so reprobated that it could never be licit, nevertheless commonly it is to be dissuaded." Yet most recently the Prefect of the S. C. de Prop. Fide wrote to the Archbishop of New Orleans, January 26, 1895, that this is licit, because in this case the priest is as an authorizable witness⁴.

³ *Collect. P. F.*, n. 1523; cf. n. 1523, ad 3.

⁴ Ap. De Becker, p. 267.

N. B. - "The faithful are also to be deterred from contracting marriage with those who notoriously have cast off the Catholic faith, even if they have not passed to a non-Catholic sect, or who are enrolled in societies condemned by the Church. Let the pastor not assist at the aforesaid nuptials unless the Ordinary has been consulted, who, after inspecting all the circumstances of the matter, can permit him to be present at the marriage, provided that a grave cause urges and according to his own prudent judgment the Ordinary judges that sufficient provision has been made for the Catholic education of all offspring and for removing the danger of perversion of the other spouse."

"If a public sinner or one notoriously bound by censure shall first have refused to approach sacramental confession or to be reconciled with the Church, let the pastor not assist at his marriage, unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary."

IV. ON THE IMPEDIMENT OF LEGAL RELATIONSHIP

916. Formerly many difficulties were raised concerning legal relationship, whether or not it was an impediment, and in what degree. The Code, c. 1059, hands down the principle of solution, decreeing that in this matter civil law is to be followed, so that in regions where, by civil relationship, nuptials are rendered illicit, by canonical law marriage is likewise illicit, or a prohibiting impediment, and indeed in the same degree and manner: "In those regions where by civil law legal relationship, arising from adoption, renders nuptials illicit, by canonical law also, marriage is illicit."

Therefore the civil legislation concerning this matter must be carefully inspected. In Gaul legal adoption is held as a prohibiting impediment¹.

¹ "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same individual; between the adopted and the children, whether legitimate or natural, who could be born to the adopter; between the adopted and the spouse of the adopter; and reciprocally between the adopter and the spouse of the adopted." (*Cod. civ.*, a. 348.)

ART. II. ON DIRIMENT IMPEDIMENTS. — § I. THINGS TO BE PREMISED CONCERNING DIRIMENT IMPEDIMENTS IN GENERAL.

Division.

² Sanchez, lib. VII, disp. 1-6; St. Alphonsus, n. 978-981 and n. 1008; Carriere, n. 508-627; Feije, n. 73-104; De Angelis, l. IV, t. I, n. 15-17; Lehmkuhl, n. 726-731; Gasparri, n. 244 sq.; De Becker, p. 49-53; Haine, q. 94-100; Rosset, n. 1246; Genicot, n. 465-477; Noldin, n. 58-61.

The nature and division of diriment impediments.

Who can establish them?

Who are subject to them?

What causes excuse from them?

1° The Nature and Division of Diriment Impediments.

917. Nature. (A) A diriment impediment is of such a nature that it renders marriage invalid: "A diriment impediment both gravely prohibits marriage from being contracted, and prevents it from being validly contracted" (*Code*, c. 1036, § 2).

(B) A diriment impediment directly affects the contract and indirectly the sacrament. For indeed the Church cannot directly touch the substance of a sacrament, that is, change what Christ Himself instituted as essential in the sacraments; therefore, granted that valid consent is the matter and form of the sacrament of Matrimony, she cannot bring it about that Christians who validly consent do not contract valid nuptials. But she can determine and prescribe the conditions required in order that matrimonial consent be valid, with attention to the public good; for that is valid in the spiritual order which the State can furnish in temporal matters; now the State can prescribe, on account of the public good, certain conditions for completing civil contracts, and if these are omitted, the contract will be invalid; which it has in fact done in relation to purchase-sale, testaments, and other matters of this kind. Therefore likewise the Church can determine the conditions without which matrimonial consent will not be valid.

Moreover, by directly touching the contract, the Church indirectly touches the sacrament; for since the matter and form of the sacrament is matrimonial consent itself, as often as the contract is invalid, so often the sacrament is invalid. Nor in this is the matter and form of the sacrament changed, which always consists in a valid contract; but the conditions necessary for the validity of the contract are changed. This is made clear by comparison: if someone chemically dissolves baptismal water, by that very fact he indirectly invalidates the baptism administered with it, without, however, changing the substance of the sacrament; so the Church, by her power dissolving matrimonial consent, or rather preventing this consent from being validly given, does not change the substance of matrimony.

918. (C) But the end for which a diriment impediment is established is, in a general way, that marriage be entered rightly and worthily for the good of the contracting parties and of society; and therefore that the evils and disadvantages which would destroy or diminish the sanctity and honorableness of marriage be efficaciously averted. Hence certain impediments are instituted: (a) on account of the physical or spiritual good of the spouses, such as consanguinity, especially in the first degrees, affinity, or crime; (b) others, however, on account of the public good of both societies, civil and ecclesiastical; for example, relationship and affinity in remote degrees, so that young persons, contracting outside blood relatives and affines, may unite by a common bond families otherwise separated; (c) others finally on account of the good of religion and of the sacrament, such as order, vow, bond.

919. Division. (A) Fifteen diriment impediments are generally enumerated, and they are contained in these verses:

Error, condition, vow, relationship, crime¹,

¹ But a threefold relationship is distinguished: natural, spiritual, and legal; likewise the impediment of crime is threefold, as will be said below; hence nineteen impediments are acknowledged by some. Of these diriment impediments, thirteen are diriment impediments properly so called. Cf. *Code*, can. 1067 sq.

Disparity of worship, force, order, bond, honesty,

Age, affinity, if clandestine and impotent,

If the woman has been abducted and not restored in a safe place.

(B) By reason of the authority from which they take their origin, impediments are: (a) of natural law, if they have been instituted by God as author of nature, for example error, impotence, and consanguinity in the first degree of the direct line; (b) of positive divine law, when they have been established by positive divine law, as is the bond; (c) of ecclesiastical law, when they have been established by the authority of the Church, such as order, vow, disparity of worship, etc.

(C) By reason of extension, impediments are (a) absolute, when they dirimently impede marriage with any person whatever, for example vow, order, bond; (b) relative, when they invalidate nuptials only with certain persons, for example relationship, affinity, crime, etc.

(D) By reason of the end for which they were instituted, impediments are: (a) of private right, which are established on account of the private good of the contracting parties, so that to them alone belongs the right and duty of impugning the marriage; there are four: error, condition, fear, impotence, to which some, such as Lehmkuhl (n. 732), add the bond; (b) of public right, which are established on account of the common good, or on account of the sanctity of Christian Matrimony, so that the right and duty of impugning the marriage belongs not only to the contracting parties, but also directly to the ecclesiastical judge and indirectly to any person who has known of such an impediment; such are age, order, vow, and the rest except the five enumerated above (*Code*, c. 1971).

(E) By reason of the manner in which they are known, impediments are public or occult, according as they can be proved in the external forum or not, as will be explained below, where Dispensations are treated (*Code*, c. 1037).

920. (F) But in the logical order, which we shall follow, they can be reduced to three heads: (a) impediments which affect consent: age and amentia, error, condition, force and fear; (b) those which affect the capacity of the contracting parties, either absolutely: impotence, bond, vow, and order; or relatively: relationship, affinity, public honesty, disparity of worship, abduction, and crime; (c) those which regard the form of the contract, namely clandestinity¹.

¹ St. Thomas (*Supplement*, q. L, single article) thus logically and philosophically expounds the order of the impediments existing in his time: "For marriage can be impeded either on the part of the marriage contract, or on the part of those contracting. If in the first way, since the marriage contract is made by voluntary consent, which is taken away by ignorance and by violence, there will be two impediments of marriage, namely force, that is, coercion, and error on the part of ignorance. And therefore concerning these two impediments the Master made his determination where the cause of marriage was being treated (*Sent.* IV, dist. 29 and 30). But now he treats impediments which are taken on the part of the persons contracting, which are distinguished thus. For someone can be impeded from contracting marriage either simply, or with respect to some person. If simply, so that he can contract marriage with no one, this cannot be except because he is impeded from the matrimonial act. And this happens in two ways: first, because he cannot in fact, either because he cannot at all, and thus the impediment of impotence for coition is posited; or because he cannot freely, and thus the impediment of the condition of slavery is posited; secondly, because he cannot licitly, and this insofar as he is obliged to continence, which happens in two ways: either because he is obliged by reason of an office received, and thus there is the impediment of order; or by reason of a vow emitted, and thus vow impedes. But if someone is impeded from marriage not simply, but with respect to some person, either this is on account of an obligation to another person, as he who is joined in one marriage cannot be joined to another, and thus there is the bond of marriage; or because proportion to another person is lacking, and this on account of three things: first indeed on account of too great a distance from her, and thus there is disparity of worship; secondly, on account of too great nearness, and thus a threefold impediment is posited, namely relationship, then affinity, because it imports the

nearness of two persons by reason of a third person joined by marriage, and the justice of public honesty, in which there is the nearness of two persons by reason of a third person joined by betrothals; thirdly, on account of an undue conjunction with her first made, and thus the crime of adultery previously committed with her impedes."

2° Who Can Establish Diriment Impediments?

921. It has already been proved above, n. 814, that the Church, and indeed she alone, has the right of establishing among the baptized impediments diriment of marriage; but the question is who in the Church enjoys this power.

(A) The Supreme Pontiff and general Councils certainly can establish impediments of this kind, since they possess supreme authority over the universal Church. And this they can furnish either by way of a universal law, or by way of a particular precept¹.

¹ *Code*, c. 1038.

(B) "A custom introducing a new impediment or contrary to existing impediments is reprobated."²

² *Code*, c. 1041.

(C) But a Bishop and particular Councils today lack the power of establishing impediments, although formerly they exercised it. The reason is that this is a major cause, which the Supreme Pontiff has reserved to himself, and deservedly; for if any Bishop were able to establish impediments for his own diocese, there would now be the greatest confusion in a matter of grave moment.

3° Who Are Subject to Diriment Impediments?

922. (A) It is certain that all, even heretics and infidels, are bound by impediments of natural law and positive divine law, such as consanguinity in the first degree of the direct line, the bond, etc.; for divine law, even merely positive law, binds all subjects of God.

It is likewise certain that infidels are not directly touched by merely ecclesiastical impediments, since the Church does not judge those who are outside, and therefore does not make laws for them. Yet infidels are indirectly touched by these when, namely, they wish to contract with the faithful, who themselves are bound by the ecclesiastical bond; for for the nullity of marriage it suffices that one of the betrothed be incapable of contracting (*Code*, c. 1036).

923. (B) But it is disputed whether heretics, schismatics, and apostates who were validly baptized are subject to merely ecclesiastical impediments.

(a) Formerly not a few theologians and canonists, such as Laymann and Schmalzgrueber¹, denied this. For although, they said, the Church has the power of binding even rebellious children, in fact she does not wish to bind those who are members of a Society entirely separated from the Church, and who are born, but do not become, heretics. For it is not credible that she would wish to press laws whose observance is impossible, and from which the greatest harms necessarily arise; but ecclesiastical laws diriment of marriage cannot be observed by heretics, since they are unknown by most, and are not held as obligatory by those who know them; besides, if heretics are bound by these laws, many marriages will be invalid: which indeed is a very great evil.

¹ Laymann, l. V, tr. X, p. 2, c. 4, n. 7; Schmalzgr., lib. I, tit. 1, n. 379-380.

924. (b) Nevertheless, according to present-day canonists, the affirmative opinion must wholly be held, on account of the decisions of the Church. - An exception, however, is admitted with regard to schismatics dwelling in the East, who now through long centuries have had their own particular laws concerning this matter, while the Roman Pontiffs were silent.

1. For Benedict XIV several times declared, whether implicitly or explicitly, that heretics are bound by canonical impediments. In the Constitution *Matrimonia*, November 4, 1741, he established that marriages contracted, without the Tridentine form, between heretics or between a heretical and a Catholic party in Belgium and Holland were valid, provided nevertheless that no other canonical impediment stood in the way; therefore they are invalid if such an impediment stood in the way. Likewise in the Constitution *Singulari nobis*, February 9, 1749, to the Cardinal of York, he declares that a marriage between a Hebrew and a heretical woman is invalid, because "it is established, he says, that heretics indeed are repelled from the unity of the Church, and are deprived of all those goods which those living in the Church enjoy, yet they are not freed from her authority and laws."
2. This is also clear from the manner of acting of the Roman Congregations. For, when spouses entangled in an ecclesiastical impediment are converted from heresy or schism, the Apostolic See sanates their marriages in the root; moreover it grants special faculties to Bishops with regard to converted heretics, for example, the faculty of dispensing in marriages contracted with converted heretics in the simple and mixed second degree, that is, in the second mixed with the third or fourth; therefore it supposes that nuptials entered with a canonical impediment are invalid.
3. In reality, impediments of this kind, if you except clandestinity (concerning whose extension it will be said below), had already been promulgated when the modern sects of heretics were born, and therefore they had the force of law where heresy now is widespread; besides, nothing proves that the Church afterward wished to exempt heretics from these laws, but, on the contrary, the documents already brought forward rather prove the contrary. And deservedly so; for otherwise the Church would seem to favor rebellious children. - Besides, the Code exempts non-Catholics only from observing the Catholic form of marriage (*Code*, c. 1099).

Nor should it be said that the greatest inconveniences arise from this; for often present-day heretics in good faith are excused from sin when they contract marriage with a canonical impediment; if they are deprived of sacramental grace, they can receive other graces, and, since they entered the nuptials in good faith, the offspring is legitimate.

4° What Causes Excuse from Diriment Impediments?

925. (A) Even invincible ignorance does not excuse from a diriment impediment, because from the Code, c. 16, "no ignorance of invalidating or inhabilitating laws excuses from them, unless something else is expressly stated." This, moreover, the Holy Office openly declared in the Instruction to the Vicar Apostolic of Siam¹, July 4, 1855: "It must also be noted, with regard to diriment impediments, that invincible ignorance or good faith is not sufficient for marriage to

be validly contracted. Although sometimes (which, however, must rarely be believed in practice) that ignorance and good faith can avail to excuse from sin, nevertheless it can never effect that a marriage is valid which has been entered with a diriment obstacle."

¹ *Ap. Collect. Paris.*, n. 950, p. 427.

926. (B) Nor, regularly, does grave harm to the contracting parties, or the impossibility of obtaining a dispensation, excuse from impediments to be incurred; for invalidating laws, which are made on account of the public good, do not cease on account of some private good. This is confirmed from the response of the Holy Office to the Vicar Apostolic of Japan², March 11, 1868; for it had been explained that Japanese Christians, during a century-long persecution, had in good faith contracted marriages with impediments of ecclesiastical law; now it was answered that those who were persevering in good faith were not to be disturbed; but that others were held to renew consent, or, if this were impossible, petition should be made for a dispensation in the root; from which it is inferred that these marriages were held by the Holy Office as invalid.

² *Ap. Collect. P. F.*, n. 1226.

It is said regularly, because if someone in this case had altogether to abstain from marriage, - because, for example, the case concerns a Catholic woman who lives in a region where all young men are pagans, - the impediment ceases, since the natural right of marrying prevails over ecclesiastical law.

927. Corollary: Is it licit to contract with a doubtful impediment? According to all, first the matter must be seriously investigated; but if, after diligent examination, doubt remains, a distinction must be made:

(A) If there is question of an impediment of natural or divine law, for example of consanguinity, of the bond, he who enters nuptials with such a doubt sins gravely; for here there is question of the validity of the sacrament, and indeed of a defect which the Church cannot supply; therefore here it is not licit, before the fact, to follow a probable opinion; and he who acts thus voluntarily and without necessity exposes himself to the danger of violating chastity.

Nevertheless, "if the impediment of impotence is doubtful, whether by a doubt of law or by a doubt of fact, marriage is not to be impeded."¹

¹ *Code*, c. 1068, § 2.

(B) If the impediment is of ecclesiastical law, a distinction must likewise be made: (a) in a doubt of law, whether the law exists, it is licit to contract, because the Church supplies, that is, gives the faculty of marrying, if perhaps this does not exist; for from the Code, "laws, even invalidating and inhabilitating laws, do not urge in a doubt of law."² Therefore in practice a doubtful ecclesiastical impediment by a doubt of law is no impediment.

² *Code*, c. 15.

(b) In a doubt of fact, whether, for example, between A and B there is a prohibited degree of consanguinity or affinity, it is not licit to contract, but a dispensation must be obtained *ad cautelam*; for from the Code "in a doubt of fact the Ordinary can dispense in these, provided the case concerns laws in which the Roman Pontiff is accustomed to dispense."³ Otherwise the marriage is exposed to

the danger of nullity without sufficient reason, since it is easy to obtain a dispensation from the Ordinary. After the fact, one must stand for the validity of the marriage until the contrary is proved (*Code*, c. 1014).

³ *Code*, c. 85.

¹ *Decret.*, lib. V, tit. 39, cap. 44.

§ II. ON IMPEDIMENTS WHICH AFFECT CONSENT.

There are four: amentia and age, error, condition, force and fear.

I. On Amentia and Age.

928. 1° On amentia². (A) Perpetual and absolute amentia by natural law dirimently impedes marriage; for, from what was said above (n. 692), for the validity of marriage there is required a free and therefore rational consent, of which those perpetually and absolutely demented are wholly incapable. - But if the amentia is not perpetual, and marriage was entered at a time when each spouse was of sound mind, it is not dissolved by subsequent amentia.

² *Decret.*, lib. IV, tit. I, cap. 24; St. Thomas, 4 *Sentent.*, dist. XXXIV, q. I, a. 4; Sanchez, lib. I, disp. 8, n. 82-24; Schmalzgr., lib. IV, t. I, n. 14-17; Carriere, n. 827; Gasparri, II, n. 779-781.

(B) Those, however, who have lucid intervals do indeed validly contract during the time when they enjoy the use of reason; but regularly they are to be turned away from marriage, on account of the evils which follow from it and the difficulty of rightly educating the offspring. It is said regularly, because these marriages can be permitted on account of a grave cause, for example to repair the honor of a girl, to ratify a civil union, or to legitimate offspring; yet this generally should not be done without consulting the Bishop.

If it is doubted whether the marriage was contracted during a time of amentia or during a lucid interval, it is generally presumed to have been entered during the time of amentia, and therefore to be invalid, because lucid intervals occur by accident, and therefore must be proved.

(C) The demented, or monomaniacs, who are insane concerning one or another matter, and in other things possess reason, more probably are capable of marriage, provided they understand the rights and duties of wedlock; but they are to be turned away from marriage, insofar as it can be done, on account of the inconveniences to which the other party and the offspring to be born will be subject³.

³ Generally civil laws hold such marriages as invalid.

929. (D) Fools or stupid persons, if they possess sufficient discretion, so that they understand the rights and burdens of marriage, can validly contract; but, since they are more easily deceived, it is also more easily proved that their consent was vitiated by error.

(E) Deaf-mutes, rightly instructed, are capable of marrying. But if they are not capable of sinning gravely, neither are they judged capable of contracting.

Those, however, who from birth have been at the same time deaf, mute, and blind, are generally incapable of marriage, unless nevertheless they have been instructed by a special method¹.

¹ For some of these have in reality been instructed, as is seen in Dickens, *American Notes*, ch. III, where it is described how Laura Bridgman, a girl deprived of all the senses except touch, was excellently educated; cf. *Amer. Supplement to Encyclop. Britannica*, under the word Bridgman; another example is seen in *La Quinzaine*, Dec. 1902.

(F) The drunk, who for the time truly lack the use of reason, and also those sleeping, even sleepwalkers, cannot enter marriage during the time of drunkenness or sleep.

But if the marriage is made through a procurator, it is validly contracted even in the case in which the mandator is drunk or sleeping at the time of the nuptials, provided that he enjoyed the use of reason when he gave the mandate.

930. 2° On age². (A) General rule: By canonical law a marriage entered before the required age is invalid, that is, before the completed sixteenth year for the man, and likewise before the completed fourteenth year for the woman³.

² *Decret.*, lib. IV, tit. 2, *de Desponsat. impuberum*; Reiffenstuel, Schmalzgr., De Angelis, Santi, and other Canonists on this title; St. Alphonsus, n. 1065-1067; Carriere, n. 900-904; Feije, n. 531-537; Gasparri, n. 491-509; Lehmke, n. 748; Mansella, p. 21-25.

³ *Code*, c. 1067. - Puberty exists at the completed twelfth year for females, at the completed fourteenth year for males, from can. 88, § 2; but, according to recent law, the age of puberty is no longer the canonical age for contracting marriage.

(a) The reason of the law is that before this age that perfect discretion which is desired for understanding the duties of marriage is presumed to be lacking; and, moreover, it is altogether fitting that nuptials not be permitted to young persons before a more mature age renders them capable of rightly sustaining all the burdens of marriage.

(b) But as soon as the aforesaid age is completed, the marriage is valid of itself, even if perhaps the immediate power of generating were still lacking; for by the law of nature, for the validity of marriage the remote power of generating suffices, provided there is also present discretion of mind from another source: and this is presumed at the canonical age, unless by contrary indications it is proved to be lacking.

(c) A marriage null on account of defect of age is not validated by the mere attainment of age; rather it is necessary that consent be renewed after the canonical age has been attained.

931. (B) Note. More probably a marriage entered before that age is not valid, even if malice supplies age, that is, if there is present at the same time the immediate power of generating and sufficient discretion for understanding the duties of wedlock; in which case the old law decreed that marriage was valid, because marriage of the impubes was declared invalid for this reason, that they were presumed incapable of contracting; but a presumption yielded to truth.

Therefore, before a marriage of impubes was permitted, two aforesaid conditions had to be proved; but concerning these it was not the pastor himself who had to judge, but the Ordinary or the Pontiff.

(a) The power of generating could be proved either from copulation already had, - or from menstruation in the female, or from the emission of semen in the male, or from inspection of the bodies carried out by a physician. (b) But due discretion of mind was discerned from a questioning of the impubes made separately, by inquiring from each whether he or she wished to marry, whether he

or she knew the nature, burdens, and properties of marriage; whether he or she was induced to marriage spontaneously, or by force, fear, flatteries, or promises.

We said that exception now more probably does not hold, since can. 1067 decrees simply that marriage before the fixed age cannot validly be entered, in no way alluding to the old exception very well known to all. Silence in so grave a matter seems to us a change of the old discipline.

932. (C) The impediment of age, as it was explained, is only of ecclesiastical law. Natural law indeed invalidates marriages which are contracted without sufficient discretion, but not those which are entered by impubes who already understand the duties of wedlock. Hence (a) among the non-baptized, posited maturity of judgment, marriage entered before puberty is valid: which is practical, not indeed in our regions, but in many Catholic missions of India and of the Chinese empire, where marriages are frequently entered among impubes.

(b) The Church is able to dispense from this impediment as soon as sufficient discretion is present; but a dispensation is very rarely granted, only on account of a most grave cause, for example the reconciliation of two nations or families, and under the condition that the contracting parties not cohabit before they have arrived at a marriageable age.

933. (D) Things to be noted for practice. Although marriage is valid as soon as puberty is reached, it is not expedient to contract immediately; but it is fitting to wait for a more mature age, lest by too premature a use of marriage the strength of the spouses be exhausted and a weak offspring be generated; lest likewise the spouses lack that prudence which is desired for the right education of offspring. Besides, the time of nuptials ought not to be deferred too long, lest perhaps the morals of the young persons be corrupted. In this matter attention must be paid to the various customs and conditions of places: in warmer places maturity is acquired sooner, in colder places later (*Code*, c. 1067).

II. On the Impediment of Error.

Error invalidating marriage can be threefold: 1° concerning the nature or essential property of marriage; 2° error concerning the person; 3° error concerning the qualities of the person.

¹ St. Thomas, *Suppl.*, q. 51; Reiffenst., l. IV, t. I, n. 342-350; Schmalzgr., l. IV, t. I, n. 433-461; Sanchez, lib. VII, disp. 18; St. Alphonsus, n. 1009-1016; Carriere, n. 631-634; Ball. P., n. 601-610, ed. 3; Feije, n. 105-118; Gasparri, II, 782-793.

1° Error Concerning the Nature or Essential Property of Marriage.

934. (A) He invalidly contracts marriage who so errs concerning the very nature of marriage that he positively does not wish to hand over the right over his own body, when, namely, he thinks marriage is a certain friendly society, but not a union for generating children; for then matrimonial consent is lacking, since the intention of giving the right over his own body is lacking.

Nevertheless it is not required that those about to marry know that offspring is generated through copulation, but it suffices that they know that marriage is contracted for having offspring, and that

some right over the body is mutually given (can. 1081, § 2). Moreover, error of this kind is not presumed in those who have reached puberty².

² Thus in the Code, can. 1082: "In order that matrimonial consent can be had, it is necessary that the contracting parties at least not be ignorant that marriage is a permanent society between man and woman for procreating children. - This ignorance is not presumed after puberty."

(B) Likewise error invalidates the sacrament when it is so concerned with an essential property of marriage, unity, indissolubility, or sacramentality, that such a property is positively excluded: then there is not only error, but a condition contrary to the essence of the contract is placed. But if this property is not excluded, and there is the intention of contracting according to the manner of others, the nuptials are valid.

935. 2° Error concerning the person exists when someone, wishing to contract with one woman, for example Magdalene, marries another, for example Mary.

Error concerning the person, whether vincible or invincible, whether antecedent or concomitant, by natural law dirimently impedes marriage, unless the intention of the contracting party is to marry the present person, whoever she may be¹.

¹ "Error concerning the person renders marriage invalid" (*Code*, c. 1083).

For marriage is a contract with a determined person, and the person herself is truly the object of the contract, and therefore pertains to its substance: but he who errs concerning the person, and marries Mary, whom he thinks to be Magdalene, does not consent to the person with whom he contracts, but to another, and therefore the consent is vitiated. Thus when Jacob married Leah, thinking her to be Rachel, the marriage was null, although afterwards he ratified it by new consent.

The exception is likewise understood; for, if someone wishes to marry the woman present, whoever she may be, he truly consents to the present person, although he erroneously supposes her to be Cecilia, while in reality she is Agnes.

936. 3° Error concerning the qualities or fortune of the person of itself does not invalidate marriage. For matrimonial consent of itself is terminated upon the person herself; and, although her qualities render consent readier and fuller, nevertheless they do not determine it; and therefore consent exists even if these qualities are lacking. - Therefore he validly contracts who marries a person whom he thinks to be noble, rich, a virgin, while in reality she is common, poor, corrupted².

² "Error concerning a quality of a person, even if it gives cause to the contract, invalidates marriage only: 1° if error of quality redounds to error of person; 2° if a free person contracts marriage with a person whom he thinks free, while instead that person is a slave by servitude properly so called."

It was said of itself, because by accident error concerning qualities or fortune invalidates marriage in a threefold case:

(a) If someone thinks the other party is free, while she is a slave, as will be explained below.

(b) If consent is given under an explicit condition of that quality, for example, I wish to marry Mary, provided she is noble, as is clear from what was said where conditional consent was treated, n. 699.

(c) If error of quality redounds to error of person; which happens when the quality is so determinative of the person that the contracting party does not wish to marry except a person endowed with such a quality; for example Titius wishes to contract with the firstborn daughter of Peter, unknown to him; in fact he marries Rosa, who falsely says that she is Peter's firstborn; the contract is invalid, since in reality the consent of Titius is bound to the quality of firstborn daughter of Peter, which in the case is lacking¹.

¹ Bangen, II, 18, illustrates the matter by an example. Count A wished to marry the only daughter of Count B, unknown to him; in fact he contracted with a chambermaid of this daughter, who pretended that she was the daughter of Count B: the contract is invalid.

Therefore from what has been said it is clear that error in these various cases invalidates nuptials by natural law, and therefore is an indispensable impediment.

III. On the Impediment of Servile Condition.

937. 1° This impediment exists when a free man marries a person of servile condition, thinking her to be free. - But if he has known this servile condition, and nevertheless has wished to accept her, the nuptials are valid. Hence this impediment is reduced to error. Therefore marriage between two slaves can be valid.

² *Decretal.*, lib. IV, tit. 9, *de conjugio servorum*; St. Thomas, *Supplem.*, q. 52; Reiffenst., Schmalzgr., and other Canonists on tit. 9, lib. IV; Sanchez, lib. VII, disp. 19; St. Alphonsus, 1017-1023; Carriere, II, n. 636-638; Ball. P., n. 611-619, ed. 3; Feije, n. 119-124.

Slavery, of which there is question, is slavery properly so called, not however the condition of those who voluntarily bind themselves to the service of others. And since slavery now does not exist among Christian nations, this impediment does not pertain to practice except in the Missions.

2° This impediment much more probably is only of ecclesiastical law, because the error on which it is founded is concerned only with the qualities of the person; therefore it does not bind infidels. But the Church deservedly established it, because the servile condition, although it does not exclude the essential goods of marriage, nevertheless is opposed to them, insofar as a slave cannot, against the master's will, live with the spouse, nor rightly educate the offspring.

IV. On the Impediment of Force and Fear.

938. 1° Notion. Force and fear are judged to be one impediment: force is physical coercion, while fear arises from moral coercion: each harms the perfect liberty of consent.

³ St. Thomas, *Supplem.*, q. 47, a. 1-4; Sanchez, lib. IV; Reiffenst., lib. IV, tit. I, n. 325-341; Schmalzgr., *ibid.*, n. 384-432; St. Alphonsus, n. 1045-1047; Carriere, n. 766-785; Ball. P., n. 737-762, ed. 3; Feije, n. 125-144; Mansella, p. 12-16; Gasparri, n. 805-826; Genicot, n. 490.

(a) Force invalidates marriage by natural law, when it is such that it cannot be resisted; for example, if someone physically compels Sempronia to express exteriorly, by a sign of the head, matrimonial consent, interior consent is lacking, and therefore by natural law the marriage is invalid. Sometimes, however, force is taken for moral coercion, and then it does not differ from fear.

(b) Fear is "a trepidation of mind by reason of a present or future danger." It is twofold by reason of intensity: grave or light, according as the trepidation of mind greatly disturbs the mind or not; generally a grave evil induces grave trepidation, especially when it is apprehended as imminent. It is grave absolutely when the evil is such that it can seriously disturb even a steadfast man; relatively, when an imminent evil, with attention to all the circumstances of sex, age, and disposition, can gravely disturb the person of whom there is question.

939. 2° Conditions required that fear invalidate marriage. By canonical law four conditions are required: fear relatively grave, - inflicted by an extrinsic and free cause, - unjustly, - for extorting consent (*Code*, c. 1087).

(A) Fear grave relative to the person contracting; hence in individual cases the judge must explore whether or not the fear caused grave trepidation of mind.

Now fear is judged grave when these two things concur at the same time: an evil grave relative to the person of whom there is question, and persuasion that it is imminent. (a) The evil must be grave relative to the person contracting. There are certain evils which by law are held as grave for all, such as death, mutilation, bodily tortures, exile, incarceration, loss of liberty, loss of all temporal goods or of a notable part of them, loss of a great profit to which one has a right, infamy of law or of fact, threat of defilement, unjust excommunication, and other evils of this kind which threaten not only the person himself or herself, but also his or her parents, blood relatives, affines, or domestics. All these are presumed grave even relative to that person, unless, with attention to his or her disposition, the contrary is clear; thus the threat of jail for a few days moves very little a most ruined man already detained many times in jail; temporary enclosure in a monastery terrifies very little a girl who loves solitude. - Moreover there are other evils which, although light in themselves, are grave relative to the age, sex, or disposition of the person; hence the judge, in judging the gravity of fear, will attend especially to three things: to the person who threatens, whether he is irascible, violent, and possesses great authority; to the person into whom fear is cast, whether he or she is fearful, trembling; to the threats themselves, whether they are of such a nature that they greatly affect the person.

(b) Moreover a grave evil must be apprehended as imminent; for if it is remote, or can easily be guarded against, whether by one's own effort or by the help of friends; or if the person threatening cannot, or at least is not accustomed to, put threats into execution, fear is not judged grave, since it is easily despised.

Hence also reverential fear, by which someone fears the indignation of parents or of a master, although blows and threats are absent, is sometimes held grave, especially if such indignation is lasting. But in the external forum it is not presumed grave, unless quarrels, threats, or at least importunate and most urgent prayers¹ have been added.

¹ Concerning this see the case of the Prince of Monaco, ap. *Acta S. Sedis*, XII, p. 403-422; and other cases ap. *Acta*, XI, p. 338-347; XXXII, p. 727-745; XXXIII, p. 130-160; from which it is clear that fear is not easily proved in the external forum.

In doubt, however, whether the fear was grave or light, it is judged to be light, because a matrimonial cause is favorable, and in doubt one must stand for the validity of marriage². Besides, if the fear had been grave in the internal forum, the marriage can be validated by afterwards giving free consent.

² Code, c. 1014.

940. (B) Fear inflicted by an extrinsic and free cause, but not by an intrinsic or necessary cause; hence a marriage entered from fear of hell is valid, so that someone may consult his conscience, - or from fear of death or disease, for example if someone has learned from a physician that the use of marriage is necessary for him to preserve health. For in these and similar cases, the contracting party is impelled to nuptials not by another, but by himself, insofar as he understands that it is consonant with reason to choose marriage in order to avoid a greater evil.

941. (C) Inflicted unjustly; now it is such, if the evil which another threatens is not proportioned to the offense. For if fear is inflicted justly, by threatening a just penalty, the liberty of consent, even if destroyed, is justly destroyed, and it is fitting that he who is worthy of penalty be deprived of liberty. "He brings fear upon himself" (D'Annibale).

(a) Thus nuptials are valid if a competent judge, the order of law having been observed, by threat of jail compels a defiler to marry the woman whom he knew by force³; likewise if someone, after betrothals contracted with a girl, or after copulation obtained under the promise of nuptials, is compelled under penalty of excommunication to marry the same girl; or if a young man, caught fornicating with a girl, is induced by the father, under threat of accusation before the judge, to contract with her.

³ A law of this kind in fact exists in many States of America; when the case occurs, the priest should carefully explore the will of the young man; for there are some who simulate consent, in order to escape jail, without the intention of marrying; they should seriously be admonished that this is sacrilege, and that they are held either to abstain from nuptials or to give consent seriously. Cf. *Amer. Eccles. Review*, XVIII, 1898, p. 530.

(b) On the contrary, marriage is null if a father says to a defiler: unless you marry my daughter, I will kill you (because he does not have the right of killing); if a judge, according to the acts and proofs, compels a young man to contract with a girl, because he is thought guilty of seduction, while in reality he is innocent; or if in some other unjust way, from fear of jail, loss of office, etc., someone is compelled to marry.

(c) When fear is inflicted justly in itself, but not as to the manner, because, namely, the order of law was not observed, it is disputed whether the nuptials are valid; more probably it is affirmed, because then the injury is done rather to the law than to the injured person.

942. (D) Fear inflicted for extorting consent, "from which (fear), in order that one may free oneself, one is compelled to choose marriage" with such a person (can. 1087).

(a) Marriage is certainly invalid when fear is inflicted either by the other contracting party or by a third person, directly in order to marriage; for example, if Caius says to Martha: unless you marry me, I will kill you; or if Titius says to Martha: unless you marry Caius, I will kill you; for in each case the innocent person is compelled to choose marriage, and there is for him no other way of freeing himself.

(b) But if fear is brought in on account of another motive, for example, if a father threatens death to a defiler in vengeance for the offense, and the latter promises to marry the violated girl, more probably

the nuptials are valid; nevertheless, since some probably contradict this, the matter remains doubtful in practice. - Likewise marriage is doubtful if it is entered from fear of a grave evil unjustly brought upon one for an end different from marriage; for example, if a sick woman contracts with a physician, or with the physician's son, because she fears that otherwise the physician will refuse to care for her, provided nevertheless he is not held to this by justice; for if he were held by justice, and were unwilling to care for her except under the condition of marriage, the nuptials would be invalid.

N. B. In all doubtful cases, judgment must be made by a judge in the external forum, and therefore his sentence must be awaited.

943. 3° By what law does fear dirimently impede marriage? (A) If the trepidation of mind so removes the use of liberty that there is not sufficient liberty for mortal sin, it invalidates marriage by natural law, because the consent is not free.

(B) But if, even under fear, the will enjoys that liberty which suffices for mortal sin, as often happens, it is disputed; (a) some, with St. Thomas, affirm that the impediment proceeds from natural law, because marriage is the bond of perpetual love, for which full and perfect consent is required, the more so because the contract once entered is indissoluble; (b) many with Sanchez hold that it is only of ecclesiastical law, because liberty from such fear is diminished, but not taken away. - Whatever the case may be, in practice the Church is not accustomed to dispense in it, but wishes that consent be renewed, or that the marriage be dissolved.

944. Corollary. If the impediment of fear is public, the marriage is not revalidated by cohabitation and carnal copulation¹; but it is necessary that consent be renewed, and indeed before the pastor and witnesses. But if the impediment is occult, it can be revalidated by copulation freely had and by consent, without solemnities, provided the solemnities had previously been observed.

¹ Thus from Trent, sess. XXIV, cap. 9 *de Reformat. matrim.*

945. N. B. Parents, masters, magistrates, and others compelling to marriage sin gravely, and can be punished by the Bishop. But the excommunication formerly laid against masters and magistrates who compel subjects or others so that they do not freely contract marriage no longer has force.

§ III. ON IMPEDIMENTS WHICH AFFECT THE CAPACITY OF THE CONTRACTING PARTIES ABSOLUTELY.

There are four: impotence (concerning which in the Supplement); bond, vow, and order.

I. On the Impediment of Bond.

946. 1° Notion. The bond, of which there is question, is the matrimonial bond arisen from other nuptials and not yet dissolved. This impediment dirimently impedes a subsequent marriage by divine law, since, from what has been said, polygamy is prohibited by divine law.

² *Decretal.*, lib. IV, tit. 4 *de Sponsa duorum*; Sanchez, lib. VII, disp. 80; Schmalzgr., l. IV, tit. 4, n. 1-28; St. Alphonsus, n. 1060; Carriere, n. 804-808; Feije, n. 438-447; Ball. P., n. 765, ed. 3; Mansella, p. 97-124; Gasparri, n. 625-634; Lehmke.,

n. 740-742; Genicot, n. 492-493. - The Code, c. 1069, establishes concerning this impediment: "He invalidly attempts marriage who is held by the bond of a prior marriage, - although not consummated, saving the privilege of faith. - Although the prior marriage be invalid or dissolved from any cause whatever, it is not therefore licit to contract another before the nullity or dissolution of the prior marriage has legitimately and certainly been established."

Hence even infidels are bound by it, and, when they are converted to the faith, they can retain only one wife: this ought regularly to be the first legitimate wife; but, since in certain regions it is impossible to find the first, the convert can remain with the baptized wife as with the legitimate wife, although she is not the first. Moreover, the converted spouse, when he cannot find and interpellate the infidel party, is permitted to enter other nuptials, which are valid, even if afterwards it has become known that the other party had been converted to the true faith at the time of the second marriage. Whether this is done by force of the Pauline privilege, or by the power conceded to the Roman Pontiff of dissolving a marriage contracted in infidelity and not consummated after baptism, is disputed, as was explained above, n. 733.

But as regards the faithful, this impediment is indispensable when it arises from a ratified and consummated marriage.

947. 2° On the proofs required for entering a new marriage. He who has entered a first marriage cannot contract another unless the former has first been dissolved. Now this can be dissolved in four ways: by the Pauline privilege, concerning which above (n. 729); - by dispensation of the Supreme Pontiff, or by religious profession, when the marriage was not consummated (above, n. 742): in which case there must be exhibited an authentic testimony of the dispensation granted by the Supreme Pontiff, or of the religious profession of the other party, with juridical proof of the non-consummation of the marriage; - by authentic declaration of the invalidity of the first marriage; - or finally by the death of the other spouse; concerning these two latter modes a few things are to be noted.

(A) In order that the prior marriage be authentically declared invalid, regularly there must be a double judicial sentence favoring nullity, from the Constitution of Benedict XIV *Dei miseratione* and from cc. 1986-1987. Nevertheless, from cc. 1990-1992, a marriage can be declared null by the Ordinary, with the intervention, however, of the defender of the matrimonial bond, without need of a second sentence, and without the solemnities established in the Constitution *Dei Miseratione*: (a) when there is question of the impediment of disparity of worship, and it is evidently clear that one party is baptized and that the other was not baptized; (b) when there is question of the impediment of bond, and it is certainly clear that the first spouse is legitimate and still living; (c) when there is question of consanguinity and affinity, or also of spiritual relationship, or of the impediment of order or of a solemn vow of chastity; provided from a certain and authentic document it is evidently clear that impediments of this kind exist, concerning which there had not been a dispensation by the authority of the Church¹. Likewise, if the form prescribed in can. 1094 was not observed where it had to be observed, no judicial process is required, nor the intervention of the defender of the bond, but the case is to be resolved by the Ordinary, or by the pastor, after consulting the Ordinary (*Pont. Commiss.*, October 16, 1919).

¹ Ap. *Collect. P. F.*, n. 1575.

948. (B) In the case of the death of the first spouse, moral certitude concerning his or her death is required, so that he sins gravely who contracts a new marriage without such certitude, even if in fact the prior spouse had died.

² Ap. *Acta S. Sedis*, XXXIII, p. 756-758.

But for obtaining this certitude, the mere absence of the spouse for many years does not suffice, unless other positive indications are added. Hence, according to the Instruction of the Holy Office³, May 13, 1868, this method is to be followed: (a) first, an authentic document of death should diligently be sought from the registers of the parish or hospital or military service, or, if it cannot be had from ecclesiastical authority, from the civil Government of the place in which the person died. (b) If such a document cannot be had, witnesses should be heard, at least two, sworn, worthy of faith, who depose concerning their own fact, who knew the deceased, and who are concordant among themselves as to the place and cause of death and other substantial circumstances. (c) Sometimes one witness is admitted, provided he is immediate, above every exception, and his deposition is supported by other grave supports; or, if extrinsic supports are lacking, his testimony is in every part congruous and probable. (d) If there are no eyewitnesses, the testimony of those can be accepted who, otherwise worthy of faith, testify that they heard of the death of the spouse from others at a non-suspect time, provided their statements correspond to the other circumstances occurring in the case. (e) If not even one witness is found such as above, proof of death must cautiously be investigated from conjectures, presumptions, indications, and any adjuncts whatsoever, which can be had from relatives, friends, neighbors, and acquaintances of each spouse⁴.

³ Ap. *Acta S. Sedis*, VI, p. 436-441; Gasparri, t. II, p. 523.

⁴ Concerning these read the cited Instruction, or Feije, n. 444. - Thus, from the decree of the Holy Office, July 20, 1898 (ap. *Acta S. Sedis*, XXXI, p. 252), faculty was granted to Italian Bishops of conceding a document of liberty to the wives of soldiers who had fought at Adwa in Africa, and of whom no memory remained, notwithstanding investigations made by the Government.

Nor, if there is need, is an investigation through public newspapers to be passed over, after all necessary indications of the person have been given to their director, unless prudence has prohibited this. But a new marriage is not to be permitted unless the greatest probability, or moral certitude, is obtained.

Therefore, in practice, the pastor can assist at new nuptials, no permission of the Ordinary having been sought, provided that it is morally certain concerning the death of the prior spouse. But if the matter is doubtful, let him have recourse to the Bishop, who himself, when the matter seems complex, should set forth the case to the Holy See.

949. 3° On the manner of acting after the second marriage has been entered. (A) If someone in fact has entered second nuptials with a probable and serious doubt concerning the death of the prior spouse, he is indeed held to render the debt to the other spouse, who is in good faith, but he cannot ask for it, because he is equated to a possessor in bad faith. If, however, the doubt was light, and, after inquiry has been made, no probable indication has been found that the prior spouse survived, it is licit to render and to ask for the debt, because then there is had the greatest probability, which is equivalent to moral certitude.

(B) If both spouses contracted in good faith, and doubt afterwards supervenes, the matter must diligently be investigated; but, if, after inquiry has been made, doubt remains, it is licit for the one doubting to ask for and render the debt; for since he is a possessor in good faith, he is not to be deprived of his right until it is morally certain that the possession is unjust¹.

¹ Thus it can be inferred from the response of the Holy Office, March 22, 1865, ad 2um, ap. *Collect. Paris.*, n. 973, and from the Instruction of the S. C. Prop. F., 1792, *ibid.*, n. 971.

(C) If finally it is morally certain that the prior spouse is still living, the second marriage is null, and therefore must be dissolved; and one must return to the prior spouse. - Nevertheless the offspring, begotten from the second marriage, is held as legitimate, on account of the good faith of the parents.

II. On the Impediment of Vow.

950. 1° Notion. There are two vows which render marriage not only illicit, but also invalid: -

¹ St. Thomas, *Supplem.*, q. 53, a. 2; *Decretal.*, l. IV, t. 6, *Qui clerici vel voventes matrimonium contrahere possunt*; Canonists on this title; Sanchez, lib. VII, disp. 25-26; St. Alphonsus, n. 1024-1026; Carriere, n. 640-663; Ball. P., n. 620-623, ed. 3; Feije, n. 514-530; Gasparri, n. 564-576.

(A) A solemn vow of perfect chastity validly emitted in a religious Order approved as solemn: "If anyone shall say that clerics constituted in sacred orders, or regulars solemnly professed in chastity, can contract Matrimony, and that the contract is valid... let him be anathema."² (a) That vow must be solemn, not simple, and therefore simple vows, which are emitted in religious Orders after the novitiate, to last for three years, do not dirimently impede marriage. (b) It must be emitted in a religious Order approved as solemn; in antiquity there were no Orders except of this kind; but today there are many Congregations, especially of women, in which only simple vows are emitted, which indeed prohibit marriage (above, n. 895), but do not invalidate it. (c) It must be valid, that is, freely emitted, and with those things which by law must be observed for the validity of religious profession having been observed.

² Trent, sess. XXIV, can. 9.

(B) The simple vows of scholastics and coadjutors of the Society of Jesus, emitted after a two-year novitiate, by force of a special privilege conceded by Gregory XIII³; nevertheless the General can dispense from them.

³ *Constit. Ascendente Domino*, May 25, 1584. This privilege is not extended to other Orders. Note, however, that the simple vows of the Jesuits do not dissolve a ratified marriage contracted before.

The Code, c. 1073, has sanctioned both thus: "Likewise religious who have professed solemn vows, or simple vows to which by a special precept of the Apostolic See the force of invalidating nuptials has been added, invalidly attempt marriage."

951. 2° Penalties against Regulars attempting marriage. Regulars or Nuns presuming to contract marriage after a solemn vow of chastity, even merely civilly, and also all those presuming to contract marriage with any one of the aforesaid persons¹, incur excommunication *latae sententiae* simply reserved to the Apostolic See. Nevertheless, since it is said "presuming," ignorance even crass or supine² excuses from this censure.

¹ Thus *Code*, c. 2388.

² *Code*, c. 2229.

952. 3° By what law does a solemn vow dirimently impede marriage? Today it is commonly handed down, against a few ancient Canonists, that a solemn vow does not dirimently impede marriage by natural law, but only by ecclesiastical law. For (a) a simple vow does not invalidate marriage; but the very solemnity of the vow certainly arises from ecclesiastical law, not from natural law. (b) Besides, from history it is clear that this impediment was successively introduced into the Church; thus in the time of Gregory the Great, it was provided that monks deserters from the rule should be brought back to the monastery even unwilling; at the beginning of the twelfth century, it was decreed in Lateran Council I that their marriages should be invalid; and in Lateran II, 1139, the same was declared with regard to the marriages of nuns³. (c) Finally the Church sometimes dispenses in this impediment; thus Pius VII dispensed with many solemnly professed monks and nuns, for revalidating marriages sacrilegiously entered during the French disturbance.

³ Cf. De Angelis, lib. IV, tit. 6, n. 6; Esmein, I, p. 269-283.

Only the Pontiff can dispense from a solemn vow of chastity. But the Code concedes to Ordinaries the faculty of dispensing concerning impediments even public ones of ecclesiastical law (except the sacred order of the Presbyterate and affinity of the direct line from a consummated marriage), and therefore also concerning a solemn vow of chastity, when danger of death urges, scandal having been removed⁴.

⁴ *Code*, c. 1043.

III. On the Impediment of Order.

953. 1° Notion and existence. A sacred or major order, validly and freely received, dirimently impedes subsequent marriage, at least in the Latin Church. Thus from Trent cited above (n. 950)⁶.

⁵ St. Thomas, *Supplem.*, q. 53, a. 3-4; *Decretal.*, l. IV, tit. 6, *Qui clerici vel voventes matrim. contrahere possunt*; Canonists on this title; Sanchez, lib. VII, disp. 27-31; St. Alphonsus, 1058-1059; Carriere, n. 787-802; Ball. P., n. 763; Feije, n. 504-513; Gasparri, n. 577-595.

⁶ "Clerics constituted in sacred orders invalidly attempt marriage" (*Code*, c. 1072).

But a law of this kind is much more ancient than the Council of Trent. For since Christ and the Apostles, both by words and by examples, had praised continence, from the first times of the Church many clerics preserved virginity, married men were gradually removed from the clerical state, or, after sacred orders had been received, lived separated from their wives; and thus, gradually and imperceptibly, the law of celibacy was introduced by custom, and sacred order was held as a diriment impediment. And deservedly so; for, as is set forth more fully in the Treatise *On the Various Obligations of States*, it is altogether fitting that major clerics abstain from marriage, both because the state of continence undertaken for God is more perfect than the matrimonial state, and because those cultivating virginity can devote themselves wholly and all their powers to the service of God and the salvation of souls, since they are not entangled in domestic cares. - According to St. Thomas,

marriage of clerics among Latins is dirimently impeded not only by force of order, but also from the vow of continence annexed to sacred orders¹.

¹ *Supplem.*, q. 53, a. 3. - In reality Boniface VIII (cap. unic. *de Voto*, in 6°) says: "We have judged that it must be declared that only that vow ought to be called solemn, as regards dirimently impeding marriage contracted afterwards, which shall have been solemnized by the reception of sacred order, or by profession"...

954. It is said (a) sacred order, that is, in the Latin Church², the subdiaconate and the other higher orders. Hence minor clerics can validly marry, but by marrying a wife they fall from the clerical state and lose the principal clerical privileges.

² Among some Eastern Churches, the subdiaconate is numbered among the minor orders, but everywhere the diaconate is held as a sacred order. Cf. Gasparri, n. 591.

(b) At least in the Latin Church; for, although among the Maronites and Italo-Greeks sacred order dirimently impedes subsequent marriage, it is disputed whether the same must be said with relation to all Orientals. The affirmative opinion seems more probable. Hence if any schismatics, after marriage contracted after sacred ordination, are converted, they must indeed be punished, because they married contrary to the canons, but the question concerning the validity of their marriage must be referred to the Holy See.

(c) Sacred order dirimently impedes a subsequent marriage, but not one contracted before, even if only ratified, but only prohibits its use in the Latin Church; among Orientals, clerics in sacred orders, with bishops excepted, can use a marriage previously validly contracted.

(d) Order freely received: for, if someone unwillingly receives order, the ordination is invalid, nor does it produce any obligation; if under grave fear, the ordination is valid, but he can be reduced to the lay state, coercion and defect of ratihibition having been legitimately proved, by sentence of the judge, without any obligations of celibacy and canonical hours, as is clear from the Code, can. 214. But coercion and defect of ratihibition must be proved according to the norm of can. 1993-1998.

955. 2° By what law does it dirimently impede marriage? By ecclesiastical law only; for divine law, although praising virginity, nevertheless did not prescribe it to the ministers of the Church. Hence the Supreme Pontiff, and indeed he alone, can dispense from this impediment; yet he is not accustomed to do this except for a most grave cause: for example, for the public good; thus Casimir, a deacon and Cluniac monk, having been made king of Poland, obtained from Benedict IX a dispensation that he could marry a wife; - or for avoiding greater inconveniences, as was done at the time of the French disturbance with regard to clerics who had entered nuptials civilly¹. - Moreover, the Code concedes to Ordinaries the faculty of dispensing with deacons and subdeacons, but not priests, in the article of death, so that they can validly and licitly contract marriage, for consulting conscience and, if the case requires, for the legitimation of offspring².

¹ Nevertheless Pius VII did not wish to revalidate the marriage of Talleyrand, Bishop of Autun. In reality dispensation is granted rarely to subdeacons and deacons, very rarely to priests, never to Bishops. Whenever it is granted, it is enjoined that the cleric reduced to the lay state can in no way exercise the orders received; but the obligation of the breviary is commuted into other good works.

² *Code*, c. 1043.

956. 3° Penalties enacted against violators of this law. Clerics constituted in sacred orders who presume to contract marriage, and likewise persons presuming to contract with them, incur excommunication *latae sententiae* simply reserved to the Apostolic See, as was said above (n. 951) concerning Regulars.

§ IV. ON IMPEDIMENTS WHICH AFFECT THE CAPACITY OF THE CONTRACTING PARTIES RELATIVELY.

Six impediments of this kind are given: relationship, affinity, public honesty, disparity of worship, abduction, and crime. Relationship, however, is threefold: natural, or consanguinity, which arises from carnal generation; spiritual, which arises from regeneration through baptism; legal, which arises from adoption: concerning these, separate things must be said.

I. On the Impediment of Consanguinity.

957. 1° Notion. (A) Consanguinity (unity of blood) is the nearness of persons descending from the same stock, or progenitor; or more fully, the bond existing between persons of whom one descends from another, or who both descend from the same, as from a common and proximate stock, through carnal generation.

¹ St. Thomas, *Supplem.*, q. 54; *Decretal.*, l. IV, t. 14, *De consanguinitate et affinitate*; Canonists on this title; Sanchez, l. VII, disp. 50-53; St. Alphonsus, n. 1029-1030; Carriere, n. 664-677; Ball. P., n. 654-665, ed. 3; Feije, n. 347-369; Konings, n. 1580-1585; Scavini, III, n. 781, and annotation, n. 889-891; Noldin, n. 96-103; Gasparri, n. 662-684; Mansella, p. 32-41; Deshayes, *Nouvelle Methode pratique pour la recherche des empachements de Consanguinite*, Paris, 1898.

(B) It is explained. (a) Consanguinity exists both between persons of whom one descends from another, whether immediately, as a daughter from a father, or mediately, as a granddaughter from a grandfather; and between persons who descend from a common stock, although not one from another, as a brother and sister, who arise from the same father, a male cousin and a female cousin, from the same grandfather.

(b) The common stock can be either the father or the mother; nor is it required for consanguinity that both descend from the same father and mother.

(c) Nevertheless it is required that the stock be proximate, not altogether remote; for the force of the stock becomes weaker in proportion as it is derived through more generations; and therefore, if the stock is very remote, the persons flowing from it are no longer consanguineous except in a broad sense.

(d) Carnal generation, whether licit or illicit, is as it were the foundation of this consanguinity, and the medium by which common blood is transmitted; hence consanguinity is twofold: legitimate and illegitimate.

958. (C) Therefore three things must be distinguished in consanguinity: stock, line, degree. (a) The stock is the person (whether father or mother) from whom, as from a root, blood relatives take their origin: thus brothers have their father as a common stock.

(b) Line is the series of persons who arise from the same stock. It is twofold: direct and collateral; the former is the series of persons of whom one descends from another, and therefore includes

ascendants, such as father, grandfather, great-grandfather, etc., and descendants, namely son, grandson, great-grandson, etc. See the genealogical tree. - The collateral, or oblique or transverse line is the series of persons who descend from the same stock, but not one from another; for example brother and sister, male cousin and female cousin, etc. This line is equal when the blood relatives are equally distant from the common stock, as brother and sister, male cousin and female cousin; but unequal, when one is more and the other less distant from the common stock, for example maternal uncle and niece.

(c) Degree is the measure of distance between consanguineous persons and the common stock from which they take origin; thus brother and sister are in the first degree of collateral consanguinity, because they are distant by one degree from the common stock.

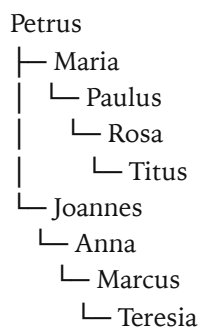
959. 2° On the computation of degrees. The mode of computing these degrees is not the same in canonical law as in Roman civil law or in most modern civil laws¹. We hand down the canonical method, which is also called Teutonic, or Germanic, because the Church received it from the Germans.

¹ In the direct line canonical and civil law agree; but in the collateral line there is a great difference; for, according to Roman law, there are as many degrees as there are generations on each side, so brother and sister, by civil law, are in the second degree; brother and niece from a sister are in the third, brother and the daughter of a niece in the fourth, etc. Cf. Gasparri, n. 664.

(A) In the direct line, there are as many degrees as generations, or in other words there are as many degrees as persons, the stock alone being removed; thus father and daughter are in the first degree, grandfather and granddaughter in the second degree, great-grandfather and great-granddaughter in the third degree, etc.

(B) In the equal collateral line, persons are distant from one another by that degree by which they are distant from the common stock, or there are as many degrees as persons in one line, the stock being removed; for example, brother and sister (in the diagram Mary and John) are in the first degree; their children (Paul and Anna) in the second; their grandchildren (Rosa and Mark) in the third; and their great-grandchildren (Titus and Teresa), in the fourth; as is shown in the following diagram:

Diagram:



960. (C) In the unequal collateral line, persons are distant from one another by that degree by which the more remote of them is distant from the common stock, or there are as many degrees as persons in the longer line, the stock being removed; thus in the preceding diagram John and Rosa are in the third degree, because the more remote person, namely Rosa, is

distant by three generations from Peter, the common stock; Paul and Teresa are in the fourth degree, because Teresa is distant by four degrees from Peter. - Nevertheless, according to the style of the Chancery, sometimes it is necessary, when a dispensation is sought, to express also the nearer degree; which is thus explained: John and Rosa are blood relatives in the third degree mixed with the first¹, or in the third touching the first of the unequal collateral line; Paul and Teresa are blood relatives in the fourth degree mixed with the second, or in the fourth touching the second, etc.

¹ Here it is worth the trouble to note that the clause "in a simple and mixed degree," which is frequently found in faculties of the Holy See, is used in a threefold sense. More often it designates, as in our case, some degree of consanguinity mixed with some more remote degree. But sometimes by simple degree the numerical multiplicity of the same impediment is excluded, while by mixed degree a multiple impediment from the same head is understood. Finally, simple degree sometimes excludes the concurrence of impediments distinct in species, while mixed signifies that in the case there are several impediments distinct in species. - Therefore the sense must be determined from the context.

961. So that the degrees of consanguinity may be more easily understood, we here subjoin the tree of consanguinity, and the names of blood relatives up to the fourth degree.

(a) In the middle of the direct line is found the letter N., which represents the person whose relationship is being sought; above N. in the direct line are found his ascendants, and below his descendants, if there are any; since there can be several, we use the plural number, for example grandfathers, grandmothers, sons, daughters, etc. From the direct line the oblique or collateral lines are deduced: on the right side, in which the sisters are placed, are placed female blood relatives and males joined through the female sex; on the left side, in which the brothers are placed, are placed male blood relatives and females joined through the male sex. The numbers 1, 2, 3, 4 express the degree of consanguinity between N. and the persons placed in the cells.

(b) When the nearness of two persons is investigated, the name of one must be written in cell N., and afterwards inquiry must be made in what cell the other person is found; for example, if she is the daughter of his sister, her name must be written in the cell beneath the sister (see the tree); and thus it will easily be clear that they are blood relatives in the second degree touching the first.

(c) Where the lines are joined, there the common stock is had; thus in the aforesaid case the lines are joined in cell 1 of the direct line¹, above N.

¹ The numbers 1, 2, 3, 4 indicate the degree of consanguinity between N. and the various persons set forth in the diagram.

(d) If the person concerning whom it is doubted whether he or she is joined with N. is not found in one of the cells of the tree, it is inferred from this that he or she is not consanguineous within the fourth degree; for all persons joined with N. in the fourth degree are found there.

Tree of Consanguinity:

Direct line:

4 Abavi / Abaviae

3 Proavi / Proaviae

2 Avi / Aviae

1 Pater / Mater

N

1 Filii / Filiae

2 Nepotes / Neptes

3 Pronepotes / Proneptes

4 Abnepotes / Abneptes

Paternal collateral line:

1 Fratres / Sorores

2 Patruī / Amitae; Fratrum filii / Fratrum filiae

3 Patruī magni / Amitae magnae; Fratrum nepotes / neptes; Sobrini / Sobrinae

4 Propatruī / Proamitae; Fratrum pronepotes / proneptes; Sobrinorum filii / filiae; Abnepotes / Abneptes

Maternal collateral line:

1 Fratres / Sorores

2 Avunculi / Materterae; Sororum filii / filiae

3 Avunculi magni / Materterae magnae; Sororum nepotes / neptes; Sobrini / Sobrinae

4 Proavunculi / Promaterterae; Sororum pronepotes / proneptes; Sobrinorum filii / filiae; Abnepotes / Abneptes

962. Names of blood relatives up to the fourth degree.

Group	Degree	Latin	Italian	French	English	German
Names of ascendants in the direct line	1	Pater	Padre	Pere	Father	Vater
Names of ascendants in the direct line	1	Mater	Madre	Mere	Mother	Mutter
Names of ascendants in the direct line	2	Avus	Nonno, Nonna	Aieul	Grand father	Grossvater
Names of ascendants in the direct line	2	Avia	Avolo, Avola	Aieule	Grand mother	Grossmutter
Names of ascendants in the direct line	3	Proavus	Bisnonno, Bisnonna	Bisaieul	Great Grand father	Urgrossvater
Names of ascendants in the direct line	3	Proavia	Bisavolo, Bisavola	Bisaieule	Great Grand mother	Urgrossmutter
Names of ascendants in the direct line	4	Abavus	Trisnonno, Trisnonna	Trisaieul	Grand Great Gd. father	Ururgrossvater

Group	Degree	Latin	Italian	French	English	German
Names of ascendants in the direct line	4	Abavia	Trisavolo, Trisavola	Trisaieule	Grand Great Gd. mother	Ururgrossmutter
Names of descendants in the direct line	1	Filius	Figlio	Fils	Son	Sohn
Names of descendants in the direct line	1	Filia	Figlia	Fille	Daughter	Tochter
Names of descendants in the direct line	2	Nepos	Nepote	Petit-fils	Grandson	Enkel
Names of descendants in the direct line	2	Neptis	Nepote	Petite-fille	Granddaughter	Enkelin
Names of descendants in the direct line	3	Pronepos	Pronepote	Arriere petit-fils	Great grandson	Urenkel
Names of descendants in the direct line	3	Proneptis	Pronepote	Arriere petite-fille	Great granddaughter	Urenkelin
Names of descendants in the direct line	4	Abnepos	Abnepote	Bisarriere petit-fils	Gr. Great Gdson	Ururenkel
Names of descendants in the direct line	4	Abneptis	Abnepote	Bisarriere petite-fille	Gr. Great Gddaughter	Ururenkelin
Blood relatives on the father's side in the collateral line	1	Frater	Fratello	Frere	Brother	Bruder
Blood relatives on the father's side in the collateral line	1	Soror	Sorella	Soeur	Sister	Schwester
Blood relatives on the father's side in the collateral line	2	Patruus	Zio paterno	Oncle paternel	Paternal uncle	Onkel (Vatersbruder)

Group	Degree	Latin	Italian	French	English	German
Blood relatives on the father's side in the collateral line	2	Amita	Zia paterna	Tante paternelle	Paternal aunt	Tante (Vaterschwester)
Blood relatives on the father's side in the collateral line	3	Patruus magnus	Fratello dell' avolo	Grand oncle paternel	Great uncle	Gross onkel (Gr. Vat. bruder)
Blood relatives on the father's side in the collateral line	3	Amita magna	Sorella dell' avolo	Grand'tante paternelle	Great aunt	Gross tante (Gross V.1 schwester)
Blood relatives on the father's side in the collateral line	4	Propatruus	Fratello del bisavolo	Gd-oncle frere du bisaieul	Great grand-uncle	Ur gross vaters bruder
Blood relatives on the father's side in the collateral line	4	Proamita	Sorella del bisavolo	Gd'tante soeur du bisaieul	Great grand-aunt	Ur gross vaters schwester
Blood relatives on the mother's side in the collateral line	1	Frater	Fratello	Frere	Brother	Bruder
Blood relatives on the mother's side in the collateral line	1	Soror	Sorella	Soeur	Sister	Schwester
Blood relatives on the mother's side in the collateral line	2	Avunculus	Zio materno	Oncle maternel	Maternal uncle	Oheim (Mutters bruder)
Blood relatives on the mother's side in the collateral line	2	Matertera	Zia materna	Tante maternelle	Maternal aunt	Muhme (Mutters schwester)
Blood relatives on the mother's side in the collateral line	3	Avunc. magnus	Fratello dell' avola	Grand oncle maternel	Gdmother's brother	Gross oheim (Gr. M. bruder)

Group	Degree	Latin	Italian	French	English	German
Blood relatives on the mother's side in the collateral line	3	Matertera mag.	Sorella dell' avola	Grand'tante maternelle	Grmother's sister	Gr. muhme (Gr. M. schwester)
Blood relatives on the mother's side in the collateral line	4	Proavunculus	Fratello della bisavola	Gd-oncle frere de la bisa.	Gr. gdmother's brother	Ur gross oheim (Ur g. m. br.)
Blood relatives on the mother's side in the collateral line	4	Promatertera	Sorella della bisavola	Gd'tante soeur de la bisa.	Gr. gdmother's sister	Ur gros muhme (Ur g. m. sch.)
Blood relatives on the sister's or brother's side in the collateral line	1	Frater	Fratello	Frere	Brother	Bruder
Blood relatives on the sister's or brother's side in the collateral line	1	Soror	Sorella	Soeur	Sister	Schwester
Blood relatives on the sister's or brother's side in the collateral line	2	Consobrini	Cugini carnali	Cousins germains	First cousins	Geschwisterkinder
Blood relatives on the sister's or brother's side in the collateral line	2	Consobrinae	Cugine carnale	Cousines germaines	id.	id.
Blood relatives on the sister's or brother's side in the collateral line	3	Sobrini	Cugini	Cousins issus de germains	Second cousins	andere Geschwisterkinder
Blood relatives on the sister's or brother's	3	Sobrinae	Cugine	Cous. issues de germains	id.	id.

Group	Degree	Latin	Italian	French	English	German
side in the collateral line						
Blood relatives on the sister's or brother's side in the collateral line	4	Abnepos	Abnepoti	Petit cousin	Third cousins	dritte Geschwisterkinder
Blood relatives on the sister's or brother's side in the collateral line	4	Abneptis	Abnepote	Petite cousine	id.	id.

963. 3° On the extension of the impediment of consanguinity. (A) The extension of this impediment was diverse according to diverse times: in the first centuries of the Church the impediment was in force in the first degree touching the second, namely between paternal uncle or maternal uncle and niece, between paternal aunt or maternal aunt and nephew, but not in the equal second; as the fourth century was passing, the impediment between first cousins began to be established; afterwards between second cousins; then up to the seventh civil degree; finally up to the seventh canonical degree; which indeed was established especially for joining, by the matrimonial bond, and therefore by the bond of charity, families or peoples separated from one another. Yet, since the prohibition of marriage extended so widely was liable to many difficulties, and rendered not a few marriages invalid, on account of the difficulty of knowing remote degrees, Lateran Council IV limited this impediment to the fourth degree inclusive in the collateral line¹.

¹ Cf. Esmein, I, p. 336-356.

(B) Consanguinity, licit or illicit, in the direct line dirimently impedes marriage to infinity; but in the collateral line formerly it dirimently impeded up to the fourth degree inclusive; but from the Code, c. 1076, it dirimently impedes up to the third degree, and indeed in such a way that the impediment is multiplied only as many times as the common stock is multiplied.

964. (C) If you look to merely natural law, (a) consanguinity in the first degree of the direct line (between father and daughter, mother and son) certainly dirimently impedes marriage by natural law; this is clear from the natural horror which even pagans and barbarians are accustomed to show for such a union; and also from the opposition between the reverence due to parents and the equality which ought to exist between spouses: "It is disordered, says St. Thomas (l. c.), that a daughter be joined to her father by marriage as an associate for the sake of generating and educating offspring, whom it is fitting in all things to be subject to the father, as proceeding from him... there is more derogation from the reverence which is due to parents if a son takes his mother as wife, than if a father takes his daughter, since a wife ought in some way to be subject to her husband."

(b) Probably also by natural law consanguinity in the direct line dirimently impedes marriage to infinity: for the same reason as above, with due proportion, extends to the remaining ascendants and descendants. - Whatever the case may be, in practice the Church never dispenses in this line.

965. (c) In the collateral line, more probably by secondary natural law marriage in the first degree, that is, between brother and sister, is prohibited, if not dirimently impeded; because even the Gentiles commonly abhor it, and in reality it seems opposed to the moral sense. - Yet because it is opposed only to secondary natural law, God could dispense in this, especially at the beginning of the human race, with regard to the sons and daughters of the first parents.

But the Church is not accustomed to dispense; indeed, according to many¹, she never dispenses in the first degree of the collateral line. Hence, if Gentiles converted to the faith had married a brother or sister and at the same time wished to cohabit, the case would have to be referred to the Holy See.

¹ Lehmke, n. 756; Santi, tit. 14, n. 12, thence conclude that a brother and sister who contracted marriage before baptism are to be separated; on the contrary Sanchez, l. VII, d. 52, n. 12, and Giovine, I, § 20, n. 1, think they can be left in the former marriage.

But the other degrees of the collateral line do not dirimently impede marriage by natural law, but only by ecclesiastical law; hence in them the Church can and is accustomed to dispense, not only on account of public but also on account of private utility, which nevertheless must be greater in the nearer degrees, as will be explained below, where Dispensations are treated.

966. 4° On the reason for the impediment of consanguinity. There is especially a threefold reason on account of which this impediment was established: (a) the social good, so that families and cities not only foreign, but also otherwise disassociated, may be bound by the bond of marriage; this reason indeed especially held good in the Middle Ages, when hostility was often in force not only between nations mutually, but also between cities and towns; for then it was especially expedient that citizens of one town should contract with citizens of another city, so that enmities might more easily be extinguished. Today indeed the social condition is not the same; nevertheless a law of this kind favors the diffusion of friendship.

(b) The moral good; for, if blood relatives could easily marry among themselves, frequent occasion would be given for indulging concupiscence; since, on the one hand, blood relatives often live under the same roof, sit at the same table, and frequently visit one another; on the other hand, sins are more easily committed among those with whom the hope of contracting marriage in the future is fostered; hence it is very expedient that, the hope of marriage having been removed, carnal love among blood relatives be restrained.

(c) Also the physical good of offspring: for experience makes clear that marriages among blood relatives, unless both are free from every bodily defect and flourish in strength and youth, are either little fruitful, or from them often arise children deaf or mute, or idiots, or blind, or deformed, or laboring under nervous disease. For if two spouses, troubled by the same defects and morbid tendencies, together contribute to the generation of offspring, defects of this kind will generally be doubled in the offspring; while spouses arisen from diverse families exercise influence upon each other in such a way that the healthier part supplies the weakened powers of the other; hence the

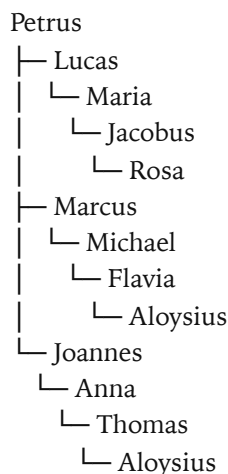
improvement and perfection of offspring is obtained much more efficaciously by avoiding unions, especially frequent ones, among members of the same family¹.

¹ According to Doctor Bemis, ten per cent of deaf-mutes, fifteen per cent of idiots, and five per cent of the blind who are found in public hospitals in the United States of America were born from first-cousin parents. From 757 marriages between first cousins, there were 256 from which deaf-mutes, blind, and idiots were procreated. (Ap. Cooke, *Satan in Society*, p. 182-183). According to Lefebvre (*Les Mariages consanguins*, ap. *Rev. des Quest. Scientif.*, I, 1877, p. 240, 249), from 460 marriages between first cousins there were born 1959 children, of whom 9 were deaf-mutes, 36 idiots; which proportion is much greater than for marriages among those who are not blood relatives. Cf. Charazain, *Du Mariage entre consanguins considere comme cause de degenerescence organique et particul. de surdo-mutite congenitale*, Montpellier, 1859; Allen, *Marriages of the Deaf in America*, 1898.

967. 5° On multiple consanguinity. Consanguinity can be multiple, arising either from one or from several stocks; and it is necessary to understand this rightly, since each bond of this kind constitutes an impediment that must necessarily be expressed for obtaining a valid dispensation.

(A) Under the old law, the first cause of multiplicity was when someone had offspring from a person consanguineous to himself; for although there is one common stock, the persons about to marry descend by a double way from this common stock: which sufficed for a double impediment.

Diagram:



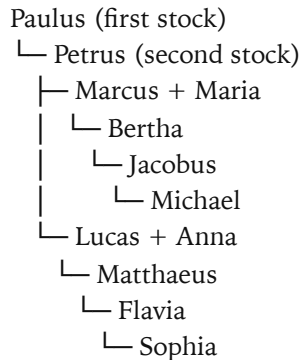
Thomas and Flavia are indicated as spouses.

In this diagram Peter is the common stock, from whom all the others descend. We suppose that Thomas married Flavia, his second cousin, and from her begot Aloysius. This being posited, Aloysius and Rosa were blood relatives in the double unequal fourth, because both descend from the common stock Peter, and are distant from him by four generations; and one of them, Aloysius, descends from Peter by a double way, namely through Thomas and Flavia. For in the old legislation impediments could be multiplied from the same stock, while in the new legislation the impediment of marriage is multiplied only as many times as the common stock is multiplied.

968. (B) The second cause is when persons consanguineous among themselves procreated offspring from persons consanguineous among themselves, for example when two brothers arisen from

one stock marry two sisters from another stock, and from them generate offspring.

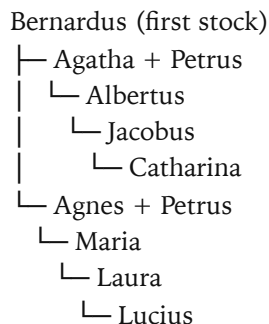
Diagram:



As appears from this stemma, two brothers, Marcus and Lucas, from the stock Peter, contract marriage with two sisters, Mary and Anna, from the stock Paul; hence Bertha and Matthew are blood relatives in the double equal second, because each descends both from Peter and from Paul, and each is distant by two generations from each stock; Jacob and Flavia are in the double equal third, because each is distant by three generations from each stock: which impediment still holds today; formerly Michael and Sophia were bound by the double equal fourth.

969. (C) The third cause is when someone has offspring from several persons consanguineous among themselves, for example when someone successively contracts with two sisters or first cousins and from them generates offspring.

Diagram:



Petrus is marked as the second stock.

In this diagram Peter successively marries Agatha and Agnes, two sisters arisen from Bernard: from the former he begot Albert, from the latter he begot Mary, etc. Wherefore Jacob and Laura are blood relatives in the equal third from the stock Bernard, and at the same time in the equal second from the stock Peter; Catherine and Lucius are in the equal fourth from the stock Bernard, and in the equal third from the stock Peter. - But today the impediment of the fourth degree is no longer computed.

Hence the twofold difference between the old and the new legislation must be carefully noted: 1° in the old, marriage in the collateral line is invalid up to the fourth degree inclusive, while in the new, up to the third inclusive; 2° in the old, impediments could be multiplied from the same stock, while

in the new, the impediment of marriage is multiplied only as many times as the common stock is multiplied.

970. Corollary: On the manner of finding the degrees of consanguinity.

(A) When there is one common stock, and it is known, a descending genealogical tree is easily made by writing the name of the common stock at the top of the page, and beneath it the names of persons descending from this side and that until the spouses are reached, as in the preceding diagrams. This being posited, the degrees are easily computed according to the rules set forth above.

971. (B) But the difficulty increases when multiple consanguinity is present and the persons about to marry know only in a confused way that they are blood relatives, without being able to indicate the various common stocks.

(a) First, a double ascending genealogical tree must be drawn, one for the bridegroom and the other for the bride; namely in the first cell is written the name of the bridegroom, - afterwards the name of his father and mother, - then the name of the grandfathers and grandmothers on the father's side and on the mother's side, and so on up to the third degree from the new law, up to the fourth from the old law. This indeed is done both from the declarations of the spouses and from the registers, by writing names and surnames, so that errors may more easily be avoided.

(b) Then a comparison should be made between each genealogical tree, and with a special sign, for example the same letter A, B, C..., the persons common to each tree should be marked: for there are as many stocks as there are common persons. Nevertheless two spouses, who are the cause of relationship, are not to be counted as a double stock: for they form only one and the same stock.

(c) Afterwards the computation of impediments and degrees is made. Now there are as many impediments as there are common stocks. Formerly, before Pentecost 1918, several impediments sometimes arose from the same stock: if from the persons about to marry one ascends to the common stock by a double or triple way, or, in other words, if a double or triple line can be drawn from one spouse to the other through the common stock, there is a double or triple impediment. The general rule was that there are as many distinct impediments as there are diverse ways of going from the bridegroom to the bride, by a continuous line, through the common stock. That diverse ways be present, it was enough that diversity be present in one of the links by which the spouses were connected. - In computing bonds and degrees, attention was paid only to the nearer stock; but, if the nearer stock consisted of two parents who were consanguineous among themselves, one had to ascend to the more remote stock from which those parents themselves arose, provided it was within the fourth degree; for example, if two spouses, Lucas and Sophia, were bound in the second degree, because they descended from grandparents Henry and Julia, who themselves were first cousins, as being grandchildren of Peter, a double stock was given: one nearer (Henry-Julia), and the other more remote, namely Peter; and thus there were three impediments: one in the second degree from the stock Henry-Julia, two in the fourth degree from the stock Peter, because by a double way (through Julia and through Henry) one ascended from the spouses to Peter¹, or, in other words, a double line could be drawn from Lucas to Sophia through the stock Peter. But from the Code this case cannot occur, because the impediment in the collateral line is not extended beyond the third degree.

¹ Thus from the decree of the Holy Office, March 11, 1896, ap. Deshayes, *Nouvelle Methode*, p. 37-48.

(d) Finally, after the various stocks have been found and the degrees computed, it is expedient to make a descending genealogical tree, so that it may be better clear whether an error has been committed or not; for thus the degrees are more easily computed and the genealogy of the spouses is more clearly exhibited.

We subjoin here a genealogical tree of the bridegroom and the bride, according to the ascending method, p. 610.²

² This stemma is taken, with a few changes, from the above-praised work of Deshayes, *Nouvelle Methode*, where the method which is called symbolic is explained, and which will greatly profit especially those who frequently have to delineate a genealogical tree.

Ascending genealogical tree of the bridegroom and bride:

Sponsus: Henricus Dubois

Parents: Julius Dubois + Maria Guerin

Line through Julius Dubois:

- Josephus Dubois + Aloysia Guerin
- Stephanus Dubois + Lucia Guerin
- Marcellus Dubois + Josephina Dugue
- Robertus Guerin
- Paulus Guerin + Anna Martin
- Rob. Guerin
- Felix Martin

Line through Maria Guerin:

- Petrus Guerin + Clara Dubois
- Paulus Guerin + Prud. Boucher
- Rob. Guerin
- Stephanus Dubois + Lucia Guerin
- Marcellus Dubois + Josephina Dugue
- Rob. Guerin

Sponsa: Julia Guerin

Parents: Franc. Guerin + Adel. Guerin

Line through Franc. Guerin:

- Petrus Guerin + Anna Guerin
- Paulus Guerin + Prud. Boucher
- Robert. Guerin
- Anatol. Guerin + Bertha Dubois
- Robert. Guerin
- Marcel. Dubois + Josepha Dugue

Line through Adel. Guerin:

- Alphons. Guerin + Desid. Guerin
- Anatol. Guerin + Bertha Dubois
- Robert. Guerin

- Marcel. Dubois + Josepha Dugue
- Paulus Guerin + Zoe Martin
- Robert Guerin
- Felix Martin

972. In this double stemma we have marked with the same letter A, B, C, D, E the persons who are common to the genealogy of the bridegroom and the bride, and from this it is immediately clear that there are five common stocks, namely A Peter Guerin, B Paul Guerin, C Marcel Dubois, D Robert Guerin, E Felix Martin. For computing the impediments, moreover, inquiry had to be made under the old law by how many ways Henry Dubois and Julia Guerin descend from these various stocks. - This indeed could be done from this stemma, since all the ways by which one ascends from the spouses to the stocks are carefully noted there. The degrees likewise are clearly shown by the numbers (1) (2) (3) (4). - But this is also better perceived in the descending tree or genealogy, which we delineate below.

Descending genealogy:

D Robertus Guerin

- ├ Lucia Guerin
 - ├ Jos. Dubois -> Jul. Dubois -> Henr. Dub.
 - └ Clara Dub. -> Maria Guer. -> Henr. Dub.
- ├ B Paulus Guerin
 - ├ Aloysia Guerin -> Julius Dubois -> Henr. Dubois
 - ├ A Petrus Guerin
 - ├ Maria Guer. -> Henr. Dub.
 - └ Fr. Guer. -> Julia Guer.
 - └ Desida Guerin -> Adel. Guerin -> Julia Guerin
- └ Anatol. Guerin
 - ├ Anna Guerin -> Franc. Guerin -> Julia Guerin
 - └ Alph. Guerin -> Adel. Guerin -> Julia Guerin

C Marcellus Dubois

- ├ Stephanus Dubois
 - ├ Jos. Dubois -> Jul. Dubois -> Henr. Dubois
 - └ Clara Dubois -> Maria Guerin -> Henr. Dubois
- └ Bertha Dubois
 - ├ Alphons. Guerin -> Adel. Guerin -> Julia Guerin
 - └ Anna Guerin -> Franc. Guerin -> Julia Guerin

E Felix Martin

- ├ Anna Martin -> Aloysia Guerin -> Julius Dubois -> Henr. Dubois
- └ Zoe Martin -> Desida Martin -> Adel. Martin -> Julia Guerin

973. From this it is clear that Henry Dubois and Julia Guerin were bound by 21 impediments according to the old law: -

From the common stock A, Peter Guerin, the persons about to marry are in the equal second, since both descend from a grandfather = 1.

From the common stock B, Paul Guerin, there were three impediments in the equal third, because the spouses descend from the great-grandfather by a triple way; or, in other words, a triple line can be drawn from one spouse to the other through the common stock = 3; but now there is one impediment in the equal third, because there is one common stock.

From the common stock D, Robert Guerin, there were twelve impediments in the equal fourth, since by twelve ways one could ascend from the spouses to the great-great-grandfather Robert Guerin = 12¹. Now no impediment.

¹ The first way is this: H. Dubois, Jul. Dubois, Jos. Dubois, Lucia Guerin, ROBERT GUERIN, from whom we descend to Paul Guerin, Peter Guerin, Fr. Guerin, Julia Guerin.

Second: H. Dubois, Maria Guerin, Clara Dubois, Lucia Guerin, ROB. GUERIN, Paul Guerin, Fr. Guerin, Julia Guerin.

Third: the same as the first, except that from Paul Guerin we pass to Desidam Guerin, Adel. Guerin, Julia Guerin.

Fourth: the same as the second, except that from Paul Guerin we likewise pass to Desidam Guerin, etc.

Fifth: the same as the first, except that from Rob. Guerin we pass to Anatol. Guerin, Anna Guerin, Fr. Guerin, Jul. Guerin.

Sixth: the same as the second, except that from Rob. Guerin we pass to Anatol. Guerin, etc.

Seventh: the same as the fifth, except that from Anatol. Guerin we pass to Alph. Guerin, Adel. Guerin, Jul. Guerin.

Eighth: the same as the sixth, except that from Anat. Guerin we pass to Alph. Guerin, etc.

Ninth: H. Dubois, Jul. Dubois, Aloysia Guerin, Paul Guerin, ROB. GUERIN, Anat. Guerin, Anna Guerin, Fr. Guerin, Jul. Guerin.

Tenth: the same as the ninth, except that from Anat. we descend to Alph. Guerin, etc.

Eleventh: H. Dubois, Maria Guerin, Peter Guerin, Paul Guerin, ROB. GUERIN, Anat. Guerin, Anna Guerin, Fr. Guerin, Jul. Guerin.

Twelfth: the same as the eleventh, except that from Anat. Guerin we descend to Alph. Guerin, etc.

From the common stock C, Marcel Dubois, there were counted four impediments in the equal fourth, since the spouses descend by four ways from the same great-great-grandfather Marcel Dubois = 4. Now no impediment.

Finally from the stock E, Felix Martin, there was one impediment in the equal fourth, since both spouses descend by one way only from the same Felix Martin = 1. Now no impediment.

II. On Spiritual Relationship.

974. 1° Notion. (A) The impediment of spiritual relationship is a certain nearness of persons arising from Baptism. For since in Baptism we are spiritually born, those who concur for this sacrament, as the minister and sponsors, are held as spiritual fathers of the baptized person.

² St. Thomas, *Supplementum*, q. 56; *Decretals*, lib. IV, tit. 11, *De cognatione spirituali*; Canonists on this title; Sanchez, lib. VII, disp. 54-62; St. Alphonsus, n. 1028 and n. 149; Carriere, n. 678-700; Ball. P., n. 642-653, ed. 3; Feije, n. 409-427; Gasparri, n. 733-750.

(B) This impediment already existed in the time of Emperor Justinian, who enumerates it in the catalogue of civil laws, and very probably it was introduced by custom. In the old law there were

three species of this relationship: paternity, co-paternity, and fraternity; and the limits of this impediment were broader than under the present law¹.

¹ Concerning this see, besides the authors cited, Esmein, I, p. 362-374.

975. (C) But Trent, seeing that from this multitude of prohibitions marriages were very often contracted invalidly, abrogated fraternity and limited paternity and co-paternity, so that the impediment of spiritual relationship was in force only:

- (a) between the baptizing one and the baptized one, provided the baptizing one is not an infidel;
- (b) between the baptizing one and the parents of the baptized;
- (c) between the sponsors and the baptized;
- (d) between the sponsors and the parents of the baptized².

² Hence, after Trent, a godfather and godmother do not contract this relationship between themselves, nor with the one baptizing or confirming.

The same had been decreed concerning the sacrament of Confirmation. This was comprised in these words:

The baptizing one, the baptized one, and the parents of the baptized;
The lifting one, the lifted one, and the parents of the lifted.

From the Code, the impediment of spiritual relationship is in force only: (a) between the baptizing one and the baptized one; (b) between the sponsors and the baptized³.

³ Code, cc. 1079 and 768.

976. 2° Conditions for incurring the impediment. (A) It is required that Baptism be validly conferred; for relationship is founded upon spiritual generation, and therefore where there is no regeneration, there is no impediment.

(a) Hence, if only the ceremonies of Baptism are supplied, the relationship is not contracted. (Code, can. 762, § 2).

(b) If Baptism is conferred under condition, "neither the sponsor who was present at the prior Baptism, nor he who was present at the later one, contracts spiritual relationship, unless the same sponsor was employed in each Baptism" (can. 763, § 2). - Does the baptizing one contract it? It is doubted.

(c) If Baptism, with the permission of the Bishop, is conferred at home, with the solemnities, as ought to be done, it is certain that the impediment arises from it.

If Baptism is conferred in a private manner, in a case of necessity and without the solemnities, the impediment is certainly contracted between the baptizing one and the baptized, and much more probably also between the sponsors and the baptized. Certainly it is not incurred by those who hold the infant without the intention of fulfilling the office of sponsor; but if they truly intend to undertake the office of sponsor, the S. C. of the Council decreed, not only in a particular case but also in a general manner, on March 5, 1678, that it is incurred¹. This sort of decree seems to be quite openly confirmed from canon 762, § 2, of the Code, where it is read: "Even in private Baptism a

sponsor, if he can easily be had, is to be employed; if he was not present, he is to be employed in supplying the ceremonies of Baptism, but in this case he contracts no spiritual relationship."

¹ Ap. Gasparri, n. 738. The responses of theologians who were consulted concerning this matter may be read ap. *Analecta Juris Pontif.*, ser. VIII, fasc. 72, p. 1708 sq.

(B) It is required that the minister and sponsors be baptized; otherwise they are not subject to the laws of the Church, nor do they incur this impediment, which is merely ecclesiastical.

977. (C) As regards sponsors, in order that they incur the impediment, they must be validly sponsors, namely:

² Cf. Lehmke, n. 758; Marc, n. 2022.

(a) enjoy the use of reason; (b) physically touch the baptized: for this, however, it is not required that they receive the infant into their own hands, but it suffices that they place their fingers upon his shoulders, or in some other way physically touch him at the time when he is baptized³; (c) have the intention of undertaking the office of sponsor, but not necessarily of incurring the impediment; hence relationship is not contracted by him who receives the infant only materially, for the sake of greater convenience; hence also, if someone exercises the office of sponsor through a proxy, the mandator, but not the proxy, incurs the impediment, as the S. C. of the Council has declared several times⁴; (d) be designated by the one to be baptized himself, or by his parents or guardians, or, these being lacking, by the minister; (e) not be the father or mother or spouse of the one to be baptized; (f) not belong to any heretical or schismatic sect, nor by condemnatory or declaratory sentence be excommunicated or infamous by infamy of law or excluded from legitimate acts, nor be among clerics deposed or degraded⁵.

³ Thus the S. C. de Prop. Fide, January 21, 1856, ap. Gasparri, n. 744.

⁴ Thus, for example, June 11, 1881, ap. *Acta S. Sedis*, XIV, p. 411-417.

⁵ Code, c. 765.

978. Corollary. Hence, with Trent admonishing, before the pastor proceeds to confer Baptism, he ought diligently to inquire who, or which persons, have been chosen by the parents as sponsors; and to admit only them, namely not more than one godfather and one godmother, lest the impediments be multiplied; and to teach them what relationship they have contracted, lest they be able to be excused by ignorance.

979. 3° On dispensation in this impediment. Since this impediment is of ecclesiastical law only, the Church is always able to dispense in it; but much more with difficulty between the baptizing one and the baptized¹.

¹ Cf. *Canoniste Contemporain*, March 1903, p. 160.

980. 4° Difference between the new and the old law. (a) Formerly the impediment arose not only from Baptism, but also from Confirmation; now only from Baptism.

(b) Formerly there was also an impediment: 1) between the baptizing one and the parents of the baptized; 2) between the sponsors and the parents of the baptized or confirmed.

III. On the Impediment of Legal Relationship.

981. 1° Notion. (a) Legal relationship is the nearness of persons arising from adoption which is made according to civil laws. Now adoption is a legitimate act by which a person foreign to the family is assumed as a son.

² St. Thomas, *Supplementum*, q. 57; *Decretals*, lib. IV, tit. 12, *De cognatione legali*; Canonists on this title; Sanchez, lib. VII, disp. 63; St. Alphonsus, n. 1027; Carriere, n. 701-704; Ball. P., n. 624-641, ed. 3; Feije, n. 428-437; D'Annibale, I, n. 65; Heiss, § 39; Gasparri, n. 751-766; Esmein, I, p. 357-362.

982. (b) This relationship took its origin from civil law; it was introduced especially so that those who do not have offspring by nature might be able, in a legal manner, to obtain adoptive children.

Now in Roman law adoption was twofold: (a) perfect, which is called *adrogatio*, by which a foreign person and one of his own right, by rescript of the prince, passed into the power and family of the adopter, so that he became a necessary heir just as legitimate sons; (b) imperfect, or simple, by which a foreign person, remaining under the power of his father or grandfather, by the authority of a judge was assumed as a son or grandson of the adopter, without, however, passing into his family and becoming a necessary heir.

Now "Those who by civil law are considered incapable of entering marriage with one another on account of legal relationship arising from adoption cannot, by force of canon law, validly contract with one another."³

³ Code, c. 1080.

983. 2° Extension. Hence it appears that the question concerning an impediment of this kind, formerly very complex, today has been placed in a clear state. For each people, the Church decrees that from legal adoption there arises a canonical diriment impediment for all who by civil law are considered incapable of entering marriage with one another because of adoption; but a merely prohibiting impediment where civil law so decrees the matter. Moreover the canonical impediment has the same extension as the civil one. In practice, therefore, recourse must be had to the civil Code of each nation.

In France, from adoption there certainly arises a prohibiting impediment: "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same individual; between the adopted and the children, whether legitimate or natural, who might afterward come to the adopter; between the adopted and the spouse of the adopter; and reciprocally between the adopter and the spouse of the adopted" (*Cod. civ.*, 348). It is not, however, a diriment impediment, according to the common opinion of jurists. In Italy, Spain, Poland, Croatia, and Slavonia the impediment is held as diriment.

The reason for this impediment is that it is altogether fitting to exclude from marriage persons who dwell in the same family, lest otherwise they fall into danger of fornication, as was said above concerning consanguinity. Besides this, between the adopter and the adopted there is a special obligation of reverence, which can scarcely be reconciled with conjugal equality.

984. 3° Dispensation. Since this impediment is of ecclesiastical law only, the Church can dispense in it.

IV. On the Impediment of Affinity.

985. 1° Notion and origin. (A) Affinity is the nearness which someone has with the blood relatives of that person with whom he has contracted a valid marriage, whether ratified only, or ratified and consummated².

¹ St. Thomas, *Supplementum*, q. 55; *Decretals*, lib. IV, tit. 14, *De consanguinitate et affinitate*; Canonists on this title; Sanchez, lib. VII, disp. 64-67; St. Alphonsus, n. 1068-1078; Carriere, n. 828-949; Ball. P., n. 782-799, ed. 3; Feije, n. 370-383; Gasparri, n. 685-704; Genicot, n. 480-482; Rosset, n. 1912-1982.

² Code, c. 97, §§ 1 and 2.

(B) The impediment of affinity was instituted by the Church after the likeness of those prohibitions which are found in the Old Law³. First indeed marriages were forbidden between a man and the sister of his deceased wife; afterwards also between him and the first cousin of his deceased wife; then affinity was successively extended to other degrees, up to the seventh, just as consanguinity itself. Indeed, before the Fourth Lateran Council, there were three species of affinity, and affinity begot affinity; but the Lateran Council abrogated two species of affinity, and restricted the third species to the fourth degree¹. But Trent limited illicit affinity to the second degree; from the Code, there is now no illicit affinity.

³ Levit., XVIII, 8-18: thus in v. 14 it is said: "Thou shalt not uncover the nakedness of thy father, nor approach to his wife, who is joined to thee by affinity."

¹ Concerning the historical evolution of this impediment, one may read Esmein, t. I, p. 374-383.

986. 2° Extension of affinity. (A) By the new law, affinity dirimently impedes marriage in the direct line in every degree; in the collateral line up to the second degree inclusive².

² Code, c. 1077.

987. (B) So that the nature of this impediment may be better understood, it must be noted that it is incurred by the man alone with the blood relatives of the woman with whom he contracted marriage, and by the woman alone with the blood relatives of the man whom she married; but by no means by the blood relatives of the man with the blood relatives of the woman: for affinity does not beget affinity. Hence two brothers can marry two sisters; a father and son can marry a mother and daughter³.

³ Code, c. 97, § 2.

(C) "Affinity is computed in such a way that those who are blood relatives of the man are affines of the woman in the same line and degree, and vice versa."⁴ This will be better understood from the following tree.

⁴ Code, c. 97, § 3.

Diagram: Degrees of Affinity.

Center: Man - Wife

Direct ascending line:

Man's blood relatives: father (1), grandfather (2), great-grandfather (3), great-great-grandfather (4).

Wife's blood relatives: mother (1), grandmother (2), great-grandmother (3), great-great-grandmother (4).

Direct descending line:

Man's blood relatives: son (1), grandson (2), great-grandson (3), great-great-grandson (4).

Wife's blood relatives: daughter (1), granddaughter (2), great-granddaughter (3), great-great-granddaughter (4).

Collateral line on the man's side:

brothers (1); father's brother (2); father's brother's son (2); father's brother's grandson (3); father's brother's great-grandson (4);

father's paternal uncle (3); his son (3); his grandson (4);

great-uncle (4); his son (4);

brother's sons (2); brother's grandsons (3); brother's great-grandsons (4).

Collateral line on the wife's side:

sisters (1); mother's sister (2); mother's sister's daughter (2); mother's sister's granddaughter (3);

mother's sister's great-granddaughter (4);

mother's maternal aunt (3); her daughter (3); her granddaughter (4);

great-aunt (4); her daughter (4);

sister's daughters (2); sister's granddaughters (3); sister's great-granddaughters (4).

(a) On the right side are found the blood relatives of the wife, and on the left side the blood relatives of the man. Now the wife is affine to all the blood relatives of the man in the same degree in which these are blood relatives of the man; on the other hand, the man is affine to all the blood relatives of the wife in the same degree in which these are blood relatives of the wife; for example, the man, after his wife has died, cannot marry her mother, grandmother, sister, first cousin, etc.; the wife, after her husband has died, cannot contract with his father, grandfather, brother, male cousin, etc.

(b) But the blood relatives of the man, for example his father, grandfather, paternal uncle, brother, etc., can marry the blood relatives of the wife, for example her mother, grandmother, maternal aunt, sister, etc.

988. (E) Names of affines:

Place	Degree	Latin	Italian	French	English	German
In the direct ascending line, on the man's side	1	Socer; Socrus; Nurus	Suocero; Suocera; Nuora	Beau-pere; Belle-mere; Bru, Belle-fille	Father-in-law; Mother-in-law; Daughter-in-law	Schwiegervater; Schwiegermutter; Schwiegertochter
In the direct ascending	2	Prosocer; Prosocrus; Pronurus	Avolo per affinita; Avola per	Aieul par affinite; Aieule par	Wife's grandfather; Wife's grandmother; Grandson's wife	Grossvater der Gattin; Grossmutter

Place	Degree	Latin	Italian	French	English	German
line, on the man's side			affinita; Pronora	affinite; Femme du petit-fils		der Gattin; Enkels Gattin
In the direct ascending line, on the woman's side	1	Socer; Socrus; Gener	Suocero; Suocera; Genero	Beau-pere; Belle- mere; Gendre	Father-in-law; Mother-in-law; Son- in-law	Schwiegervater; Schwiegermutter; Schwiegersohn
In the direct ascending line, on the woman's side	2	Prosocer; Prosocrus; Progener	Avolo per affinita; Avola per affinita; Progenero	Aieul par affinite; Aieule par affinite; Mari de la petite-fille	Husband's grandfather; Husband's grandmother; Granddaughter's husband	Grossvater des Gatten; Grossmutter des Gatten; Enkelins Gatte
In the collateral line	1	Levir, Sororius; Fratria, Glos	Cognato; Cognata	Beau-frere; Belle- soeur	Brother-in-law; Sister-in-law	Schwager; Schwagerin

989. 3° On multiple affinity. "The impediment of affinity is multiplied: 1) as often as the impediment of consanguinity from which it proceeds is multiplied; 2) by marriage repeated successively with a blood relative of the deceased spouse."¹ Thus, from the first head, a wife is three times affine to him who is three times blood-related to the husband; but from the second, a woman who successively contracts marriage with two men blood-related among themselves is twice affine to the other blood relatives.

¹ Code, c. 1077, § 2.

990. Sometimes affinity and consanguinity also exist at the same time between those about to marry; thus, for example, Peter marries Catherine, blood-related to him in the second degree; after his wife has died, he wishes to contract with Gertrude, his wife's sister; there are two impediments in the case, of affinity in the first collateral degree and of consanguinity in the second collateral degree.

991. 4° By what law does affinity dirimently impede marriage? Affinity, even in the first degree of the direct line, more probably arises from merely ecclesiastical law. Hence it is not an impediment for infidels, even if they afterwards receive Baptism. For canon 97 of the Code establishes that affinity arises from marriage whether ratified, or ratified and consummated; but, according to c. 1015 of the Code, a valid marriage of baptized persons is called ratified. - But the impediment is incurred from a valid marriage between a baptized party and an infidel², the ecclesiastical law directly reaching the faithful party and indirectly the infidel.

² "Although the impediment has itself from one party only, nevertheless it renders the marriage either illicit or invalid." (Code, c. 1036, § 3).

992. 5° On dispensation from affinity. (a) As regards the direct line, the Church very rarely dispenses in the first degree³, rarely in the other degrees.

³ A case of a dispensation of this kind may be found in *Le Canoniste contemporain*, November 1912, p. 659.

(b) In the degrees of the collateral line, not excepting the first⁴, the Church "now shows herself not difficult in granting a dispensation."⁵

⁴ The matter was formerly much disputed on the occasion of the dispensation granted by Julius II to Henry VIII.

⁵ Desmet, n. 306. - Up to now, if someone wished to marry a person whose mother he had carnally known, a dispensation was not granted except under the condition: "Provided, however, that intercourse with the mother did not precede the birth of the daughter." The inconvenience which was thus guarded against is now removed, at least in part, through the new impediment of public honesty, concerning which below.

993. 6° On the difference between the old and the new law. Formerly affinity was defined as the nearness which someone contracted with the blood relatives of that person with whom he had had perfect carnal intercourse; thence a distinction was made between licit and illicit affinity; affinity from licit intercourse dirimently impeded marriage in the direct line to infinity, according to the more probable opinion; up to the fourth degree inclusive in the collateral line; but affinity from illicit intercourse dirimently impeded marriage up to the second degree inclusive in each line.

V. On the Impediment of Public Honesty.

994. 1° Notion from the Code. (A) The impediment of public honesty arises from an invalid marriage, whether consummated or not, and from public or notorious concubinage; and it dirimently impedes nuptials in the first and second degree of the direct line between the man and the blood relatives of the woman, and vice versa². Thus if Titius publicly lived in concubinage with Lucia, the mother of Sophia, by that very fact he contracted the impediment of public honesty with Sophia. It is called public honesty because honesty of morals demands that illicit unions not be multiplied, from which there arises a certain quasi-affinity.

¹ St. Thomas, q. 55, a. 4; *Decretals*, lib. IV, tit. 2, cc. 3, 4, 8; tit. IV, *De sponsa duorum*; Canonists on this title IV; Sanchez, lib. VII, disp. 68-70; St. Alphonsus, n. 1061-1064; Carriere, n. 809-826; Ball. P., n. 760-776, ed. 3; Gasparri, n. 705-732; Feije, n. 384-408; Noldin, n. 106-107.

² Code, c. 1078.

995. (B) Traces of this impediment are found in Roman law, which acknowledged quasi-affinity between the betrothed woman of the father and the son, the betrothed woman of the son and the father, the mother of the betrothed woman and the betrothed man³. At what time public honesty was held as a canonical impediment is not certain; for the canons in the Decree of Gratian⁴ which suppose its remote antiquity are apocryphal; more probably it was in force not long before the twelfth century. - Before Trent, public honesty, whether arisen from betrothals or from marriage, was extended to the fourth degree, and arose from invalid betrothals,

provided they were not invalid by defect of consent. But Trent established that the impediment would not arise in future from invalid betrothals, and from valid ones not beyond the first degree; but it changed nothing as regards public honesty arisen from ratified marriage⁵.

³ L. 12 § 1 and 2, l. 14 ff. *De ritu nuptiarum*.

⁴ *Decret. Grat.*, c. 11, 14 and 15, c. 2, q. 2.

⁵ Thus decreed St. Pius V, Const. *Ad Romanum*, July 1, 1568.

Hence up to Pentecost of the year 1918, the impediment of public honesty was the nearness of persons arising both from valid betrothals and from ratified and non-consummated marriage.

996. 2° Extension of this impediment, from the old law. (A) Public honesty arising from valid betrothals dirimently impeded marriage between the betrothed man and the blood relatives of the betrothed woman, and vice versa, up to the first degree; therefore the betrothed man would have contracted invalidly with the mother, sister, or daughter of his betrothed; but validly with all other blood relatives of the betrothed woman. This was true even if the betrothals had been legitimately dissolved; for an impediment once contracted does not cease except by dispensation.

It did not, however, arise from invalid betrothals, by whatever reason they had been invalid; nor from conditioned betrothals, except when the condition had been fulfilled.

997. (B) Public honesty from ratified marriage dirimently impeded nuptials up to the fourth degree inclusive, even if it had arisen from an invalid marriage, provided the invalidity had not been from defect of consent; for when consent was lacking, the foundation of the impediment was lacking, namely the joining of souls.

998. 3° On the multiple impediment of public honesty, in the old law. (a) This impediment was multiplied from several betrothals or non-consummated marriages. Let there be, for example, three sisters, Rosa, Martha, Lucia; if Titius had contracted betrothals with Rosa, and afterwards, having obtained a dispensation, marriage with Martha, without consummating it, he was bound by a double impediment of public honesty with regard to Lucia; if nevertheless he had married Lucia, having likewise obtained a dispensation without consummating the marriage, he labored under a triple impediment of public honesty with regard to Sempronia, the mother of the three sisters.

999. 4° On dispensation from this impediment. Since this impediment is of merely ecclesiastical law, the Church dispenses in it, but with caution, namely by taking care lest someone join his own offspring to himself in marriage; namely, if illicit and occult intercourse preceded the birth of the woman to be married, concerning whom it can be doubted whether she is the daughter or sister of the other party, can. 1076, § 3, must be applied: "Marriage is never to be permitted if there exists any doubt whether the parties are blood relatives in some degree of the direct line or in the first degree of the collateral line."¹

¹ Commission for interpreting the Code, June 2-3, 1918.

VI. On the Impediment of Disparity of Cult.

1000. 1° Notion and origin. (A) Disparity of cult is a diriment impediment between one baptized in the Catholic Church or converted to the same from heresy or schism², and one not baptized, even a catechumen; and thus it is distinguished from mixed religion, which is a prohibiting impediment between a Catholic and a non-Catholic validly baptized. - In our days, not only among pagans, but also in the great cities of Catholic regions, an impediment of this kind can be found, because not a few adults have never been baptized.

¹ St. Thomas, q. 59, a. 1; *Decret. Gratiani*, c. XXVII, q. 1; Benedict XIV, Const. *Singulari nobis*, February 9, 1749; Canonists, lib. IV, on tit. I or tit. VI; Sanchez, lib. VII, disp. 74; St. Alphonsus, n. 1044; Carriere, n. 747-752; Ball. P., n. 699-710, ed. 3; Feije, n. 459-470; Gasparri, n. 596-624.

² Code, c. 1070, § 1.

It must be carefully noted that in the case it is not a question of any baptized person whatever, even in heresy, as formerly, but of a person baptized in the Catholic Church or converted to the Catholic Church from heresy or schism. And the impediment is present even if the person baptized in the Catholic Church afterwards adhered to heresy or schism, or, having converted to the Church, again relapsed into heresy.

1001. (B) This impediment, considered as diriment, is of ecclesiastical law. In Scripture indeed the nuptials of the faithful with infidels were in some way prohibited: "Bear not the yoke with infidels³; for what participation has justice with iniquity? or what fellowship has light with darkness?"; but that prohibition did not dirimently impede such a marriage, since elsewhere it is supposed valid⁴. The Fathers and Councils likewise condemned nuptials of this kind, especially because in the Old Testament it was forbidden to the Jews to marry infidel women; but for many centuries they held them as valid; and most holy women contracted with infidels, as Cecilia with Valerian, Monica with Patricius, Clotildis with Clovis, without the Church condemning them. Gradually, however, from the dangers which flow from nuptials of this kind, the practice prevailed in various parts of the Church of holding them as null; this practice in the course of time became universal; and thus this impediment, insofar as it is diriment, was introduced by custom, and already from the beginning of the twelfth century was received everywhere; wherefore today it is in force even in those regions where the faith is first propagated¹.

³ *II Cor.*, VI.

⁴ *I Cor.*, VII, 12-16.

¹ The historical evolution of this impediment may be read ap. Esmein, t. I, p. 219 sq.; Watkins, *Holy Matrimony*, p. 446 sq. - The reason why such a marriage is prohibited is explained thus by St. Thomas, l. c.: "The principal good of marriage is offspring to be educated for the worship of God. But since education is commonly done by father and mother, each according to his own faith intends to educate the offspring for the worship of God. And therefore if they are of diverse faith, the intention of one will be contrary to the intention of the other." Hence the reasons set forth above concerning mixed marriages, n. 905-907, also hold good, and often *a fortiori*.

1002. 2° When is it incurred? It is certainly incurred when it is morally certain that one party has been validly baptized, and the other either in no way or invalidly baptized. But in a case of

doubt concerning Baptism, an investigation indeed ought to be made, according to the Instruction of the Holy Office of August 1, 1883, but, if the doubt remains, this rule is to be held: "If the party at the time of the contracted marriage was commonly considered as baptized, or his Baptism was doubtful, one must stand, according to the norm of c. 1014², for the value of the marriage until it is certainly proved that one party was baptized, and the other not baptized."³

² Canon 1014 has itself thus: "Marriage enjoys the favor of law; wherefore in doubt one must stand for the value of the marriage until the contrary is proved."

³ Code, c. 1070, § 2.

1003. 3° On dispensation from this impediment. (A) Only the Roman Pontiff is able to dispense in this impediment by his proper power; but others only through an indult, which is granted in places where there are many infidels.

(B) The conditions required that the dispensation be granted are: (a) that there be absent insult to the Creator, that is, danger to faith or morals for the Catholic party and his offspring; hence the infidel must promise that he will leave full liberty to the Catholic party as regards the exercise of his religion, and that all the offspring will be instructed in the Catholic religion; (b) that the faithful party, according to his powers, take care for the conversion of the infidel, by prayers, good example, and especially by rightly fulfilling the duties of conjugal life; (c) that grave causes be present, which are left to the prudent judgment of the one dispensing, such as, for example, the salvation of the souls of those who have already lived for a long time in such a marriage, or who can scarcely be restrained from contracting it. - A dispensation knowingly granted without grave cause by the Roman Pontiff is illicit, but valid; by a delegate, however, it is not only illicit, but also invalid.

VII. On the Impediment of Abduction.

1004. 1° Origin and notion. (A) The impediment of abduction, insofar as it is universal and diriment, was instituted by Trent. But, already from the earliest centuries, the crime of abduction had been prohibited. (a) By Roman civil law it was punished with most grave penalties, and marriage between the abductor and the abducted woman was forbidden as a penalty of abduction.

¹ *Decret. Gratiani*, c. XXVII, q. 2; c. XXXVI, q. 1-2; *Decretals*, lib. V, tit. 17; Trent, sess. XXIV, cap. 6 *de Reformat. Matrim.*; Reiffenst., lib. IV, tit. 1, n. 372-379; Sanchez, lib. VII, disp. 12-13; St. Alphonsus, n. 1106-1108; Carriere, n. 905-914; Ball. P., n. 692-698, ed. 3; Feije, n. 145-187; De Angelis, lib. IV, tit. 1, n. 20; Gasparri, n. 537-563; De Becker, p. 67-73.

(b) By ecclesiastical law the discipline was not always the same; according to the ancient canons, the abductor was punished with excommunication and other penalties, and was prohibited forever from marrying the abducted woman; indeed in certain provinces such a marriage was considered invalid. But by the new law of the Decretals, the girl could consent to marriage, even when she remained under the power of the abductor; and if the consent was truly free, the nuptials were regarded as valid².

² Cf. Esmein, I, p. 391-393; II, p. 250-255.

(c) But Trent, wishing better to provide for the liberty of marriages, decreed that there is no marriage between the abductor and the abducted woman as long as she remains in the power of the abductor, even if she has freely consented; and it punished the crime of abduction with various penalties³: "The Holy Synod decrees that between the abductor and the abducted woman, as long as she remains in the power of the abductor, no marriage can subsist. But if the abducted woman, separated from the abductor and placed in a safe and free place, has consented to have him as husband, let the abductor have her as wife; and nevertheless the abductor himself and all those who furnish counsel, aid, and favor to him are by the law itself excommunicated, and perpetually infamous, and incapable of all dignities, and if they are clerics, let them fall from their own grade. Moreover let the abductor be bound, whether he has married the abducted woman or has not married her, to dower the abducted woman becomingly, at the judgment of the judge."

³ Sess. XXIV, cap. 6 de Reform. Matrim.

(B) Hence abduction can be defined: the violent carrying away of some person from place to place, where she is detained under the power of the abductor, for the sake of entering marriage¹. This impediment is distinguished from fear; for, even when fear ceases, the marriage is invalid as long as the abducted woman remains under the power of the abductor. Nor is it a penal impediment, for marriage can be celebrated validly and licitly as soon as the woman is withdrawn from the power of the abductor; therefore it is an impediment *sui generis*, by force of which the abductor is rendered incapable of contracting with the abducted woman, as long as she is retained under his power.

¹ Code, c. 1074: "§ 1. Between a man as abductor and a woman abducted with marriage in view, as long as she remains in the power of the abductor, no marriage can subsist. - § 2. But if the abducted woman, separated from the abductor and placed in a safe and free place, has consented to have him as husband, the impediment ceases."

1005. 2° Conditions required that abduction dirimently impede marriage. (A) That there be an abduction of a woman, but not of a man. This is certain from can. 1074, § 1, by which the impediment is established only between a man as abductor and a woman, and odious things are to be restricted; hence if a fainthearted young man were abducted by an over-powerful woman, the marriage would be held as valid, provided the young man consented freely. - Now it makes no difference whether the woman who is abducted is a virgin or corrupted, honorable or a prostitute; for the words of the Code are altogether general. - Nevertheless, if the woman is ruined in morals, she is presumed to have been abducted for the sake of satisfying lust, not for the sake of marriage; but the presumption would yield to the truth.

1006. (B) That there be a true carrying away from place to place; that is, that the woman be transferred from the place in which she was safe into a morally different place, in which she is less safe, although not far distant. - Now it makes no difference whether the abductor carries away the woman by himself, or through others, provided he himself gave the mandate; but if someone, thinking that he will do something pleasing to a friend, transfers a certain girl into his own house, so that this friend can more easily marry her, the nuptials are valid, because the friend did not mandate the abduction. - Moreover the mandataries who abduct the woman in the name of the principal agent do not contract the impediment with her, unless they afterwards detain her (from § 3).

1007. (C) That the carrying away be violent, that is, with the woman unwilling. It is considered violent: (a) if it is done by force or grave fear unjustly inflicted; (b) by fraud or deceit, for example through hypnotic suggestion, which takes away liberty. - But it is not violent if a girl, whether of her own right or not, freely flees with a man, so that she may avoid the opposition of parents or others; if she is not of her own right, the nuptials indeed can be illicit, on account of the dissent of the parents, but they will be valid. Likewise, if the woman at first indeed was unwilling, but then, drawn by persuasions and flatteries, follows the man with marriage in view, there is indeed an abduction of seduction, but not a violent abduction; yet in the external forum it must be proved that she truly consented to the flight; otherwise the prior dissent is presumed to have persevered.

But if a consenting woman is carried away into another place, not because she herself intends marriage, but on account of another motive; and the abductor, who was thinking about marriage although he had said nothing about it, detains her there and proposes nuptials to her, much more probably the impediment is present; because she is deceitfully carried away by the abductor¹. "As regards the nullity of marriage, violent retention of the woman is held equal to abduction, namely when a man violently detains a woman with marriage in view in a place where she dwells or to which she freely came."²

¹ For understanding the matter better, see the cases resolved by the S. C. of the Council, ap. Gasparri, n. 554-556.

² Code, c. 1074, § 3.

When valid betrothals have been contracted, it is controverted whether he who abducts his unwilling betrothed incurs the impediment of abduction. (a) If she has a just cause for withdrawing or delaying, according to all, the impediment is incurred, because her liberty is unjustly and violently harmed; (b) if she does not have a just cause, much more probably it is also incurred, because the betrothed woman cannot be forced by private violence to keep her betrothal pledge.

1008. (D) That the carrying away be done with a view to entering marriage, since the impediment was established for preserving the liberty of matrimonial consent. Hence if a woman is carried away to take money from her, or to satisfy lust, or for another end, the impediment does not arise. But in the external forum abduction is presumed to be done for the sake of marriage, unless the contrary is proved. Besides this, if the woman is first abducted for the sake of lust, but afterwards is detained unwillingly with a view to entering marriage, the impediment is now present, because detention in the case is equated with violent carrying away.

1009. (E) That the abductor detain the woman under his own power, as is clear from Trent and the Code. Therefore when the girl has been separated from the abductor and placed in a safe and free place, the impediment ceases without any dispensation; thus it is, for example, if she is restored to her own home, or placed in the house of a friend or parent of the woman herself, who is not a favorer of the abductor. But the impediment endures if the woman remains in the same house into which she had been transferred, although she could flee; or if she is placed in the house of a friend or parent of the abductor, especially if someone watches over her by mandate of the man; for then she is not placed in a safe and free place.

1010. N. B. The Church generally does not dispense in this impediment¹. - Let the abductor "be held by the law itself as excluded from legitimate ecclesiastical acts, and moreover be punished with other penalties according to the gravity of the fault."²

¹ Formerly the Church never dispensed; but in the Instruction to the Albanian Bishops, February 15, 1901, ap. *Acta S. Sedis* (XXXIII, p. 547-549), the Holy Office declared that, on account of the peculiar circumstances prevailing in Albania, nothing prevents a dispensation from being granted, if it is clear concerning the truly free consent of the abducted woman and if sufficient motives for dispensing are present; but, lest this be done easily, each case must altogether be submitted to the judgment of the Holy See.

² Code, c. 2353.

VIII. On the Impediment of Crime.

1011. 1° Notion and origin. (A) Not all crimes dirimently impede marriage, but certain more odious ones committed in relation to marriage, namely: (a) killing of a spouse perpetrated by mutual conspiracy with the intention of contracting marriage between themselves; (b) adultery committed with the other party, with a promise of marriage or attempted marriage; (c) adultery with killing of a spouse perpetrated by one party only⁴. - The reason why crimes of this kind render subsequent nuptials invalid is threefold: (a) because otherwise, under hope of contracting marriage with accomplices, occasion would be given to spouses for perpetrating these crimes, especially the killing of a spouse, which is so unworthily opposed to conjugal love and fidelity; (b) as a penalty for the crime committed; (c) because such nuptials would be publicly dishonorable and scandalous.

³ *Decret. Gratiani*, Caus. XXXI, q. 1; *Decretals*, lib. IV, tit. 7, *De eo qui duxit in matrimonium quam polluit per adulterium*; Canonists on this title; Sanchez, lib. VII, disp. 78-79; St. Alphonsus, n. 1031-1043; Carriere, II, n. 709-746; Ball. P., n. 666-691, ed. 3; Feije, n. 448-458; Mansella, p. 155-162; Gasparri, n. 641-660; De Becker, p. 162-173; Konings, n. 1594-1596; Noldin, n. 110-124.

⁴ Code, c. 1075.

(B) By ancient Roman law nuptials between accomplices in adultery were prohibited, even after the prior marriage had been dissolved; afterwards, in the time of Justinian, they were declared null. Canon law received this law, and St. Leo established: "Let no one take in marriage her whom he previously polluted by adultery"; but it is not certain that adultery as a diriment impediment was universally accepted, especially in the Western Church, before the ninth century; in the time of Gratian, already a twofold species of crime dirimently impeding marriage was acknowledged; finally, in the time of Gregory IX, the threefold impediment of crime set forth above was universally established.

1012. 2° On killing of a spouse perpetrated by mutual conspiracy. Four conditions are required that the impediment from this head be incurred:

(A) Mutual conspiracy between the accomplices for the killing of the spouse of one or other of them; this exists if one party induces the other to the crime by counsel, prayers, or approval; or if each cooperates either physically, for example by supplying poison, or morally, by corrupting a physician so that he may bring on death or not prevent it. Hence it is not enough that one party plans death

while the other is unaware, even if the latter afterwards approved the killing; nor is the silence of the other enough, unless by other supports the silence can be held as consent and truly influences the crime.

(B) That the conspiracy be done from the intention of entering marriage with the accomplice¹, at least on one side; therefore, if it is done for another end, for example hatred, revenge, cupidity, or so that life may be lived more freely, or for more easily marrying another person, the impediment is not incurred.

¹ Concerning this intention the Code is silent.

It was said: at least on one side; because some theologians require this intention from each party; but more probably this is not necessary, provided that the intention of one is externally manifested; for example, if sufficient signs of intention preceded the killing, suppose gifts, familiarities, love letters, and similar things between those who wish to contract; otherwise if the intention remained altogether internal, because the Church cannot punish a homicide done from such an intention if no indication concerning it has preceded. Thus St. Alphonsus, n. 1034.

(C) That death follow by the work of one or other, whether physical or moral, but not from a fortuitous case, or from the fault of another person; hence, if after a non-mortal wound has been inflicted death follows through the inexperience or negligence of the physician, the impediment is not incurred; otherwise, if the physician, by the counsel or mandate of one or other accomplice, has been negligent by design.

(D) That the marriage was valid at the time of the killing; otherwise there will not be killing of a spouse, but homicide; nor is it enough that it was putative; on the other hand it is not necessary that it had been consummated.

1013. 3° On adultery with promise or attempted marriage. Three conditions are required:

(A) True adultery, formal on each side, consummated.

(a) True, insofar as a valid marriage and one still persevering ought to exist at least on the part of one adulterer; hence, if the marriage is invalid, although putative, or if the other spouse is already dead, although his death remains unknown, the impediment is not contracted, because objectively adultery is not committed, but only fornication.

(b) Formal on each side, insofar as each must know that the other is married; nor is it enough that each knows himself to be married, if this is unknown by the other accomplice. Now it is not necessary that both be married, nor therefore that both know each to be married; but it suffices that the conjugal state of one is known to each.

(c) Consummated, that is, of itself apt for generation.

(B) Promise or attempted marriage, made before the death of the innocent spouse. Now this promise ought to be:

(a) true and accepted, and therefore externally manifested, and probably mutual; (b) in order to entering marriage with the accomplice after the death of the spouse; for if marriage to be entered while the other spouse is still living is promised, where polygamy is permitted by civil law, the

impediment is not contracted, because the reason for the impediment ceases, which is lest the promise furnish occasion for killing the other spouse; (c) absolute; hence a conditioned promise does not suffice, unless this has passed into an absolute one by fulfillment of the condition before the death of the spouse; (d) not revoked before the adultery; if it is revoked after the adultery has been committed, the impediment already contracted does not cease; (e) probably made with knowledge of the bond; hence if the promise is made at a time when the bond of the accomplice is unknown, and afterwards adultery is committed once the bond is known, the impediment is doubtful, and therefore in practice none.

Attempted marriage, or civil marriage, takes the place of a promise; hence those who, after a marriage validly entered, obtain a civil divorce and, while the former spouse is living, contract and consummate another marriage, incur the impediment of crime; and therefore, after the former spouse has died, they cannot revalidate the marriage without dispensation¹.

¹ Thus, according to De Angelis, lib. IV, t. IV, n. 11, the S. Penitentiary was accustomed to respond; cf. Gasparri, t. I, n. 738, ed. 3.

(C) The promise of marriage must be made and the adultery committed during the same marriage; namely, if Peter successively has two wives, and while one is living, for example Bertha, he promises to marry Catherine, but afterwards marries Martha, and while she is living commits adultery with Catherine, there is no diriment impediment between Peter and Catherine, provided the same promise of marriage is not renewed; for the promise previously made is considered revoked by the nuptials celebrated with Martha.

Moreover, it makes no difference whether the promise precedes, accompanies, or follows the adultery, or by how much time it is distant from the adultery, provided these two things are done during the same marriage.

1014. 4° On killing of a spouse with adultery. Three conditions are required for contracting this impediment:

(A) True adultery, formal on both sides, consummated, as above, committed before the homicide; for if it is committed after the death of the spouse, it is no longer adultery.

(B) Homicide perpetrated by one, with the intention of entering marriage with the accomplice, externally manifested, although the other does not know that the homicide is to be perpetrated, or even contradicts it. Hence in this case mutual conspiracy is not required, nor a promise. But the intention of entering marriage is presumed in the external forum, unless the contrary is clear from the circumstances. - It is likewise necessary that death in fact follow by the work or machination of one of the adulterers.

(C) That each thing, namely adultery and killing of a spouse, be committed while the same marriage stands.

1015. 5° On the multiple impediment of crime. The impediment of crime can be multiplied both by reason of the delict and by reason of marriage:

(A) By reason of the delict: (a) when the impediment arises from homicide alone, the impediment is double if each spouse is married and each from conspiracy kills his own spouse; (b) when it arises

from adultery alone, a double impediment is incurred if both adulterers are married and both know this; (c) when it arises from homicide with adultery, the impediment is double if each adulterer is married and each kills his own spouse, even without conspiracy; (d) when adultery and homicide separately have their proper conditions, according to what was set forth above, each is likewise an impediment.

(B) By reason of marriage, namely when several marriages have successively been entered, and during each marriage, one or several of the aforesaid crimes have been perpetrated; for example, if Titius successively entered a threefold marriage with Mary, Bertha, and Rosa, and while each marriage stands, carnally knows Caia with a promise of marriage, there is now a threefold impediment; if besides this he kills Rosa, so that he may marry Caia, a fourth impediment arises, etc. - But impediments are not multiplied if adultery is committed several times with the same person while the same marriage stands.

1016. 6° On dispensation in this impediment. (A) Since this impediment is of ecclesiastical law only, infidels do not incur it, and therefore they do not need a dispensation when they are converted. But if the crime is committed by a faithful party with an infidel party, the impediment is present, directly affecting the faithful party and indirectly the infidel.

(B) The Church is always able to dispense in this impediment; but she dispenses with very great difficulty when the killing of a spouse was perpetrated by mutual conspiracy, or by one party only together with formal adultery, especially if the crime is public, on account of the scandal which would follow from it; but a dispensation is granted more easily for adultery with attempted marriage, at least on account of grave reasons; more easily also in the case of adultery with the mere promise of marriage.

(C) The Code, can. 1053, establishes that for the future a dispensation from the impediment arising from adultery with promise or attempted marriage, if any is needed, is considered granted through a dispensation concerning a ratified and non-consummated marriage, or through permission of passage to other nuptials.

(D) It was disputed whether ignorance excused from this impediment. Most denied it; for this impediment is more an incapacity than a penalty; now an incapacity is incurred even by those who are ignorant of it. Yet a few, probably before the promulgation of the Code, affirmed it¹; for this impediment is a penalty, and indeed medicinal, for deterring men from perpetrating a crime of this kind; and therefore it is not incurred by those who are ignorant.

¹ Krimer, *In Decretal.*, lib. IV, n. 1001; Ball. P., n. 683-690; Gasparri, n. 858.

Today, however, from can. 16 of the Code, this opinion lacks all probability: "No ignorance of invalidating or incapacitating laws excuses from them, unless something else is expressly said." Moreover something else concerning this matter is said in no canon of the Code.

Note. Usually those about to marry do not think about manifesting this impediment; hence, if the confessor has founded suspicions about its existence, he ought discreetly to question the penitent; for example, if a maidservant wishes to marry her recently widowed master, it can be asked whether a promise of marriage preceded, and when, while the wife was living? whether, besides the promise, there were dishonorable conversations, etc.

**§ V. ON THE IMPEDIMENT AFFECTING THE FORM
OF THE CONTRACT, OR ON CLANDESTINITY.**

Notion. From the Tridentine law, namely the decree *Tametsi*, in order that marriage be valid, a certain solemnity is required which consists in the presence of the pastor and of at least two witnesses. Hence a marriage is called solemn which is contracted according to the form of law; on the contrary, clandestine, which is contracted outside the form of law. Since, however, the Tridentine form was notably changed by the decree *Ne temere*³ and by the Code, we shall speak: 1° of the Tridentine form; 2° of the form of the new law.

² For the ancient discipline: *Decret. Gratiani*, C. XXX, q. 5; *Decretals*, lib. IV, tit. 3, *de Clandestina Desponsatione*; Trent, sess. XXIV, cap. 1 *de reformat. Matrim.*; Sanchez, lib. III; St. Alphonsus, n. 1078-1094; Gasparri, n. 871-999; Deshayes, *Questions sur le Mariage*, q. 91-150. - For the form of the new law: De Smet, ed. 3, n. 103-150; Vlaming, ed. 3, n. 561-609; Fourneter, p. 140 sq.

³ Which began to be in force on April 19, 1908, for the whole world, except the empire of China, in which it is in force from April 11, 1909. - Hence marriages entered before this time must be judged according to the discipline of the decree *Tametsi*.

I. On the Tridentine Form.

Trent had established this law: "Those who shall attempt to contract marriage otherwise than in the presence of the pastor, or of another priest with the permission of the same pastor or of the Ordinary, and of two or three witnesses, the holy Synod renders altogether incapable of so contracting: and it decrees that contracts of this kind are invalid and null, just as by the present decree it makes them invalid and annuls them."

Yet lest that decree (which is called *Tametsi*, because it begins with this word) should affect heretics, who were not going to receive it, the Council willed that the decree not have the force of law except after thirty days from the first publication in each parish; for thus an opportunity was furnished to heretics, who formed separate communities, of evading the law.

Concerning that discipline, now antiquated, we shall hand down only a few things, nevertheless necessary to know for judging the validity of marriages entered before April 19, 1908; if perhaps more difficult cases occur, let the authors cited above be consulted.

1017. 1° On the places in which this decree was in force. (A) From what has been said, the decree was not in force except where it had been promulgated, at least implicitly through immemorial observance.

Hence marriages entered without the Tridentine form were valid: in England, Scotland, several districts of Switzerland, Denmark, Sweden, Norway, the regions of Europe and Asia under Turkish and Persian rule, the Vicariate of Sutchuen, Abyssinia, the island of Madagascar. - The matter remained doubtful for almost the whole of Wallachia, Bulgaria, Syria, the island of Cyprus, Malabar, the Cape of Good Hope, and Upper Canada.

(B) From the constant interpretation of the Roman Congregations, the aforesaid law also bound baptized non-Catholics wherever it had been promulgated.

Nevertheless the places were to be excepted for which the Benedictine declaration¹ was given or to which it was extended. Since there had long been dispute concerning the validity of marriages of heretics in Holland, from the fact that very many Catholics there had fallen away from the Catholic faith, Benedict XIV, wishing to put an end to the dispute, declared and established that clandestine marriages in Holland, whether entered between heretics or between heretics and Catholics, or to be entered in the future, were to be held as valid, provided no other impediment stood in the way. This declaration was afterwards extended to the places which follow:

¹ Constit. *Matrimonia*, November 4, 1741.

The Federated Orders of Belgium, the whole Empire of Germany from April 15, 1906, Constantinople and its suburbs, Pondicherry, Coromandel, Malabar, Bombay, Canada, the Island of the Most Holy Trinity, the dioceses of the United States of America, except the province of Santa Fe.

(C) Moreover mixed marriages were valid not only in the aforesaid regions, but also where derogation had been made from the Tridentine decree with respect to mixed marriages; these are: Hungary, Ireland, the Russian Empire and the part of Poland subject to it, Georgia.

1018. 2° On the subject of the Tridentine law. Principle: The law of clandestinity was at once local and personal.

(A) Insofar as it was local, it directly affected the territory in which it had been promulgated, and indirectly all who were staying there, or were traveling through the territory, even if they had no domicile or quasi-domicile there.

(B) Insofar as it was personal, it directly bound subjects, so that they could not validly contract in an exempt territory (where the law was not in force), if they went to this territory in fraud of the law, that is, for the purpose of marrying, without the intention of acquiring there a domicile or quasi-domicile.

(C) But when those about to marry dwelt in diverse places, a marriage celebrated without the Tridentine form was valid in a place where *Tametsi* was not in force, if one of the betrothed had there his domicile or quasi-domicile; for the privilege of one was communicated to the other.

1019. 3° On the solemnities required by the Tridentine law. - Two things were required: 1° the presence of the proper pastor, or Ordinary, or delegate; 2° the presence of witnesses.

1° On the presence of the pastor. (A) Who is the proper pastor? It is twofold: the pastor of the domicile or quasi-domicile of either of the contracting parties, that is, either of the bridegroom or of the bride; hence the pastor of one is the pastor of each with respect to marriage.

1020. (a) For domicile two things were required at the same time: habitation in the parish where marriage is contracted, and the intention of remaining there perpetually for a notable part of the year. Domicile was acquired as soon as habitation began with the intention of remaining externally manifested; nor was it lost by a long absence, provided there was the intention of returning.

1021. (b) For quasi-domicile two things likewise were required: habitation in the parish, and the intention of remaining there for the greater part of the year or at least for six months. Hence one could have a domicile in one parish, and a quasi-domicile in another.
1022. (c) Vagi, who have neither domicile nor quasi-domicile, can validly and licitly contract before the pastor of the place where they actually dwell; indeed probably, according to some, before any pastor.
1023. (B) Who came under the name of pastor with respect to marriage? All who have care of souls in a parish, with the general permission of administering the sacraments, although they are not pastors in the strict sense, namely:

(a) Not only irremovable pastors, but also removable ones; (b) rectors, or administrators of a vacant parish; (c) pro-pastors, vice-curates, for example, vicars of an absent pastor, or of a pastor present but infirm or worn out by old age, or of a suspended pastor, etc.; or cooperating vicars enjoying full authority of administering all the sacraments; but not those vicars who are deputed to help the pastor in those things which he will commit to them.

(d) Not only the proper pastor, but also the Ordinary of the diocese validly assists at marriages, that is, the Bishop; the Vicar General; or the Capitular Vicar, the see being vacant; the Roman Pontiff for the whole Church; the Apostolic Legate for his own territory.

1024. (C) On delegation for marriage. Not only the pastor, but one delegated by the pastor or Ordinary could validly assist at marriage.

The delegate could subdelegate another priest, if this power had been expressly committed to him, or if he had been delegated for the universality of matrimonial causes, or by the Supreme Pontiff even for a particular case.

1025. (D) What sort of presence of the pastor or delegate was required? There was required and sufficed for validity a moral presence, which the office of an authorized witness requires.

Hence if the pastor had rightly been warned beforehand, no special address was necessary, but it sufficed that he hear the contracting parties. Nor was it required that he had been expressly called to assist at the marriage; whether he was present by chance, or called under some other pretext, it sufficed that he understand what was being done.

Nevertheless a merely physical presence did not suffice, since the pastor ought to notice, as a witness, those things which are being done; hence one unaware, drunk, sleeping, insane, or hypnotized did not validly assist.

The pastor and witnesses had to assist at the marriage together.

1026. 2° On witnesses. Since Trent requires no special qualities in witnesses, those which natural law demands suffice. Therefore all those are qualified who, enjoying the use of reason, can know the fact and give testimony concerning it.

II. On the Form of the New Law.

1027. 1° Extension of the law. (A) The decree *Ne temere* and the Code have now been promulgated for the whole world. But they do not reach, at least directly, Orientals, who, from immemorial custom and with can. 1 approving, are not subject to disciplinary laws unless they are included by express declaration.

1028. (B) But in the Latin Church, can. 1099 declares who are subject to this law, namely:

(a) All baptized in the Catholic Church, when they contract among themselves, even if afterwards they have fallen away from the faith; - that is, all who by Baptism itself are freely enrolled in the Catholic Church, if adults are in question; with parents consenting, if little children are in question; but not those who are baptized by a heretical or schismatic minister by the will of the parents, even if the parents were Catholic; nor, at least more probably, the children of non-Catholics who, with the parents unaware and unwilling, were baptized by a Catholic maidservant. But the doubtfully baptized, with respect to marriage, are presumed validly baptized.

(b) All also who have been converted from heresy or schism and already baptized; but not the children of converts, unless they themselves also embrace the Catholic faith. - This holds good even if afterwards they fall away from the faith, because it is not fitting that this defection profit them.

(c) All likewise the aforesaid Catholics or converts, when they contract with non-Catholics, even after a dispensation has been obtained from the impediment of mixed religion or disparity of cult¹. Likewise Catholics who contract with Orientals. - Thus the discipline is reformed by which an immune party communicated his immunity to the other, while on the contrary today the bound party communicates his bond to the other.

¹ By the Constitution *Provida* (January 18, 1906), Pius X had exempted any mixed marriages to be contracted in Germany from the decree *Ne temere*. But that exemption is to be considered abrogated according to the mind of can. 6, 1° (*Pontifical Commission*, December 9, 1917).

(d) But non-Catholics, whether baptized or not baptized, are by no means subject to the law of clandestinity when they contract among themselves; therefore under this head the marriages of non-Catholics will not be invalid, which, as regards form, are subject only to natural and civil law. But if a baptized non-Catholic party contracts with an infidel, the marriage will be null from the impediment of disparity of cult, which has by no means been removed (above, n. 924).

1029. 2° Form to be observed in ordinary cases. - The matter must be examined both as regards validity and as regards liceity.

(A) For validity. "Only those marriages are valid which are contracted before the pastor, or the local Ordinary, or a priest delegated by either, and at least two witnesses..." (can. 1094); all these things must be weighed carefully.

(a) Pastor is to be understood in the sense of can. 451, that is, not only he who presides over a canonically erected parish, but also a quasi-pastor, who rules a quasi-parish, and all parochial vicars who are endowed with full parochial power. Now these are: 1. the actual vicar, or curate, who administers a parish united to a chapter or moral person (can. 471); 2. the vicar-economus, who rules a vacant parish (can. 472, 473); 3. the substitute vicar, who supplies for an absent pastor (can. 474); 4. the assistant vicar, who is given to an infirm pastor, if nevertheless he supplies for him in all things

(can. 475). - But the cooperating vicar, who is given on account of the multitude of the people, can in no way be called endowed with full parochial power, according to the mind of can. 451, § 2, 2°, and therefore he cannot assist at marriages by his own right; but he can, as will be said below, as a delegate.

(b) Ordinary is anyone who has ordinary jurisdiction or jurisdiction equivalent to ordinary jurisdiction in the external forum, for example, a Bishop in his own diocese and his vicars general, the Capitular Vicar when the see is vacant, an Abbot nullius, etc. (can. 198).

(c) Delegate. - Those who can assist by their own right can delegate (can. 1095, § 2), and therefore all whom we have just enumerated, but only for marriages to be entered within the boundaries of their territory.

This delegation can be given in any manner, by writing, word, or sign, but expressly, and a presumed delegation does not suffice.

It must be given to a determinate priest for a determinate marriage; otherwise it is invalid. Therefore a delegation given for any priest whom those about to marry might choose would not be valid, nor one given for all marriages perhaps occurring (can. 1096).

Nevertheless a general delegation given to a cooperating vicar for the parish to which he is assigned is valid, as is the custom for the first vicar in the parishes of the diocese of Paris. Indeed, from can. 476, § 6, we think that the cooperating vicar has a general delegation by law, unless something else is expressly provided in the letters of the Ordinary or from the determination of the pastor himself¹.

¹ In this matter it is necessary to remember that the Church supplies jurisdiction both in doubt of law and in common error (can. 209), which must also be applied to the pastor and the Ordinary.

But the delegate can subdelegate according to the general rules fixed by law (can. 199), namely: 1. if he has received permission from the one delegating; 2. if he has been delegated for the universality of causes, and therefore, in our interpretation, the cooperating vicar could subdelegate even without a special concession.

(d) Witnesses must be at least two. Since no special qualities are demanded in them, all those are qualified who, enjoying the use of reason, can know the fact and give testimony concerning it, whether they are of age or not of age, faithful or infidels, seculars or regulars.

These are the persons who must assist at marriage; moreover the Code commands that the assistance be done according to certain rules which we explain (can. 1095, 1096).

1030. (e) The Ordinary or pastor validly assists only from the day of possession obtained or of office begun, up to the day of their cessation from office; these two moments are determined thus for the pastor:

1. From can. 1444, the pastor acquires right over subjects when he is placed in possession of his parish according to the law or custom of the diocese - "unless for a just cause the Ordinary has expressly dispensed him in writing from that manner or rite: in which case this dispensation takes the place of possession taken."

2. The pastor loses jurisdiction in the case of transfer "when he canonically takes possession of another office," unless something else has been prescribed (can. 194), and in the case of resignation, when it has been accepted and the acceptance notified (can. 190).
3. Those assist invalidly who are by sentence excommunicated, interdicted, or suspended from office, or declared such.

(f) The competent pastor and Ordinary are the pastor and Ordinary of the place (of the parish and diocese respectively) within whose boundaries the contract is entered; hence from now on, otherwise than under the Tridentine discipline, a pastor outside the parish and an Ordinary outside the diocese cannot validly assist at the marriage even of subjects; and on the contrary, in his own territory he validly assists at the marriage even of outsiders. - The same must certainly be said if they assist not by themselves but through a delegate.

(g) As regards the manner of assisting, it is necessary that, "constrained neither by force nor by grave fear, they ask and receive the consent of the contracting parties"; therefore, otherwise than under the old discipline, marriages contracted before the pastor silent and unwilling, or deceitfully and unexpectedly (*par surprise*), would be invalid. But the fear which a legitimate threat of recourse to the superior produces, if the pastor does not wish to join the betrothed, would not invalidate the marriage.

1031. (B) For liceity the following things are to be observed (can. 1097):

(a) Before the Ordinary or pastor or their delegate assists at marriage, it is required that he himself be certain of the free state of the contracting parties, as we said above, n. 851.

(b) One of those about to marry must be a subject of the assisting priest, which is done in a fourfold manner: by domicile, quasi-domicile, monthly residence, and, if it is a question of a vagus, by actual presence in the place. - Hence if there are several pastors of this kind, any one of them assists licitly, without any permission. If the marriage is celebrated elsewhere than in the place of domicile, quasi-domicile, or monthly habitation, the pastor of the place where it is celebrated must have permission (not delegation), unless grave necessity intervenes, from one of those whom we have just enumerated.

Vagi can be united in the place where they now dwell, but, from can. 1032, for celebrating their marriages the permission of the Ordinary must be had beforehand.

It remains that we explain the notions of domicile, quasi-domicile, and monthly residence according to the recent discipline (can. 92).

1. Domicile is acquired in two ways: either by actual residence in a parish with the intention of remaining there perpetually, if nothing calls one away from there, - or likewise by actual residence already prolonged for a completed decade. But understand residence not as bodily presence, but as presence resulting from facts which manifest the intention of having one's seat there: for example, by buying a house there and transporting into it one's household goods, or by accepting a permanent office there. Once acquired, domicile is not lost except by a positive intention, externally manifested, of not returning. A minor necessarily retains the domicile of him to whose power he is subject (can. 93).

2. Quasi-domicile likewise is had in two ways: by actual residence with the mind of remaining there at least for the greater part of the year, if nothing calls one away from there, - or likewise by actual residence in fact prolonged for the greater part of the year.
3. Monthly residence, however, does not consist in the intention of staying somewhere, but in the fact itself, whatever the intention may be. A completed month, or at least thirty days, is required. This residence must be morally continuous: an absence of some hours, even daily, does not obstruct this continuity, provided on each day of the month the principal residence in the place of marriage truly was present. Say the same very probably concerning the absence of one day. But if someone is absent for two or three days with the intention of returning, the residence is suspended, but the preceding residence can be joined with the following, for completing thirty days: thus Titius, who had rented a room in parish N. for one or more months, after ten days is called elsewhere for two days on account of urgent business; having returned, after twenty other days, he licitly contracts marriage in parish N. If he had departed without the intention of returning, the time previously elapsed will not be computed.

(c) If the proper priest does not assist, permission is to be had from the proper pastor or Ordinary, unless it is a question of the marriage of vagi, as was said, or necessity urges which excuses from seeking permission. Permission given in any manner is valid, and sometimes can be presumed.

(d) "Let it be held as a rule that marriage be celebrated before the pastor of the bride, unless a just cause excuses," for example, the reasonable desire of the parties or custom (can. 1097, § 2).

1032. 3° Form to be observed in extraordinary cases. Can. 1098 decrees that "if the pastor or Ordinary or delegated priest cannot be had or approached without grave inconvenience," marriage is contracted validly and licitly before witnesses alone in a twofold case: 1) in danger of death; 2) when it is foreseen that this condition of things will endure for a month. - Concerning these things note:

(A) For validity two things are required: (a) that the proper priest or delegate cannot be had; (b) that two witnesses be present.

This impossibility of having or approaching the proper priest is not required to be physical, but moral suffices, which is induced by "grave inconvenience" of any kind, whether on the part of the contracting party, or of his own, or even, as it seems, of the priest himself.

Here it is permitted to observe that in the Code it is not a question of a difficulty which affects some region, or parish, or village, but that a personal difficulty suffices. On this occasion it has been asked whether that case is verified if the pastor cannot assist without grave inconvenience for himself, for example, because the civil marriage cannot be performed within a month, and the law of the region gravely prohibits ministers of worship from assisting at the marriage of those who are not joined civilly? The matter had recently been much agitated, on the occasion of various responses which the Sacred Congregations had given before the promulgation of the Code; but now, with the new law in force, several grave authors judge that can. 1098 is to be applied, and that such a marriage before witnesses alone is valid and licit. Thus De Smet, 3rd ed., n. 135-136; Vlaming, 3rd ed., n. 590. Otherwise Lehmkuhl (*Questions... novo juri adaptatae*, p. 55). Hence the Ordinary should prudently be consulted in so grave a matter, if time permits.

(B) For liceity two things also are to be observed: (a) if there is present another priest, he should be had, who assists with the witnesses. But it is not said that such a priest, lacking delegation, must ask and receive the consent; it suffices that he assist passively.

(b) Let either the assisting priest or the witnesses, or the contracting parties, take care that the marriage entered be noted in the ritual books (can. 1103, § 3). - It is also fitting that, given the opportunity, the spouses receive the nuptial blessing from a sacred minister (can. 1101).

1033. 4° On the registration of marriages. (a) Immediately after the celebrated marriage, or as soon as possible, the pastor or he who takes his place, for example the first vicar, must write in the book of marriages the names of the spouses and witnesses, the place and day of the marriage. Since it is not said by his own hand, the act can be written by another, but the pastor himself or he who takes his place must see to it that all things are written accurately. - In many regions, as in France, the act is signed not only by the pastor or delegated priest, but also by the witnesses, immediately after the marriage has been celebrated.

(b) Besides this, the pastor shall also note in the book of the baptized that the spouse contracted marriage on such a day in his parish. But if the spouse was baptized elsewhere, the pastor of the marriage shall transmit notice of the contract entered to the pastor of Baptism, either by himself or through the episcopal curia, so that the marriage may be entered in the baptismal book¹. This was wisely provided so that marriages already entered may thus be more easily detected. Wherefore it is expedient to demand from the betrothed a recent document of Baptism, by which it may be more safely known whether they have contracted another marriage.

¹ *Ne temere*, IX, 2; Code, c. 1103. - Cf. Instr. S. Cong. de Sacram., March 6, 1911, A. A. S., III, 102-103; a commentary on which is handed down by *Nouv. Rev. theol.*, 1911, p. 261-276.

1034. 5° Sanctions. Pastors who, without the permission of the proper pastor and outside a case of grave necessity, have assisted at the marriage of non-subjects, must remit the stole fees to the proper pastor of the contracting parties (can. 1097, § 3). - The suspension from priestly office inflicted by Trent on a priest who had dared to join in marriage the betrothed of another parish without the permission of their pastor has been abrogated.

Chapter IV: On Dispensations and the Revalidation of Marriage

ON DISPENSATIONS.

We shall speak: 1° of dispensations themselves; 2° of the revalidation of a null marriage.

ART. I. ON DISPENSATIONS THEMSELVES.

Division:

- On the notion and species of dispensations.
- On the author of dispensations.
- On the causes of dispensations.
- On the manner of asking for dispensations.
- On the manner of executing dispensations.

§ I. ON THE NOTION AND SPECIES OF DISPENSATIONS.

1035. 1° Notion. (A) A matrimonial dispensation is the relaxation of some ecclesiastical impediment, for a particular case, made by him who has power. - Therefore it differs from abrogation of a law, by which an impediment is removed for the whole Church and totally; and from derogation, by which an impediment is removed for the whole Church only in part, for example when consanguinity was reduced from the seventh to the fourth degree.

¹ Sanchez, lib. VIII, disp. 1; Pyrrhus Corradus, *Praxis Dispensationum*, lib. I, c. 1-3; Gasparri, n. 311; De Becker, p. 278-279; Brillaud, *Des Empêchements et des Dispenses*, n. 63-65; Esmein, II, p. 316-330; N. Rousseau, *Renseignements pratiques sur la législation canonique du Mariage*, Paris, 1905, p. 33 sq.

(B) St. Thomas² declares as follows the reason why it is sometimes expedient to grant a dispensation: it sometimes happens that some precept, which is for the advantage of the multitude, is not suitable for this person or in this case, because through it something better would be impeded, or even some evil would be induced; therefore it is expedient that in this particular case the law be relaxed; but because it would be dangerous to commit this to the judgment of anyone whatever, except on account of an evident and sudden danger, it is necessary that he who has power to rule the multitude have the power of dispensing in human law, which rests upon his authority.

² *Sum. Theolog.*, 1a 2ae, q. 97, a. 4.

(C) In the earlier centuries of the Church no traces appear of dispensations concerning matrimonial impediments. St. Gregory the Great, in the sixth century, granted to the recently converted English that they might remain in marriages entered before conversion in the third degree of consanguinity: but this was not a dispensation strictly taken, but a privilege granted to a certain nation on account of special reasons. But already in the eleventh century examples of dispensation are found, for example in the case of Casimir, who, notwithstanding religious profession, received permission to contract nuptials. From the twelfth century, dispensations were given more frequently by the Roman Pontiff; from the sixteenth century, faculties of dispensing concerning some impediments were granted to Bishops, especially missionaries; and this practice became more common day by day. Leo XIII greatly extended the faculties usually granted, and at the same time abrogated or changed certain clauses

which were accustomed to be added to rescripts, so that dispensations might more easily be committed to execution.

1036. 2° Species of dispensations. (A) Dispensations can be granted with regard to a public or to an occult impediment: this distinction is of the greatest importance, since often the S. Penitentiary dispenses with the clause "provided it is occult."

(a) Now certain impediments are public by their nature, insofar as they can be known without infamy or scandal, and otherwise are easily proved in the external forum, for example legitimate consanguinity, spiritual relationship, licit affinity, bond, disparity of cult, etc.; these, although known to few, are always held as public.

(b) But others are, by their nature, or by law, occult, namely because they cannot be known without infamy or scandal, nor can they so easily be proved in the external forum, such as illegitimate consanguinity, crime, etc.; concerning these it is asked when they are considered occult in fact.

Now up to this time the Roman Congregations distinguished a twofold kind of occult: altogether occult and simply occult. The former was that which is known to no one except the parties and the confessor; indeed, more probably, that which, besides the parties and the confessor, is known to only one discreet person.

The latter, that is, simply or quasi occult, was that which is known only to a few, without probable danger that the matter be proved in the external forum. But can. 1037, which used to be left to canonists to define, itself defines it, by saying simply: "An impediment is considered public which can be proved in the external forum; otherwise it is occult."

Therefore, in order that an impediment occult by its nature be public in fact, it is not required that it be juridically proved; but it suffices that it be known to those persons whose testimony in the external forum would be equivalent to juridical proof. Now such persons are, from can. 1791: 1. one sole qualified witness who gives testimony concerning things done by office; 2. two or three persons, greater than every exception, firmly agreeing among themselves, testifying from their own knowledge.

1037. Corollaries. (a) If an impediment is known in one place, for example in Ireland, and unknown in the place where the contracting parties dwell, for example in America, and knowledge of it is not foreseen as likely to come there easily, it is considered occult; nevertheless it is safer to set forth this circumstance in the petition. - Likewise if it was at one time public, but from then for a long time (for example ten years) remained occult, it can be held as occult.

(b) If an impediment is public materially, that is, insofar as it is a fact, but not formally, insofar as it is criminal (for example if a homicide is held by the community as fortuitous), in practice it is considered occult. But if it is public not only as a fact, but also as a crime, although it is commonly unknown that this is an impediment, the matter is indeed controverted; but the more common opinion, which the Penitentiary follows in practice, holds that the impediment is truly public.

1038. (B) By reason of the forum, a dispensation is granted either for the external forum, or for the internal forum only. (a) When it is granted for the external forum, it is considered to have

force also for the internal forum, except in a case where the judgment was rendered from a presumption which is in reality false. - This dispensation is sought for a public impediment, with the names of the petitioners expressed.

(b) A dispensation is granted in the sacramental internal forum (the names of the petitioners being withheld), or in the non-sacramental internal forum (their names being expressed). From can. 1047 let these things be noted: "Unless the rescript of the S. Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum concerning an occult impediment is to be noted in a book diligently kept in the secret archive of the curia... nor is another dispensation for the external forum necessary, even if afterwards the occult impediment becomes public; but it is necessary if the dispensation had been granted only in the sacramental internal forum."

1039. (C) By reason of form, a dispensation can be given (a) in gracious form, when it is granted directly to the petitioner himself and directed to him; which formerly was sometimes done; (b) in commissory form, when it is not granted to the petitioner himself, but is committed to be executed either by the Bishop, or by the confessor or another priest; today dispensations are granted in this way, by command of Leo XIII¹.

¹ Thus he decreed "that all matrimonial dispensations in the future are to be committed either to the Ordinary of the Petitioners or to the Ordinary of the place." (*Collect. P. E.*, n. 1471.)

In either case, the dispensation does not expire by the death of the one granting it, or his cessation from office; nor by the death of the delegated person, unless to this person the faculty of dispensing had been entrusted by reason of personal quality, but not by reason of office. (Code, c. 1055.)

§ II. ON THE AUTHOR OF DISPENSATIONS.

Since those can dispense who enjoy the power of making laws, the question can be considered with respect to the Supreme Pontiff and Bishops.

² Sanchez, l. VIII, disp. 3-15; Reiffenst., *Append. ad lib. IV*, § 1; Schmalzgr., lib. IV, tit. 16, n. 59-101; St. Alphonsus, n. 1118-1127; Carriere, n. 1063-1110; Ball. P., n. 918-932; Gasparri, n. 312-327; 404-431; Feije, n. 601-648; Zitelli, *De Dispensationibus*, p. 45-62; Brillaud, n. 66-114; Tephany, *Traite des Dispenses*, p. 76-118.

I. On the Power of the Supreme Pontiff with Respect to Dispensations.

1040. 1° On the power itself. The Supreme Pontiff, as the supreme head of the Church, can validly dispense from any ecclesiastical law, and therefore in all impediments of ecclesiastical law. That this may be declared more fully, these things are to be noted:

(A) No dispensation is granted concerning impediments of divine law, whether natural or positive, except in cases determined by divine law itself (for example in the Pauline case, above, n. 729). Nevertheless the Church can do two things with respect to divine law: authentically declare whether an impediment is present or not, for example whether there is sufficient certainty concerning the dissolution of a prior bond; or whether, in such and such a circumstance, divine law obliges or not, for example in the Pauline case whether an interpellation is necessary.

Hence the Supreme Pontiff cannot dispense in the first degree of consanguinity of the direct line; in antecedent and perpetual impotence; in the bond, if it is a question of a marriage of the faithful that is ratified and consummated; in error and fear, insofar as they remove the necessary liberty.

1041. (B) If it is doubted whether some impediment is of divine or ecclesiastical law, the Supreme Pontiff, following the safer way, is not accustomed to dispense in it; thus in every degree of consanguinity in the direct line; in the first degree of consanguinity of the collateral line.

(C) Rarely and only from a most grave cause does the Pontiff dispense in the impediment of age, even insofar as it is merely ecclesiastical; in the second degree of consanguinity touching the first (a niece and maternal uncle); in the first degree of licit affinity in the direct line; in a solemn vow and sacred order; in disparity of cult, outside mission places; in clandestinity.

1042. 2° On the organs through which the Roman Pontiff dispenses. Since the Roman Pontiff cannot personally dispatch all business, he uses various Congregations for granting dispensations.

Today, according to the new economy introduced by the Constitution *Sapienti consilio*, five Congregations are deputed to this office:

1043. (A) For the internal forum only, the S. Penitentiary can dispense, as before, for the forum of conscience:

(a) as regards marriages contracted and to be contracted, concerning all impediments, prohibiting and diriment, which by nature and in fact are occult, and concerning public honesty from occult betrothals (from the old law); (b) in order to convalidate a contracted marriage, concerning the third and fourth degree of consanguinity and of licit affinity occult in fact, and also in the second degree, if "it has remained occult at least for ten years, and the petitioners have at the same time contracted publicly and lived together, and have been reputed as legitimate spouses," likewise concerning spiritual relationship occult in fact¹.

¹ Benedict XIV, Constit. *Pastor bonus*, April 3, 1744; *Normae peculiares*, cap. VIII, art. 1. (A. A. S., I, 101). - Cf. Desmet, *De Sponsalibus et Matrimonio*, 1911, n. 351.

(c) Besides this it belongs to the Penitentiary to sanate dispensations concerning the third and fourth public degrees of consanguinity and affinity, which are null on account of occult subreption or obreption; likewise to sanate marriages null because of consanguinity or affinity of the first with the second degree, or of the second with the third. - Its competence extends to all Latin churches, not excepting those which are subject to the S. C. de Prop. Fide.

All things are dispatched secretly and gratis in this sacred tribunal. Nevertheless postal expenses must be paid, and if the dispensation is obtained through the episcopal Chancery, a small sum of money for the agency.

1044. (B) For the external forum: (a) The Cong. of the Holy Office dispenses in the impediments of disparity of cult and mixed religion. It also retains the faculty of knowing those things which regard the Pauline privilege and mixed marriages (between Catholics and non-Catholics). Its competence extends to all churches of the Latin rite, not excepting those which are subject to the S. Cong. de Prop. Fide. (Code, can. 247, § 3.)

(b) The Congreg. of the discipline of the sacraments, or of the sacraments, dispenses concerning the remaining impediments of the external forum, both for the poor and for the rich. To the same Congregation are attributed sanctions in the root, dispensation concerning ratified and non-consummated marriage, separation of spouses, legitimation of offspring. Its competence in those things which regard marriage extends to the whole world of the Latin rite. - Nevertheless, when it is a question of dispensation concerning a ratified marriage, the prior judicial inquiry concerning the fact of non-consummation pertains to the S. Rota. (Code, can. 249, § 3.)

Scholion on taxes to be paid. When a pontifical dispensation for the external forum is granted, from the usage of the Curia, for the rich or quasi-poor, besides postal and agency expenses, a certain tax is imposed for the support of officials and for bearing other burdens of the apostolic curia; and also a composition to be converted to pious uses, when for the rich a dispensation is obtained without cause, or even with cause if it is a question of consanguinity or licit affinity; this is greater the richer the petitioners are. Wherefore in the supplicatory petition the wealth of the petitioners must be set forth. In many regions, by force of indult, the tax and composition are determined according to equity and the good by the Ordinary of the place.

But the poor obtain a dispensation gratis; nevertheless there is inserted in the rescript that a small alms is to be made, to be taxed according to the judgment of the Ordinary; but those called miserable are dispensed from it¹.

¹ The poor are reputed those who both together do not have more than 1500 francs in Italy and, outside Italy, about 3000 francs; the miserable, those who live by the labor of their hands alone; the quasi-poor, those who possess no more than about 5000 francs in Italy and, outside Italy, 10000 francs. In computing fortune, account must be taken of fortune in hope, which is customarily computed for half, and of stable revenues from the office of either of the betrothed.

Today, however, error or fraud concerning the economic condition of the petitioner does not obstruct the validity of the dispensation.

1045. (c) The S. Congreg. set over the Business of Religious Sodalities dispenses concerning the vow of chastity as regards religious of each sex, and all sodales living life in common after the manner of religious, and indeed through the whole world of the Latin rite.

(d) The S. Congreg. for the Business of the Oriental Rites dispenses, as regards regions and persons belonging to the Oriental Rites, in all impediments, except only the Pauline privilege, which is reserved exclusively to the Holy Office.

Note. From the const. *Vacante Sede Apostolica*, December 25, 1904, the ordinary faculties of the Congregations are not extinguished by the death of the Pontiff, but only the extraordinary ones, or those which cannot be dispatched unless the word has been had with the Most Holy. Nevertheless the Pontiff wills that, insofar as it can be done, the Congregations not use these faculties except in matters of lesser moment.

II. On the Power of Dispensing Competent to Bishops.

1046. 1° By proper and original right, Bishops cannot dispense in impediments of marriage, whether diriment or even prohibiting, if exception is made for a prohibition made by the Bishop

himself, or his predecessor, or by a pastor. For a Bishop cannot by his own right dispense from a general law.

1047. 2° By ordinary power, yet vicarious, not proper:

(a) Concerning the proclamation of banns: "The proper local Ordinary, according to his prudent judgment, can for a legitimate cause dispense from publications, even those to be made in another diocese."¹

¹ Code, c. 1028.

(b) In a doubtful case: "Even invalidating and incapacitating laws do not bind in doubt of law; but in doubt of fact the Ordinary can dispense in them, provided it is a question of laws in which the Roman Pontiff is accustomed to dispense."²

² Code, c. 15.

1048. (c) "When danger of death urges, local Ordinaries, for consulting conscience and, if the case calls for it, the legitimation of offspring, can dispense their own subjects wherever they dwell, and all those actually staying in their own territory, both concerning the form to be observed in the celebration of marriage and concerning each and all impediments of ecclesiastical law, whether public or occult, even multiple, except impediments arising from the sacred order of the presbyterate and from affinity in the direct line, when the marriage has been consummated, scandal being removed, and, if the dispensation is granted concerning disparity of cult or mixed religion, the customary cautions having been furnished."³

³ Code, c. 1043.

From this canon the power of dispensing also includes affinity in the direct line, if the marriage has not been consummated. Moreover a marriage (whether true or false), "if the spouses have cohabited together, is presumed consummated until the contrary is proved."⁴

⁴ Code, c. 1015, § 2.

In the same circumstances and only for cases in which not even the local Ordinary can be approached, the same faculty of dispensing is possessed both by the pastor, and by the priest who assists at marriage... when the pastor or Ordinary or delegated priest cannot be had or approached without grave inconvenience, and also by the confessor, but he only for the internal forum in the act of sacramental confession⁵.

⁵ Code, c. 1044. But concerning a dispensation of this kind granted for the external forum, the local Ordinary is to be informed immediately, and it is to be noted in the book of marriages. Code, c. 1046.

1049. (d) In an urgent case. - "Local Ordinaries can, under the clauses indicated above, grant dispensation concerning all the impediments of which in the same number, whenever the impediment is detected when now all things are prepared for the nuptials⁶, and the marriage, without probable danger of grave evil, cannot be deferred until a dispensation is obtained from the Holy See.

⁶ From the decision of the Pontifical Commission, March 1, 1921, these things are to be understood not in a strict sense, namely that the impediment had previously been altogether unknown and then is discovered, but in this sense,

that although previously known, then only it is brought to the knowledge of the pastor or Ordinary.

This faculty also has force for the convalidation of a marriage already contracted, if the same danger is present in delay and time does not suffice for recourse to the Holy See.

In the same circumstances, they enjoy the same faculty, but only for occult cases in which not even the local Ordinary can be approached, or only with danger of violation of the secret."¹

¹ Code, c. 1045.

Thus now the case which was called perplexed is easily solved.

1050. 3° By delegated power, Bishops can dispense in those impediments for which they have received special faculties²; these indeed are various for various regions.

² From the Decree of the Congreg. of Sacraments, March 7, 1910, these faculties are not to be used for marriages of kings and of princes of the royal stock. Cf. *Acta Apost. Sedis*, II, p. 147; Code, c. 201, § 3:

As regards common Indults which up to now were granted to Ordinaries petitioning for them (in the Brief called of 25 years, or in formulas for ten years or for three years), these things have been established (*Secret. S. C. Consistorialis*, April 25, 1918):

(a) In all dioceses subject to common law, all faculties for the external forum granted to Ordinaries, and which are contained in the Formulas and Brief enumerated above, will cease from May 18, 1918.

(b) Nevertheless in more remote places and others to which knowledge of the decree has not come, dispensations granted by force of the old faculties will be valid.

(c) But the faculties for the internal forum granted by the S. Penitentiary have not been abolished.

(d) Local Ordinaries in America, in the Philippine Islands, in the East Indies, in Africa outside the coasts of the Mediterranean Sea, and in Russia, for a quinquennium from May 18, 1918, are able to dispense from impediments of a lesser degree (c. 1047); and marriages nullly contracted on account of these impediments they can sanate in the root, according to the rules of the Code; likewise for a quinquennium they can dispense from impediments of a greater degree, whether occult or public, even multiple, yet of ecclesiastical law (except impediments arising from the sacred order of the presbyterate and from affinity in the direct line when the marriage has been consummated), and also from the impedient impediment of mixed religion, if the petition for dispensation has been sent to the Holy See and an urgent necessity of dispensing supervenes while recourse is pending, with those things nevertheless being observed which must be observed by law.

1051. Concerning all these faculties, whether ordinary or delegated, these things are to be noted:

1. When the contracting parties are of diverse dioceses, if the impediment is altogether proper to one, such as a vow, the contracting party so bound must have recourse to his own Bishop, and if both have contracted such an impediment, each must be dispensed by his own Bishop; but if the impediment is common to each, as consanguinity or affinity, it suffices that the dispensation be granted by either Bishop; nevertheless it is fitting that it be sought from the Bishop in whose diocese the marriage is celebrated.
2. Faculties subdelegated by the Bishop can be exercised toward subjects, even if both he himself and the subject are outside the diocese at the time when the dispensation is made; unless, however, the clause has been added, "nor can he use them outside the boundaries of the diocese," or it is otherwise clear from the mind of the Supreme Pontiff, or unless the subject matter requires it; for then the faculties can be exercised only with proper subjects actually

dwelling in the diocese at the time when the favor is granted. Nevertheless it is not necessary that the Bishop himself then be in the diocese¹.

¹ Code, c. 201, § 3: "...one can exercise voluntary or non-judicial power of jurisdiction even for one's own advantage, or while existing outside the territory, or over a subject absent from the territory."

3. "In marriages either contracted or to be contracted, he who enjoys a general indult of dispensing concerning a certain impediment can, unless something else is expressly prescribed in the indult itself, dispense concerning it even if the same impediment is multiple.

He who has a general indult of dispensing concerning several impediments of diverse species, whether diriment or impedient, can dispense concerning the same impediments, even public ones, occurring in one and the same case."²

² Code, c. 1049.

4. In granting dispensations, Bishops must follow the rules which the Holy See observes with respect to the causes of dispensations.
5. Faculties habitually granted to Ordinaries do not perish, nor are they suspended on account of their death or cessation from office, but pass to the Ordinary successors; likewise those granted to the Bishop also belong to the Vicar General³.

³ Code, c. 66, § 2. Besides this, "a granted faculty also carries with it other powers which are necessary for its use; wherefore in the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation." Ibid.

6. "Through a dispensation concerning a diriment impediment granted either from ordinary power, or from delegated power by general indult, but not through a rescript in particular cases, there is also by that very fact granted the legitimation of offspring, if any has already been born or conceived from those with whom the dispensation is made, yet adulterine and sacrilegious offspring being excepted."¹

¹ Code, c. 1051.

§ III. ON THE CAUSES OF DISPENSATIONS.

1052-1061. I. General principles. 1° Dispensations ought not to be granted except when a grave and proportionate cause urges: "In contracting marriages," says Trent³, "let either no dispensation at all be given, or rarely, and that from cause, and let it be granted gratis." Today, however, on account of the changed conditions of times, the old law has been tempered on account of the common good of souls⁴; nevertheless a grave cause is required, and indeed one graver according as the impediment from which dispensation is sought is graver. - For liceity a just cause is always required; for validity it is also required whenever a Bishop dispenses by tacit or explicit delegation, because the Supreme Pontiff does not grant the faculty of dispensing unless a grave cause is present; but the Pope, as supreme Legislator, validly dispenses even without cause, although he is not accustomed to do this.

² Sanchez, lib. VIII, disp. 18-20; P. Corradus, lib. VII-VIII; Vincentius de Justis, *De Dispens. matrim.*, lib. III; St. Alphonsus, n. 1129-1130; Carriere, n. 1112-1123; Ball. P., n. 933-944, ed. 3; Feije, n. 649-685; Gasparri, n. 328-349; Lehmke, n. 800-803; Planchard, n. 51-68; Tephany, n. 77-121; Joder, p. 95-104.

³ Sess. XXIV, cap. 5 *de Reformat. Matrim.*

⁴ Thus the Dataria, ap. *Acta S. Sedis*, XXXIV, p. 83.

1062. 2° Species of causes. (A) Some causes of dispensations are final, or determining by themselves, but others are impelling or impulsive: the former are the reasons why a dispensation is granted, and of themselves suffice that it be granted; the latter are reasons which move the one dispensing so that he may more easily dispense, but of themselves do not suffice for obtaining a dispensation. - Sometimes one cause taken separately is insufficient, but joined to another or to several others is judged sufficient; for things which do not profit singly, help when many.

(B) Some are defaming, which arise from a delict or injure the reputation of the petitioners; others are honorable, which imply neither delict nor defamation. Dispensation is more easily made from defaming causes than from others, on account of the necessity of averting grave evil.

(C) Certain causes are called canonical, because from the style of the Roman Curia they are accustomed to be admitted as having force and efficacy; others non-canonical, whose efficacy is not explicitly admitted. The former especially must be set forth in the supplicatory petition, but others can be added to them, so that the dispensation may be granted more easily; all the more because the Supreme Pontiff can, in a particular case, admit any rational cause approved by him¹.

¹ Thus the Dataria, *Formulae reformatae*, ap. *Act. S. Sedis*, l. c.

1063. II. Principal causes of dispensations. The Dataria formerly admitted only four; but in the *Reformed Formulas*² twenty-eight are enumerated:

² Ap. *Acta S. Sedis*, XXXIV, p. 34-35.

Narrowness of place; narrowness of places³; narrowness with the clause: and if outside, the dowry would not be competent⁴; incompetence of the dowry of the female petitioner; dowry with increase⁵, for the undowered woman; when another increases the dowry; on account of enmities (to be avoided); for the confirmation of peace, and on account of treaties between Princes and Kingdoms; on account of lawsuits concerning succession to goods; on account of a dowry involved in lawsuits; on account of lawsuits concerning matters of great moment; for a female petitioner burdened with children, or bereft of parents; for a female petitioner exceeding the twenty-fourth year of age; on account of the difficulty of men going to the place, for contracting with inhabitants of the place; on account of the small number of men, for example by reason of war; on account of the Catholic religion of the contracting party being placed in safety, and the danger of a mixed marriage; on account of the hope of conversion of the other party to the Catholic religion; that goods may be preserved in the family; for the preservation of an illustrious family; for the preservation of the royal stock; on account of excellence of merits; on account of preserving the honor of familiars; on account of infamy and scandal; on account of intercourse; on account of abduction; on account of civil marriage; on account of marriage before a Protestant minister; on account of a marriage nullly contracted; from certain rational causes, namely on account of a more abundant composition in degrees somewhat remote; or in more remote degrees on account of a cause of public good moving the mind of the Pontiff; from certain special rational causes, moving the minds of the Petitioners and set forth to His Holiness, namely on account of intercourse or dishonorable acts, which, on account of the honor of the Petitioners, their quality having been considered, it is not expedient to explain.

³ That is, both of the place of origin and of the place of domicile.

⁴ That is, if she were forced to marry outside the place of domicile, the dowry which she has would not be competent or sufficient.

⁵ Namely, the male petitioner intends to increase the insufficient dowry of the female petitioner.

1064. The S. Penitentiary and the other Congregations have already for a long time admitted many canonical reasons, but especially sixteen, which the Instruction of the S. C. de Prop. Fide¹, May 9, 1877, enumerates thus:

¹ *Ap. Collect. P. F.*, n. 1482; Gasparri, n. 333 sq. - These causes do not substantially differ from those which the Dataria recently admitted, and therefore the explanations which we add hold good for each.

"1° Narrowness of place, whether absolute or relative (only by reason of the female petitioner), namely when 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 blood relative or affine; but to leave the fatherland would be hard for her."

Concerning this we observe: according to the S. Congreg. of the Council, December 16, 1876, narrowness of place is not to be taken from the number of hearths of each parish, but from the number of hearths of the whole city or town, or of places which are not distant more than a mile (1500 meters); and, according to the Dataria, August 30, 1847, a place is called narrow when it does not exceed three hundred hearths, that is, about one thousand five hundred inhabitants, heretics, schismatics, and infidels being removed, but not the impious and unbelievers. - The reason why a dispensation is granted is because otherwise the female petitioner would have either to remain unmarried, or to marry a man of unequal condition, or to depart from the fatherland; these three are grave inconveniences. That the cause may be true, the female petitioner must be of an honorable family; otherwise she could find a man of equal condition. The cause is considered present, even if previously certain young men of equal condition had asked for her as wife, provided none can now be found.

1065. "2° The over-adult age of the woman, namely if, having already passed the twenty-fourth year of age, she has not found a man of equal condition whom she can marry. But this cause by no means favors a widow who desires to fly to other nuptials."

A man of equal condition is said, that is, equal in birth, wealth, character, and not unequal in age, religion, or morals, who is acceptable to the woman and her parents. - For the validity of the dispensation it is enough that there be certainty concerning over-adult age, nor is it necessary, in the verification of the cause, to inquire and prove that the woman up to that age did not find a man of equal condition².

² Thus the S. Penitentiary, April 5, 1902, *ap. Acta S. Sedis*, XXXV, 44.

1066. "3° Deficiency or incompetence of dowry, namely if the woman does not actually have so great a dowry that she can marry, in her own place in which she dwells, an outsider of equal condition, namely one who is neither blood relative nor affine. This cause urges more if the woman is altogether undowered, and a blood relative or affine is prepared to marry her; or even is prepared suitably to dower her entirely."

This reason exists even if the female petitioner is going to have a dowry after the death of her parents, provided these are unwilling or unable to dower her now; indeed even if there is certain hope that someone wishes to dower her, if the female petitioner does not have the right of forcing him to this; or even when she has already renounced the dowry, provided she did not do this for obtaining the dispensation.

"4° Lawsuits concerning succession to goods already arisen, or a grave or imminent danger of the same. If a 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 prosecute it at his own expense, besides him who desires to take her as wife, a dispensation is usually granted; for it is of interest to the commonwealth that lawsuits be extinguished. - Hence another cause closely approaches, namely a dowry involved in lawsuits, when, that is, the woman is destitute of another man by whose aid she may be able to recover her goods. But a cause of this kind suffices only for the more remote degrees."

"5° Poverty of a widow, who is burdened with numerous offspring, and a man promises to support her. But sometimes by the remedy of dispensation assistance is given to a widow only for this cause, that she is younger and is in danger of incontinence."

1067. "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 between the blood relatives or affines of the contracting parties, and which would be entirely settled by the celebration of the marriage, or when grave enmities have prevailed between the blood relatives and affines of the contracting parties, and although peace has already been entered into between them, nevertheless the celebration of the marriage would be of the greatest service for the confirmation of that peace."

This cause is that which is called by the Dataria "on account of enmities," and supposes two things: that the enmities have arisen from some other source than from the cause of the marriage, and that there is a founded hope of extinguishing them by the desired nuptials.

1068. "7° Excessive, suspect, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be prevented."

The reason for this is that scandal may be avoided; hence it is necessary that the familiarity or cohabitation have given origin to a suspicion concerning foul carnal commerce. To this cause can be referred other things which likewise may be able to furnish scandal, such as disordered love and danger of life, when the parents of the girl threaten death to a man unless he marry her whom they suspect him to have known carnally.

"8° Intercourse previously had with a blood relative or affine or another person laboring under an impediment, and pregnancy, and therefore the legitimation 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 usually given even to common people."

Since this cause is admitted on account of avoiding scandals, the intercourse must be notorious or about to be divulged very soon. If it is occult, it can be alleged for confirming the danger of incontinence or of scandal. - Formerly the clause was added: provided the intercourse was not perpetrated under hope of an easier dispensation; but this was removed by decree of the Holy Office¹, June 25, 1885.

¹ Ap. Collect. P. E., n. 1246.

"9° Infamy of the woman arising from the suspicion that she, too familiar with her blood relative or affine, has been known by him, even if the suspicion is false, namely when, unless the marriage is contracted, the woman would remain gravely defamed or unmarried, or would have to marry a man of unequal condition, or grave damages would arise."

"10° Revalidation of a marriage which has been contracted in good faith and publicly, with the Tridentine form preserved: because its dissolution can scarcely be made without public scandal and grave damage especially to the woman, cap. 7 *de consanguin.* But if the spouses entered nuptials in bad faith, they by no means merit the grace of dispensation, as the Council of Trent disposes, sess. XXIV, cap. 5 *de Ref. Matr.*"

Today, however, this last restriction is no longer in force, and, in order to avoid worse evils, dispensation is given even in the case of bad faith on the part of both parties, especially if offspring has already been born, or a civil marriage contracted.

1069. "11° Danger of celebrating a mixed marriage or one before a non-Catholic minister. When there is danger that those wishing to contract marriage in some degree, even one of the greater degrees, because of the denial of dispensation, would approach a non-Catholic minister for celebrating the nuptials, with contempt for the authority of the Church, a just cause of dispensing is found; because there is present not only a very grave scandal of the faithful, but also fear of perversion and defection from the faith in those so acting and contemning the impediments of marriage, especially in regions where heresies rage with impunity... The same must be said concerning the danger that the Catholic party should dare to celebrate marriage with a non-Catholic."

"12° Danger of incestuous concubinage..., lest someone become filthy in concubinage with public scandal and evident peril of eternal salvation..."

"13° Danger of civil marriage. From what has been said it follows that the probable danger that those who seek dispensation, if it is not obtained, are going to celebrate only a civil marriage, as they say, is a legitimate cause of dispensing."

"14° Removal of grave scandals."

"15° Cessation of public concubinage."

"16° Excellence of merits, when someone has deserved exceedingly well of religion, either by battle against the enemies of the Catholic faith, or by liberality toward the Church, or by doctrine, virtue, or in some other way."

1070. There are also other causes on account of which the S. Penitentiary and the S. C. de Prop. Fide grant dispensations, e.g., if the nuptials bring a special utility, such as immunity from military service; or between the petitioners there is a special equality of condition and disposition; or the male petitioner is present at Rome and has made sacramental confession there; or the spouses, ignorant of the impediment, have prepared all things for the nuptials; or through the marriage an illustrious family is preserved; or the parents greatly desire the nuptials. But the Penitentiary does not admit for the external forum the cause without cause, or a more abundant alms, but then refers the petitioners to the competent Congregation.

1071. Corollary. The cause on account of which a dispensation is given must be true at the time when the dispensation is fulminated, or is committed to execution; otherwise it would be granted without cause, and consequently illicitly and invalidly.

(a) But since today Papal dispensations are given only in commissory form, strictly speaking it is not necessary that the cause of dispensation be true¹ at the time when the Supreme Pontiff grants the letters of dispensation, but only at the time of execution; for the Supreme Pontiff does not weigh the truth of the causes, nor does he properly dispense, but constitutes the executor (the Bishop, or confessor) as judge, that he may see whether the causes are true, and, once the truth of the causes has been posited, fulminate the dispensation¹. - But if the dispensation is granted in gracious form by the Bishop, the cause must be true also at the time of the concession.

¹ Bad faith, however, being excluded, as will be said below.

¹ Thus *Santi*, lib. IV, Append., n. 34, after *Pyr. Corradum*, lib. VII, c. 6, n. 25.

(b) Nor is it required, according to the common and safe opinion, that the cause be true at the time when the marriage is celebrated; e.g., if a woman who obtained a dispensation on account of incompetence of dowry, after the dispensation has been fulminated and before the marriage, has become rich, she contracts validly; for the impediment, already removed by dispensation, does not revive.

§ IV. ON THE MANNER OF SEEKING DISPENSATIONS.

1072. I. To whom does it belong to seek the dispensation? (A) Regularly to the contracting parties themselves who need the dispensation; but since for the most part they are unfit to perform this, generally the petition is made by the pastor or confessor of the petitioners.

² P. Corradus, lib. VII-VIII; St. Alphonsus, n. 1131-1141; Carriere, n. 1126-1159; Ball. P., n. 945-954, ed. 3; Feije, n. 686-730; Gasparri, n. 350-362; *Santi*, lib. IV, Append., n. 33-45; *Brillaud*, n. 174-199; *Planchard*, n. 86-149; *Zitelli*, p. 67-74.

(a) If the impediment is public, the petition is made by the pastor, in the name of the petitioners. If the parties about to marry are of diverse parishes, the dispensation can be requested by the pastor of either one; but it is expedient that it be sought from the pastor of the place where the marriage is celebrated, regularly, namely, from the pastor of the bride. If, however, it is a question of a mixed marriage, the petition must be made by the pastor of the Catholic party.

(b) If the impediment is occult, the petition is made by the confessor. When the impediment affects only one of the contracting parties, one petition suffices; but when it affects two contracting parties

(e.g., spouse-murder with both plotting it), a double petition is to be made by the confessor of each penitent, unless the confessor of both is the same.

(c) If there is a double impediment, one public and the other occult, a double petition must be made: one for the public impediment, with the names of the petitioners; another for the occult one, with the names suppressed, so that thus provision may be made for the seal of the sacrament and the reputation of the parties: the former is to be sent to the Congregation of the Sacraments or the Holy Office, etc.; the latter to the Penitentiary, noting that the petitioners, bound by another public impediment, have obtained or have sought a dispensation concerning it¹.

¹ That provision may be made for the reputation of the petitioners, there ought to be two officials in the Episcopal Curia, one for public impediments, the other for occult impediments; for, if the same official receives each supplicatory petition, he can easily know the names of the petitioners who have sought a dispensation for an occult impediment. Since in most dioceses of North America there is only one official, it is expedient to have recourse, for occult impediments, to the Holy See or to the Apostolic Delegate.

(B) Although the petition can be made orally, it is made better and more safely in writing. In practice the Roman Congregations admit only written petitions. By command of Leo XIII, December 10, 1891, dispensations ordinarily ought not to be sought telegraphically, on account of the inconveniences which can easily occur from this way of acting; the same rule ought to be observed in Episcopal curias.

(C) When a composition or tax is required for obtaining a dispensation, it is expedient that the pastor or confessor not send the supplicatory libellus unless the expenses have first been paid; otherwise he himself could be held to paying them. But if the petitioners are so poor that they can give no money, this should be set forth in the supplicatory libellus itself, so that the dispensation may be granted gratis.

1073. II. From whom must the dispensation be obtained? From the Bishop, or from the Holy See, or from an Apostolic Delegate.

(A) Formerly most Bishops, especially in remote regions, were accustomed to obtain very broad faculties from the Holy See; therefore for many impediments recourse could be had directly to the Bishop or his Chancellor, and indeed by a letter written in the Latin or vernacular idiom.

(B) When it is a question of an impediment in which the Bishop cannot dispense, recourse is to be had to the Roman Congregations, namely the S. Congregation of the Sacraments, the Penitentiary, the Holy Office, etc., according to the principles set forth above (n. 1042 sq.).

1074. When recourse is made to the Congregation of the Sacraments or to the Holy Office, this or a similar formula can be employed: -

Beneventan. (i.e., the name of the diocese of the petitioner)

Most Blessed Father,

It is humbly set forth to Your Holiness, on the part of those devoted petitioners Alphridus Santangelo, man, and Maria Loiacono, woman, of the Beneventan diocese, that, since the said woman, in the place from

which she and the aforesaid Petitioner have arisen, existing in the said diocese, on account of the narrowness of that place, cannot find a man of equal condition whom she can marry, and since the said female Petitioner exists burdened with five children begotten from another man, and the said male Petitioner intends to take her as wife and to support and govern her said children; therefore the aforesaid Petitioners desire to be joined to each other matrimonially. But ... (Here is set forth the special impediment prevailing between the petitioners)

.....
.....
.....

Therefore the aforesaid Petitioners humbly supplicate Your Holiness, that with the same Petitioners, as regards the impediment arising from the premises, and with other things perhaps withheld in good faith, and all other contrary things whatsoever notwithstanding, that they may be able freely and licitly to contract marriage publicly between themselves, the form of the Council of Trent being observed, you may deign to dispense, of special grace, with suitable clauses.

1075. When recourse is had to the S. Penitentiary, the supplication is addressed to the Major Penitentiary¹, and can be written in Latin, or also in the vernacular idiom.

¹ To the Most Eminent Cardinal Major Penitentiary, Palazzo della Cancellaria, Rome, Italy.

Most Eminent Prince,²

Titius ... (Here the impediment is set forth, and afterward the reason on account of which the dispensation is sought)

.....
.....
.....

Wherefore Titius as suppliant asks Your Eminence that you may deign kindly to grant a dispensation in the aforesaid impediment.

May it please Your Eminence to direct the letters to me, the undersigned confessor.

Most humble Servant

N. N.

² We take this formula from the work of Zitelli, p. 198.

There should be expressed there the name and surname of the confessor, the name of the town or city, in the common idiom.

Another specimen of the supplicatory libellus is recommended by the Penitentiary itself³, for a public impediment, when the petitioners are poor; and indeed it is commendable for its brevity and clarity: -

³ Ap. *Acta S. Sedis*, p. 61.

Most Blessed Father,

N. N., born years
and N. N., born years
of the diocese N., prostrate at the feet of Your
Holiness, humbly request a dispensation concerning the impediment
.....
.....
that they may be able to contract a legitimate marriage between
themselves.

The causes are: 1. Age of the female petitioner.
2. Defect of dowry.
3. Narrowness of place.
4. Care of offspring received from a previous marriage,
etc.

The petitioners are poor

We testify that the things set forth are true and we commend the
petitioners for the grace.

Given

1076. The S. C. de Prop. Fide has published printed formulas, with empty spaces in which those
things can be written which are special to each case¹; we subjoin one for the sake of a
specimen: -

¹ These formulas are to be found apud Putzer, n. 96. - The petition is directed to the Most Eminent Cardinal Prefect of
the S. C. de Prop. Fide, Propaganda, Rome, Italy.

Most Blessed Father,

The petitioners
humbly ask from Your Holiness a dispensation concerning the impediment
.2.....
that they may be able to contract marriage between themselves.

The causes are³
and incest had between the same Petitioners

² For example: concerning the impediment of consanguinity in the second equal degree of the collateral line, by which they are bound, from the fact that both descend from a common stock, as is clear from the following stemma (here let the genealogical tree be given).

³ E.g., the age of the female petitioner, who has already reached the 25th year, and has found no other man of equal condition who wishes to marry her.

Letters to the S. C. de Prop. Fide can be written directly in the Latin, French, or Italian language.

Sometimes recourse can also be had to Apostolic Delegates, who have obtained from the Holy See the faculty of dispensing⁴.

⁴ In the United States of America, the Apostolic Delegate enjoys the same Faculties as the Bishops themselves; letters can be directed to him in this way: - His Excellency Most Rev. N. N., 201, I Street, N. W. Washington, D. C.

When a pastor or confessor writes to the Roman Congregations, it is more advisable to send the letters through the Episcopal Chancery, unless there is danger of violating the sacramental seal or of defaming the petitioners: for the petition will be set forth better and more clearly by an official accustomed to these affairs. Besides, for a public impediment petitions are not admitted unless furnished with the Episcopal seal.

1077. III. On those things which must be expressed in the supplicatory libellus. These have been declared in the cited Instr. of the S. C. de Prop. Fide, whose words it is helpful to report and explain: -

"1° The name and surname of the petitioners, each to be written distinctly and neatly and without any abbreviation of letters."

This indeed holds for public impediments; for when writing to the S. Penitentiary for an occult impediment, the names of the petitioners are suppressed, and in their place N. or Titius is put. - If one party is not Catholic, this must be expressed. - A substantial error in the name or surname probably invalidates the dispensation (e.g., Peter in place of Paul); probably, however, according to some, the rescript is not vitiated, provided that there is certainty concerning the identity of the petitioner; in practice, the style of the curia requires revalidation. But if the error is very small (e.g., Antonius for Antoninus), the dispensation is certainly valid.

"2° Diocese of origin or of actual domicile. When the petitioners 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."

If it is a question of an occult impediment, no mention is made of the diocese, but the confessor writes his own name and the name of the place to which the response must be directed, in the vernacular language and in clear characters. - Since there are in diverse regions several dioceses which are called by the same or almost similar name, it is expedient to add the name of the kingdom or State to which the diocese belongs. - A substantial error in the name of the diocese, e.g. (Bostoniensis in place of Baltimorensis), would vitiate the rescript, but not an error in the name of the parish, unless the dispensation was given on account of narrowness of place.

1078. "3° Also the lowest species of the impediment, whether it is consanguinity or affinity arising from licit intercourse ... public honesty deriving its origin from a ratified marriage; in the

impediment of crime, whether it has proceeded from spouse-murder with a promise of marriage, or from spouse-murder with adultery, or from adultery alone with a promise of marriage; in spiritual relationship, whether it is between the one lifting and the one lifted."

An error in the species of the impediment renders the dispensation void. If it has been set forth that the impediment is doubtful, while in reality it is certain, some think the dispensation is invalid; but much more probably it is valid, for from the fact that it is given, it carries with itself the tacit condition: if the impediment is present.

1079. "4° The degree of consanguinity or affinity, or of public honesty from a ratified marriage, and whether it is simple or mixed, not only the more remote but also the nearer; and likewise the line, whether it is direct or transverse; likewise whether the petitioners are joined by a double bond of consanguinity, as much on the father's side as on the mother's side."

(a) The degree not only more remote but also nearer; if in a petition for the nearer degree the more remote is put, the dispensation is invalid, since dispensation is made with greater difficulty from the nearer than from the more remote.

But if the degrees are unequal, it does not seem altogether necessary to set forth the nearer, unless it is a question of the nearer degree of the first degree. - Indeed, whenever the first degree is touched, it is necessary to express, for liceity, not for validity, whether a nephew wishes to marry an aunt, or a maternal uncle a niece. Besides, by command of Leo XIII, June 19, 1895¹, for an impediment of the first degree touching the second degree of consanguinity, Bishops are to "explain the reasons in each case in letters written by their own hand." - If someone wishes to marry the widow of his deceased brother, he must set forth whether she had offspring from the deceased man.

¹ Ap. *Acta S. Sedis*, XXXIV, p. 34.

(b) Nevertheless a dispensation granted in some degree is valid, although in the petition, or in the concession, an error concerning the degree has crept in, provided the degree really existing is lower, or although another impediment of the same species in an equal or lower degree has been withheld. (*Codex*, c. 1052.)

(c) As regards the line, it must be expressed whether it is direct or oblique; but if this is omitted in consanguinity, the oblique is understood, since dispensation is not granted in the direct.

1080. "5° Number of impediments, e.g., if there is double or multiple consanguinity or affinity, or if, besides relationship, there is also affinity, or any other impediment whatsoever, whether diriment or impedient."

(a) Therefore, if there is present an impedient impediment of vow, betrothals, mixed religion, etc., it must be expressed at least for liceity; indeed for validity, when the dispensation is sought from the Penitentiary, since it is accustomed to add this clause: provided that between them there exists no other canonical impediment.

(b) If there are several impediments, all must be expressed in the same supplicatory libellus; for when several are found at the same time, dispensation is granted with greater difficulty. Nor is it valid to have recourse to the Bishop for one impediment, but to the Holy See for another; an

exception is given when a public and an occult impediment are found at the same time, as was explained above (n. 1072). - Therefore, if, after a dispensation has been obtained, a new impediment is detected which already existed at the time of the petition, the dispensation is null.

When it is seriously feared lest, besides the impediments expressed, another unknown one be found in the case, it is helpful to set this forth; for recently the Roman Congregations, at the request of Officials, have granted a dispensation not only in impediments explicitly manifested, but in others, if there are any in the case in which the Holy See is accustomed to dispense.

(c) He who has obtained a dispensation concerning the crime of spouse-murder, and afterward, the crime having been repeated, needs a new one, must make mention of the prior crime, since on account of this the dispensation is granted with greater difficulty.

1081. "6° Various circumstances, namely whether the marriage is to be contracted or has been contracted; if already contracted, it must be disclosed whether in good faith, at least on the part of one, or with knowledge of the impediment; likewise whether after the banns had been premised; (or whether under hope of more easily obtaining a dispensation)¹; finally whether it has been consummated, if there is bad faith at least of one party, or with knowledge of the impediment."

¹ This indeed is no longer required, from the declaration of the Holy Office, June 25, 1885, ap. *Collect. P. F.*, n. 1495.

Trent had indeed prohibited² a dispensation from being granted when a marriage had been attempted, and a fortiori consummated, with knowledge of the impediment: today, however, dispensation is granted, but these circumstances must be expressed; otherwise the dispensation would be subreptitious.

² Sess. XXIV, cap. 5 de *Reformat. Matrim.*

Formerly likewise incestuous intercourse had between the spouses before the execution of the dispensation had to be expressed, even when the intercourse was not the cause of dispensing; but this obligation was abrogated by the cited decree of the Holy Office, June 25, 1885¹.

¹ If, however, someone wishes to obtain the legitimation of offspring received from incest, intercourse must be declared for this effect.

1082. N. B. When the Bishop dispenses by force of an indult, he must follow the aforesaid rules, because he acts as the delegate of the Pontiff, and therefore cannot dispense except in the way in which the Pontiff dispenses. But if he dispenses by ordinary or quasi-ordinary right, he must indeed observe those things which pertain to the substance of the dispensation, but not necessarily those which regard the style of the Curia.

1083. IV. On the defects of dispensations and their sanation. 1° A dispensation can be invalid on account of extrinsic causes, e.g., defect of power in the one granting it, defect of the customary form, erasure of letters in the dispositive part of the rescript, and other things which are explained by Canonists where they treat of Rescripts; or on account of intrinsic causes, namely obreption and subreption.

Obreption is the expression of what is false in the supplicatory libellus, while subreption is the suppression of what is true and ought to have been set forth. Some, however, take these two words promiscuously.

Now if it is a question of lesser impediments, dispensations, by the new law, will be valid, notwithstanding obreption or subreption (can. 1054). Lesser impediments are: 1) Consanguinity in the third degree of the collateral line; 2) Affinity in the second degree of the collateral line; 3) Public honesty in the second degree; 4) Spiritual relationship; 5) Crime from adultery with promise or attempted marriage, even through only a civil act (can. 1042).

As regards greater impediments, a distinction must be made:

(a) the dispensation is valid if the error turns only upon the impulsive cause, provided the final cause proposed is true; (b) on the contrary it is invalid if the error turns upon the final cause which alone has been alleged; for it is granted under the condition: if the things set forth are true; (c) but if several final causes have been alleged, and only one is found false, the dispensation is valid, because the others are sufficient for moving the Superior; (d) if only impulsive causes have been proposed, and one of them is not true, the dispensation is not valid, if the remaining causes would not have been sufficient for obtaining the rescript; (e) in doubt whether the cause falsely alleged is final or impulsive, the dispensation can be held as valid, because in doubt one must stand for the value of the act; (f) the dispensation is not valid if, in the petition, those things which by the style of the Curia must be expressed for validity have not been expressed. (Can. 42.)

A slight exaggeration does not invalidate the dispensation, although it is much more advisable to set forth the matter candidly as it is. - If in the rescript itself there is read the clause "by our own motion, from certain knowledge," the defect is removed, provided that the error occurs not in the rescript but only in the petition.

1084. 2° The defect of obreption or subreption can be sanated by letters *perinde valere* or by a reforming decree: (a) if it is detected after the rescript has been dispatched, the petitioners in a new supplication must set forth the tenor of the prior concession, detect the defect, and humbly beseech that the Holy See may deign to revalidate the prior grace; then letters *perinde valere* are dispatched, i.e., by which the prior dispensation has the same force as if it had not been vitiated; but if a new defect is detected, a new grace will be needed, which is called *perinde valere super perinde valere*.

(b) When the rescript of dispensation has not been dispatched, the defect can be repaired through a reforming decree; for this it suffices that a new supplication be written, in which what had been omitted is supplied, or what was badly expressed is corrected; whence it is not necessary that the things already set forth be repeated, because the double supplication will be proposed at the same time to the Supreme Pontiff.

§ V. ON THE MANNER OF EXECUTING DISPENSATIONS.

We shall speak both of the execution itself, and of the clauses of dispensations.

I. On the Execution Itself of Dispensations.

1085. Preliminary notes. One must carefully distinguish between dispensations in gracious form and in commissory form: (a) the former are already granted by the Superior, and therefore are valid without fulmination; it suffices that the dispensation be made known to the petitioners and that the clauses be observed; (b) the latter have not yet been granted, but contain only the faculty of dispensing, so that they are not valid unless first they are fulminated by the executor, after previous information concerning the truth of the petitions and the clauses having been observed.

1086. 1° On a dispensation granted by the Holy See. Today this is always granted in commissory form.

(A) "Dispensations concerning public impediments committed to the Ordinary of the petitioners are to be executed by the Ordinary who gave the testimonial letters or transmitted the petitions to the Apostolic See, even if the spouses, at the time when the dispensation is to be given to execution, having left the domicile or quasi-domicile of that diocese, have departed into another diocese, not to return any more, yet the Ordinary of the place in which they wish to contract marriage having been informed."¹ These things, however, must be observed:

¹ Can. 1055. - Cf. can. 198.

(a) A fulmination made before the original rescript has been received would be invalid, even if by another way it were certainly known that the dispensation had been granted; whence, if this becomes known by telegraph, the same cannot be used validly and licitly, unless the telegraphic notice has been transmitted officially by the authority of the Holy See². Therefore, after the authentic document has been received, a new execution of the dispensation is necessary; if the marriage has already been contracted, it must be revalidated.

² Code, c. 53: "The executor of a rescript invalidly performs his office before he has received the letters and recognized their authenticity and integrity, unless previous notice of the same has been transmitted to him by the authority of the one rescripting."

(b) The rescript must be recognized as genuine and authentic.

(c) Afterward it must be investigated whether the petitions rest upon truth, since one of the clauses is "if the things set forth are true." The Ordinary, however, can delegate another, generally the pastor, to carry out this investigation. A judicial form is not required, unless this is expressly prescribed in the rescript, or there is a contradictor; but the investigation can be completed from authentic acts, witnesses, reputation, or examination of the parties.

(d) The executor must attentively read all the clauses inserted in the rescript, and take care that they are faithfully fulfilled. "Clauses which likewise pertain to the substance of the dispensation are expressed in the Formulas by the conditional particle if, or another similar one."³ The same must be said of the particles provided that, after, not otherwise, if not in another way, otherwise let it be void; or of conditions expressed through the ablative absolute, unless nevertheless it is clear from elsewhere, from the very nature of the matter or from the style of the Curia, that these are required only for liceity.

³ Dataria, *Acta S. Sedis*, XXXIV, 34.

(e) The fulmination of the dispensation must be made in writing, certainly for liceity, probably also for validity. The Ordinary, namely, must declare that he, having received the rescript, has verified the truth of the petitions, and by apostolic authority dispenses concerning such impediment, so that the spouses may be able to contract validly and licitly, and legitimates offspring received (adulterine offspring excepted) and to be received; then he signs his name. The dispensation is valid at that moment at which the decree is signed, with the acceptance of the petitioners acceding, whether explicit or implicit. - Besides, if the spouses perhaps have incurred censures, let them be absolved from them before they are dispensed, for each forum, and this for validity if it is a question of those bound by a censure through a condemnatory or declaratory sentence. (Can. 2265, 2275, 2283.)

¹ *Normae peculiares*, c. III, n. 6; *Codex*, c. 36, § 2.

(f) Finally, the dispensation is carefully preserved in the diocesan archives, and its fulmination is transmitted to the pastor of the petitioners, who makes this known to them and notes in the registers the acceptance of the dispensation².

² Code, cc. 1046, 1103.

1087. (B) When a dispensation is granted by the S. Penitentiary for the internal forum, it is transmitted for execution "to a discreet man, a confessor from those approved by the Ordinary." Those things which were said above concerning the reception and recognition of the rescript, and also concerning the clauses, must be observed; but besides:

(a) Generally the Penitentiary prescribes that the dispensation be fulminated in the very act of confession, "his confession having first been heard," or "only in the act of confession"; if this clause is absent, it can be fulminated even outside confession. This or a similar formula can be employed: "By Apostolic authority specially delegated to me³, I dispense with you concerning the impediment (e.g., of crime from adultery and spouse-murder), so that, the aforesaid impediment notwithstanding, you may be able to contract marriage validly and licitly, and by the same authority I declare offspring received and to be received legitimate."

³ Code, c. 1057.

(b) The fulmination of the dispensation is completed by living voice; nevertheless the confessor can read the written formula; but he must not hand over the authentic document to the penitent, but must tear it up or burn it, at least within three days, under penalty of excommunication *latae sententiae*.

(c) The investigation concerning the truth of the petitions is required only for liceity: since the penitents themselves must be believed, unless the confessor knows the contrary from elsewhere, by extra-sacramental knowledge.

(d) If the impediment affects only one party, as a vow, or is culpable in only one party, as crime, it suffices to fulminate the dispensation upon that party. But if it is common to both, and each spouse is guilty and conscious of the crime, the fulmination must be made upon each, either by the same confessor or by a different one; in the latter case, the first confessor, after the dispensation has been granted to one, hands over the rescript to the same, that it may be given to the other party: but the latter will present the rescript to his own confessor, who, after the dispensation has been fulminated, will destroy it.

(e) If a double dispensation is necessary, one for a public impediment, the other for an occult one, first that which regards the public impediment must be fulminated.

1088. 2° On a dispensation granted by the Bishop. (A) If it is a question of a public impediment, generally the dispensation is granted in gracious form, and therefore is fulminated by the Bishop or diocesan official; whence the marriage would already be valid from the time of the concession, even if knowledge of it had not reached the ears of the pastor; but it is illicit to contract before notice has been received, lest perchance they contract invalidly before fulmination. If the matter were altogether urgent, notice of the fulmination could be sent telegraphically. - But once the authentic instrument has been received, the pastor makes it known to the spouses, and inserts and preserves it in the Register of marriages.

The Bishop can, however, use faculties which are communicable in commissory form: then the pastor himself is bound to fulminate the dispensation, as is done in Pontifical dispensations.

(B) When it is a question of an occult impediment, generally the Bishop dispenses in commissory form, whenever he can subdelegate: in which case the dispensation must be fulminated by the confessor himself, with the clauses carefully observed. If the question is about impediments for which the Bishop cannot subdelegate an ordinary confessor, he must dispense in gracious form, and therefore fulminate the dispensation; then the confessor, having received the instrument, has nothing further to do except make it known to the parties and commit the clauses to execution. - But the instrument is to be destroyed, as above.

II. On the Principal Clauses Annexed to Dispensations.

1089. That clauses of this kind may be more easily observed, it is helpful to explain them briefly.

1° "Absolving each of them from any ecclesiastical censures whatsoever for the effect of obtaining the present things"; by these words the petitioners are absolved from censures perhaps contracted, but only so that they may validly receive the dispensation; whence they need another absolution so that, for other effects, they may be truly immune from censures.

2° "If the things set forth are true"¹; according to the declaration of the Dataria, this clause "is referred, as regards validity, to the persons to be dispensed, to the impediment to be dispensed, to the motive cause of the dispensation, to the various clauses, to other things which might perhaps obstruct the marriage."¹

¹ Formerly this clause was added: "If through the same information you have found that the petitions rest upon truth," and therefore the dispensation was invalid if no information was made, even if the petitions rested upon truth; today, however, from the decree of the Holy Office, August 28, 1888, there is added only "If the things set forth are true," and therefore the dispensation is valid even without any information, provided the things set forth are true.

¹ Apud *Acta S. Sedis*, XXXIV, p. 83.

3° "You shall have presumed in no way to demand anything of gift or reward or to receive what is offered"; or "of dispensing gratis"; that is, let no money, no gift be received, except the tax of the chancery, the composition or alms, and the expenses of the agent.

4° "Decreeing the offspring received legitimate." Hence, if perhaps the dispensation cannot obtain its effect on account of the supervening death of one of the Petitioners, nevertheless the power of legitimating offspring will have force. Wherefore the dispensation and legitimation must be expressed in the decree of the Ordinary; if this has been omitted, legitimation of this kind can be made by another decree. The offspring is decreed legitimate simply, and therefore as regards all the effects of legitimation. - It is also said: "Decreeing offspring received, if there is any, and insofar as there is need, legitimate." If indeed the marriage is invalid but contracted ignorantly, publicly, and in legitimate form, legitimation would not be necessary; whence it is done as a precaution, to remove the murmuring of the ignorant².

² Ibid., p. 82.

5° "Scandal being removed, insofar as it is present, especially through separation for a time well seen by you, if it can be done." Scandal indeed must be removed, and often the separation of the spouses must be preferred to other ways; nevertheless the manner of repairing the scandal is left to the prudent judgment of the Ordinary³.

³ Thus the S. Penitentiary, April 12, 1889, ap. *Acta S. Sedis*, XXVI, p. 509.

6° "A grave salutary penance having been imposed upon them according to the measure of the fault, at your judgment." This penance is distinct from sacramental penance and must be grave, e.g., confession once a month for six months, recitation of the rosary twice or three times in a week for three months, performing the way of the cross once a week for four months; if a grave and long-lasting one is enjoined, it must be carried out for at least one year; if a most grave and perpetual one, even until death. Besides, the S. Penitentiary declared, April 8, 1890, that "neither the limits of severity nor of humanity are to be exceeded, and account must be taken of condition, age, infirmity, office, sex, etc."⁴ It likewise rescripted, December 14, 1891, that the omission of a penance imposed for dispensations does not render them invalid⁵; indeed, that they are not invalidated even if the penance was accepted with the intention of not fulfilling it⁶.

⁴ Ap. *Acta S. Sedis*, XXVI, p. 510.

⁵ Ibid., XXXI, p. 556.

⁶ Ibid., XXXI, p. 557.

7° "Some alms having been disbursed by them, to be taxed by the judgment of the Ordinary himself." The observance of this clause is not required for validity¹. Nor is it necessary, for liceity, that the alms be disbursed before the fulmination of the dispensation, but it suffices that the spouses promise to give it; indeed, if they are poor, or are unwilling to pay anything, this can be omitted, according to the prudence of the Ordinary.

¹ S. Penit., June 10, 1876, *Acta S. Sedis*, XXVI, p. 514.

8° "His or their confession having first been heard." This condition is satisfied through confession, even sacrilegious confession, provided it is sacramental. If it is foreseen that one of the parties is unwilling to confess, this should be stated in the supplicatory libellus, so that this clause may not be inserted.

ART. II. ON THE REVALIDATION OF MARRIAGE.

Division.

² St. Alphonsus, n. 1109-1117; Carriere, n. 1379-1464; Ball. P., n. 892-909, ed. 3; Lehmke, n. 823-832; Planchard, n. 553-588; Feije, n. 759-779; Zitelli, p. 113-118; Haine, q. 161-163; Gasparri, II, n. 1120-1161; Genicot, n. 534-542; N. Rousseau, n. 128-138.

On Revalidation in General.

On Simple Revalidation.

On Revalidation through Sanation in the Root.

§ I. ON REVALIDATION IN GENERAL.

Revalidation is the act by which a marriage hitherto null is rendered valid.

1090. 1° On the manner of acting when a priest notices that a marriage is invalid. There can be four remedies:

(A) The putative spouses can be warned concerning the impediment, and it can be tolerated that they live as brother and sister, if there is no danger of incontinence; which is scarcely possible in practice when they are younger, unless they are impotent, or truly brother and sister, or father and daughter, who contracted from error.

(B) They can be left in good faith, if the impediment is indispensable, and the nullity occult, and otherwise it cannot be manifested without danger of formal fornication, or the parties cannot be separated without infamy or scandal³.

³ Gasparri, n. 1121, note 2, relates a case for illustrating the matter. Titius had relations with a mother, unknowingly indeed on the part of Titius, but not on the part of the mother, who bore a daughter: she was educated outside the maternal home, and at the age of 17 was taken as wife by Titius, her father and brother at the same time. The mother discloses all things to the confessor; he, the Bishop having been consulted, left the putative spouses in good faith, lest the mother's foulness be revealed.

(C) When the parties cannot or at least do not wish to cohabit peacefully, or when danger to faith or morals is present, a declaration of nullity can be sought from the ecclesiastical judge, if this can be juridically proved.

(D) Finally the marriage can be revalidated, if the impediment is dispensable; and this generally is more advisable both for avoiding scandals and for providing for the education of the offspring.

1091. 2° On whether the separation of the putative spouses is to be enjoined or not, before the revalidation of the marriage. One must proceed with the greatest prudence, lest scandal be caused, or the putative spouses be exposed to formal danger of sinning.

(A) If the nullity of the marriage is publicly known, e.g., because the marriage was clandestine where *Tametsi* has been promulgated, or because the community knows the spouses to be blood relatives: (a) regularly the parties must be separated, not only as regards bed, but also as regards dwelling, so that scandal may be avoided or repaired. But if separation as regards dwelling is not possible, e.g., on account of the poverty of the parties, scandal is to be removed in the best way in which it can be done; and, if danger of incontinence is feared, the parties are not to be warned unless a dispensation has already been obtained.

(b) But a dispensation is to be sought as quickly as possible, if it is a question of a dispensable impediment; and, if the parties have been unwilling or unable to be separated, this is to be set forth in the supplicatory libellus, so that in the rescript the clause concerning previous separation of the spouses is not placed.

1092. (B) If the nullity of the marriage is occult (e.g., on account of crime), the confessor will proceed thus: (a) both the pastor and the confessor enjoy the faculty of dispensing when there is danger of grave evil in delay and not even the local Ordinary can be approached, or can be approached only with danger of violation of the secret¹.

¹ *Codex*, c. 1045, § 2 and 3.

(b) If one or each party doubts concerning the value of the marriage, the confessor should prudently inquire into the reason for doubting; if, the matter having been weighed more maturely, the nullity is certain, let him act as above; if it remains doubtful, one must stand for the value, and a dispensation is to be sought as a precaution.

§ II. ON SIMPLE CONVALIDATION.

There is a threefold case: 1° from defect of consent; 2° from defect of the Tridentine form; 3° from another impediment.

I. On the Convalidation of a Marriage Invalid on Account of Defect of Consent.

1093. When a marriage was null from defect of natural consent, which was given fictitiously, or from error, force, or fear, it cannot be renewed except by a new consent duly furnished, i.e., with the error or fear removed, and with knowledge of the nullity of the prior marriage. Nor in this case is any dispensation required. - But the manner of proceeding for the renewal of consent is diverse according to the diverse cases which occur:

(A) If the nullity of the marriage on account of defect of consent is publicly known, the consent must also be renewed publicly, and indeed in the face of the Church, even if previously the marriage had been celebrated in the prescribed form¹.

¹ *Codex*, c. 1136, § 3.

(B) But when the nullity is occult: (a) if consent was deficient on the part of both, both must renew consent by an external sign, although private and secret², and indeed after they have known that the prior consent is null.

² *Codex*, c. 1136, § 3.

(b) If the consent was null on the part of one only, that party must freely furnish a new consent, the consent of the other party persevering; but this is judged to persevere provided it has not been revoked by a positive act³. - If the defect of consent was merely internal, it is enough that the party who had not consented consent inwardly. If it was also external, it is necessary also to manifest the consent outwardly⁴.

³ *Codex*, c. 1136.

⁴ *Codex*, c. 1136.

1094. Some besides used to say that the other party, who truly consented, must be warned concerning the nullity of the marriage, so that he might renew consent with knowledge of the invalidity. Now it is certain from the Code⁵ that this is not required; from another side, a moral union between the consent of one and the consent of the other suffices, as in every contract; but such a union exists in the case; for the consent validly furnished by one virtually perseveres, and is manifested through cohabitation and the mutual signs of conjugal love, while the other freely renews his consent. - Nor does the fear stand in the way lest the party who freely consented from the beginning, if warned concerning the nullity of the marriage, perhaps would retract consent; for a hypothetical retraction cannot destroy the force of the consent furnished before.

⁵ *Codex*, c. 1136.

II. On the Revalidation of a Marriage on Account of Defect of Form.

1095. A marriage, null from this head, can be revalidated, without dispensation, only by renewing consent before the pastor and witnesses. (a) This indeed regularly must be done publicly when the nullity of the marriage is publicly known, so that scandal may thus be repaired; nevertheless, if on account of special circumstances the parties are unwilling to renew consent publicly, they can be permitted to repeat it secretly, with the Bishop consenting, and scandal removed in another way.

(b) When the nullity is occult, it suffices that the consent be renewed secretly, before the pastor and witnesses, for preventing the infamy of the spouses.

(c) But if either one refuses to contract in church, consent can be renewed in any decent place. If one consents to appear before the pastor, and the other only through a proxy, or if both wish to contract privately before the confessor, this can be done with the Bishop's permission. - If one is unwilling to renew consent in any way, thinking this altogether useless, sanation in the root is to be sought. But if each absolutely refuses to appear before the pastor or confessor, nothing remains except to pray for them that they may turn themselves to better things: for the Church is not accustomed to grant dispensation to those who obstinately despise her laws.

III. On the Revalidation of a Marriage Invalid on Account of Another Impediment.

1096. A marriage contracted invalidly on account of a diriment impediment can sometimes be revalidated without dispensation, namely when the impediment ceases of itself; e.g., the bond ceases when the spouse has died, disparity of cult by the baptism of the infidel party; but if the impediment does not vanish of itself, it is necessary that a dispensation first be obtained¹. These things being posited, it remains to inquire how consent must be renewed.

¹ *Codex*, c. 1133.

(A) If the impediment is publicly known, consent must be repeated publicly in the form prescribed by law², even if this had been observed in the prior marriage: for this is required both for repairing scandal and so that the validity of the marriage may be established. - If, however, the putative

spouses cannot be brought to contract publicly, they can be permitted to renew consent occultly, before the pastor and witnesses; yet afterward this must be published at an opportune time, so that scandal may be removed.

² *Codex*, c. 1135, § 1.

1097. (B) But if the impediment is occult, it suffices that the consent be renewed occultly, and indeed without the prescribed form, if this had already been observed the first time.

(a) This indeed will be easy if the impediment is known to each party: for both, conscious of the nullity of the prior marriage, express a new consent, which is altogether independent of the prior one¹.

¹ *Codex*, c. 1135, § 2.

(b) But if the impediment is known to only one party, and cannot be manifested to the other without grave inconvenience, it is not required that the party ignorant of the impediment renew consent; the renewal of consent made by the party conscious of the impediment suffices. Thus the Code².

² *Codex*, c. 1135, § 3; cf. *Codex*, c. 1133, § 1.

"But this renewal of consent is required by ecclesiastical law for validity, even if in the beginning each party furnished consent and did not afterward revoke it."³ Which "renewal of consent must be a new act of the will toward a marriage which is established to have been null from the beginning."⁴

³ *Codex*, c. 1133, § 2.

⁴ *Codex*, c. 1134.

§ III. ON THE REVALIDATION OF MARRIAGE THROUGH SANATION IN THE ROOT.

1098. 1° Notion. "Sanation in the root of a marriage is its convalidation, carrying with itself, besides dispensation from or cessation of the impediment, dispensation from the law concerning renewing consent, and retrotraction, by fiction of law, concerning canonical effects to the past. - Convalidation is made from the moment of the concession of the grace; but retrotraction is understood to be made to the beginning of the marriage, unless something else is expressly provided. - Dispensation from the law concerning renewing consent can also be granted with only one party or each party unaware."⁵

⁵ *Codex*, c. 1138.

This can be declared thus: by force of ecclesiastical law, matrimonial consent was invalid, the marriage null, and the children illegitimate. Now dispensation in the root, by abrogating the law in this particular case, heals the defect by which the consent was invalid; therefore the marriage by that very fact becomes valid, and children born after the dispensation are truly legitimate. But besides, from the fiction of law, the Church has the consent, and therefore the marriage, as valid from the beginning; and she recognizes as legitimate those who were conceived from the beginning of the marriage up to the fulmination of the dispensation. Hence the marriage is truly sanated in the root, i.e., in the consent itself, and from the beginning.

1099. 2° Conditions required for dispensation in the root. Four are required: (A) that the diriment impediment about which it is a question be of merely ecclesiastical law; for in others the Church cannot sanate a vitiated consent.

"But a marriage contracted with an impediment of natural or divine law, even if afterward the impediment has ceased, the Church does not sanate in the root, not even from the moment of the cessation of the impediment."¹

¹ *Codex*, c. 1139, § 2. - Thus the opinion of certain ones saying that this impediment can be sanated in the root from the moment of the cessation of the impediment is reprobated.

1100. (B) That the matrimonial consent was present, or was given with the affection of entering marriage: for he who wishes not to enter marriage, but only to abuse a woman through fornication, lays no foundation for a dispensation in the root².

² Namely, it is necessary that the marriage have been contracted "with the naturally sufficient consent of each party." (*Codex*, c. 1139.)

Generally the Church also requires that the union of the spouses have had the external appearance of marriage. This exists when the prescribed form was used; and, for heretics, when marriage has been celebrated before a non-Catholic preacher or civil magistrate. But where the canonical form of marriage is required, civil marriage indeed does not have a strict and canonical form, yet it does have the natural figure of marriage³; whence the Holy See can sanate it in the root, and sometimes does sanate it on account of an urgent reason, e.g., when one of the contracting parties is unwilling to renew consent.

³ Namely, the spouses appear sufficiently to wish to enter a matrimonial consortium.

1101. (C) That the consent given perseveres virtually in each party up to the time of the granted dispensation: hence a dispensation can be granted if one of the contracting parties has fallen into insanity; but not if either one has already departed from the living: in which case the marriage could nevertheless be sanated, not indeed in itself, but as regards juridical effects, namely the legitimacy of offspring.

"But if consent was indeed absent from the beginning, but afterward was furnished, sanation can be granted from the moment of the furnished consent."¹

¹ *Codex*, c. 1140, § 2.

1102. (D) That a grave reason be present, which can especially be threefold: (a) if one party cannot be brought to renew consent, although he wishes to remain in the marriage; (b) if each party is unaware of the nullity and there exists a grave reason for not revealing the impediment, e.g., on account of the great number of marriages which from some error have been contracted invalidly, or on account of avoiding scandal if the nullity arises from an error committed by the pastor or Ordinary; (c) if each party is conscious of the nullity, but cannot be induced to renew consent because of an insuperable prejudice; or if sanation in the root is necessary for the legitimation of offspring. - From another side, "sanation in the root can be granted only by the Apostolic See."²

² *Codex*, c. 1141.

1103. When the confessor must fulminate a dispensation in the root, he can use this or a similar form: "By Apostolic authority (or by authority received through the Bishop), I sanate and consolidate in the root the marriage contracted nullly by you, and I announce and declare that offspring received and to be received will be legitimate."

Appendix: On Civil Law with Respect to Marriage

ON CIVIL LAW WITH RESPECT TO MARRIAGE.

Division.

Principles on the manner of acting with respect to civil laws concerning Marriage.

Principal civil laws concerning Marriage in England and the United States of America.

Principal civil laws concerning Marriage in France.

Principal civil laws concerning Marriage in Italy.

Principal civil laws concerning Marriage in Germany.

I. PRINCIPLES ON THE MANNER OF ACTING WITH RESPECT TO CIVIL LAWS CONCERNING MARRIAGE.

1104. Principle I: Those about to marry can faithfully observe, and regularly ought to observe, the prescriptions of civil law concerning the celebration of marriage, which are not opposed to divine or ecclesiastical law, especially if upon them depends the value of the marriage in the civil forum.

¹ De Angelis, lib. IV, tit. 1, n. 13-14; Feije, n. 780-785; Haine, q. 173-175; Gasparri, n. 1210-1231; Aertnys, n. 473.

(A) For this is deservedly inferred from the Instruction of the S. Penitentiary concerning civil marriage, January 15, 1866, where it is said²: "Nevertheless, for avoiding vexations and penalties, and on account of the good of offspring, which otherwise would by no means be held as legitimate by the lay power, and also for averting the danger of polygamy, it seems opportune and expedient that the same Faithful, after they have legitimately contracted marriage before the Church, present themselves to perform the act prescribed by law, yet with that intention (as Benedict XIV teaches in the Brief of September 17, 1746, *Redditae sunt Nobis*), that in presenting themselves to the Government Official they do nothing else than perform the civil ceremony."

² Apud *Acta S. Sedis*, I, p. 508-512. - This is confirmed from the decree of the Holy Office, January 12, 1881 (*Collect. P. E.*, n. 1550): "Missionaries must take care that those who are going to contract marriage observe even civil prescriptions, which are conducive to conserving the moral order as regards the civil effects of marriage."

(B) For although the State cannot by its own right make laws, for Christian subjects, concerning the matrimonial bond, it can fortify ecclesiastical laws, either all or some, with civil sanction; it can besides, by its own right, establish laws concerning civil effects separable from the bond of marriage. Moreover, if the State has made laws in a matrimonial matter, which require certain solemnities so that marriage may not lack its civil effects, and which otherwise do not stand in the way of divine and ecclesiastical law, certainly spouses may obey these; indeed this seems opportune and expedient, as the S. Penitentiary says: (a) for avoiding vexations and penalties which the State inflicts upon violators of laws; (b) on account of the good of offspring, which otherwise would not be held as legitimate by civil law; (c) for averting the danger of polygamy, since in reality some are deterred from this vice by fear of civil laws.

1105. Corollaries: (a) Where there is had the marriage which they call civil, it is not only licit, but expedient, that the faithful present themselves before the civil magistrate, so that before the law they may be held as true spouses and their children as legitimate; provided, however, that they rightly understand that this is not true marriage, where *Tametsi* is in force, but a merely civil act, by which they show their submission toward the laws.

When the laws permit this, the faithful must first contract before the Church, and afterward complete the civil act. But if the law prescribes the inverse order, as in France, or grave necessity demands it, the spouses can indeed first present themselves before the civil magistrate; but "then all diligence must be used, so that the marriage be contracted before the Church as soon as possible, and meanwhile the contracting parties remain separated."¹

¹ Instr. S. Penit., l. c., p. 511-512.

In the United States of America, religious marriage is held as valid before civil law; but in most States a license is required from a public official before proceeding licitly to marriage; and besides, the minister before whom the nuptials have been celebrated is bound, within a defined time, in writing, to make known to the official designated by law the marriage entered; which indeed, as consonant with reason, must be carefully observed.

1106. (b) Where there are civil impediments, especially diriment ones, which are not recognized as such by the Church, pastors should not easily admit to contracting marriage those who are held by civil law as incapable: both because these are not considered by the State as legitimate spouses, and because pastors celebrating such unions can be punished by law, not without scandal of the faithful. "In this matter they will have to use much caution and prudence, and to seek the counsel of the Ordinary; and let him not be easy in consenting; but in graver cases let him consult this sacred Tribunal."¹

¹ Instr. S. Penit., l. c., p. 511. - This rule is practical in some of the United States of America, where marriages between whites and blacks or indigenous persons are most strictly prohibited.

1107. Principle II: If the precepts of civil law are intrinsically repugnant to divine or ecclesiastical right, it is not licit actively to execute them. For this follows from what has been said in the Treatise on Laws. Hence spouses who, after obtaining a civil divorce, fly to new nuptials sin gravely, although by civil law they may be able to do this: for a law of this kind is altogether contrary to the divine law of the indissolubility of marriage. But if divorce is sought without the intention of marrying again, the matter is disputed (above n. 751).

But if someone passively cooperates in the execution of an unjust law, e.g., if a civil magistrate assists at a civil marriage by office, when he certainly knows that the contracting parties do not wish to enter marriage before the Church (where *Tametsi* is in force), or that they are bound by a prior bond, it is disputed whether this manner of acting is gravely illicit, as has already been said, n. 760.

II. PRINCIPAL CIVIL LAWS CONCERNING MARRIAGE IN ENGLAND AND THE UNITED STATES.

1108. 1° As regards betrothals. (A) In England, these things are to be noted concerning betrothals: "A promise to marry at a future time, which, like other contracts, gives a right of action for damages in case of its violation, is not binding on the defendant unless he or she be of the full age which the law provides for other cases of contract, viz. twenty-one years; and where there are mutual promises to marry made by two persons, one of the age of twenty-one, and the other under that age, the first is bound by the contract so as to be liable to an action if it be broken; but on the part of the minor, it used to be voidable; and it is now void."²

² Stephen's *Commentaries*, 12th ed. London, 1895, vol. II, p. 252.

1109. (B) In the United States of America: (a) "If an infant below the marriageable age and a competent person agree to intermarry, the contract is void because it is an attempted violation of the law. But after the marriageable age has arrived, a marriage by the infant may sometimes be beneficial to him; therefore, as to him, the agreement to marry with an adult will be, not void, but voidable. And within familiar principles it cannot be enforced against the infant, who may rely on his non-age to avoid it; but the infant's action for its breach by the adult is in no degree impaired by the fact of infancy."¹

¹ Bishop, *New Comment. on Marriage, Divorce and Separation*, Chicago, 1891, vol. I, § 206.

(b) "Parties in too near consanguinity, being by law incapable of intermarriage, cannot bind themselves by a mutual promise to marry."²

² Bishop, I, § 203.

(c) "When marriageable persons conduct toward each other as engaged parties commonly do, and as those who are not engaged do not, the reasonable and fair inference is that they are in fact what they thus hold themselves out to be, engaged; and in a breach-of-promise suit the jury is justifiable in so finding."³

³ Bishop, § 197.

(d) "When one party has agreed to marry the other under the presumable inducement of a controlling fact supposed to exist while it did not, or when such a fact existed at the time of the promise but was afterward reversed, or when the other's fraudulent representation of something even less important entrapped him into the promise, he may rescind the agreement, first giving an expressed or implied due notice, where the thing was not within the knowledge of the other."⁴ - "Any conduct by one of the parties, amounting to actual fraud, will justify the other, who has been entrapped by it, in withdrawing from the agreement."⁵ - If parties to a marriage promise mutually to relinquish it, the release by each is a consideration for that by the other, and neither can afterward maintain a breach-of-promise suit.⁶ - "And after the bargain is entered into, ill conduct in one of them, of a nature and to a degree not quite definable, yet far less than would be required for a divorce after marriage, will justify the other in rescinding it. So likewise may either rescind it for any supervening incapacity in himself or in the other to fulfil the special duties of marriage."⁷

⁴ Bishop, § 216.

⁵ Bishop, § 224.

⁶ Bishop, § 225.

⁷ Bishop, § 235.

(e) "Damages for the breach are not restricted to such as can be measured by the rule of dollars and cents, but, beyond this, the jury may give what seems reasonable in compensation for wounded feelings, for disgrace and shame, for loss of position in society and other like evils coming as natural and probable consequences of the breach, or of the special circumstances in which the breach was committed."¹

¹ Bishop, l. c.

1110. 2° On the celebration of marriage. (A) In England many conditions are required for the celebration of marriage, especially as regards Catholics, who do not wish to marry in Anglican churches². (a) "Persons desiring to be married in a Catholic church must obtain the Registrar's certificate; they may also obtain from him a licence permitting the marriage to be solemnized with less delay, for a fee of thirty shillings and ten shillings stamp duty."

² We take these rules from the work: *A Manual of the Law specially affecting Catholics*, by W. S. Lilly and J. E. P. Wallis, London, 1893, p. 54-57. Since it is difficult for the poor to follow all these prescriptions, not a few live in concubinage: hence the Catholic Bishops of England earnestly requested that certain of them be abolished or changed, *ibid.*, p. 191-195. - Cf. Stephen, II, p. 252-265.

"In the first place, notice must be given in the form prescribed in the Act by one of the parties to the Superintendent Registrar of the District where they shall have dwelt for the preceding seven days, fifteen days if the marriage is to be by licence; or, if they dwell in different districts, then the Registrar of each District, unless the marriage is to be by licence, when notice to one Superintendent Registrar is sufficient. A copy of the notice is entered by the Registrar in the Marriage Notice Book, which is open, at all reasonable times, without fee to all persons desirous of inspecting it. Either the original notice, or a copy thereof, under the hand of the Superintendent Registrar, must be affixed in a conspicuous place in his office. And for every such notice he is entitled to a fee of one shilling (6 & 7 Will. 4, c. 85, SS. 4, 5; and 19 & 20 Vict. c. 119 S. 3)."

(b) "One whole day after the entry of this notice, if the marriage is to be solemnized by licence, or twenty-one days after, if it is to be solemnized without licence, the Superintendant Registrar, upon the demand of the party by whom notice was given, issues a certificate in the form provided by the Act, showing that the requisite notice has been given, and that the issue of the certificate has not been forbidden by any authorised person, and for this certificate a fee of one shilling is payable (6 & 7 Will. 4, c. 85, S. 7, and 19 & 20 Vict. c. 119, S. 4)."

(c) "The marriage may then be celebrated in the Catholic church duly registered for the solemnization of marriages, which is specified in the notice and which must, as a rule, be in the district of the residence of one of the parties. But it must be celebrated in the presence of a Registrar of the district in which the church is situated, and of two or more credible witnesses, and a fee of five shillings - ten if the marriage is by licence - is payable to the Registrar for his attendance (6 & 7 Will. 4, c. 85, SS. 18, 20, 22.) The Act further provides that in some part of the ceremony, and in the presence of the Registrar, each of the parties shall declare: "I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.," and that each of the parties shall say to the other: "I call upon these persons, here present, to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)."

(d) "The celebration of the marriage must take place within three calendar months next after the day of the entry of the notice. Should a certificate of marriage ("The Marriage Lines") be desired, it may be procured from the Registrar-General, or Superintendent Registrar, upon payment of a fee of two shillings and sixpence (6 & 7 Will. 4, c. 85. SS. 35, 36)."

(e) "The clergy should take note that by S. 39 a priest would be guilty of felony if he knowingly solemnized a marriage in England in any other place than the registered building specified in the notice and certificate, or in a registered building in the absence of a Registrar of the district."

(f) It is provided by 19 & 20 Vict. c. 119, S. 12, that "if the parties to any marriage contracted at the registry office of any district shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention to do so; and such clergyman or minister, upon the production of their certificate of marriage before the Superintendent Registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself, or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong."

1111. (B) In the United States of America, by common law no solemnity is required for the validity of matrimonial consent; but by particular law in most States, for liceity, under various penalties, certain conditions are prescribed¹:

¹ We borrow the summary of American law from Browne, *Elements of the Law of Domestic Relations*, Boston, 1890, p. 9-12.
- Cf. Bishop, § 293-449.

(a) "At common law marriage is a civil contract, to which consent alone is essential. It requires no legal forms nor religious solemnities, nor special mode of proof. The common rule is, that in the absence of statutory regulation, consent *per verba de praesenti* with or without consummation, or *per verba de futuro* with consummation, constitutes a valid marriage... In New York, Illinois, and Rhode Island, it is now held that mere *verba de futuro*, although followed by consummation, do not constitute a valid marriage."

(b) "Although in most if not all of the United States there are statutes regulating the celebration of marriage, and inflicting penalties on all who disobey the regulations, yet it is generally considered that in the absence of any positive statute declaring that all marriages not celebrated in the prescribed manner shall be absolutely void, or that none but certain magistrates or ministers shall celebrate a marriage, any marriage regularly made according to the common law, without observing the statutory regulations would be still a valid marriage."

(c) "An assent to a ceremony understood on both sides to be given in jest, even if the clergyman is in earnest, will not constitute a valid marriage; but otherwise, if one of the parties is in earnest; and where one party procures a mock ceremony to be performed by one falsely personating a clergyman, it will bind both if the other assents in good faith."

(d) "Intercourse illicit in its commencement will be presumed always so to continue, and no marriage can be presumed from it. Without express proof of words of consent a valid marriage may be

predicated of cohabitation, acknowledgment of a marriage by the parties, receptions of them by relatives and friends and in society as husband and wife. Even though it may invalidate a subsequent marriage. But not as against a prior ceremonial marriage."

(C) When nuptials are celebrated in a foreign region by English or Americans, they are valid, provided that the rite customarily employed in that region has been observed, and otherwise they are truly capable of contracting, according to English or American laws¹.

¹ Browne, p. 12; Stephen, p. 264-265.

1112. 3° On the mutual rights and offices of husband and wife. These are substantially the same in England as in America². (a) Rights of the husband: "The rights of a husband, in and over his wife, are two: obedience and service. The husband has the legal control of the person of his wife, and may put moderate restraints upon her liberty, if her conduct be such as to require it. If he changes his domicile, it is her duty to follow him. If she elopes and abandons him without cause, he may compel her to return. But he has no right to chastise her or to use physical violence toward her, except so far as is necessary to prevent her from doing violence to himself or others. The services of the wife, and the result thereof, also belong to the husband, at common law; though in some States, by Statute, he is entitled to the result of her service only as a trustee, and holds them for her use."

² W. C. Robinson, *Elementary Law*, Boston, 1882, p. 112-113, gives a summary of these.

(b) Rights of the wife: "The rights of the wife, in and from the husband, are also two: protection and support. Whatever he may lawfully do in his own defence he may do, and is naturally obliged to do, in defence of her. It is his duty to provide her with necessaries according to her station in life, and, if he refuses to do so, she may contract for them in his name, and she may still contract debts for her necessaries in his name. This right will be forfeited by the wife if she elopes with an adulterer, or if she abandons her husband without cause and does not repent and offer to return to him. But the husband is not bound to support the wife out of his family, if he provides for her and treats her properly there; and, in all cases, persons supplying a wife with necessaries, without the consent of the husband, are bound to make inquiries, and, even after such inquiries, if they supply her, they do it at their peril."

1113. 4° On semi-full divorce, or separation from bed and board. (A) In England: "A judicial separation (in lieu of the divorce *a mensa et toro*) may now be decreed, on the petition of either husband or wife; and this decree has all the effect that belonged to the old divorce *a mensa et toro*; and judicial separation may be decreed on the ground of adultery, or cruelty; or on the ground of desertion without cause for two years and upwards; and during the continuance of the decree, the wife acquires, as to property and for many other purposes, the condition of a *feme sole*¹."

¹ Stephen, II, p. 285-286.

1114. (B) In the United States of America, divorce from bed and board is not recognized by common law, but by the Statutes of many States². The causes on account of which it is granted are diverse according to the diverse States³. The following are recognized in almost all⁴:

² "Limited divorce exists in the following states: Alabama, Arkansas, Delaware, District of Columbia, Georgia, Kentucky, Louisiana, Maryland, Michigan, Minnesota (in favor of wife only), Nebraska, New Jersey, New York, North Carolina, Pennsylvania (in favor of wife only), Rhode Island, Tennessee (in favor of wife only), Virginia, West Virginia, Wisconsin." (*A report on Marriage and Divorce*, by Carroll D. Wright, Washington, 1891, p. 115.)

³ C. D. Wright enumerates these, *op. cit.*, p. 89-112.

⁴ Browne, p. 64-66.

(a) "Cruel and inhuman treatment. This must be such as renders the life or health of the plaintiff unsafe. Words of menace creating a reasonable apprehension of bodily violence will suffice. It need not be personal; unmercifully whipping her child in the wife's presence and in spite of her entreaties will suffice. But mere bad temper, or conduct producing annoyance, discontent, and disgust, is not enough. Nor does mere intoxication, occasional or frequent, constitute cruel or inhuman treatment. Nor an angry expulsion of the wife under suspicion of infidelity. Nor refusal to permit her to attend her own church. A single cruel act does not constitute cruelty of treatment. But when accompanied by circumstances indicative of a probability of repetition, it may warrant a divorce."

(b) "Such conduct as renders it unsafe and improper to cohabit. "Unsafe" means a reasonable apprehension of bodily injury. As subjecting the wife to excessive sexual intercourse."

(c) "Abandonment and refusal or neglect to provide. These must concur. The neglect must be wilful. Denial of sexual intercourse is not utter desertion; nor desertion, nor cruelty. On a suit by a husband for separation for abandonment, the wife may be awarded a separation for cruelty."

(d) As regards the alimony of the wife, these things also are to be noted: "Pending the suit the court may grant the wife a pecuniary provision from the husband to enable her to live separately from him, which is called alimony; and also compel him to pay her counsel fees to enable her to wage or defend the suit. On granting her a divorce the court may also impose alimony, and order the husband to make provision for supporting the children."

1115. 5° On full divorce. (A) In England: (a) "A divorce or dissolution of the marriage... may also now be obtained on the petition of either husband or wife; and where he is the petitioner, it may be on the ground that since the marriage she has been guilty of adultery; but where she is the petitioner, it may only be on the ground that he has since the marriage been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of unnatural crime, or of adultery coupled with such cruelty as would, without adultery, have formerly entitled her to a divorce *a mensa et toro*; or of adultery coupled with desertion, without reasonable excuse, for two years or upwards. But no divorce can be decreed, if the petitioner (whether husband or wife) has been accessory to, or connived at, or has condoned the adultery; or if the petition is presented or prosecuted by collusion; and the court is not bound to decree the divorce, if the petitioner has been guilty of adultery during the marriage; or of cruelty; or of desertion or wilful separation; or of such wilful neglect or misconduct as has conduced to the adultery; or if there has been undue delay (remaining unexplained) in presenting the petition."¹

¹ Stephen, p. 286.

(b) "A decree of nullity of marriage may also be obtained on any ground which would formerly have justified a divorce *a vinculo*,"² viz. disability; lack of legal age, of mental capacity, etc.

² Stephen, p. 288.

1116. (B) In the United States of America, the laws are altogether diverse according to the diverse States; therefore we can hand down only those things which are more common. (a) "Nullity of contract... For this divorce there are generally five causes: lack of legal age, former marriage, lack of mental capacity, force or fraud, and impotence... It may now be said generally, that marriages coming within these prohibitions are usually valid until pronounced void, and the children are legitimate. It has been held, however, that a judgment annulling a marriage contracted by an insane party is unnecessary. The lack of mental capacity and the impotence, to justify a divorce, must have existed at the time of the marriage."¹

¹ Browne, p. 62-63.

(b) Among the principal causes which in various States suffice for divorce properly so called, the following are enumerated²: adultery, a cause in all the states and territories; pregnancy of wife at time of marriage, unknown to husband; abandonment, desertion, wilful absence; disappearance, absence without being heard from; cruelty, actual violence or apprehension thereof, inhuman treatment³; failure or neglect of husband to provide for wife; drunkenness (habitual), conviction of felony or infamous crime, sentence to imprisonment.

² Cf. C. D. Wright, op. cit., p. 89-115.

³ How broadly this cause of divorce extends can be understood from the various examples which C. D. Wright reports, p. 172-178: "Defendant does not wash himself, thereby inflicting on plaintiff great mental anguish... Defendant has accused plaintiff's sister of stealing, thereby sorely wounding plaintiff's feelings... Defendant violently upbraided plaintiff and said to him: You are no man at all; thus causing him mental suffering and anguish... Defendant pulled plaintiff out of bed by his whiskers, etc. etc."

(c) In relation to adultery, these things are worthy of note: "But a divorce for this cause will never be granted where the offence was committed by the procurement or connivance of the complainant; or has been forgiven and the parties have voluntarily cohabited with knowledge of its commission, which is called condonation; or the complainant has also been guilty of the like offence, so that the defendant, if innocent, might have a divorce therefor, which is called recrimination."⁴

⁴ Browne, p. 63.

(d) "Generally the defendant, on judgment passing against him, is prohibited from remarrying during the plaintiff's life. But this provision has no extra-territorial effect. It is held that a marriage within this State in violation of this injunction subjects the prohibited party to the penalties of bigamy."⁵

⁵ Browne, p. 64.

1117. On matrimonial impediments. (A) In England they are reduced to four⁶:

⁶ Ap. Stephen, p. 248-252.

(a) "The first of them, namely, a prior marriage still subsisting, wants no particular observation, excepting this, that the second marriage is to all intents and purposes void."

(b) "Insanity, or want of reason, is the second civil disability... and accordingly, by our law, it is established that a marriage contracted under circumstances of duress overpowering the will is void; also, that the marriage of a lunatic, not being in a lucid interval, is absolutely void."

(c) "The third civil incapacity is that in respect of proximity of relationship, - whether of consanguinity or of affinity... The only marriages which are now illegal in respect of proximity of degree (as being either contrary to God's law or within the Levitical degrees), are the following, viz. - those between persons in the ascending and descending line *in infinitum*, - and those between collaterals to the third degree inclusive, according to the mode of computation in the civil law; which reckons the sum of the degrees from, (but exclusively of), one of the persons related, up to the common stock and so down to the other person. Moreover, the prohibitions in the case of collaterals extend not only to *consanguinei*, or those related by blood, but to *affines*, or those related by marriage; e.g. a man can marry neither his sister, nor his deceased wife's sister, for both are related to him in the second degree; nor his sister's daughter, nor his deceased wife's sister's daughter, for both are in the third degree; but he may marry his first cousin, for she is in the fourth degree."

(d) "The want of age... It is not necessary to the contract of marriage that the parties should have attained their full age of twenty-one; for a male person is enabled by law to consent to matrimony at the age of fourteen, and a female at the age of twelve, subject (where subject) to the consent of their parents or guardians; and, indeed, even though the male be under fourteen, or the girl under twelve, the marriage is not absolutely void, but is inchoate only and imperfect; and either of the parties, upon coming to the proper age for his or her consent, may in such latter case disagree to (and so avoid) the marriage; but a marriage between people, either of whom is under the age of seven years, is absolutely void."

1118. (B) In the United States of America, the impediments are various according to the various States; those which are common to almost all are referred to seven heads:

(a) "Law forbids the marriage of near relations. The degrees of consanguinity called the prohibited degrees are defined by the laws of the different States. In Maryland, for instance, a man shall not marry his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's daughter, or sister's daughter. A woman shall not marry her corresponding relatives."¹

¹ Cf. C. D. Wright, p. 31-35, where the laws of various States are enumerated.

(b) "Social condition. At common law, and in England, race color, and social rank constitute no impediment to marriage. In this country United States, in many States marriage is by statute forbidden between whites and negroes or Indians."¹

¹ Browne, p. 3.

(c) "Mental capacity. An intelligent consent is essential to a valid marriage. Hence an idiot or lunatic cannot contract marriage. So of other persons who have not the capacity to understand the duties and obligations of the relation. The test usually applied in the courts is that of fitness for the general transactions of life... Marriage contracted during temporary insanity is void; but marriage contracted during a lucid interval is valid; except when provided, as in England and in some of our States, by statute, that it is void during an unrevoked commission of lunacy. Drunkenness does not incapacitate, unless so great that the party does not know what he is about. Deaf and dumb persons, formerly classed as idiots, may now, it is held, contract a valid marriage."²

² Browne, p. 3-4.

(d) "Physical capacity. Where impotence exists there can be no valid marriage. But impotence means physical incapacity; not mere coldness, reluctance or unwillingness, or even absolute refusal to consent to sexual connection. Barrenness constitutes no incapacity, nor does any malformation not preventing copulation, nor any curable disability. The impotency must have existed at the time of the marriage."³

³ Browne, p. 5.

(e) "Age. The common law fixes an age of consent for a valid marriage at 14 in males and 12 in females... A marriage, either party to which was under the age of consent, may be ratified, on arriving at that age, by consent implied from continued intercourse or slight circumstances. Consent of parents is not necessary to the marriage of minors. In some States such marriages are forbidden without being declared void, and penalties are denounced for celebrating or contracting them."⁴

⁴ Browne, p. 5-6.

(f) "Prior marriage. Polygamy or bigamy is denounced as a crime by all christian communities... At common law the subsequent marriage is void *ab initio*, but statutes have relaxed this rule by declaring that such marriages shall be void only from the time when so pronounced by the decree of a competent court."⁵

⁵ Browne, p. 6.

(g) "Force or Fraud. Kent says "a marriage procured by force or fraud is void *ab initio*, and may be treated as void by every court in which its validity may be incidentally drawn in question." So says Schouler. But this has recently been denied, and it has been held that such a marriage can only be avoided by the person defrauded, in his lifetime. Statutes have changed the rule in some States, and attached the invalidity of the time of a decree of nullity.

"Force implies physical restraint; fraud implies deception. The general rule is that the force must be such as would naturally serve to overcome the will. The question of the amount of force depends upon circumstances... A marriage procured by illegal arrest may be avoided, and so where the arrest was legal but malicious. But when a man under legal arrest for seduction reluctantly marries the woman the marriage will not be set aside.

"The fraud which will avoid a marriage must go to the essence of the contract... So fraudulent representations by one party as to birth, age, social position, fortune, health, manners, or character will not suffice... A false personation would undoubtedly avoid the marriage."¹

¹ Browne, p. 7-8.

III. PRINCIPAL CIVIL LAWS CONCERNING MARRIAGE IN FRANCE.

1119. 1° On betrothals. The civil Code is silent concerning betrothals, and jurists hold that promises of future marriage do not have obligatory force. "Nevertheless, the tribunals every day condemn to damages and interest that one of the betrothed who fails in his promise without legitimate reasons: the judge sovereignly assesses the legitimacy of the reason. Damages and interest are allotted by application of art. 1392. The promise of marriage is without doubt null. But that one of the betrothed who, after having made such a promise, withdraws capriciously,

makes himself guilty of a civil delict or of a quasi-delict: of a civil delict, if there is fraud on his part, of a quasi-delict, if there is only heedlessness; he must be condemned to repair the material or even moral prejudice of which he is the author. The material prejudice will consist in the expenses made by the abandoned betrothed with a view to the conclusion of the marriage; the moral prejudice, in the injury brought to his reputation."³

² Carriere, II, n. 936-1026; *Theol. Claromont.*, n. 325-335; Gasparri, n. 1211-1220; Allegre, *Code civil commente*, 6th ed., Paris, 1897, I, p. 74-82; Baudry-Lacantinerie, *Precis de Droit Civil*, 7th ed., Paris, 1899, t. I, n. 483-936.

³ Baud. Lac. n. 484.

1120. 2° On the celebration of marriage. (A) Before the marriage, banns must be promulgated: (a) "Before the celebration of marriage, the officer of the civil state shall make a publication by means of a notice posted at the door of the common house. This publication shall state the given names, names, professions, domiciles, and residence of the future spouses, their quality of being majors or minors, and the given names, names, professions, and domiciles of their fathers and mothers. It shall state, besides, the days, places, and hours when it was made: It shall be inscribed upon a single register, numbered and initialed as is said in article 41, and deposited at the end of each year at the registry of the tribunal of the arrondissement."¹

¹ *Code civil*, art. 63. We give here the corrections made by the law of June 21, 1907.

(b) "The notice foreseen in the preceding article shall remain posted at the door of the common house for ten days, which must comprise two Sundays. The marriage cannot be celebrated before the tenth day from and not including that of the publication."²

² Art. 165.

(c) "If the marriage has not been celebrated within the year, counting from the expiration of the time-limit of the publication, it can no longer be celebrated except after a new publication made in the form above."³

³ Art. 64.

1121. (B) As regards the celebration itself of marriage: (a) "Marriage shall be celebrated publicly before the officer of the civil state of the commune where one of the spouses shall have his domicile or his residence on the date of the publication foreseen by art. 63, and, in case of dispensation from publication, on the date of the dispensation foreseen in art. 169 below."⁴

⁴ Art. 65.

(b) "Marriage shall be celebrated in the commune where one of the two spouses shall have his domicile, or his residence established by at least one month of continuous habitation on the date of the publication foreseen by the law."⁵

⁵ Art. 74.

(c) "On the day designated by the parties after the time-limits of the publications, the officer of the civil state, in the common house, in the presence of four witnesses, relatives or non-relatives, shall read to the parties the above-mentioned documents, relating to their state and to the formalities of marriage, and ch. VI of the title on Marriage concerning the respective rights and duties of the

spouses. He shall receive from each party, one after the other, the declaration that they wish to take each other for husband and wife; he shall pronounce, in the name of the law, that they are united by marriage, and he shall draw up an act of it on the spot."⁶

⁶ Art. 76.

(d) "There shall be stated, in the act of marriage: 1° the given names, names, professions, age, places of birth and domicile of the spouses; - 2° whether they are majors or minors; - 3° the given names, names, professions, and domiciles of the fathers and mothers; - 4° the consent of the fathers and mothers, grandfathers and grandmothers, and that of the Family Council, in the cases in which they are required; - 5° the notification prescribed by article 151, if it has been made; - 6° the oppositions, if there have been any; their removal, or the mention that there has been no opposition; - 7° the declaration of the contracting parties to take each other for spouses, and the pronouncement of their union by the public officer; - 8° the given names, names, age, professions, and domiciles of the witnesses, and their declaration, if they are relatives or affines of the parties, on which side and in what degree; - 9° the declaration made upon the interpellation prescribed by the preceding article that a marriage contract has or has not been made, and, insofar as possible, the date of the contract, if it exists, as well as the names and place of residence of the notary who received it; all under penalty against the officer of the fine fixed by art. 50. - Mention shall be made of the celebration of the marriage in the margin of the birth act of the spouses."¹

¹ Art. 76.

(e) "A marriage contracted in a foreign country between French persons, and between French persons and foreigners, shall be valid, if it has been celebrated in the forms used in the country, provided that it has been preceded by the publication prescribed by article 63, under the title of Acts of the civil state, and that the French person has not contravened the dispositions contained in the preceding chapter. - The same shall hold for a marriage contracted in a foreign country between a French man and a foreign woman, if it has been celebrated by the diplomatic agents or by the consuls of France, conformably to French laws. - Within three months after the return of the French person to the territory of the Republic, the act of celebration of the marriage contracted in a foreign country shall be transcribed upon the public register of marriages of the place of his domicile."²

² Art. 170-171. - It is disputed among jurists whether a marriage entered without conditions of this kind is valid or not; cf. Baud. Lac. n. 555-557.

(f) These things also are to be noted by priests: "Every minister of a cult who shall proceed to the religious ceremonies of a marriage without its having been justified to him by an act of marriage previously received by the officers of the civil state shall be punished, for the first time, by a fine of 16 francs to 100 francs. - In case of new contraventions of the kind expressed in the preceding article, the minister of the cult who has committed them shall be punished, namely: for the first relapse, by imprisonment from two to five years; and for the second, by detention."³

³ *Code penal*, art. 199-200.

1122. 3° On the mutual rights and offices of spouses. (a) "The spouses owe each other mutually fidelity, aid, assistance. - The husband owes protection to the woman; the woman, obedience to her husband. - The woman is obliged to dwell with the husband, and to follow him

wherever he judges it suitable to reside: the husband is obliged to receive her, and to furnish her everything that is necessary for the needs of life, according to his resources and his state."⁴

⁴ *Code civil*, art. 212-214. - The aid in question consists in the furnishing, in kind or in money, of things necessary for life. The obligation of paying alimentary support is imposed, at the cessation of common life, when one of the two spouses is without resources, - when the husband refuses to receive his wife at the conjugal domicile, - when the husband forces his wife to leave the conjugal domicile by the bad treatment which he makes her undergo. Cf. Baud. Lac. n. 715-716.

1123. 4° On matrimonial impediments. (A) Age: "A man before eighteen completed years, a woman before fifteen completed years, cannot contract marriage. - Nevertheless it is permitted to the President of the Republic to grant dispensations from age for grave reasons."¹ - The cause most frequently invoked is the pregnancy of the woman: malice has supplied age.

¹ *Code civil*, art. 144-145.

(B) Defect of consent. (a) "There is no marriage when there is no consent."²

² Art. 146.

(b) Now error concerning the person invalidates consent: "When there has been error in the person, the marriage can be attacked only by that one of the two spouses who was induced into error. - In the case of the preceding article, the petition for nullity is no longer receivable whenever there has been continued cohabitation for six months after the spouse acquired his full liberty, or after the error was recognized by him."³

³ *Code civil*, art. 180-181.

(c) Likewise perpetual insanity, by force of art. 489: "The major who is in an habitual state of imbecility, dementia, or fury must be interdicted, even when this state presents lucid intervals."

(d) And also force and fear: "Thus a young man surprised in flagrant delict with a young girl promises to marry her, and in fact marries her, under the influence of a threat of death which is made to him by the father of the young girl. The spouse subjected to violence can demand the nullity of the marriage." - "Abduction is no longer today, as formerly, a diriment impediment of marriage. Only the abducted person can cause the nullity of the marriage which she had contracted with her abductor to be pronounced, if she succeeds in demonstrating that her consent was not free."⁴

⁴ Baudry-Lac. nn. 588, 590.

(e) Bond: "One cannot contract a second marriage before the dissolution of the first." - "Marriage is dissolved: 1° by the death of one of the two spouses; 2° by divorce legally pronounced." - "A woman cannot contract a new marriage except after 300 completed days from the dissolution of the preceding marriage." - "A divorced woman can remarry immediately after the transcription of the judgment or decree which pronounced the divorce, if nevertheless 300 days have already elapsed since there intervened, in the instance which led to the divorce, the ordinance which authorized the petitioner spouse to have a separate residence." (Law of August 9, 1919.)

⁵ *Code civil*, art. 147, 227, 228, 296. - Bond is indeed a diriment impediment, but the prohibition of marrying before ten months from the dissolution of the prior marriage is only impedient. - Besides, bigamy is punished by grave penalties. (*Code penal*, art. 340.)

1124. (C) Defect of the consent of parents: (a) "The son and the daughter who have not attained the age of twenty-one completed years cannot contract marriage without the consent of their father and mother. In case of dissent, the consent of the father suffices. - If one of the two is dead, or if he is in the impossibility of manifesting his will, the consent of the other suffices. - If the father and the mother are dead, or if they are in the impossibility of manifesting their will, the grandfathers and grandmothers replace them. If there is dissent between the two lines, this division shall carry consent."¹

¹ *Code civil*, art. 148-150.

(b) "Children who have attained the age of twenty-one completed years and up to the age of thirty completed years are bound to justify the consent of their father and mother. In default of this consent, the interested party shall have notified, in the forms foreseen in article 154, the projected union to his father and mother or to that one of the two whose consent has not been obtained. Thirty clear days after justification of this notification, one shall proceed to the celebration of the marriage."²

² Art. 151.

(c) "If there is dissent between parents divorced or separated from bed and board, the consent of that one of the two spouses in whose favor the divorce or separation shall have been pronounced and who shall have obtained the custody of the child shall suffice. For lack of uniting these two conditions, that one of the father and mother who shall consent to the marriage can cite the other before the Tribunal of first instance sitting in the Chamber of Council; the competent Tribunal shall be that of the person who has the custody of the child; it shall decide in public audience and in last resort."³

³ Art. 152.

(d) "The notification prescribed by article 151 shall be made at the request of the interested party by a notary acting without the concurrence of a second notary or of witnesses. This act, visaed for stamp and registered gratis, shall state the given names, names, professions, domiciles, and residences of the future spouses, of their fathers and mothers, as well as the place where the marriage shall be celebrated. It shall also contain a declaration that this notification is made to them in view of obtaining their consent and that, in default of it, one shall proceed to the celebration of the marriage at the expiration of the period of thirty clear days."⁴

⁴ Art. 154.

(e) "The natural child legally recognized who has not attained the age of 21 completed years cannot contract marriage without having the consent of that one of his father and mother who recognized him or of the one and the other if he was recognized by both. - In case of dissent, the consent of the parent who shall exercise paternal power suffices. If one of the two is dead or if he is in the impossibility of manifesting his will, the consent of the other suffices."⁵ The dispositions contained in articles 151, 153, 154, and 155 are applicable to the natural child after the age of 21 completed years. - The natural child who has not been recognized, and that one who, after having been recognized, has lost his father and mother, or whose father and mother cannot manifest their will, cannot, before the age of twenty-one completed years, marry except after having obtained the consent of the Family Council."¹

⁵ Art. 158, modified by the law of March 10, 1913.

¹ Art. 159.

(f) "If there is neither father nor mother, nor grandfathers nor grandmothers, or if they all find themselves in the impossibility of manifesting their will, sons or daughters minor of twenty-one years cannot contract marriage without the consent of the Family Council." - The minor of 21 years who would be ignorant of the place of the death or of the domicile of those of his ascendants whose consent is required for his marriage shall swear that the place of the death or that of the last domicile of his ascendants is unknown to him.²

² Art. 160, modified by the law of 1913.

1125. (D) Kinship and affinity: (a) "In the direct line, marriage is prohibited between all legitimate or natural ascendants and descendants, and affines in the same line."³

³ Art. 161. - Affinity does not cease by the death of the spouse who produced it.

(b) "In the collateral line, marriage is prohibited between brother and sister, legitimate or natural. It is prohibited between affines in the same degree when the marriage which produced the affinity has been dissolved by divorce (Law of July 1, 1914). - Marriage is also prohibited between uncle and niece, aunt and nephew. - Nevertheless it is permitted to the President of the Republic to lift, for grave causes, the prohibitions carried by article 162 concerning marriages between brothers-in-law and sisters-in-law, and by article 163 concerning marriages between uncle and niece, aunt and nephew."⁴

⁴ Art. 162-164. - Jurisprudence admits more and more that art. 163 also opposes marriage between the great-uncle and the grand-niece, the great-aunt and the grand-nephew. Cf. Baud. Lac. n. 523. But the Court of Cassation judges that marriage is permitted between an uncle and his natural niece, just as between an aunt and her natural nephew.

(c) "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same individual; between the adopted and the children who could come to the adopter later; between the adopted and the spouse of the adopter, and reciprocally between the adopter and the spouse of the adopted."⁵

⁵ Art. 348.

(E) Defect of legal solemnity: (a) "The declaration of the parties which establishes their free and voluntary consent; and that of the officer of the civil state, who pronounces in the name of the law that the conjugal union is formed, are substantial formalities without the fulfillment of which there could not be marriage."⁶

⁶ Court of Cassation, ap. Baud. Lac., n. 582, 3°.

(b) "Every marriage which has not been contracted publicly, and which has not been celebrated before the competent public officer, can be attacked by the spouses themselves, by the father and mother, by the ascendants, and by all those who have a born and actual interest, as well as by the public ministry."¹

¹ Art. 191. - "Every contravention of the rules concerning publicity does not necessarily render the marriage null as clandestine. The judge has here a power of appreciation which does not belong to him for the other causes of nullity." (Baud. Lac., n. 627). - "The incompetence of the officer of the civil state who has celebrated a marriage does not necessarily entail its nullity... The judge is invested with a discretionary power to appreciate the gravity of the violation, whether of the rules of competence or of the rules of publicity." (Baud. Lac., n. 630).

1126. From this it follows that there are some canonical impediments which are not acknowledged by civil law; such are impotence, spiritual kinship, public honesty, disparity of cult, vow, order², crime, abduction, clandestinity. Yet if impotence is such that the sex of the person cannot be determined, the marriage can be declared null. Likewise, if an abducted person can prove that her consent was extorted by force by the abductor, the marriage is invalidated. But other impediments which are admitted are not understood in the same way by civil law and by canon law; besides, there are civil impediments, such as the consent of parents, which the Church does not have as diriment. To this priests must pay attention, lest a marriage be readily contracted valid in the civil forum and invalid in the ecclesiastical forum, or vice versa.

² On February 26, 1878, the Court of Cassation had judged that priesthood is a diriment impediment of marriage; a decree of the same Court, dated January 25, 1888, rendered a contrary decision. Cf. Baud. Lac., n. 529.

1127. 5° On full divorce. (A) The causes of divorce: (a) "The husband can demand divorce on account of adultery of his wife. - The wife can demand divorce on account of adultery of her husband."³

³ Art. 229-230.

(b) "The spouses can reciprocally demand divorce for excesses, acts of cruelty, or grave injuries of one of them toward the other."⁴

⁴ Art. 231. - By *exces* one must understand attacks brought by one spouse against the life of his consort or acts placing the life of the latter in danger. By grave injuries one understands only those which are the manifest expression of an evil, deliberate, and permanent sentiment.

(c) "The condemnation of one of the spouses to an afflictive and infamous penalty shall be for the other spouse a cause of divorce."⁵

⁵ Art. 232.

(d) "When separation from bed and board shall have lasted three years, the judgment can be converted into a judgment of divorce upon the petition formed by one of the spouses."⁶

⁶ Art. 310. Cf. Baud. Lac., 798-893.

(B) The procedure of divorce is clearly indicated in articles 234-252; the effects in articles 295-304. Article 298 is abrogated, which established a kind of diriment impediment: "In the case of divorce admitted in court on account of adultery, the guilty spouse can never marry his accomplice."

1128. 6° On semi-full divorce. (a) "In the case where there is place for a petition for divorce, it shall be free to the spouses to form a petition for separation from bed and board."¹

¹ Art. 306.

(b) "Separation from bed and board always entails separation of goods. It has besides the effect of restoring to the woman the full exercise of her civil capacity, without her needing to have recourse to the authorization of her husband or of justice."²

² Art. 311. Law of February 6, 1893, completing this article.

IV. Principal Italian Civil Laws concerning Marriage.

1129. 1° On betrothals. (a) "The mutual promise of future marriage produces no legal obligation to contract it, nor to execute what may have been agreed for the case of non-fulfillment of the same. - (b) If the promise was made by public act or by private writing by one who is of age, or by a minor authorized by the persons whose concurrence is necessary for the celebration of marriage, or if it appears from the publications ordered by the officer of the civil state, the promisor who refuses to execute it without just motive is obliged to compensate the other party for the expenses made on account of the promised marriage. The demand, however, is no longer admissible after one year from the day on which the promise ought to have been executed."³

³ *Cod. civile*, art. 53-54.

1130. 2° On the celebration of marriage. (a) "The celebration of marriage must be preceded by two publications to be made under the care of the officer of the civil state. - The publications must be made in the commune in which each of the spouses has his residence. If the present residence has lasted for less than one year, the publications must also be made in the commune of the preceding residence. The publications are made at the door of the communal house on two successive Sundays. The act shall remain posted in the interval between one publication and the other, and for three following days. - Marriage cannot be celebrated before the fourth day from the last publication. - The publications are considered as not having occurred, if the marriage is not celebrated within the term of the one hundred eighty following days."⁴

⁴ Art. 70-72, 76-77.

(b) "Marriage must be celebrated in the communal house and publicly before the officer of the civil state of the commune where one of the spouses has his domicile or residence. - On the day indicated by the parties, the officer of the civil state, in the presence of two witnesses, even relatives, shall read to the spouses articles 130, 131, and 132 of this title; he shall receive from each of the parties personally, one after the other, the declaration that they wish respectively to take each other as husband and wife, and immediately thereafter he shall pronounce in the name of the law that they are united in marriage. - The declaration of the spouses that they take each other respectively as husband and wife cannot be subjected either to a term or to a condition."¹

¹ Art. 93-95.

(c) "Marriage performed in a foreign country between citizens, or between a citizen and a foreigner, is valid, provided that it is celebrated according to the forms established in that country, and the citizen has not contravened the dispositions contained in the second section of the first chapter of this title. The publications must also be made in the kingdom according to the norm of articles 70 and 71. If the citizen spouse has no residence in the kingdom, the publications shall be made in the commune of the last domicile. - The citizen who has contracted marriage in a foreign country must, within three months from his return into the kingdom, have it inscribed in the registers of the civil state of the commune where he shall have fixed his residence, under penalty of a fine extendable to one hundred lire."²

² Art. 100-101.

1131. 3° On the mutual rights and offices of spouses. "Marriage imposes upon the spouses the reciprocal obligation of cohabitation, fidelity, and assistance. - The husband is head of the family: the wife follows his civil condition, assumes his surname, and is obliged to accompany him wherever he believes it opportune to fix his residence. - The husband has the duty of protecting the wife, of keeping her with himself, and of supplying her all that is necessary for the needs of life in proportion to his substance. The wife must contribute to the maintenance of the husband, if he does not have sufficient means. - The obligation of the husband to supply aliment to the wife ceases when the wife, having withdrawn without just cause from the conjugal domicile, refuses to return there."³

³ Art. 130-133.

1132. 4° On the impediments of marriage. (a) "A man cannot contract marriage before he has completed eighteen years, nor a woman before she has completed fifteen years."⁴

⁴ Art. 55.

(b) "He who is bound by a preceding marriage cannot contract other nuptials."⁵

⁵ Art. 56.

(c) "A woman cannot contract a new marriage except after ten months have elapsed from the dissolution or from the annulment of the preceding marriage, excepting the case expressed in article 107 (impotence). This prohibition ceases from the day on which the woman has given birth."⁶

⁶ Art. 57.

(d) "In the direct line marriage is forbidden between all legitimate or natural ascendants and descendants and the affines of the same line. - In the collateral line marriage is forbidden 1° between sisters and brothers, legitimate or natural, 2° between affines in the same degree, 3° between uncle and niece, aunt and nephew."¹

¹ Art. 58-59.

(e) "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same person; between the adopted and the children born later to the adopter; between the adopted and the spouse of the adopter, and between the adopter and the spouse of the adopted."²

² Art. 60.

(f) "Those interdicted on account of infirmity of mind cannot contract marriage."³

³ Art. 61.

(g) "He who in criminal judgment was convicted as guilty party or accomplice of voluntary homicide committed, failed, or attempted upon the person of one of the spouses cannot be united in marriage with the other spouse."⁴

⁴ Art. 62.

(h) "The son who has not completed twenty-five years, the daughter who has not completed twenty-one years, cannot contract marriage without the consent of the father and mother. If the parents are discordant, the consent of the father is sufficient. If one of the parents is dead or in the impossibility

of manifesting his own will, the consent of the other is enough. For the marriage of an adoptive son who has not completed twenty-one years, besides the consent of the parents, the consent of the adopter is necessary. - If the father and the mother should be dead or in the impossibility of manifesting their will, minors of twenty-one years cannot contract marriage without the consent of the grandfathers and grandmothers: if the grandfather and grandmother of the same line are discordant, the consent of the grandfather is enough. Disagreement between the two lines is equivalent to consent. - If there exist no parents, nor adopter, nor grandfathers nor grandmothers, or if none of these is in the possibility of manifesting his own will, minors of twenty-one years cannot contract marriage without the consent of the family council."⁵

⁵ Art. 63-65.

(i) "A marriage contracted in contravention of articles 55, 56, 58, 59, 60, and 62 can be impugned by the spouses, by the nearest ascendants, by the public minister, and by all those who have a legitimate and actual interest in it. By the same persons the marriage celebrated before an incompetent officer of the civil state or without the presence of the required witnesses can be impugned. After one year has elapsed from the celebration of the marriage, the demand of nullity for incompetence of the officer of the civil state is no longer admitted."⁶

⁶ Art. 104.

(j) "Marriage can be impugned by that one of the spouses whose consent was not free. When there was error in the person, the action of nullity can be promoted by that one of the spouses who was induced into error. - The demand of nullity for the causes expressed in the preceding article is no longer admissible if there was continued cohabitation for one month after the spouse recovered his full liberty or knew the error."¹

¹ Art. 105-106.

(k) "Manifest and perpetual impotence, when it is prior to marriage, can be proposed as a cause of nullity by the other spouse."²

² Art. 107.

1133. 5° On separation from bed and board. (a) "Separation can be demanded on account of adultery and voluntary abandonment, and on account of excesses, cruelty, threats, and grave injuries. An action for separation on account of the adultery of the husband is not admitted, except when he keeps a concubine in the house or notoriously in another place, or when circumstances concur such that the fact constitutes a grave injury to the wife. - Separation can also be demanded against the spouse who has been condemned to a criminal penalty, except in the case that the sentence is prior to the marriage and the other spouse was aware of it. - The wife can ask separation when the husband, without any just motive, does not fix a residence, or, having the means, refuses to fix it in a manner suitable to her condition."³

³ Art. 150-152.

(b) "Reconciliation extinguishes the right of asking separation; it also induces the abandonment of the demand which had been proposed."⁴

⁴ Art. 153.

Up to this time no full divorce is permitted.

V. Principal Civil Laws concerning Marriage in Germany.

N.B. "§ 1588. Ecclesiastical obligations in respect to marriage are not touched by the prescriptions of this section."

⁵ A summary of the new civil law concerning matrimonial matters, in force in Germany, is to be read ap. *Pelt, Canoniste*, XXIII, 1900, p. 321-331.

1134. 1° On betrothals. "§ 1297. From a betrothal one cannot sue for entering into marriage. The promise of a penalty for the case that entry into marriage does not take place is null."

1135. 2° On the impediments of marriage. (A) Diriment impediments. (a) Defect of solemnity: "§ 1324. A marriage is null, if at the celebration of marriage the form prescribed in § 1317 has not been observed. If the marriage has been entered in the marriage register and the spouses, after the celebration of marriage, have lived with each other as spouses for ten years, or, if one of them died before, until his death, yet at least three years, then the marriage is to be regarded as valid from the beginning. This prescription finds no application if, at the expiration of the ten years or at the time of the death of one spouse, the action of nullity has been brought."

(b) Defect of capacity: "§ 1325. A marriage is null if one of the spouses at the time of the celebration of marriage was incapable of transacting business or was in a state of unconsciousness or of a passing disturbance of mental activity. - The marriage is to be regarded as valid from the beginning if the spouse confirms it after the removal of the incapacity of transacting business, the unconsciousness, or the disturbance of mental capacity, before it has been declared null or dissolved. The confirmation does not need the form prescribed for the celebration of marriage."

(c) Bond: "§ 1326. A marriage is null if one of the spouses at the time of the celebration of marriage was living with a third party in a valid marriage."

(d) Consanguinity and affinity: "§ 1327. A marriage is null if it has been contracted between relatives or affines contrary to the prohibition of § 1310, paragraph 1."

(e) Crime: "§ 1328. A marriage is null if it was prohibited because of adultery according to § 1312. If afterward liberation from the prescription of § 1312 is granted, then the marriage is to be regarded as valid from the beginning."

(f) Defect of age: "§ 1331. A marriage can be contested by the spouse who, at the time of the celebration of marriage, or in the case of § 1325 at the time of confirmation, was restricted in capacity for transacting business, if the celebration of marriage or the confirmation occurred without the consent of his legal representative."

(g) Error and fraud: "§ 1332. A marriage can be contested by the spouse who, at the celebration of marriage, did not know that it was a matter of a celebration of marriage, or who indeed knew this, but did not wish to give a declaration that he wished to enter marriage. - § 1333. A marriage can be contested by the spouse who at the celebration of marriage erred concerning the person of the other spouse or concerning such personal qualities of the other spouse as, with knowledge of the state of the matter and with an intelligent weighing of the essence of marriage, would have kept him from

entering marriage. - § 1334. A marriage can be contested by the spouse who was determined to enter marriage by fraudulent deception concerning such circumstances as, with knowledge of the state of the matter and with an intelligent weighing of the essence of marriage, would have kept him from entering marriage. If the deception was not perpetrated by the other spouse, then the marriage is contestable only if this one knew the deception at the celebration of marriage. Contestation does not take place on the ground of a deception concerning property relations."

(h) Fear: "§ 1335. A marriage can be contested by the spouse who was unlawfully determined to enter marriage by threat."

N.B. "§ 1343. If a contestable marriage is contested, it is to be regarded as null from the beginning.

"The nullity of a contestable marriage which has been contested by way of action cannot, so long as the marriage has not been declared null or dissolved, be asserted in any other way."

1136. (B) Impedient impediments. (a) Defect of age: "§ 1303. A man may not enter marriage before the entrance of majority, nor a woman before the completion of the 16th year of life. - Liberation from this prescription can be granted to a woman."

(b) Defect of the consent of parents: "§ 1305. A legitimate child, until the completion of the twenty-first year of life, needs the consent of the father for entering marriage; an illegitimate child, until the same age of life, needs the consent of the mother. The mother takes the place of the father if the father is dead or if the rights arising from paternity according to § 1701 do not belong to him. A child declared legitimate does not need the consent of the mother even if the father is dead. - It is equivalent to the death of the father or of the mother if they are permanently incapable of giving a declaration or if their residence is permanently unknown."

(c) Illicit affinity and consanguinity: "§ 1310, 2°. A marriage may not be contracted between persons of whom one has had sexual intercourse with parents, ancestors, or descendants of the other.

"§ 1310, 3°. Relationship in the sense of these prescriptions exists also between an illegitimate child and his descendants on the one side, and the father and his relatives on the other side."

(d) Legal kinship: "§ 1311. He who has adopted another in the place of a child may not enter marriage with him or his descendants so long as the juridical relation founded by the adoption exists."

(e) Certain special matters concerning widows, minors, soldiers, banns: "§ 1313. A woman may enter a new marriage only ten months after the dissolution or declaration of nullity of her former marriage, unless she has meanwhile given birth. Liberation from this prescription can be granted.

"§ 1314. Whoever has a legitimate child who is a minor or who stands under his guardianship may enter a marriage only after the guardianship court has given him a certificate that he has fulfilled the obligations designated in § 1669 or that they are not incumbent upon him. - If, in the case of continued community of goods, a descendant entitled to a share is a minor or under guardianship, the surviving spouse may enter a marriage only after the guardianship court has given him a certificate that he has fulfilled the obligations designated in § 1493, paragraph 2, or that they are not incumbent upon him.

"§ 1315. Military persons or such state officials for whom, according to the laws of the state, a special permission is required for entering marriage, may not enter marriage without the prescribed permission.

"Foreigners for whom, according to the laws of the state, a permission or certificate is required for entering marriage may not enter marriage without this permission or without this certificate.

"§ 1316. The celebration of marriage ought to be preceded by a bann. The bann loses its force if the marriage is not contracted within six months after the execution of the bann.

"The bann may be omitted if the life-threatening illness of one of the betrothed does not permit delay of the celebration of marriage.

"Liberation from the bann can be granted."

1137. 3° On divorce. (a) Adultery, bigamy, and the sin of impurity against nature are a sufficient cause of divorce, provided nevertheless that the other spouse has not consented to or cooperated in these crimes: "§ 1565. A spouse can sue for divorce if the other spouse makes himself guilty of adultery, or of an act punishable according to §§ 171, 175 of the penal code.

"The right of the spouse to divorce is excluded if he consents to the adultery or to the punishable act, or makes himself guilty of participation."

(b) "§ 1566. A spouse can sue for divorce if the other spouse seeks after his life."

(c) "§ 1567. A spouse can sue for divorce if the other spouse has maliciously deserted him. Malicious desertion is present only: 1° if a spouse, after he has been condemned by final judgment to restore domestic community, for one year has not obeyed the judgment, against the will of the other spouse, with malicious intention; 2° if a spouse, for one year, against the will of the other spouse and with malicious intention, has kept himself away from the domestic community and the prerequisites for public service against him have existed for a period of one year. - Divorce is inadmissible in the case of paragraph 2, n. 2, if the prerequisites for public service no longer exist at the close of the oral hearing on which the judgment is issued."

(d) "§ 1568. A spouse can sue for divorce if the other spouse, by grave violation of the duties founded by marriage, or by dishonorable or immoral behavior, has culpably caused so deep a disturbance of the conjugal relation that the continuation of the marriage cannot be expected of the spouse. Gross ill-treatment also counts as a grave violation of duties."

(e) "§ 1569. A spouse can sue for divorce if the other spouse has fallen into mental illness, the illness has lasted at least three years during the marriage and has reached such a degree that the spiritual community between the spouses has been removed, and every prospect of restoration of this community is also excluded.

N.B. "§ 1570. The right to divorce ceases in the cases of §§ 1565 to 1568 by pardon."

"§ 1571. The action for divorce must be brought, in the cases of §§ 1565 to 1568, within six months from the time at which the spouse obtains knowledge of the ground of divorce. The action is excluded if ten years have elapsed since the occurrence of the ground of divorce. The period does not run so long as the domestic community of the spouses is removed. If the spouse entitled to the

action is summoned by the other spouse either to restore the domestic community or to bring the action, then the period runs from the receipt of the summons. The citation to the term of reconciliation is equivalent to bringing the action. The citation loses its effect if the spouse entitled to the action does not appear at the term of reconciliation, or if three months have elapsed after the end of the reconciliation procedure and the action has not previously been brought. To the running of the six-month and the three-month period the prescriptions of §§ 203, 206, applying to prescription, are correspondingly applied."

1138. 4° On separation as to bed and habitation. "§ 1575, 1° The spouse who is entitled to sue for divorce can, instead of divorce, sue for removal of the conjugal community. If the other spouse petitions that the marriage, if the action is founded, be dissolved by divorce, then judgment is to be given for divorce.

"§ 1586. If, according to § 1575, the conjugal community is removed, then the effects connected with divorce enter in, yet the entering of a new marriage is excluded. The prescriptions concerning the nullity and contestability of marriage find application as if the judgment had not been issued.

"§ 1575, 2° For the action for removal of the conjugal community the prescriptions of §§ 1573-1574 hold. - § 1576. If judgment has been given for removal of the conjugal community, then each of the spouses can, on the ground of the judgment, petition for divorce, unless after the issuing of the judgment the conjugal community has been restored. The prescriptions of §§ 1570 to 1574 find no application; if the marriage is dissolved by divorce, then the spouse declared guilty is to be declared guilty also in the judgment of divorce."

1139. We conclude the exposition of civil law and the Treatise on Marriage with these words of Leo XIII¹: "Since these things are so, all governors and administrators of public affairs, if they had wished to follow reason, wisdom, and the very utility of peoples, ought to have preferred that the sacred laws concerning marriage remain untouched, and to have employed the assistance offered by the Church for the protection of morals and the prosperity of families, rather than to call the Church herself into suspicion of enmity, and into a false and unjust accusation of violated civil right."

¹ Encycl. *Arcanum*.

Supplement to the Treatise on Marriage

SUPPLEMENT TO THE TREATISE ON MARRIAGE.

In this Supplement we shall speak: 1° on the impediment of impotence; 2° on the conjugal debt; 3° on fetuses to be baptized.

Since in some Seminaries questions of this sort are explained to deacons alone, but in others in their own place to all candidates of theology, we have judged it right to discuss them briefly in a Supplement, which can be inserted in this volume or removed from it, at the discretion of the Rectors of Seminaries.

ART. I. ON THE IMPEDIMENT OF IMPOTENCE. — I. NOTION OF IMPOTENCE.

1. 1° Impotence is indeed a natural impediment of marriage; but it belongs to the Church, insofar as she is the interpreter of natural law, to define wherein that impediment consists. Now impotence, insofar as it is a canonical impediment of marriage, is not impotence for begetting or sterility, but impotence for coition, or for having copula of itself apt for the generation of offspring. Hence for valid marriage the power of begetting is not required, but it suffices that there be the power of coiting in such a way that the man can pour forth seed within the vagina of the woman², and the virile seed can be mixed with the female ovule.

¹ *Decretals of Gregory IX*, book IV, title XI, *De frigidis et maleficiatis et de impotentia coeundi*; the Canonists on this title; St. Thomas, Supplement, q. 58, a. 1-2; Sanchez, book VII, disp. 92-114; St. Alphonsus, book VI, n. 1095-1105; Lehmkühl, n. 743-747; Bull. P., n. 864-891, ed. 3, 1900; Gasparri, *De Matrimonio*, n. 510-536; Eschbach, *Disputationes Physiologico-Theologicae*, Rome, 1901, disp. 11; id., *De novo quodam sterilitatis conceptu*, Rome, 1903; Antonelli, *De conceptu impotentiae*, Rome, 1900; id., *Pro conceptu impotentiae*, Rome, 1901; id., *Medicina pastoralis*, Ratisbon, 1905, vol. II, n. 42-293; Capellmann, *Medicina Pastoralis*, p. 162-169; *American Ecclesiastical Review*, Dec. 1902, p. 609; Jan. 1903, p. 57, etc.; Surbled, *La Morale dans ses rapports avec la Medecine*, 6th ed. 1900, vol. II, p. 113 sq.

² Indeed, according to some, such as Capellmann (p. 164), Ballerini P., n. 873, and others, impotence does not exist when the man can emit seed at the mouth of the vagina, so that the seed can be drawn into the vagina and uterus.

Indeed, marriage was established primarily for the procreation of offspring, but secondarily as a remedy for concupiscence; and therefore it is judged valid whenever this secondary end is obtained, even if the primary end by accident cannot be attained. Now whenever virile seed can be poured forth within the vagina of the woman, concupiscence is quieted, even if by accident conception cannot take place.

Hence the sterile contract validly, provided they can have copula with each other in the sense explained; but eunuchs who lack both testicles contract invalidly, because, even when they can penetrate the natural vessel of the woman, they cannot pour forth seed¹.

¹ Thus Sixtus V, *Motu proprio Quod frequenter*, June 27, 1587.

2. 2° Impotence is: (a) natural, when it arises from the very constitution of the body; accidental, when it comes from an extrinsic cause, e.g., from disease or wound; (b) antecedent, when it precedes marriage; subsequent, if it occurs after marriage already contracted; (c) perpetual, if it

cannot be removed by licit human means, nor means gravely dangerous; temporary, if it can be healed by licit human means and not otherwise gravely dangerous; (d) absolute, which exists in relation to any person whatever; relative, which exists only with such a determined person, e.g., because of defect of proportion between the sexual organs.

II. CONDITIONS THAT IMPOTENCE BE A DIRIMENT IMPEDIMENT.

3. 1° Principle: Antecedent and perpetual impotence invalidates marriage as regards all, if it is absolute; but if it is relative, with respect to that person with whom true copula is impossible.

(A) It is explained: (a) antecedent, for if it follows upon a marriage already validly contracted, it does not dissolve it.

(b) Perpetual, for if it can be removed, it does not render someone incapable of copula except for a time; but such a one can validly transfer the right over his own body, to be exercised as soon as the impotence has ceased. - Hence, if after marriage impotence of this sort is detected, much more probably there is an obligation of removing it, if this can be done without danger of life or of grave illness; for, since the right over one's own body has been handed over in order to generation, everything must be furnished which is morally possible lest the other party be defrauded of his or her right. But if the impediment cannot be removed without danger of life or of grave illness, there is no obligation of incurring such danger, because law does not oblige with so great an inconvenience¹.

¹ Today danger of this sort is often lacking, on account of the wondrous advances of surgical art.

4. (B) It is proved. The essence of the matrimonial contract consists in the handing over of the right over one's own body in order to acts of themselves apt for the generation of offspring, as is clear from the very definition of marriage; but one who labors under perpetual impotence for coition cannot give to another the right to copula, of which he is wholly incapable. - From this it follows that this impediment is of the law of nature and therefore indispensable; but if the impediment "is doubtful, whether by a doubt of law or a doubt of fact, marriage is not to be impeded" (*Code*, c. 1068, § 2).

5. 2° Corollaries. Therefore the following labor under impotence: (A) Men (a) lacking both testicles, because they cannot emit seed; (b) whose testicles are so crushed that they cannot perform their function; but if the testicles are hidden, it belongs to physicians in the particular case to discern whether they can produce seed or not; (c) whose virile member cannot be erected² (which defect the ancients called frigidity); or is so deformed that seed cannot be introduced into the vagina of the woman³; today this defect is easily remedied; (d) more probably those who have undergone vasectomy, namely by which the canal through which seed is carried to the virile member has been cut⁴; (e) those who always emit seed before they can penetrate the natural vessel; this defect, however, can for the most part be healed. - But phimosis, or excessive extension of the foreskin, which impedes the ejaculation of seed, can easily be corrected, and therefore is not an impediment.

² Cf. Eschbach, *op. cit.*, p. 146-149; Antonelli, vol. II, n. 220 sq.

³ This especially occurs when the urethral canal is open in the middle of the penis, or in the lower or upper part; this defect they call epispadias and hypospadias; on which see Capellmann, p. 163-164.

⁴ But this operation is illicit, unless for saving the whole body (below, n. 8); therefore it does not seem licit for rendering evil men sterile, since there are other means for protecting society against the multiplication of the evil. - Vermeersch (*De Castitate*, n. 73, 84) thinks this operation does not certainly invalidate marriage.

(B) Women (a) lacking vulva or vagina, because they are wholly incapable of copula; (b) more probably having vulva or vagina so closed or narrow that it cannot sufficiently be opened without danger of death or of grave illness⁵. - But vaginismus, by force of which the woman, from a lighter contact of the man, suffers atrocious pain, is not an impediment, because by its nature it is not incurable.

⁵ In this case conception can indeed take place by accident, because seed poured forth at the lips of the vagina is sometimes drawn into the uterus; but, since copula does not take place in the due vessel, not a few say that impotence still subsists; but others, much more probably, think that it ceases by that very fact, as soon as it is proved that conception has taken place: for then the two spouses are truly one flesh, and the marriage can be called consummated. Cf. Eschbach, p. 152; Berardi, n. 5158; Ball. P., n. 1269-1270 (873-874 ed. 3). - Moreover if a woman, laboring under perpetual impotence, undergoes a dangerous operation by which she is rendered potent, she can either pass to other nuptials, or contract again with her prior husband; the latter solution is wholly to be urged.

6. 3° Disputed question. Here, however, it is asked whether a woman whose uterus and ovaries are absent or have been excised¹ must be held truly impotent. (A) The reason for doubting is that, on the one hand, this woman remains apt for copula, since the vagina is left intact; but on the other hand, copula does not seem of itself apt for generation, since ova, absolutely necessary for conception, are wholly lacking. Hence theologians have gone into various opinions: some say this woman is truly impotent, because ovaries in a woman are required for conception no less than testicles in a man². - But others hold that she is indeed sterile, but not impotent: for that which is required and suffices for the essence of marriage is the power of coiting, not of begetting; but this exists, provided the vagina remains intact; if conception becomes impossible, that is related by accident, insofar as ova are lacking, just as they are absent in old women, who indeed are sterile, but not for that reason impotent³.

¹ Today that operation which is called Porro is performed without great danger, from the physician who first successfully performed it.

² Antonelli vigorously defends this opinion, op. cit.

³ Thus Eschbach, op. cit., p. 197-204; Berardi, *Casus Conscientiae*, year 1892, p. 22 sq., where he illustrates the matter thus by comparison: "An old woman of eighty or ninety years is certainly unfit for generation; and nevertheless her marriage is valid. But what difference is there? An old woman is a vine whose roots are dried up; a woman without ovaries is a vine whose roots have been cut off. Both without fruit, both incapable of generation. Therefore if the marriage of the first is valid, the marriage of the second also ought to be valid."

7. (B) On this matter the Holy Office, in two particular cases, responded thus. On February 3, 1887, to the question: "Whether a woman, rendered sterile by defect of both ovaries having been excised, can and may be permitted to enter marriage or not?"; the response was: "The matter having been maturely and long considered, the marriage of the woman concerning whom in the case is not to be impeded." - But on July 30, 1890, to the question: "Whether woman N. N., to whom by surgical operation the two ovaries and uterus have been removed, can be admitted to contracting marriage?"; the response was: "Marriage is not to be impeded." - Although these decrees do not have the force of a general law, a prudent confessor will follow them in practice, whenever it is not certainly established concerning the perfect and absolute

excision of the uterus and ovaries¹: for no one ought to be deprived of the natural right of marrying, unless it is canonically established that he or she is bound by some impediment. But if, by the judgment of physicians, the absolute excision were established, recourse would have to be had to the Sacred Congregations.

¹ According to Bucceroni (*Institut. theol. mor.*, vol. II, n. 994), His Eminence Parrocchi, secretary of the Holy Office, declared that the aforesaid responses regard only cases in which, by the judgment of experts, it was not altogether established concerning the perfect and absolute excision or absence of the uterus and ovaries.

8. Notes for practice. Here, however, it is fitting to advert to two things: (A) Excision of the uterus and ovaries is not licit except from a very grave cause. (a) This certainly exists when otherwise the life of the woman cannot be preserved; for, according to St. Thomas², since some member is part of the whole body, it must be disposed of according as it is expedient for the whole; therefore if some member is corruptive of the whole body, it is licit to cut off the putrid member for the health of the whole body.

² St. Thomas, II-II, q. 65, a. 1.

(b) According to Lehmkuhl (n. 856), this is also licit when danger of death, although not so immediate and certain, but nevertheless actually existing, is notably lessened by this operation; e.g., if, in a Caesarean operation, the danger becomes much less, granted that the uterus is extirpated; or if from an ulcerated uterus or one otherwise badly affected a grave danger of life is justly feared.

9. (c) Can the same thing be said when, from the very narrowness of the woman, without any disease, childbirth is foreseen to be very dangerous both for the woman herself and for the offspring? Most authors deny³, because it is not licit to cut off a member except for saving the whole body; but this would be done proximately in the case for preventing conception.

³ Lehmkuhl, n. 856; Capellmann, p. 27; Eschbach, p. 370-373.

(d) Finally it is certain that it is a very grave sin to permit this excision for this end only, that sterility be induced, and copula be able to be had without fear of offspring to be conceived.

10. (B) A woman who has undergone this operation cannot licitly contract marriage unless she makes the man whom she intends to marry more certain concerning this matter; for, since the primary end of marriage is the generation of offspring, she would deceive the spouse in a grave matter if, knowing very well that she is wholly unfit for generation, she manifested nothing to him concerning a matter of such moment.

11. 4° On the manner of acting as regards the impotent. (A) When it is certain that the impotence is antecedent and perpetual, regularly the spouses must be admonished that they separate as regards bed; otherwise they are exposed to danger of sinning against chastity. - It is said regularly, because often it is expedient to leave them in good faith, until the nullity of the marriage is declared by the ecclesiastical judge; for if they are imprudently admonished concerning the obligation of this separation, material sins which they previously committed now become formal. This is especially true when it is not expedient to declare the nullity of the marriage, whether because of scandal, or because of civil law, which does not admit such an

impediment; then they can be permitted to live as brother and sister, provided such cohabitation is not an occasion of sinning¹.

¹ Thus the Sacred Congregation of the Council, Dec. 15, 1877, apud Gasparri, n. 535.

But if no scandal or other grave inconvenience is feared, it is expedient that the matter be referred to the Bishop, so that by a twofold judicial sentence the nullity of the marriage may be pronounced²: then the party who does not labor under impotence can enter other nuptials; the other must remain unmarried, unless the impotence is only relative.

² The order to be followed is described in the Constitution *Dei Miseratione* of Benedict XIV, and in the Instruction of the Sacred Congregation of the Council, Aug. 22, 1840; and also in the Instruction of the Holy Office for making the process concerning the impotence of the man, and the non-following consummation of marriage; these documents you will find apud Gasparri, vol. II, p. 538-555; but it is set forth at length apud Bassibey, *Le Mariage devant les tribunaux ecclesiast.*, Paris, 1899; Smith, *Marriage Process*, Part III-IV; C. Sagnori, *Exemplar actorum forensium quibus inquirendum est de matrimonii nullitate ex capite impotentiae*, Rome, 1903; more briefly apud Peries, *Code de Procedure canonique dans les Causes matrimoniales*, Paris, 1894.

12. (B) If impotence is only doubtful, it is not licit to contract marriage unless, the matter having been canonically investigated, the doubt has been practically removed; but, with marriage already contracted, the spouses can attempt copula as long as hope remains of accomplishing it, even if by accident seed were poured forth outside the vessel; but when every hope has vanished, one must proceed as above. - By canonical law they can attempt copula in this way for three years; but today recourse is rather had to the Holy See for dispensation from a ratified and non-consummated marriage.
13. (C) Since it is often difficult to prove that impotence is antecedent and perpetual, the easier way for dissolving the bond is namely by seeking a dispensation concerning a ratified and non-consummated marriage. In order that this be granted, the non-consummation of the marriage must be proved; this is demonstrated according to the norm of the Bull *Dei miseratione*, issued by Benedict XIV, Nov. 29, 1741: (a) by the sworn testimony of the spouses; (b) by testimony of the seventh hand, i.e., by the testimony of seven witnesses both on the part of the man and on the part of the woman, who, under the faith of oath, depose that the spouses are worthy of trust, and moreover whether they have heard that the marriage was consummated or not; (c) by inspection of the bodies performed by physicians or surgeons; as regards the man, the physicians examine by decent means whether he is impotent or not; as regards the woman, midwives, first to be instructed by at least two physicians, investigate whether signs of virginity are present, especially whether the hymen is intact or not¹. All these things having been done, if it is morally certain that the marriage was not consummated, the Supreme Pontiff is accustomed to dispense in it.

¹ Cf. Instruction of the Holy Office, 1858; and Sept. 1890, apud *Acta S. Sedis*, XXVI, p. 37-41; Bassibey, op. cit., book III, n. 230-474; Smith, Part III-IV.

SCHOLION: ON HERMAPHRODITES.

14. Hermaphrodites are called those who are judged to participate in both sexes, so that they can at will carry out the office of one or the other sex. Today it is certainly established that such do

not exist, if we believe the judgment of experts.

² Cf. Eschbach, p. 53-54; Surbled, op. cit., p. 148-155.

But there are men who, besides the complete organs of one sex, have something from the organs of the other; others who are incompletely endowed with the organs of both sexes, so that they are impotent; and finally others concerning whose sex there is doubt, especially as long as they are not pubescent. These things being posited:

(a) Hermaphrodites in whom one sex prevails are to be adjudged to this sex, nor can they carry out the functions of the other: these can marry, since nothing proves them to be impotent.

(b) Those who in tender years are thought to be of the female sex, and afterward are proved to belong to the other sex, must assume male clothing; but before they are admitted to marriage, prudence demands that the judgment of physicians be sought concerning their potency.

(c) Finally those who remain neutral, so that neither sex prevails in them, are to be kept from entering marriage, as being impotent.

ART. II. ON THE CONJUGAL DEBT.

15. St. Paul sets forth the Christian doctrine on the conjugal debt thus²: "Let the husband render the debt to the wife, and likewise also the wife to the husband. The woman does not have power over her own body, but the husband; and likewise also the husband does not have power over his own body, but the woman. Do not defraud one another, except perhaps by consent for a time, that you may be free for prayer; and return again to the same thing, lest Satan tempt you because of your incontinence." - Therefore we shall speak 1° on the liceity; 2° on the obligation of the conjugal debt.

¹ St. Thomas, Supplement, q. 49 and 64; Billuart, disp. IV, art. 2-4; Sanchez, book IX; Lacroix, n. 287-400; St. Alphonsus, n. 900-954; Lehmkuhl, n. 833-850; Ball. P., n. 385-416, ed. 3; Aertnys, n. 480-515; Genicot, n. 543-554; Noldin, *De Sexto*, n. 60-94; Capellmann, p. 136-161; Eschbach, p. 105-120.

² I Cor. VII, 3-5.

§ I. ON THE LICEITY OF THE CONJUGAL DEBT.

Division:

On the liceity of conjugal copula.

On licit and illicit things between spouses.

On conjugal onanism.

I. ON THE LICEITY OF CONJUGAL COPULA.

16. 1° On the liceity of conjugal copula by reason of the end. That marital copula is in itself an honorable, laudable, and therefore meritorious work has already been proved elsewhere. But here it is asked what end the spouses ought to intend in order that such an act be licit.

(a) It is certain that the conjugal act is licit when it is exercised for the ends on account of which marriage was instituted by God, namely for the generation of offspring, - as a remedy for concupiscence, - or for satisfying the consort legitimately asking; for then the pleasure which the spouses enjoy is ordered to a superior end intended by God Himself.

(b) It is likewise certain that the same act is licit whenever it is performed for any honest end whatever, e.g., for fostering conjugal love, for the health of the body; for an act good of itself, elicited for an honest end, cannot be evil; moreover any honest end ultimately tends toward the ends intended by God in the very institution of marriage.

17. (c) It is also certainly established that that act is illicit, at least venially, when it is so exercised for pleasure alone that all honest ends are positively excluded: for then there is present a perversion of the order of nature, while one wishes to enjoy venereal delight against the order intended by God, by positively excluding every end by which such an act can be rendered honorable. The sin is grave if means are employed for preventing generation, as is said below, n. 40; venial, if means of this sort are not employed.

(d) But if the conjugal act is indeed exercised for pleasure, yet in such a way that honest ends are not excluded, nor even virtually included, certainly mortal sin is not committed; indeed, according to some¹, there is no venial fault, because it is licit to seek delight good in itself, without its being positively referred to an honest end, provided this end is not excluded. Nevertheless, according to the common opinion², it is a venial sin to exercise the conjugal act for pleasure alone, not referring it virtually to some honest end; for since delight is a means to an end, and is annexed to the operation so that we may elicit the act more easily and better, it is a disorder to stop in delight as in an end, and in no way refer it to an honest end. - In this sense this ninth proposition was deservedly condemned by Innocent XI, March 2, 1679: "The conjugal work exercised for pleasure alone is entirely free from all fault and venial defect."³ - But in practice most spouses either virtually refer this act to an honest end, or think themselves guilty of no fault, provided they have copula rightly, and they can be left in good faith⁴.

¹ Thus especially Ball. P., n. 323-361, ed. 3, with the authors cited there.

² Cf. *Vindiciae Alphons.*, p. 822-840.

³ Apud Denzinger, n. 1026; cf. Viva, *Thes. damnat.*, in this place.

⁴ If someone wishes to instruct penitents concerning right intention and moderation in the conjugal debt, let him refer them to St. Francis de Sales, *Introduction a la Vie devote*, Part III, chap. 38-39.

(e) But if delight is intended secondarily and moderately together with another honest end, there is no sin, even venial, because delight is sought in an ordered way as a means to something good.

18. Corollaries: (a) Spouses sin gravely who exercise copula with an adulterous affection, i.e., thinking of another person as present and desiring to have copula with that person; for then they affectively commit adultery. But if they think of another person, and of that person's beauty, so that they may excite themselves for the conjugal act, without any depraved desire, they do not sin; nevertheless this is dangerous, since the will is easily carried toward the object thought of.

(b) The conjugal act is licit for the sterile, for whom there is no hope of begetting offspring; for, besides the generation of offspring, there are other honest ends, e.g., quieting of concupiscence, by which copula can be rendered honorable. - Nor do those sin even venially who use marriage as a remedy for concupiscence: for this is one of the ends on account of which marriage was instituted; moreover one who wishes to avoid incontinence, by that very fact intends to preserve conjugal chastity.

19. (c) Spouses who, because of poverty or another honest end, internally desire that offspring not be conceived from copula, do not sin, provided they use no illegitimate means for impeding generation.

(d) The conjugal act is licit even if it is foreseen that perhaps the woman is going to suffer abortion or give birth to dead offspring; for such an effect occurs by accident, and therefore can be permitted for an honest end, e.g., the quieting of concupiscence. But the offspring conceived, even if it be deprived of supernatural beatitude, can enjoy a certain natural happiness, as is explained in the *Treatise on God the Creator*, n. 205.

20. 2° On the liceity of the conjugal act by reason of circumstances. (A) Things to be noted beforehand. (a) That copula be done legitimately, three things are generally required and suffice: penetration of the due vessel, or vagina; effusion of seed within the vagina; and retention of the seed by the woman, so that it can be drawn into the uterus and, at the opportune time, fecundate one of the ova which descend from the ovaries. - The general principle is that those sin gravely who knowingly and willingly do not observe these three things substantially in exercising copula; for then they act against the primary end of marriage.

21. Nevertheless, since today it is established that conception can take place without penetration of the vagina - provided that virile seed is poured forth at the lips of the female organ - the man who, because of some defect, cannot accomplish copula more perfectly can perform it in this imperfect manner, even if by accident part of the seed is lost; for, provided there is hope of begetting offspring, spouses can attempt coitus in the better manner in which it can be done.

(b) When these three things have been substantially observed, disorder concerning the accidentals of copula does not exceed venial sin, provided nevertheless that from the disordered circumstances there does not follow grave scandal or some other spiritual or temporal harm. The reason is that, these things being observed, generation can take place and the primary end of marriage be obtained.

22. (B) On the position of copula. (a) The natural position is that the man be above and the woman beneath, since this mode is generally more apt for the infusion of seed. Nevertheless no position, even unnatural (sitting, standing¹, or with the woman above, etc.), of itself impedes generation, since seed can ascend into the uterus by attraction; hence change of the natural position does not exceed venial sin, provided the danger of pouring forth all the seed outside the vessel is excluded; even if a not small part of the seed is dispersed by accident, it is not mortal sin, because the smallest part of seed suffices for fecundation.

¹ According to experts of the medical art, to exercise copula sitting and especially standing can induce certain diseases. Cf. Vigouroux, *Tr. de Medecine*, vol. IV, p. 65. Hence on this head spouses are to be kept from a position of this sort.

(b) If a change of the natural position is made for a legitimate cause, e.g., because of danger of abortion during the time of pregnancy, or because of difficulty of coming together otherwise, there is no sin, even venial.

Hence in practice spouses must not be questioned concerning the position which they employ in exercising the conjugal act, since this is not necessary for the integrity of confession. If they inquire concerning it, let it be answered that the natural position is to be observed insofar as it can be done. If they accuse themselves of an unnatural position, let it be asked only whether they so act in order to impede generation.

23. (C) On place. (a) Modesty and charity demand that the use of marriage can take place only in a secret place, lest scandal be furnished to others. Therefore those sin gravely who have copula before others, especially younger persons, who can suffer scandal from it. Therefore parents must take care lest children sleeping in the same bedroom acquire knowledge of the marital matter.

(b) In a sacred place the use of marriage is prohibited under penalty of sacrilege, outside a case of necessity, which today will hardly ever occur.

24. (D) On time. (a) By today's discipline the conjugal act is strictly prohibited on no feast days. It is nevertheless more advisable to abstain from asking the debt on feast days, or days of fasting, and on the night preceding Holy Communion; nevertheless it is to be rendered to one legitimately asking, especially if in the other consort danger of incontinence could be feared. Hence those who have had copula in an honorable manner must not be kept from Communion.

(b) During the time of the ordinary menstrual flow, copula is not illicit of itself¹, since conception can then take place, and indeed more easily than at another time². But women, when they suffer the flow, naturally abhor every marital congress; moreover not without danger to health do they render the conjugal debt; the man himself can contract some disease (urethritis), if the blood which remains in the vagina is in some way vitiated³; hence it is more advisable at that time to abstain from copula. - During the time of an extraordinary flow, which endures for a longer time, copula is licit, provided the disease under which the woman labors and which causes the flow is not much aggravated by it: concerning this the physician will judge. But the man who cares for the health of his wife will abstain in these circumstances from frequent copula, so that that disease may more easily decrease and be cured.

¹ Under the Old Law it was prohibited, and indeed under penalty of death (*Levit.*, XV, 19-20; XX, 18); perhaps because in warm regions that flow is wont to be more copious, and the part of the blood which remains in the organs is easily corrupted, and can induce very bad diseases in the man coiting.

² Hence the sterile can be admonished to have copula at the time of menstruation, if at other times they have not conceived.

³ Vigouroux, op. cit., p. 64. - It is in no way to be feared that, through copula had at that time, leprosy is contracted or monsters are generated: for this is a fable long since exploded.

25. (c) During the time of pregnancy, copula is not of itself illicit although generation can no longer take place, because there can be other ends for rendering it honorable. But by accident it can be illicit because of danger of abortion. Now that danger in healthy wives is not probable, if copula is had moderately; but unrestrained and often repeated copula can easily induce abortion, especially in the first⁴ and last times of pregnancy, and under this respect it is more or less illicit according to the gravity of the danger which it brings.

⁴ The state of beginning pregnancy is not easily recognized; nevertheless, if the spouses suspect pregnancy, moderation in copula must be recommended to them.

26. (d) During the time of puerperal purgation, which follows childbirth, copula is illicit not indeed because of itself, but because of the harm which threatens the wife¹, and therefore gravely or lightly, according as the harm brought is grave or not. Now, according to Capellmann (p. 154), generally during the first two weeks after childbirth grave harm can be brought, and light harm during the four following weeks; but account must also be taken of the condition of each person in particular. When the harm which is feared is light, a reasonable cause excuses from every sin.

¹ "Childbed brings many things with it which at any other time would have to be called morbid, although here they are physiological... The things which happen at this time in the organs of generation, the changes and injuries produced by pregnancy, already of themselves dispose to various diseases: to flows of blood, inflammations, aberrant positions of the uterus." (Capellmann, p. 154).

27. (e) During the time of lactation, copula is licit; for the danger of infecting the milk, and therefore of harming the offspring, concerning which older authors speak, does not exist in any way. If a new conception occurs (which rarely happens during the time of lactation), the milk indeed is lessened and soon ceases, but is not corrupted; and the offspring can be nourished by artificial lactation. Hence spouses are not bound to abstain from copula during the whole time of lactation.

28. (f) During the time of illness of either spouse, the use of marriage is illicit when grave danger of life or health can prudently be feared from it; but if the danger is neither proximate nor certain, a grave reason excuses: concerning this a physician is to be consulted.

1. When there is question of syphilitic or venereal disease, copula is gravely illicit, because of the morally certain danger of infecting the consort and the offspring²; this danger is so grave and dreadful that, although the older theologians speak more mildly concerning it, moderns with Capellmann (p. 159) deservedly say: "In this matter I judge that not even the danger of incontinence is an honesting cause."

² Concerning this Capellmann writes, p. 159: "Infants are syphilitic like the parents, at least for the most part, even when the syphilis of the parents lies hidden; abortion will be very frequent, or an immature infant is brought forth, or the very infants born mature perish most miserably in the first months of life. Hundreds of infants in this way, and often not even baptized, pay for the sins of the parents." How dreadful syphilis is, authors on medical matters describe, e.g., H. Vigouroux, *Traite de Medecine Pratique*, vol. IV, p. 202-304; Duclaux, *L'Hygiene sociale*, Paris, 1902, p. 224-266; Surbled, op. cit., p. 76-99; Stall, *What a Young Man ought to know*, ch. IV-VI.

2. In contagious diseases which can induce death in a short time, copula is not licit, since no one is master of his own life; in others, where such danger is only remote, e.g., in phthisis, it is licit for a grave cause.
3. In non-contagious diseases, copula is illicit if they are joined with fever and great pain, since these ordinarily are much aggravated through copula, and in certain cases danger of death is present. Almost the same must be said of chronic illnesses by which the organs of generation in women are affected; for although they are judged light at the beginning, through the use of copula they are often aggravated, so that afterward they are not easily healed. Hence, if the physician judges that one must abstain from copula for some time, it is fitting to obey his commands. - But if the diseases are lighter and not greatly debilitating, they do not easily become worse through copula; and therefore they do not prohibit the use of marriage.
29. (g) Copula, after much drinking of intoxicating liquors, is not licit, because offspring conceived in drunkenness is in danger lest it be born foolish or deaf-mute or liable to drunkenness. After a copious meal the use of marriage is not free from danger, and even today's physicians assert that "not rarely those passing from table to copula are struck by sudden death"; nevertheless the danger for healthy men is not proximate. In antiquity it was held that copula after a bath or bloodletting was dangerous and therefore illicit; but this is denied by moderns.

II. ON LICIT AND ILLICIT THINGS BETWEEN SPOUSES.

30. Besides copula itself there are other acts more or less connected with it, concerning whose liceity one must inquire. Now there are three principles from which the morality of these acts can be judged: (a) whatever is truly useful for the generation of offspring is absolutely licit; (b) whatever is done besides, but not against, generation does not exceed venial sin; (c) whatever works against conception is mortal. This must be explained a little more fully.
31. 1° Whatever is useful for the generation of offspring is absolutely licit. (A) Imperfect venereal acts, whether mutual or solitary, such as looks, touches, embraces, kisses, conversations, etc., are licit for spouses when they wish to accomplish copula, insofar as they conduce to performing the conjugal act more perfectly and easily. For when the end is licit, by that very fact the means naturally ordered to the end are licit; now all those acts are ordered to copula and are as it were its beginning. - Nevertheless spouses ought not to linger too long in acts of this sort, lest perhaps pollution follow before copula; for if they intended effusion of seed outside marital copula, they would sin gravely, since they would seek complete venereal delight against the order of nature. But if sometimes pollution follows besides intention while they occupy themselves with these previous acts, there is no sin.
32. (B) Hence, if the man has emitted seed before the woman emits seed¹ (which not rarely occurs, since many women are colder than men), she can by touches or another mode excite herself to emission; for although the seed of the wife is not necessary for generation, it completes the conjugal act and quiets concupiscence; and if women, after irritation of the organs which arises from copula, were held to restrain nature, they would often be exposed to danger of sinning gravely. Moreover seminal emission of this sort contributes something so

that the virile seed may more easily and more certainly ascend into the uterus and be joined with the ovule, and therefore favors conception.

¹ Here there is not question of true seed, which in women is nothing but the ovum; but of the vulvo-vaginal secretion which is emitted with pleasure.

Some think that this is also licit for the woman when the man, an onanist, withdraws himself before emission²; for since, as we suppose, she legitimately began the conjugal act, she can complete the same: otherwise, the genital organs remain irritated. But it is more commonly taught that this is not licit³; for since the man has not emitted seed within the vagina, conception cannot take place, and emission on the part of the woman would be pollution.

² Capellmann, p. 143-144.

³ Lehmkuhl, n. 858; Noldin, n. 65.

33. 2° Whatever is done besides, but not against, the generation of offspring, does not exceed venial sin. For venereal delight is licit for spouses when it is referred to some honest end, as was said above (n. 16); but if it is taken on account of itself, it is only venially illicit, provided danger of pollution is absent and nothing is performed against the chief end of marriage; for the disorder which is found in such acts is accidental and light. Hence:

(A) Mutual imperfect acts (touches, kisses, embraces, etc.), even when they are not ordered to copula, nor rendered honorable by any honest end, but are exercised for pleasure alone, are only venially illicit¹, provided proximate danger of pollution is absent, even if sometimes pollution should follow by accident: for then it is neither foreseen nor willed. Indeed, acts of this sort are altogether licit if they are rendered honorable by some honest end, e.g., for fostering mutual love, etc.

¹ Nevertheless those acts which are very obscene are commonly excepted, e.g., to put the genitals into the mouth of the woman, to penetrate the posterior vessel, to lick the genitals, etc. But these acts are gravely illicit, not precisely because obscene, but because for the most part they induce grave danger of pollution; hence, if in fact in certain persons such a danger did not exist, sodomitical affection having been excluded, they would not be gravely sinful. Nevertheless spouses are to be deterred from these, lest, the sense of conjugal modesty having been lost, they fall into worse things.

(B) Solitary imperfect acts, e.g., base touches exercised on one's own body, are indeed venial sins because they are done for pleasure alone; but not mortal, if they are performed without proximate danger of pollution. But those who so indulge themselves at a time when marital copula cannot be had easily expose themselves to the danger of proceeding further; not so if in those circumstances in which legitimate copula can be exercised, since, danger occurring, they can ask the debt.

34. 3° Whatever is against the generation of offspring is gravely illicit, since it is opposed to the primary end intended by God in the institution of marriage. Hence:

(A) Voluntary pollution outside conjugal copula, and whatever can induce proximate danger of pollution, are no less illicit in the married than in the unmarried; indeed they are graver, because besides chastity, the right of the other consort is injured; for, as St. Paul says², "the woman does not have power over her own body, but the man; and likewise also the man does not have power over his own body, but the woman." Hence also copula with a strange person is adultery, including two mortal sins, one against chastity, the other against justice; and if adultery is had between two married

persons, there are three sins, one against chastity and two against justice, because the rights of two are injured. This indeed is true even if the other spouse cedes from his or her right; for here there is question of the right which arises from the very unity of marriage, as it has been established by God under the New Law, and therefore it cannot be alienated by the private authority of the spouses.

² I Cor., VII, 5.

Even in the wife pollution is a grave sin; for although it is not the effusion of prolific seed, but only the secretion of some humor useful for generation, but not necessary, nevertheless it is joined with complete venereal delight, and therefore ultimately is referred to generation; therefore to induce it, without any order to conjugal copula, is a grave disorder, since it is done against the order intended by nature.

35. (B) Sodomitic copula had between spouses is also a grave sin, i.e., penetration of the posterior vessel with effusion of seed in the same; for it is a grave disorder against nature, since it renders conception impossible; and also against conjugal fidelity, which forbids spouses to use the body of the consort except in a mode apt for generation; it also induces very bad diseases in the woman¹.

¹ See these described apud Surbled, op. cit., vol. II, p. 58-63.

Nevertheless to begin copula in the posterior vessel with the intention of consummating it in the vagina; or to touch the posterior vessel with the genitals, provided the effusion of seed is forestalled, and every sodomitical affection is excluded, are probably not mortal sins: because the former act is done as a preparation for copula in the due vessel, but the latter is only a touch between spouses not prohibited under grave obligation. Nevertheless they are to be exhorted to abstain from these things, as being indecent, and lest perhaps they soon commit sodomy itself.

An act by which spouses come together after the manner of animals, yet so that copula takes place in the due vessel, must be distinguished from the sin of sodomy; in which case some say that they came together in a posterior manner or from behind. Then the confessor ought to ask whether generation was possible in this mode or not; if they answer that it was possible, it is inferred that the act was not sodomitical, but only disordered in position; and this sin indeed does not exceed venial sin.

36. Here it is asked whether a wife can cooperate with sodomitical copula. The Sacred Penitentiary, April 3, 1916², responded thus: "But if the husband should wish to commit with her the crime of the Sodomites, since this sodomitical coitus is an act against nature on the part of each spouse thus coiting, and it is gravely evil by the judgment of all Doctors: hence, for no cause at all, not even to avoid death, can the wife licitly comply with her immodest husband in this matter." Therefore the opinion of those who, before this decree, thought that the woman could suffer that concubitus in order to avoid death cannot be admitted; but the common doctrine must be held, namely that that cooperation, even passive, is a sin against nature.

² Apud Marc, *Institutiones Morales*, 16th ed., 1920, n. 2116.

(C) Onanistic copula is also gravely prohibited; it must be treated specially because of its frequency and depraved consequences.

37. Corollaries. (A) On artificial fecundation. This occurs when virile seed cannot naturally be retained in the female organs; then, by the aid of a syringe, it is introduced into the uterus itself, often with a happy outcome, i.e., with conception of offspring. This can be done especially in a twofold mode: (a) legitimate copula having first been had between spouses, the seed received in the vagina is drawn out by the aid of a syringe and injected into the uterus; (b) the man pours forth seed by solitary or onanistic pollution, which by syringe is introduced into the organs of the woman. Now the former mode is not illicit, provided fecundation cannot take place naturally, because it is employed only for aiding nature; but the latter is gravely illicit, because the means employed, namely directly voluntary pollution, is something evil in itself. Hence the Holy Office, March 24, 1897, when this doubt was proposed: "Whether artificial fecundation of a woman can be employed?", responded: "It is not licit."¹

¹ Apud *Acta S. Sedis*, XXIX, p. 704.

38. (B) On the internal sins of spouses. (a) It is a grave sin to wish for copula with a strange person, or to rejoice concerning copula had or to be had with that person: for this is nothing else than internally to consent to adultery.

(b) Venereal delight concerning copula had or to be had with one's own spouse, or the desire of it, the proximate danger of pollution nevertheless being excluded, is not a sin: because it is joy or desire concerning a licit thing. Hence, if one spouse is absent, a vivid thought of this sort is very dangerous, since on the one hand it induces danger of pollution, and on the other this danger cannot be averted through marital copula. In every case spouses are to be exhorted to abstain from these delights, since for the most part they are sought for pleasure alone.

(c) Delight or desire concerning acts between spouses venially illicit is a light sin; concerning things prohibited under grave obligation it is a grave sin; for delight and desire put on the morality of the object sought.

III. ON CONJUGAL ONANISM.

39. 1° Notion of onanism. Onanism properly so called, or conjugal onanism, is copula so performed that, although the effusion of human seed is present, the conception of offspring is rendered impossible. This is effected in various modes: (a) on the part of the man, if, copula having begun in the due vessel, he withdraws before emission and pours forth seed outside the vessel²; or covers the virile member with some thin covering (in French *capotte anglaise*, in English *French coat*, commonly *condom*) within which the emitted seed is retained; (b) on the part of the woman, when she uses a sponge, or an occlusive covering, by which the entrance of virile seed into the uterus is blocked; or an irrigator, by which seed received in the vagina is washed out; or chemical substances by which the seed is killed.

¹ Besides the authors already cited, cf. Nardi, *De Onanismo*, apud Appendices to Billuart, p. 549 sq.; *Ami du Clerge*, XX, 1898, p. 1073 sq., 1105 sq.; XXI, 1899, p. 328-331; Surbled, op. cit., I, p. 181-204.

² This was the crime of Onan (hence the word onanism), who, "going in to the wife of his brother, poured forth seed upon the ground, lest children should be born in the name of his brother" (*Gen.*, XXXVIII, 9). Yet it must be noted that there Onan is especially reprehended because, against the law, he was unwilling to raise up children for his deceased brother. - Onanism is also called Malthusianism from Malthus, who in the work *Essay on the Principles of Population*, 1878,

proposed means of impeding the excessive multiplication of men; yet he himself does not advocate illicit means, but rather voluntary continence as soon as a sufficient number of children has been procreated. - In the broad sense, among physicians, onanism also designates solitary pollution committed.

40. 2° The malice and depraved consequences of onanism. (A) Onanism voluntarily committed is a grave sin against nature. For copula of itself is ordered so that the human species can be propagated, and therefore spouses, while they legitimately occupy themselves with the matrimonial work, are helpers of God and cooperators in the procreation of a most noble creature, which is destined for divine adoption; but onanists, by using illegitimate means for preventing conception, frustrate nature; they abuse the organs given to them against the order intended by God; they become guilty of a certain sacrilege, while they change a most noble thing into a most base act of ignominy of passion, and convert the immaculate marriage bed into a brothel; moreover they show themselves cruel while, for the sake of a most shameful pleasure, they positively refuse to concur with God in procreating infants¹, who could have been citizens of the heavenly fatherland. - Therefore deservedly the Holy Office, May 21, 1851, condemned the following proposition²: "It is probable that that use of marriage (onanism) is not prohibited by natural law."

¹ This also the Pagans recognized; hence Martial the poet said concerning pollution (*Epigram.*, book IX, 42): "Believe that nature herself says of things: That which you lose with your fingers, Ponticus, is a man!"

² Apud *Ami du Clerge*, XX, p. 1077; there you will find other responses of the Holy See on this matter.

41. (B) Ruinous consequences follow from onanism. (a) The spouses themselves often suffer many evils from it; for just as children are the common good and common bond by which spouses are joined more firmly and closely, so on the other hand those who lack offspring much more easily disagree and separate from one another. - Nor should it be said that one or another child suffices for attaining this end; for the more numerous the offspring, the firmer the union of the spouses; moreover not rarely are onanists punished by the premature death of one or another child whom they had begotten; hence often parents of an only child are pressed by anxieties and fears, lest perhaps this child be taken from the living and the name of the family be blotted out. - Besides, marital copula which, legitimately performed, is a remedy for concupiscence, does not quiet it but inflames it when it is performed onanistically; especially the woman is not completely delighted, nor does she rest unless the uterus is irrigated by virile seed tempering its heat. - Hence also physicians cry out with one voice that onanists are liable to many diseases³, which arise especially from excitation of the nerves; for the disturbance which intercourse causes is not quieted except by the natural effusion and reception of virile sperm.

³ Apud Eschbach, p. 573-574; cf. Surbled, op. cit., vol. I, book II, ch. 11-12.

42. (b) Offspring also not rarely suffers some detriment from the onanism of the parents, which the Council of Puy⁴ describes thus, 1868: "Very often it happens that that son, brought up too indulgently, either by God's command shortly ends his life, or, having become worse with age, deprived of the sweet love and protection of brothers and sisters, loving himself, not obeying his parents, proud, ungrateful, without affection, afflicts his family with disgrace and grief."

⁴ Chap. VI, n. 8, apud *Collect. Lacens.*, vol. IV, p. 830.

43. (c) Nor does onanism harm society less. Indeed, the principal strength and protection of society is placed in the number and virile education of citizens; but onanism, by impeding generation, lessens the number of citizens, so that nations once flourishing gradually decline; it likewise stands in the way of the virile education of boys: for where there is an only son, he is generally brought up more indulgently, is devoted to pleasure rather than to duty, and often becomes wholly useless to the fatherland. - Nor must it be feared that men will multiply beyond measure; for today there are many regions still uncultivated, and new means are discovered by which fields already cultivated can bring forth more abundant fruits; hence trust is to be placed in Him who said: "Increase and multiply, and fill the earth"¹; for He Himself will provide.

¹ *Gen.*, I, 28.

44. 3° On the cooperation of the wife with onanistic copula. (A) If the cooperation is formal, so that the wife truly consents to it or rejoices in it, or a fortiori herself uses means for preventing conception, she certainly sins gravely. The same must be said if morally and efficaciously she cooperates with this crime, by complaining about numerous offspring, about the pains of childbirth, and at the same time foreseeing that by these complaints the man is induced to onanistic congress.

If the wife rejoices not in the sin itself, but in the pleasure which is experienced in copula of this sort before the man withdraws himself, or in the effects of this sin, e.g., in preservation from the troubles and labors of pregnancy or childbirth, by that very fact she is not guilty of mortal fault; for, strictly speaking, she can rejoice concerning these, provided she detests that sin and seriously tries to impede it. Nevertheless, since it is greatly to be feared lest complacency concerning the effects pass into complacency concerning the sin itself, it is to be advised to her that she quickly turn her mind away from that joy, and before God protest that she does not approve such abuse.

45. (B) If the cooperation is material, i.e., if the wife suffers or permits onanistic copula, without approving it in any way, a distinction must be made: (a) when onanism is performed by the withdrawal of the man alone, the cooperation of the woman is permitted from a grave cause, e.g., for avoiding quarrels, or the adultery of the husband, or her own incontinence; indeed the wife can ask the debt from an onanistic man, because of a grave reason, e.g., because it is grave for her to abstain so long from the use of marriage. For there is question of an act which in itself is licit, and which the man can furnish in a licit mode, if he wishes; and, even if it is foreseen that he will sin from his own malice, this can be permitted, provided there is sufficient reason. Hence in this case the wife can consent to the pleasure arising from this copula, since she herself completes the conjugal act in a legitimate mode.

Nevertheless by prayers, blandishments, admonitions, signs of displeasure, or other means she ought to induce the man to have copula in a legitimate mode; to this she is held, not indeed on each single occasion, but at an opportune time, both by the obligation of fraternal correction, and lest otherwise she seem to consent¹.

¹ "Nevertheless let the petitioner admonish a wife of this sort, that she not cease prudently to warn her husband that he desist from this turpitude." (Sacred Penitentiary, Nov. 5, 1816).

46. (b) But when onanism is performed condomistically, i.e., with the instrument commonly called a condom, within which the virile seed is retained, regularly not even the material cooperation of the wife is licit; for such congress is intrinsically evil already from the beginning, since it renders conception impossible: and to cooperate with it is a grave sin. Therefore the wife ought positively to resist with all her strength. For the man in this case is deservedly equated with an oppressor, and therefore the woman ought to oppose that resistance which a virgin opposes to an invader, as the Sacred Penitentiary declared, June 3, 1916². Nevertheless, just as a woman oppressed by a man is not bound to resist him even to death: then she does not permit, but only suffers the abuse of marriage, every affection toward evil delight having been excluded.

² Apud Marc, n. 2117.

This doctrine is confirmed by the response of the Holy Office, April 6, 1853: "1° Whether the imperfect use of marriage, whether it be done onanistically or condomistically, according as in the case, is licit? - Negatively; for it is intrinsically evil. 2° Whether a wife, knowing, in condomistic congress can passively offer herself? - Negatively; for she would give assistance to a thing intrinsically illicit."¹

¹ Apud *Ami du Clerge*, loc. cit., p. 1077.

47. 4° On certain acts approaching onanism. (A) If marital copula is interrupted because of some necessity, e.g., to avoid scandal which would be suffered by a person fortuitously arriving, there is no sin, even if seed is poured forth outside the vagina; for this is done besides intention, to avoid a greater moral evil, and therefore is no more culpable than involuntary pollution.
48. (B) If two spouses, exercising the conjugal act, by mutual consent break off copula before emission, without there being danger of pouring forth seed outside the vessel, strictly speaking they probably do not sin gravely, especially if there is a grave reason for acting thus, e.g., to avoid very dangerous childbirth, or lest offspring be excessively multiplied; for copula in this case is only an immodest touch which, between spouses, danger of pollution being excluded, is not gravely illicit. Nevertheless ordinarily spouses are to be kept from such a manner of acting; for often there is present danger of pouring forth seed outside the vessel; and moreover those who act in this way are commonly led by pleasure alone, and easily fall into onanism².

² You will find this question set forth more fully apud *N. Rev. Theol.*, XXXII, 1900, p. 579-635; *Collat. Brug.*, VI, 1901, p. 466-478.

Hence if the man began copula with the intention of emitting seed within the vessel, but, because of weariness or weakness or spasm or another reason of this sort, foresees that effusion of seed very probably will not follow even if copula is prolonged further, he can cease from copula, even if the wife has already emitted seed; for no one is held to the impossible.

49. (C) The practice of having copula only at those times at which conception rarely occurs differs altogether from onanism. Namely, according to the laws of physiology, generation of offspring happens much more easily three or four days before and fourteen days after the beginning of menstruation; while it occurs only rarely from the fifteenth day to the few days which precede the recurrence of the menses; therefore if copula is had only at this time, which is called the

time of agenesi, conception is indeed possible, but not very probable. Moreover, such a manner of acting is not sinful, since spouses can contain themselves as long as they wish, and moreover they do nothing against the end of marriage at the time when they come together. Deservedly therefore the Sacred Penitentiary, June 16, 1889, responded¹: "Spouses using marriage in the aforesaid mode are not to be disturbed, and the confessor can insinuate the opinion concerning which there is question, cautiously nevertheless, to those spouses whom he has tried in vain to lead away in another way from the detestable crime of onanism."

¹ Apud Bucceroni, *Enchirid.*, n. 913.

50. (D) Wives who, while they exercise the conjugal act, try to avoid emission, and because of this turn the mind to other things or procure sensible pain for themselves, objectively do not sin, because feminine distillation is not necessary for generation; but sometimes they sin subjectively, because they do it for the end of impeding conception; hence they are to be admonished that all efforts of this sort are altogether useless. - The same must be said of those who, immediately after copula, rise or urinate; for thus conception is not impeded, because the uterus soon draws the seed and, once it has been received, is immediately closed; but the very intention of expelling seed is a mortal sin.
51. (E) If, because of an organic defect, the wife cannot retain virile seed, nevertheless she licitly exercises copula, because she does nothing against the order of nature, and if the seed is cast out, this cannot be imputed to her. But every act by which the received seed is voluntarily expelled or killed is a grave sin. Hence women ought not to irrigate the vagina immediately, but only several hours after copula (according to certain experts of the medical art, ten or twelve)².

² Surbled, op. cit., vol. I, p. 202.

52. 5° On the manner of acting of confessors as regards onanists. (A) According to the Sacred Penitentiary, March 10, 1886³, since this unspeakable vice is widely prevalent, confessors ought to try to uproot it; for accomplishing this: (a) when there is founded suspicion that penitents who are wholly silent about onanism are addicted to this crime, the confessor is regularly held prudently and discreetly to question them, asking, e.g., whether they have sinned against the sanctity of marriage, - or whether there is anything which bites the conscience concerning the use of marriage. If they answer negatively, generally it is not expedient to proceed further. - Therefore those are not to be approved who abstain from every interrogation in this matter, lest they disturb some from good faith.

³ Apud *Ami du Clerge*, loc. cit., p. 1078-1079.

53. (b) When the confessor, whether from spontaneous confession or from prudent interrogation, knows that the penitent is an onanist, regularly he is held to admonish him concerning the gravity of this sin, just as concerning other mortal sins, and to rebuke him with paternal charity, and to impart absolution to him only then, when it is established from sufficient signs that the same person grieves concerning the past and has a purpose of no longer acting

onanistically. - If he has fallen back several times into the same sin, without amendment, let the rules handed down above concerning recidivists, in the Treatise on Penance, be applied.

Nevertheless if the onanist is in good faith, and no good fruit seems able to be hoped for from admonition, the admonition can be omitted until he is better disposed; meanwhile the confessor should gradually prepare him to accept and follow the rules of Christian ethics concerning this matter.

54. (B) The Holy Office, March 30, 1889, wrote to a certain French Archbishop¹: "That you never cease with all care and zeal to extirpate, or certainly to restrain, a pestilence of this sort so calamitous, and to refute the pernicious and immodest doctrines which concerning this matter are circulated by many, especially by cultivators of the medical art. - Therefore in whatever better and more prudent manner you judge can be done, you will take care that the faithful be efficaciously taught that heavenly blessings certainly await the parents of more numerous offspring, and at the same time you will give effort that confessors know the norms handed down on this matter by approved Doctors and especially the decisions issued several times by the Holy See." - Wherefore, - (a) those about to marry are to be admonished that the primary office incumbent upon them is the procreation of children, and that the greatest crime of conjugal life is to impede the conception of offspring. (b) Spouses are to be persuaded that, as regards children to be procreated, they trust in God, who cares for all things, the birds of heaven, the lilies and the grass of the field, and a fortiori men: "Therefore do not be anxious, saying: What shall we eat, or what shall we drink, or with what shall we be clothed?... For your Father knows that you need all these things. Seek therefore first the kingdom of God, and His justice, and all these things shall be added to you."² (c) Since the chief cause of onanism is unrestrained libido, to the married and unmarried are to be recommended those natural and supernatural means by which pleasure can be tamed, such as hard and diligent labor; moderate chastisements of the body; temperance in food and drink; avoidance of occasions which excite libido; vigilance of mind and heart, by at once driving out slippery thoughts and depraved desires; assiduous prayer; frequent thought of the last things: for brief is whatever delights here, eternal what torments!

¹ Apud *Ami du Clerge*, XX, 1898, p. 1079.

² *Matt.*, VI, 31-33.

§ II. ON THE OBLIGATION OF THE CONJUGAL ACT.

55. 1° Spouses from justice are held of themselves under grave obligation to render the debt mutually to one another, whenever one party asks seriously and legitimately, whether expressly or tacitly.

It is proved: For by force of the matrimonial contract a strict right over the body of the other is acquired in order to acts of themselves apt for generation; but to the strict right of one there responds a strict obligation on the part of the other; and since there is question of a grave matter, namely of the generation of offspring, of avoiding incontinence, and of preserving peace between

spouses, such an obligation is of itself grave. - Hence deservedly St. Paul says¹: "Let the husband render the debt to the wife, and likewise also the wife to the husband."

¹ I Cor., VII, 3.

56. It is explained: (A) This obligation is grave of itself, but by accident can be light from various circumstances; if the debt is denied only rarely, e.g., if to one asking often it is denied only once in a month; if it is deferred for a brief time; if the other asks only weakly, not insistently, and easily acquiesces to the one denying; provided nevertheless that in these circumstances danger of pollution is absent. - But in practice wives who make themselves difficult and morose in rendering the debt sin mortally, since thus they expose their husbands to danger of incontinence and adultery. Men also sin gravely who, whether for avoiding offspring or from malevolence, rarely know their wives, even if these do not ask expressly, but only interpretatively. Indeed, even once to deny the debt to one asking seriously and legitimately, when this brings danger of incontinence or grave trouble to the other, is not free from mortal fault.

57. Hence also it is not licit for spouses to render themselves incapable of copula by excessive labors, vigils, austerities, or a fortiori by pollutions, adulteries, or other illicit acts. - Nor is it licit for one, without necessity or the consent of the other, to be absent for a notable time: for this is equivalent to denial of the debt.

Certain women, already burdened with offspring or of more advanced age, sometimes think that by denying the debt they do not sin gravely; if this is not done often, and the man is not exposed to danger of sinning, nor any fruit is hoped for from admonition, they can be left in good faith; but they must be admonished not by acting thus to expose the man to danger of incontinence.

Spouses are excused from rendering the debt within the first two months from the celebrated nuptials, certainly indeed if they are thinking of entering religion; probably even if they do not have this in mind. But that privilege ceases, even within the two months, as soon as the marriage has been consummated. Besides, most do not use that privilege because they are ignorant of it.

58. (B) In order that someone be held to render the debt, the other must ask legitimately; for if this one has lost the right of exacting the debt, the obligation of rendering ceases. Now either spouse loses the right of exacting:

(a) Through formal, certain, consummated, not permitted, and not condoned adultery; for then the innocent spouse has the right of departing from the adulterer.

(b) Through affinity or some other impediment contracted after the nuptials by force of which it is prohibited to ask the debt; for then the other party can indeed, but strictly is not held to, render the debt¹, although often it is better to furnish it, for avoiding incontinence. - Nevertheless a woman oppressed by a blood-relative of the husband does not lose the right of asking, because a penalty is not incurred without fault. - Moreover, when the lost right has been restored by dispensation, the obligation of rendering the debt revives on the other side, unless it was lost through adultery: for then it is not restored unless the condonation of the innocent party accedes.

¹ Yet some think that she is held, because the other party, although acting illicitly, preserves his right in relation to the consort: but in practice, since the obligation is doubtful, it cannot be urged.

(c) Through the loss of reason; namely if one of the spouses becomes insane or drunk, the other is not held to render the debt; for one who lacks the use of reason does not ask in a reasonable and human mode. Nevertheless it is licit in this case to render the debt, especially if the insane or drunk person is in danger of incontinence; indeed, according to some, this is truly prescribed, if the danger is proximate; but since this obligation is not established, it must not be urged. - But when the insane or drunk person has recovered the use of reason, he or she can now enjoy his or her right.

59. (d) By asking the debt in an illicit mode, e.g., in an onanistic or sodomitical mode, or in such circumstances in which scandal can be furnished; for no one can exact an illicit act. -

Nevertheless if the act is illicit not in itself, or in the mode in which it is performed, but by reason of the one asking, because, e.g., he or she is bound by a vow of chastity, or acts for pleasure alone, many with Sanchez say more probably that the other spouse can and ought to render the debt; for although the one asking acts illicitly, he or she has not lost the right over the body of the other. Hence in practice it is more advisable in this case to render the debt.

60. (e) By asking the debt in an immoderate mode, so that from it the other spouse prudently fears grave harm to self or to offspring. Here there is question of harm or inconvenience which is not annexed to the matrimonial condition. Therefore the ordinary inconveniences of pregnancy or childbirth do not excuse from rendering the debt, nor some debilitation of health, nor moderate pains even long-lasting, such as headaches, etc., because all these are annexed to marriage itself.

But grave danger of life or health excuses, which from the judgment of a prudent physician is to be feared; thus in the case of contagious disease or not, when grave harm threatens, as was said above, n. 28: likewise if the woman cannot give birth without danger of death, but not if in a first childbirth she suffered danger or extraordinary pains (for in a first childbirth the labors are greater than in the following ones). Hence also if the man asks the debt too often, e.g., twice or three times on the same night, there is no obligation of rendering, since copula repeated so often harms both, and commonly even more the man than the wife. Besides, spouses of weak or infirm constitution cannot, without grave harm, exercise copula daily; hence let them consult a prudent physician concerning this matter and follow his counsel.

Likewise grave harm threatening offspring already conceived excuses, e.g., danger of abortion. If there is question of offspring to be conceived, the fear that it may be born infirm or dead, or live in poverty, does not excuse; for it is better for it to labor under these infirmities, or even to die infected with original sin, than not to be.

If the man culpably has no care for the offspring, and the burden of feeding herself and the offspring falls upon the wife, she is not held to render the debt to him, even if he were living in danger of incontinence, unless at last he comes to his senses and promises to have care for the family; for she is not held to be as a servant addicted to the mere will of the man.

But if, without fault of the man, the wife and numerous offspring labor under the greatest poverty, and no other children can be fed, according to some, danger of incontinence being excluded, the debt

can be denied. But such danger will hardly be absent; hence rather trust must be placed in Divine Providence, which, while it imparts fecundity, is also wont to provide food. Nevertheless to these spouses it can be discreetly advised that they come together only in the time of agenesis (above n. 64).

61. (C) In order that someone be held to render the debt, it is not necessary that the other party ask explicitly; it suffices that he or she implicitly or interpretatively signify his or her will. For often wives, because of innate modesty, do not dare to ask expressly, but express their desire by interpretative signs; if the husband notices these, he is held to render the debt.
62. 2° Neither spouse of himself or herself is held to ask the debt; but by accident, from charity, each can be held, but especially the man. - The reason for the former is that no one is held to use his or her own right. The reason for the latter is that the man can judge that the consort is exposed to danger of incontinence and, because of modesty, does not dare to ask: then charity demands that he himself ask the debt, lest she fall into sin; likewise, in certain circumstances, this is necessary for fostering mutual love, or for averting jealousy and disagreements.

ART. III. ON FETUSES TO BE BAPTIZED.

Division:

¹ Besides the theologians who discuss baptism, cf. Cangiamilla, *Sacra Embryologia*; Capellmann, op. cit., p. 104-119; Eschbach, op. cit., p. 287-378; Antonelli, *Medicina Pastor.*, vol. II, n. 10-41; Barry, *Medico-Christian Embryology*, Louisville, 1846; Surbled, vol. II, p. 266-279.

On aborted fetuses.

On children in danger in the mother's uterus.

On the Caesarean operation.

On abortion and craniotomy.

63. I. On aborted fetuses. Since today it is morally certain that the human fetus is informed by a rational soul already from the beginning of conception, and since moreover baptism is necessary for salvation for all, even infants, all aborted fetuses, even the smallest, are to be baptized, unless they are already dead.

1° When aborted fetuses seem fully formed, they are to be baptized absolutely, provided even the very slightest movement is apprehended in them; because such movement is a sufficient sign of life. - But if they seem without movement, and nevertheless are not corrupted or putrid, let them be baptized without delay under condition: if you are living... For life can exist without apparent movement, and putrefaction alone is a certain sign of death, so that infants who exteriorly were judged to be dead, after several attempts, were finally apprehended to be living.

64. 2° Aborted fetuses, even if not yet fully formed, in whom vital movement is apprehended, are to be baptized absolutely; but those who appear without movement, yet are distinguished from a mole or fleshy mass¹, are to be baptized under condition: if you are living. The reason for the

former is that, where vital movement is present in a human fetus, there is a rational soul; the reason for the latter is that where it is lacking, it is doubtful whether the fetus is still living.

¹ To understand this, it must be known that aborted ova which are emitted sometimes lack a fetus or embryo, which has already perished, and therefore are only a fleshy mole. Moreover, after the first month from conception, the embryo does not exceed the length of one centimeter and is bent in the ovum, not extended, so that some attention is necessary for recognizing it.

3° When immature fetuses are emitted, they are still wrapped in the secundines, i.e., especially in two membranes or little skins, the former of which is called amnios, the other chorion. But it is disputed whether baptism conferred on an infant wrapped in the secundines is valid or not; some affirm, because these wrappings are judged to be part of the infant's body; others deny, because these do not belong to its body, but are like garments by which it is covered. - Hence in practice, when an embryo enclosed in the secundines is emitted, immediately, lest it perish, let it be baptized under condition: if you are capable; then, the wrappings having been broken or cut, let it again be washed under condition: if you are not baptized².

² This can be done thus, according to Capellmann, p. 115, note 2: let the fetus be immersed in warm water (lest it be killed by cold water); with thumb and index finger of each hand let some fold of the covering be grasped and broken, so that the matter of the ovum may flow out and the baptismal water directly wash the fetus; and at the same time let the form be pronounced.

65. 4° Monsters, or deformed fetuses which bear before themselves the appearance of a beast rather than a human, if it is established that they were born from a woman, are to be baptized absolutely, provided they certainly live; conditionally, if it is doubted whether they still live.

It is indeed said in the Roman Ritual³: "A monster which does not bear before itself the human appearance ought not to be baptized"; but this was written at a time when monsters were thought able to arise from the intercourse of a woman with beasts. But today it is discovered that the matter is not so, but that monsters arise from this, that the form of the human fetus, while it is still soft and flexible, can be so deformed and changed, from some vehement imagination or terror of the mother, that it assumes the form of a beast. Hence monsters of this sort, if they certainly live, ought to be baptized absolutely.

³ On the Sacrament of Baptism, n. 19.

66. If infants have two heads or two distinct breasts, it is presumed that there are as many distinct men, and each is to be baptized separately; unless danger of death threatens: for then the heads of both are to be washed at the same time, saying: I baptize you... If it is doubted whether there are two persons, because the two heads or breasts are not distinct, let one first be baptized absolutely, and the other under condition.

67. II. On infants in danger in the maternal uterus. Although many older theologians doubted concerning the validity of baptism conferred on infants in the uterus, nevertheless today it is commonly taught that such baptism is valid. (a) Wherefore, if danger of death threatens, the infant in the uterus will have to be baptized under condition: "if you are capable"¹; and if afterward it is born alive, it is to be rebaptized under condition: "if you are not baptized." The reason is that some doubt remains concerning the validity of baptism of this sort, until the

Church has rendered judgment on this matter². Besides, before an infant is baptized in the uterus, whether by syringe, or sponge, or hand, care must be taken that the secundines be broken, so that the water touches the very body of the infant.

¹ The Ritual indeed teaches the contrary, n. 16: "No one enclosed in the mother's uterus ought to be baptized"; but this was written when such baptism was falsely thought to be invalid.

² Moreover the Sacred Congregation of the Council responded thus not only July 12, 1794, but also March 16, 1897, apud Eschbach, p. 335-336.

(b) If the infant has emitted the head and danger of death threatens, let it be baptized on the head, nor afterward, if it escapes alive, will it have to be baptized again; because then the baptism is certainly valid, according to the *Roman Ritual*, n. 16. But if it has emitted another member, which indicates vital movement, let it be baptized conditionally on that member; and then, if having been born it lives, let it again be baptized under condition. Thus the Ritual, loc. cit.

68. III. On the Caesarean operation. This operation consists in this, that the membranes which cover the uterus and the uterus itself are cut, so that from it may be brought forth the infant who cannot be brought to the light by the natural way; it is called Caesarean, because by this method Julius was born, and on that account called Caesar (from the word *caesus*); physicians call the same thing hysterotomy.

(A) When this operation is done on a living mother, if she is robust and the physician skilled, and moreover antiseptics and other means very well known to surgeons are employed, generally both the mother and the infant are saved¹; nevertheless some danger of death remains for each. - This being posited, it is asked whether the mother is held to suffer Caesarean section, so that her offspring can receive baptism. (a) First, all confess that she is not held if the infant can be baptized in the uterus; for even if there is hope of saving the life of the mother and of the child, this is not so certain that therefore the mother is strictly held to undergo a dangerous operation; hence such an obligation is not to be urged.

¹ Eschbach demonstrates this, p. 340-344, by the testimony of physicians. - Another operation, which is called symphysiotomy, consists in the cutting of the symphysis of the pubic bones, by which the opening of the pelvis is made broader, so that the offspring can more easily pass through it; this is not free from danger, but, if in a particular case it is judged safer by a prudent physician than Caesarean section, nothing prevents its being permitted.

(b) But if the infant cannot be baptized in the uterus and Caesarean section is the only means of procuring the salvation of the infant (which today at least rarely happens), not a few teach that the mother is held to permit the operation, provided she is sufficiently robust, the physician skilled, and precautions can be employed which remove probable danger of death; for, by the law of charity, we ought to prefer the salvation of our neighbor to our own temporal good. But many say that there is no strict obligation of undergoing this, for, that we may be held to expose life for the salvation of our neighbor, it is necessary that there be certain hope of saving him; but in the case such certainty is not present, since, notwithstanding the aforesaid precautions, some danger of death remains not only for the mother, but also for her offspring. - Hence in practice the Caesarean operation can be advised, but not strictly urged².

² Sometimes the danger for the mother and her offspring can also be removed by acceleration of childbirth, which can be done without grave danger for the infant after seven months have already elapsed after conception. Concerning its

liceity the Holy Office on May 4, 1898 wrote back: "Acceleration of childbirth is not illicit of itself, provided it is performed from just causes and at that time and in those modes, by which from ordinary contingencies the lives of the mother and fetus are cared for." (*Acta S. Sedis*, XXX, p. 704).

69. (B) But when a pregnant mother has died, there is present a grave obligation, from charity, of performing Caesarean section, whenever it is probable that the fetus has not perished, so that the offspring can be baptized and perhaps its life preserved. This obligation falls first upon physicians and surgeons; but if these are lacking, also upon others who can furnish this without danger to the infant. But it is not licit for a priest, not indeed because such an operation of itself is repugnant to priestly honor, since there is question of a soul to be saved by a legitimate means; but because of the danger of scandal which many would suffer from it; for it is a lesser evil that an infant die without baptism than that scandal be given to many adults. Hence in this sense the Holy See responded several times¹, especially December 13, 1899. But the priest ought prudently to take care with all his strength that the operation be performed by others, especially by a physician². - That the life of the infant in the uterus of the dead mother may more easily be preserved, when Caesarean section is not performed at once, the uterus is to be covered with cloths, so that it may retain heat; but it is useless to keep the mouth of the mother open, since this does not in the least help the respiration of the infant.

¹ Thus the Holy Office, Feb. 15, 1780 and Dec. 13, 1899, apud *Acta S. Sedis*, XXXII, p. 502-503.

² In some States no one except a physician can licitly perform such an operation.

70. Corollaries. (A) If the confessor, from the confession of a sick girl, knows that she is illegitimately pregnant, no one knowing it, he ought to admonish her that nothing is to be done which could injure the life of the infant. But if she is in proximate danger of death, he ought to induce her to disclose the matter to a discreet person, so that, after her death, the Caesarean operation can be done and the infant baptized. This the girl can furnish: (a) by writing letters, in which she declares that she wills that after death the uterus be opened and the offspring baptized; these letters, signed and closed, she will hand to a trustworthy person, to be opened only after death: for thus she will provide, insofar as can be done, for her reputation and for the salvation of the offspring; (b) if she cannot write, let her manifest the matter by living voice to a wholly discreet person, who will reveal the fact only after her death. - If nevertheless she is in good faith, and it is prudently feared that she may not acquiesce, the confessor can be silent.

71. (B) Since the eternal salvation of many infants depends on the way in which physicians and midwives put into execution the aforesaid rules concerning fetuses to be baptized, it is the office of the pastor to instruct them diligently both on the necessity and on the manner of baptizing aborted fetuses and infants in danger, whether in the mother's uterus or after birth; for thus he will perform an excellent work of charity, and will assign to the heavenly fatherland not a few of those little ones concerning whom Christ was accustomed to say: "Suffer the little children to come to me, and do not forbid them; for of such is the kingdom of God."¹

¹ *Mark*, X, 14.

72. IV. On abortion and craniotomy². It is known that voluntary destruction of the fetus flourished among the Pagans; but the Christian religion, zealous for human life and the salvation of infants, strictly prohibited it as true homicide. Yet in our days not a few physicians have attempted to make honorable abortion and embryotomy or craniotomy (i.e., the destruction of a living fetus)³, at least in the case in which the life of the mother otherwise cannot be saved. Now as regards abortion, the violent ejection of an immature fetus, at the time when it cannot live outside the uterus, must be distinguished from acceleration of childbirth, which takes place when the fetus, already conceived for seven months, can live outside the uterus. - These things being posited, we set forth the responses of the Congregations on this matter:

² Eschbach, op. cit., pp. 273-286; 381-476; Surbled, op. cit., vol. II, p. 184-258; Dissez, *Craniotomy from the theological point of view*.

³ Embryotomy etymologically means the cutting of the embryo, craniotomy the cutting of the skull or head.

73. (A) On craniotomy. In the year 1884, on May 28, the Holy Office recalled for examination the doubt proposed by Cardinal Caverot: "Whether it can safely be taught in Catholic schools that the surgical operation which they call craniotomy is licit, namely when, it being omitted, the mother and son would perish, but on the contrary, it being admitted, the mother would be saved, the infant perishing"; it judged that it must be answered: that it cannot safely be taught⁴. But when there was dispute concerning the sense and extension of this decree, especially in the Catholic Faculty of Lille, the Archbishop of Cambrai proposed new doubts concerning certain surgical operations akin to craniotomy; after three years, the Holy Office, on August 14, 1889, confirmed the first response, and declared that it cannot safely be taught that "any surgical operation directly killing the fetus or the pregnant mother" is licit⁵.

⁴ Apud Eschbach, op. cit., p. 461-462; *Acta S. Sedis*, XVII, p. 556.

⁵ Eschbach, p. 464-467; *Acta S. Sedis*, XXII, p. 748.

74. (B) On abortion of the immature fetus. Since procurement of abortion differs from craniotomy, some thought, even after the aforesaid decrees, that abortion was licit for saving the mother.

Therefore a new case was proposed to the Holy See: "Titius, a physician, when he was called to a pregnant woman lying gravely ill, everywhere observed that there was no other cause underlying the lethal disease except the pregnancy itself, that is, the presence of the fetus in the uterus. Therefore there was one way at hand for him, that he might save the mother from certain and imminent death, namely of procuring abortion or ejection of the fetus. He was accustomed to enter upon this way, having employed means and operations nevertheless not indeed tending of themselves and immediately to this, that they should kill the fetus in the maternal womb, but only that it should be brought to light alive, if it could be done, although it would soon die, as being still altogether immature." Now the Holy Office, on July 24, 1895, decreed that this could not be done¹.

¹ Eschbach, p. 468-469.

75. (C) On acceleration of childbirth. Wherefore nothing remained except to inquire concerning acceleration of childbirth; therefore the following doubts were proposed by the Bishop of Sinaloa (Sinaloa, in the Mexican region): "1. Will acceleration of childbirth be licit whenever

from the narrowness of the woman the exit of the fetus at its natural time would become impossible? - 2. And if the narrowness of the woman is such that not even premature childbirth is judged possible, will it be licit to provoke abortion or to perform the Caesarean operation at its own time? - 3. Is laparotomy (i.e., section of the abdomen) licit when there is question of extra-uterine pregnancy, or of ectopic conceptions?"

Moreover the Holy Office on May 4, 1898 responded: "To 1. Acceleration of childbirth is not illicit of itself, provided it is performed from just causes and at that time and in those modes by which, from ordinary contingencies, care is taken for the life of the mother and fetus. - To 2. As regards the first part, negatively... But as regards the second, nothing prevents the woman concerning whom there is question from being subjected to the Caesarean operation at its own time. - To 3. Necessity compelling, laparotomy is licit for extracting ectopic conceptions from the womb of the mother, provided that for the lives of both fetus and mother, insofar as can be done, serious and opportune provision is made."²

² Eschbach, p. 470-471; *Acta S. Sedis*, XXX, p. 704.

The Holy Office again confirmed this response on March 5, 1902, renewing the prior decrees³.

³ *Ami du Clerge*, XXIV, 1902, p. 478.

76. From the aforesaid decrees it is permitted to infer a threefold rule: (A) It is not licit directly to procure immature abortion⁴ or to perform craniotomy; for each action is directly killing of an innocent. Therefore the following sin gravely: (a) pregnant girls who procure abortion lest they lose reputation or suffer some other grave evil; or women who, fearing lest they are pregnant, take potions or employ other means in order to induce abortion; (b) physicians who directly procure abortion, even for saving the mother; for evils are not to be done that goods may come¹; moreover there are other suitable means for helping the mother, namely acceleration of childbirth and the Caesarean operation, which today, especially in great cities, where skilled surgeons are found, is performed easily and safely².

⁴ This indeed is true even if it were admitted that the fetus, although living, is not yet informed by a rational soul; for by Innocent XI, March 2, 1679, this proposition 34 was condemned (apud Denzinger, n. 1051): "It is licit to procure abortion before animation of the fetus, lest a girl found pregnant be killed or defamed." - The excommunication imposed against those procuring abortion is set forth in the Treatise on Censures.

¹ Nor can it be said that the fetus is an unjust aggressor; for, as Cangiamilla already said in his time, the infant is not an unjust invader, but compelled by nature, whose author is God; indeed compelled by the mother herself, as D. Huber says. Cf. Eschbach, op. cit., p. 424.

² Hence today many physicians, even non-Catholics, reject immature abortion and craniotomy as something scientifically antiquated: "To kill the fetus, under pretext of favoring delivery, is to misunderstand the certain resources of modern obstetrical surgery; it is to be behind the times." Thus Dr. Guerinoprez, apud Eschbach, op. cit., p. 389.

77. (B) It is licit indirectly to procure abortion from a proportionately grave cause; e.g., if the mother labors under a lethal disease which cannot be cured unless a remedy is furnished from which abortion will follow by accident; provided these conditions concur: (a) that the disease be truly lethal; (b) that the remedy be directly employed for curing the disease, not for expelling the fetus; (c) that in the best way possible provision be made for the baptism and salvation of the animated fetus.

(C) It is licit directly to procure acceleration of childbirth, when it is foreseen that the infant can live, provided there is a grave cause; for by such a manner of acting the life of the infant is not taken away, but only exposed to danger; and this indeed is licit whenever it is required for averting a greater danger of the infant itself or of death.

78. Note for practice. Since in some Schools of physicians it is taught that craniotomy is licit and expedient for saving the life of the mother, certain surgeons in good faith perform it when from various circumstances the Caesarean operation seems less opportune; in which case, as regards the past, they are indeed excused from sin, but they are prudently to be instructed as regards the future, according to the rules handed down in the Treatise on Penance.

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