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CHAPTER XXVII

DIGEST OF CASES OF SEPARATION ADJUDGED
BY THE TRIBUNAL OF THE
SACRED ROMAN ROTA

The published volumes of the Decisions and Sentences of the
S. R. Rota contain relatively few cases dealing with separation.
From these cases, however, it can be clearly deduced that the per-
mission for separation is to be granted only when very serious rea-
sons exist and when these are proved with irrefragable evidence.
The Church is decidedly reluctant to permit spouses to separate,
particularly in modern times when the dangers and temptations
are so insidious and manifold. A digest is given here of the prin-
cipal cases of separation adjudged by the S. R. Rota, with the aim
of helping those who are obliged to deal with similar cases.

I. CASE OF SEPARATION BECAUSE OF CONSTANT
QUARRELS AND DISSENSIONS

A. Species Facti

The marriage of Rhadamanthus and Nenia was very unhappy
because of frequent dissensions, contentions, quarrels, beatings, and
the like. Wherefore, after some years Rhadamanthus requested and
received a decree of separation from the civil authorities, with the
consent of his wife. He then applied to his Metropolitan Curia for
an ecclesiastical separation, but was refused. After several recon-
ciliations and attempts to resume conjugal cohabitation, followed
by separations and decrees from ecclesiastical authorities with con-
comitant recourse and appeals, the case was finally submitted to
the S. R. Rota for a definite settlement. The doubt was submitted
as follows: "An constet de nullitate sententiae Curiae Metropol-
B. In lure

There was a lengthy discussion about an appeal from a delegate to the one delegating, but this need not be reported here.

Adultery is the only cause authorizing permanent separation. However, there are other causes which permit temporary separation.

The constant and uniform jurisprudence of the S. C. of the Council and of the Tribunal of the S. R. Rota proves that great caution should be employed before a separation is authorized, because separation is directly opposed to the purpose of marriage. Moreover, it causes scandal, harms the family, affects the children, and exposes the consorts to great moral dangers. Wherefore the conclusion is stated: in causa separationis thori, omnia iura clamant ut coniugale consortium non disiungatur, nisi invicta comprobetur, adesse causam canonicae separationis (n. 11).

Special consideration must be given to the exceptionally grave dangers to conjugal continence existing in modern times when the consorts are separated either permanently or for a time. Moreover, temporary separation easily and frequently prepares the way for permanent separation: nam matrimonium datum est etiam in remedium concupiscientiae: dissoluto autem semiplene maritali consortio, statim irreputant adulterini amores et illiciti amplexus (n. 12). Hence, consorts are not to be permitted ordinarily to separate because of slight difficulties, incompatibility of temperament, and the like.

C. In Facto

The habit of constant quarrels and dissensions began in the very first days of married life. Within one month the wife left the home because of fights, quarrels, and severe beatings. According to the testimony, Rhadamanthus had a quick temper and Nenia, a terrible tongue. These factors constituted a dangerous and volcanic combination.

Both consorts asserted that reconciliation and conjugal cohabitation were impossible. Futile attempts in the past were the principal arguments alleged. Even the pastor attested, in view of his experience, to the impossibility of reconciliation. Wherefore the S. R. Rota decided: attentis circumstantiis in casu concurrentibus, eiusque perdurantibus ... ita ut fiat locus separationi quoad thorum et mensam.

II. CASE OF TEMPORARY SEPARATION GRANTED BECAUSE OF IMPLACABLE ANTIPATHIES OF CONSORTS AND BECAUSE OF MENTAL INSTABILITY OF THE WIFE

Special Case of Temporary Separation Adjudged By Eleven Auditors of the S. R. Rota

A. Species Facti

The S. R. Rota was specially commissioned by the Holy Father, Pope Pius X, to adjudge the case of a certain Lawrence and Casilda. They were married in 1875 and continued married life for more than twenty-three years, that is, until 1899. Separation then occurred because of quarrels and recriminations. Casilda was accused of insane tendencies, suicidal and homicidal threats, and the like, and was even placed in a sanatorium. In return, Casilda and her relatives accused Lawrence of prodigality, of inconsiderate treatment of his wife, and the like. Thereupon, a series of lawsuits ensued in the ecclesiastical courts, followed by conflicting decisions, appeals, and counterappeals, even to the Rota of the Apostolic Nunciature (seemingly in Spain). Finally, Lawrence had recourse personally to the Holy Father who, ex voto, commissioned the S. R. Rota to examine and adjudge the case. With the intervention of the Promotor Iustitiae, the case was begun and the question was formulated as follows: An constet de legitimis causis divorci semipleni, seu separationis quoad thorum et mensam, in casu?

B. In lure

The Church recognizes certain causes which warrant temporary separation. The Rota then gives a long disquisition on the difference between permanent and temporary separation.

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3 S. R. Rotae Dec., IV (1912), 195.
C. **In Facto**

In some cases of mental instability, conjugal cohabitation is possible. This is true when peace and concord exist between the consorts. The good of the individuals as well as the public good must always be taken into consideration.

From the history of the case, the constant recriminations, the implacable antipathy of the parties, the bitterness caused by constant lawsuits, and the like, it is clear that conjugal cohabitation is impossible. Witnesses, documents, and other evidence prove these facts. Hence, the decision of the S. R. Rota was as follows: *Constare de causis separationis temporaneae, iuxta modum expressum in sententiis Curiarum Ordinarii et Primatis. A sententia vero Rotali Nunciaturae, utpotest, a duabus aliis praecedentibus diformi, ius esse Laurentio, si lubeat, appellandi ad alium Turnum.*

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**III. CASE OF SEPARATION FOR AN INDEFINITE PERIOD OF TIME GRANTED TO WIFE BECAUSE OF DESERTION OF HUSBAND**

**A. Species Facti**

Henry and Hedwige were married on June 23, 1900. From the very beginning the marriage was unhappy. In 1908, Henry deserted his wife and two daughters. In 1909 he expressed his willingness to resume married life, but Hedwige refused because of the conditions stipulated, involving the disposal of property and the like. On April 20, 1910, Hedwige requested from the Archbishop the authorization for a separation for an indefinite time on the grounds of desertion and refusal of support. On June 17, 1911, this request was rejected in a formal sentence. Hedwige then appealed to the court of second instance, which reversed the previous sentence and granted the separation *ad tempus indefinittum*. Thereupon, Henry appealed to the Tribunal of the S. R. Rota where, with the proper intervention of the *Promotor Instructiae*, the case was introduced with the following formula: *An constet de legisimis causis separationis in casu? Cuius culpa separatis locus est?*

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<td>4 S. R. Rota Dec., IV (1912), 193-203.</td>
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**B. Ius Quod Attinet**

The Council of Trent teaches that the separation of consorts may be permitted for certain reasons. Temporary separation is not only permitted as a punishment to the offending consort, but is granted as a remedy to avoid greater evils of body and soul. Hence the principle: *Omnes separationis causae flanunt ex principio: Coniuges ad vitae consortium eatenus tantum obligantur, quatenus id absque animae, vitae vel charitatis periculo continuare possint."

Malicious desertion is given by authors as a just cause for separation. The reason for this is *qua recidit vel in odio capitale vel acerbiore animi afflictionis*. In a case of desertion, permission for separation is not to be granted at once. The deserting consort should be entreated to return. For this, all possible means should be employed. If the party fails or refuses to resume conjugal cohabitation within a reasonable or stipulated period of time, the judge may then grant separation to the innocent consort. *Ex quibus colligen potest, non tam factum desertionis esse causam legitimam ad divertium pronuntiatum, quam potius pertinacem detractionem coniugale, consortium instaurandi post iudicis invitationem.*

Before the desertion can be called malicious it must be proved to be unjust and culpable and done with the intention of severing conjugal cohabitation. *Ulterior ad notionem malitiosae derelictionis requiritur ut haec sit dolosa et inauriosa coniuncta cum intentione vitam coniugalem solvendi.* And whoever leaves his home with the intention of desertion obviously inflicts an injury upon the innocent consort. Such desertion must always be duly proved.

**C. Factum Quod Attinet**

In her plea for separation Hedwige adduces only one reason, namely, malicious desertion and refusal of support of herself and children. The fact of desertion is duly proved by witnesses and documents. But before the desertion can be called malicious, it must be proved that it is unjust, culpable, and done with the intention of severing conjugal cohabitation. All of this was duly proved by letters and witnesses.

A part of the family discord was due to the fact that Henry wanted to sell the family property and to live one place while...
Hedwige insisted on another plan. Thus the sentence of the S. R. Rota states the principles involved:

Verissimum quidem est principium, viri esse, sedem eligere ubi lares constitut, et non uxoris. At hoc principium admittit etiam exceptiones. Audiatur ad rem Ferraris (Bibloth. Canon. sub verbo "Uxor" n. 1-4): "Uxor per se loquendo tenetur potius cohabitate viro, quam hic illi: idest viri, non autem uxoris est eligere domicilium, seu locum ubi habi-
tent ac simul vivant, quia, ut ait Apostolus (Eph. 6:22), vir caput est mulieris. Unde ordinazie uxor tenetur seque maritum iusta de causa mutament domicilium, dummodo illa mutatio non accidat uxori graviter incommoda, quia uxor non censetur se obligasse ad sequendum cum tanto suo incommodo, vel periculo v.g. salutis, vitae, pudicitiae et huio-
modi." Ceterum uxor non est serva et mancipia sui mariti, sed hera et socia. Insuper nulla iusta ratio habetur ex parte viri in casu morandi habitualiter ruri, cum aequa bene, ut dictum est, et fortasse melius, arte
em suam agrariam in urbe commorando exercere poterit, praeestern im piacula emat vel corduacat, quae prope urbem consistant.

Denum notandum est, Henricum, qui praetendit, se familiam-dese-
ruisse, ut officium aliquod qua agronomus consequeretur, de facto huc-
que nullum officium invensit, et nunc etiam in urbe degere ibique
munere fungi ab agricultura alieno. Aliae quoque circumstantiae, uti
ruriae inter conuiges, quas extitisse plures deponunt testes, Henrico iustam
haud supputitarunt causam Hedwigem diereliquendi.\footnote{S. R. Rotae Dec., V (1913), 223-224, n. 12-13.}

There were many arguments and recriminations about improper and incapable administration of farm property and the like. Both Henry and Hedwige had important persons and even ecclesiastical personages commending their characters and personal qualifications.

The final point to be ascertained is whether Henry had the intention of severing ties of conjugal cohabitation when he deserted his wife and family. This fact is proved from Henry's actions and statements and is confirmed by his absence of several years. Since he had no just reason for departing from his home and since his intention to disrupt conjugal cohabitation is certain, his desertion can be considered as malicious and culpable and injurious to his family. Wherefore the decision of the S. R. Rota was: \emph{Ad primum dubium: Affirmative, seu constare de legitima separationis causa ad tempus indefinitum iuxta uxoris instantiam. Ad secundum
dubium: Ex culpa viri statuentes pratererea expenses haberi com-
pensatas inter partes.}\footnote{S. R. Rotae Dec., V (1913), 217-225, n. 18. This sentence is particularly noteworthy for its clear and thorough exposition of the law on separation.}

\footnote{S. R. Rotae Dec., XVII (1925), 39.}

IV. CASE OF TEMPORARY SEPARATION BECAUSE OF ONANISM

A. \\emph{Species Facti}

In July, 1922, a certain Sella of the diocese of Alexandria Ar-
menorum (i.e., Alexandria, Egypt) requested from her Ordinary the permission for separation from her husband Josias. The Ordinary first attempted to effect a reconciliation or at least an amicable separation. This failing, Sella asked for a definite sentence of separation. Because of delays she took her case directly to the S. Congregae of the Oriental Church, which in turn referred the case to the S. R. Rota on April 4, 1923. Her petition was for permanent separation because of the crime of adultery committed by her husband.

While the case was pending before the S. R. Rota, Josias requested a reconciliation, stating that he was willing to provide for his family. Sella, however, insisted that the case be decided by judicial sentence. Hence, it was introduced, with the intervention of the \emph{Promotor Iustitiae,} under the following formula: \emph{An constet de legitimis causis separationis quod thorum, mensam et cohabi-
tationem in casu.}\footnote{S. R. Rotae Dec., XVII (1925), 39.}

B. \\emph{Ius Quod Attinet}

A preliminary question arose in this case, namely, whether the S. R. Rota was competent to issue a sentence in cases of temporary separation, in view of the phrase \emph{uctoritate Ordinarii} of Canon 1131 §1 which might be construed to prescribe an administrative inquiry rather than a judicial process. Because of the juridical importance on this point, the complete text of the incidental question is given:

\footnote{S. R. Rotae Dec., XVII (1925), 39.}

Litterae quas C. pro Ecclesia Orientali misit, separationis neque
quoad causas, neque quoad tempus, illum ponit ilimitem.

Memoratae autem Congregationem ad Tribunal transmittere posse
questiones quas iudicari tramite dirimendas esse censuetur, explorati
iuris est (can. 257 §3).

Neque obiciatur iuxta Codicem iuris canonici dirimendas esse non ad
SEPARATION OF CONSORTS

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etiam: a) Etsi vera esset relati legis textus explicatio in qua nitor
difficultas, non exinde revocaretur in dubium validitas vel extensio
madrat, siquidem citati canones unam respiciunt Latinam Ecclesiam; hic
contra agitur de Arminorum controverta, ac consequenter res ad Iuris
Armeni normam dirimenda est. Porro iuxta armenas ecclesiasticas leges
quistantes de separatione temporaneae judiciliter solvi devlet vel saltem
possunt.

Re etenim vera in Acta et Decreta Concilii Nationalis Arminorum anni
1911 legitur: "Tria sunt causarum matrimonialium genera, aliqua veras
sunt circa inicis coniugalis foederis firmitatem... aliae sunt causae
excitatae aut super validas sponsalium, aut super iure instituendi
divortium quaod thorum et cohabitationem... aliae demum sunt causae,
qua connexionem quidem habent cum matrimonio..." (can. 922)

b) Sed neque concedi potest verba "auctoritate Ordinarii" explicanda
esse "per iurisdictionem administrativam praepositi ecclesiastici qui non
gerat munus iudicis." Nam Ordinarius loci, uti habetur in can. 1572 § 1,
est iudex qui potest iudicalem potestatem exercere. Opposta verba hoc
unum evincunt huiusmodi nempe controversias non necessario iudicalem
figuram ac stipitum requiere (Wernz-Vidal, Ius matrimoniale, an.
1925, n. 646; Vlaiming, Praelectiones Iuris matrimonialis, tom. 2, an.
1921, n. 748, 2d). Hinc et Auctores qui ad normam novi Codicis de hisse
scirium, tradunt ad iudicium tramitem etiam non perpetui divortii causas
persolvi posse. Cf. Wernz-Vidal, i.e., n. 647; De Smet, De sponsalibus
et matrimonio, an. 1923, nota in margine; Vlaiming, i.e., Cappello, De
matrimonio, an. 1923, n. 839, 832.

c) Hac confirma tur ex can. 1552 § 2, ubi traditur iudicij obiectum
esse "i. Personarum physicarum vel moralium iura perseveranda aut
vindicanda, vel earundem personarum facta iuridica declaranda." Porro
qui causam divortii temporarii promovet, ius vult profesqui, et id asequei
contendit per Judicis declarationem qua constet assartas divortii causas
ex alia parte negotas extare. Ast ubi judicialis est indoles rei controversae,
rite per jurisdiction res iudicatur.

d) De cetero, eti, per simplicem hypothesis, dubium theoreticam man-
eret circa vigentem Ecclesiae Latinae discipline, practice tamen standum
eset pro competentia Tribunalis ecclesiastic, nam antea multis temporibus,
huiusmodi competentia extra controversiam erat; sed iuxta can. 6, n. 4,
"in dubio num aliquod canonum praescriptum cum veteri iure discrepant,
aveteri iure non est recedendum."

The sentence quotes Canon 1128 and the text of the Armenian
law, which is similar to that of the Code. Hence, permanent sepa-
ration may be granted in cases of adultery. But before the separa-
tion is authorized, the adultery must be certainly proved. Ratio est
quia neuter coniugum potest privari; iuribus quae possidet nisi et
in certam privationis causam, et quia ex separatione gravissima ali-
quando orientur incommoda.

It is difficult to prove the crime of adultery because, ordinarily,
there is no direct proof from eyewitnesses and the like. Hic res

C. Factum Quod Attinet

The wife and several witnesses testified under oath that Josias
had told them that he had committed adultery with a certain
woman. These depositions, however, could not be accepted as con-
stituting full proof as they all depended upon the extrajudicial con-
fusion of Josias. Under oath, Josias deposed that he had never
had sinful relations with any woman.

The question of onanism is then discussed at length: the serious-
ness of the crime, its sad results and the like. Sella deposed that
for several years her husband had resorted to this sinful way of life.
And Josias attested under oath that he began this after the birth
of the fourth child because of the economic situation of the family
and the burden of supporting children.

The evil influence of Josias upon his children was considered
in the sentence. His conversation with the children was both im-
moral and irreligious. He had thrown the Crucifix out of his room

and gave other indications of irreligious attitudes. Moreover, he
failed to observe the precept of annual Communion.

In conclusion, the sentence briefly resumed the status of the case:
Hinc, quoad adulterium, etsi non levia habeantur indicia, certitudo
tamen patrai criminis non habetur; sed constat procul dubio graves
haberi in casu causas quae separationem quoad habitationem, men-
sam et thorum, quae separationem ad tempus indeterminatum pos-
tulant, ut damna et mala a familia removentur.

In view of the facts of the case, the S. R. Rota decided: Afferma-
tive, seu constare de legitimis causis separationis quoad thorum,
mensam et cohabitationem ex culpa solius mariti decrendae ad
tempus indefinitum; ad normam canonum 1131 et 1132; inbentes
provisoriam executionem ad tramitem can. 1917 et sq. 10

V. REFUSAL TO ELDERLY COUPLE OF SEPARATION
REQUESTED ON GROUNDS OF
IMPLACABLE HATRED

A. Species Facti

Francis married Catherine in 1897. In 1924, after twenty-seven
years of married life, Francis, then sixty-nine years of age, requested
authorization from the Tribunal of Sirmio for separation from
Catherine, then sixty-six. The sentence granted permission of separa-
tion for an indefinite period of time because of the fault of both
consorts. Both consorts then appealed to the Metropolitan Tribunal,
which refused permission for separation and charged the expenses
of the case to Francis. Whereupon, Francis appealed to the S. R.
Rota, while Catherine remained opposed to separation. Hence, the
S. R. Rota, with the proper intervention of the Promotor Institiae
in the case, formulated the doubt as follows: An et quomodo sit
locus separationi quoad thorum et cohabitationem, in casu. 11

B. Ius Quod Attinet

The Council of Trent and Canon 1131 § 1 are quoted. As is
evident from the text of Canon 1131 § 1, the reasons authorizing
separation are not laxative propositae:

11 S. R. Rota Dec., XX (1928), 367.
that since, as Canon 1131 § 2 enacts, conjugal cohabitation in cases of temporary separation should be resumed as soon as the cause of separation ceases, for a greater reason there should be no grant of separation where the cause of the estrangement has seemingly vanished. Wherefore, the sentence of the S. R. Rota is: Negative, seu non esse locum separationi quod thorum et cohabitionem, in casu.12

VI. REFUSAL OF SEPARATION REQUIRES ON GROUNDS OF ADULTERY, CONTAGIOUS DISEASE, AND CRUELTY

A. Species Facti

Titus and Justina were married on October 29, 1922. They separated on October 6, 1924. A few days later Justina requested separation from the Tribunal of Jerusalem on the grounds of adultery, contagious disease, and cruelty on the part of Titus. The sentence was unfavorable to Justina. Wherefore she appealed to the S. R. Rota where the cause was introduced, with the proper intervention of the Promotor Iustitiae ex officio, under the following formula:

I. An et quomodo separatio a toto et habitatio concedenda sit, in casu; et quatenus affirmativa;
II. An et qua mensura pensio pro alimentis decepta sit favore actricis;
III. An et qua mensura partes ius habeant ad reflicitum damnorum, in casu.13

B. Ius Quod Attinet

Conjugal cohabitation is a duty of the consorts, but since it pertains to the integrity rather than to the essence of marriage, it may be suspended or discontinued for just reasons. Adultery is the only reason, natura sue, which gives grounds for permanent separation. And before this right is granted the adultery must be formal, culpable, consummated, and morally certain. All other causes constitute grounds merely for temporary separation. Among these causes would be grave bodily danger arising from a contagious disease, cruelty, and the like, for consorts are bound to conjugal cohabitation only in so far as it is possible without danger to soul, life, or charity. Moreover, separation should be granted only with prudent caution lest the consorts be exposed to the dangers of incontinence to and other perils which might be the source of scandal.

C. Factum Quod Attinet

Justina accused Titus of adultery principally on the grounds that she had found some letters in which a woman of questionable reputation made improper allusions. However, this accusation did not constitute proof. The letters were not produced and their contents were merely attested by Justina. Proofs were not only lacking; but there were not even suspiciones vel praesumptiones violentae. Moreover, there were no witnesses to corroborate Justina's gratuitous assertions.

Justina further undertook to prove the existence of adultery by the assertion that she had contracted certain venereal diseases from Titus. However, Justina later admitted that she did not know whether or not Titus had contracted these diseases before marriage. Furthermore, examination of three experts proved that Justina did not have one of the diseases referred to, although there was evidence of the other. But this fact could not be taken as proof of adultery on the part of Titus.

The fact is not to be overlooked that even if there had been adultery, it was condemned both expressly and tacitly by Justina. From the facts of the case, it is indubitably clear that Justina continued to live with Titus and to manifest marital affection toward him. The separation was not on the grounds of adultery, but because of arguments about other matters; principally with her mother-in-law and sister-in-law. Hence, Justina has no right to perpetual separation on this particular point.

As to the reasons favoring temporary separation, the following considerations are to be borne in mind. The two reasons alleged by Justina are the contagious disease and cruelty of Titus. As to the former, the S. R. Rota sagely remarks that the particular danger could be averted without formal separation: cum per separationem tori satis ad rem provideatur. Moreover, Canon 1131 § 2 rules that "with the cessation of the cause of separation, conjugal cohabitation

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should be resumed." Justina herself admits in her deposition that Titus is now cured of his contagious malady. Likewise there is a telegram in the records of the case in which Justina claims she is cured. Hence, there is no reason for separation on the grounds of contagious disease, as the S. R. Rota remarks.

As to the point of cruelty, the sentence of the S. R. Rota aptly states: "Nam ad effectum separationis tori, coque magis ad separationem habitatiovis, tales saevitiae sunt in judicio probandae, quae aptae sint gravem incutere metum, in constantem virum cadentem (Sanchez, De matr., lib. 10, disp. 10, n. 16: Rota, Matrim., coram Albergato, an. 1650, n. 10)." Furthermore, the fact of cruelty is not proved from the testimony of witnesses. Rather it was proved that the arguments and difficulties were more with her mother-in-law and sister-in-law than with anyone else.

From the foregoing it becomes clear that neither adultery nor danger of contagious disease nor cruelty is proved in the case. Moreover, Justina was not treated as a slave or servant, but as a helpmate. Hence, she is bound to the obligation of conjugal cohabitation. In view of the facts of the case the decision of the S. R. Rota was:

Ad primum dubium: Negative; seu separationem a toro et habitatiovis non esse concedendam, in casu.

Ad secundum dubium: Provisum esse in primo.

Ad tertium dubium: Non esse locum refectioni damorum.

Statuimus inspexerant eisdem expesas compensandas esse inter partes. 14

VII. CASE OF SEPARATION GRANTED TO HUSBAND BECAUSE OF MALICIOUS DESERTION OF WIFE

A. Species Facti

Aurelius, forty-four years of age, on November 23, 1912, married Octavilla, who was then twenty-four years of age. Two children were born of the union, but one died in infancy. The conjugal life was considerably disturbed by the World War and finally ceased in 1920.

In 1926, Aurelius petitioned the Signatura Apostolica for permission to present his case directly to the S. R. Rota. This petition was granted, and with the proper intervention of the Promotor Iustitiae ex officio the case was introduced under the following formula: An constet de causis separationis perpetuas, vel saltem temporaneas, quoad torum, mensam et habitacionem, in casu. 15

B. Ius Quod Attinet

Canons 1129 § 1 and 1131 are quoted and commented on with admirable clarity and succinctness. The question of malicious desertion is then considered, as follows:

"Verba autem canonis: ‘aliaque id genus’ significat alias adesse separationis temporaneas causas, quae in ipso canone non sunt expressae. Inter has causas accensenda est malitia desertio, quae admittitur cum alter coniux ab altero desistem vel alterum dimittit cum animo deiciendi obligationes coniugales et absque iusta causa. Ut igitur malitia desertio habeat, requiruntur tria haec: 1 o. discessus ab altero coniuge vel eius dimissio; 2 o. animus deiciendi obligationes coniugales; 3 o. defectus iustae causae.

Iustae autem desertionis causae sunt quae ob ipsos citatos canones 1129 et 1131 tribuunt coniugis ius separationis perpetuas vel temporaneae."

C. Factum Quod Attinet

In his deposition Aurelius testified that Octavilla had left his home and that she traveled about with another man. According to Aurelius' assertions, she lived in the same room with this man for four days in 1925. She went to another city and introduced this man to friends as her cousin. Later she visited other cities in the company of this same man.

Despite the numerous accusations, there was no real proof of adultery. Most of the assertions were traced back to one or two persons, and these admitted that their information was merely hearsay rumor. Nine witnesses testified, but none of them had any real and personal knowledge of the improper life that Octavilla was accused of living. The circumstantial evidence seemed to indicate that Octavilla's way of life was far from commendable, but

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15 S. R. Rotae Dec., XXI (1929), 524.
perpetual separation on the grounds of adultery demands certain
and irrefragable proof. Neither Aurelius nor his witnesses produced
this proof.

On January 23, 1926, Octavilla was supposed to have signed a
rather compromising document in the presence of three or four
witnesses. But this document could not be accepted as proof of
adultery. First of all, it did not clearly state that fact; secondly, at
the most it was only an extrajudicial confession; and thirdly, it
was written by another person and allegedly signed by Octavilla
when she was in a confused state of mind. Therefore, such a docu-
ment could not constitute proof.

The fact of malicious desertion is proved satisfactorily. Octavilla
departed from the home of her husband, spurned her obliga-
tions as wife, left her daughter in the care of others, and finally went
off to America. Because of these circumstances, the care of the
daughter is confided to Aurelius.

In view of the facts of the case, the S. R. Rota refused the request
of perpetual separation, but granted permission for temporary
separation for an indefinite period of time. The sentence states:
Constat de causa: separationis ad indefiniitum tempus, et ideo ad
propositum dubium respondemus: Negative, ad primam partem:
affirmative, ad alteram, commissa filia curae patris. Expensas vero
judicii mandamus solvendas esse ab actore.  

VIII. REFUSAL OF SEPARATION REQUESTED
ON GROUNDS OF CONSTANT QUARRELS

A. Species Facti

Paul married Blanche on April 17, 1909. In 1927, Blanche left
Paul and in the same year he requested from his Archbishop the
authorization for separation from Blanche because of continuous
quarrels. The petition was refused, whereupon Paul appealed to
the S. R. Rota. The case was introduced, with proper intervention
of the Promotor Iustitiae ex officio, under the following formula:
An constet de causis legitimis separationis tori, mensae et habi-
tationis, et cuiam ex partibus culpa praecipue imputanda sit, in
causa.  

B. Ius Quod Attinet

The sentence quotes Canon 1131 § 1 and then adds the following
excellent comments:

"Ut liquet, hac lege non taxative determinantur separationis ad
tempus certum incertumve causae, quae multae quidem esse pos-
sunt (Conc. Trid. sess. XXIV, De sacramento matrimonii, can. 8).
Verum, quamvis cohabitation non sit de matrimonii essentia, separa-
tio tamen tori, mensae et habitatioinis, etiam temporaer, est res gravis,
uptote publica obligationi naturali contraria, ac perculus plena pro
coniugibus, specieenus de continentia servanda; quapropter separa-
tionis causa, ut sit legittima, debet esse proportionata, id est continere
periculum sive animae sive corporis ita grave, ut cedat obligatio
illa, qua coniuges servare vitae conjugalis communionem iure
 tenentur (can. 1128). Et patet, attentis exemplis a Legislateor in
cit. can. 1131 § 1, relatis, ex iure veteri quidem.

In adjudging the suffering endured by the person experiencing
cruelty, vexation, and the like, the nature of the offense and the
character of the individual must be carefully examined. Unless
hardships and difficulties and misunderstandings and quarrels
prove to be a source of continued and prolonged anxiety, unhap-
iness, exasperation, suffering, and the like to the particular indi-
vidual, they cannot be considered a just reason for separation. Thus
the sentence very aptly adds:

"Quapropter ad aestimandam gravitatem saevitiarum et aliorum
huiusmodi, si facta utique ponderanda sunt, magis tamen con-
sideretur oportet animus ex quo procedunt et species quam exinde
recipient, ratione quoque habita indolis et conditionis coniugis
patientis. Finitero separationem fieri nefas est ob levia quaeslum
incommoda, quamvis repetita, puta discrepantis indolis causa; neque
ob graviora iurgia, sed quae, nata ex insolita quadam ira et in-
opinato perturbationis motu, non excludent spem proximae recon-
ciliationis; nec a fortiobi ob iustam reprehensionem et correctionem
(cf. Schmalzguber, cit. tis., n. 193 ss.): cuncta huiusmodi non
inferunt gravem ofensionem aut metum gravem in animum con-
stantem. Contra vero, iusta est dicerda causa separationis, ubi datur
probatio certae malitiae diuturnae, certaeve propensionis et assidui-
tatis ad grave malum inferendum, aut si difficilas ad servandam
vitae communionem probetur nimia, iuxta verbum nimis scriptum

17 S. R. Rota Dec., XXII (1930), 523.
in can. 1131 § 1, id est si imponeretur onus diurnum, quod viribus
personae constantis imponi recta prudentia vetat. Si res per viam
judiciarium definienda est, iudex igitur non arbitrio, sed cunctis
rimitatis circumstantiis personarum, temporis, loci, aetatem sitne
probatum iudicialiter huiusmodi periculum grave pro persona, de
qua agitur.\footnote{10 S. R. Rota Dec., XXII (1930), 523–534.}

C. Factum Quod Attinet

In his testimony, Paul straightway excludes the possibility of
permanent separation, as he affirms that Blanche is exemplary in
her virtue as a wife. As to the reasons for temporary separation,
Paul claimed that conjugal life was impossible because of constant
arguments and quarrels. Among the many reasons in a long list
presented to the tribunal, he states that Blanche once threatened
to hit him with a chair; at another time she opened the window
and shouted so loudly that a great crowd of people and even the
police assembled at his home; on another occasion she heaped
words of obloquy upon him in public; on many occasions she
refused to cook meals for him, to take care of his laundry, and
the like.

In her deposition, Blanche admits that there were misunder-
standings and quarrels. She testifies, however, that the real cause
of all the trouble was that Paul, then forty-nine years of age, had
fallen in love with a young girl of twenty-two of the oriental Greek-
Schismatic church. Paul’s relations with this girl were very question-
able; he wrote numerous letters of an extremely compromising
nature and some of these letters are among the documents of the
case. Briefly, Paul learned that the ecclesiastical sentence of separa-
tion would authorize him to marry in the schismatic church. Hence,
he was actuated by dishonorable motives in requesting the separa-
tion. These points are proved from the testimony of witnesses and
by documents.

There was evidence that Blanche had used harsh and even oppro-
britious language toward Paul. But most of the other accusations
were either groundless or highly exaggerated. In no way could
Blanche’s conduct be interpreted as a serious threat to Paul’s health
or welfare.

Blanche is most willing to be reconciled and asserts that a happy
and peaceful married life with their many children is possible if
Paul will only conquer his infatuation for the schismatic girl. Paul
is not anxious for a reconciliation, but the sentence of the S. R.
Rota emphasizes the great moral danger he would be placed in
if he were deprived of the protective influence of his home, his
wife, and his children.

In view of the facts the decision of the S. R. Rota stated: Ad
primam partem, negative; ad secundam partem, provisum in
prima.\footnote{10 S. R. Rota Dec., XXII (1930), 523–534.}
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