

the lack of a truly marital consent; the decisions differ only in the legal heading which defines that defect.

(Private); Rota, decision *coram* Anné, 11 March, 1975, Prot. N. 10.629; translated by William B. Cogan, S.J., and Joseph A. Persich, S.J., the latter of whom kindly sent us the case and decision.

**Transvestites, Transsexuals and Marriage** (S. R. Rota, 14 April, 1975) **Private**.

This case of nullity of marriage was decided *coram* Pinto on the grounds of lack of the discretion arising out of transvestism.

**Case.** 1) After an engagement period of two years, R. and M., he while in his 34th year, she in her 25th, willingly and freely contracted marriage in the Catholic rite on the 1st of April, 1946.

Shortly after the marriage celebration, the man, who is the defendant, manifested unusual indications: he often wore women's clothes at home because, in order to maintain psychological balance, he must feel that he is a woman; further, he confessed to his wife that he could not have sexual relations with a woman unless he thought himself a woman dressed in women's clothing.

The couple have given birth to three children, namely, G. (20-II-47), B. (2-V-49), and M. (3-XII-58). However, because of difficulties which arose between the spouses, partially because of economic reasons, partially because of sexual reasons, the husband in March of 1971 filed for civil divorce and the wife intervened with a countersuit.

On the 9th of May, 1972, M. accused her marriage of nullity before the regional ecclesiastical tribunal of L., either on the grounds of defect of consent on the part of the man because of incapacity of the said man to give matrimonial consent (or the incapacity to assume conjugal obligations) or, in a subordinate way, on the grounds of error on the part of the woman regarding a quality of the man amounting to an error regarding the person in accord with canon 1083, §2, 1°. Since the decision of the court of first instance (26-

III-73) was against the plaintiff, she has appealed to Our Apostolic Tribunal where, after completion of a new judicially for the plaintiff, the case is today proposed to us for a definitive resolution, responding to the question thus worded (29-I-74): "Is there proof of nullity of marriage in the instance?"

#### A) DEFECT OF CONSENT

**Law. 2)** In order to contract a valid marriage, the contracting party must possess that mental discretion whereby he can obligate himself to give to his partner and receive from her the perpetual and exclusive right over the body for acts which of themselves are apt for the generation of children. As a result, if, because he has not yet acquired adequate discretion (*immaturity*), or because he has serious disturbances of mind or will (*amentia*), he is incapable of employing sufficient deliberation, the marriage must be declared invalid *because of defect of consent*.<sup>1</sup>

But if, after the matrimonial consent has been given, the contracting party, because of a serious psychosexual disorder existing at the moment of the celebration of the marriage, was incapable of fulfilling the aforesaid obligations assumed in the act of consent, the marriage, by the very nature of the matter, will be invalid because of his *inability to proffer the essential object of the consent*.<sup>2</sup>

3) Incapacity to proffer the essential formal object of the contract and, consequently, the nullity of the marriage are had when the contracting parties who appeared to be of different sexes, actually *are of the same sex*.

Determination of sex does not offer difficulty when there is question of *typical sexuality*, in which genetic sex (chromosomal: XY for male, and XX for female, as well as chromatinic: male, when the Barr bodies do not exceed 5%; female,

<sup>1</sup>Canons 1081 and 1982. Dropping the references in the sentences to the bottom of the page and the numbering of them is our work in an effort to make the reading of the sentence easier.

<sup>2</sup>Cf. D. 18, 4, 1; 30, 39, 8-10; 44, 7, 1, 9-10; 50, 17, 185; *In VI<sup>o</sup>, De regul. iur., reg. VI.*

beyond that), *anatomical*, that is, *morphological sex* (both primary and secondary sexual characteristics), and *psychological sex* are at harmony among themselves.

However, it will be difficult, at times, very difficult, to determine the sex in cases of *ambiguous sexuality*, e.g., when there is question of transvestism together with transsexualism.

4) *Transvestism*, that is, *eonism* is “(the) psychosexual phenomenon in which the subject (usually, the man) plays the role of the opposite sex by being *conscious of belonging to a specific sex*. In this dimension the subject searches for sexual identification in the clothing and in the assumption of tastes, practices, and behavior patterns of the opposite sex . . . Within the area of transvestism three varieties are distinguished: the fetishist, the exhibitionist, and the homosexual.”<sup>3</sup> In transvestism properly so-called, “*the emotions are always involved*, tinged more or less with eroticism, sexual stimulation and, often, to masturbatory satisfaction.”<sup>4</sup> If the clothing of the other sex is worn for another reason, e.g., to conceal one’s real personality, that is not transvestism but simulation (disguise).

5) *Transsexualism*, on the other hand, is “a psychosexual syndrome characterized by the tested *feelings* of an individual of a specific sex (more often, the man) of *belonging to the opposite sex*. Such a feeling is accompanied by the *desire to change* one’s own somatosexual configuration with surgical or hormonal treatment. In this situation the subject conspires to deny his own sex totally and to transfer himself into the area of the opposite sex. . . . Transsexualism can be distinguished from transvestism since in this latter case the individual plays the role of the opposite sex but is aware that he belongs to a specific sex. Moreover, the transsexual phenomenon is distinguished from homosexuality in that the subject directs towards his own sex his erotic instincts without placing in discussion his own sexual identity.”<sup>5</sup>

<sup>3</sup>Rizzoli Larousse: *Enciclopedia della Medicina*, vol. IV, 1972, p. 325.

<sup>4</sup>H. Benjamin: *The Transsexual Phenomenon*, 1966; Italian version, p. 39 [p. 30].

*Note:* Since this work was originally written in English, all quotations from it are given in the original English. Page references to the English edition are given in square brackets as above.

<sup>5</sup>Rizzoli Larousse: *op. cit.*, p. 309.

“Both (transvestism and transsexualism) can be considered symptoms or syndromes of the same underlying psychopathological condition, that of a *sex or gender role disorientation and indecision*. Transvestism is the minor though the more frequent, transsexualism the much more serious although rarer disorder. . . . The picture of transsexualism may first appear to be merely transvestism, but whether this indicates a progressive character is by no means certain.”<sup>6</sup>

As regards the *etiology* of the abnormality, “biological research has not permitted the singling out of any alteration which would point to an organic basis. This is in harmony with the majority of the authors who have endeavored to give biological consistency to the sexual deviations (Vague, Pauly, Benjamin, . . .) . . . Robbe and Girard conclude that psychosexual maturation and orientation are the result more of education and of contacts which the subject has learned to establish with his milieu than the abnormal actions which contribute the elements which the subject ought to integrate into his self-image.”<sup>7</sup>

Concerning *prognosis*, “up to now all attempts at a cure in the cases of genuine transvestism (sc., transsexualism) have failed, especially if the therapy looks to recovery . . . . When eonism has been clearly characterized, it is not possible to awaken in him the desire to change the dispositions for putting him in harmony with his physical make-up. The experimental cures with male sexual hormones (testosterone) . . . . when applied, turn out to lack the desired success. Numerous patients will categorically refuse similar attempts; they do not have any wish to ‘remedy’ their state. For them, the transvestism corresponds to their true ego; instead, they have desired to be liberated from their loathed male attributes. Every attempt to strengthen their masculinity has appeared as an attack on the laws of nature.”<sup>8</sup>

6) Among *males*, in view of the different types of “transvestite-transsexualistic” syndrome, H. Benjamin distinguishes six types, namely, I, II, III for transvestites, and IV, V, VI

<sup>6</sup>H. Benjamin: *op. cit.*, p. 27 [p. 17].

<sup>7</sup>A. Condini—G. Tessari: *Considerazioni Cliniche e Psicodinamiche su un Caso di Transessualismo*, in *Sessuologia*, 14 (1973), n. 3, p. 45.

<sup>8</sup>C. Hamburger—G. Ströup—E. Dahl Iversen: *L'Eonismo e la Metamorfosi Sessuale Indotta*, in *Enciclopedia della Sessualità*, ed. Borla, 1969, p. 612. Cf. G. Sartori: *Compendio di Sessuologia*, 1972, pp. 517-523.

for transsexualists. Hence, the so-called "Sex Orientation Scale" (S.O.S.) which, in summary, appears thus:

*Type I:* Pseudo-transvestites (among these are included transvestite homosexuals): of their own volition wear female clothing;

*Type II:* Fetishistic transvestites: on set days wear women's clothes by which their libido is stimulated, but they wear them underneath male clothes;

*Type III:* True transvestites: do not find affective balance except when showing themselves made up as women;

*Type IV:* Transsexuals: for these estrogen medication is necessary in order to take on the female form because women's clothes are not sufficient for them; however, they do not think of surgical intervention to change their genitals;

*Type V:* Transsexuals: these ardently desire surgical intervention, a "conversion operation"; however, since they cannot undergo the operation itself, they can still obtain the sought-for psychological balance with psychotherapy and estrogen medication;

*Type VI:* Transsexuals: these so urgently seek the so-called "conversion operation" that, if it is not granted to them, they can turn to self-mutilation, and even to suicide.<sup>9</sup>

Nevertheless, this must be adverted to: "a sharp and scientific separation of the two syndromes (TV and TS) is not possible. We have as yet no objective diagnostic methods at our disposal to differentiate between the two. We—often—have to take the statement of an emotionally disturbed individual, whose attitude may change like a mood . . ." <sup>10</sup>

7) With regard to *legal sex*, Roman law, in the case of *hermaphrodites*, where the issue is confined to anatomical sex, either because testicles and ovaries are found in the same subject (true hermaphroditism), or because a man has the external genitals of a female (male pseudohermaphroditism) or a woman has the external genitals of a male (female pseudohermaphroditism), applies the following rule of Ulpian: "It is asked: to what do we compare an hermaphro-

<sup>9</sup>Cf. H. Benjamin: *op. cit.*, pp. 21-28 [pp. 12-19].

<sup>10</sup>H. Benjamin: *op. cit.*, pp. 30-31 [p. 21].

dite? I strongly believe that the hermaphrodite's sex must be considered *that which is predominant in the person.*"<sup>11</sup> Canonical teaching and jurisprudence follow this rule.<sup>12</sup>

Further, because at that time hermaphroditism was thought (falsely, of course) to be not only organic but also functional so that those affected by it could, as regards generation, act at will as either a man or a woman, the prevailing canonical teaching recognized for them the right whether they wished to be joined in marriage as a man or as a woman. However, once a choice had been made, a change of it was considered to be gravely illicit without, on the other hand, in any way being an obstacle to the validity of subsequent marriages.<sup>13</sup>

Because, when there is question of *transsexuals*, a radical dissociation is found between psychological sex on the one hand and genetic, gonadal, hormonal and somatic sex on the other hand, so that transsexuals feel like the soul of a woman in the body of a man or vice versa, without hope being had of a return of the psychological sex to the original sex, nothing prevents predominance from being attributed to *psychological* sex as regards those matters which do not exceed the juridical capacity of the subject. For the canonical teaching which, in cases of doubtful sexuality, recognized the right for the subject to make a definitive choice of sex, can be applied "when there is question of ordering one's purely *external* and *social* life, e.g., of wearing men's or women's clothing, of giving testimony in instruments, of the right to determine an heir."<sup>14</sup>

However, as regards *marriage*, since there is question of a contract whose essential formal object is the right to acts

<sup>11</sup>D. 1, 4, 5, 10.

<sup>12</sup>Cf. Sanchez: *De S. Matrimonii Sacramento*, L. VII, disp. 106, n. 1, 4 and 5; Wernz: *Ius Decretalium*, tomus IV/2, 1912, n. 353; Gasparri: *De Matrimonio*, I, 1932, n. 550; Cappello: *De Matrimonio*, 1961, n. 387; S.C.C.: *Ferentina*, 24 March—18 Aug., 1888; S.R.R.: *coram* Heiner, 31 January, 1911; *coram* Massimi, 12 November, 1924, in which there was also question of a transsexual.

<sup>13</sup>Cf. Schmalzgrueber: *Ius Ecclesiasticum Universum*, Lib. IV, tit. 15, n. 52.

<sup>14</sup>Wernz: *loc. cit.*

which are of themselves apt for the generation of children, the capacity to contract it depends on the potency for perfect carnal copula, namely, on biological sex and not on psychological sex. See Schmalzgrueber<sup>15</sup> according to whom a marriage is valid if contracted according to the non-predominant sex provided that there is potency for perfect copula.

Therefore, we agree only partially with the "concordant orientation of the *medico-legal teaching* (Domenici, Gerin, Cattabeni, Franchini, Canepa, Fiori, Ghini) which states that the predominant determinants of sex are the psychological component and the copulative capacity,"<sup>16</sup> unless this "copulative capacity" is understood in the canonical sense. "Ecclesiastical jurisprudence cannot and must not ignore the genuine progress of the moral and juridical sciences"<sup>17</sup> but not always does the criterion of medicine harmonize with the criterion of canon law.

*Civil jurisprudence* still remains vacillating: certain decisions concede predominance to genetic, gonadal and somatic sex;<sup>18</sup> others, however, to somatic and psychological elements evaluated conjointly.<sup>19</sup> Nor are there lacking cases in which, after a change of legal sex has been admitted, the subject was not allowed to marry.<sup>20</sup>

8) Concerning *nullity of marriage* in cases of transvestites and transsexuals it seems that the following must be held:

a) The matrimonial difficulties of *transvestites* do not arise out of the fact that they feel they belong to the sex of their partner, because this is not verified, but out of their proclivity to wear women's clothes which normal women often put up with reluctantly. However, "the majority of transvestites'

<sup>15</sup>*Op. cit., et tit. cit., n. 54.*

<sup>16</sup>F. Carrieri—B. M. Altamura: *Rilievi Medico-Legali e Criminologici in Tema di Transessualismo*, in *Sessuologia*, 14 (1973), no. 1, pp. 57-58.

<sup>17</sup>Pius XII, Allocution to the Auditors, etc. S.R.R., 3 October, 1941: AAS, 33 (1941), 423 [C.L.D., 2, p. 455]

<sup>18</sup>E.g., *Tribunal of Genoa*, Sent. n. 1372/1966 and Sent. n. 837/R.G. d. 20-VI-1968.

<sup>19</sup>E.g., *Tribunal of Milan*, Sent. n. 1030/1965; *Tribunal of Turin*, Sent. n. 2330/1965 R.G.

<sup>20</sup>Cf. C. Hamburger *et al.*: *art. cit.*, p. 619.

wives are willing to tolerate the husband's hobby, provided they do not have to see him dressed as a woman. I also know marriages of many years' standing when the wife actually never knew of the husband's transvestism."<sup>21</sup> In the cases examined by Buchner, 21% of the wives totally rejected the transvestism of the husband. Often he will hold the fastidiousness of his wife as the cause rather than the deceitful concealment of the abnormality. "No transvestite should ever marry a girl without telling her of his peculiarity beforehand. It would be too unfair."<sup>22</sup> In order to declare nullity of marriage an interpretative, that is, an habitual intention on the part of the woman not to contract marriage with a man afflicted with this kind of malady does not suffice; the intention must be at least virtual.

See the decision of S.R.R. *coram* Davino, 6 June, 1972,<sup>23</sup> where there was question rather of a bisexual pseudo-transvestite who, as a result, was able to reject his transvestism.

b) "The majority of marriages between normal women and transvestites (by which term these authors mean *transsexuals*) will degenerate and tend to separation. Nevertheless, it has happened more than once that the woman has accepted the husband's tendency to transvestism and, if they give birth to children, the spouse, in general, shows affection and a deep love for them. Still, marital relations are rare and the man participates in the sex act passively. Frequently, his feeling 'of really being a woman' tends to aversion, disgust, a genuine hatred of his own genitals and to a desire for castration. Attempts at self-mutilation are not rare."<sup>24</sup> Transsexuals "say they are able to have sex relations with the help of fantasies, by taking a succubus (under) position in intercourse, or by wearing a female nightgown. Some of these married transsexuals described to me a mental state during intercourse in which the penis seems to lose its identi-

<sup>21</sup>H. Benjamin: *op. cit.*, p. 54 [p. 44].

<sup>22</sup>H. Benjamin: *op. cit.*, p. 55 [p. 44].

<sup>23</sup>*Monit. Eccles.*, 98 (1973), 98-103.

<sup>24</sup>C. Hamburger *et al.*: *art. cit.*, p. 610.



ty of ownership."<sup>25</sup> Cases are reported of married transsexuals with children.<sup>26</sup> Married life sometimes lasted up to 30 years; children, however, in a given instance were 5.

*The reasons for contracting marriage* were varied: either because some girl was found and he was captivated by her love and, with the passage of a period of time, feeling himself a man, seriously believed himself already cured; or because he believed that in marriage he would find a remedy for his deviation; or because on the one hand he loved a certain girl while on the other hand certain persons induced him into marriage.

According to F. Carrieri — M. B. Altamura, "Most of the time the transsexual is the bearer of such anatomical anomalies of the genital apparatus as to bring about an *irremediable impotency for procreation* (**testicular atrophy**. . . congenital anatomical malformation of the organ which cannot be corrected surgically and which make copula impossible, etc.)."<sup>27</sup> On the contrary, according to those same authors, in agreement with many others, "As a rule, the psychological disturbances which characterize the transsexual state are *not accompanied by perturbations in the intellectual and volitional sphere*. Consequently, the transsexual, in almost all cases, is in possession of a full *capacity to intend and to will* and, as a result, can furnish a juridically valid consent."<sup>28</sup> This does not prevent the use, sometimes made, e.g., by I. B. Pauly, of the term "Paranoia Transsexualis" for the syndrome.

From what has been said, it is evident that the marriage of transsexuals, even in cases where they are capable of perfect conjugal copula, is invalid when it is proved that, at the time of the wedding celebration, they were incapable of giving and accepting the right over the body *in perpetuity*.

<sup>25</sup>H. Benjamin: *op. cit.*, p. 60 [p. 49].

<sup>26</sup>E.g., Krafft-Ebing—A. Moll: *Psychopathia Sexualis*, French version, 1950, p. 643 ff.; H. Benjamin: *op. cit.*, pp. 72-74 [pp. 60-62]; pp. 225-240 [pp. 217-232]; and pp. 256-264 [pp. 248-256].

<sup>27</sup>*Art. cit.*, p. 50.

<sup>28</sup>*Art. cit.*, p. 53.

The fact that the man must feel himself a woman or vice versa, is no obstacle to the fulfillment of the obligation just as aphrodisiacs are not an obstacle to the consummation of a marriage.<sup>29</sup>

c) After the surgical intervention called "conversion operation," it is patently clear that transsexuals labor from perpetual impotency, notwithstanding the fact that they more or less exhibit the appearance of the sex to which they feel they belong and have acquired a degree of psychological balance.<sup>30</sup>

Certain persons undeservedly accuse canon law of "biologism" and extol "personalism." For the Catholic Church safeguards this biological process which has already begun, defending new human life, namely, the basic right of *the person*, whose dominion is exclusively reserved to God.<sup>31</sup>

**Findings.** 9) In the instance there is no doubt that the defendant was *not only a transvestite but also a transsexual*.

However, this is denied by the defendant and members of his family. Nevertheless, the matter is proved by the deposition of the plaintiff which is confirmed by what is said below.

The wife states: "The first month of our union, my husband had the habit of taking my nightgown from me to wear it . . . Then, during the summer . . . he spent the evening moving about in the apartment wearing my nightgown or my pajamas." At last he confessed to his surprised wife "that, always, he wanted to be a girl; that he had a compelling need for his balance to feel himself a woman and to wear women's clothing . . . that he loved me much and that we will be two women living together." "He said that he could not have relations with a woman unless he thought

<sup>29</sup>Holy Office, 2 February, 1949 [C.L.D., 3, p. 473].

<sup>30</sup>Cf. H. Benjamin: *op. cit.*, pp. 66, 124 and 146 [pp. 60, 113 and 136 respectively].

<sup>31</sup>Cf. Paul VI, encyc. *Humanae vitae*, 25 July, 1968 in AAS, 40 (1968), 481-503; S. C. Doct. Fid., *Declaration regarding Abortion*, 18 November, 1974 in AAS, 66 (1974), 730-747 [cf.; C.L.D., 7, p. 128 and 8, p. 936 respectively].

C. Liberati recently (1975) wrote his doctoral dissertation (not published) on transsexualism and transvestism: *La Rilevanza Giuridica dell' Omosessualità nella Recente Giurisprudenza Rotale*.

of himself as a girl, unless he was wearing women's clothing."

While he was a little boy, since he had four sisters, his very hardworking mother, for the sake of convenience, dressed him in the same manner as them. When he became a youth, he secretly and gladly dressed himself in the clothes of his sisters.

In the course of the marriage, his transvestism seemed to increase, for "in the evening he wanted to wear what I wore: slip, tight corset, padded brassière, stockings, pajamas, culottes, robe . . . sometimes he wore a wig, jewelry and perfume . . . Under his clothing, during the day, he wore some female article . . . During the summer in the country, he wanted, at night, to take a walk as a woman with me."

That the woman's statement was true is clear from the following:

a) Knowledge of the transvestism and transsexualism of the defendant was had from the plaintiff by her sister before the birth of the third child and by the sisters of the defendant and by other witnesses before the separation.

b) In the suit for divorce the plaintiff accused her husband of this.

c) Cote, an expert, realizing very well that here everything depends on the veracity of the plaintiff, spoke with her, searching out whether there was sufficient evidence about her, and thus concluded: "What she says, she does freely and sincerely." Also Santori, who is more expert, vouches for the credibility of the plaintiff.

d) The defendant refused to make a formal deposition, simply adding "a conversation" that he did not wish "to be interrogated henceforth," without giving any reason.

e) The pastor of the plaintiff, who knows her very well, strongly commended her.

10) Although the defendant feels himself a woman, since he belongs to an intermediate stage between transvestism and transsexualism (type IV), he was not impeded either from placing consent or from fulfilling the obligations assumed.

a) Relative to *matrimonial consent*, the psychiatric expert, Cote, holds the following: "Intellectually, Monsieur D. comprehends that there was a matrimonial union." "He is far

from being a feeble-minded person, a simpleton, a liar, or a madman in the popular sense of the word. He possessed a certain number of the capacities to join himself in wedlock: he loves (in his own fashion, of course) his wife . . . . Therein, there is an enormous number of things which indicate at times his anguish, his pathological guilt, and which confirm that he wanted to be a spouse, a father, even while feeling his entire self full of problems." "He often begged (his wife) to support him, to accept him, to love him such as he was; thus he had had, continued to have and still has a keen awareness of his abnormality."

b) As regards *capacity to fulfill the obligations assumed* relative to the right over the body in perpetuity, this capacity cannot be denied to the defendant.

"*The marriage was consummated* on the second or third night without difficulty. Everything went well." "Once or twice a week we had very painful *relations*; that was my nightmare." "Both of us were *very happy expecting the child*." "The other births were *very welcome*." "My husband took a great interest in the children until they were 12-14 years old." (Plaintiff).

Nowhere in the acts does it appear that the defendant wished to change his biological sex and he did not have recourse even to hormonal therapy.

The sexology expert, Prof. Santori, concludes: "The subject cannot be considered a transsexual in the full meaning of the expression, even though clear hints in this sense emerge from the statement made by the wife." "This, if in fact it is so, would represent a first degree, a first expression of transsexualism."

c) There is no obstacle from the fact that the expert, Cote, admits that it was impossible for the defendant "*to fulfill in a healthy manner the duties of marriage and to set up a community of life and love*." First of all, he himself had already said: "It is not juridical liberty which is in question but the aptitudes to realize a happy marriage." This, indeed, no matter how desirable it may be, does not pertain to the essence of marriage. Again, when the suit for divorce had already been initiated, on the occasion of the marriage of the second child, the plaintiff sent a letter to her husband in

which we read the following: "A multitude of happy and sad memories swept over me and I believe that I would give everything for us to recapture again those years of the past when we were reunited for better and for worse . . . I know it is very difficult to reverse things without another wound, but I beg you for this. It is so stupid to wipe out a home with 25 years of life together, thinking only of our pride. We are making a mistake which we will regret, perhaps to our last breath . . . Only Michael remains; both of us love him . . . We must do something; try that which we think is still impossible, and yet would be so simple if we thought only of the love which still slumbers in the depths of our hearts. I am extremely unhappy. If you feel this same pain, try the impossible for all of us, for us two." When the husband gave no response, the wife initiated the suit for nullity. From this it is seen that community of life and love existed for many years, notwithstanding great difficulties.

## B) ERROR OF QUALITY AMOUNTING TO ERROR REGARDING THE PERSON

**Law:** 11) Error regarding the quality of a person invalidates a marriage when the error amounts to an error regarding the person.<sup>32</sup> This, indeed, is verified when the consent of the contracting party is not brought to bear directly on the person, because the person is unknown to him, but is brought to bear directly on a quality which is exclusively proper to a given person whereby it happens that all persons not endowed with that quality are distinguished from the partner whom the contracting party wishes to marry; thence the error revolves around the person. Thus St. Thomas<sup>33</sup> and the common teaching and jurisprudence.

Thus understood, this juridical norm very rarely finds application. (In our times marriage is with a person who is known and loved, not with an unknown person who is specified by a quality exclusively proper to him). Laudable at-

<sup>32</sup>Canon 1083, §2, 1°.

<sup>33</sup>*Suppl.*, q. 51, a. 2 ad quintum.

tempts have been made that this norm be interpreted in accord with new circumstances.

We dealt broadly with this question in the decision of the 12th of November, 1973, before the undersigned referee.<sup>34</sup>

This interpretation seems to escape from the difficulties raised: Error regarding a quality amounts to an error regarding a person when it focuses on a quality which, from the nature of the matter, is necessary for the exercise of the essential rights and obligations of the marriage contract. In that instance the error centers around the person because he who lacks a quality which is indispensable,<sup>35</sup> is a person different from the one whom the contracting person intends to marry. From the nature of the matter, matrimonial consent is brought to bear on the constitutive elements of marriage and on the qualities of the partner which are necessary for the exercise of the essential rights and obligations as on that which is indispensable,<sup>36</sup> unless by a positive act of the will something is excluded.<sup>37</sup>

**Findings.** 12. The plaintiff, in the instance, wished to contract marriage with the defendant who was known and loved, while being totally ignorant that he labored from the deviation of transsexualism. In law ignorance and error are equated. What she would have done if she had known this before the wedding, nobody, not even she, can determine with certainty today. There remains the fact that, notwithstanding the above-mentioned deviation, conjugal cohabitation lasted for 25 years and the essential obligations and rights were fulfilled in a communion of life and love.

Wherefore, after having attended to what has been set forth above, proof is not had of the nullity of the marriage.

In the preceding presentation we have taken into consideration both the arguments adduced by the distinguished Counsel, acting officially for the plaintiff, in his precise stricture, and the animadversions of the very diligent deputy defender of the bond.

<sup>34</sup>Sent. n. 178/1973.

<sup>35</sup>*sine qua non*.

<sup>36</sup>See footnote 35.

<sup>37</sup>Thus B. Gangoiti: *Dolus, vel melius, error constituitne titulum sive causam nullitatis matrimonii?* in *Angelicum*, 50 (1973), 376-430. (Free Version)

**Decision.** 13) After having considered all these matters both in law and in fact, we, the undersigned auditors of the turnus, having only God in view and after having invoked the name of Christ, definitively pronounce sentence, responding to the proposed question: *In the negative*, that is, *proof is not had of nullity of marriage in the instance.*

(Private); Rota, decision, 14 April, 1975; reported in *Monit. Eccles.*, 102 (1977), 39-48.

Bibliographical data regarding the Benjamin book. *The Transsexual Phenomenon* by Harry Benjamin, M.D.: The Julian Press, Inc., 119 Fifth Ave., New York, N. Y., 10003.

**Marriage: Community of Life, Community of Conjugal Love (Sig. Apost., 29 Nov., 1975) Private.**

Presented here is a case\* which came from the Tribunal of the Diocese of Utrecht (Holland) and for which a special commission of cardinals of the Apostolic Signatura is issuing the definitive sentence in third instance.

**Facts.** I, Mr. S.M., born in 1937 in the city of F. (Italy), contracted marriage on 12 February, 1963, in Arnhem (The Netherlands) with Miss R.T., who was born in 1942. About three months after the wedding a daughter was born.

In the month of June of the same year, the man deserted his wife and moved to Switzerland. The main reason for this desertion seems to have been the man's intolerance of his wife's parents—especially of the mother—with whom the couple lived right from the start. In 1964 the wife sued for divorce. However, this was not granted until 1968 when the man returned to The Netherlands.

\*The text used as the basis of this translation is that published in *Apollinaris*, 49 (1976), 31-48, which, since it is the text published in a public source, we suppose is the definitive text; at times, it differs notably, especially by deletions of sections, from the text supplied at Rome to Fathers Sacchi and Rossi of the Regional Tribunal of Vancouver (Canada) who, at our request, kindly sent