

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 accusing 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."

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