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## Divorce and Malicious Desertion

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## Divorce and Malicious Desertion.

### II. No Divorce, Except It Be for Fornication.

Fornication constitutes the one and only cause for obtaining a divorce, for severing the marriage bond. However, before the Christian congregation may sanction a suit for divorce on the grounds of fornication, it must be manifest that the person accused has actually committed fornication. The offense must be proved *de facto* and *de iure* to be *πορνεία*. It must be fornication *de iure*. A raped woman has not committed fornication; she has been the victim of a crime perpetrated against her will. Whether rape has occurred before or after betrothal or marriage, it will not afford the husband a cause for divorcing his wife or severing the betrothal. Unless the element of fraud enter, she is under no obligation even to reveal to her husband or betrothed the rape she has suffered before or after the marriage. Circumstances must decide whether it would be more advisable to reveal or conceal it.

Again, the person charged with fornication must be proved to be guilty *de facto*. The congregation must have evidence that he actually committed the sin of which he is accused. The fact of fornication must either be self-evident or self-confessed or proved by at least two witnesses, Matt. 18, 16. If, *e. g.*, a husband has had absolutely no opportunity for sexual intercourse with his wife for two years, and if immediately after the expiration of these two years his wife give birth to a child, it would be self-evident that she had committed adultery. The absence of her husband being established, it would not be necessary to furnish witnesses of the actual fornication. The confession of a woman that she has committed fornication will according to Matt. 12, 37; Luke 19, 22, establish her guilt before man, unless it can be proved that she lied. Yet her unsupported confession naming a man as the partner of her guilt will not establish the guilt of this man nor warrant the congregation to proceed against him as an adulterer nor permit his wife to divorce him, unless he himself pleads guilty to the charge. Wherever the guilt is neither self-evident nor self-confessed, the charge must be established by two witnesses, or the congregation dare not institute disciplinary proceedings against the party accused. We readily see that it may be very difficult to furnish or obtain proof in a case of alleged fornication; in many cases it may be impossible to substantiate the charge. In these cases the innocent party who suspects or knows of the guilt of the other spouse must commit the matter to the judgment of God; for no person has the right to raise a public charge, even though he has witnessed the act, unless he can procure at least one more witness. And the pastor must guard against harboring any suspicions against any person charged with fornication unless the proof has been fur-

nished. Else he would sin against the word of the Lord that none of us shall imagine evil in our heart against our neighbor, Zech. 8, 17. By no means should he permit himself to voice these suspicions, for that would be slandering and might involve him in a suit for malicious slander before the church or the civil courts. Even if he has been the witness of the act or the confession, but can prove neither the one nor the other, he has no right to raise the charge of fornication publicly; for that would be a manifest transgression of the rule laid down by Christ Matt. 18, 16, and again might easily involve him in serious consequences.

Olshausen feels that this commandment cannot possibly be carried out in the Church, and hence the Church of the New Testament, while endeavoring to educate its members to the high ideal pointed out by Christ, yet because of the hardness of the heart of many church-members would have to permit divorce on other grounds besides the one here specified. Olshausen, of course, had the State Church in mind when he wrote these words. In the Church of Christ the Word and will of Christ decide. Hard-hearted people do not belong to the Church, but must be excommunicated. If any congregation permits one of its members because of the hardness of his heart to divorce his spouse for any other reason than fornication, it commits a double sin. It fails to excommunicate a manifestly impenitent sinner, and it permits a divorce which Christ has clearly forbidden. "Whosoever divorces his wife, except it be for fornication, commits *adultery*." The State will divorce for other reasons, as we have seen, and other states may recognize this divorce and hold such a person blameless, yet before God he is an adulterer. And since the Church knows of no other norm than the Word of God, it will plead with every member contemplating a divorce for any other cause to desist from his course, and if he persists in it, the congregation will discipline and eventually excommunicate him. Before recognizing him again as a brother, it will insist that he return to his former wife wherever that is possible, even if it may mean the dissolution of a second marriage into which he has entered. This second marriage was not a marriage before God, but from its very beginning it was adultery, and adultery in its every act and manifestation.

Fornication, if established *de facto* and *de iure*, is, according to the words of the Savior, the one and only cause for obtaining a divorce, for severing what God has joined together. The innocent party applying for a divorce does not transgress the rule laid down by the Lord Matt. 19, 6. In this case it is not man severing what God has joined together, but the Lord Himself, having granted the permission, actually sanctions the severing of the bond if the innocent party makes use of the permission granted. We must bear in mind that the marriage bond is not severed by the act of fornication. It is not true

that this sin, abominable as it is, is "in its very nature the rupture of marriage," as the *Expositor's Bible* asserts in its remarks on Matt. 19, 9, or as Olshausen puts it: "Fornication is not a cause, a motive, for divorce, it is the actual separation itself, the annulment of the *σάραξ μία*. As every *πορνεία* is forbidden already from the legal viewpoint by the Decalog, so naturally every marriage is actually annulled in which a *πορνεία* occurs." (Olshausen on Matt. 19, 9.) This view, wide-spread as it may be, is utterly false. The essence of marriage is not carnal intercourse, the becoming one flesh. That is one of the purposes of marriage, which consists in mutual consent to be husband and wife. Fornication is the grossest possible and most detestable violation of marital faithfulness, yet it does not necessarily rupture the bond of wedlock. "They twain" are still married, still husband and wife. If adultery could actually annul marriage, then a marriage continued after a case of adultery would no longer be a marriage, but adultery, since the two parties uniting would no longer be husband and wife.

Christ, however, does not *command* that the innocent sever the marital relation with the adulterer. He simply states that every divorce except for fornication is adultery. Hence a divorce because of this sin is not adultery. Christ therefore merely grants permission for divorce. While it is the duty of the wronged spouse to forgive the offense committed, there is, according to Christ's clear words, no obligation to continue the marital relation; for Christ distinctly gives to the innocent party the privilege of severing the marriage bond. Quite a different question is whether one will or should always avail himself of his right. The principle laid down by Paul in another matter applies here also: "All things are lawful unto me, but all things are not expedient," 1 Cor. 6, 12. The innocent party may waive his rights and continue the marriage which was not severed by the adultery of the other spouse. Before advising in these cases, the pastor should carefully weigh all circumstances, the family conditions, the nature of the offense, the character and temperament of both spouses, etc. If the innocent party is inclined to waive his right, he should, as a rule, be encouraged to do so. If, however, he voices strong objections, he should not be unduly urged, lest more harm than good be done by the advice of the pastor.

A. L. Graebner very correctly observes in the *Theological Quarterly*, IV, pp. 473 f.: "It is not the guilty party who obtains this right, and if the innocent party is willing to condone the offense and continue the state, the guilty party is morally bound to accept such condonation and continuation. The offer of the offended party to condone and to remain the espoused of the offender is not a new offer of marriage. If it were, the other party must be free to accept or reject such offer. What accrues to the innocent party, and to that party only, is the right of *ἀπολύειν*, of severing the bond of marriage,

of rescinding the state by putting an end to that whereby the state was established and sustained, the marriage consent. To use or to waive the exercise of this right rests with the party to whom the right itself has been granted by the Lawgiver. In the decision whether the state should continue, the guilty party is entirely at the mercy of the innocent party until the decision has been rendered, and this decision is final. If the injured party decide to condone and uphold the existing relation, both parties are and remain bound as they were before the offense. If the innocent party decide not to condone, but to rescind and thus to terminate the existing relation, both parties are free as they were before the relation was entered into and established. This final decision must be the free act of the party entitled to this remedy, and condonation brought about by duress or fraud is not condonation and leaves the case open for final decision. Of course, the innocent party cannot condone, or refuse to condone, before having obtained knowledge of the offense, and the burden of proof, when the charge is denied, rests with the offended party." Neither does the fact that A. has condoned one case of fornication while being ignorant of other cases committed either before or after the case condoned prohibit him from obtaining a divorce if these cases become known to him later and can be proved by him.

Self-evidently the convicted adulterer must be subjected to discipline, unless he is repentant and willing to ask the forgiveness of the wronged spouse and make public amends if, and to the extent that, the offense is publicly known.

TH. LAETSCH.

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## Dispositionen über die altkirchliche Epistelreihe.

### Neujahr.

Gal. 3, 23—29.

Heute wünschen wir einander ein fröhliches und gesegnetes neues Jahr. Werden diese Segenswünsche in Erfüllung gehen?

Wie können wir dieses neue Jahr zu einem fröhlichen und gesegneten machen?

1. Dadurch, daß wir uns täglich durch das Gesetz zu Christo führen lassen;
2. dadurch, daß wir als Gottes Kinder wandeln;
3. dadurch, daß wir das verheißene ewige Erbe stets im Auge behalten.

#### 1.

A. Nicht als solche, die unter dem Gesetz verwahrt und verschlossen sind, wie das Volk Gottes im Alten Bunde, B. 23—25. Wir sind nicht mehr im Kerker, nicht mehr unter dem Zuchtmeister, sondern frei, und