

riage may be declared null on the ground of fraud or duress. But, on examination, it will be found that this is only a way of amplifying the proposition long ago laid down (*Fulford's Case*, Ch. 482, 488, 493) that the voluntary consent of the parties is required. In the case of duress with regard to the marriage contract, as with regard to any other, it is obvious that there is an absence of a consenting will. But when in English law fraud is spoken of as a ground for avoiding a marriage, this does not include such fraud as induces a consent, but is limited to such fraud as procures the appearance without the reality of consent. The simplest instance of such fraud is personation, or such a case as that supposed by Lord Ellenborough in *Reg. v. Burton-on-Trent*, 3 M. & S. 537, or a man assuming a name to conceal himself from the person to whom he is to be married. In *Portsmouth v. Portsmouth*, 1 Hagg. Eccl. Rep. 355, and *Harrod v. Harrod*, 1 K. & J. 4, the fraud consisted in taking advantage of a mind not absolutely insane, but weak, to induce in the one case a man, in the other a woman, to enter into a contract which (to use the phrase of Vice-Chancellor Wood in the latter case) he or she did not understand. *Browning v. Reane*, 2 Phill. 69, and *Wilkinson v. Wilkinson*, 4 N. of C. 295, are other cases of the same kind.

In all these, and I believe in every case where fraud has been held to be the ground for declaring a marriage null, it has been such fraud as has procured the form without the substance of agreement, and in which the marriage has been annulled, not because of the presence of fraud, but because of the absence of consent. This is illustrated by the imaginary case suggested by Lord Campbell in *Reg. v. Mills*, 10 Cl. & F. 534, 735, of a mock marriage in a masquerade where the kind of result which fraud might have produced would be produced by mistake. In such an instance there would be no fraud, but for want of real consent the marriage would be declared void. But when there is no consent, no fraud inducing that consent is immaterial. Lord Stowell has at least three times expressed this in the most emphatic language. In *Wakefield v. Mackay*, 1 Phil. 134, 137, that learned judge said—"Error about the family or fortune of the individual though procured by disingenuous representations does not at all affect the validity of the marriage;" in *Ewing v. Wheatley*, 2 Consist. 183—"It is perfectly established that no disparity of fortune, or mistake as to the qualities of the person will impeach the *vinculum* of marriage," and in *Sullivan v. Sullivan*, 2 Consist. 248—"The strongest case you could imagine of the most deliber-