

Objection 1. It would seem that the husband can on his own judgment put away his wife on account of fornication. For when sentence has been pronounced by the judge, it is lawful to carry it out without any further judgment. But God, the just Judge, has pronounced this judgment, that a husband may put his wife away on account of fornication. Therefore no further judgment is required for this.

Objection 2. Further, it is stated (Mat. 1:19) that Joseph... being a just man... “was minded to put” Mary “away privately.” Therefore it would seem that a husband may privately pronounce a divorce without the judgment of the Church.

Objection 3. Further, if after becoming cognizant of his wife’s fornication a husband has marital intercourse with his wife, he forfeits the action which he had against the adulteress. Therefore the refusal of the marriage debt, which pertains to a divorce, ought to precede the judgment of the Church.

Objection 4. Further, that which cannot be proved ought not to be submitted to the judgment of the Church. Now the crime of fornication cannot be proved, since “the eye of the adulterer observeth darkness” (Job 24:15). Therefore the divorce in question ought not to be made on the judgment of the Church.

Objection 5. Further, accusation should be preceded by inscription*, whereby a person binds himself under the pain of retaliation, if he fails to bring proof. But this is impossible in this matter, because then, in every event the husband would obtain his end, whether he put his wife away, or his wife put him away. Therefore she ought not to be summoned by accusation to receive the judgment of the Church.

Objection 6. Further, a man is more bound to his wife than to a stranger. Now a man ought not to refer to the Church the crime of another, even though he be a stranger, without previously admonishing him privately (Mat. 18:15). Much less therefore may the husband bring his wife’s crime before the Church, unless he has previously rebuked her in private.

On the contrary, No one should avenge himself. But if a husband were by his own judgment to put away his wife on account of fornication, he would avenge himself. Therefore this should not be done.

Further, no man is prosecutor and judge in the same cause. But the husband is the prosecutor by suing his wife for the offense she has committed against him. Therefore he cannot be the judge, and consequently he cannot put her away on his own judgment.

I answer that, A husband can put away his wife in two

ways. First as to bed only, and thus he may put her away on his own judgment, as soon as he has evidence of her fornication: nor is he bound to pay her the marriage debt at her demand, unless he be compelled by the Church, and by paying it thus he nowise prejudices his own case. Secondly, as to bed and board, and in this way she cannot be put away except at the judgment of the Church; and if she has been put away otherwise, he must be compelled to cohabit with her unless the husband can at once prove the wife’s fornication. Now this putting away is called a divorce: and consequently it must be admitted that a divorce cannot be pronounced except at the judgment of the Church.

Reply to Objection 1. The sentence is an application of the general law to a particular fact. Wherefore God gave out the law according to which the sentence of the court has to be pronounced.

Reply to Objection 2. Joseph was minded to put away the Blessed Virgin not as suspected of fornication, but because in reverence for her sanctity, he feared to cohabit with her. Moreover there is no parallel, because then the sentence at law was not only divorce but also stoning, but not now when the case is brought to the Church for judgment. The Reply to the Third Objection is clear from what has been said.

Reply to Objection 4. Sometimes when the husband suspects his wife of adultery he watches her secretly that together with witnesses he may discover her in the sin of fornication, and so proceed to accusation. Moreover, if he has no evidence of the fact, there may be strong suspicions of fornication, which suspicions being proved the fornication seems to be proved: for instance if they be found together alone, at a time and place which are open to suspicion, or “nudas cum nuda.”

Reply to Objection 5. A husband may accuse his wife of adultery in two ways. First, he may seek a separation from bed before a spiritual judge, and then there is no need for an inscription to be made under the pain of retaliation, since thus the husband would gain his end, as the objection proves. Secondly, he may seek for the crime to be punished in a secular court, and then it is necessary for inscription to precede, whereby he binds himself under pain of retaliation if he fail to prove his case.

Reply to Objection 6. According to a Decretal (Extra, De Simonia, cap. Licet), “there are three modes of procedure in criminal cases. First, by inquisition, which should be preceded by notoriety; secondly, by accusation, which should be preceded by inscription;† thirdly, by denunciation, which should be preceded by fraternal correction.” Accordingly the saying of our Lord refers to the

* Cf. IIa IIae, q. 33, a. 7 † Cf. IIa IIae, q. 33, a. 7

case where the process is by way of denunciation, and not for the safeguarding of the common good, which would be destroyed if justice were lacking.

by accusation, because then the end in view is not only the correction of the guilty party, but also his punishment,