THE CONVALIDATION OF NON-CATHOLIC MARRIAGES

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CAPPELLO has recently proposed the new theory that baptized non-Catholics are not subject to the norms of canons 1133 ff., and that accordingly in the simple convalidation of their marriages they do not need to be aware of the original nullity, since no new act of consent is required of them.[1]

On the one hand, he admits that they seem to be subject to the law, since no exception in favor of non-Catholics is mentioned in these canons, and the constant rule is that baptized non-Catholics are exempt from an ecclesiastical law only in so far as they are expressly declared exempt. But, on the other hand, he thinks there is solid reason to consider them exempt;

> . . . quia renovatio consensus in casu requiritur ut simplex conditio ex lege mere ecclesiastica seu ut elementum extrinsecum; ideoque videtur reducenda ad formam celebrationis matrimonii, quae forma plura sane complectitur. Hinc exempti a forma iuridica in nuptiis valide ineundis, videntur immunes quoque a lege de consensu renovando, ubi agitur de matrimonii convalidatione. Nullum auctorem de hac quaestione ex professo disserentem reperimus. Re mature considerata, censemus secundam sententiam solido niti fundamento, seu acatholicos baptizatos, exemptos a canonica forma celebrationis, non teneri ad renovationem consensus de qua in can. 1133.[2]

If solid probability is conceded to this opinion, grave practical consequences will follow. Matrimonial courts are often enough called upon to consider a marriage which took place while both parties were non-Catholics, and which was originally invalid because of some impediment that later ceased while the parties were still cohabitating. Often too it can be established with moral certitude that no new act of consent has taken place, for the parties were never aware of the original nullity.

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[1] *Jus Pontificium*, XX (1940), 25-27. [2] *Ibid.*, p. 26.

Hence if by reason of baptism the non-Catholic parties are subject to the norms of canons 1133 ff., the marriage remains unconvalidated. If, however, there is solid probability in Cappello's theory that even though baptized they are exempt from these canons, then the marriage was probably convalidated even without a renewal of consent, and henceforth will enjoy the *favor iuris* of canon 1014.

I. DISCUSSION OF THE THEORY

Cappello's sole argument is that the renewal of consent is required by eccelesiastical law as a simple condition, as an extrinsic element, and hence seems to be reduced to the form, which indeed embraces many things. The argument would be conclusive if he could show that ecclesiastical law has superadded to naturally sufficient consent *only one* condition or extrinsic element, or that the renewal of consent and the form are in whole or in part *the same* extrinsic element.

It is true that both the renewal of consent prescribed in canons 1133-1135 and the form prescribed in canons 1094-1098 are superadded extrinsic conditions. Neither belongs among the indispensable requisites demanded by the natural law for valid contractual consent, and neither is required in a valid marriage or convalidation between two pagans. But the question is: Are these two conditions identified at least in part? Is the renewal of consent part of, or included within, the other extrinsic conditions which is called the form?

"Forma plura sane complectitur," says Cappello. Since this is quite true and since the form is a somewhat complex thing, if the question is dropped with this general statement one may be left with the vague feeling that somewhere among the complexities of form the renewal of consent may possibly have its place.

The form under discussion in this question is, as indicated above, the juridical form prescribed in canons 1094-1098, and it is not to be confused with the sacramental form, which,

according to the more common opinion,[3] consists in the external manifestation of the mutual acceptation of matrimonial rights. Baptized non-Catholics are not and cannot be exempted from the sacramental form, for without it there can be no contract and hence no sacrament. And even in non-sacramental marriages among infidels, an externally manifested mutual acceptation of rights is essential to the contract.

What non-Catholics are exempt from, therefore, is not the external manifestation of mutual consent, but simply those formalities which the Church has superadded to the naturally sufficient manifestation of consent in order to guarantee that the contract will be provable in the external forum. The complexus of these superadded formalities is called the juridical or canonical form.

The elements that constitute the juridical form, though multiple, are not mysterious. The law of form is concerned solely with the witnesses before whom the matrimonial consent is to be manifested, and it prescribes that ordinarily there must be one authorized witness (the pastor or delegate) and two other witnesses, though in certain extraordinary circumstances (canon 1098) the authorized witness is not required. The manifold complications of this law merely indicate who can validly and licitly be these witnesses, and where and in what manner they are to assist. But the central fact remains that, whatever its complexities, the law of form deals exclusively with conditions needed to prove that the marriage has taken place. This is clear from an analysis of canons 1094-1098, and also from Cappello's very good summary of the history of the law of form.[4] Accordingly, when, over and above the naturally sufficient elements in a matrimonial contract, the ecclesiastical law adds the requirement that the consent be manifested before certain witnesses, the Church's purpose is simply to guarantee

[3]Cappello, *De Matrimonio* (ed. 4; Romae: Marietti, 1939), nn. 30-31.

[4]*De Matrimonio*, nn. 657-660.

that the contracted marriage will be provable in the external forum, and hence that clandestine marriages with all their abuses and dangers will be outlawed from Catholic society.

But the other law, that on convalidation, which demands a new act of consent made after the nullity has become known, *per se* is not concerned with witnesses at all; it binds, as in canon 1135, par. 2 and 3, even when the renewal need not be before witnesses, and accordingly even when no proof of the renewal is demanded.

It is true that whenever the impediment is public, that is, capable of being proved in the external forum, canon 1135, par. 1 demands that the renewal of consent be made in the prescribed form, for the obvious reason that the renewal may be provable, thus precluding the parties from having their convalidated marriage later declared null by reason of an impediment which they can prove in court. As Chelodi aptly says, in this case the renewal of consent must be in the prescribed form, "ut, prout de coniugii nullitate, ita et de convalidatione publice constet."[5]

When, however, the impediment is occult, the parties will not be able to prove the nullity of their marriage, and consequently the Church does not need proof of the convalidation, and does not demand that it be witnessed in the prescribed form.[6] Nevertheless, even in this case canons 1133-1135 still require a new act of consent made after the nullity has become known, though the renewal can be private, as Blat says: "forma celebrationis matrimonii non servata,"[7] or, as Cappello himself says elsewhere "sine parocho et testibus seu absque forma iure praescripta."[8]

Accordingly, since the prescribed renewal of consent is entirely separable from the form, as in canon 1133, par. 2 and 3,

[5] *Ius Matrimoniale* (ed. 3; Trento: Ardesi, 1921), n. 164.

[6] Cf. Woywood, *The Homiletic and Pastoral Review*, XXV (1925), 615.

[7] *De Sacramentis* (ed. 2; Romae: Institut. Pii IX, 1924), n. 549, 2.

[8] *De Matrimonio*, n. 845, 2.

it cannot be reduced to the form. And consequently the law of form and the law on renewal of consent are essentially different laws. When, therefore, canon 1099 exempts non-Catholics from the law of form prescribed in canons 1094-1098, it does not thereby exempt them from the altogether different law of canons 1133 ff. on the renewal of consent.

Cappello's theory on the exemption of baptized non-Catholics from the renewal of consent, must, by his own admission, stand or fall with his sole argument, just examined. For he himself not only admits but insists that there can be no other argument for it. Someone, he says, claims a stronger argument is available. Who this "someone" may be, he does not mention, but, since he himself says, "nullum auctorem de hac quaestione ex professo disserentem reperimus," one may venture the conjecture that the "someone" was an oral critic or perhaps a censor. In reply Cappello writes:

> Quidam affirmat haberi rationem *validiorem* pro asserenda exemptione acatholicorum baptizatorum a lege de renovando consensu. Quae tamen ratio *validior* silentio praeteritur eaque nos prorsus latet; immo firmiter nobis persuasum est huiusmodi rationem validiorem nullatenus exsistere. Nam, ipsa rei natura perspecta et canonibus 16 et 87 variisque decisionibus a S. Sede latis naviter attentis, nec defectus subiectionis legibus ecclesiasticis, nec bona fides, nec ignorantia legis in favorem acatholicorum, qui valide baptizati sint, potest in casu allegari. Quibus sepositis, alia ratio nec afferri valet, nec datur revera.[9]

Another critic or censor, he says in the same footnote, has asked how he can reconcile his theory with canon 1135, par. 2 and 3: "Quidam quaerit: quidnam in casu impedimenti occulti, cum sufficit renovatio consensus '*privatim et secreto*' ad normam can. 1135, par. 2 et 3?"

To this Cappello replies: "Huiusmodi hypothesis vix aut ne vix quidem verificari potest," and the rest of his answer is merely an endeavor to show in detail that *per se* there can be no non-Catholic marriages which can verify the requisites for

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[9] *Jus Pontificium*, XX (1940), 27, footnote.

private and secret convalidation under canon 1135, par. 2 and 3, since in a marriage between baptized non-Catholics there can never or hardly ever be a hidden impediment which can cease. His argument is as follows:

> Sane matrimonium nullum ob impedimentum dirimens, de quo agitur, nequit convalidari 'nisi *cesset* vel *dispensetur* impedimentum' (can. 1133, par. 1). At dispensatio numquam conceditur si *utraque* pars est acatholica, ut in casu. Manet igitur unica hypothesis quod impedimentum sponte cesset. Porro quaenam sunt impedimenta dirimentia, *quae cessant absque dispensatione?* Sunt haec: aetas, ligamen et disparitas cultus. Consulto omittimus impotentiam antecedentem ac perpetuam, quae ex gravi operatione chirurgica forte evanuerit, itemque cognationem legalem, *si* et *quatenus* ex lege civili constituat impedimentum *temporaneum.*
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> In casu nec est nec esse potest sermo de cultus disparitate, eo ipso quod uterque acatholicus baptizatus est. Manent alia duo impedimenta.
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> Impedimentum ligaminis natura sua *publicum* est ad normam can. 1037, quia matrimonii exsistentia, unde illud oritur, *per se* in foro externo probari potest. Id valet etiam de matrimonio secreto seu conscientiae, de quo in can. 1104-1107, cum legitima forma canonica ineatur. *Per accidens* impedimentum erit occultum, si exsistentia ligaminis sive coniugii iuridice nequeat probari. Etiam aetas natura sua est impedimentum *publicum,* cum in foro externo multiplici ratione comprobari possit.
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> Igitur impedimentum dirimens vere occultum ad tramitem can. 1037, *quod cesset sine dispensatione,* ita ut convalidationi, eo sublato, locus sit per renovationem consensus *'privatim et secreto'* factam, in casu de quo agitur per se non exsistit.

With all due reverence to so eminent a canonist, this reply seems to be beside the point. The question is not whether in non-Catholic marriages there can ever be a hidden impediment that verifies the conditions of canon 1135, par. 2 and 3. Nor is the question whether marriages of non-Catholics can be convalidated by a renewal of consent *privatim et secreto;* obviously they can, whether the impediment be public or occult, for canon 1099 exempts them from the form.[10] But the question at issue is: Can marriages of baptized non-Catholics be con-

[10]Cf. Chelodi, *Ius Matrimoniale,* n. 164; Mahoney, *The Clergy Review,* x (1935), 226-228; Payen, *De Matrimonio* (Zi-ka-wei: 1929), II, n. 2557, 3.

validated without the prescribed renewal of consent? Is this renewal of consent reducible to the form? More specifically: Can the last two paragraphs of canon 1135 be reconciled with a theory which reduces the law on renewal of consent to the law of form?

That no such reconciliation is possible, has been shown above from the fact that canon 1135 sharply distinguishes between the renewal of consent and the form, and decrees that when the impediment is public, the renewal must be made in the prescribed form (by those bound by the law of form), but that when the impediment is occult, the renewal must still be made even though the form may be entirely omitted. Hence, whether the conditions required in the canon for the cessation of a hidden impediment can be verified in both Catholic and non-Catholic marriages, or only in Catholic marriages, the fact still remains that canon 1135 separates the renewal of consent from the form and excuses from the form while obliging to the renewal of consent, and thus shows that the prescribed renewal is not reducible to the form.

Suppose, for the sake of argument, that Cappello is right in his contention that in non-Catholic marriages *per se* there cannot be an occult impediment which can cease without dispensation. This would merely show that the cessation of an occult impediment *per se* could be found only in Catholic marriages. But this is quite enough to destroy the force of the sole argument for his main theory. Take, for instance, two Catholics whose marriage is invalid because of an occult impediment which has now ceased. What must they do to convalidate it by means of simple convalidation, without a *sanatio in radice*? At least one of them must discover that the marriage was invalid, and then the party or parties aware of the original nullity must make a new act of consent, but in this renewal of consent they may entirely omit the form. Hence the law demanding their renewal of consent is not part of the law or form; for the mere fact that they are entirely excused from

the observance of the form, does not excuse them from the prescribed renewal of consent. Hence, similarly, the mere fact that by canon 1099 baptized non-Catholics are exempt from the law of form, does not exempt them from the law on renewal of consent, since this is not part of the law of form.

II. FURTHER CONSIDERATIONS

Though it is therefore not really relevant to the question at issue, it might be worth while, by way of digression, to examine more closely the argumentation Cappello uses above to prove that in a marriage between baptized non-Catholics there can never or hardly ever be a hidden impediment which can cease without dispensation.

1. In his apparently exhaustive enumeration he reduces to three the diriment impediments that can cease without dispensation, namely: age, marriage bond, and disparity of cult. He might have added also *raptus*, which ceases when the abducted or violently detained party has been restored to liberty; though one may readily grant that this will usually be a public impediment. But, with the exception of his brief reference to disparity of cult, Cappello make no mention of the now-abrogated pre-Code impediments which ceased without dispensation with the promulgation of the Code. Among them was the impediment of illicit affinity, which resulted from fornication with the brother, sister or first cousin, nephew or niece, uncle or aunt, child or grandchild, parent or grandparent, of the person one later married.[11] This impediment, accordingly, covered a good many possibilities. Moreover, it was not restricted to Catholics, and it was of its nature occult; for the fornication from which it resulted was a normally hidden fact no less than the adultery that gives rise to the impediment of crime, and which Cappello rightly calls "natura sua occultum."[12]

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[11]Cf. Noldin, *De Sacramentis* (ed. 7; Oeniponte: Rauch, 1908), n. 604.

[12]*De Matrimonio*, n. 200.

The pre-Code impediments abrogated by the Code cannot legitimately be excluded from this discussion, first, because the law demanding renewal of consent is not a new law introduced by the Code, and secondly, marriages which were invalid by reason of some pre-Code impediment, were not convalidated merely by the fact that the impediment ceased by abrogation at the time of the Code's promulgation. Hence the post-Code convalidation of such marriages is a post-Code question, to be decided according to the law of the Code.

Thus the Code Commission, on June 3, 1918, replied that such marriages were not revalidated by the promulgation of the Code,[13] and the President of the Commission later explained that this reply "definitely means that such marriages are to be validated in accordance with c. 1133 and the following canons."[14]

2. Moreover, in the discussion of marriage between baptized non-Catholics, Cappello's proof that the impediment of previous marriage bond is *natura sua* public, does not seem altogether conclusive. For that which *per se* makes a previous marriage a public or provable fact, is the juridical form in which the contract was celebrated. But if both parties are non-Catholics, they are exempt from the law of canonical form. Hence Cappello's further statement that even a secret marriage begets an impediment which is of its nature public, "cum legitima forma canonica ineatur," does not seem accurate in a context concerning the marriage of non-Catholics, who are not bound to observe the canonical form. And, moreover, if at least one of the parties has been baptized, the marriage from which the impediment of bond arises can be valid irrespective even of any civil form demanded by the law of the state.[15]

3. Furthermore, Cappello's exclusion of the impediment of

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[13]*Acta Apostolicae Sedis*, X, 346.

[14]Bouscaren, *Canon Law Digest* (Milwaukee: Bruce, 1934), I, Canon 1036.

[15]Cf. Vromant, *De Martrimonio* (ed. 4; Bruxelles: Desclée de Brouwer, 1938), n. 229; Mahoney, *The Clergy Review*, XVII (1939), 455; Dalpiaz, *Apollinaris*, IX (1936), 659; Schaaf, *The Ecclesiastical Review*, XC (1937), 182-188.

disparity of cult from the discussion, does not seem justifiable. "In casu," he says, "nec est nec esse potest sermo de cultus disparitate, eo ipso quod uterque acatholicus baptizatus est."

The fact is that the pre-Code impediment of disparity among non-Catholics ceased not only with the promulgation of the Code, but also in countless cases before that date, because the unbaptized party became baptized, usually in some Protestant sect. Hence, once the impediment had thus ceased, the question of convalidation referred to a marriage antecedent to which both non-Catholic parties had been baptized. Accordingly, even granting for the moment Cappello's restriction of the question to that of two baptized non-Catholics, thousands of pre-Code disparity cases rightly belong in this discussion, and in many of them the impediment was probably occult, owing to the impossibility of proving in court that one of the parties was still unbaptized at the time of the marriage; for few things are harder to prove than the negative fact of non-baptism.

In the light of all this, one may challenge Cappello's restriction of his question to a marriage in which both parties are not only non-Catholics but baptized, thus excluding from the discussion non-Catholic marriages in which only one party has been baptized. Though every writer is entitled to determine his own state of the question, (a) the above-mentioned restriction does not seem relevant to the real question at issue, and (b) Cappello's argument for his main theory, if it proved anything, would prove the exemption of two non-Catholics, whether one or both of them had been baptized.

a) His original question, as he himself states it, is: "Utrum acatholici, exempti a forma celebrationis matrimonii, subsint, necne, normis praefinitis in can. 1133 ss. ad simplicem convalidationem quod attinet."[16] As he well says, if both parties are *unbaptized* they are not subject to the Church's jurisdiction, and are therefore free from the ecclesiastical law concerning renewal of consent. The real question at issue, then, is whether

[16] *Jus Pontificium*, XX (1940), 25.

baptism makes a person subject to canons 1133 ff. on the renewal of consent. If it does, then these canons oblige in the convalidation of non-Catholic marriages not only when both parties are baptized, but also when only one of them is baptized; for, in this latter case, the law binds the baptized party directly and the unbaptized party indirectly. Dalpiaz points this out in a passage to be quoted below. If, on the other hand, Cappello is right, and the mere fact of baptism does not bind a person to the observance of these canons because baptized non-Catholics have been exempted from them, then in the convalidation of non-Catholic marriages the renewal of consent is required neither when both parties are baptized nor when only one of them is baptized; for, in this latter case, if the baptized non-Catholic party is exempt from the eccelesiastical law, *a fortiori* the unbaptized party will also be exempt.

b) Cappello's sole argument for his theory, as shown above, is that the renewal of consent required under canons 1133 ff. is reducible to the form; consequently, since the marriage of two non-Catholics is exempted by canon 1099 from the requirement of form, it seems thereby also exempted from the law on renewal of consent. Now if this argument were valid, it would hold not only when both non-Catholics had been baptized, but equally well when only one of them had been baptized, for this latter case is likewise exempt from the law of form.[17] Again, therefore, there seems to be no sufficient reason for restricting this discussion to the case in which both of the non-Catholic parties have been baptized.

III. CONCLUSION

To sum up, then, at the end of this long digression:—In the convalidating of a marriage between two non-Catholics, of whom at least one has been baptized, the parties cannot be exempt from the law on renewal of consent unless they are expressly so declared, as Cappello clearly and correctly explains,[18] for ecclesiastical laws *per se* bind all baptized persons

[17]Cf. canon 1099.

[18]*Jus Pontificium*, XX (1940), 26.

by reason of their baptism. Now, neither in the canons on convalidation nor anywhere else in the Code are non-Catholics explicitly declared exempt from the prescribed renewal of consent, nor can such an exemption be implicitly contained in canon 1099, which exempts non-Catholics from the law of form; for, as shown above, the prescribed renewal of consent cannot be reduced to the form.

Hence it is that all other writers who have hitherto discussed this question have unanimously held baptized non-Catholics subject to the canons on convalidation. Most authors, it is true, do not even touch upon this question. A few merely point out that canons 1133-1135 contain a purely ecclesiastical law which therefore is not binding upon the *unbaptized*. Thus De Smet,[19] and Genicot-Salsmans.[20] A number of other writers, however, treat the matter expressly. Gasparri, in reference to a marriage between two baptized non-Catholics that was invalid because of the impediment of age, says:

> Fingatur casus: Titius et Sempronia, acatholici baptizati, coram magistratu civili matrimonium contraxerunt nullum iure canonico non autem iure civili ob impedimentum *aetatis* ex parte mulieris: tractu temporis impedimentum cessavit, et modo coniuges, de conversione ad catholicam Ecclesiam cogitantes, volunt matrimonium convalidare: ad quid tenentur? Non est necessaria dispensatio ab impedimento, quia hoc iam cessavit; tenentur ad renovationem consensus, quia utraque pars est baptizata; non tenentur consensum renovare in forma canonica substantiali, quia haec eos non obligat (can. 1099); igitur satis est ut consensum renovent modo externo privato.[21]

Dalpiaz, in a rather complete explanation of the matter, has the following paragraphs relevant to the present question:

> Cum igitur novi Codicis leges vim retroactivam non habeant (cfr. AAS. 1918, pag. 346), matrimonia inter acatholicos propter impedimentum disparitatis cultus nulliter contracta per Codicem non sunt eo ipso convalidata, sed convalidatione indigent, quae, ablato iam impedimento, fit per reno-

[19] *De Sponsalibus et Matrimonio* (ed. 4; Brugis: Beyaert, 1927), n. 728.

[20] *Institutiones Theologiae Moralis* (ed. 13; Bruxellis: 1936), II, 537, nota 3.

[21] *De Matrimonio* (ed. 2; Typis Polyglottis Vaticanis, 1932), II, n. 1198.

vationem consensus (c. 1133, par. 1). Haec autem renovatio consensus ad validatatem requiritur, etiam si utraque pars consensum initio praestitum non revocaverit (c. 1133, par. 2), et debet esse 'novus voluntatis actus in matrimonium, quod constat ab initio nullum fuisse' (c. 1134). . . .

Cum lex de renovando consensu sit mere ecclesiastica, patet eam coniuges infideles non obligare ideoque eorum matrimonia, cessata invaliditatis causa, statim convalidari; si e contra etiam alterutra tantum pars sit baptizata, etsi extra Ecclesiam catholicam, utraque pars eadem lege adstringitur et quidem pars baptizata directe, pars vero non baptizata indirecte ob individuitatem contractus.[22]

Canon Mahoney, while discussing the convalidation of a marriage between two non-Catholics which was invalid by reason of pre-Code disparity of cult, points out that for convalidation the consent must be renewed according to the norms of canons 1133 ff., but that it need not be renewed in the prescribed form, since the non-Catholic parties are not bound by the law of form.[23] This same doctrine is aptly expressed also by Timlin,[24] Fallon,[25] and Schaaf.[26]

In conclusion, attention might be called to the fact that the Holy Office on March 8, 1899, gave an important decision relevant to the present question.[27] The case was that of Amalia, an unbaptized Protestant, who had married John, a baptized Protestant. After the marriage Amalia was baptized in a Protestant sect and continued to live with her husband for some time. Later, after a civil divorce, Amalia asked permission to marry a Catholic. The Archbishop who presented the case pointed out that Protestants do not know that a marriage between a baptized and an unbaptized person is invalid, and he therefore asked: Granted that the parties were ignorant of the fact that their marriage was invalid by reason of disparity of

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[22]*Apollinaris*, VI (1933), 360-363.

[23]*The Clergy Review*, X (1935), 226-228.

[24]*The Homiletic and Pastoral Review*, XLII (1941), 621 ff.

[25]*The Irish Ecclesiastical Record*, LV (1940), 428-429.

[26]*The Ecclesiastical Review*, XCIII (1935), 302.

[27]Gasparri, *Codicis Iuris Canonici Fontes* (Typis Polyglottis Vaticanis, 1926), IV, n. 1217; or *Acta Sanctae Sedis*, XXXI, 691-692.

cult, did the marital life of Amalia with John convalidate the marriage after the baptism of Amalia? To this the Holy Office replied, with the subsequent approval of Leo XIII:

Praevio iuramento ab Amalia in Curia N. N. praestando, quo declaret matrimonium contractum cum Ioanne post baptismum ipsius Amaliae, ab iisdem, scientibus illius nullitatem, ratificatum non fuisse in loco ubi matrimonia clandestina vel mixta valida habentur, et dummodo R. P. D. Archiepiscopus moraliter certus sit de asserta ignorantia sponsorum circa impedimentum disparitatis cultus, detur mulieri documentum libertatis ex capite ipsius disparitatis cultus.

It should be noted that in those days wherever the *Tametsi* had been promulgated, baptized Protestants were bound by the law of form just as much as Catholics, except where such concessions as the Benedictine Declaration were in force. In such places only marital cohabitation would have been needed for convalidation, if the prescribed renewal of consent were reducible to the form; for, in this hypothesis, the same circumstances which excused the parties from the observance of the form would thereby have excused them also from the need of a renewal of consent to be made after discovering the original nullity.

But the Holy Office indicated that this marriage between two non-Catholics would remain unconvalidated unless it were ratified by the parties not only in a place where they were excused from the form, but also "scientibus illius nullitatem," or, in other words, by a renewal of consent such as was later defined in canon 1134 as: "novus voluntatis actus in matrimonium quod constet ab initio nullum fuisse." Accordingly, the Holy Office added: "Archiepiscopus etc."

This decision of the Holy Office has just as much weight today as it had in 1899, for in the law on the renewal of consent required for convalidation the only change made by the Code was the abrogation of the old requirement that the party aware of the impediment should inform the other party—a point that has no bearing on the present question.