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Doctrinal Theology.

SOTERIOLOGY.

DEFINITION.

Soteriology is the doctrine of Holy Scripture concerning the application and appropriation of the merits of Christ to the individual sinner, whereby the sinner is led to the actual possession and enjoyment of the blessings which Christ has actually procured for all mankind. Christ is σωτὴρ τοῦ κόσμου, the *Savior of the world*.[1] *God was in Christ reconciling the world unto himself*.[2] Christ is the *propitiation for our sins; and not for ours only, but also for the sins of the whole world*.[3] The Mediator between God and man reconciled the world with God not partially or potentially, but wholly and actually. *By one offering he hath perfected for ever them that are sanctified*.[4] When he sat down on the right hand of the Majesty on high, the work of redemption had been fully performed; *he had by himself purged our sins*.[5]

Yet, among those whom the Lord has bought, there are those who *bring upon themselves swift destruction*.[6] Though God HATH *reconciled us to himself by Jesus Christ*,[7] and *we* WERE *reconciled to God by the death of his Son*,[8]

1) John 4, 42. 1 John 4, 14. 2) 2 Cor. 5, 19.
3) 1 John 2, 2. 4) Hebr. 10, 14. 5) Hebr. 1, 3.
6) 2 Pet. 2, 1. 7) 1 Cor. 5, 18. 8) Rom. 5, 10.

Practical Theology.

BREACH OF BETROTHAL AND ITS CONSEQUENCES.

We were prompted to discuss this subject by the request of a Conference for an opinion on a case coming under this head, and by the consideration that similar cases which have come to our knowledge were a source of considerable anxiety to those whom they concerned.

The fundamental maxim governing all cases of breach of betrothal is that valid betrothal is, *in foro ecclesiae*, essentially marriage. Even secular jurists are agreed that *consensus*, *non concubitus*, *facit matrimonium*. Now, betrothal is the lawful and unconditional mutual consent of a marriageable man and marriageable woman to be husband and wife. The consent, in order to constitute the essence of marriage, must, in the first place, be real, actual *consent*, not a mere semblance of consent, as, f. ex., a *yea* given in a state of intoxication, not a yielding of the mind brought about by duress, or fraud, or *error personae* but a free and conscious act of the will. The consent must be *lawful*, not in itself a violation of a law of God or of the state. The consent must be *mutual*. That one of the parties has become willing after the willingness of the other has ceased, does not constitute mutual consent. The *as*sent of the one party and the *as*sent of the other party conjointly become the marriage *con*sent of both parties when they have brought to each other's knowledge their contemporaneous or co-existing willingness. The proposal and the acceptance of the proposal must come together, and where there is no longer a proposal there can be no acceptance. The consent of the parties, in order to be a marriage consent, must be their willingness to be to each other *husband and wife*. A compact according to which a man would agree to take a woman

into his house and support her, and the woman would agree to keep house for that man, and which would, by its terms, exclude conjugal intercourse, would not constitute marriage. Marriage consent implies the consent lawfully to be one flesh. And, finally, this consent must be *unconditional.* An agreement to *become* husband and wife, provided that a certain condition shall have previously been fulfilled, is not marriage or betrothal. *Sponsalia* proper must not be *sponsalia de futuro*, but *sponsalia de praesenti*, not to become in the future, but to *be*, *now*, husband and wife. Betrothal is not a promise of future marriage, and a promise of future marriage is not properly betrothal. In betrothal a man *takes* unto himself a woman as his wife; and having *taken* her he from that moment on *has* her, and she *is* his wife. And likewise, in betrothal a woman *takes* unto herself a man as her husband, and having *taken* him, she from that moment *has* him for her husband. Betrothal is not simply a contract, which might be rescinded at the will of either party or by an agreement of both parties, but is a compact superinducing a state, or a state superinduced by a compact; and that state is essentially the *estate of matrimony*.

This is the scriptural concept of betrothal. While Mary was *espoused to Joseph*, μνηστευθεῖσα τῷ Ἰωσήφ,[1] ἐμνηστευμένη ἀνδρί,[2] she was, by the angel of the Lord, called *his wife*,[3] and he is, by the Holy Spirit, called *her husband*.[4] In Deuteronomy we read: *If a damsel that is a* VIRGIN *be betrothed unto an* HUSBAND, *and a man find her in the city, and he lie with her, then ye shall bring them both out unto the gate of that city, and ye shall stone them with stones that they die; the damsel, because she cried not, being in the city; and the man, because he hath humbled his neighbor's* WIFE.[5] Here the man who has lain with a *virgin* who was *betrothed unto an husband*, is said to have humbled

1) Matt. 1, 18. 2) Luke 1, 27.
3) Matt. 1, 20: Μαριὰμ τὴν γυναῖκά σου.
4) Matt. 1, 19: Ἰωσὴφ ὁ ἀνὴρ αὐτῆς. 5) Deut. 22, 23. 24.

his neighbor's *wife*. And the penalty is the same as that imposed upon an adulterer who has been found lying with a woman married to an husband in consummated marriage.[1] On the contrary, if a man had been found to lie with *a damsel, a virgin, which was not betrothed*, they were not to be put to death, but, said the law, *the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife.*[2]

The difference, then, between betrothal and consummated marriage is, *in foro ecclesiae*, not in the *essence* of marriage, but in its *use;* not in the possession, but in the enjoyment of the specific rights of husband and wife. The betrothed are *de jure* and *de facto* a married couple who have agreed to defer, for a time, cohabitation and conjugal intercourse, to enjoy each other's society under restrictions imposed by time-honored traditional customs with which they are expected to comply and to which they have tacitly consented to conform their conduct during this first stage of their married life. While they are looked upon as belonging to each other, and may, without giving offense, betoken their intimate and exclusive relation to each other in various ways not to be tolerated in persons not thus related, they are at the same time, with their approval and consent, looked upon as recognizing and respecting those restrictions which by common usage and decency such couples take upon themselves and permit to be imposed upon them by their friends and by society at large. This being the general supposition, it is a breach of confidence and an offense of decency when, during their betrothal and before their "wedding," they, for lack of continence, and deceiving their friends and society, clandestinely enjoy what they have agreed to defer, connubial intercourse whereby they become one flesh. Yet such intercourse is really connubial, not extra-connubial, not fornication, is, in fact, the giving and taking of the *debitum conjugale*, which each party owes to the other

1) Deut. 22, 22. 2) Deut. 22, 28. 29.

from the moment of their betrothal, but the use and enjoyment of which should not be claimed or granted with a setting aside or violation of truth and decency, or at variance with the laws of the state, which date the lawfulness of the exercise of matrimonial rights from the recognition of the married state under the laws of the state. Hence, if either or both of the parties feel or think that they can no longer continently live under the restrictions imposed upon betrothed couples, then let them cut short this stage of their married life and fix the wedding day and do and enjoy decently and in order what they will no longer defer. And if one party demand, the other party is bound to grant, the decent transition from the one stage to the other, the appointment of the day when in due form and order cohabitation and its concomitants shall begin.

Having thus briefly viewed the nature and significance of betrothal, we are now ready to face our subject proper, the breach of betrothal and its consequences.

In the first place, then, there can be no breach of betrothal where there is no betrothal, just as there can be no transgression of the law where there is no law, no violation of a rule where there is no rule, and no extraction of a tooth where there is no tooth.

Thus, conditional betrothal is no betrothal. If it is anything at all, it is an offer or promise or agreement to become betrothed at some future time, provided that a certain condition be previously fulfilled or known to be fulfilled. This agreement or compact is not betrothal. It does not superinduce a state. The condition enters in between and separates the promise or agreement and the state, and by the agreement itself as a conditional agreement the state cannot and shall not begin before and unless the condition is fulfilled and known to be fulfilled. If it were otherwise, the condition would not be a condition, a presupposition on the realization of which the realization of the thing thereon conditioned must depend.

Conditions may be of three kinds, as regards the time of their fulfilment: past, present, and future. Let us exemplify. John asks Mary to be his wife. Yes, says Mary, I will be your wife, provided that you have never loved another woman before. This answer does not close the compact and complete the betrothal of the parties. John may have been engaged to a woman whom he truly loved and who has died. In this case, Mary, according to her own statement, does not want to be his wife, and John may simply accept her word and consider his proposal rejected. He is not bound to continue his suit. He is as free as he was before his proposal, and if he chooses to let the matter rest, he commits no breach of betrothal, because there was no betrothal. On the other hand, he may still be desirous of bringing about an engagement, and he may renew his proposal, stating his case and asking to be accepted without condition. But this would be a new offer, which might again be either accepted or rejected; and if Mary should now say: "Well, since your former affianced is dead, I drop the condition and declare my willingness to be your wife," the engagement would be thereby completed, not on the first, but on the second proposal.

But let us suppose that John had never loved a woman before he had first proposed to Mary. In this case, Mary's condition would have been fulfilled. And yet her first answer would not have closed the engagement, since, according to the terms of that answer, there was not, when she gave it, an unconditional, *de facto* consent in her mind to be John's wife. Even in that case, John, on receipt of that conditional answer, was free to drop his suit, and if, having discovered a jealous disposition in Mary, he preferred to desist from his endeavors to win her, there was no breach of betrothal, because there was no betrothal, no actual coexisting consent of both parties to be husband and wife.

Or as to present conditions. John having offered his hand in marriage to Mary, she replies that she is willing to

accept his offer, provided that he own property to the value of ten thousand dollars. Now, all that John owns does not amount to a thousand dollars, and he is, of course, a rejected suitor. But even if the condition were fulfilled, if John had ten thousand dollars and more, he would not be bound by the conditional acceptance of his offer, which was unconditional and demanded an unconditional, a real and actual consent in order to bring on the desired effect, the state of betrothal. John, therefore, commits no breach of betrothal if he drops his suit for the hand of a woman who will, according to her own words, actually consent to be his only when she shall have learned that he possesses a certain amount of wealth. Her conditional answer was, in fact, only a new offer implying a rejection of the original offer of the other side, which was without condition. What Mary replied was, in more words: "No, unconditionally as you have made your offer, I cannot or will not accept it; but I offer to take you on one condition, that you own so much property." And, this being really a new offer, John, to whom it is made, is free either to accept or to reject it.

Or as to future conditions. John's offer of marriage has met with the response: "I will be yours if you shall obtain your Doctor's degree next spring and when you shall have practiced medicine one year." This, too, is not an acceptance, but rather a refusal of what would be granted by unconditional consent, present espousals, and the advancing of a new offer, which John may either accept or reject. And if John accepts this offer, he and the woman who has made it are not by this mutual consent betrothed. They have made an agreement or a contract, but not an agreement superinducing the state of marriage in the form of valid betrothal. By the very terms of their agreement both would be free if John, in spite of his earnest endeavors to perform his part of the contract, failed to obtain his degree in the ensuing spring. In that case his failure would not have dissolved their betrothal; for failing in a med-

ical examination is not a cause for dissolution of marriage. There would or could be no dissolution or annulment of betrothal, because that state had never ensued. But what if John had, before completing his course in medicine, decided to become a merchant, or if, having taken his degree and practiced for half a year, he should choose to quit the profession and go into business? This he could not do, unless with the other party's consent, without committing a breach of agreement and promise, having agreed to win his bride by studying and practicing medicine within a stipulated time. Or if the woman, while John were still studying or pratic-ing medicine according to their agreement, would, without his consent, recede from their compact and become engaged to another man, that too would be a breach of faith and promise. But in neither case would the offense be a breach of betrothal, a dissolution of marriage. And if, before the clearing of the condition, they mutually agreed to cancel their contract, they could not be held to their compact or charged with a disruption of that bond which is, essentially, the bond of marriage. If they agree to drop the condition, and plight their troth unconditionally, this is a new compact, differing from the former in number and in kind, a betrothal in marriage, which the former was not, and binds the parties under the divine law of marriage, which the former did not.

As a conditional acceptance of an unconditional offer is not *de facto* acceptance, and does not close the compact, so an acceptance of a conditional offer regardless of the condition is not a real acceptance. John offers to make Jane his wife, provided, however, that she would take him for his own sake, not because her parents desired the match, but prompted by love and esteem toward him. Jane, knowing that her father and mother would be grieved and angry if she declined, declares her willingness to be John's wife, and John considers her his affianced. But at a subsequent visit he finds her in tears; she gives him a cold and distant

welcome, but will not explain. A ring he has brought is reluctantly accepted. At a later visit he finds her wearing his ring; but she is evidently in distress, and will not account for her conduct. After some days, however, she writes to him, stating that she had given her word simply and solely to please her parents; that she had never liked him, but rather felt a growing repugnance toward his person which, she was sure, could never be overcome; that she had not intended to deceive him when she spoke her consent, hoping that she might subdue her feelings. She was even now willing to stand by her word though she knew she would be miserable by his side. On reading this letter, John knew what he was about. The parents substantiated that, though they had not constrained their daughter, she had been right in deeming it their wish that she should marry John, and that from early years it had been their daughter's way to do the very utmost in yielding to their wishes. They also testified that from the hour when she had given her word to John, she had not had a cheerful moment and very little sleep. All this proved conclusively, not that the engagement must be rescinded, but that there was no betrothal to rescind. John had made a conditional offer and had never consented to be Jane's husband with that condition unpurified. He was, therefore, not bound when Jane, seemingly accepting his proposal, had set aside the condition which was in John's mind when he made his offer and was part and parcel of his offer, which had never been accepted by the other party. And thus in all other cases a conditional offer, in order to be accepted at all, must have been accepted as a whole and leads to a binding compact, an actual betrothal, only when the condition is fulfilled.

The conditions hitherto considered were, all of them, conditions stipulated by the will of the parties. Distinct from these, there is another category comprising conditions fixed and imposed by law. Says A to B: "Will you be my wife?" "Yes," says B., "if my parents do not object."

Where parental consent is doubtful or improbable, it is not in the choice of the parties to make or to waive this condition, which has been imposed by law, when God says, *Thou shalt honor thy father and thy mother.* A promise of marriage under this condition is also a conditional acceptance and does not close a compact of valid betrothal or superinduce the bond of marriage. But while an agreement to waive or drop a voluntary condition and to change the conditional into an unconditional offer and acceptance is from then on valid betrothal, an agreement conditioned on the *consensus parentalis* becomes valid betrothal only on the clearing of that condition, the parental consent to or acquiescence in the consent of the parties proper to be man and wife. Where this consent is persistently and definitely denied, the parties are free, and their separation and subsequent marriage with other parties is not a breach of betrothal. There is but one consideration which can justify marriage to which a parent of sound mind persistently objects, viz., when such objection is explicitly or implicitly tantamount to a total prohibition of marriage imposed upon a son or daughter, in violation of 1 Cor. 7, 2: *To avoid fornication, let every man have his own wife, and let every woman have her own husband.*

Still another kind of conditions, those which are to be purified *after* the assumption of the marriage bond, as, f. ex., arguments concerning the common domicile, are of a nature not to exclude actual *consensus de praesenti.* But we are not yet ready to enter upon those cases in which a breach of betrothal is possible, having still several classes of cases to deal with where that offense is impossible because of the absence of the thing itself which might be broken.

No betrothal, then, exists where no mutual consent of any kind has been given, be it conditional or unconditional. As an offer without an acceptance is not a contract nor part of a contract, so an offer of marriage is not betrothal or part of a betrothal before an acceptance has been granted. Mar-

riage does not consist of the willingness of one party followed, at some time, by the willingness of the other party, the two halves constituting a whole; but it consists in the concurrent and contemporaneous consent of both parties to be husband and wife. There cannot, even for a moment, be a wife without a husband or a husband without a wife. The husband is not and cannot be a husband before the wife is a wife. When John offers to marry Jane, that offer does not make him the husband of Jane. If it did, no acceptance would be requisite; the proposal which would make John a husband would make Jane his wife, since there can be no husband without a wife. It is the concurrence of the offer and its acceptance which makes them husband and wife. If John's proposal leaves Jane free to accept or to reject, John must also be free until his offer has been accepted. Hence, if John withdraw his proposal before its acceptance, this is not a breach of betrothal. This holds good also when a time has been fixed within which the acceptance shall be granted or refused. If John has asked Jane to be his wife, and Jane has asked a week to consider the proposal, and John has agreed to wait a week for her decision, that agreement should be kept. If, however, such agreement does not bind Jane to John as his wife, but expressly leaves her free to accept or reject him, then that agreement implies that John too shall not be bound to Jane as her husband until, before the expiration of the stipulated time, she have accepted his offer and given herself to him as his wife. If, before such acceptance and before the expiration of the week, John should withdraw his offer, this might and probably would be a breach of good faith, a culpable rescission of his agreement to wait a week for the decision of the other party; but it would not be a breach of betrothal. If it were, John would have been a husband without a wife, which is a logical and metaphysical nonentity, a thing which cannot be thought and cannot exist.

No consent has been given, and no betrothal ensued,

when the purported consent of either party has been brought about by duress, fraud, or *error personae*.

Duress is constraint by force or menace, and when under such constraint the lips have yielded, but not the mind, to the will of others, no real consent, and, hence, no betrothal has ensued. It should be noted, however, that duress is not an absolute quantity, but the kind and amount of force or menace which may operate as duress in one case may utterly fail in another. What might have left a strong, fearless, heroic woman undaunted, may so overawe and overpower a weak, timid, irresolute girl as to wring from her lips what was never in her heart. On the other hand it should be said here that not every exercise of constraint precludes real consent. If a man had ravished a girl, and the girl's father should say to him: "See here, unless you marry my daughter, I shall have you sent to state's prison for rape," the man could not plead duress if he had yielded. For he would have suffered no wrong of which he might complain if he had been imprisoned for his crime. He had no right, but, under the circumstances, only the opportunity to escape punishment, and the choice between marriage and the penitentiary was his own voluntary act.

Fraud, also, when it precludes the very essence of marriage, the real and actual consent of either party, not only vitiates but nullifies what was meant to pass as marriage. Of course, not every misrepresentation or deceit committed by one party, which may have contributed toward bringing about the consent of the other party, will cause that marriage to collapse for want of consent. A mere concealment of facts which, had they been known, might have prevented the marriage, will not necessarily afford cause for setting aside a betrothal. Neither will even a fraudulent assertion made by one party and believed by the other, while an investigation might have shown it to be false. No man is entitled to profit by his own carelessness. There may be so many other motives for the consent of the party deceived

in a certain point, that such deceit cannot *ipso facto* stamp the consent as procured by fraud. Least of all may the deceiving party plead his or her deceit to nullify the engagement; for no one has a right to benefit by his or her own wrong. Neither can the party to whom false statements have been made, but who has consented knowing them to be false, contest the validity of the engagement; for in such case there was consent in spite of attempted deceit, and that consent, once given, cannot rightfully be withdrawn. In short, while deceit wrongfully practiced with a view to marriage is a wrong, whether it be successful or not, it is not inasmuch as such wrong deserves punishment that the party on whom such deceit has been attempted or practiced may subsequently withhold his or her marriage consent, but only when and inasmuch as such apparent consent was, because of such fraud, *ab initio*, as in case of duress, no real marriage consent at all. Thus, when A has asked B to be his wife, and B has expressed her willingness to have A for her husband, there is an apparent marriage consent. But if A should subsequently learn that B, at the time of their agreement, had been pregnant of another man, and should thereupon refuse to acknowledge B as his betrothed, this would not be a breach of betrothal, but simply and consistently the maintenance of the truth that such a thing as marrying a woman in that condition had never entered his mind. But here lies the great difficulty in determining many cases of this class, the difficulty of deciding whether the deceiving party has simply stolen, or the party deceived has nevertheless given what, if really given, would constitute the essence of marriage. Theft cannot establish a title, a right to possess the object stolen. But a thing which was originally obtained by theft may be subsequently possessed with the consent of the party from whom it was stolen, and a marriage consent originally wanting may be supplied at a later period. This actually occurs in many cases in the incipient stages of which fraud has entered even to the exclu-

sion of real consent; and as consent may be expressed not only by words, but also by conduct, it is often very difficult to determine whether consent was given or not after the discovery of the fraud, a fraud the extent and effect of which also may be doubtful. Thus, what has been said concerning the theory and practice of secular law is true also *in foro ecclesiae:* "This topic (fraud) is probably the most difficult of treatment of all connected with the law of marriage and divorce."[1])

Error personae, mistaken identity, may shut out actual consent; for marriage consent is not willingness to marry in general, but willingness to marry a certain person. A has promised his dying brother to marry the latter's affianced, B, whom he has never seen. Meeting her sister, C, and mistaking her for B, he proposes to her and is accepted. This is not betrothal; for in A's mind there was no will to marry C, and if A, on the discovery of the error, cancels the putative engagement, this is not a breach of betrothal, and A is perfectly free to propose to B and make her his wife with her consent, and thus, according to his original intention, make good his promise to his deceased brother. But if A learns that B has resolved to remain single and become a hospital nurse, or for some other cause declines his offer, and both he and C are willing to be man and wife, and tell each other so, this is a new offer and acceptance, which makes them a betrothed couple. It must, however, be said before we pass to another point, that when the *error personae* of the one party is from the beginning known to, or later on discovered by, the other party, and concealed, the case is either from the beginning or from the moment of the discovery and concealment a case of fraud excluding the consent of the party held in error, and that there is an element of fraud in the constitution of many, perhaps most, cases of *error personae*.

1) Bishop, Marriage and Divorce, I, § 165.

A doctrine very generally set forth by secular jurists and theologians alike, concerning these three impediments, error, duress, and fraud, is that they are overcome and removed by subsequent voluntary copula or cohabitation. But this doctrine must be received and applied with caution and restriction. The doctrine will stand only when and inasmuch as copula and cohabitation can be considered tokens of subsequent consent. Carnal knowledge may be due to incontinence without as within the state of betrothal, or may otherwise take place without real and actual consent of present marriage. Copula under constraint, and even voluntary copula, is not necessarily the giving and taking of the *debitum conjugale*, and though, where carnal intercourse has taken place, it is proper that innocence should be assumed rather than guilt, and, hence, marriage should not easily be set aside where, otherwise, fornication or rape must be charged, yet the fundamental doctrine that *consensus*, not *concubitus*, is the essence of marriage, must remain unimpaired. To hold or admit that the status of marriage could be imposed upon or assumed by a non-consenting person would throw the theory and practice of marriage jurisprudence, both secular and ecclesiastic, into dire and hopeless confusion. The doctrine must stand that wherever there is mutual marriage consent there is marriage, and where there is no marriage consent there is no marriage. Where and while this doctrine stands, the only difficulty in adjudicating concrete cases is in ascertaining the *species facti*. And while the question of law is very plain and simple, the questions of fact are often very obscure and complicated. That where marriage consent has been mutually given there is marriage is clear; but *whether* mutual marriage consent has been actually given is often very difficult and sometimes impossible to ascertain, and where this question cannot be conclusively answered, one of two courses only can be pursued. The one is based on a maxim of expediency, the other on a maxim of justice. The maxim of

expediency is, *Semper praesumitur pro matrimonio.* Marriage being part of the groundwork of human society, it is wise and expedient to sustain marriage where it can be sustained, and in doubtful cases the parties should be advised to waive what in strict justice they might claim, and acknowledge where they might repudiate the marriage bond. Justice, however, deals only with questions of right and wrong and demands that a man's innocence must be presumed until his guilt is proven, and there is no guilt without transgression of the law. In the administration of civil government, in its legislative, judicial, and executive functions, expediency must often be allowed to prevail over justice. In the church, which has no legislative power, but is subject and bound to a moral law, an unalterable norm of right and wrong established for all times as the norm according to which sin is sin, the question, wherever this norm is to be applied, can never be, What is expedient? but must always be, What is right before God? And hence, *in foro ecclesiae*, marriage must not be presumed, but must be proved, before a person can be held guilty of the sin of having broken what was essentially the bond of marriage. On the other hand, where fraud or duress is charged in defense, these charges, too, must be proved before they can justify that for which they were set up in defense. Where neither the existence nor the non-existence of lawful mutual consent can be proved, the church can neither condemn nor justify, but must dismiss the case for lack of evidence. This amounts to an acquittal as far as the unsustained charges are concerned, and the parties accused but not convicted must be treated as if the charges had never been made. Such acquittal, however, is not properly a justification, not a declaration that the wrongs charged to either party have not been committed; but the questions of fact and the judgment thereon are left to Him who knows all things. *De occultis non judicat ecclesia.*

It has already been said that duress and fraud, though

certainly wrongs in themselves, do not operate as affording the innocent party sufficient cause for the rescission of existing valid betrothal, but, like *error personae*, which is not a wrong *per se*, simply and solely inasmuch as they exclude that consent which alone can superinduce the state of betrothal. There is, however, one, and only one, wrong which, as a wrong inflicted upon the innocent party, and not excluding but presupposing marriage, gives the injured party sufficient cause to set aside the marriage bond and withdraw the consent which has been actually given. That wrong is the sin and crime of adultery, the voluntary carnal intercourse of a married person with one not the husband or wife.[1] This offense can be committed during any stage of married life, not only after, but also before the consummation of marriage. For the same reason for which sexual intercourse between parties mutually betrothed, though a violation of decency, is not fornication, carnal commerce of a betrothed person with a person not his or her betrothed is adultery, a gross violation of the marriage bond. It is not *ipso facto* a dissolution of that bond, but an offense by which the offender forfeits the right of holding the innocent party bound and the offended party obtains the right of withdrawing his or her consent which constitutes the essence of marriage and thus terminating the married state. It is not the guilty party who obtains this right, and if the innocent party is willing to condone the offense and continue the state, the guilty party is morally bound to accept such condonation and continuation. The offer of the offended party to condone and to remain the espoused of the offender is not a new offer of marriage. If it were, the other party must be free to accept or reject such offer. What accrues to the innocent party, and to that party only, is the right of *ἀπολύειν*,[2] of severing the bond of marriage, of rescinding the state by putting an end to that whereby the state

1) Matt. 19, 9; 5, 32.

2) Matt. 5, 32; 19, 9.

was established and sustained, the marriage consent. To use or to waive the exercise of this right rests with the party to whom the right itself has been granted by the Lawgiver. In the decision whether the state should continue, the guilty party is entirely at the mercy of the innocent party until the decision has been rendered, and this decision is final. If the injured party decide to condone and uphold the existing relation, both parties are and remain bound as they were before the offense. If the innocent party decide not to condone, but to rescind and thus to terminate the existing relation, both parties are free as they were before the relation was entered into and established. This final decision must be the free act of the party entitled to this remedy, and condonation brought about by duress or fraud is not condonation and leaves the case open for final decision. Of course, the innocent party cannot condone or refuse to condone before having obtained knowledge of the offense, and the burden of proof, when the charge is denied, rests with the offended party. Where the sin has been committed with the connivance or collusion of the other party, it is not an offense to that party; for *volenti non fit injuria*. Or where a betrothed woman has been ravished, she has committed neither sin nor offense, but suffered injury. In both these cases no cause of divorce arises and the parties remain bound *in vinculo*.

Adultery, then, is the only cause which can justify the rescission of existing valid betrothal, and the right of rescission rests only with the innocent injured party. Where this right is exercised, it is that party's voluntary and rightful act. Not properly a cause to the innocent party to separate from the guilty party, but an actual, wrongful withdrawal from the bond of marriage by the guilty one, has ensued when one party, in the absence of the one sufficient cause, and against the will of the other, has ceased and persistently refuses to uphold what was valid betrothal. Cases of this class, and those of a class to be dealt with after this,

are of very frequent occurrence. To determine whether in these cases a breach of betrothal is to be adjudicated, the first question to be settled is whether at any time valid betrothal has existed between the parties. This having been established according to the principles above set forth, the next point to investigate is the withdrawal of his or her consent by one of the parties. This, too, being ascertained, it must be shown that the other party is still upholding his or her consent and opposing the rescission of the engagement. When these three points are affirmatively determined, the case is clear in its essentials as a breach of betrothal by the guilty party. The offense, in this case, is not, like adultery, an injury in view of which the injured party is justified in breaking off the engagement, but an injury which, being itself a breach of betrothal, leaves no engagement to be broken off. The injury sustained in this case is the loss of a husband or wife, not an injury justifying the dismissal of a husband or wife. A man whose affianced has discarded him has no choice between continuing or discontinuing the former relation; he can neither dismiss nor retain a woman who has already gone from him against his will. When the breach has become complete by the malicious and persistent withdrawal of the marriage consent of one party against the will of the other party, the parties are no longer husband and wife in the state of betrothal, but single and separate. The discarded woman, having been permanently robbed of her betrothed husband, is no longer a wife. She is free and innocent. And, as there can be no husband without a wife, the former husband, having broken and thrown away the marriage bond, is no longer a husband. He is free but guilty, guilty of the breach of marriage, until he restore what he has robbed, if restoration is possible.

The question when the breach of betrothal in such cases is to be considered complete must be answered on the merits of each case. It is often very difficult to determine if consent has been given; it is often far more difficult to decide

whether consent has been definitely and permanently withdrawn. Least of all should the innocent party be overhasty in assuming that the guilty one could no longer be brought to terms. Even a new engagement of the guilty party is not conclusive. While the former betrothal stands, the new compact counts for nothing. Having given herself to A, the betrothed, B, cannot also give herself in betrothal to C, and any compact to that effect between B and C is void. Neither is it *per se* sufficient cause for A to repudiate B; for what the latter has committed is not adultery. Let A be steadfast, and let proper endeavors be made to convince B of the error and folly of her way, and all may be well, the permanent breach between A and B having been avoided or prevented. But even when B is obstinate and clings to C in spite of repeated admonition, A should not contract a new engagement, with D, without having given warning to B and made a final attempt at reconciliation; and the safest course for A is to defer new espousals until B, having consummated her union with C and become one flesh with him, has given A the clear case and unquestionable right of declaring the first betrothal off. By this declaration or A's tacit acquiescence, B and C, too, are set free to cohabit, and should they thereafter repent, they may remain in wedlock with a free conscience, whether A on her part contract a new marriage or not. But if A should insist upon his right of claiming B as his wife regardless of her offense — though he should be earnestly dissuaded from this course — B could not consistently be discharged from her guilt until she returned to her duty.

A form of disloyalty to the duties assumed by betrothal and, in fact, a setting aside of the very essence of marriage under the guise of unchanged fidelity, is the refusal of the one party to pass from the incipient stage of married life in the form of betrothal to the subsequent state of cohabitation and consummated marriage. A is engaged to B. They have been betrothed for a year, two years, three years,

and in spite of A's most urgent requests, B has been continually putting off and persistently refuses to fix the wedding day. She has, during all this time, been a kind and interested friend to A, and a correspondent whose letters were couched in the most cordial and endearing terms. But the essence of her betrothal was her consent to be his wife, and that is precisely what she has hitherto refused to be. She has abused his patience, until he is determined to bring matters to a crisis. He requests and demands once more that she appoint the wedding day, and informs her that this will be his last appeal; that, if she should again refuse, he would submit her answer and, if such there be, her statement of cause, to two brethren in the congregation of which she is a member, with the request that they, too, would admonish her to come up to her duty, and that, if she should refuse to yield to such admonition, he would "tell it unto the church." — Is A right? Most certainly. And if the woman refuse to hear the church and fail to state good and sufficient cause for her refusal to be a wife to her husband, the church should pronounce her a heathen woman and a desertrix from the bond of marriage who has been making a mockery of God's holy institution, and the congregation should pronounce the innocent and injured party free to wed another. By this mode of procedure, Christian men and women in these and other cases of breach of betrothal will avoid taking the law in their own hands and being plaintiff, judge, and executor in their own case. And the church is bound to administer admonition and to sit in judgment also in such cases as these since, when the Head of the church says, *If thy brother trespass against thee*, and, *Tell it unto the church*,[1] he certainly does not exclude trespasses against the divine law of marriage.

There are, however, numerous cases of breach of betrothal in which there is, apparently or really, no injured

1) Matt. 18, 15—17.

party who might claim a remedy at the hands of the church. In many of these cases the motive may seem good and generous, praiseworthy rather than open to censure. And yet a breach of betrothal in such cases also is an offense against the will and word of God. Thus, if a person, engaged to another with parental consent freely given, would break off that engagement because the parental consent had been subsequently withdrawn, this would not be praiseworthy filial obedience, but culpable breach of betrothal. For *what God hath joined together, let not man*, and though he be a parent, *put asunder*,[1] and *we ought to obey God rather than men*.[2] Neither may valid betrothal be rightfully rescinded if, after the engagement, either party should meet with serious disaster to his or her health, property, honor, or estate, being impoverished, crippled, disfigured, deposed from office, excommunicated, implicated in crime and punished, etc. Betrothal, being essentially marriage, is "for better or for worse." Even if the party directly affected by such changes should offer to release the other and to cancel the engagement, that offer must be rejected and the relation must be sustained. Marriage cannot be dissolved by mutual agreement. And here we have entered upon another class of cases which are of frequent occurrence, that of separations by mutual understanding. A and B are engaged in valid betrothal. On better acquaintance with each other or with their mutual friends they learn to understand that they have made a grave mistake, that they are ill mated, that their dispositions and tastes and propensities and wants and aspirations *et cetera* are in painful and alarming disagreement. Their friends may have made the same observations. For a while, perhaps, quarrels are followed by reconciliations. But finally the time comes when all concerned are agreed that this unfortunate engagement should be canceled; rings

1) Matt. 19, 6. 2) Acts 5, 29.

and presents and letters are mutually returned, and both parties breathe a sigh of relief at being once more free. And when, in cases as those mentioned above, reverses of fortune have changed the matrimonial outlook, it is even looked upon as a duty incumbent upon the party directly stricken, to offer the other party leave to withdraw from a union in which the misfortune which has befallen one must be borne by both; the offer generously made is, perhaps readily, perhaps reluctantly, accepted, and the engagement is declared off. In these cases neither party is injured by the other; *volenti non fit injuria*. The parties are agreed; the state does not inhibit; friends and relatives do not interfere, but rather commend; even members of the congregation are apt to say, "If they are satisfied to separate, what is it to us? They must know best. Better now than later." And yet throughout the world, among all nations of all ages, in legislative halls, in courts of justice, in the text books of jurists, in systems of ethics, we find it to be a matter of common and nearly unanimous consent that marriage is a union for life and must not be dissolved by the mutual agreement of the parties. And according to the highest Authority, the rulings of Him who has instituted marriage as part and parcel of the creative order of things, and, consequently, for all times, betrothal is essentially marriage and, as such, cannot be rightfully dissolved by the will of the parties, but is subject to the injunction: "*What God hath joined together, let not man*, not even the parties themselves, *put asunder!*" In human legislation, strict justice and expediency are often at variance. In the moral law, what is enjoined as a duty is also conducive to the best interests of man and human society. Where the marriage bond is held sacred not only in consummated wedlock, but also in the form of lawful betrothal, a host of evils and heartsores are avoided, while, on the contrary, breach of betrothal is not only a wrong in its nature, but also an evil in its consequences. The sacredness

of marriage, if set aside in one form or stage of married life, is held of little consequence in any form or stage. Divorces would be of comparatively rare occurrence if the nature and significance, the dignity and obligation of betrothal or marriage engagements were properly understood and duly respected. The wanton disregard of marriage in its initiatory stage results in a low estimate of the entire institution. When the sacredness of the marriage bond is no longer a matter of conscience, to be respected also in the absence of the regulations in the penal code, the natural tendency is toward an increase of matrimonial cases in the courts which must interfere where the functions of conscience have failed of their proper effect or have been altogether suppressed. And a breach of betrothal is a sin which brings down upon the sinner and his accomplices and abettors the displeasure of a righteous God, and should expose the offender to the well regulated and energetic discipline of the church.

A. G.