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**Expedita Juris Divini, Natvralis, Et Ecclesiastici Moralis
Expositio**

Tamburini, Tommaso

Coloniæ Agrippinæ, 1665

An conjuges post consummatum Matrimonium valeant ex communi
consensu mutationem status assumere Caput IV.

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alii conjuges post consummatum Matrimonium, de qua re mox c. 4.

Expectari igitur debet, si forte evanescat spes reconciliationis, hac enim evolante, poterunt dicti conjuges eligere novum vitæ statum, eo proportionaliter modo, quo supra definitum est.

2. Quoad secundum Effectum sit hæc Regula. Conjux ille, qui alias obligatus erat, debet dotem, & alimenta subministrare ei, qui culpam non dedit separationi, non debet ei, qui culpam dedit, quæ Regula satis explicata manet ex prædictis, advertendo tamen, tum in his causis, tum in præcedentibus intelligi semper pro tempore, quo actualiter legitimè perpetuer separatio.

^a Pont. kb.

9. c. 23.
n. 12.

3. Pontius ^a censet, quando Divortium est factum ob sc̄vitiam uxoris, ipsam non obligari ad restituendam dotem viro innocentia. Ratio est, inquit, quia amissio dotis solum est adnexa delicto adulterii, vel ocisionis Mariti, non autem aliis delictis.

n. 2.

b Castrop. palaus; b Nam in Sacro Textu, cuicunque l.c. §. 10. delicto, ex quo Divortium fit, seu mutua coabitatio solvit (^a sanè pro tempore quo ut modo dixi, legitimè durat solutio) amissio dotis adnectitur.

4. Sed contra meritò se opponit Castro-

b Castrop.

n. 2.

palaus; b Nam in Sacro Textu, cuicunque

l.c. §. 10.

delicto, ex quo Divortium fit, seu mutua

coabitatio solvit (^a sanè pro tempore quo

ut modo dixi, legitimè durat solutio) amissio

dotis adnectitur.

5. Quoad tertium Effectum, idem dico,

quod modo indicavi paragr. 8. n. 21.

C A P U T IV.

Occasione prædictorum quærimus, qua ratione Conjuges post consummatum Matrimonium valeant communī consensu mutationem status afflumere.

1. Hactenus declaravimus, quando nam in casu delicti alterius conjugis possit alter novum vitæ statum suscipere. In præsentia vero quærimus, quid extra casum delicti.

2. Et quidem, quod mutuo consensu valeant conjuges, etiam post consummatum Matrimonium se separare, & vitam cœlibem agere, & certum est, & multi Sancti Veteres nos suo exemplo docuerunt. Verum id à conjugibus, præserim, si sint Juueues, esse cum magna prudentia, immo, & longa experientia

suę continentię præstandum, non est hic, nisi serio monendum. Legatur Sanchez, et alioque.

3. Jam vero discurramus per singulos illos vitaे status supra memoratos. Professionem Religiosam, Ordinis Sacri susceptionem, Pont. lq. simplicis Voti Castitatis emissionem.

matr. ill.

§. I.

Quoad Professionem Religiosam sine licentia Conjugis.

1. Nec licetè, nec validè conjux sine expressa licentia alterius professionem in Religione emittit: proflus sicut servus, Domino non consentiente. Si tamen sine prædicta licentia emittrat, poterit omnino ab alte o conjugje repeti, immo ipsemet, relicta Religione, poterit propria auctoritate (gravi scandalo semper prudenter a-moto) ad conjugem reverti, & ad hanc reversionem sanè obligabitur, etiam si conjux alterius ingressui non consentiens, nequam positivè revocet. Ratio est, quia ex una parte id requirit justitia debita conjugi, & ex alia professio fuit ^d nullus: esto Pon- d Exct. tius & teneat, sine licentia Judicis, causeque d. 31. q. 1 discussione non posse hunc professum Reli- Sanchez. gionem describere.

2. Licentia f autem debet liberè data esse à conjugje, Quare coacta, vel dolo, vel metu extorta non sufficit ad validitatem Professionis.

3. Inquires. Conjux sine licentia alterius factus Professus, si deinde redcat ad uxorem, obligaturne Primo, servare Casti- f Sat. p. tem, quantum potest, v.g. non petendo Laym. d debitum. Secundo, obligaturne mortua uxo- Castrop. d re, redire ad Religionem?

4. Respondeo ad primum. Si professio- p. 6. l. 11 nem emittens habuit expressum animus n. 6. ex Castitatem vovendi, etiam si ad saculum venia redire, certum est, obligari ad servandam de concur- quantum potest, Castitatem, & consequen- Coniug. ter ad non petendum debitum, nam ad fa- torum. tisfaciendum uxori, satis est, si reddat. Si vero hunc animum expressum non habuit, non obligabitur, quia ex communi more g. S. 2. emittendi professionem semper intelligit dam, C profitens, vovere Castitatem statui Religio- place De fo annexam. Quod si Pontifex in Sacro g. concur. Textu dicit, hunc conjugem teneri ad id, Coniug. quod

quod potest, id dicit, tum ex quadam præsumptione, quod conjugatus animum habuerit servandi Castitatem, etiam extra Religionem, tum, ut conjugi proponat id, quod tunc est. Ita Pontius, ^a idemque tenet in simili de professione ex alio capite nulla, Borondonus, ^b licet Sanch. ^c et aliquis strictius loquantur, quibus adde Dianam. ^d

^a Pont. l. 9. matr. s. 11. m. 4. b Berd. T. j. cont. 16. num. 25. c Sanc. l. 7. mard. 34. n. 2. d Diana p. 6. tr. 7. n. 11. e Castrop. l. 3. 6. Ad secundum respondeo, certum esse, non obligari, neque ad illam Religionem, ubi professus fuerat, redire, neque aliam suscipere, nisi forte ad aliquod ex his se obligare expressè intenderit.

Atque hæc de Professione nuncupata sine licentia conjugis sequitur, ut dicamus de eadem ex alterius consentia.

Quod eandem, cum licentia Conjugis.

6. Profecto validam esse eam professionem, & præscindendo ab alio inconveniente, per se licitam, omnes docemus. Sed, quia tunc vinculum Matrimonii non dissolvitur, idè, si cognosceret vir professus uxorem suam, etiam professam, peccaret quidem contra Votum, non vero contra f. Justitiam, quia adhuc illa sua est, si evolaverunt ad Religionem Matrimonio consummato.

7. Est autem advertendum id, quod Sacri Canones statuant g. circa hanc professionem, ut scilicet neuter conjugum possit Religionem ingredi, nisi uterque ingrediatur. Et Religionem quidem Sancti Joannis sufficere, & sic usu servari, docet h. Pontius, contra Sanch. id negantem. Additur tamen in predictis Textibus, tunc nihilominus virum posse, ut etiam uxorem (quidquid in contrario dicat de uxore Hurtadus, contra quem agit Castropalaus i.) Religionem ingredi, remanente altero conuge in sæculo, quando concurrunt tria.

8. Primo, Ut coniugus relictus in sæculo sit senex: Senex autem ad hunc effectum ordinariè erit, si mas sit sexaginta annorum, femina quinquaginta, quando jam non solent amplius apti esse ad generandum. Ceterum in casibus particularibus poterit Episcopus, spectata conjugum valetudine, robore, modo vivendi, arbitrari aedes, vel abesse debet senectutem.

9. Secundò, Ut ejusmodi coniugus relin-

quendus in sæculo non sit suspectus de incontinentia.

10. Tertiò ut idem emittat Votum Castitatis, quod certè Votum simplex erit, adeoque, si post mortem alterius conjugis aliud Matrimonium (utique illicite) contrahatur, contrahet validè, & impetrata dispensatione Voti, etiam licite.

11. Nonnulli, præter licentiam alterius conjugis, requirunt licentiam Episcopi saltem, ut licite assumatur dicta professio: Et sanè, tametsi de rigore juris hæc non requiratur, ut, expendendo Textus, prosequitur Castropalaus, ^k nihilominus ex consuetudine, ut idem ibidem haberet, jam necessaria est ejusmodi licentia ad licitam admissionem & ita usus obtinuit.

12. Inquires. Quid, si eveniat casus, ut, profiteste uno ex conjugibus, alter, qui dedit licentiam, nolint deinde ingredi Religionem, si juveatis est, &c, si, Senex, non vult Votum Castitatis emittere?

13. Respondeo, tunc Professio illius, qui ad Religionem transit, est quidem valida, quia, si praecessit alterius liber consensus, satis fuit legitimè suscepta; sed tamen relictus in sæculo ad Religionem, vel Votum persuaderi posset, cogi non posset, quia Religio, & Votum ex propria voluntate, non vero ex aliena sunt suscipienda. Immò in hoc casu, si incontinentia periculum, uxorem v.g. premeret, debebit Episcopus conjugem, quamvis Professum uxori periclitanti restituere (nam ex se exire à Religione nequit, quia, ut dictum est, fuit valida professio) licet, uxore deinde mortua, vel Votum Castitatis emitente, obligetur dictus Professus ad suam Religionem reverti. ^l

14. Quæres. Ille relictus in sæculo, peccabite nolens ingredi Religionem, vel Votum Castitatis emittere?

Respondeo. Si gravi causa non moveatur, (sic puto) graviter peccabit, tum, quia contra Sacros Canones agit, tum quia Religioni, pro qua dedit licentiam, illud damnum afferit, quod modo diximus, nempe obligationem restituendi coniugem, &c.

15. Si relictus in sæculo voeat tandem Castitatem, non poterit amplius revocare ad se Professum, quia per licentiam, quam dedit ut suus coniugus profiteretur, concessit illi, ut pol-

^k Castr. lo. cit. n. 11.

^l Sanc. l. 7. matr. d. 33 n. 14. & 15

Pont. l. 9. c.

§. 8. n. 6.

ppp 3 fer,

set, immo, ut deberet non petere debitum: per Votum autem, quod ipsa emisit Castitatis, non potest ipsa petere: ergo ad quid inserviret illa revocatio? Ita discurrit Pontius;

a & consequenter vides, Professum, si quando restituatur uxori in casu dicto num. 13. posse quidem reddere debitum, at, quia verè est Professus, debet, *b* quando potest, suum Votum servare, atque adeo, nisi ipsi dispenseatur a Summo Pontifice, petere debitum non valebit.

§. II.

Quoad Ordines Sacros sine consensu conjugis,

1. **Q**uamvis certissimum sit, validè Sacris ordinibus initiari conjugatum invita uxore, semper tamen mortaliter illicitè. Idque verum est, sive post Matrimonium consummatum, sive etiam post solum Ratum; Ratum enim dat dumtaxat facultatem ad professionem emitendam, non vero ad Ordines Sacros suscipiendos, ut supra suo loco vidimus.

2. Hinc fit, ut sic ordinatus possit revocari à sua uxore, possitque ipse revocationi assentiri, & reddere debitum, sed, quia Ordini Sacro annexum est Votum, seu Præceptum servandæ Castitatis, petere non poterit, ut in simili nu. 16. dictum est, & hic notat Pon-

c Pont. d. l. tius. *c*

9.c.13.n.3 3. Quid si non revocetur?

Respondeo. Tunc non tenebitur quidem ex se redire ad illam. Ordo enim validus merito id concedere debet, (ut advertit Castropalaus *d*) posset tamen si vellet, ut diximus numero quarto de professo, uxore non consentiente; par enim est ratio. Quamvis enim illa professio fuerit nula, Ordo vero hic sit validus; tamen obligatio reddendi debitum uxori est eadem, & ex alia parte Ordo Sacer non pugnat ex se cum Matrimonio, nisi ratione Voti Castitatis ipsi Ordini adnexit. Si ergo Voto Professionis non obstante, potest in illo contra nō nullos citatos à Sanct. I. 7. Denique adverte, si conjugatus, etiam Mat. d. 40. Matrimonio non consummato, ad Ordinem n. 5. Sacrum (non ergo, si ad Minores) ascendat

sine uxoris expressa licentia, in suspensiō nem, seu irregularitatem incurre ex Jure. *f* Unde, neque in suscepso Ordine ministrare, *f* in Em. neque ad Superiorē promoveri neque Beneficiū, vel officium Ecclesiasticum obtinere *cantab.* habet. *Pont. b. 1. 2 Sacr. nat. d. 2. 1. 3. 2. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 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CAPUT QUARTUM, §. SECUNDUS.

si dent, eas nescire ejusmodi prohibitionem non valendi transfere ad secundas nuptias; ergo, &c. Supponimus autem dictam viduam nullum Votum Castitatis emisisse, ut certe emittere non solent.

Confirmo iterum, quia in dubio, an emiserim Votum, & in dubio, quod existat lex, seu præceptum, melior est conditio meæ libertatis, atque adeo non obligor illam servare, ut de lege dubia docet Sanchez lib. I. in Decal. cap. 10. num. 32. & de Voto numer. 36. Cum ergo, ad minus, saltem dubia sit lex hæc; vel Votum de abstinentia à secundis Nuptiis, quoad prædictam viduam ipsa non obligabitur, &c.

Nec contrarius est Pontius lib. 7. matrim. cap. 25. & 21. dum dicit, Matrimonium relictæ à Sacerdote Græco esse quidem validum, sed illicitum, quia est contra eorum Canones: Non est, inquam, contrarius, quia & ipse, & Canones, quos assert, videntur loqui de vidua, quæ dedit licentiam, seu consensit sui viri Ordinationi, sciens sibi sic prohiberi secundas Nuprias, vel de vidua, quæ Castitatem forte voverit: Lege diligenter tūm ipsum, tum Sanc. II. cc.

10. Inquires Secundo. Si eveniat casus familiis illi, cuius dū nuper memini, hoc est, si, d^r Supra §. promoto conjugē in Sacris, uxor, nec Religione 1.iii.12. gionem ingredi velit, nec Castitatem vovere, quid faciet vir jam Ordinatus.

11. Respondeo. Sanch. e air, uxorem de- e Sanc. I. 7
bere cogi ad Votum ; ad hoc enim emitten- mat. d. 39.
dum se obligavit, dum liberè dedit licentiam nu. 13.
viro, ut ad Ordines ascenderet. Verum Ca-
stropalauſ f ait, non posse cogi, sed, si uxor, f Cast. I.c.
petat, debet ipsi suum virum restituī. Ratio num. 19.

et, quia nemo unquam cogi invitus potest ad vorvendam Castitatem. Utroque probabilis est tentatio. Verum mihi magis placet hæc posterior; tunc enim magis libertatem. Quia tamen uxor supponitur promississe Professionem, vel Votum emissuram, nolens deinde promissionem servare, causa valde rationabilis deber accedere, ne graviter peccet, nolendo custodire Sacros Canones in rem tam gravi. Sicut puto, ut ibidem num. 14. in similiter

12. Illud item Castropalaus g contra plu-
g Cast. I.c.
res Doctores habet, hunc Ordinatum cum li- num. 23.
centia uxoris, sed nolentis, nec profiteri, nec

*a Extrav.
Antiq. de
Voto.*

vovere ; incidere etiam in candem illam suspensionem, seu irregularitatem, de qua modo dixi num. 4. Ratio est, quia in *a* Sacro Texu dicitur, eum incidere in dictam suspensionem, qui, aliter quam Sacris Canonibus noverit convenire, Sacros Ordines suscepit. At Sacri Canones requirunt ad dictos Ordines non solum licentiam Uxor, sed ejus professionem, vel Votum. Nota tamen illud (noverit) si cum bona fide inculpare Maritus, supponens uxorem Canones servaturam, promoveatur, non puto cum fore suspensum, quia sic non novit se ordinari contra Sacros Canones. Sed profecto, ne prædicta incommoda eveniant, praxis esse debet, ut prius profiteatur, vel voleat uxor, & deinde Maritus promoveatur.

13. Denique, ut vir ad Episcopatum ascendat, requirunt omnino jura, ut uxor Religionem ingrediatur. Ad Cardinalium vero nihil aliud est opus, præter illud, quod ad Ordines Sacros necessarium esse, hactenus defivimus.

§. III.

Quoad Votum simplex Castitatis.

1. **Q**uemadmodum §. 1. indicavimus, posse conjuges mutuo consensu cœlibem

F I N I S.

Laus D E O, Beatiss. Virginis, ac B. Aloysio.

LIBER NONVS, DE CONTRACTIBVS IN PARTICVLARI.

EA, quæ pro praxi scire oportuit de contractibus in genere, in *c* Decalogi libris indicavi satis : Nam propterea, iis non repetitis, ad peculiares Contractus explicando nunc opportune descendendum est.

TRACTA-