The Linacre Quarterly

Volume 19 | Number 3 Article 3

8-1-1952

Indications and Proof of Non-Consummation

Paul V. Harrington

Joseph B. Doyle

Indications and Proof of Non-Consummation

Rev. Paul V. Harrington, J.C.L. and Joseph B. Doyle, M.D.

IN CONNECTION with the ordinary work of the Diocesan Tribunal, it is very often necessary to enlist the assistance of medical experts and to receive from them an objective judgment based on observable anatomical and physiological phenomena. The conclusions of the doctors will assist the judges in arriving at their decision, which is essentially an application of the law and legal principles to a specific case. Thus the opinion of the medical experts must be an interpretation of the observed phenomena in the light of the legal norms that govern that particular species of case. Since there is the possibility that the medical and legal definitions of one and the same idea might differ and since cases must be adjudicated in terms of legal definitions, not medical definitions, it is thought necessary and advisable to explain and describe the *legal* interpretation to doctors who might be called upon to assist in the work of their Diocesan Tribunals.

The thought that all Catholic doctors might appreciate a description of the procedure of Diocesan Tribunals in cases of non-consummation prompted the writers to include an account of the methods of proof that are demanded and accepted in such instances. This outline is coupled with a legal definition of non-consummation as set forth in the commentaries on the law, the jurisprudence of the Supreme Tribunals of the Church and the responses of the Holy See.

A brief introductory paragraph, which would demonstrate the right and the power of the Catholic Church to dissolve an unconsummated marriage, might not be out of place, since many people find it difficult to reconcile the fact of an ecclesiastical dissolution with the divine mandate of indissolubility.

When a valid sacramental marriage has the perfecting note of consummation added to it, then there is expressed and verified the inseparable union of Christ with His Bride, the Church, which St. Paul so beautifully describes and which is set forth as the model upon which all Christian marriage is to be founded. Such a union is completely indissoluble and thus referred to in the *Evangelical Law*, where the stern words of God are recorded: "What God has joined together, let no man put asunder."[1] The Latin and Greek Fathers, writing in the early Christian centuries and recognizing the indissolubility of marriage, refused to allow a man to

remarry after he had separated from his wife, even if he alleged as a cause the crime of adultery on the part of his spouse. Further evidence of this is found in the uncompromising ruling of the Canon Law which states that a "valid sacramental marriage which has been consummated cannot be dissolved by any human power or for any reason other than death."[2]

If one of the above-described elements, either of sacramentality or proper consummation, is lacking, there is a *possibility* of a dissolution of that marriage, since one of the perfecting characteristics is missing. A very important fact to remember is that such a marriage is always considered to be valid and, therefore, binding until the actual dissolution has been conceded.

An unconsummated sacramental marriage (for that is to occupy our attention more specifically) continues to be a true sacrament and, for this reason, is *intrinsically* indissoluble by the divine law but *extrinsically,* it can be dissolved provided that, in a particular case, there is verified a proportionately just and serious reason which would dictate that the supreme authority of the Church should be invoked.

A consideration of the sweeping and unlimited faculty which was conferred by Christ on St. Peter and on all of his successors—"*Whatsoever* is bound on earth, will be bound in Heaven and *whatsoever* is loosed on earth will be loosed in Heaven"—clearly indicates and demonstrates that the Church does have the power to dissolve a marriage of the faithful which has remained unconsummated and from the words of the Master: "Feed my lambs; feed my sheep;" it is concluded that this power is to be used in favor of the faithful, for the good of souls and for the utility of the Church.

This power to dissolve an unconsummated marriage is not in any way contrary to texts of Sacred Scripture or opposed to the acknowledged dictates of authoritative tradition. Further, the Roman Pontiff, who is the guardian of divine law and its infallible interpreter, recognizes the indissolubility of marriage but, at the same time, is aware that exceptions can be made in favor of a non-consummated marriage. It would be rash indeed to state that over such a long period of time and in so many instances, the Pontiffs would have erred in a matter of such great importance, for from the time of Pope Martin V (15th century) it has been the constant and certain practice of the Holy See, upon proof of compelling reasons, to dissolve unconsummated marriages. In addition, the Code of Canon Law states definitely: "An unconsummated marriage between two baptized persons or between one party who is baptized and one party who is not baptized, is dissolved by a dispensation granted by the Holy See for a just cause."[3]

Thus, from the above, it can be concluded on sufficient evidence that the Church of Christ has been endowed by its Founder with the power to dissolve such a marriage.

Since, in cases of this type, the Holy Father does not act in virtue of a *personal* power of ordinary jurisdiction but rather by the authority and in the name of Christ by a *vicarious* power, it is essential and absolutely necessary for the *validity* of the dispensation that there be present a just and proportionately grave reason, which would justify papal intervention; otherwise the dispensation would be invalid and a second marriage, contracted in virtue of it, would likewise be invalid.

In the last analysis, what constitutes such a reason is left to the prudent judgment of the Holy Father but one fact is beyond all dispute, that some urgency, whether public or private, must be verified. The following is a list of reasons which, singly or in combination have been accepted in the past and thus will serve as precedent to give some idea to the reader of the quality demanded:

1) Complete and actual separation without any hope of a future reconciliation.
2) Probable fear of grave scandal in the future and of discord and disagreements among blood relatives.
3) Probable suspicion of impotency on the part of one of the spouses coupled with a danger of incontinence on the part of the other spouse.
4) Civil divorce already obtained by one party with a danger of incontinence on the part of the innocent person.
5) Suspicion of invalidity of the marriage because of defect of consent or the presence of some diriment impediment.
6) Attempted second marriage without any possibility of convalidating it.
7) Danger of perversion of either or both of the spouses.

This list is not necessarily taxative and therefore other reasons, similar to the above, which denote urgency, might be offered for consideration.

Since the verification with moral certitude of a just and proportionately serious reason is only part of the process, the second factor of actual non-consummation must now be investigated. This naturally brings us to a discussion of what constitutes proper consummation of a marriage from the point of view of Canon Law and the purpose will be to establish a minimum standard so as to determine the least necessary for verification of consummation.

The Code of Canon Law[4] states that a marriage is to be judged as consummated: "if between the spouses, there has occurred the conjugal act to which the marriage contract is, by its nature, ordinated and by which the spouses become one flesh." As can be readily seen, this norm is much too

general and requires specification and delineation before it can be of any practical value in determining this matter more accurately.

By reflection, we can say that the consummation in which we are interested must be an *external* fact, capable, by its nature, of being proved *juridically* and its mode must be *natural* i.e. instituted by nature, *ordinate* to the essential purpose of marriage and *ordinary*. To realize all of these essential elements, it is required and suffices that the vagina of the woman be penetrated by the male organ and that there be an effusion of male semen therein.

The further question arises as to how much penetration and semination is required before a marriage can be described as consummated. Must there be perfect penetration of and complete semination within the vagina or would a partial accomplishment of both suffice? This vexing question is answered by a study of cases that have already been officially decided and of replies that have been given by Congregations of the Holy See.

The jurisprudence of the Sacred Roman Rota has always held that a marriage is consummated by a true sexual union in which the husband, with an erect male organ, penetrates, at *least imperfectly*, the vagina of his wife and therein deposits semen. In one particular decision, the judges of the Rota declared that "in order to have perfect copula, it is not necessary to have complete penetration by the male organ i.e. that the entire male organ enter the vagina of the woman, but only that penetration is required by which, after the erection of the male organ has ceased, there is excluded mere semination *ad os vaginae* (near the introitus). It is sufficient to have partial penetration so that some part of the male organ enters through and beyond the hymeneal membrane and into the vaginal canal and to have at least a partial semination within the canal."[5] In other words, intra-vaginal deposition of semen is essential although penile penetration need not be complete. A decision of the Holy Office, of March 1, 1941, consonant with Rotal jurisprudence, stated that for perfect copula and consummation of the marriage, it is required and suffices that "a man in some fashion, even though imperfectly, penetrates the vagina and immediately effects in a natural manner a semination, at least partial, within the vagina, with this reservation that the entire male organ need not enter the vagina."[6]

It is clear from the above that the minimum, which is required and suffices for true consummation, is to be found between the two extremes of mere vulvar penetration, on the one hand, and complete penetration of the entire male organ, on the other. There must be verified a true entrance through the hymeneal membrane and into the vaginal canal, so that part of the male organ can be truly said to be enveloped by the vagina. Juxtaposition of the glans penis against the hymeneal orifice with the result that only the tip of the *glans* enters beyond the hymeneal membrane, and this without in any way stretching or tearing it or loosening the hymeneal ring, is not sufficient. For, in this instance, it could not be said that any *penetration* had occurred. Rather must there be realized the apposition of an erect male organ against the hymeneal orifice with a definite pressure which will cause the membrane to be pushed aside and to be stretched, at least momentarily, so that part of the male organ can actually enter the vagina. This minimum penetration, coupled with a simultaneous semination, will constitute proper consummation.

It can be readily seen that the above determination has no necessary correlation with either actual conception or the possibility of conception, since the consummation of a marriage must be within the capability of all persons who are allowed to marry and persons who might be naturally sterile or who have become sterile by surgery or by advanced age are not prevented from contracting marriage. On the other hand, actual conception is not always a certain and indubitable sign that a marriage has been properly consummated, since it is possible for such to occur by the deposit of semen *ad os vaginae*, without benefit of any penetration and with the subsequent migration of the sperm into the vaginal canal, through the cervix and body of the uterus and into the fallopian tubes. To substantiate this conclusion, reference is made to two decisions of the Rota, wherein a definite judgment was made that marriages had not been properly consummated even though the fact of conception was beyond all controversy[7] and in a particular case, even though a woman had given birth to two children, for in this instance, it was verified that the subject was suffering from such severe vaginismus that penetration was impossible.[8]

It is safe to say that where the practices of "coitus interruptus" or condomistic intercourse are exclusively verified or where semen is extracted directly from the epididymis and then injected into the vagina or uterus, without any type of marital relationship being accomplished, such marriages are to be considered *theoretically* as unconsummated, since the essential constituents of consummation—partial semination, in the former instances, and partial penetration, in the latter instance, are lacking. True and proper consummation has been realized in the instance where the spouses have participated in a relationship which is normal and natural, with sufficient penetration and semination but where a doctor, or some other competent person, collects the semen, with the aid of an instrument, and injects it into the deeper recesses of the vagina or into the cavity of the uterus.

Having considered the legal definition of consummation and its constitu-

ent elements, it remains now to investigate the more difficult problem of the proof of alleged non-consummation.

In this regard and at the very outset, the Code of Canon Law establishes the principle that once the marriage ceremony has taken place and the spouses have cohabitated, then it is *presumed* in law that proper and true consummation has taken place.[9] This is a simple presumption which will yield to *proof* to the contrary but the entire burden of proof falls upon the one who alleges non-consummation.

Since Canon Law, on the one hand, normally presumes that the marriage has been consummated, and since, on the other hand, the divine law states that a consummated, sacramental marriage can in no wise be dissolved, greater or less probability or mere conjecture of non-consummation is not sufficient. There is required and demanded full proof so that moral certitude of the non-consummation might be had before the dissolution will be granted. This seems to be evident and clear when one considers that, in a matter of such importance, the Holy Father could not risk the dissolution of a possibly-consummated union.

To safeguard the essential indissolubility of Christian marriage, special rules of procedure have been drafted by the several Roman Congregations which have jurisdiction in these matters. In all, there have been four separate and distinct instructions relevant to alleged non-consummated marriages.[10] The remainder of this presentation will be a summary review of these four instructions.

The first point to consider is that the ordinary diocesan Tribunal does not have jurisdiction to draw up and decide alleged cases of non-consummation, since the Holy Father himself must intervene *personally* and make the judgment. However, he can delegate the diocesan Tribunal to act as his agent in instructing the case, in receiving the sworn statements of the parties involved and their witnesses and, in general, in supervising all accepted methods of presenting evidence.

Before this delegation of agency is granted, however, a petition, addressed to the Holy Father, must be signed by either or both spouses and transmitted to the proper Congregation. This petition should contain an accurate and complete description of all of the facts and list the reasons which would justify the granting of the dissolution. This *libellus* should be forwarded to Rome through the local Bishop, who is to give or refuse his recommendation but doing neither until he tries to reconcile the husband and wife, if this is possible.

A word of caution is contained in the instructions to the effect that if there is an indication that either or both parties had recourse to sexual acts of perversion during the continuance of the marriage, the petitioner should

be advised of the futility of prosecuting the matter further. This is true because there is always the possibility that the marriage had been consummated during the course of these abnormal acts, especially if the perversion took the form of condomistic intercourse. In addition, such parties would not be considered worthy of this *favor*, since, in committing these actions, they consciously violated the sanctity of marriage and, at the same time, made it impossible to attain the primary purpose of marriage. The past unworthiness of the parties could be supplied for by evidence that the petitioner did not participate in these acts or encourage them but merely tolerated them and, in addition, is truly repentant of the previous scandalous conduct and seriously promises that, in a future marriage, he will not be a party to such sinful actions. Yet, even if the present worthiness of the person is verified, there always remains the possibility that the marriage had been consummated and this would indicate the inadvisability of pressing the matter further.

When the necessary faculties of delegation have been granted, the Bishop will constitute a Tribunal to hear the case consisting of a judge, who will preside, a defender of the marriage bond, who will argue in favor of proper consummation in keeping with the legal presumption and a notary, who will record the testimony, assemble the evidence and authenticate the records.

After the Tribunal has been duly constituted, both parties to the original marriage—the petitioner and the respondent—will be cited to appear individually before the court to give their formal testimony under oath. If one or the other party lives outside of the confines of the diocese, where the case is being instructed, he will be cited to appear before the Tribunal of the diocese where he is residing. This is true also in regard to the witnesses who are to be summoned at a later date.

On presenting themselves, the presiding judge must be careful to verify the identity of the parties involved. This is done principally by checking a photograph, driver's license, social security card, commercial charge accounts, military papers, character testimonial letters etc. and in general in any way in which it can be established definitely that the person before the court is actually the person he represents himself to be. This precautionary measure is taken to guarantee, insofar as it is humanly possible, that there is no fraudulent substitution of persons. Obviously, the need for identification will be more urgent on the occasion of the vaginal inspection by the medical experts, since there is more reason to fear such substitution at that time. If, in the process of instructing a case, it becomes evident that both parties have conspired to a substitution of persons, either for purposes of testifying before the Tribunal or of submitting to a physical examination, the judge

is to decree that the matter be terminated and no further evidence is to be received. This is done partly as a penalty for the perpetration of such a serious crime and partly because the testimonies of the parties and their witnesses would forever be suspect.

By direction of the Holy See, the spouses are to be interrogated regarding the following points: the period of courtship and engagement, the reason which prompted the marriage, the freedom with which they entered the marriage, the consent given, time and place of the marriage ceremony, incidents or circumstances which accompanied it, time at which common life was inaugurated and the duration of it, time and causes of separation, attempts at sexual relations and their success, attitude of the wife toward marriage relations, presence or absence of fear or pain on her part, evidence of bleeding, acts of perversion or contraception, determination of both parties as to consummation, time when the spouses learned of the possibility of a papal dissolution and the source of their knowledge, reasons for seeking the dissolution, possibility of scandal if the favor should be granted and they should remarry.

In questioning the petitioner and the respondent about the fact of possible consummation, it is most important that each be informed as to how little is actually required before the marriage is to be declared as properly consummated. Otherwise, if penetration and semination, sufficient to satisfy the legal definition, has occurred even on one occasion, the parties, through ignorance, would swear that the marriage had never been consummated, since their concept of consummation might be the perfect penetration of the vagina by the complete male organ.

It is interesting to note that when the woman to the marriage is giving her testimony before the Tribunal, she is to be interrogated directly by a physician in accordance with questions which have been previously prepared according to the norms of law. This insures a frank, honest and complete discussion of intimate facts which normally a modest Christian woman would be reluctant to discuss with a priest.

Since the testimony of the principals, in any type of litigation, is never accepted as proof but only as an indication of the facts involved, their statements must be corroborated and confirmed by the testimony of thoroughly reliable witnesses. These will fall into two distinct categories: witnesses *de scientia* and witnesses *septimae manus*.

Witnesses *de scientia* are those who have some knowledge of the marriage involved, its background, circumstances and problems. These are usually members of the family of both parties, relatives or close friends, who have been apprised of the situation by one or both of the parties concerned. They are to be questioned in regard to their knowledge of the background of the marriage, the reason for the alleged non-consummation, the time when they

heard that the marriage had not been consummated—a time when the married life was peaceful and happy or a time when trouble had started, the final separation had already taken place, a civil divorce had already been obtained or after the parties had learned, for the first time, that a marriage could be dissolved on the basis of non-consummation. It is important to determine this time element as precisely as possible because the information given to the witnesses by the petitioner or respondent, could conceivably be dictated by the circumstances existing at the time and the personal interest of the parties.

The presiding judge should be careful to obtain from the witnesses the exact words which were spoken, if possible, but at the very least the precise idea which was conveyed. Very often, the principals told them that the marital relations were not at all satisfactory or that a proper adjustment had not been made and from these general statements, they arrive at a personal conclusion that the marriage had not been consummated and then testify under oath to the actual non-consummation of the marriage when, in fact, the relations which were had, although not entirely satisfactory, were sufficient to constitute consummation. If the witnesses had been informed that the marriage had not been consummated, then, if possible, an effort should be made to determine exactly what was the spouse's understanding of consummation at the time when the statement was made, for it is entirely possible, as was mentioned above, for the principal to state erroneously, through ignorance, that the marriage had not been consummated when, in fact, it had. Thus, the error would be perpetuated throughout the testimonies of all of the witnesses.

Since decent people do not normally discuss with friends and associates such intimate, personal details of their marriage as consummation, it is understandable that in many cases, brought before the Tribunal, there will be a paucity of witnesses *de scientia* and this gap must somehow or another be filled. This is done in most instances by summoning witnesses *septimae manus*, who do not testify to facts but to the character of the persons involved. This mode is a carry over from Germanic Law which was willing to accept proof of one's credibility in place of factual proof, where the latter was lacking.

Each side is advised to produce seven character witnesses—hence the name *septimae*; however, fewer will be accepted, if it is impossible to have the full number. These will be interrogated about the uprightness and honesty of the petitioner or respondent, his veracity, his reputation in the community, his observance of the ecclesiastical precepts, the fulfillment of his religious duties and most especially as to whether or not his sworn testimony of non-consummation can be readily believed without hesitation or reservation.

In addition to the verbal testimony of witnesses, private documents of an extra-judicial nature can also be submitted as evidence, if such are genuine and authentic. Examples of these would be letters, transcript of the proceedings before the civil court in cases where legal action had already taken place and where the question of consummation had been reviewed and medical records of previous physical examinations or hospitalization.

The last and final mode of proof is the physical examination, which is always required unless it is clearly evident that this would be useless either because the woman had been previously married and had consummated that marriage or because she had been violated in the past or has, since the marriage in question, had intercourse. In the event that the presiding judge should decree that an examination of the woman is to be made and she refuses to submit to it, this refusal must be evaluated in the light of existing circumstances.

By formal decree, the judge will designate the two experts, who are to conduct the examination, the matron or nurse who is to be present throughout the proceedings, and the place, the date and the time of examination.

To qualify as a medical expert and thus to be placed on the staff of experts associated with the Tribunal, a doctor must submit a testimonial of his fitness from a competent and recognized authority and must be considered, by reason of his experience, to be outstanding in his specialty and he must be known for his honesty, integrity and uprightness. However, even though an individual doctor fulfills the above requirements for appointment to the associate staff of experts, he cannot be appointed as an examiner in a particular case where he might be related to one of the parties by blood or marriage or where he might have a personal interest or concern in the eventual outcome of the case or where he has examined the person privately regarding the fact of non-consummation, but in this latter case, he can be summoned as a witness and his written report can be filed among the other documents.

The physical examination is to be made by each doctor individually and separately but always in the presence of a matron or nurse of upright character and it is to be conducted with due regard for all of the rules of Christian modesty and only after the patient has taken a bath in tepid water for a period of no less than one-half hour immediately preceding the examination. This was originally invoked not so much as a hygienic measure but to cause the dissolution of any foreign substance which might have been inserted within the vagina, for the purpose of simulating integrity and giving evidence of virginity. The doctors and nurse are also obliged to take an oath that they will fulfill the duties committed to them as conscientiously as it is humanly possible and observe complete secrecy.

The corporal inspection, as it is sometimes called, should be concerned exclusively with the female genitalia; there is no need to record the temperature, blood pressure, pulse, previous medical history etc. unless this last is necessary to explain some present physiological phenomena. Attention should be centered on the labia maiora and minora, the hymeneal membrane and the hymeneal ring. Special note should be made of any swelling or scars on the labia maiora and minora, the presence or absence of an anatomically intact hymen, any evidence of hymeneal tears, fissures or carunculae myrtiformes, the relative snugness of the hymeneal ring and finally, indications of vaginismus, i.e., reaction of the woman to the examination—whether it was the normal reaction a doctor would expect, i.e. a very slight, fleeting contraction of the sphincter cunni, or whether it was abnormal and unusual—viz. a true spasm. In addition, any other abnormal or unusual anatomical or physiological findings should be recorded.

The examination should take place under the best possible medical conditions, in good light and with the use of a regulation examining table. Anaesthesia should not be administered, since it would destroy any evidence of vaginismus, if such exists, and would make it impossible for the doctor to determine the reaction of the patient to the entire procedure.

If the hymeneal membrane is noticeably absent, the doctor should try, fact—was it lost by a hymenotomy or a hymenectomy. If the latter, then the name of the doctor, who performed the surgery, should be recorded, along with the name of the hospital and the approximate date of the operation. This is necessary and useful, so that these records might be obtained to verify these facts.

If old hymeneal scars, tears, fissures or carunculae myrtiformes are witnessed, then some explanation should be sought by the doctor. Can their presence be satisfactorily explained by trauma, resulting from falls on sharp objects, by the forceful stretching and tearing of the membrance by reason of violent athletic exercising, such as riding horseback, in which the patient was accustomed to participate, by the habitual use of menstrual tampons, or by reason of a past history of autoeroticism, where either a digital manipulation or the insertion of objects into the vaginal canal was resorted to?

The elasticity and size of the hymeneal ring should be carefully computed. In the past, many doctors measured this factor in terms of the number of fingers which could be inserted easily into the orifice. Unless one could observe the size of the fingers or have their dimensions, a report, stating that one or two fingers could be easily inserted, would mean little to the one who was reviewing it. It is suggested that a more accurate and objective measurement could be easily obtained by inserting a standard gauge

Hanks uterine sound through the hymeneal orifice until the largest size, tha penetrates easily, is determined.

If there is any indication of vaginismus, its extent must be carefull noted, especially if its severity would have made it impossible for an penetration to have occurred.

With all this factual information before him, the doctor is expected t make a conscientious judgment as to whether the marriage in question ha or has not been consummated. This opinion is to be reached only after careful consideration of the minimum penetration and semination require by the norm described above.

As is evident, it is always much easier to establish a positive fact—tha something did occur—than to try to prove a negative fact—that somethin did not occur.

A very specific norm was set forth by the S.C. de Discip. Sacram. o December 18, 1950 in a private reply to the Tribunal of the Archdiocese o Boston, which should be of great value in aiding the doctor in arriving a his decision: "If due consideration is given to the measurement and for of the hymeneal ring and the nature of the hymeneal membrane with it characteristic extensibility, can there be excluded, in this particular cas even the slightest penetration on one occasion of the male organ into th vagina with an accompanying partial semination?"

Usually, by conducting a vaginal examination, doctors can differentiat between a virgin and a woman who has had some sexual experience. For, i most cases, where even the minimum penetration, described above, has take place, there will be some evidence remaining for the examiner to detect e.g. carunculae myrtiformes, tears, scars and fissures of the hymenea membrane, definite relaxation or stretching of the hymeneal ring etc. If th doctor finds these present and they cannot be accounted for or explained i any of the ways mentioned above, then he must conclude that the marriag in question had been properly consummated. If, on the other hand, th examining physician finds a hymen which is completely intact and absolutel integral and a hymeneal ring which is snug and tight and shows no evidence of ever having been stretched, then he will be justified in judging that th marriage had never been properly consummated and in so reporting to th Tribunal. It is true that in some rare and exceptional instances, sufficient penetration could have taken place without in any way rupturing th hymeneal membrane or without stretching the hymeneal ring to the point where there is definite evidence of a real relaxation. This possibility merely points up the fact that the doctor's report is not entirely conclusive and by

itself would not be sufficient to establish the fact of non-consummation with the moral certitude demanded and required by the various Roman Congregations.

There would seem to be definite evidence of non-consummation in the cases, admittedly rare indeed, where the hymeneal orifice was so minute or where a condition of vaginismus was so severe or where there was such disproportion between the size of the male organ and the female introitus that the minimum penetration could not possibly have occurred.

In this analysis, it is clear that all of the emphasis has been placed on the question of penetration without any consideration of the factor of *semination*. It is true, as was stated above, that a marriage remains unconsummated, if the minimum of semination has not occurred, even if minimum or maximum penetration has been definitely established. But this is theoretical and has little, if any, practical value since it is nigh on impossible to prove that sufficient semination has not taken place, especially if we recall that once penetration has been established, minimum semination is *presumed*. The only seeming exception to this rigid conclusion would appear to be instances where, in the man, *both* testes are entirely absent, or completely undeveloped or absolutely atrophied and thus cannot manufacture male sperm or where a double vasectomy had been performed prior to the marriage and had perdured throughout the entire duration of the marriage, so that the sperm, which had been manufactured, could not be transmitted. Verification of these facts could not only be had by having the husband submit to a corporal inspection and in cases, where surgery had intervened, to receive copies of hospital records and medical reports.

When the examination has been completed, each doctor should make a written report including the date and place of examination, the method of examination used (digital or by instrument), all of the anatomical and physiological facts observed, and the judgment as to consummation or non-consummation; the judgment alone is not sufficient. The report should, then, be filed with the Tribunal officials as soon as possible, and, at a later date, each doctor will be invited to testify under oath in accordance with questions prepared by the Defender of the Bond. These questions will be based on the written report that each doctor had submitted. The matron or nurse will be asked to report on whether or not the rules of modesty were followed throughout the entirety of the examination.

In the event that the doctors, designated for the examination, should disagree either as to the anatomical and physiological facts which they observed or as to their final conclusion, the presiding judge can decree that the doctors review each other's report in an effort to explain the apparent contradiction. If the case warrants it, he can even permit these same two

doctors to examine the patient again but this time together, submit a join report and then testify separately. If this method fails or appears useless the presiding judge can submit the two previously prepared reports to a third expert who will give an evaluation of them and conduct his own examination, if he thinks it necessary. As a last resort, the judge can designate new experts, in which case, each will make his own examination submit his own individual report and then testify separately before the Tribunal. In this last situation, all of the formalties, which were described above for the first examination, will be followed.

The testimony of the doctors and the nurse will usually complete the process. When the Defender of the Bond and the parties state that they have no further proof to offer, the judge will decree that the case is concluded. At this point, the Defender of the Bond will review the entire case and prepare his animadversions, which will be a critique on the procedure followed in the instruction of the case and a correlation of all of the proof presented. He will compare the testimonies of the petitioner and respondent and of all of their witnesses to determine if they agree or if they are divergent and what conclusions are to be drawn from these. The reports and testimonies of the doctors, since they are not entirely conclusive in themselves, will be studied in the light of the other evidence.

If there are manifest contradictions in the testimonies of the parties concerned and their witnesses, the case is considerably weakened and the possibility of receiving a dissolution becomes proportionately less. One requisite for the dissolution is that the fact of non-consummation must be proved beyond all question and all positive, prudent doubt of possible consummation must be removed. This is most difficult to realize except in cases where the persons did not live together after the marriage ceremony or where there is clear proof and indication that no attempts at normal marriage relations were made. Once it has been determined that the spouses have cohabited and have attempted to consummate the marriage, the law presumes that it has been consummated and this presumption perdures until it is set aside by overwhelming proof to the contrary.

The animadversions of the Defender of the Bond will be directed towards proving the consummation of the marriage in keeping with the legal presumption which favors his position. When these have been completed, the entire case will be presented to the local Bishop, who will or will not recommend the matter for a dissolution. His recommendation will depend on the strength of the proof indicating non-consummation, the reasons offered as to why the dissolution is to be granted and the worthiness of the parties. This last is most important since the entire process is a favor and

not something which can be demanded as a right protected by the virtue of justice.

When all the above has been completed, the case is typed in several copies, translated into either French, Italian or Latin and transmitted to the proper Congregation in Rome. There, it is studied by a board of reviewers, who order the entire case to be printed, if they deem that it merits further consideration. Having been printed, the case is filed in its proper place and is not considered until all of the cases, which preceded it, have been settled. At the proper time, the case is formally studied and a recommendation is made to the Holy Father. In a private audience with the Cardinal members of the respective Congregations, the Roman Pontiff will *personally* give his decision. If it is in favor of a dissolution, this is granted and has effect from the very moment when it is officially announced by the Pope.

The papal judgment, be it favorable or unfavorable, is then forwarded, in the form of a rescript, to the local Bishop who originally presented the case and he is directed to promulgate the decision to the respective parties. If the previous marriage has been dissolved, this fact is to be noted on their baptismal records, if both are Catholics, and on the marriage record. The rescript carries with it a dispensation from the impediment of *crimen*, which would be present where a second marriage had been attempted.

In conclusion, a word might be said about the fees which are involved in the instruction of a case, since many false, outlandish and unjustifiable statements are made by unknowing and uninformed people. The most common and popular charge which such people circulate is that, if the proper fee is given to the right priest, the dissolution will be readily granted regardless of the factual history of the case and the proof presented. If the money is not forthcoming, there is no possibility of ever getting a favorable decision, even when the case would warrant it. This serious charge is bantered about in spite of the fact that no Cardinal, Bishop or priest, who handles the case, ever receives one penny for his work and labor and this whether the ultimate decision is favorable or unfavorable. Whatever offering is made by the parties is to cover stenographic and secretarial work, which is necessarily involved in the typing of such cases, in the work of translation and in the mailing costs, which are rather sizeable. The *offerings requested* are very moderate and cover merely the costs of processing the case. The same consideration is given and the same energy is expended regardless of the ability of the person to pay the costs. If a person, by reason of his financial status, cannot make any contribution towards the expenses, the costs are charged to the Diocese. If some payment can be made, even though it is only a small percentage of the entire cost, such will be accepted.

The welfare of souls and the good of the Church constitute the operating spirit of the Diocesan Tribunal—not the ability of persons to pay.

Conclusions:

1) The minimum, which is required and suffices for true consummation, is to be found between the two extremes of mere vulvar penetration, on the one hand, and complete penetration of the entire male organ, on the other. There must be verified a true entrance through the hymeneal membrane and into the vaginal canal, so that part of the male organ can be truly said to be enveloped by the vagina.

2) Actual conception is not always a certain and indubitable sign that a marriage has been properly consummated.

3) Once the marriage ceremony has taken place and the spouses have co-habited, then it is *presumed* in law that proper and true consummation has taken place. This is a simple presumption which will yield to *proof* to the contrary but the entire burden of proof falls upon the one who alleges non-consummation.

4) *Usually*, by conducting a vaginal examination, doctors can differentiate between a virgin and a woman who has had some sexual experience. In most cases, where even the minimum penetration has taken place, there will be some evidence remaining for the examiner to detect; e.g. carunculae myrtiformes, tears, scars and fissures of the hymeneal membrane, definite relaxation or stretching of the hymeneal ring, etc. If the doctor finds these present and they cannot be accounted for or explained, then he must conclude that the marriage in question had been properly consummated. If, on the other hand, the examining physician finds a hymen which is completely intact and absolutely integral and a hymeneal ring which is snug and tight and shows no evidence of ever having been stretched, then he will be justified in judging that the marriage had never been properly consummated. It is true that in some rare and exceptional instances, sufficient penetration could have taken place without in any way rupturing the hymeneal membrane or without stretching the hymeneal ring to the point where there is definite evidence of a real relaxation.

(1) Matt. 19, 3sq; Mark 10, 11sq; Luke 16, 18; 1 Cor. 7, 10sq; 1 Cor. 5, 39; Rom. 7, 2sq.
(2) Canon 1118.
(3) Canon 1119.
(4) Canon 1015, M.1
(5) Decisiones S. Romanae Rotae—July 16, 1930—November 10, 1931.
(6) Cappello—Tractatus Canonico—Moralis De Sacramentis (Vol. V, De Matrimonio, Marietti, 1947) n. 382, pp. 381-382.
(7) Recisiones S. R. Rotae—August 17, 1920—August 3, 1921.
(8) Decisiones S. R. Rotae—March 20, 1926.
(9) Canon 1015, n. 2.
(10) Instructions of S.C. de Discip. Sacram.—May 7, 1923 and March 27, 1929.
Instruction of S.C. pro Ecclesia Orientali—June 10, 1935.
Instruction of S.C. Sancti Officii—June 12, 1942.