

### E. LISBON. MATRIMONY. MONDAY (15 MARCH, 1574)

in Caesare de Grassis, *Decisiones Sacrae Rotae* (Rome 1590) 79–80 [CD trans. Citations mostly omitted.]

The lords [of the Rota] said that diminished faith, at the discretion [*arbitrio*] of the lords, was to be given to Helena de Conto and Catharina Gundisalvi, witnesses examined for donna Maria. And some of the lords thought that absolutely no faith was to be given to the aforesaid Helena, because she is a slave [*serva*], as all the witnesses both of don Pedro and of donna Maria seemed to confess in deposing that she is the daughter of Maria Roderici, an engendered slave [*seminigtae servae*], and the rule is undoubted that the offspring follows the womb. ...

Nor was it pleasing, what was urged on the other side, that servitude is not one of those things that are perceived by the senses, for the witnesses further deposed that she was treated like a slave and was taken for one at home and outside, that she served and that in effect she was called a slave. From which things it is clearly to be inferred that she is in the status of servitude. That seems to suffice that she not be admitted as a witness. ...

Nor do the witnesses of donna Maria stand in the way when they say that the aforesaid Helena was very well treated in that house, and that it was said by many that she was the sister of the same Maria. For it is said, and the witnesses confirm it, that she is a slave, insofar as it is said that her father left her liberty, her father still being alive. Whence she cannot be free by this, because a testament is confirmed by death, as is generally held.

Nor does it stand in the way that she is the slave or freedwoman of the father and not of Maria, for as soon as she is the slave or freedwoman of the father, she is also the slave or freedwoman of the daughter, and thus also of Maria. [D.50.16.58.1].

Further it is said that she is an *aya* or a *cuitos*.<sup>1</sup> Whence it seems to be in her great interest to act so as not to be said to be engaged in bawdry, in which case a witness is repelled. ... And let her not only try to exonerate herself but also her mother ... . Since all these things came together, it seemed to some of the lords that she ought be entirely repelled... . Which proceeds even where the truth cannot otherwise be had. ... On the part of some, as I have said, it seemed that she ought to be repelled entirely.

Some said that she ought not be entirely repelled, since some of the witnesses seemed to depose of her reputation and of a certain sort of treatment as a freedwoman, and since the matter is favorable. When there is a case about proof of marriage, in the proof of it witnesses not greater than any exception seem to be admitted, as is handed down to us in [X 4.18.3; Panormitanus *ad* X 2.20.22] in 3 not., more clearly in [Philippus Decius, *Consilium*] 163. col. 4. sub. numer. 7. vers. *octavo oppono.*, after [Alexander Tartagnus, *Consilium*] 146. col. 6. vers. *nec obstat si aliquis*, vol. 5.

Even those who felt this way agreed that her faith should be reserved for discretion, with not a little diminution.

As to the second witness, Catherina Gundisalvi, since she is [Maria's] nurse and her familiarity remains and consequently she still is a domestic, both of which things normally repel a nurse (. . .) and because she desires that the marriage be effectuated, which desire similarly in marriage cases totally rejects a witness (. . .), on this account the lords wanted equally to reserve her faith also for discretion with considerable diminution. So much the more so because between the first and second examination there are certain variations, which although it seemed possible that it [the testimony] could be saved on account of the lapse of time that intervened between the first and second examinations, nonetheless they displeased the lords.

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<sup>1</sup> Both words apparently mean “nanny.” “Aya” is today a Spanish word and “cuitos” Portugese, but in this period the distinction between the two languages was not that great.