

Sentence *coram* Parrillo, 04 May 1929¹

For Defamation and Support

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1 – The Facts

1. Rita, the legitimate wife of Titus, had hardly returned to N., a city in Egypt, from America with her husband, in the beginning of 1925, when she began to be accused by him of conjugal infidelity and she was immediately deserted. Titus, taking his refuge in the city of Z., had already prepared everything for his return to America since his wife had been abandoned. Nevertheless, since his plan had been suitably brought to light, she had recourse to the Latin Patriarch of Jerusalem, so that he would restrain the man's departure and at the same time judicially cite him to respond about the false accusation of her. Since the man was bound to appear and the suit had been introduced, it was quickly discovered that the matter to be discussed was not able to be settled quickly, especially because of hearing the witnesses whom for the most part were living in America. However, since Titus was urging to return, because from the delay he was encountering enormous loss to his businesses, the tribunal produced an interlocutory sentence on March 22, 1925, determining that: "The husband can go back to America, pending the definitive sentence, but in the meantime the husband must pay his wife alimony on the basis of 25 piasters a day, from the day when he leaves his wife in N. This fee for support the wife must take from the 50 lire her husband had sent before to the family. If this tribunal is unable, due to delays of the required documents, to pronounce judgment before the said sum has been exhausted, the wife can ask her husband to send the same for support. In case of refusal, it is in her power to take this amount, which however, has not been already made by previous donations to her by her husband or by others, from her husband's port in N." Rita appealed this sentence to the Holy See, asking also that it would be deemed worthy to see about the merit of the controversy, and that the respective acts would be sent from the Sacred Congregation of the Discipline of the Sacraments (to which they had been sent) to Our Tribunal.

2. After the benefit of a gratuitous advocate was granted, the man was cited for the first time on November 9, 1926 to the joinder of grounds, but he responded that he was not able to come to Rome and does not know when he would be able to, thus he would delegate his own rights to a

¹ TRIBUNAL OF THE ROMAN ROTA, *coram* Parrillo, 04 May 1929, in *Sacrae Romanae Rotae Decisiones*, 21 (1929), pp. 189-193.

procurator.² Another citation was sent on February 1, 1927, with a little noted added about the advocates of Our Tribunal, from which he was able to choose the advocate whom he prefers. Since he had asked that Bishop X, in whose territory he is living, be assigned to interrogate the witnesses living there, it was repeated that he must present the witnesses' names prior, with the points under which they must be interrogated, according to canon 1761, §1;³ thereupon the means and instructions could be given to the same witnesses having to be heard there, with the things of law preserved which must be preserved. The respondent designated an advocate following this other citation, who nevertheless was unable to accept the mandate, but he pointed out to the respondent that he could choose another one whose name he was providing. Meanwhile, the joinder of grounds remained suspended in expectation of this newly appointed procurator, with the advocate of the petitioner and the Promoter of Justice consenting. But after seven months of expectation had uselessly passed, Rita's advocate urged that Titus be cited for the third and indeed final time, as he was on November 25, 1927. Only then, as if he was aroused from sleep, the accused signified, through the ministry of Bishop X, that he would not establish a new procurator, because the advocate had dared to ask for a huge sum of money for himself, and the first advocate had suggested that someone must be substituted in his place. At the same time, he was insisting for a second time that the faculty be given to the same Bishop to examine the witnesses near him, whom nevertheless he had neither designated, nor had he said under which points they must be questioned, according to a reply given at another time.

3. Since it was already about three years that this cause was lying unresolved due to the negligence of the man, and there was no ready hope from the evasions of the man that it would be quickly resolved, the joinder of grounds was done on April 28, 1928, between the advocate of the petitioner and the Promoter of Justice, with a question having been formulated about a single point concerning support, and also because of the woman's condition amid the delays of the trial which was made worse due to their death.⁴ At the insistence of this advocate, Titus was declared obstinate according to the norm of canons 1729 §1⁵ and 1843,⁶ and the formula of the doubt was

² Advocates and Procurators of the Roman Rota would have resided in Rome, which is why the man intended to name a Procurator. However, the use of the subjunctive suggests that he never did appoint a Procurator.

³ Canon 1761 of the 1917 *CIC*: "§1. When evidence through witnesses is proposed, their names and domicile shall be indicated to the tribunal; moreover the positions or articles of argument upon which the witnesses are to be interrogated shall be disclosed. §2. If, within a certain preemptory period established by the judge, things have passed without effect, the request is considered abandoned."

⁴ It is unclear from the text who died. However, given the context of this passage as well as of the passage further down below, it seems reasonable to conclude that the woman's children died.

⁵ Canon 1729 §1 of the 1917 *CIC*: "§1. If on the day designated for agreement on the questions, a party who is called before justice neither appears nor presents a just excuse for absence, he shall be declared contumacious [i.e., obstinate] and the formulation of questions established *ex officio* upon the request of the party who is present. Notice shall be delivered, however, immediately to the contumacious party *ex officio* so that if he wishes to propose

indicated to the same man *ex officio*, with the useful time of one month granted to dispel his obstinacy. The resolution of the question, by the same decree, had been established for August 8 of the same year, but once again the negligence of the man interfered so that the trial had to be deferred until the present day. Indeed, in a reply given by him at the appropriate time, he has brought up two reasons to dispel his obstinacy, beyond the fact of the advocate requiring a huge sum, and the asked for delegation to examine the witnesses in the diocese of X, about which he had brought up in his past replies. For he said that he is absolutely ignoring the object of the trial, because he was not notified about a lawful sentence from the Patriarch of Jerusalem, and that besides he is poor, since, not owning liquid assets, he lives by the toil of his own activity; whence he was insisting upon the benefit of a free defense. Although, after the third citation and the decree of obstinacy were given, these motives seem to be worthless and made to bring forward new delays to the trial. Nevertheless, we wish to take up the question of what is due about this information, from which it is evident that the interlocutory sentence about support, which concerns today's question, was personally read by Titus and he was able to go to America in compliance with the sentence. Moreover, the same man enjoys the best economic condition, whence the benefit of gratuitous legal representation cannot be granted.

In today's meeting, the following doubt is proposed for resolution, namely: Whether, in this case, Titus is obligated to be responsible for the support of his wife, in what amount and from what time.

2 – The Law

4. It is certain that a woman, who was abandoned by her husband without a just and legitimate cause, has the right to support, until it is demonstrated from the judicial definitive sentence that the marital partnership did not cease on account of his fault. However, the support must be suitable, after the dignity of the persons, the quantity of patrimony and the local lifestyle have been truly considered; because it was especially set forth in the decision handed down from the judge, and must be kept in mind, that support does not strictly consist only in bread and wine and shelter, but also in all those things necessary to sustain life, which all come under the name of support.

exceptions against the formulation of questions or the articles and to purge himself of contumacy, [he may do so] within a time that seems appropriate to the judge.”

⁶ Canon 1843 of the 1917 *CIC*: “§1. A judge is not to declare a respondent contumacious unless it is first shown: 1°. That a citation legitimately made came to the notice of the respondent within a useful time or at least should have come to him; 2°. The respondent fails to offer an excuse for the absence or presents an unjust one. §2. These things can be proved either by a new citation made to the respondent in order for him to excuse, if he can, his contumacy, or in some other way.”

3 – The Argument

5. The question proposed under the related formula of doubt encompasses three parts, namely: a) whether Titus is obligated to be responsible for the support of his wife; b) from what time; and c) in what amount. But the first and the second are considered beyond all controversy, for the appealed sentence took care of both, declaring that the man is obliged to provide support for his wife, and this from the day on which he abandoned her. Since Titus has neither principally nor incidentally appealed this sentence, after his wife's appeal (can. 1887, § 2),⁷ parts one and two have become an adjudged matter. And so, the third part remains, which is the only matter of contention; for in the appeal which was brought forth by the petitioner, it is stated: "The tribunal of the Patriarchate, in its so-called provisional sentence, fixed the fee at twenty-five Egyptian piasters per day, for maintenance, which treats me like a person of no importance, despite being the wife of a rich man, and consequently increased the suspicion against my reputation." And the Apostolic Vicar of Egypt commends the plea of the petitioner, "because at least the husband is forced to give to the wife, thus abandoned, a pension that allows her to live honorably."

6. On the other hand, if the payment fixed for support by the appealed sentence, which was by no means unsuitable, but also seeming to mock the pastor of the petitioner (as in their explanations), such must be considered today for a stronger reason, with her condition having been considered, in which she lives after his manner of living, amid the delays of trial they went the way of all mortals [i.e., they died]. For, the minors are the reason for the provisions of support for the wife, who is leading a common life with her parents, and the provisions are able to be present only and especially for living; and moreover since she has become accustomed to living honorably and well in the man's house, she must not be taken away from this condition until it is juridically established that he was not at fault.⁸

Rita, on behalf of her suitable support, asked for thirty English pennies for herself each month, which are to be sent by the man, since the expenses for this had been computed and her pastor keeps a just and suitable sum, with the conditions of place having been considered, in proportion

⁷ Canon 1887, § 2 of the 1917 CIC: "If [appeal] is interposed by one party upon a certain heading of the sentence, the adverse party, even if the deadline for appeal has run, can appeal other headings incidentally; he can do this even under condition of receding if the first party recedes from the instance." In other words, since the woman appealed the original sentence so that the merits of the controversy would be considered, the man could have appealed any other part of the sentence, incidentally.

⁸ In other words, the Rota is saying that the woman is entitled to support from the man for two reasons. First of all, for support for her and her children. However, the children apparently have died and the woman is living with her parents. Therefore, one could conclude that she is not owed any support. However, the Rota offers a second reason for support, namely, for the lifestyle to which she had become accustomed to with the man, until it can be juridically proven that the man was not at fault.

to the man's wages, which go up to seventy English pennies monthly and more, according to the information having been obtained about him.⁹

7. Indeed, this request seemed greatly exaggerated to the Father Auditors and to the Promoter of Justice himself, although it must be held as absolutely true that the man from his own activity acquires seventy or more pennies in a single month, as if this amount should be divided in half between the spouses! On the contrary, after all of the circumstances have been considered, and especially with the fact that Rita used to demand an amount smaller than the one today, for their living, in order to provide support for herself, hence the Father Auditors, with a certain compensation placed in the past and present, fix the size of the support at fifteen English pennies monthly from the day of the man's departure.

From this amount, which Titus is obligated to deliver to his wife for support and has already been used up, fifty pennies must be subtracted, about which the appealed sentence stipulates: "The wife must take this amount for support from the 50 pennies that her husband had sent prior to the family." Concerning this point, no appeal from the petitioner was brought forward, hence it must be considered as unopposed by the parties, it has also been declared an adjudged matter.

8. Finally, since the nature of the support has been considered, and the parties implore a quick determination in accord with the common expression, "hunger does not admit delay," it must provide for the future in an effectual way, so that support is not refused to the wife in the future from the refusals of the man, even under the excuse of the protection of rights. Thereupon, the Father Auditors (at the insistence of the petitioner's advocate), with the power of the faculty granted from canon 1917, § 2, 2^o,¹⁰ strengthen their own sentence with this clause of provisional execution that support is to be granted from this day into the future, namely as long as something else is not determined through a definitive sentence about the merit of the cause, or unless in the meantime it is agreeable to the contending parties to re-establish common life, just as the appealed sentence also determined. And this, notwithstanding an appeal, or more correctly, a

⁹ The Latin could also "small coins" instead of pennies. It is unclear exactly what denomination of coin is intended.

¹⁰ Canon 1917 of the 1917 *CIC*: "§1. Sentences that have passed into an adjudicated matter can be the subject of execution. §2. The judge, however, can order the provisional execution of a sentence that has not yet passed into an adjudicated matter: 1^o. If it concerns provisions or presentations necessary for the support [of a party]; 2^o. If other grave necessity urges but in such a way that if provisional execution is granted there be sufficient provision for the indemnity of the other party by bonds, bail, or security in case the execution is revoked."

petition for *restitutio in integrum* through appeal on the part of the stubborn respondent, according to the norm of canon 1847.¹¹

9. Since all these things have been considered, We the undersigned Auditors of the *Turnus*, etc. sentence, thus responding to the proposed doubt: *Affirmatively, for fifteen monthly English pennies from the day of the departure of the man, nevertheless subtracting fifty pennies, about which was mentioned in the appealed sentence.* And with the clause of provisional execution, within the limits as they are in the text. Furthermore, we find Titus guilty in order to pay back the fee for this sentence.

Given in Rome, at the Seat of the Tribunal of the Roman Rota, on May 4, 1929.

Franciscus Parrillo, *Ponens*
Franciscus Morano
Arcturus Wynen

The sentence was executed.

¹¹ Canon 1847 of the 1917 *CIC*: “But after the sentence has been laid down, a stubborn one can seek the benefit of restitution in the entirety [*restitutio in integrum*] through appeal from the judge who laid down the sentence, but not beyond three months from communication of the sentence, unless it concerns a case that does not pass into an adjudicated matter.”