

SUPPLEMENT TO THE THIRD PART, QUESTION 55

Of the Impediment of Affinity (In Eleven Articles)

We must consider next the impediment of affinity. Under this head there are eleven points of inquiry:

- (1) Whether affinity results from matrimony?
- (2) Whether it remains after the death of husband or wife?
- (3) Whether it is caused through unlawful intercourse?
- (4) Whether it arises from a betrothal?
- (5) Whether affinity is caused through affinity?
- (6) Whether affinity is an impediment to marriage?
- (7) Whether affinity in itself admits of degrees?
- (8) Whether its degrees extend as far as the degrees of consanguinity?
- (9) Whether marriages of persons related to one another by consanguinity or affinity should always be dissolved by divorce?
- (10) Whether the process for the dissolution of like marriages should always be by way of accusation?
- (11) Whether witnesses should be called in such a case?

Whether a person contracts affinity through the marriage of a blood-relation?

Suppl. q. 55 a. 1

Objection 1. It would seem that a person does not contract affinity through the marriage of a blood-relation. For “the cause of a thing being so is yet more so.” Now the wife is not connected with her husband’s kindred except by reason of the husband. Since then she does not contract affinity with her husband, neither does she contract it with her husband’s kindred.

Objection 2. Further, if certain things be separate from one another and something be connected with one of them, it does not follow that it is connected with the other. Now a person’s blood relations are separate from one another. Therefore it does not follow, if a certain woman be married to a certain man, that she is therefore connected with all his kindred.

Objection 3. Further, relations result from certain things being united together. Now the kindred of the husband do not become united together by the fact of his taking a wife. Therefore they do not acquire any relationship of affinity.

On the contrary, Husband and wife are made one flesh. Therefore if the husband is related in the flesh to all his kindred, for the same reason his wife will be related to them all.

Further, this is proved by the authorities quoted in the text (Sent. iv, D, 41).

I answer that, A certain natural friendship is founded on natural fellowship. Now natural fellowship, according to the Philosopher (Ethic. viii, 12), arises in two ways; first, from carnal procreation; secondly, from connection with orderly carnal procreation, wherefore he says (Ethic. viii, 12) that the friendship of a husband towards his wife is natural. Consequently even as a person through being

connected with another by carnal procreation is bound to him by a tie of natural friendship, so does one person become connected with another through carnal intercourse. But there is a difference in this, that one who is connected with another through carnal procreation, as a son with his father, shares in the same common stock and blood, so that a son is connected with his father’s kindred by the same kind of tie as the father was, the tie, namely of consanguinity, albeit in a different degree on account of his being more distant from the stock: whereas one who is connected with another through carnal intercourse does not share in the same stock, but is as it were an extraneous addition thereto: whence arises another kind of tie known by the name of “affinity.” This is expressed in the verse:

Marriage makes a new kind of connection,
While birth makes a new degree,

because, to wit, the person begotten is in the same kind of relationship, but in a different degree, whereas through carnal intercourse he enters into a new kind of relationship.

Reply to Objection 1. Although a cause is more potent than its effect, it does not always follow that the same name is applicable to the cause as to the effect, because sometimes that which is in the effect, is found in the cause not in the same but in a higher way; wherefore it is not applicable to both cause and effect under the same name or under the same aspect, as is the case with all equivocal effective causes. Thus, then, the union of husband and wife is stronger than the union of the wife with her husband’s kindred, and yet it ought not to be named affinity, but matrimony which is a kind of unity; even as a man is identical with himself, but not with his kinsman.

Reply to Objection 2. Blood-relations are in a way separate, and in a way connected: and it happens in respect of their connection that a person who is connected with one of them is in some way connected with all of them. But on account of their separation and distance from one another it happens that a person who is connected with one of them in one way is connected with another in another way, either as to the kind of connection or as to the degree.

Reply to Objection 3. Further, a relation results sometimes from a movement in each extreme, for instance fatherhood and sonship, and a relation of this kind is really in both extremes. Sometimes it results from the movement of one only, and this happens in two ways. In one way when a relation results from the movement of one extreme without any movement previous or concomitant of the other extreme; as in the Creator and the creature, the sensible and the sense, knowledge and the knowable object: and then the relation is in one extreme really and

in the other logically only. In another way when the relation results from the movement of one extreme without any concomitant movement, but not without a previous movement of the other; thus there results equality between two men by the increase of one, without the other either increasing or decreasing then, although previously he reached his actual quantity by some movement or change, so that this relation is founded really in both extremes. It is the same with consanguinity and affinity, because the relation of brotherhood which results in a grown child on the birth of a boy, is caused without any movement of the former's at the time, but by virtue of that previous movement of his wherein he was begotten; wherefore at the time it happens that there results in him the aforesaid relation through the movement of another. Likewise because this man descends through his own birth from the same stock as the husband, there results in him affinity with the latter's wife, without any new change in him.

Whether affinity remains after the death of husband or wife?

Suppl. q. 55 a. 2

Objection 1. It would seem that affinity does not remain after the death of husband or wife, between the blood-relations of husband and wife or "vice versa." Because if the cause cease the effect ceases. Now the cause of affinity was the marriage, which ceases after the husband's death, since then "the woman . . . is loosed from the law of the husband" (Rom. 7:2). Therefore the aforesaid affinity ceases also.

Objection 2. Further, consanguinity is the cause of affinity. Now the consanguinity of the husband with his blood-relations ceases at his death. Therefore, the wife's affinity with them ceases also.

On the contrary, Affinity is caused by consanguinity. Now consanguinity binds persons together for all time as long as they live. Therefore affinity does so also: and consequently affinity (between two persons) is not dissolved through the dissolution of the marriage by the death of a third person.

I answer that, A relation ceases in two ways: in one way through the corruption of its subject, in another way by the removal of its cause; thus likeness ceases when one of the like subjects dies, or when the quality that caused the likeness is removed. Now there are certain relations which have for their cause an action, or a passion or movement (Metaph. v, 20): and some of these are caused by movement, through something being moved actually; such is the relation between mover and moved: some

of them are caused through something being adapted to movement, for instance the relations between the motive power and the movable, or between master and servant; and some of them result from something, having been moved previously, such as the relation between father and son, for the relation between them is caused not by (the con) being begotten now, but by his having been begotten. Now aptitude for movement and for being moved is transitory; whereas the fact of having been moved is everlasting, since what has been never ceases having been. Consequently fatherhood and sonship are never dissolved through the removal of the cause, but only through the corruption of the subject, that is of one of the subjects. The same applies to affinity, for this is caused by certain persons having been joined together not by their being actually joined. Wherefore it is not done away, as long as the persons between whom affinity has been contracted survive, although the person die through whom it was contracted.

Reply to Objection 1. The marriage tie causes affinity not only by reason of actual union, but also by reason of the union having been effected in the past.

Reply to Objection 2. Consanguinity is not the chief cause of affinity, but union with a blood-relation, not only because that union is now, but because it has been. Hence the argument does not prove.

Objection 1. It would seem that unlawful intercourse does not cause affinity. For affinity is an honorable thing. Now honorable things do not result from that which is dishonorable. Therefore affinity cannot be caused by a dishonorable intercourse.

Objection 2. Further, where there is consanguinity there cannot be affinity; since affinity is a relationship between persons that results from carnal intercourse and is altogether void of blood-relationship. Now if unlawful intercourse were a cause of affinity, it would sometimes happen that a man would contract affinity with his blood-relations and with himself: for instance when a man is guilty of incest with a blood-relation. Therefore affinity is not caused by unlawful intercourse.

Objection 3. Further, unlawful intercourse is according to nature or against nature. Now affinity is not caused by unnatural unlawful intercourse as decided by law (can. Extraordinaria, xxxv, qu. 2,3). Therefore it is not caused only by unlawful intercourse according to nature.

On the contrary, He who is joined to a harlot is made one body (1 Cor. 6:16). Now this is the reason why marriage caused affinity. Therefore unlawful intercourse does so for the same reason.

Further, carnal intercourse is the cause of affinity, as shown by the definition of affinity, which definition is as follows: Affinity is the relationship of persons which results from carnal intercourse and is altogether void of blood-relationship. But there is carnal copulation even in unlawful intercourse. Therefore unlawful intercourse causes affinity.

I answer that, According to the Philosopher (Ethic. viii, 12) the union of husband and wife is said to be natural chiefly on account of the procreation of offspring, and

secondly on account of the community of works: the former of which belongs to marriage by reason of carnal copulation, and the latter, in so far as marriage is a partnership directed to a common life. Now the former is to be found in every carnal union where there is a mingling of seeds, since such a union may be productive of offspring, but the latter may be wanting. Consequently since marriage caused affinity, in so far as it was a carnal mingling, it follows that also an unlawful intercourse causes affinity in so far as it has something of natural copulation.

Reply to Objection 1. In an unlawful intercourse there is something natural which is common to fornication and marriage, and in this respect it causes affinity. There is also something which is inordinate whereby it differs from marriage, and in this respect it does not cause affinity. Hence affinity remains honorable, although its cause is in a way dishonorable.

Reply to Objection 2. There is no reason why diverse relations should not be in the same subject by reason of different things. Consequently there can be affinity and consanguinity between two persons, not only on account of unlawful but also on account of lawful intercourse: for instance if a blood-relation of mine on my father's side marries a blood-relation of mine on my mother's side. Hence in the above definition the words "which is altogether void of blood-relationship" apply to affinity as such. Nor does it follow that a man by having intercourse with his blood-relation contracts affinity with himself, since affinity, like consanguinity, requires diversity of subjects, as likeness does.

Reply to Objection 3. In unnatural copulation there is no mingling of seeds that makes generation possible: wherefore a like intercourse does not cause affinity.

Objection 1. It would seem that affinity cannot be caused by betrothal. For affinity is a lasting tie: whereas a betrothal is sometimes broken off. Therefore it cannot cause affinity.

Objection 2. Further if the hymen be penetrated without the deed being consummated, affinity is not contracted. Yet this is much more akin to carnal intercourse than a betrothal. Therefore betrothal does not cause affinity.

Objection 3. Further, betrothal is nothing but a promise of future marriage. Now sometimes there is a promise of future marriage without affinity being contracted, for instance if it take place before the age of seven years; or if a man having a perpetual impediment of impotence promise a woman future marriage; or if a like

promise be made between persons to whom marriage is rendered unlawful by a vow; or in any other way whatever. Therefore betrothal cannot cause affinity.

On the contrary, Pope Alexander (cap. Ad audientem, De spons. et matrim.) forbade a certain woman to marry a certain man, because she had been betrothed to his brother. Now this would not be the case unless affinity were contracted by betrothal. Therefore, etc.

I answer that, Just as a betrothal has not the conditions of a perfect marriage, but is a preparation for marriage, so betrothal causes not affinity as marriage does, but something like affinity. This is called "the justice of public honesty," which is an impediment to marriage even as affinity and consanguinity are, and according to the same degrees, and is defined thus: "The justice of public hon-

esty is a relationship arising out of betrothal, and derives its force from ecclesiastical institution by reason of its honesty.” This indicates the reason of its name as well as its cause, namely that this relationship was instituted by the Church on account of its honesty.

Reply to Objection 1. Betrothal, by reason not of itself but of the end to which it is directed, causes this kind of affinity known as “the justice of public honesty”: wherefore just as marriage is a lasting tie, so is the aforesaid kind of affinity.

Reply to Objection 2. In carnal intercourse man and woman become one flesh by the mingling of seeds. Wherefore it is not every invasion or penetration of the hymen that causes affinity to be contracted, but only such as is followed by a mingling of seeds. But marriage causes affinity not only on account of carnal intercourse, but also by reason of the conjugal fellowship, in respect of which also marriage is according to nature. Consequently affinity results from the marriage contract itself expressed in

words of the present and before its consummation, and in like manner there results from betrothal, which is a promise of conjugal fellowship, something akin to affinity, namely the justice of public honesty.

Reply to Objection 3. All those impediments which void a betrothal prevent affinity being contracted through a promise of marriage. Hence whether he who actually promises marriage be lacking in age, or be under a solemn vow of continence or any like impediment, no affinity nor anything akin to it results because the betrothal is void. If however, a minor, laboring under insensibility or malefice, having a perpetual impediment, is betrothed before the age of puberty and after the age of seven years, with a woman who is of age, from such a contract there results the impediment called “justice of public honesty,” because at the time the impediment was not actual, since at that age the boy who is insensible is equally impotent in respect of the act in question.

Whether affinity is a cause of affinity?

Suppl. q. 55 a. 5

Objection 1. It would seem that affinity also is a cause of affinity. For Pope Julius I says (cap. Contradicimus 35, qu. iii): “No man may marry his wife’s surviving blood-relation”: and it is said in the next chapter (cap. Porro duorum) that “the wives of two cousins are forbidden to marry, one after the other, the same husband.” But this is only on account of affinity being contracted through union with a person related by affinity. Therefore affinity is a cause of affinity.

Objection 2. Further, carnal intercourse makes persons akin even as carnal procreation, since the degrees of affinity and consanguinity are reckoned equally. But consanguinity causes affinity. Therefore affinity does also.

Objection 3. Further, things that are the same with one and the same are the same with one another. But the wife contracts the same relations with all her husband’s kindred. Therefore all her husband’s kindred are made one with all who are related by affinity to the wife, and thus affinity is the cause of affinity.

Objection 4. On the contrary, If affinity is caused by affinity a man who has connection with two women can marry neither of them, because then the one would be related to the other by affinity. But this is false. Therefore affinity does not cause affinity.

Objection 5. Further, if affinity arose out of affinity a man by marrying another man’s widow would contract affinity with all her first husband’s kindred, since she is related to them by affinity. But this cannot be the case because he would become especially related by affinity to her deceased husband. Therefore, etc.

Objection 6. Further, consanguinity is a stronger tie

than affinity. But the blood-relations of the wife do not become blood-relations of the husband. Much less, therefore, does affinity to the wife cause affinity to her blood-relations, and thus the same conclusion follows.

I answer that, There are two ways in which one thing proceeds from another: in one way a thing proceeds from another in likeness of species, as a man is begotten of a man: in another way one thing proceeds from another, not in likeness of species; and this process is always towards a lower species, as instanced in all equivocal agents. The first kind of procession, however often it be repeated, the same species always remains: thus if one man be begotten of another by an act of the generative power, of this man also another man will be begotten, and so on. But the second kind of procession, just as in the first instance it produces another species, so it makes another species as often as it is repeated. Thus by movement from a point there proceeds a line and not a point, because a point by being moved makes a line; and from a line moved lineally, there proceeds not a line but a surface, and from a surface a body, and in this way the procession can go no further. Now in the procession of kinship we find two kinds whereby this tie is caused: one is by carnal procreation, and this always produces the same species of relationship; the other is by the marriage union, and this produces a different kind of relationship from the beginning: thus it is clear that a married woman is related to her husband’s blood-relations not by blood but by affinity. Wherefore if this kind of process be repeated, the result will be not affinity but another kind of relationship; and consequently a married party contracts with the affines of the other party

a relation not of affinity but of some other kind which is called affinity of the second kind. And again if a person through marriage contracts relationship with an affine of the second kind, it will not be affinity of the second kind, but of a third kind, as indicated in the verse quoted above (a. 1). Formerly these two kinds were included in the prohibition, under the head of the justice of public honesty rather than under the head of affinity, because they fall short of true affinity, in the same way as the relationship arising out of betrothal. Now however they have ceased to be included in the prohibition, which now refers only to the first kind of affinity in which true affinity consists.

Reply to Objection 1. A husband contracts affinity of the first kind with his wife's male blood-relation, and affinity of the second kind with the latter's wife: wherefore if the latter man dies the former cannot marry his widow on account of the second kind of affinity. Again if a man A marry a widow B, C, a relation of her former husband being connected with B by the first kind of affinity, contracts affinity of the second kind with her husband A; and D, the wife of this relation C being connected, by affinity of the second kind, with B, this man's wife contracts affinity of the third kind with her husband A. And since the third kind of affinity was included in the prohibition on account of a certain honesty more than by reason of affinity, the canon (cap. Porro duorum 35, qu. iii) says: "The justice of public honesty forbids the wives of two cousins to be married to the same man, the one after the other." But this prohibition is done away with.

Reply to Objection 2. Although carnal intercourse is a cause of people being connected with one another, it is not the same kind of connection.

Reply to Objection 3. The wife contracts the same connection with her husband's relatives as to the degree but not as to the kind of connection.

Since however the arguments in the contrary sense would seem to show that no tie is caused by affinity, we must reply to them lest the time-honored prohibition of the Church seem unreasonable.

Reply to Objection 4. As stated above, a woman does not contract affinity of the first kind with the man to whom she is united in the flesh, wherefore she does not contract affinity of the second kind with a woman known by the same man; and consequently if a man marry one of these women, the other does not contract affinity of the third kind with him. And so the laws of bygone times did not forbid the same man to marry successively two women known by one man.

Reply to Objection 5. As a man is not connected with his wife by affinity of the first kind, so he does not contract affinity of the second kind with the second husband of the same wife. Wherefore the argument does not prove.

Reply to Objection 6. One person is not connected with me through another, except they be connected together. Hence through a woman who is affine to me, no person becomes connected with me, except such as is connected with her. Now this cannot be except through carnal procreation from her, or through connection with her by marriage: and according to the olden legislation, I contracted some kind of connection through her in both ways: because her son even by another husband becomes affine to me in the same kind and in a different degree of affinity, as appears from the rule given above: and again her second husband becomes affine to me in the second kind of affinity. But her other blood-relations are not connected with him, but she is connected with them, either as with father or mother, inasmuch as she descends from them, or, as with her brothers, as proceeding from the same principle; wherefore the brother or father of my affine does not become affine to me in any kind of affinity.

Whether affinity is an impediment to marriage?

Suppl. q. 55 a. 6

Objection 1. It would seem that affinity is not an impediment to marriage. For nothing is an impediment to marriage except what is contrary thereto. But affinity is not contrary to marriage since it is caused by it. Therefore it is not an impediment to marriage.

Objection 2. Further, by marriage the wife becomes a possession of the husband. Now the husband's kindred inherit his possessions after his death. Therefore they can succeed to his wife, although she is affine to them, as shown above (a. 5). Therefore affinity is not an impediment to marriage.

On the contrary, It is written (Lev. 18:8): "Thou shalt not uncover the nakedness of thy father's wife." Now she is only affine. Therefore affinity is an impediment to marriage.

I answer that, Affinity that precedes marriage hinders marriage being contracted and voids the contract, for the same reason as consanguinity. For just as there is a certain need for blood-relations to live together, so is there for those who are connected by affinity: and just as there is a tie of friendship between blood-relations, so is there between those who are affine to one another. If, however, affinity supervene to matrimony, it cannot void the marriage, as stated above (q. 50, a. 7).

Reply to Objection 1. Affinity is not contrary to the marriage which causes it, but to a marriage being contracted with an affine, in so far as the latter would hinder the extension of friendship and the curbing of concupiscence, which are sought in marriage.

Reply to Objection 2. The husband's possessions do

not become one with him as the wife is made one flesh with him. Wherefore just as consanguinity is an impedi-

ment to marriage or union with the husband according to the flesh, so is one forbidden to marry the husband's wife.

Whether affinity in itself admits of degrees?

Suppl. q. 55 a. 7

Objection 1. It would seem that affinity in itself admits of degrees. For any kind of propinquity can itself be the subject of degrees. Now affinity is a kind of propinquity. Therefore it has degrees in itself apart from the degrees of consanguinity by which it is caused.

Objection 2. Further, it is stated in the text (Sent. iv, D, 41) that the child of a second marriage could not take a consort from within the degrees of affinity of the first husband. But this would not be the case unless the son of an affine were also affine. Therefore affinity like consanguinity admits itself of degrees.

On the contrary, Affinity is caused by consanguinity. Therefore all the degrees of affinity are caused by the degrees of consanguinity: and so it has no degrees of itself.

I answer that, A thing does not of itself admit of being divided except in reference to something belonging to it by reason of its genus: thus animal is divided into rational and irrational and not into white and black. Now carnal procreation has a direct relation to consanguinity, because the tie of consanguinity is immediately contracted through it; whereas it has no relation to affinity except

through consanguinity which is the latter's cause. Wherefore since the degrees of relationship are distinguished in reference to carnal procreation, the distinction of degrees is directly and immediately referable to consanguinity, and to affinity through consanguinity. Hence the general rule in seeking the degrees of affinity is that in whatever degree of consanguinity I am related to the husband, in that same degree of affinity I am related to the wife.

Reply to Objection 1. The degrees in propinquity of relationship can only be taken in reference to ascent and descent of propagation, to which affinity is compared only through consanguinity. Wherefore affinity has no direct degrees, but derives them according to the degrees of consanguinity.

Reply to Objection 2. Formerly it used to be said that the son of my affine by a second marriage was affine to me, not directly but accidentally as it were: wherefore he was forbidden to marry on account of the justice of public honesty rather than affinity. And for this reason this prohibition is now revoked.

Whether the degrees of affinity extend in the same way as the degrees of consanguinity?

Suppl. q. 55 a. 8

Objection 1. It would seem that the degrees of affinity do not extend in the same way as the degrees of consanguinity. For the tie of affinity is less strong than the tie of consanguinity, since affinity arises from consanguinity in diversity of species, as from an equivocal cause. Now the stronger the tie the longer it lasts. Therefore the tie of affinity does not last to the same number of degrees as consanguinity.

Objection 2. Further, human law should imitate Divine law. Now according to the Divine law certain degrees of consanguinity were forbidden, in which degrees affinity was not an impediment to marriage: as instanced in a brother's wife whom a man could marry although he could not marry her sister. Therefore now too the prohibition of affinity and consanguinity should not extend to the same degrees.

On the contrary, A woman is connected with me by affinity from the very fact that she is married to a blood-relation of mine. Therefore in whatever degree her husband is related to me by blood she is related to me in that same degree by affinity: and so the degrees of affinity should be reckoned in the same number as the degrees of

consanguinity.

I answer that, Since the degrees of affinity are reckoned according to the degrees of consanguinity, the degrees of affinity must needs be the same in number as those of consanguinity. Nevertheless, affinity being a lesser tie than consanguinity, both formerly and now, a dispensation is more easily granted in the more remote degrees of affinity than in the remote degrees of consanguinity.

Reply to Objection 1. The fact that the tie of affinity is less than the tie of consanguinity causes a difference in the kind of relationship but not in the degrees. Hence this argument is not to the point.

Reply to Objection 2. A man could not take his deceased brother's wife except, in the case when the latter died without issue, in order to raise up seed to his brother. This was requisite at a time when religious worship was propagated by means of the propagation of the flesh, which is not the case now. Hence it is clear that he did not marry her in his own person as it were, but as supplying the place of his brother.

Objection 1. It would seem that a marriage contracted by persons within the degrees of affinity or consanguinity ought not always to be annulled by divorce. For “what God hath joined together let no man put asunder” (Mat. 19:6). Since then it is understood that what the Church does God does, and since the Church sometimes through ignorance joins such persons together, it would seem that if subsequently this came to knowledge they ought not to be separated.

Objection 2. Further, the tie of marriage is less onerous than the tie of ownership. Now after a long time a man may acquire by prescription the ownership of a thing of which he was not the owner. Therefore by length of time a marriage becomes good in law, although it was not so before.

Objection 3. Further, of like things we judge alike. Now if a marriage ought to be annulled on account of consanguinity, in the case when two brothers marry two sisters, if one be separated on account of consanguinity, the other ought to be separated for the same reason. and yet this is not seemly. Therefore a marriage ought not to be annulled on account of affinity or consanguinity.

On the contrary, Consanguinity and affinity forbid the contracting of a marriage and void the contract. Therefore if affinity or consanguinity be proved, the parties should be separated even though they have actually contracted marriage.

I answer that, Since all copulation apart from lawful marriage is a mortal sin, which the Church uses all her endeavors to prevent, it belongs to her to separate those between whom there cannot be valid marriage, especially those related by blood or by affinity, who cannot without incest be united in the flesh.

Reply to Objection 1. Although the Church is up-

held by God’s gift and authority, yet in so far as she is an assembly of men there results in her acts something of human frailty which is not Divine. Therefore a union effected in the presence of the Church who is ignorant of an impediment is not indissoluble by Divine authority, but is brought about contrary to Divine authority through man’s error, which being an error of fact excuses from sin, as long as it remains. Hence when the impediment comes to the knowledge of the Church, she ought to sever the aforesaid union.

Reply to Objection 2. That which cannot be done without sin is not ratified by any prescription, for as Innocent III says (Conc. Later. iv, can. 50: cap. Non debent, De consang. et affinit.), “length of time does not diminish sin but increases it”: nor can it in any way legitimize a marriage which could not take place between unlawful persons.

Reply to Objection 3. In contentious suits between two persons the verdict does not prejudice a third party, wherefore although the one brother’s marriage with the one sister is annulled on account of consanguinity, the Church does not therefore annul the other marriage against which no action is taken. Yet in the tribunal of the conscience the other brother ought not on this account always to be bound to put away his wife, because such accusations frequently proceed from ill-will, and are proved by false witnesses. Hence he is not bound to form his conscience on what has been done about the other marriage: but seemingly one ought to draw a distinction, because either he has certain knowledge of the impediment of his marriage, or he has an opinion about it, or he has neither. In the first case, he can neither seek nor pay the debt, in the second, he must pay, but not ask, in the third he can both pay and ask.

Objection 1. It would seem that one ought not to proceed by way of accusation in order to sever a marriage contracted between persons related by affinity or consanguinity. Because accusation is preceded by inscription* whereby a man binds himself to suffer the punishment of retaliation, if he fail to prove his accusation. . But this is not required when a matrimonial separation is at issue. Therefore accusation has no place then.

Objection 2. Further, in a matrimonial lawsuit only the relatives are heard, as stated in the text (Sent. iv, D,

41). But in accusations even strangers are heard. Therefore in a suit for matrimonial separation the process is not by way of accusation.

Objection 3. Further, if a marriage ought to be denounced this should be done especially where it is least difficult to sever the tie. Now this is when only the betrothal has been contracted, and then it is not the marriage that is denounced. Therefore accusation should never take place at any other time.

Objection 4. Further, a man is not prevented from ac-

* The accuser was bound by Roman Law to endorse (se inscribere) the writ of accusation; Cf. Ila Ilae, q. 33, a. 7

curring by the fact that he does not accuse at once. But this happens in marriage, for if he was silent at first when the marriage was being contracted, he cannot denounce the marriage afterwards without laying himself open to suspicion. Therefore, etc.

On the contrary, Whatever is unlawful can be denounced. But the marriage of relatives by affinity and consanguinity is unlawful. Therefore it can be denounced.

I answer that, Accusation is instituted lest the guilty be tolerated as though they were innocent. Now just as it happens through ignorance of fact that a guilty man is reputed innocent, so it happens through ignorance of a circumstance that a certain fact is deemed lawful whereas it is unlawful. Wherefore just as a man is sometimes accused, so is a fact sometimes an object of accusation. It is in this way that a marriage is denounced, when through ignorance of an impediment it is deemed lawful, whereas it is unlawful.

Reply to Objection 1. The punishment of retaliation takes place when a person is accused of a crime, because then action is taken that he may be punished. But when it is a deed that is accused, action is taken not for the punishment of the doer, but in order to prevent what is unlawful. Hence in a matrimonial suit the accuser does not bind himself to a punishment. Moreover, the accusation may be made either in words or in writing, provided the person who denounces the marriage denounced, and the impediment for which it is denounced, be expressed.

Reply to Objection 2. Strangers cannot know of the consanguinity except from the relatives, since these know with greater probability. Hence when these are silent, a stranger is liable to be suspected of acting from ill-will unless he wish the relatives to prove his assertion. Wherefore a stranger is debarred from accusing when there are relatives who are silent, and by whom he cannot prove his accusation. On the other hand the relatives, however

nearly related they be, are not debarred from accusing, when the marriage is denounced on account of a perpetual impediment, which prevents the contracting of the marriage and voids the contract. When, however, the accusation is based on a denial of the contract having taken place, the parents should be debarred from witnessing as being liable to suspicion, except those of the party that is inferior in rank and wealth, for they, one is inclined to think, would be willing for the marriage to stand.

Reply to Objection 3. If the marriage is not yet contracted and there is only a betrothal, there can be no accusation, for what is not, cannot be accused. But the impediment can be denounced lest the marriage be contracted.

Reply to Objection 4. He who is silent at first is sometimes heard afterwards if he wish to denounce the marriage, and sometimes he is repulsed. This is made clear by the Decretal (cap. Cum in tua, De his qui matrim. accus. possunt.) which runs as follows: "If an accuser present himself after the marriage has been contracted, since he did not declare himself when according to custom, the banns were published in church, we may rightly ask whether he should be allowed to voice his accusation. In this matter we deem that a distinction should be made, so that if he who lodges information against persons already married was absent from the diocese at the time of the aforesaid publication, or if for some other reason this could not come to his knowledge, for instance if through exceeding stress of weakness and fever he was not in possession of his faculties, or was of so tender years as to be too young to understand such matters, or if he were hindered by some other lawful cause, his accusation should be heard. otherwise without doubt he should be repulsed as open to suspicion, unless he swear that the information lodged by him came to his knowledge subsequently and that he is not moved by ill-will to make his accusation."

Whether in a suit of this kind one should proceed by hearing witnesses in the same way as in other suits?

Suppl. q. 55 a. 11

Objection 1. It would seem that in such a suit one ought not to proceed by hearing witnesses, in the same way as in other suits where any witnesses may be called provided they be unexceptionable. But here strangers are not admitted, although they be unexceptionable. Therefore, etc.

Objection 2. Further, witnesses who are suspected of private hatred or love are debarred from giving evidence. Now relatives are especially open to suspicion of love for one party, and hatred for the other. Therefore their evidence should not be taken.

Objection 3. Further, marriage is a more favorable suit than those others in which purely corporeal questions

are at stake. Now in these the same person cannot be both accuser and witness. Neither therefore can this be in a matrimonial suit; and so it would appear that it is not right to proceed by hearing witnesses in a suit of this kind.

On the contrary, Witnesses are called in a suit in order to give the judge evidence concerning matters of doubt. Now evidence should be afforded the judge in this suit as in other suits, since he must not pronounce a hasty judgment on what is not proven. Therefore here as in other lawsuits witnesses should be called.

I answer that, In this kind of lawsuit as in others, truth must be unveiled by witnesses: yet, as the lawyers say, there are many things peculiar to this suit; namely

that “the same person can be accuser and witness; that evidence is not taken ‘on oath of calumny,’ since it is a quasi-spiritual lawsuit; that relatives are allowed as witnesses; that the juridical order is not perfectly observed, since if the denunciation has been made, and the suit is uncontested, the defendant may be excommunicated if contumacious; that hearsay evidence is admitted; and that wit-

nesses may be called after the publication of the names of the witnesses.” All this is in order to prevent the sin that may occur in such a union (cap. Quoties aliqui; cap. Super eo, De test. et attest.; cap. Literas, De juram. calumn.).

This suffices for the Replies to the Objections.