CHAPTER VIII

OBLIGATIONS ARISING IN THE USE OF THE EXTRAORDINARY FORM OF MARRIAGE

THE three previous chapters treated of the postulated conditions for the valid use of the extraordinary form of marriage. In order that the form may be licitly used, there are certain duties incumbent on the parties who take part in a marriage contracted according to this form. They relate to (1) the contingent approval of the local ordinary; (2) the prenuptial investigation; (3) the assistance of another priest when obtainable; (4) the registration of the marriage, and (5) the subsequent observance of prescribed civil formalities.

ARTICLE 1. THE CONTINGENT APPROVAL OF THE LOCAL ORDINARY

The canon itself does not require the approval or the permission of the local ordinary for the licit use of the extraordinary form of marriage. However, the ordinary may with all due right reserve all such cases for his own judgment and approval. This right could be vindicated from the Code itself. It is the *mens legislatoris* that all difficult problems be referred to the local ordinary.[1] The Holy See has at various times stressed the prudence and necessity of the local ordinary's intervention in such cases.[2]

Realizing the need of such intervention, the Bishops of the Province of Malines decreed in Council that outside the danger of death these cases should be referred to the local ordinary.[3] Finally, this is the common opinion of the commentators.[4]

[1] Cf. Canons 336, 1023, 1026, 1028, 1031, 1032, 1034, 1063, 1065, 1066, etc.

[2] The Sacred Poenitentiary, in an instruction issued January 15, 1886 (*Fontes*, n. 6427; Gasparri, n. 1295) decreed that when a civil marriage is obligatory but cannot be performed, great prudence and caution should be observed and the advice of the ordinary sought. Cf. also S. C. de Sacramentis, 16 iun, 1922 (ad Ordinarium Brugensem)—apud De Smet, *De Sponsalibus et Matrimonio*, n. 136, footnote on page 110; 24 apr. 1935 (ad Episcopum Metensem)—*Periodica*, XXVII (1935), 45.

[3] *III Prov. Conc. Mechliniense* (1923), n. 214—apud De Becker, *Ephemerides Theologicae Lovanienses*, IX (1932), 290.

[4] Heylen, *Tractatus de Matrimonio*, 273; Claeys-Bouuaert—Simenon, *Manuale Juris Canonici* (3 vols., Vol. II, 3. ed., Gandae et Leodii: Dessain, 1947), II *(De Sacramentis)*, n. 320; Vlaming-Bender, p. 430; *Periodica*, XXI (1932), 45.

Prudence suggests that such cases be not decided by the pastor himself. The ordinary can lay down certain rules which will preclude the possibility of abuses setting in. He can check to see that all the required conditions have been met, and can take the necessary steps to see that the marriage is properly recorded. At times it may be necessary for him to invoke the power given him by the Code of placing a ban for a period of time on the contracting of marriage by this couple.[5] This ban, however, will not have the force of an invalidating law, since it is only in the power of the Holy See to introduce an invalidating clause in such a ban.[6] If it be necessary to safeguard the validity of the marriage, he may have to call on the power of dispensing which he possesses either in virtue of a grant from the general law or from special faculties. In fact, in cases of doubt whether the facts as presented to him would allow the use of Canon 1098, he may, in virtue of Canon 15, dispense the parties and allow the use of the extraordinary form. In view of the foregoing it must be said that, even when the ordinary has made no ruling in this regard, the pastor would be most imprudent in venturing to act without consulting him.

As a general rule, when the parties are constituted in danger of death, there will be no opportunity of receiving the approval of the ordinary. Outside of these cases, if a qualified witness is, *de facto*, physically absent and unavailable, once again there will be no occasion for seeking the ordinary's approval. The cases in which such approval can easily and should be received obtain when the qualified witness is unavailable because of serious inconvenience threatened by the civil law. In cases of this sort the parties will invariably approach their parish priest for the purpose of contracting marriage. As a rule, they abide by his counsel and direction. There is absolutely no reason why the ordinary should not be consulted.

When the ordinary has made certain rulings in this matter, the parties are bound to obey him in view of the seriousness of the

[5] Canon 1039, § 1.

[6] Canon 1039, § 2.

matter. By disobeying him they would expose themselves to serious sin. One must not forget, however, that such disobedience, even in the event that the ordinary forbade the use of the extraordinary form, would not render the marriage invalid if all the postulated conditions in Canon 1098 are fulfilled. The law does not have an invalidating clause to that effect.

Article 2. The Prenuptial Investigation

Canon 1019, § 1, states that before *any marriage* is celebrated it must be clearly evident that there is no obstacle to its valid and licit celebration. This rule grants no exception in the use of the extraordinary form. One will note that the canon studiously omits mentioning to whom the facts mentioned therein must be evident. One explanation can be found in the fact that this state of the parties must also be known in the use of the extraordinary form.

When the parties are constituted in danger of death, there will be little if any time to conduct any sort of investigation. The Code makes provision for such an eventuality in the second paragraph of Canon 1019. It declares that if no other proofs are available, and there are no contrary indications, the sworn statement of the parties before witnesses that they have been baptized and that they are not bound by any impediment will suffice. A party would act temerariously, even if he felt in conscience that a former marriage was invalid or had been dissolved by death, as long as this fact had not as yet been established with certainty.[7]

Outside of the danger of death, if a qualified witness and any other priest is physically unavailable, some sort of investigation would have to be made. One cannot place this obligation on the witnesses, since they are not qualified witnesses in law; their sole obligation is to witness and to testify to the exchange of matrimonial consent between the parties. It can be said that in the event that they are aware of a diriment impediment between the parties, they must refuse their assistance. They may not participate in an invalid marriage. The obligation, then, of establishing the free state of the parties will devolve on the parties themselves. They must be certain that there is no obstacle to the marriage, otherwise they may not contract marriage. How far must this investigation go? All one can say is that they must establish that each is baptized and that they are not bound by any impediments. This they can do by producing relevant documents of proof and by furnishing sworn affidavits of witnesses. The question of whether the parties, even though bound by an impediment, could contract marriage according to the extraordinary form if there is no one who can dispense them from it will be discussed in the following chapter.

[7] Canon 1069, § 2.

On the other hand, if a qualified witness is physically present but cannot assist at the marriage because of impending harm from the civil law, or if some priest is called to assist at the marriage as the canon prescribes, the obligation to establish the free state of the parties will fall to the priest. The obligation is primarily that of the pastor of the bride, i.e., the one whose right it is to assist at the marriage.[8] In fine, the Instruction of the Congregation of Sacraments, dated June 29, 1941, will have to be strictly observed. This responsibility is a grave one for the pastor, as is evident from the importance of the matter. The examination is to be made by the pastor personally, unless there is some reasonable cause that serves to excuse him. The pastor may not shirk this responsibility, even though the marriage will not take place according to the ordinary form. It would be his right to assist if it were to take place in the ordinary manner. Therefore it is his obligation to make the necessary investigation. The fact that the extraordinary form is to be used is only incidental to the marriage in this regard.

The priest who is called to assist at the marriage in accordance with the prescript of Canon 1098 will have an obligation to make this investigation only if no investigation has as yet been made. This is an obligation based not merely on the priest's duty to see that so great a sacrament be not exposed to nullity; one can say that it is implicitly stated in Canons 1044 and 1045, which give such a priest the power of dispensing from matrimonial impediments. The grant of this power presupposes an investigation from which it becomes evident that the use of this power is necessary.

[8] Canon 1097, § 2, cum c. 1020, § 1. Cf. also S. C. de Sacramentis, instr., 29 iun. 1941, n. 4, a—*AAS*, XXXIII (1941), 297 ff; Bouscaren, *Digest*, II, 255.

Article 3. The Assistance of Another Priest

The second part of Canon 1098 requires in both instances, i.e., in danger of death and also when it is foreseen that a qualified witness will be unavailable for at least a month, that wherever and whenever another priest, namely, one who is not a qualified witness, is at hand and can easily be had (*praesto sit*), he should be called and he should assist at the marriage along with the witnesses. However, lest the wrong impression be created, the canon hastens to remind the reader that his presence is not required for validity, the marriage being valid as long as it takes place in the presence of witnesses alone. The legislator calls for the priest's presence that the latter may lend dignity to the marriage ceremony; that he may contribute a religious note of reverence to the celebration of the marriage; that he may remind the people that the marriage is a sacrament; that he may offer the parties the opportunity of receiving a blessing; that he may safeguard the validity of the marriage, in the event that a dispensation from a diriment matrimonial impediment is necessary; and, finally, that he may make proper registration of the contracted marriage.

For the licit use of this form there rests on the parties the obligation of calling such a priest. This obligation is a serious one. It binds on the supposition that such a priest is readily available and can assist without serious inconvenience. If the parties disobeyed this law they would expose themselves to serious sin. The obligation ceases if the excusing cause is grave [9] and probably even if the cause is a reasonable one.[10] It will also cease if the priest is not readily available or can be had only with serious inconvenience on his part or that of the parties. The parties are not obliged to seek a priest in order to obtain his services; their obligation to use his services is predicated on his being readily available. When the priest is called, he must according to law (*debeat*) assist at that marriage. It is not a matter of choice for him, unless, again, a serious inconvenience would excuse him.

If he is present, must he assist actively, i.e., by asking and

[9] Wernz-Vidal, *Ius Matrimoniale,* n. 543.

[10] Cappello, *De Matrimonio,* n. 696.

receiving the consent of the contracting parties to the marriage? This is not required for validity, for he is not acting in the capacity of a qualified witness. Commentators do not consider the problem of whether his active assistance is required for licitness; one can say that it is not required.[11] Even though it is not required for the licitness of the act, it would be advisable for him to assist actively to safeguard the validity of the marriage. In the event that he does assist actively, it would be fitting (*convenit*) for him to follow the Roman Ritual,[12] although, once again, this cannot be urged as an obligation.

Inasmuch as the law does not distinguish, the parties may call for any priest, whether he be of the Latin or of some Oriental rite, whether he be a member of a religious order or a congregation or a member of the secular priesthood. Whether the phrase "any priest" points also to a priest who is under a censure of excommunication or suspension has long been disputed among the canonists. For the sake of clarity, one must note that in regard to excommunicates the Code distinguishes between those who are *tolerati* and those who are *vitandi,*[13] and, among the *tolerati,* between those who have incurred the censure but upon whom a declaratory sentence has not as yet been inflicted and those upon whom a condemnatory or declaratory sentence has been passed. Regarding the persons under the censure of suspension or interdict, the distinction is the same as for the *excommunicati tolerati.* Vlaming,[14] De Smet,[15] Vermeersch-Creusen,[16] Cappello [17] and Hyland [18] are of the opinion that if a priest is an *excommunicatus vitandus* he need not be called. Cerato,[19] on the other hand, felt that even if such a sentence has been passed on the priest he is to be called. In view of the probability of the

[11] Payen, II, n. 1825, 4.

[12] Sipos, *Ius Pontificium,* XX (1940), 102.

[13] Canon 2258.

[14] *Praelectiones Iuris Matrimonii,* II, n. 586.

[15] *De Sponsalibus et Matrimonio,* n. 134, nota 1.

[16] *Epitome Iuris Canonici,* II, n. 406.

[17] *De Matrimonio,* n. 696.

[18] *Excommunication,* The Catholic University of America Canon Law Studies, n. 49 (Washington, D. C.: The Catholic University of America, 1928), p. 106.

[19] *Matrimonium a Codice Iuris Canonici integre desumptum,* p. 163.

first opinion, it may be said that there is no obligation of calling such a priest. May such a priest be called? In the event that the parties are constituted in danger of death, such a priest may certainly be called, because Canon 2261, § 3, allows the faithful to seek the ministrations of such men in the matter of sacramental absolution and, when no other priest is available, in the matter of the other sacraments and the sacramentals as well. Wishing to have their marriage blessed, the parties would be allowed to call him. Regarding his power of dispensing in the event that an impediment is present, a more detailed discussion will be found in the following chapter. When the danger of death does not obtain, it seems that he may not be called. One cannot fall back in such an eventuality on Canon 2261, § 3. There is no spiritual necessity great enough, or any utility, that would justify the assistance of such priests if they are under such a censure. De Smet, Hyland, and Cappello extend the same restrictions to priests upon whom has been passed a declaratory or a condemnatory sentence of excommunication or suspension of the type that forbids the exercise of orders or of jurisdiction. It seems that this restriction cannot be extended to a priest who is under personal interdict. This type of censure does not take away jurisdiction from the transgressor. He is forbidden to administer the sacraments and sacramentals,[20] the Code making no mention of his being deprived of jurisdiction, except implicitly in Penance, for in its administration, jurisdiction would have to be used. Therefore, he would still possess the power of dispensing granted by the Code to priests mentioned in Canon 1044. It seems, then that, since some benefit might eventuate from his being called, it would be permissible to call him. Such assistance, as long as the blessing is excluded, could be allowed because it does not fall in the comprehension of the phrase *"divina officia,"* which are forbidden him by the law.[21] One must remember that not he but the parties themselves are the ministers of the sacrament. It is necessary that he have the power of orders, but in assisting at a marriage he doesn't exercise the power of orders.

As for the priest under censure upon whom no sentence has been

[20] Canon 2275.

[21] Canon 2275 cum c. 2256, § 1.

passed,[22] the Code forbids him to administer the sacraments and sacramentals except in cases wherein the faithful, by way of a reasonable request, seek from his hands the sacraments or the sacramentals, especially if no other priest is available. The censured priest may then, without asking the reason, accede to their reasonable requests.[23] Besides, if the censure is not notorious and its observance in the external forum would cause him to lose his good name, he need not observe the penalty until such time that a sentence has been passed.[24] The parties in wishing a priest to bless their marriage would be making a reasonable request. *Ergo.* Must he be called? Rossi [25] and Cerato [26] hold the affirmative view, while Leitner [27] is of the opinion that he should not be called.

Assisting at the marriage along with the witnesses, the priest is only a special, but not a qualified, witness. There have been commentators who have held that he was a qualified witness representing the Church. However, in view of the fact that his presence is not required under the pain of invalidity, and of the fact that he is not strictly required, even when present, to ask and receive the consent of the parties, it is difficult to see how this opinion can be sustained.[28]

The priest should remind the parties that they are receiving a sacrament, and that therefore it is necessary for them to be in the state of grace. After its celebration, it is his obligation to take care that the marriage is properly registered in the prescribed ecclesiastical registers.[29]

Article 4. Other Obligations

A valid marriage contracted according to the extraordinary form is as much a sacrament as is a marriage contracted according to

[22] Except for a *vitandus* according to Canon 2343, § 1, who becomes such *ipso facto.* Cf. also C. 2266.

[23] Canon 2261, § 1, § 2.

[24] Canon 2232, § 1.

[25] *De Matrimonii Celebratione iuxta Codicem Iuris Canonici,* pp. 113-114.

[26] *Loc. cit.*

[27] *Lehrbuch des katholischen Eherechts,* p. 207.

[28] Schönsteiner, *Grundriss des kirchlichen Eherechts,* p. 729; Payen, II, n. 1825.

[29] Canon 1103, § 3.

the ordinary form, if both parties are baptized. Since it is a sacrament of the living, it must be received in the state of grace. The Holy See has on various occasions insisted that this obligation be brought to the attention of the parties.[30] The reason is clear. The parties are likely not to advert to the fact that they will be receiving a sacrament when they contract marriage, and thus a sacrilege could possibly result. Furthermore, through a stressing of this obligation there will be impressed on the minds of the parties the fact of the sacredness of the marriage they are contracting, and the fact that it will be a true and binding sacramental marriage. If there is no priest at hand, the parties will have to provide for themselves. For the gaining of the state of grace an act of perfect contrition will be necessary. If a priest is available, whether he will be able to hear confessions will depend on whether he has faculties in that territory to hear confessions. If he has, then there is no problem. It must be remembered, however, that it cannot be insisted that the parties confess their sins. They may, if they so desire, but at their own peril, try to put themselves into the state of grace by means of an act of perfect contrition. If the priest has no faculties to hear confessions in that territory, faculties will be given him *a iure,* if the parties, one or both, be constituted in danger of death.[31] This faculty is given only for the benefit of the person in danger of death. The law makes no provision for the other party.

The local ordinary should bring this matter of the needed instruction of the people, in order that they must be in the state of grace to receive the sacrament of matrimony, to the attention of his priests. They in turn should then instruct the people when arranging for such a marriage. It will be primarily the duty of the priest who is arranging for the marriage. In the event that no qualified witness is available, the obligation will devolve on the priest who is called to assist at the marriage.

[30] S. C. de Propaganda Fide, instr. (ad Vic. Ap. Sin.), 23 iun. 1830—*Collectanea S. C. de Prop. Fide* (ed. 1907), n. 816; S. C. de Sacramentis, 16 iun. 1922 (ad Ordinarium Brugensem)—apud De Smet, *De Sponsalibus et Matrimonio,* n. 136, footnote page 110; 24 apr. 1935 (ad Episcopum Metensem)—apud *Periodica,* XXVII (1935), 45.

[31] Canons 882; 2252.

After the marriage is contracted, a very serious obligation of properly registering such a marriage remains. The Code states that, whenever a marriage is contracted according to the extraordinary form, the priest, if he assists at such a marriage, or otherwise the witnesses, are held *in solidum* with the contracting parties to see to it that the marriage is registered as soon as possible in the prescribed books.[32] The Holy See has ever been solicitous about this matter. In 1785, in its instruction to the Prefect of the Missions at Curaçao, the Congregation for the Propagation of the Faith advised the priest to tell the parties whom he permitted to contract marriage apart from his presence and solely in the presence of two witnesses that they should return as soon as possible after the celebration of the marriage to tell him of the contracted marriage so that he could make a proper annotation of it.[33] This solicitude is easily understandable because of the danger of subsequent marriages, or also of the danger that the offspring be considered as illegitimate, if the marriage is not properly recorded.

This obligation is indeed a serious one because of the possible consequences just mentioned.[34] The assisting priest will be well aware of this obligation. As for the parties, unless they have been informed of it, it is difficult to see how they will know of it. The priest arranging for this type of marriage will have the obligation of bringing this to their attention. This registration must take place *quam primum,* i.e., as soon as possible. To acquit oneself of this obligation within three or four days will fulfill the law. This obligation may demand immediate fulfillment if the party realizes that otherwise he may forget about it.

With reference to the subject of this obligation, two eventualities may emerge: Either a priest assists at the marriage, or the marriage is contracted in the presence solely of two witnesses. In the first instance, it seems from the wording of the canon that the entire obligation falls on the priest, the parties and witnesses incurring no obligation. Such is the common interpretation of the

[32] Canon 1103, § 3.

[33] *Collectanea S. C. de Prop. Fide* (ed. 1907), n. 571.

[34] Gasparri, n. 1013; Cappello, *De Matrimonio,* n. 720.

canonists.[35] However, there are a few who interpret the canon to mean that the obligation is that of the priest *and* of the contracting parties *in solidum,* i.e., all three are bound until one satisfies the obligation. The parties are always bound, even when a priest was present.[36]

This interpretation is not in strict conformity with the text of the canon.[37] In view of the common interpretation, one must hold that when a priest is present the obligation is solely his, neither the parties nor the witnesses having an obligation in such an eventuality. But if it were clearly evident that the priest will not have the marriage recorded, then there will be an obligation for the parties and witnesses. In the second instance, when marriage is contracted in the presence of two witnesses only, the obligation falls on the witnesses and the parties *in solidum.*

The canon does not specify which pastor is to be notified for the proper registration of the fact that such a marriage had been contracted. It could be the pastor of the place in which the marriage was contracted or it could be the proper pastor of the parties, i.e., the pastor who according to the law had the prior right and duty to assist at the marriage. The commentators are in disagreement. Cappello feels that it should be the pastor of the place.[38] Van der Acker[39] argued that, in view of the purpose of the law which seeks to facilitate proof of the fact that a marriage had been contracted, it should be the proper pastor of the parties. Because of the disagreement among authors, one is free to choose either of the two pastors. In consequence of the fact that the marriage is also to be annotated in the baptismal registers, practically it may make little difference which pastor is chosen.

[35] Gasparri, n. 1013; De Smet, *op. cit.,* n. 701; Cappello, *De Matrimonio,* n. 720; Ubach, *Compendium Theologiae Moralis,* II, n. 860, nota 2.

[36] Wouters, *Theologia Moralis,* II, n. 751; Noldin-Schmitt, *Summa Theologiae Moralis* (3 vols., 26. ed., Vol. III [*De Sacramentis*], Oeniponte/Lipsiae: Rauch, 1940), III, n. 653, 3°. Miceli (*Monitor Ecclesiasticus,* LXXV [1950], 236) holds that the priest, the contracting parties and the witnesses are held *in solidum.*

[37] Payen, II, n. 1921.

[38] *De Matrimonio,* n. 720.

[39] *Apud* Payen, II, n. 1922.

At first glance it may seem that Canon 1103, § 3 also demands that the obliged parties make the fact of the marriage known to the pastor or the pastors of the church or churches in which the contracting parties received baptism. It speaks of taking care that the marriage is recorded in the prescribed books, which besides the matrimonial registers can mean also the baptismal registers containing the record of the parties' baptisms.[40] There are commentators who like Cappello[41] actually place this double obligation on the parties and the witnesses. But there are others, like Vermeersch[42] and Van den Acker,[43] who believed that their obligation was fulfilled when the contracting of the marriage was made known to the pastor either of the place or to the proper pastor of the contracting parties. It then became his obligation to make provision that all proper annotations were made. This he could do by inquiring of the parties about the actual place of their baptism and also about

[40] The instruction of the Sacred Congregation of the Sacraments, dated June 29, 1941, in regard to the canonical investigation that is to be made before parties are admitted to the celebration of marriage (*AAS,* XXXIII [1941], 305-306; translated *apud* Bouscaren. *Digest,* II, 263) wisely counsels ordinaries to see to it that annotations of baptism should be made not only in the baptismal register of the actual place of baptism *(locus baptismi),* if the baptism could not be deferred till the child could be taken to the proper pastor of the parents; but also in the baptismal register of the proper parish of the parents *(locus originis)* at the time of the birth (Canon 778 cum c. 738, § 2). The wisdom of this prescription is plainly evident from the fact that if the priests have observed the law, as they are presumed to have done, there will be two records of the baptism. To safeguard the provision that one's baptismal record furnish indication regarding one's free state in regard to marriage, the notice of the contracted marriage should be sent to both parishes. Since it cannot be assumed that the priest present at the contracting of the marriage knows of the fact that the baptism is registered in two different parishes, the obligation of forwarding a notice of the contracted marriage to the parish of origin seems to rest on the priest of the church where the baptism was actually conferred and where the primary record of baptism is preserved for it is likely that he will first receive the notice of the contracted marriage. Accordingly he should notify the pastor of the other church (parish of origin) where likewise a record of baptism is preserved.

[41] *De Matrimonio,* n. 720.

[42] *De Forma Sponsalium et Matrimonio post Decretum "Ne temere"* (Brugis, 1098), p. 82.

[43] *Apud* Payen, II, n. 1922, nota 4.

the place of their origin at the time of their baptism. This opinion has great intrinsic value. To place this obligation on the parties without ascertaining whether they are able to write or whether they have any knowledge of the further obligation of noting the contracted marriage in the baptismal registers seems contrary to the purpose of the legislator. The proper recording of the marriage will be duly safeguarded if the further obligation is acknowledged to rest with the pastor of the place where the marriage was contracted. Such an obligation could analogically be derived from the wording of paragraph two of the same Canon (1103) where the obligation of recording and notification is placed on the pastor even though the marriage took place in the presence of some other priest. Because of the extrinsic and intrinsic probability of this opinion, the parties and witnesses will be acquitted of this obligation if the contracting of the marriage has been made known either to the pastor of the place in which the marriage had been contracted or to the proper pastor of the parties. Gasparri noted that if such a marriage was contracted in a place where no parish or quasi-parish has as yet been erected, then the notification should be sent to the ordinary of the place.

The items comprised in the obligatory notification are the names of the parties, the date and place of their baptism, the names of their parents, the names and addresses of the witnesses, the date and place of the contracted marriage, annotations to the effect that the marriage was contracted in accordance with the prescripts of Canon 1098 and also to the effect that a dispensation had been granted if such was the case.

It was noted above that in such circumstances even a civil marriage would be valid as long as the parties had intended contracting a valid marriage. The purely civil effects of marriage, such as the right to an inheritance or to a pension would be duly safeguarded. There remains the question whether the parties who contracted a valid marriage in the presence of witnesses alone, without observing the formalities required by the civil law, are obliged to go through a "civil" ceremony in order to secure the civil effects of marriage once there is removed the civil impediment which originally stood in the way of the marriage. The same obligation

would be present even where there was no civil impediment. It has been the constant practice of the Holy See and the teaching of the commentators to acknowledge that a civil marriage can indirectly become obligatory. The Sacred Penitentiary, in an instruction given on January 15, 1866,[44] declared that for various reasons it was opportune and expedient for the spouses who had contracted a valid marriage according to the laws of the Church to go through a civil ceremony demanded by the civil government. This was to be done for the avoidance of difficulties and penalties, for the good of the offspring which would otherwise be considered illegitimate by the civil law, and for the purpose of avoiding the danger of a subsequent marriage. D'Annibale (1815-1892) would not excuse one from a mortal sin if he or she should neglect the solemnities required by the civil law. In such a case the "civil" marriage was fully licit; its omission could lead to a serious danger of harm to the parties and to their offspring.[45] Gasparri was of the same opinion.[46]

It is no wonder that the Congregation of the Sacraments, in its reply to the Ordinary of Bruges on June 16, 1922,[47] insisted that the ordinary take care that the parties oblige themselves to fulfill the civil formalities as soon as this could be done. This insistence was so strong that the Congregation demanded that the promise of later compliance with the civil formalities be committed to writing, and that the document be kept in the episcopal curia. The ordinary or the priest who made the arrangement for the marriage to be contracted according to the extraordinary form was to exact this promise from the parties. True, the reply was only of a particular nature; nevertheless, it showed the mind of the Holy See, and accordingly should be followed in practice.

When a priest is also a civil official for the purpose of witnessing marriages, a "civil" marriage should be taken care of by him, when the parties are free to call for his service. If he is not, then the parties should look to a civil official to fulfill the requirements

[44] *Fontes*, n. 6427; Gasparri, n. 1295.
[45] *Summula Theologiae Moralis*, III, n. 467.
[46] *Loc. cit.*
[47] *Apud* De Smet, *De Sponsalibus et Matrimonio*, n. 136, footnote p. 110.