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FONTES

CURA
EM̄I PETRI CARD. GASPARRI
EDITI

VOLUMEN V
CURIA ROMANA

S. C. CONSIST. - S. C. DE SACRAMENTIS
S. C. C. - A. 1573-1760

N. 2056-3704



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S.S.C. Levellana, 6 July
Fontes Vol. I
p. 763

Sacerdos N. N. De nefando scelere accusatus, fuit a Curia Eminentissimi Urbis Vicarii die 31 augusti 1718 damnatus ad triremes per septennium. Et licet fuerit transmissus, nunquam tamen remigavit, cum toto tempore dictae condemnationis fuerit addictus servitio Hospitalis S. Barbarae, uti habetur ex attestatione Priors dicti Hospitalis. Expleto tempore poenae, et praestito laudabili servitio memorato Hospitali, Sacerdos habuit recursum ad Santissimum D. Nostrum pro facultate Missam celebrandi, et a Sanctitate Sua preces fuerunt remissae ad hanc Sac. Congregationem.

Sanctae MEM. Urbanus VIII die 4 ianuarii 1635 sequenes edidit decretum: *ut inposterum tam presbyteri saeculares, quam cuiuscumque Ordinis Regulares damnati ad triremes perpetuo vel ad tempus, et qui cum effectu fuerint in eisdem triremibus remiges, finito tempore dictae poenae, nunquam habilitentur ad exercitium suorum Ordinum.* De hoc decreto nonnulli dicunt, illud non esse declarativum iuris communis, nec esse eidem conforme, et locum sibi non vindicare extra Tribunal Sancti Officii, cum a Summo Pontifice fuerit editum in Congregatione Sanctissimae Inquisitionis. Aliqui censent, damnatum ad triremes effici infamem infamia iuris ex genere poenae et per consequentiam irregularem. At opinio hodie recepta est, quod ex simplici damnatione aut transmissione ad triremes quis non efficitur infamis, nec irregularis, nisi vel actu remigaverit, vel fuerit transmissus, propter delictum, quod de iure habeat annexam infamiam; et concordat resolution huius Sac. Congregationis in *Comen. Dispensationis* pro Presbitero Iosepho Cataneo, qui ad triremes damnatus et transmissus ob armorum

delationem, absque eo quod remigaverit, supplicavit pro rehabilitatione ad Ordines, et S. Congregatio, si Sanctitati Suae placuissent, censuit, ut constito quod non remigasset, esse eum per litteras apostolicas ad exercitium suorum Ordinum rehabilitandum et restituendum, uti resolutum fuit die 14 martii 1671, et habetur Libro 27 Decretorum pag. 54.

His positis, nonnulla sunt, quae faciunt contra petitionem Oratoris, et signater, quod sodomiae crimen annexam habet infamiam, tam de iure civili, quam de iure canonico, dummodo sit notorium notorietate iuris vel facti, uti plene habetur apud Thesaurum, *De poenis ecclesiasticis*, par. 2, cap. I, in verbo *sodomiae*.

E contra pro Oratore faciunt nonnullae facti circumstantiae latius expressae in informatione. Eminentissimi Urbis Vicarii, in qua post admissam limitationem supradictam, quod transmissus ad trireemes licet non remigaerit, efficiatur infamis et irregularis, si crimen, propter quod condemnatus habebat de iure annexam infamiam, haec habentur; *talis tamen limitation applicabilis non videtur in casu praesenti, ubi crimen, pro quo Orator fuit damnatus, non aliunde probatum remansit, quam ex dicto eorum, quo socio eiusdem criminis se fecerunt et quidem non coacte, se ultronee, et qui ultra hanc nobilem exceptionem, ob quam eorum dictum, nullis praesertim concurrentibus adminiculis, nullam prorsus fidem facit, alios insuper patiebantur defectus: nedum enim erant vilis conditionis, sed etiam plura depposuerunt inverosimilia, in aliquibus contarri inter se deteguntur. Addito etiam quod in processu nec praesumptiones, neque coniecturae ullae relevantes afferri potuerunt adversus inquisitum, immo eius favore militabat qualitas sacerdotalis cum quotidiana celebratione Missae, gravis sexaginta et ultra annorum aetas ac solitum retinendi iugiter apertam ianuam eius cubiculi, etiam de tempore, quo ibi visi fuerant pueri, quemadmodum concorditer deposuerunt tres tests repetiti ad instantiam fisci.*

His stantibus dignabuntur EE. VV. Decernere:

An petitis sit annuendum, nec ne?

Die 8 iunii 1726: Non proposita.

Die 6 iulii 1726 Sacra, etc. respondit: Negative

[Thesaurus Resolutionum, tom. 3, p. 334, 341].

A priest *N.N.* accused of a nefarious crime was condemned by the Curia of the Most Eminent Vicar of the City on 31 August, 1718, to the galleys for seven years, and although he was transferred, he never rowed, since the whole time of the sentence he was attached to the service of the Hospital of Santa Barbara, as it is understood through the testimony of the Prior of said Hospital. When the time of punishment was completed, and since his service to the Hospital had been noted as exemplary, the priest had recourse toward our Holiest D. [God?] regarding the ability to celebrate Mass, and his entreaties have been sent by His Holiness to this Sacred Congregation.

Urban VIII of holy memory issued the following decree on 4 January, 1635: *Henceforth both Presbyteri saeculares and Regulares of any Order who have been condemned to the galleys for life or to serve time, and who have in fact rowed in said galleys, must not, at the end of the sentenced time, be vested in the exercise of their Orders.* Some say of this decree that it is not declarative of communal law and does not conform to it, and that it is not valid outside the Tribunal of the Holy Office, since it was issued by the High Pontifex before the Congregation of the Most Holy Inquisition. Some believe that a man condemned to the galleys has been made "infamous" by the infamy of the ruling through this form of punishment and as a consequence is "irregular." But the opinion has been received today that a man is not "infamous" by a simple condemnation or transference to the galleys, nor is he "irregular," unless he has actually rowed, or was transferred there on account of a crime which had "infamy" connected to it by law; and the resolution of this Sacred Congregation finds agreement in the *Comen. dispensationis* in favor of Presbyter Josephus Cataneus, condemned to the galleys and transferred to them on account of a denunciation of arms, but who, since he did not row, appealed for rehabilitation to the Orders, and the Sacred Congregation judged that, if it pleased His Holiness, when it had been established that he had not rowed, he be rehabilitated and restored by apostolic letter to the exercise of his Orders. This was resolved on 14 March, 1671, and is in the 27th Book of Decrees, p. 54.

That aside, there are some things which side against the plea of the petitioner, and particularly the fact that the act of sodomy has "infamy" attached, both in civil and canonical law, as long as the act is known publicly by means of the ruling or the action itself. This is fully described in the Compendium, *De poenis ecclesiasticis*, par. 2, heading 1, under the word, "sodomy."

On the other side, some circumstances of fact expressed in the summation of the Most Eminent Vicar of the City act for the petitioner. The Vicar's summation admits the stipulation that if he had been transferred to the galleys – even if he did not row – he must be made "irregular" and "infamous" if the crime for which he was condemned had "infamy" attached by law; these are the Vicar's thoughts in his summation: *such stipulation nevertheless does not seem applicable in the present case, in which the crime for which the petitioner was condemned has not remained otherwise proved, except by the word of those who made themselves partners of his crime and indeed not through compulsion, but willingly, and who, beyond this notable exception (on account of which their word, especially when there is no corroborating evidence, creates absolutely no confidence) suffer other defects besides; not to mention the fact that they were of lowly state, and gave much testimony which was difficult to believe, in some of which they directly contradicted one another. And in addition, because in the legal process neither suspicions nor relevant conjectures will be able to be brought against the man inquired of, his priestly behavior in the celebration of Mass has militated strongly in his favor, and the fact that*