

Sentence *coram* Florczak, 30 June 1928¹

Separation of Spouses

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1 – The Facts

1. Francis, who was a brick maker, entered into marriage with Catherine in October of 1897 at the parish church of N. in the diocese of X. After 27 years of marriage, Francis, who was 69 years old, initiated a suit against his wife, who was 66 years old, on February 2, 1924, so that he could obtain a canonical separation. The tribunal of first instance decreed, on May 7, 1924, that a separation from table and bed must be established for an indeterminate time because of the sin of both spouses. Immediately, both parties appealed to the Metropolitan Tribunal, however, with an unfortunate foreboding, because the judges of second instance denied the separation on February 3, 1925, and the man was made to pay all the expenses of the suit. Francis lodged an appeal against this sentence only to Our Sacred Tribunal, while the woman remitted herself to the justice of Our Sacred Office from a truly strange separation. Therefore, today the cause is proposed to Us, having to be defined under the agreed upon formula of doubt: *Whether and how there is a matter for separation from bed and dwelling, in this case.*

2 – The Law

2. Even though adultery is the only reason by law for a perpetual separation, nevertheless there are other reasons at hand for a temporary separation, which was defined in the 24th session of the Council of Trent, canon 8: “If anyone says that the Church errs, in that she declares that, for many causes, a separation may take place between husband and wife, in regards to bed, or in regards to dwelling, for a determinate or for an indeterminate period; let him be anathema.” Temporary causes of separation are enumerated by the Code in this manner: “If one spouse gives his name to a non-Catholic sect; if he raises the children non-Catholic; if he leads a criminal or disgraceful life; if one creates grave danger to the soul or body of the other; if by cruelty, one renders common life too difficult; these reasons and others of their sort...” (canon 1131 §1 of the 1917 *CIC*). Not all causes but only particular ones are enumerated by the Code, so other causes of equal importance are also able to be given, because the Code itself evidently declares,

¹ Tribunal of the Roman Rota, *coram* Florczak, 30 June 1928, in *Sacrae Romanae Rotae Decisiones*, 20 (1928), pp. 267-272.

excluding an exhaustive enumeration by these words: “These reasons and others of their sort are for the other spouse completely legitimate reasons for leaving” (ibid.). Moreover, it can be affirmed that, of all of these causes from which the right to obtain a separation can arise, one effect certainly ought to be danger of grave harm either of soul or of body. Fear of any danger whatsoever is not sufficient; it is necessary that the evil which is feared be grave and of such a nature that even the constant man would fear.² From this it follows that it is not enough for there to be threats, unless the one who threatens was accustomed to kill people, considering especially the gender, the nature and the temperament either of the one threatening or of the one fearing, and even the manner of threatening (cf. Sanchez, *De matrim.*, book X, disp. 18, n. 2-13³; Wernz-Vidal, *Ius matr.*, n. 644-646⁴; Cappello, *De matr.*, n. 828-830⁵). As far as hatred is concerned, pre-eminent and unappeasable hatred is required (cf. the words of Pope Alexander III in chapter 8, *De restitute. spoliat.*; Coscius, *De separ. tori*, book 2, chapter 11, n. 1 ff.): and light injustices from abusive words or the incompatibility of the personalities of the spouses which make cohabitation troublesome cannot be considered as sufficient causes to separate the spouses (cf. Pallottini, *Coll.*, tom. XIII, v. *Matrimonium*, § 23, n. 119⁶; Sacred Roman Rota, *Separation*, c. Lega, July 5, 1910⁷).

3 – The Argument

3. The petitioner asserts that he has the right to obtain a canonical separation, because of the pre-eminent hatred which his wife carries with her. “There is one sufficient fact which existed all this long time, the irresistible hatred which my wife has toward me ... and then this hatred is in

² In this case, the man is alleging that he should be granted a separation because his wife is trying to poison him. Thus, with any danger of grave harm, there is accompanying fear experienced by the person who has knowledge of the danger. As this decision makes clear, not any danger is sufficient to constitute a reason for separation, rather the danger must be grave. Consequently, the accompanying fear must be grave. Grave fear can be absolute or relative. Taking the criterion of Saint Raymond of Penyaford, absolutely grave fear is such that it afflicts even the “*homo constans*,” (*Summa de pœnitentia*, I, 1, tit. 8, 6) who only becomes fearful with serious threats such as kidnapping, torture, death, etc. Therefore, it has become an established aspect of jurisprudence to compare the person experiencing fear with the “constant man,” i.e., a man who is not easily frightened. This method allows the judges to determine whether a certain fear is absolute or relative, and thus whether the danger is grave.

³ Sanchez, T., *Disputationes de sancti matrimonii sacramento*, Venice, 1754.

⁴ Wernz, F.X., and P. Vidal, *Ius canonicum ad codicis normam exactum*, 7 vols., Rome, Gregorianum, 1927-1946.

⁵ Cappello, F.M., *Summa iuris canonici in usum scholarum concinnata*, 3 vols., Rome, Gregorianum, 1945.

⁶ Congregation for the Council, *Collectio omnium conclusionum et resolutionum*, S. Pallottini (ed.), vol. 13, Rome, 1867-1893.

⁷ In *Sacrae Romanae Rotae Decisiones*, 2, pp. 242 ff.

itself the one sufficient reason that allows me to separate through the sole fault of my wife.” Now the witnesses introduced do not prove this pre-eminent hatred of the woman for the man. Indeed, these witnesses plainly state that the cause of the strife is not the woman’s hatred, but either the woman’s love of money or other reasons. “The cause of the strife – states Aloisius V. – was the anxiety of the accused for money and for increasingly greater possessions.” And Francisca V.: “I believe that the cause of the split between the spouses is this, that the accused is stingy and did not want to keep servants, she wanted to keep the same operation of the house.” And Sigismundus S. also implicitly confirms this.

4. Various accusation brought forward by the man in order to demonstrate pre-eminent hatred against the woman are hardly proven juridically. Francis speaks about the warning signs of poisoning: “Before these same witnesses, I declare that my wife would like to poison me if she knew that her crime would not be discovered, which these witnesses will confirm.” But Sigismundus S. and his wife do not testify about these threats; Francisca V. relates: “I don’t know anything about the poisoning”; Aloisius V. responds: “It’s true that he said that she would poison her husband,” but immediately he added: “but I didn’t take this seriously, because the man says all sorts of things in anger.” Similarly the wife’s great defects in the care of household things reported by the man are not proven in the petitioning *libellus*, of February 2, 1924, because they are denied by the wife, who asserts substantial reasons for their denial, and because the witnesses disagree among themselves with adversative disagreement and they seem motivated by some passion or anxiety. However, other arguments brought forward by Francis against Catherine – such as the sale of the household and gardening things, stealing money and a copy of the marriage record – do not prove pre-eminent hatred, both because they are of little importance, and because they seem to be reasonably explained by the woman in a sense altogether foreign to the interpretation of the man.

5. It is true that the woman said shameful things against the man often and in many settings: for the wife herself has confessed this and the witnesses harmoniously testify. “It is true – states Aloisius V. – that she spoke ill with all possible curse words.” And Anna S.: “She spoke much ill of her husband ... as much as I silenced the worse curse words uttered.” Francis F. and Francisca V. testified similarly. Nevertheless, if the circumstances are weighed carefully, this reason for speaking against her husband, although it must be condemned, does not demonstrate pre-eminent hatred, but it signifies anger or exacerbation of mind, because indeed Catherine was suffering grave things from the man. “If at any time – Catherine says – in front of the witnesses I was severely condemning the behavior of my husband against me on the occasion of some debate, this was not an outpouring of hatred towards him, but rather an expression of my exacerbation and being worked up about the injury I received.” And then: “A real and continuous incurable hatred between spouses does not manifest itself only with words, but much more in the acts of malice and malignancy. And there was none of this between us. The petitioner did not

assert even one act on the basis of which one could categorically state that I have constant hatred.”

6. Therefore, it is not proven that Catherine pursued or will pursue the man himself with pre-eminent hatred. Indeed it is proven, and the man himself does not deny it, that she behaves in such a way to re-establish and pursue again peacefully the common life. “I am ready – says the woman – to make peace and from here on to live peacefully, as it should be.” From the acts it is clear that Catherine is not a woman who has a terrible nature, nor is Francis a man who is afraid of the hypothetical hatred of his wife, but, in view of the same, he may be agitated for a while. Indeed, he, in an unjust manner and way, used to hold his wife in contempt, as cruel or boorish: about this the witnesses testify: Eva B., Martha R., Catherine T. and Aloisia B. But especially, the man has severely offended his wife because of the suspected report, which he was fomenting with Julia the maidservant. It seems now to be a peculiar case both of disagreements among the spouses and of quarrels between the wife and the maidservant, about which the man uselessly supposes that an argument has to be produced to establish her intention. Finally, it must not be passed over what the wife had conveyed about the cause of the present litigation: “The petitioner wants to get rid of me, not to give me food.”

7. Hence, the hatred of Catherine toward Francis hardly seems to be unappeasable from the procedural records. The woman, as we see, resists the separation and asks that peaceful life be re-established, and she wrote to the tribunal of second instance in her appeal: “We are human, we are weak, and the care and hardships of life often excite us beyond measure, and therefore it is likewise in these altercations and debates of the family. But I note the fact that for 26 years of married life such squabbles and debates have not made the common life impossible, because after all we quarrel but we reconcile, as other spouses also do.” And Aloisius V. testifies: “For a long stretch of years, over 40 years, I have known Francis’ family. The litigating spouses remember their wedding. They have fought 4 times since then, and every time I have pacified them.” Moreover, the spouses had had sexual relations in September of 1923, that is, the seventh month before beginning the present cause. For the wife says, “If I was disgusting the petitioner, how is it that he had intercourse with me 7 months ago? Then he told me again that he wants, from here on, to live well with me.” And the man himself has confessed this fact: “It is also true – he said – that now seven months ago I had intercourse with my wife.” Then the hatred, even if it were to exist, must not be called unappeasable, and there is proof that it was forgiven. For, since a reconciliation was established after a disagreement or quarrel, it is evident that the same was already condoned and it is not able to be brought to trial as the reason to demand a temporary separation. For when considering the right to obtain a perpetual separation, this right of the spouse is not granted any more to the one who has condoned the adultery of the other spouse, even tacitly (can. 1129), rather a separation is not granted in the case mentioned above. And furthermore, since it is clearly established in canon 1131 §2, after a cause of temporary

separation ceases, the partnership of life must be re-established, which is all the more reason that it is evident that the same must not be separated, because of a reason which by chance has already ceased.

8. Since all these things have been considered in law and in fact, We the undersigned Auditors of the Turnus, etc. definitively sentence, responding to the proposed doubt: ***Negatively***, or *there is no proof for a separation from bed and dwelling, in this case.*

Given in Rome, at the Seat of the Tribunal of the Roman Rota, on June 30, 1928.

Joseph Florczak, *Ponens*
Ubaldo Mannucci
Andreas Jullien

The sentence was executed.