

SUPPLEMENT TO THE THIRD PART, QUESTION 46

Of the Consent to Which an Oath or Carnal Intercourse Is Appended (In Two Articles)

We must now consider the consent to which an oath or carnal intercourse is appended. Under this head there are two points of inquiry:

- (1) Whether an oath added to the consent that is expressed in words of the future tense makes a marriage?
- (2) Whether carnal intercourse supervening to such a consent makes a marriage?

Whether an oath added to the consent that is expressed in words of the future tense makes a marriage?

Suppl. q. 46 a. 1

Objection 1. It would seem that if an oath be added to a consent that is expressed in words of the future tense it makes a marriage. For no one can bind himself to act against the Divine Law. But the fulfilling of an oath is of Divine law according to Mat. 5:33, "Thou shalt perform thy oaths to the Lord." Consequently no subsequent obligation can relieve a man of the obligation to keep an oath previously taken. If, therefore, after consenting to marry a woman by words expressive of the future and confirming that consent with an oath, a man binds himself to another woman by words expressive of the present, it would seem that none the less he is bound to keep his former oath. But this would not be the case unless that oath made the marriage complete. Therefore an oath affixed to a consent expressed in words of the future tense makes a marriage.

Objection 2. Further, Divine truth is stronger than human truth. Now an oath confirms a thing with the Divine truth. Since then words expressive of consent in the present in which there is mere human truth complete a marriage, it would seem that much more is this the case with words of the future confirmed by an oath.

Objection 3. Further, according to the Apostle (Heb. 6:16), "An oath for confirmation is the end of all...controversy"; wherefore in a court of justice at any rate one must stand by an oath rather than by a mere affirmation. Therefore if a man consent to marry a woman by a simple affirmation expressed in words of the present, after having consented to marry another in words of the future confirmed by oath, it would seem that in the judgment of the Church he should be compelled to take the first and not the second as his wife.

Objection 4. Further, the simple uttering of words relating to the future makes a betrothal. But the addition of an oath must have some effect. Therefore it makes something more than a betrothal. Now beyond a betrothal there is nothing but marriage. Therefore it makes a marriage.

On the contrary, What is future is not yet. Now the addition of an oath does not make words of the future tense signify anything else than consent to something future. Therefore it is not a marriage yet.

Further, after a marriage is complete, no further consent is required for the marriage. But after the oath there is yet another consent which makes the marriage, else it would be useless to swear to a future marriage. Therefore it does not make a marriage.

I answer that, An oath is employed in confirmation of one's words; wherefore it confirms that only which is signified by the words, nor does it change their signification. Consequently, since it belongs to words of the future tense, by their very signification, not to make a marriage, since what is promised in the future is not done yet, even though an oath be added to the promise, the marriage is not made yet, as the Master says in the text (Sent. iv, D, 28).

Reply to Objection 1. The fulfilling of a lawful oath is of Divine law, but not the fulfilling of an unlawful oath. Wherefore if a subsequent obligation makes that oath unlawful, whereas it was lawful before, he who does not keep the oath he took previously does not disobey the Divine law. And so it is in the case in point; since he swears unlawfully who promises unlawfully; and a promise about another's property is unlawful. Consequently the subsequent consent by words of the present, whereby a man transfers the power over his body to another woman, makes the previous oath unlawful which was lawful before.

Reply to Objection 2. The Divine truth is most efficacious in confirming that to which it is applied. Hence the Reply to the Third Objection is clear.

Reply to Objection 4. The oath has some effect, not by causing a new obligation, but confirming that which is already made, and thus he who violates it sins more grievously.

Objection 1. It would seem that carnal intercourse after consent expressed in words of the future makes a marriage. For consent by deed is greater than consent by word. But he who has carnal intercourse consents by deed to the promise he has previously made. Therefore it would seem that much more does this make a marriage than if he were to consent to mere words referring to the present.

Objection 2. Further, not only explicit but also interpretive consent makes a marriage. Now there can be no better interpretation of consent than carnal intercourse. Therefore marriage is completed thereby.

Objection 3. Further, all carnal union outside marriage is a sin. But the woman, seemingly, does not sin by admitting her betrothed to carnal intercourse. Therefore it makes a marriage.

Objection 4. Further, "Sin is not forgiven unless restitution be made," as Augustine says (Ep. cliii ad Macedon.). Now a man cannot reinstate a woman whom he has violated under the pretense of marriage unless he marry her. Therefore it would seem that even if, after his carnal intercourse, he happen to contract with another by words of the present tense, he is bound to return to the first; and this would not be the case unless he were married to her. Therefore carnal intercourse after consent referring to the future makes a marriage.

On the contrary, Pope Nicholas I says (Resp. ad Consult. Bulg. iii; Cap. Tuas dudum, De clandest. despons.), "Without the consent to marriage, other things, including coition, are of no effect."

Further, that which follows a thing does not make it. But carnal intercourse follows the actual marriage, as effect follows cause. Therefore it cannot make a marriage.

I answer that, We may speak of marriage in two ways. First, in reference to the tribunal of conscience, and thus in very truth carnal intercourse cannot complete a marriage the promise of which has previously

been made in words expressive of the future, if inward consent is lacking, since words, even though expressive of the present, would not make a marriage in the absence of mental consent, as stated above (q. 45, a. 4). Secondly, in reference to the judgment of the Church; and since in the external tribunal judgment is given in accordance with external evidence, and since nothing is more expressly significant of consent than carnal intercourse, it follows that in the judgment of the Church carnal intercourse following on betrothal is declared to make a marriage, unless there appear clear signs of deceit or fraud* (De sponsal. et matrim., cap. Is qui fidem).

Reply to Objection 1. In reality he who has carnal intercourse consents by deed to the act of sexual union, and does not merely for this reason consent to marriage except according to the interpretation of the law.

Reply to Objection 2. This interpretation does not alter the truth of the matter, but changes the judgment which is about external things.

Reply to Objection 3. If the woman admit her betrothed, thinking that he wishes to consummate the marriage, she is excused from the sin, unless there be clear signs of fraud; for instance if they differ considerably in birth or fortune, or some other evident sign appear. Nevertheless the affianced husband is guilty of fornication, and should be punished for this fraud he has committed.

Reply to Objection 4. In a case of this kind the affianced husband, before his marriage with the other woman, is bound to marry the one to whom he was betrothed, if she be his equal or superior in rank. But if he has married another woman, he is no longer able to fulfill his obligation, wherefore it suffices if he provide for her marriage. Nor is he bound even to do this, according to some, if her affianced husband is of much higher rank than she, or if there be some evident sign of fraud, because it may be presumed that in all probability she was not deceived but pretended to be.

* According to the pre-Tridentine legislation