Coram Exc.mo P. D. ANTONIO STANKIEWICZ, Decano, Ponente

RICHMONDIEN.

NULLITATIS MATRIMONII

Sententia definitiva diei 18 iunii 2008

(With comments from Msgr. Alejandro Bunge, made in Little Rock, on August 7, 2019)

1. – **Facti species.** – Innocent, petitioner in this cause, twenty-three years of age, and Ida, the respondent party, twenty-six years of age, both professing Baptist religion, while assisting classic hand-ballasts, celebrated marriage before the minister of the same religion in the city of Berchel on 20 July 1977, after the man had obtained a sentence of civil divorce from a prior bond, contracted with Laura, also a member of the Baptist religion.

Married life between the new spouses established immediately, was blessed with the birth of two children and lasted fourteen years despite various difficulties in common life.

Indeed, during this time, when another son was barely born, the petitioner decided to have vasectomy in order to avoid procreating any more children. Also due to anxieties and frustrations, experienced because of various reasons, he ended up with a severe form of intoxication, and because of this he was abandoned by his wife for a brief period of time.

Finally, during 1991 the woman definitively returned to her parents along with the children with the decision never again to return to her husband. He however, after lengthy and very expensive divorce procedure, obtained a sentence of divorce on 14 September 1994, which sanctioned the definitive dissolution of conjugal life, namely "on the grounds that the parties have lived separate and apart without cohabitation and without interruption for a period of one year".

2. – In order to legitimately marry a Catholic woman, the man petitioned the Ecclesiastical Tribunal of Richmond for a declaration of nullity of his marriage on 5 May 1995, but without indicating a clearly described ground of the accused nullity[1].

The Judicial vicar of the tribunal and with himself as the sole judge, competent by reason [...], admitted the introductory libellus of the petitioner on 18 October 1995.

Then the sole judge, after citing the respondent party and the defender of the bond,

[1] Here is a first point worthy of attention. The petitioner presented the case without knowing what the principal ground of invalidity was. The pre-judicial or pastoral inquiry desired by Mitis Iudex, described in the Rules of Proceeding, arts. 1-5), would have been helpful. It is necessary to identify with clarity, before the beginning of the case, the possible ground or grounds, so as to direct the most appropriate way of instructing the case., without losing time in aspects of the case that are not necessary, and without leaving "black holes" in the investigation that allow or help to resolve the case.

ex officio determined the following formula of doubt on 15 November 1995: "Whether the nullity of this marriage has been proven on the grounds that the petitioner entered marriage subject to an error such to determine the will concerning indissolubility (can. 1099); or that the petitioner excluded the permanence of marriage at the time of consent by a positive act of the will (can. 1101, § 2); or that the petitioner and/or the respondent labored under a grave lack of due discretion of judgment concerning the essential rights and obligations of marriage to be mutually given and accepted (can. 1095, 2°)".[2]

The same day the above said judge notified the formula of doubt to both parties and began the instruction of the cause, although the procedural law determines that this should be done ten days after the notification of the decree of the concordance of the doubt (can. 1677, § 4).[3]

3. – During the instruction of the cause, which was partly done through ratification of the documents, which were presented by the petitioner together with the introductory *libellus* of the cause, but partly through acquisition of written responses of the petitioner and his witnesses, that is, of his mother, aunt and uncle, which, by order of the judge, they sent via "registered" mail to the Chancery of the Tribunal of first instance.[4]

The respondent, although responded three times via telephone at the instance of the tribunal, was declared absent from the trial by the sole judge. In fact she then declared her desire to cooperate in this cause with the tribunal in these words: "This [process] has me upset." "I do want to respond and I do also have witnesses. I need to speak with someone concerning this."

After declaring the absence of the respondent party, the sole judge published the acts on 12 January 1996, having given the parties the faculty "to inspect at the Tribunal office acts which are not yet known to them and to propose any new proofs."

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[2] In this case, the Judicial Vicar, without having relied on the help of a previous investigation, sets the grounds in an imprecise way, including incompatible grounds. The defect of discretion of judgment is not compatible with simulation of consent, because, one who lacks sufficient discretion of judgment is incapable of making a sophisticated consent, as occurs with simulation, consenting to marriage, but excluding one or more of its essential elements.

[3] Certainly, the judge directs the process, and therefore also the instruction of the case, but he or she is not able to step on the rights of the parties who, with due advice, should have corrected this overly broad formula of the doubts which did not help to bring about a good investigation over the main chapter of invalidity.

[4] It is necessary to point out an investigation made according to the ancient roman model, guided by precise questions from the judge. The judge knows what is necessary proof to arrive at moral certainty regarding a particular ground and to direct questions to that which is necessary to know as not to be distracted by that which is not important. At the same time, a spontaneous declaration without knowing the previously the questions, helps the one who is questioned, who will already is one of the parties to the case or a witness, not arming his responses looking to say that which according to his way of seeing important results. It is in the interest of the interviewed that he or she declares what he or she knows about the facts and leaves the judge to evaluate what assist in proving and that which lacks sufficient proof.

Then, having bypassed the decree of conclusion of the cause (cf. can. 1599, § 3),[5] the same judge, after receiving the observations of the defender of the bond, pronounced the definitive sentence on 26 April 1996, by which he declared the nullity of marriage on the ground of error determining the will concerning the indissolubility of the bond (can. 1099), but dismissed negatively the other grounds of nullity of marriage, that is, both exclusion of indissolubility on the part of the man petitioner (can. 1101, §2), "and grave defect of discretion of judgment in both parties" (can. 1095, 2°).

4. – With an appeal by the respondent against the sentence of the first instance, which had declared the nullity of her marriage, the cause was brought before the Tribunal of the Roman Rota.

After receiving and carefully weighing the observations of the Defender of the Bond, the parties, who were in fact invited to intervene in this briefer process according the norm of canon 1682, § 2, did not send in their observations, in the session held on 30 May 1997 the Fathers decided that, after deferring the decision on the ratification of the first instance sentence, information should be sought from the Tribunal of Richmond about the canonical status of the prior matrimonial bond of the man petitioner, which was dissolved only through civil divorce, by which he was bound before marrying the respondent. We must say that the Judicial vicar of the said tribunal offered appropriate explanations and he sent them to Our Apostolic Tribunal together with the acts of the documentary process in the cause of the preceding marriage of the petitioner.

And these acts show that the first marriage of the petitioner contracted on December of 1974 in Georgia with Laura, also a member of the Baptist religion, was declared null due to the impediment of prior bond on the part of the said woman, on 26 October 1995, also by the Richmond Tribunal. In fact, when marrying the petitioner, as it is evident from the authentic document, she was still bound by the prior bond of marriage which was contracted with Alberto in Miami city in January 1968, also before a non-Catholic minister.[6]

5. – Therefore, after this controversy was in some way clarified, the Rotal *Turnus* discussed during the session held on 27 November 1997 the preliminary question about the ratification of the appealed sentence of first instance.

However, it seemed to the Fathers that the above mentioned sentence of the sole

[5] The beginning and the conclusion of the stage of instruction are important procedural moments which one should not forget or put to the side, because they have important juridical consequences which affect the substance of the process.

[6] A prior marriage of the petitioner's first wife, celebrated between two non-Catholic, made the marriage of the petitioner with this woman invalid, because there existed the impediment of prior bond, the woman was already validly married, until the contrary was proven. The petitioner's marriage with the prior woman is the first marriage of the petitioner which was declared invalid, in virtue of the prior bond of the woman, following the documentary process.

judge cannot be confirmed by decree according to the norm of canon 1682, § 2 especially because of many difficulties of a probationary nature.[7] For, the instruction of the cause was carried out too generically and superficially in view of the fact that the witnesses responded in writing only privately within their homes according to the manner of acting practiced there, although totally contrary to canonical laws (cf. canons 1558-1571), that is, in an extra-judicial manner without the presence of the judge and notary.[8] Moreover, the questionnaires sent directly to witnesses were not specific with respect to the ground of error determining the will.[9] Also the judicial examination of the man petitioner on the grounds of nullity of marriage for completing his preliminary exposition which was full of gaps, carried out before the formal commencement of the canonical process, was similarly overlooked.

After the cause was remitted to an ordinary examination of the second grade by the decree of the *Turnus* of 27 November 1997, at the instance of the *ex officio* Advocate, a supplementary instruction was carried out, in which the man petitioner and two witnesses introduced by him were again judicially examined.

The respondent party, although she responded "that she wants to cooperate", during the course of the process at the Rota, she refused to present her declarations. For, as the Judicial vicar of the Tribunal of Oakland indicated, "we have tried repeatedly to seek the cooperation of Ida in this examination, but she refuses to be interviewed. We have tried to explain what the concept of the annulment process consists of; yet, she states that she still cannot understand the concept".[10]

Therefore, after publishing the act of the supplementary instruction, having received and carefully weighed the written defences for the bond and for the petitioner, We now have to respond to the doubt determined in the second grade of trial under the

[7] The sentence of invalidity declared in the first instance before the Richmond Tribunal, was not able to be confirmed by the Roman Rota, because of the numerous deficiencies detected in the gathering of the proofs. The information received from those deposed was too general and superficial, probably because the formula of the doubt was too broad, that one could not realize a more detailed instruction, directed towards a precise object.

[8] Here comes the mention of the "American way" of instructing a case, according to the way the jurisprudence of the Roman Rota expresses it, although certainly not exclusively, in some cases that come from the United states, but also from other locations, It applies to the expression of an instruction realized in a very generic way, that is not carried out in a direct way to look for the determined facts that allow the proof of a ground of invalidity.

[9] It is necessary to distinguish between the type of investigation proper to the state that precedes judgment, which habitually is an investigation much broader, trying to find useful elements for the possible cause of invalidity, and the type of investigation to realize within the cause of invalidity, in which should follow precise norms over who, what and how one should investigate, counting additionally with the teaching of the jurisprudence over that which lacks proof in each ground.

[10] This is a situation probably very frequent in cases between baptized non-Catholics. Certainly it concerns a serious difficulty, but does not absolutely prevent the cause from moving along.

following formula: Whether there is proof of nullity of marriage in the case due to error determining the will concerning the indissolubility of marriage on the part of the man the petitioner (can. 1099).

6. – **In iure**. – Because the judicial discussion in this cause of nullity of marriage concerns two baptized non-Catholics, the first question concerns whether non-Catholic spouses are *habiles* to challenge before the tribunal the Catholic Church their in order to obtain a legitimate declaration of nullity;[11] then, if it is so, which substantial or substantive and procedural law should be applied, in such a case, by the ecclesiastical judge.

However, according to the law we use, both those baptized outside the Catholic Church, and the non-baptized can act in an ecclesiastical trial,[12] but when summoned to trial they must respond (can. 1476).[13] And this has been provided by ecclesiastical law not because they have the capacity of a party on the basis of their proper juridic personality in virtue of the baptism they have received and of incorporation into the Catholic Church (canons 96; 204, § 1), but because of participated personality, namely by reason of a challenge against their marriage in the ecclesiastical forum (cf. can. 1501) in order to obtain clarification of their free status, so that they may be able to celebrate a canonical marriage with a Catholic party (cf. sent. c. the undersigned Ponens, 25 July 2002, in RRT Dec., 94 [2002], p. 490, n. 4).[14]

For the same reason an ecclesiastical judge can deal with and define only those causes of nullity of marriage of baptized non-Catholics or non-baptized, in which the free status of at least one party needs to be proved before the Catholic Church (art. 3, § 2 Instr. *Dignitas connubii*), but certainly not to attain some other and deserving ends.

However, in order to declare the nullity of marriage, the causes of non-Catholics

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[11] The first question to resolve is regarding the right of tribunals of the Catholic Church to treat the cause of invalidity of the marriage of two baptized non-Catholics, or said in another way, the right of baptized non-Catholics to present their case in the tribunals of the Catholic Church. Certainly, they can do so, but not in virtue of proper law, but by reason of derived law, in which the declaration of marriage of a baptized non-Catholic could open the door for this non-Catholic to celebrate now a new marriage, this time with a Catholic. The response is offered clearly in the Instruction *Dignitas Connubii* articles 3-4: the baptized non-Catholics have the possibility to present their case on invalidity of marriage in a tribunal of the Catholic Church, not by reason of the proper juridic personality, but by virtue of a participated juridic personality of the Catholic with whom the non-Catholic hopes to celebrate new marriage, for which it is necessary to show his status of "free from the bond of marriage."

[12] Under these conditions the baptized non-Catholics can initiate his or her cause of invalidity in a tribunal of the Catholic Church.

[13] Additionally, without they are cited to declare a cause which is treated before a tribunal of the Catholic Church, they have the obligation to respond.

[14] The reason the judge has jurisdiction to intervene in these cases concerned the necessity of the party to demonstrate his/her free status to celebrate marriage with a catholic faithful.

must be defined according to the proper *matrimonial law* of the Church or ecclesial Community to which they belonged at the time of celebration of the marriage. If the ecclesial Community lacks its own law, the matrimonial law used by it is to be applied (arts. 4, § 1, 1°; 2, § 2, 1°-2° Instr. *Dignitas connubii*), having observed however the principles of divine natural and positive law concerning the essential and constitutive elements of marriage, which are authentically explained by canonical laws in the delineation of psychic incapacity and defects of matrimonial consent (cf. canons 1095-1104).[15] Finally, the causes of nullity of marriage of non-baptized persons must be dealt with and defined by the Ecclesiastical Tribunal according to canonical procedural norms (cf. t. 4, § 2, 1° Instr. *Dignitas connubii*).

7. – As far as the ground of nullity is concerned, about which there is judicial discussion in this case, that is to say, about error concerning the indissolubility of marriage which determines the will (can. 1099),[16] we must see not only the connection of such an error with the will, but especially it's determining and inordinate influence on consent, that is, on matrimonial will (cf. can. 1057, § 2).

However, we must first of all note that error determining the will does not concern only the *speculative* dimension, impeding mere assent of the mind to the false (S. Thomas Aq., *De malo*, ...; A. Llano, *Filosofia della conoscenza*, ...), approval of the false for truth or wrong judgment of reason (ibid., ...), but a *dimension totally practical, that is, of acting*, by exciting and moving the propensities and inclinations of the will toward the object designated by a false judgment of reason.[17] For "practical reason judges and makes decisions on practical matters", because "it not only directs exterior acts, but also inferior passions", while "the will tends to what is already judged by reason" (S. Thomas Aq., *Summa theologica*, ...).

However, when error as a false judgment about unknown matter, because of distorted representation of reality, exercises its influence on the volitive process, also causes discrepancy between the will formed by an erroneous judgment and externally declared, and the hypothetical, that is, interpretative will, which would have been had if

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[15] The second question is: What law should the judge apply to resolve the invalidity of marriage to baptized non-Catholics? IT is not a small question, if one has in mind that they marry these faithful are not obligated by merely ecclesiastical laws (c. 11: "Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the efficient use of reason, and unless the law expressly provides otherwise, have completed seven years of age"). Therefore, the judge should apply the law proper to the church to which they pertain, the non-Catholic, or if they do not have it in their own church, remaining always honoring the divine law: natural or revealed.

[16] In this case, it has special interest and is necessary to show that error regarding indissolubity of marriage, attributed to the petitioner, there was of such a nature that it determined his will.

[17] Error involves a practical decision, in practical matters, and not speculative.

error had not been present.[18] For this reason, the assertions of ancient roman jurisprudence and imperial constitutions express the vitiated will or totally absent will in substantial error in the following words: “indeed, null is the will of the one in error” (Pomp. Dig. ...); “the will of the one in error is null” (Impp. Diocletian. et Maximinian. ...); “the consent of the one in error is null” (iidem. ...); “those in error do not seem to consent” (Ulp. Dig. ...); “those in error may not consent: what is in fact so contrary to consent as error” (Ulp. Dig. ...).

8. – Unlike among the ancient experts of law, within the canonical tradition not only the incompatibility of substantial error with matrimonial consent is acknowledged by usual words of ancient jurisprudence: “what is more opposed to consent than error” (Suppl., ...), but above all the efficacy of such error is attributed to natural law itself, in view of the fact that “error concerning natural law has what voids marriage” (Suppl., ...), “as indeed is error of something of those which are of the essence of marriage” (ibid.).

Besides, it happens if error concerns those things “which are consequent upon marriage, for instance on the question of its being a sacrament, or of its being lawful”, because such error “is no impediment to marriage: as neither does an error about baptism hinder a person from receiving the character, provided he or she intends to receive what the Church gives, although he or she believes it to be nothing” (Suppl.,...).[19]

Indeed, the canonical-juridical inefficacy of error of faith “in those who do not believe in this sacrament” (Suppl.,...),[20] extends also to error concerning the essential properties of marriage (cf. can. 1056), which come under the reason such as those things “which are consequent upon marriage”. For, “it is not from its generic nature that error is an impediment to marriage, but from the nature of the difference added thereto”, which is recalled if error concerns “those elements which concern the essence of marriage”. But the essential properties of marriage perceived by a wrong judgment by the one in error neither change nor affect the identity of this essence (cf. can. 1096, § 1).[21] Wherefore, *speculative error* on the part of one or the other of the contractants, who argue that the bond of marriage can be dissolved, is not opposed to the validity of marriage, but an error founded in practical reason, to which the contractants also bind their will to a dissoluble

[18] Error leads to a different decision than one which you would have taken if the error had not been present. This with such strength that one can say that in reality, true consent, in this situation, does not exist, because one consents to something that is not a real marriage.

[19] Already, the ancients attributed to the natural law the capability of substantial error to provoke the invalidity of consent. One does not attribute the same capacity of error concerning the elements that accompany the marriage, but do not pertain to the substance.

[20] For example, it is not enough that the marriage might be void, that it is not considered, for the lack of faith, a sacrament.

[21] In turn, if one can provoke the nullity of marriage an error regarding its essence, also if it is an error regarding some of the essential properties (unity and indissolubility, as over his essential ends, it is the offspring, the communion of life and love).

bond under the influence of error.[22] In fact, for this reason, according to the norm of canon 1099, error concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent, provided that it does not determine the will.

9. – Whenever baptized non-Catholics are in an invincible error concerning the indissolubility of marriage, often augmented by the behaviour of their ecclesial community, the same persons when they approach the celebration of their own marriage, because of the dictate of their erroneous conscience, they are not presumed to act differently than they feel and are convinced about the dissolubility of marriage.[23] For, the erroneous judgment, but especially the practico-practical judgment, by which they are imbued, furnishes them with only a dissoluble marriage, and they are compelled to infallibly consent to this. In fact, the more strongly and more tenaciously the opinions of divorce are rooted in the mind of the contractants and these involve the manner of acting to be executed, they pervade and move their will more efficaciously to choose a dissoluble marriage (cf. sent. c. the undersigned Ponens, 25 April 1991, in RRT Dec., 83 [1991], p. 283, n. 7).

Nevertheless, error so specified does not on its own induce the nullity of marriage, but through the will determined by it,[24] and this consents to a likeness of marriage that is in conformity with the erroneous opinions (cf. sent. c. Caberletti, 27 November 1998, in RRT Dec., 90 [1998], p. 815, n. 5; sent. c. Sable, 18 November 1999, in ibid., 91 [1999], p. 679, n. 6). In fact, the function of error determining the will does not consist in the fact that the error as an act of the intellect turns into an object of the will, but because it circumscribes the object of the will under the consideration of apparent truth and proposes it under the consideration of apparent good to the volitive faculty to accept.[25] Therefore, one who restricts the limits of the formal object of matrimonial consent to the sole form of marital partnership dissoluble by divorce, by depriving it of this essential property, that is, indissolubility, by a positive will, contracts invalidly (cf. sent. c. the undersigned Ponens, 25 April 1999, in ibid., p. 284, n. 7; sent. c. Erlebach, 9 July 1999,

[22] For this, what is needed that the error does not remain in the intellect, but it moves the will. It is not enough, that, the error of one who believes that marriage is dissoluble, but that needs the error of whom, precisely as the cause of this error, to want a marriage “dissoluble” An error, therefore that determined the will of the one who errs.

[23] If the parties belong to a community in which the error against the indissolubility of marriage is rooted, it is quite possible that this error is forming part, decisive way, to the point of determining, of the will of the one who errs.

[24] Already one more time, it insists in that it is not treating an error in itself, but it treats of an error that determined the will.

[25] It is not that the error of the intellect moves the will to make a mistake, too. It is that error proposes to the will a false truth, and the will moves towards a false good, which does not actually exist (dissolvable marriage).

in ibid., p. 535, n. 5; sent. *c.* Bottone, 1 December 2000, in ibid., 92 [2000], p. 681, n. 11).

10. – Since "law does not order the useless" (R.J.), in judicial interpretation of the legal clause concerning error determining the will (can. 1099), one is not to overlook the common opinion, according to which the above said clause remits, as far as the mode of determination of the will by error is concerned, to the prescript of canon 1101, § 2, that is, to the form of a positive act of the will, at least implicit, by which either or both of the parties exclude some essential element or some essential property. Therefore, according to the understanding of this opinion, the above mentioned clause, unlike the one concerning error about the quality of a person "directly and principally" intended (can. 1097, §2), retains the character of only simple reference to another canonical norm.[26]

However, in this matter, with the Pontifical function of teaching assisting judicial interpretation, even other modalities of determination of the will by error are appropriately considered.

Therefore, the *intensity or force* of a determined will is thus brought to light, because of which the error itself amounts to a condition *sine qua non* (cf. can. 126).

Therefore, by parallel reasoning about the necessity of an intention in the simulation of the will and in error determining the will we are warned in the following serious words: "it would cause serious harm to the stability of marriage and so to its sacred nature, if the fact of simulation was not formulated concretely on the part of the alleged simulator in a 'positive act of will' ('*actus positivus voluntatis*') (cf. can. 1101, § 2); or if the so-called error of law ('*error iuris*') regarding an essential property of marriage or its sacramental dignity did not acquire such intensity as to condition the act of the will, thus causing the consent to be null" (John Paul II, Allocution to the Roman Rota, 29 January 1993, in AAS, 86 [1993] p. 1259, n. 7).[27]

11. – However, the will conditioned by invincible error concerning the indissolubility of the bond is difficult to prove among non-Catholics, who marry between themselves.[28] In fact, the erroneous assent firmly rooted in the mind toward a dissoluble

[26] It affirms canon 1099 it seems to be, but is not the same as canon 1101 regarding the simulation of consent.

[27] The pontifical magisterium helps to understand that which has been said up until now: The intensity or the strength of the will can to be, what it is claiming with this will should be as a condition "sine que non." And, therefore, as happens in the ground of invalidity of the exclusion, also in error that determines the will, there is an intention, caused by error that converts the content of the error to a condition "sine que non" (Juan Pablo II a la Rota Romana, 1993).

[28] It is not easy to prove, in the case of marriage celebrated between baptized non-Catholics what the error regarding the essential properties of marriage comes to precipitate an intention of such force that it converts it into a condition sine qua non. Being both convinced that the marriage is at the same time dissoluble, they do not need a special intention that puts the accent on

marriage, determines their will according to the object specified by the error without perceiving the need to strengthen such a determination with the help of an attached condition, that is, in order for the erroneous assent to turn into a condition *sine qua non*. On the contrary, such a necessity seems to be more easily detected by a non-Catholic because of the necessity of celebrating the marriage with a Catholic party in the Catholic Church.

Therefore, in similar circumstances even a *positive determination of the will* to a dissoluble marriage is sufficient for effecting the nullity of consent. For, as we are taught: "in virtue of the principle that nothing can replace marital consent (cf. can. 1057 CIC), an error concerning indissolubility, by way of exception, can have an invalidating effect on consent if it positively determines the will of the contracting party to decide against the indissolubility of marriage (cf. can. 1099 CIC). This can only occur when the erroneous judgment about the indissolubility of the bond has a determining influence on the will's decision, because it is prompted by an inner conviction deeply rooted in the contractant's[29] mind and is decisively and stubbornly held by him" (John Paul II, Allocution to the Roman Rota, 21 January 2000, in AAS, 92 [2000], p. 353, n. 5).

12. – Because the internal consent of the mind is always presumed to correspond to the words or signs used in the celebration of marriage (can. 1101, § 1), the determination of the will by error to a marriage dissoluble by divorce must be proven with convincing arguments in the judicial forum.[30]

But, more correctly the object of this proof either constitutes an error affecting the will of the contractant, or the intensity of the will, which chooses and pursues under the influence of error only a dissoluble bond.

These elements are gathered especially from the judicial and extra-judicial confession of the party in error (cf. can. 1536, § 2; arts. 179, § 2; 180, §§ 1-2; 181 Instr. *Dignitas connubii*),[31] then from the remote and proximate cause for the transition of error into the will[32] and from the circumstances antecedent, concomitant and subsequent to marriage, which illustrate the determination of the will by error by facts that are

indissolubility.

[29] It is easier for this to happen when marriage between a non-Catholic and a Catholic baptized person is celebrated. The non-Catholic knowing that for his Catholic spouse marriage is indissoluble, he may have the special intention of assuming the marriage as he understands it, that is, dissolvable, and his error, then, leads his will.

[30] That the will of the one who married there had been determined by his or her error should be demonstrated. There that tests the existence of the error, and also the intensity of the will it.

[31] The direct proof, that is the principal, consists, equal that in the case of simulation, it is the confession of the one who erred, made during his or her judicial declaration, or made outside the judicial field.

[32] The indirect proof consists especially in the case that brings the error from the intellect to the will, to the point to determine it.

completely certain.[33]

Moreover, in order to specify the nature of error determining the will and moving it toward the object presented to it, the following two things may be usefully explored, which are necessary: "a) that the one marrying thinks that the bond of marriage must be dissolved at least when the marriage has ended"; "b) that he or she is convinced that the bond of marriage must be dissolved in the concrete case of marriage to be contracted here and now, at least in case of probable breakdown" (sent. c. Pinto, 14 November 1986, in RRT Dec., 78 [1986], p. 626, n. 4; sent. c. the undersigned Ponens 25 April 1991, in ibid., 83 [1991], p. 285, n. 10).

13. – **In facto**. – This cause was referred to our Tribunal so that it might consider, in accord with the mind of canon 1682, § 2, the confirmation of the sentence of the first instance. But, because of scarcity of the elements of proofs concerning the ground of nullity adduced in the first grade of trial, which the defender of the first instance tribunal recalled as follows: "There is no evidence concerning petitioner's feelings on indissolubility of marriage", much less "that he had excluded the permanence in the marriage", except that "he had bad examples of divorce in his family and that he had already experienced one of his own", the sentence of first instance pronounced in favor of the nullity of the marriage was not confirmed through the Rotal decree but the cause itself was remitted to the ordinary process in the second grade of trial.[34]

In fact, because the effort of the sole judge, begun in the preceding instance, in strengthening the weakness of the proofs was not successful in having a positive result, he rather reverted to conjectures than to the generic declarations of the petitioner and of his witnesses, which conformed to the ground of nullity, and concluded for the nullity of the matrimonial bond, namely by thinking that "the petitioner knew what he was doing and married according to the definition he knew. He could do no other".[35]

From these concise observations it is clearly evident that the cause submitted to

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[33] Additionally preceding, concomitant, and subsequent circumstances also form part of the indirect proof; they result compatibly with the assumed error that determines the will.

[34] It is important to have in mind that it was the shortage or poor quality of the proof that prevented the confirmation by decree of the first instance decision (in accord with canon 1682 § 2 which was in force at this time). If the case had arrived today at the Roman Rota, the same thing would have happened. For the same reason (the scarcity and poverty of the proof), it would not be considered a merely dilatory appeal (the only way for a case to arrive at the Rota after an affirmative sentence). Therefore, the appeal would be admitted, and the case would be treated according to the ordinary process, making a supplementation of the proof, with all the delay that this involves.

[35] There is no evidence of the evaluation, consideration, or appreciation of the feelings of the petitioner regarding the indissolubility of marriage. The sole judge of the first instance only based the conjectures that he made, apart from the imprecise declarations that were present in the acts, but this is not sufficient. One arrives at moral certainty of invalidity, in light of the proofs, and not by means of conjectures.

the Rotal judgment needed further examination, through a supplementary instruction in order to explore the will of the petitioner in contracting marriage, whether or not it was in fact determined by his error about the indissolubility of the matrimonial bond, redounding to a decision to celebrate only a marriage dissoluble by divorce.[36]

14. – In fact, among the family members of the petitioner there had been several dissolutions of the marriage bond. His own parents and grandparents, certain maternal aunt and uncle, who was a minister in the Pentecostal community, had indeed obtained divorce. And the petitioner on his own brings this to light in this grade of trial in the following words: "My parents were divorced, and I became close to an uncle who became like a brother to me. He was a Pentecostal minister". "My uncle who had been divorced took me in, he and his new wife". "My grandparents were divorced, and my mother's sister who was married five times". Thereupon, the petitioner now ponders over these facts in his mind as follows: "we had the example of my parents, and I had my uncle's divorce as an example, too".[37]

It is of utmost importance to us what the petitioner and other members of that Pentecostal community felt about the divorce of its own minister, namely of the petitioner's uncle, and in what esteem did they hold this event and what significance did they attribute to the same. But, according to the petitioner's explanation, all the members of the said community excused the divorce of their minister without any difficulty and they approved it with the consent of all. For, as the petitioner and the nephew of that minister explains: "the church accepted his new wife very well. They had seen how he had tried his best to resolve things, and so when that didn't work, no one faulted him for getting married again. We all felt he was justified in getting married again, and everyone was happy with him". Moreover, according to the petitioner's declaration, his uncle made several attempts to avoid the decision to abandon his wife, in fact "he spent hours praying that she'd come back. He did not say a whole lot about her, but soon he found another wife, a lady who had been helping the church secretary. They grew close and soon married".

15. – We are also not to overlook that the fact that the petitioner had until now

[36] The new instruction carried out in the Roman Rota had the objective to supplement that which was lacking in the first instance proofs. If this in fact had been done at first instance, it would have saved the petitioner interested in the declaration of nullity much time. The lacking proof concerned the will of the actor, at the moment of the celebration of marriage, to verify if it was or was not determined by the error concerning the indissolubility of marriage.

[37] The proof in favor of the error determining the will was obtained mainly from the declaration – judicial confession – of the petitioner. They placed into evidence the various cases of dissolution of the bond in the family of the petitioner. Of special importance was the divorce of the uncle pastor and minister in the Pentecostal Church, with the approval of the community, also his second marriage with a secretary of the Church office. Also, the divorce of the parents.

risked two divorces. In fact, Innocent married the first time a woman already divorced by her husband, that is, Laura, namely one who "had a prior marriage and had two little boys". However, this marriage lasted only nine months, because as the petitioner explains, "it broke up on her initiative while I was in boot camp. She said she saw it was a mistake".[38]

However, divorces both of his own family members and undoubtedly the petitioner's own strengthened his conviction "that marriage could end in divorce, that is, that a marriage would be over and a person would be free to marry again".

It is asked however whether the firm persuasion or conviction of the petitioner concerning the intrinsic dissolubility of marriage had also determined his own will with respect to the marriage to be contracted with the respondent.[39]

In his latest judicial confession the petitioner manifested in clear words his conviction deeply rooted in his mind about the dissolubility of every marriage. For, to the question formulated generically: "Did you marry, believing that the marriage could be dissolved?" – the petitioner responded: "Of course it can, if there is adultery or if the other person is running around, or if there's fighting, because there's no need to be hurt in a marriage". But to the question specific to his own concrete marriage to be contracted with the respondent: "When you married, did you consider this marriage was indissoluble?" – The petitioner gave this response: "No. I thought any marriage could be dissolved. I don't believe any marriage is not dissoluble".

Similarly, the petitioner attributes to civil divorce the power of dissolving any matrimonial bond. According to his opinion, by means of civil divorce "the marriage is over", because "divorce dissolves the marriage, and both of you are free to remarry".[40]

16. – But one may counter other statements of his against the above reported assertions of the petitioner concerning the dissolubility of the matrimonial bond, which show his intention to establish stable family life, which was equally fostered by him. In fact, such an intention clearly emerges from the following affirmations: "I wanted a family, a home, and to be out of the barracks where there was no personal place"; "I was more thinking of wanting a house and a family. She gave me no reason to be thinking of

[38] Also important in the proof that the petitioner had already had two divorces, by the time he presented the cause of nullity: the first of his marriages, declared invalid in the Catholic Church through the documentary process, by reason of the prior bond of his first spouse; the marriage not submitted to the judgment of the Catholic Church, after having obtained the civil divorce.

[39] The actor was asked directly about his intention in celebrating the particular marriage on which this cause of invalidity is about, and his answer was clear: he assumed this marriage as dissolvable, just like any other, since all marriages are dissolvable.

[40] The petitioner attributed to civil divorce the capacity to dissolve the marriage bond, not only its civil effects, but also the bond itself.

a divorce again when I proposed to her".[41]

Anyway, every human being, who has the nature of a total human person, prefers a successful marriage to the prospect of future divorce in case of breakup of conjugal life. Nor did the petitioner prefer differently after the unexpected rupture of his first marriage, although he too quickly crowned the premarital relationship with the respondent by his decision to marry her. In fact, as he himself explains: "in meeting Ida I was just coming from a divorce and I needed to date a lot, but instead I latched onto just one person quickly. It did not grow as a premarital relationship".

With these in mind, as the petitioner explains in his judicial examination, the happy and prosperous outcome of marriage desired by him together with the possibility of the dissolubility of the bond were present together in his mind. For in his brief response to the intricate question of the Auditor: "You have said you preferred this marriage to succeed, but that you married with the thought that it was dissoluble, that is, that either of you could dissolve it and get out of it if it was not satisfactory. Is this correct?" – he repeated thus: "Yes, absolutely".

17. – However, what pertains to the intrinsic force of the intention of choosing a dissoluble marriage according to the opinions deeply rooted in the mind contrary to indissolubility, the petitioner also aptly reveals this when asked: "Is this a true statement of your intention, not just something I am saying?" – he responds thus: "Yes, that's what I thought. All along I thought that the marriage might break up".[42]

But, in the disposition of the internal mind of the petitioner it was not a matter of mere intellectual thinking, which does not exceed the limits of simple error concerning indissolubility, but a matter of an intention of embracing a dissoluble marriage, formed under the influence of a radical conviction in his mind concerning the dissolubility of any matrimonial bond. In fact, even the Auditor, who carried out the petitioner's judicial examination, interpreted his affirmations in this sense. For, according to the estimation of this Instructor: "His claim is that he married but did not intend the marriage to be an indissoluble or lifelong commitment. His reaction to some of the questions I posed demonstrated his continued conviction that marriage is dissoluble".[43]

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[41] It is necessary, and it is done in the sentence, to give reasons from the proofs that seem contrary to the affirmation of the invalidity of marriage. The petitioner and some of the witnesses say that he wanted a "stable" marriage, with a family, and a house. But at the same time, the petitioner explained that he would thought of "stability," he did not think about "indissolubility," but simply discard a "temporary" relationship.

[42] Here comes the part that case to be considered the most difficult of the proofs. It concerns the consideration of the force of the intention of the petitioner's will, at what time it was determined by the error regarding the indissolubility of marriage.

[43] The remote cause of the petitioner's will determined by the error regarding the indissolubility is found in his firm conviction that marriage is dissoluble, reinforced by his life experience, the actions of his family, and his own divorce after nine months after he celebrated his first mar-

This judicial confession of the petitioner about his intention to contract a dissoluble marriage with the respondent finds its remote cause in his firm conviction about the dissolubility of any marriage, which he peacefully shared with other members of his religion. But the proximate cause of such an intention was based on doubts the same petitioner had about the uncertain success of the marriage which he was about to celebrate after the unfortunate end of his prior marriage. For, to the question formulated thus: "Why did you enter the marriage thinking this?" – The petitioner responds: "Because of what I knew about marriage and what I had experienced, and because of the doubts I had".[44]

18. – The judicial confession of the petitioner received no recognition on the part of the woman respondent. In fact, as already stated above (cf. n. 5), although she had first promised to appear in the ecclesiastical trial in order to provide her declarations in the cause, she then completely changed her mind and will and refused to appear before the judge. But she offers the following reason for her behaviour, because she thinks that it is very difficult to know and understand in what does the concept of canonical process about the nullity of marriage consist.[45]

However, the witnesses introduced by him confirm the familial surroundings which favored divorce, in which the petitioner spent his time with the respondent before the marriage.[46]

For Olla testifies thus: "Mother and father divorced. Educated in public schools. As most youngsters, he was hurt that his parents divorced, but it did not leave any psychological damage". The witness also supports the credibility and truthfulness of the petitioner: "I have known Innocent since birth and he has always been a reliable person. He returned from the Navy, and was hired in his same job as a civilian with numerous responsibilities; so that should tell you something about his character".

Similarly the petitioner's mother testifies that divorce was common within the domestic surrounding of her son: "Divorce was common in his family. His one brother is divorced, but has not remarried". "Innocent was of the Baptist Faith. To the best of my

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riage. The proximate cause one finds in the doubts of the petitioner concerning the marriage that he prepared to celebrate and the success of the relationship undertaken.

[44] The intention of the petitioner was truly an intention that left the indissolubility of marriage absolutely outside of consent. Here it is interpreted by the same auditor who interrogated him (the petitioner).

[45] The Respondent does not confirm everything the actor has stated. This needs an explanation, which the sentence offers without fail. Although she was willing to participate in the cause, the respondent did not do so, justifying herself by stating that she could not understand what a judgment of nullity in the Church meant. This makes her alleged opposition to nullity not enough to reach special vigor or strength.

[46] Notwithstanding the silence, or directly the absence of the respondent, the declarations, of the witnesses presented by the petitioner confirm what he has said.

knowledge, they do believe in divorce, under certain conditions". "He believed that divorce from Ida is best for him and her and I agree". Moreover, the petitioner's mother confirms that her son is absolutely truthful, while she is not that confident in saying anything for certain with respect to the respondent's truthfulness in this matter: "Innocent will answer truthfully. I don't know if Ida will or not, I haven't had contact with her in four years".

19. – When all these matters are carefully weighed, everyone can see that in this cause a peculiar force must be attributed to the conviction of the petitioner about the dissolubility of the matrimonial bond, and certainly driven by this he accepted the respondent party as a partner in the marriage-bed in conformity with his own mind. Certainly this conviction or persuasion, which had radically shaped the mind of the petitioner, not only drew its intrinsic justification and reinforcement from the constant use of civil divorce within his family environment and his own religious community, but also resulted even in the real application in his manner of acting in matrimonial matter.[47]

It does not matter if some witnesses bring to light the desire of the same petitioner "to have a good functional family", insofar as "he was the personification of a family man", "a good provider and loves his children" (Roland), or that "he believed strongly in the institution of marriage" as well as "he expected it (marriage) to be permanent" and "when they were married, [...] it appeared to be normal" (Olla).

In fact, permanent partnership (cf. can. 1096, § 1) indicates only its stability, therefore it excludes some transient union. But indissolubility indicates something much broader under the aspect of duration, namely perpetuity properly called (cf. F.M. Cappello, *De matrimonio*, Romae, 1961, p. 38; sent. c. the undersigned Ponens, 14 October 1978, in RRT Dec., 70 [1978], pp. 442443, n. 12). Therefore, one who wants only a stable partnership, does not necessarily intend the same to be indissoluble. But in our case, the man petitioner, despite his desire for a stable partnership with the respondent, nevertheless because of error determining his will, intended and contracted only a dissoluble partnership.

20. – After having properly weighed and carefully considered everything said in law and in fact, We the undersigned Auditors of the *Turnus* decide, declare and definitively sentence responding to the proposed doubt: *Affirmatively, that is, there is proof of nullity of marriage in the case because of error determining the will concerning the indissolubility of marriage on the part of the petitioner; the same man is prohibited from entering into a marriage in the Catholic Church, unless he promises before the*

[47] It was therefore not a simple error of the petitioner regarding the indissolubility of marriage. This error had a particular strength in the petitioner, able to determine his will, because of his previous experience and circumstances. In this way, this error acted directly on his will at the time of making his practical decisions, such as marrying the respondent.

Ordinary of the place that he will contract according to Divine Laws.[48]

Given in Rome, at the seat of the Tribunal of the Roman Rota, on 18 June 2008.

+ Antonius Stankiewicz, Decanus, Ponens
Robertus M. Sable
Iordanus Caberletti

[48] It is necessary in the case, in an inescapable way, to add a prohibition (*vetitum*) on the petitioner celebrating a new marriage, without first making a serious promise made before the Ordinary of place, to marry according to divine law. It will therefore be required that he overcomes the error that led to the nullity of his marriage to the respondent.