

Objection 1. It would seem that even in the absence of inward consent a marriage is made by consent expressed in words of the present. For “fraud and deceit should benefit no man,” according to the law (cap. Ex Tenore, De Rescrip., cap. Si Vir, De cognat. spir.). Now he who gives consent in words without consenting in heart commits a fraud. Therefore he should not benefit by it, through being released of the bond of marriage.

Objection 2. Further, the mental consent of one person cannot be known to another, except in so far as it is expressed in words. If then the expression of the words is not enough, and inward consent is required in both parties, neither of them will be able to know that he is truly married to the other; and consequently whenever he uses marriage he will commit fornication.

Objection 3. Further, if a man is proved to have consented to take a certain woman to wife in words of the present tense, he is compelled under pain of excommunication to take her as his wife, even though he should say that he was wanting in mental consent, notwithstanding that afterwards he may have contracted marriage with another woman by words expressive of consent in the present. But this would not be the case if mental consent were requisite for marriage. Therefore it is not required.

On the contrary, Innocent III says in a Decretal (cap. Tua Nos, De Spons. et matr.) in reference to this case: “Other things cannot complete the marriage bond in the absence of consent.”

Further, intention is necessary in all the sacraments. Now he who consents not in his heart has no intention of contracting marriage; and therefore he does not contract a marriage.

I answer that, The outward cleansing stands in the same relation to baptism as the expression of words to this sacrament, as stated above (a. 2). Wherefore just as were a person to receive the outward cleansing, with the intention, not of receiving the sacrament, but of acting in jest or deceit, he would not be baptized; so, too, expression of words without inward consent makes no marriage.

Reply to Objection 1. There are two things here, namely the lack of consent—which benefits him in the tribunal of his conscience so that he is not bound by the marriage tie, albeit not in the tribunal of the Church where judgment is pronounced according to the evidence—and the deceit in the words, which does not benefit him, neither in the tribunal of his conscience nor in the tribunal of the Church, since in both he is punished for this.

Reply to Objection 2. If mental consent is lacking in one of the parties, on neither side is there marriage, since marriage consists in a mutual joining together, as stated above (q. 44, a. 1). However one may believe that in all probability there is no fraud unless there be evident signs thereof; because we must presume good of everyone, unless there be proof of the contrary. Consequently the party in whom there is no fraud is excused from sin on account of ignorance.

Reply to Objection 3. In such a case the Church compels him to hold to his first wife, because the Church judges according to outward appearances; nor is she deceived in justice or right, although she is deceived in the facts of the case. Yet such a man ought to bear the excommunication rather than return to his first wife; or else he should go far away into another country.