SUMMA SUMMÆ
S. THOMÆ

Billuart's own compendium of his commentary
on the Summa Theologiae of St. Thomas

by Charles-René Billuart, O.P.

TOMUS III — ON THE SECUNDA SECUNDAE

Faith · Hope · Charity · Right and Justice

Latin and English in parallel

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On Faith

Proem

1 (*D. Thomas, IIae IIae, from q. 1 to q. 16.*)

> *(*D. Thomas, IIae IIae, a q. 1 ad q. 16.*)*

2 [Since, as St. Thomas says in the prologue of II-II, all moral matter is reduced to the consideration of the virtues, and all virtues are to be further reduced to seven, the Angelic Doctor divides them into three theological and four cardinal virtues, and he undertakes an ordered treatment of them. Beginning therefore with the first, those virtues are called theological which look immediately to God and in a certain way attain him, insofar as they surpass human and natural aptitude and capacity; and for this reason they are not acquired by our acts, but are infused by God alone. Three, however, are commonly counted, namely faith, hope and charity, which we accordingly undertake to investigate here with the same Doctor from q. 1 to q. 44, proposing and resolving the principal questions that are wont to be raised concerning them.

> *[Cum, ut ait D. Thomas in prologo 2ae 2ae, omnis materia moralis ad considerationem virtutum reducatur, et omnes virtutes sint ulterius reducendae ad septem, eas Angelicus dividit in tres theologicas et quatuor cardinales, de quibus ordinate tractationem instituit. Incipiendo ilaque a primis, illae dicuntur theologicae, quae immediate Deum respiciunt et quodam modo attingunt prout humanam et naturalem superant aptitudinem et capacitatem, et propterea non nostris actibus acquiruntur, sed a Deo solo infunduntur. Tres autem communiter numerantur, scilicet fides, spes et charitas, quas ideo investigandas suscipimus cum eodem Doctore hic a q. 1 ad q. 44, praecipuas quaestiones quae circa eas agitari solent proponentes et solventes.*

3 First there is treated faith, which comes first at least in the order of generation.

> *Prius agitur de fide, qua ordine saltem generationis prima occurrit.*

4 We judge it opportune to set before this treatise a brief exposition of faith as outlined by the Vatican Synod itself in the constitution *Dei Filius*, chapter 3, on Faith.

> *Opportune praefigendum esse censemus huic tractatui breve syntagma de fide ab ipsa Vaticana synodo delineatum, in constit.* Dei Filius*, cap. 3, de Fide.*

5 « Since man depends entirely upon God as upon his Creator and Lord, and created reason is subject wholly to the uncreated truth, we are bound by faith to render to God who reveals full obedience of intellect and will. Now this faith, which is the beginning of human salvation, the Catholic Church professes to be a supernatural virtue, by which, with the inspiration and assistance of God's grace, we believe that the things revealed by him are true, not because the intrinsic truth of the things is seen by the natural light of reason, but because of the authority of God himself who reveals them, who can neither deceive nor be deceived. For faith is, as the Apostle testifies, the substance of things to be hoped for, the evidence of things that appear not, *Hebr.*, XI, 1.

> *« Cum homo a Deo tamquam Creatore et Domino suo totus dependeat, et ratio creata increatae veritati penitus subiecta sit, plenum revelanti Deo intellectus et voluntatis obsequium fide praestare tenemur. Hanc vero fidem, quae humanae salutis initium est, Ecclesia catholica profitetur virtutem esse supernaturalem, quam, Dei aspirante et iuvante gratia, ab eo revelata vera esse credimus, non propter intrinsecam rerum veritatem naturali rationis lumine perspectam, sed propter*

> *authoritatem ipsius Dei revelantis, qui nec falli nec fallere potest. Est enim fides, testante Apostolo, sperandarum substantia rerum, argumentum non apparentium,* Hebr.*, XI, 1.*

6 That nevertheless the obedience of our faith might be consonant with reason, God willed that external arguments of his revelation be joined to the internal assists of the Holy Spirit, namely divine facts, and above all miracles and prophecies, which, since they clearly display the omnipotence and infinite knowledge of God, are most certain signs of divine revelation and suited to the understanding of all. Wherefore both Moses and the prophets, and above all Christ the Lord himself, performed many and most manifest miracles and prophecies; and of the Apostles we read: But they going forth preached everywhere, the Lord working withal, and confirming the word with signs that followed, *Marc.*, XVI, 20. And again it is written: We have the more firm prophetical word, whereunto you do well to attend, as to a lamp that shines in a dark place, *II Petr.*, 1, 19.

> *Ut nihilominus fidei nostrae obsequium rationi consentaneum esset, voluit Deus cum internis Spiritus sancti auxiliis externa iungi revelationis suae argumenta, facta scilicet divina, atque imprimis miracula et prophetias, quae cum Dei omnipotentiam et infinitam scientiam luculenter commonstrent, divinae revelationis signa sunt certissima et omnium intelligentiae accommodata. Quare tum Moyses et prophetae, tum ipse maxime Christus Dominus multa et manifestissima miracula et prophetias ediderunt, et de Apostolis legimus: Illi autem profecti, praedicaverunt ubique, Domino cooperante et sermonem confirmante subsequentibus signis,* Marc.*, XVI, 20. Et rursum scriptum est: Habemus firmiorem propheticum sermonem, cui bene facitis attendentes quasi lucernam lucentem in caliginoso loco,* II Petr.*, 1, 19.*

7 Although the assent of faith is by no means a blind movement of the soul, no one nevertheless can consent to the preaching of the Gospel as he ought in order to obtain salvation, without the illumination and inspiration of the Holy Spirit, who gives to all men sweetness in consenting and believing the truth[1].

1 *Synod. Arausican.*, II, can. 7.

> *Licet autem fidei assensus nequaquam sit motus animi caecus, nemo tamen evangelicae praedicationi consentire potest sicut oportet ad salutem consequendam, absque illuminatione et inspiratione Spiritus sancti, qui dat omnibus suavitatem in consentiendo et credendo veritati*[1].
>
> 1 Synod. Arausican.*, II, can. 7.*

8 Wherefore faith itself, even when it does not work through charity, is a gift of God, and its act is a work pertaining to salvation, by which man renders free obedience to God himself, by consenting and cooperating with his grace, which he could resist.

> *Quare fides ipsa in se, etiamsi per charitatem non operetur, donum Dei est, et actus eius est opus ad salutem pertinens, quo homo liberam praestat ipsi Deo obedientiam, gratiae eius, cui resistere posset, consentiendo et cooperando.*

9 Further, by divine and Catholic faith all those things are to be believed which are contained in the word of God, written or handed down, and which are proposed by the Church, whether by solemn judgment or by her ordinary and universal magisterium, to be believed as divinely revealed.

> *Porro fide divina et catholica ea omnia credenda sunt, quae in verbo Dei scripto vel tradito continentur, et ab Ecclesia, sive solemni iudicio, sive ordinario et universali magisterio, tamquam divinitus revelata credenda proponuntur.*

10 But since without faith it is impossible to please God and to attain to the fellowship of his children, therefore no one has ever obtained justification without it, nor will anyone obtain eternal

life unless he shall have persevered in it unto the end.

> *Quoniam vero sine fide impossibile est placere Deo et ad filiorum eius consortium pervenire, ideo nemini unquam sine illa contigit iustificatio, nec ullus, nisi in ea perseveraverit usque ad finem, vitam aeternam assequetur.*

11 But that we might be able to satisfy the duty of embracing the true faith and of persevering constancy in it, God through his only-begotten Son instituted the Church, and endowed his institution with manifest marks, so that it could be recognized by all as the custodian and teacher of the revealed word. For to the Catholic Church alone belong all those things, so many and so marvelous, that have been disposed by God toward making evident the credibility of the Christian faith. Nay more, the Church by her very self, on account of her admirable propagation, her eminent sanctity and her inexhaustible fruitfulness in all good things, on account of her Catholic unity and invincible stability, is a great and perpetual motive of credibility and an irrefragable testimony of her own divine legation.

> *Ut autem officio veram fidem amplectendi, in eaque constanter perseverandi, satisfacere possemus, Deus per Filium suum unigenitum Ecclesiam instituit, suaeque institutionis manifestis notis instruxit, ut ea tamquam custos et magistra verbi revelati ab omnibus posset agnosci. Ad solam enim catholicam Ecclesiam ea pertinent omnia quae ad evidentem fidei christianae credibilitatem tam multa et tam mira divinitus sunt disposita. Quin etiam Ecclesia per se ipsa, ob suam nempe admirabilem propagationem, eximiam sanctitatem et inexhaustam in omnibus bonis faecunditatem, ob catholicam unitatem invictamque stabilitatem, magnum quoddam et perpetuum est motivum credibilitatis et divinae suae legationis testimonium irrefragabile.*

12 By which it comes about that she herself is like a standard lifted up unto the nations, *Is.*, XI, 12, and she both invites to herself those who have not yet believed, and makes certain her own children that the faith they profess rests upon a most firm foundation. To this testimony indeed an efficacious succor is added from supernatural virtue. For the most benign Lord arouses and helps by his grace even those who go astray, that they may be able to come to the acknowledgment of the truth; and those whom he has translated out of darkness into his admirable light, he confirms by his grace in this same light that they may persevere, never forsaking unless he is forsaken. Wherefore the condition of those who have adhered to the Catholic faith by the heavenly gift of faith is by no means equal to that of those who, led by human opinions, follow a false religion; for they who have received the faith under the magisterium of the Church can never have any just cause for changing that same faith or calling it into doubt. Which things being so, giving thanks to God the Father, who hath made us worthy to be partakers of the lot of the saints in light, let us not neglect so great salvation, but looking on the author of faith and finisher, Jesus, let us hold fast the confession of our hope without wavering, *Hebr.*, XII, 2 and X, 22. »]

> *Quo fit ut ipsa veluti signum levatum in nationes,* Is*., XI, 12, et ad se invitet qui nondum crediderunt, et filios suos certiores faciat firmissimo niti fundamento fidem quam profitentur. Cui quidem testimonio efficax subsidium accedit ex superna virtute. Etenim benignissimus Dominus et errantes gratia sua excitat atque adiuvat, ut ad agnitionem veritatis venire possint, et eos quos de tenebris transtulit in admirabile lumen suum, in hoc eodem lumine ut perseverent, gratia sua confirmat, non deserens, nisi deseratur. Quocirca minime par est conditio eorum qui per caeleste fidei donum catholicae fidei adhaeserunt, atque eorum qui, ducti opinionibus humanis, falsam religionem sectantur; illi enim qui fidem sub Ecclesiae magisterio susceperunt, nullam unquam habere possunt iustam causam mutandi aut in dubium fidem eandem revocandi. Quae cum ita sint, gratias agentes Deo Patri, qui dignos nos fecit in partem sortis sanctorum in*

lumine, tantam ne negligamus salutem, sed aspicientes in auctorem fidei et consummatorem Iesum, teneamus spei nostrae confessionem indeclinabilem, Hebr.*, XII, 2 et X, 22. »]*

On the Object of Faith

1 (*St. Thomas, q. 1.*)

*(*D. Thomas, q. 1.*)*

What is the object of faith?

1 [Faith is taken in various senses: 1° For fidelity in promises, as *1 Cor.*, X, 13: God is faithful, who will not suffer you to be tempted above that which you are able, and elsewhere. 2° For conscience, *Rom.*, XIV, 23: All that is not of faith is sin. 3° For confidence, *Jas.*, 1, 6: Let him ask in faith, nothing wavering. Faith understood in this sense is abused by Lutherans and Calvinists, who say we are justified by faith, that is, by the confidence by which we trust that sins are forgiven us through Christ. Which acceptation of faith, although in this sense it is to be rejected, is nevertheless to be admitted absolutely as an effect of faith, indeed even of hope; for from the fact that we believe God and hope in him, confidence in him is born. 4° For veracity or the inclination to speak the truth, *2 Tim.*, II, 11: A faithful saying: for if we be dead with him, we shall also live with him. 5° For the doctrine itself, that is, the object of faith, *Rom.*, X, 8: This is the word of faith which we preach.]

[Fides varie sumitur: 1° Pro fidelitate in promissis, ut I Cor.*, X, 13: Fidelis Deus est, qui non patietur vos tentari supra id quod potestis, et alibi. 2° Pro conscientia,* Rom.*, XIV, 23: Omne quod non est ex fide, peccatum est. 3° Pro fiducia,* Iacob.*, 1, 6: Postulet in fide, nihil haesitans. Fide hoc sensu intellecta abutuntur Lutherani et Calvinistae, dicentes nos iustificari per fidem, id est per fiduciam qua confidimus nobis remitti peccata per Christum. Quae acceptio fidei, licet hoc sensu sit reiicienda, absolute tamen est admittenda tamquam effectus fidei, imo et spei; ex eo enim quod Deo credimus et in ipso speramus, nascitur fiducia in ipsum. 4° Pro veracitate seu inclinatione verum dicendi,* II Tim.*, II, 11: Fidelis sermo; nam, si commortui sumus, et convivemus. 5° Pro ipsa doctrina, id est obiecto fidei,* Rom.*, X, 8: Hoc est verbum fidei quod praedicamus.]*

2 Faith is here taken 6° and properly for the supernatural virtue by which we believe truths revealed by God; and it is defined by the Apostle, *Hebr.*, XI, 1: The substance of things to be hoped for, the evidence of things that appear not. But, because every habit is specified by its object, and from that its nature is known, the Author begins this treatise from the object of faith, treating of the habit of faith itself below, q. 4. Adhering to which method,

Fides hic sumitur 6° et proprie pro virtute supernaturali qua credimus veritatibus a Deo revelatis; et definitur ab Apostolo, Hebr.*, XI, 1: Sperandarum substantia rerum, argumentum non apparentium. Sed, quia quilibet habitus a suo obiecto specificatur, et inde eius natura cognoscitur, Author hunc tractatum ab obiecto fidei incipit, de ipso fidei habitu infra, q. 4, acturus. Cui methodo inhaerens,*

3 **I say** 1°: The formal object which, or, as others call it, the object of attribution of faith, is first truth in being,[2] or God himself as God, exceeding natural reason; which I add, because God, as natural author, can be known by natural light independently of faith.

2 *2ae 2ae*, q. 1, a. 1, o.

***Dico** 1°: Obiectum formale quod, seu, ut alii vocant, obiectum attributionis fidei, est prima veritas in essendo*[2]*, seu Deus ipse ut Deus, excedens rationem naturalem; quod addo, quia Deus, ut author naturalis, potest lumine naturali cognosci*

independenter a fide.

[2] 2ae 2ae, *q. 1, a. 1, o.*

[4] *It is proved*.[3] That is the formal object of some habit which is principally attained by it, and by reason of which the other things are attained: thus health is the formal object of medicine, because it is principally attained by medicine, and by its reason the other things, pulse, urine, remedies, etc., are attained. Now first truth in being, or God, as true God, is that which is principally attained by faith; but the other things, as those pertaining to the humanity of Christ, to the sacraments, and whatever else is contained in the Sacred Scriptures, are attained in order to God as to that which is most excellent among all things, and that he may be known more and more. Therefore.

[3] *Ibid.*, et ad 1 et 2.

Probatur.[3] *Illud est obiectum formale quod alicuius habitus, quod principaliter ab eo attingitur, et ratione cuius caetera attinguntur: sic sanitas est obiectum formale quod medicinae, quia principaliter a medicina attingitur, et eius ratione caetera, pulsus, urina, medicamina, etc., attinguntur. Atqui prima veritas in essendo, seu Deus, ut verus Deus, est id quod principaliter a fide attingitur; caetera autem, ut quae pertinent ad humanitatem Christi, ad sacramenta, et quaecumque alia in sacris Scripturis contenta, attinguntur in ordine ad Deum tamquam ad id quod praestantissimum est inter omnia, et ut magis ac magis cognoscatur. Ergo.*

[3] Ibid., *et ad 1 et 2.*

[5] **I say** 2°: The formal object by which, or the proper quo, of faith is first truth in speaking, or the divine veracity revealing, connoting first truth in knowing, or the infinite wisdom of God.[4]

[4] *1ª p.*, q. 1, a. 1, o.

***Dico** 2°: Obiectum formale quo, seu suo quo, fidei est prima veritas in dicando, seu divina veracitas revelans, connotans primam veritatem in cognoscendo, seu infinitam Dei sapientiam*[4]

[4] 1ª p., *q. 1, a. 1, o.*

[6] *It is proved* as to the first part. The formal object by which of faith in common is the veracity of the speaker; for in this the assent of faith is distinguished from scientific assent, that the motive of the assent of faith is the authority of the speaker, while the motive of scientific assent is the truth of the principle from which the conclusion is elicited. Therefore the formal object under which of divine faith is the veracity of God speaking and revealing.

Probatur *prima pars. Obiectum formale quo fidei in communi est veracitas dicentis; in hoc enim distinguitur assensus fidei ab assensu scientifico, quod motivum assensus fidei sit authoritas dicentis, motivum autem assensus scientifici sit veritas principii ex quo elicitur conclusio. Ergo obiectum sub quo fidei divinae est veracitas Dei dicentis et revelantis.*

[7] *It is proved* as to the second part. Faith is certain and infallible. Therefore it must rely on an infallible motive. — I subsume. Now the divine veracity revealing does not have that it be infallible unless it connote the infinite wisdom of God. Therefore. — *Proof of the minor*. That the divine veracity revealing be infallible, it does not suffice that it cannot deceive out of malice, but it is required that it also cannot deceive out of ignorance, and therefore that God himself cannot be deceived in knowing. Now that God cannot be deceived in knowing proceeds from his infinite wisdom, by which he knows all things as they are, without any admixture of falsity. Therefore.

Probatur *secunda pars. Fides est certa et infallibilis. Ergo debet niti motivo infallibili. — Subsumo. Atqui veracitas divina revelans non habet quod sit infallibilis, nisi connotet infinitam Dei sapientiam. Ergo.* — Prob. min. *Ut veracitas*

divina revelans sit infallibilis, non sufficit quod fallere non possit ex malitia, sed requiritur quod etiam fallere non possit ex ignorantia, adeoque quod Deus ipse falli non possit cognoscendo. Atqui quod Deus falli non possit cognoscendo, provenit ex eius infinita sapientia, qua cognoscit omnia prout sunt, sine ulla falsitatis admixtione. Ergo.

8 **I say** 3°: The adequate material object of faith is everything revealed by God: God himself primarily, the rest secondarily.

***Dico** 3°: Obiectum materiale adaequatum fidei est omne revelatum a Deo: primario Deus ipse, caetera secundario.*

9 *It is proved*. The adequate material object of some power or habit is all that which it can attain, as it lies under its object, or under the formal ratio under which: thus every colored body is the adequate material object of the visual power, because it can attain it, as it lies under light, which is its formal ratio under which. Now faith attains everything revealed, as it lies under the truth of God revealing, which is its formal object under which, as was said: God however primarily, the rest secondarily, as was also said in the first conclusion. Therefore.

Probatur. *Obiectum materiale adaequatum alicuius potentiae vel habitus est id omne quod potest attingere, ut subest suo obiecto, seu rationi formali sub qua: sic omne corpus coloratum est obiectum materiale adaequatum potentiae visivae, quia potest illud attingere, ut subest luci, quae est eius ratio formalis sub qua. Atqui fides attingit omne revelatum, ut subest veritati Dei revelantis, quae est eius obiectum formale sub quo, ut dictum est: Deum tamen primario, caetera secundario, ut etiam dictum est conclusione prima. Ergo.*

10 *You will object* against the first part of the second conclusion: The formal object by which of faith, or, which is the same thing, the motive of the assent of faith, is that into which the assent of faith is ultimately resolved. Now that into which the assent of faith is ultimately resolved is not first truth in speaking, but first truth in being, or the Godhead. Therefore. — *Proof of the minor*. To one asking why you believe the mysteries of faith, v. g., that God is trine, you rightly answer: « Because God revealed it. » And to one asking further why you believe God revealing, you rightly again answer: « Because he is first truth in speaking. » But finally to one asking why God is first truth in speaking, nothing else remains to answer than: « Because God is, or he is first truth in being. » Therefore.

Obiicies *contra primam partem secundae conclusionis: Obiectum formale quo fidei, seu, quod idem est, motivum assensus fidei est id in quod ultimo resolvitur assensus fidei. Atqui id in quod ultimo resolvitur assensus fidei, non est prima veritas in dicando, sed prima veritas in essendo, seu deitas. Ergo.* — Prob. min. *Quaerenti, cur credas mysteriis fidei, v. g., Deum esse trinum, recte respondes: « Quia Deus revelavit. » Et ulterius quaerenti, cur credas Deo revelanti, recte iterum respondes: « Quia est prima veritas in dicando. » Sed tandem quaerenti, cur Deus sit prima veritas in dicando, nihil aliud restat respondendum, nisi: « Quia Deus est, seu est prima veritas in essendo. » Ergo.*

11 Nothing else remains to answer, than that because God is, assigning the cause of the thing, I concede; assigning the cause of the assent, I deny. Indeed for this reason God is truthful or first truth in speaking, because God is; but not for that reason do I believe the mysteries of faith, v. g., that God is trine, because God is, or he is first truth in being, but because he is truthful. For the assent of faith (which is to be diligently observed) is not discursive, but simple, and it rests solely in the testimony of the speaker, otherwise it is no longer the assent of faith: thus to one telling me that Rome exists, I assent because he is truthful, and there faith rests; but if you ascend and ask further: « Whence is he truthful? » now you run outside faith. Similarly therefore, to one asking why I believe God revealing, I rightly answer: « Because he is truthful », and there faith or the assent of faith rests, nor could it be

asked except foolishly why I believe truth or veracity; but if you ask further why God is truthful, now I shall answer, not as a believer, but as a theologian: « Because God is. »

> *Nihil aliud restat respondendum, nisi quia Deus est, assignando causam rei, conc.; assignando causam assensus, nego. Equidem ideo Deus est verax seu prima veritas in dicando, quia Deus est; at non ideo credo mysteriis fidei, v. g., Deum esse trinum, quia Deus est, seu est prima veritas in essendo, sed quia verax est. Assensus enim fidei (quod diligenter est observandum), non est discursivus, sed simplex, et in solo testimonio dicentis sistit, alioquin non est amplius assensus fidei: sic dicenti mihi Romam existere, assentior quia verax est, et ibi sistit fides; si autem ascendas et ulterius quaeras: « Unde verax est? » iam excurris extra fidem. Similiter ergo quaerenti, cur credam Deo revelanti, recte respondeo: « Quia verax est », et ibi sistit fides seu assensus fidei, nec nisi fatue posset quaeri, cur credam veritati seu veracitati; si autem ulterius quaeras, cur Deus sit verax, iam respondebo, non ut fidelis, sed ut theologus: « Quia Deus est. »*

Into what is the ultimate resolution of our faith?

1 The question is commonly proposed thus, but it comes to the same as if you asked what the motive of faith is. This can be understood in two ways: either of the motive for assenting to revealed truths, or of the motive or rule for discerning which things are revealed. The first is disputed among Catholics, the second between Catholics and heretics.

> *Quaestio sic communiter proponitur, sed perinde est ac si quaeras, quodnam sit motivum fidei. Quod potest intelligi dupliciter, vel de motivo assentiendi revelatis, vel de motivo seu regula discernendi quae sint revelata. Primum controvertitur inter catholicos, secundum inter catholicos et haereticos.*

2 [Protestants commonly hold that the motive and rule for discerning revealed truths is sacred Scripture, or the private spirit of each one, that is, the understanding breathed by the Holy Spirit into each one of the Scriptures he inspires.]

> *[Protestantes communiter volunt, motivum et regulam revelata discernendi esse sacram Scripturam, vel privatum cuiusque spiritum, hoc est afflatum Spiritus sancti unicuique intelligentiam Scripturarum inspirantis.]*

3 **I say** 1°: The motive for believing and assenting to revealed truths is the authority and veracity of God revealing, not the testimony or proposition of the Church.

> ***Dico** 1°: Motivum credendi et assentiendi revelatis est authoritas et veracitas Dei revelantis, non Ecclesiae testimonium seu propositio.*

4 *It is proved* — the first part, from the second conclusion of the preceding article. The motive for believing revealed truths is the formal object quo of faith; for that is called the formal object quo of a habit which is the medium and motive for attaining the formal object quod, as is clear from what has been said. Now the veracity of God revealing is the formal object quo of faith, as was said. Hence, to one asking why I believe God to be triune, I rightly answer: « Because God, who revealed it, is true. »

> Probatur *prima pars ex secunda conclusione articuli praecedentis. Motivum credendi revelatis est obiectum formale quo fidei; dicitur enim obiectum formale quo habitus, quod est medium et motivum attingendi obiectum formale quod, ut patet ex dictis. Atqui veracitas Dei revelantis est obiectum formale quo fidei, ut dictum est. Unde quaerenti, cur credam Deum esse trinum, recte respondeo: « Quia Deus, qui revelavit, est verax. »*

5 *It is proved* — the second part. The proposition or testimony of the Church in no way pertains to the formal object quo of faith. Therefore. — *Proof of the antecedent.* 1° Because it is something created; but nothing created can enter into the formal object of faith, any more than of hope and charity, otherwise they would not be purely divine and theological virtues. 2° The proposition of revealed

truths through the Church is related to faith just as the proposition of goodness is related to love; for just as the will cannot love an object unless it is proposed and known, so the intellect cannot believe unless revealed truths are proposed to it. Now the proposition of goodness, in relation to the will and love, is not its formal object, but only the application of the object and a condition sine qua non. Therefore, similarly, the proposition of revealed truths through the Church, in relation to the intellect and faith.

> Probatur *secunda pars. Propositio seu testimonium Ecclesiae nullo modo pertinet ad obiectum formale quo fidei. Ergo.* — Prob. ant. *1° Quia est aliquid creatum; nihil autem creatum ingredi potest obiectum formale fidei, sicut nec spei et charitatis, alioquin non forent virtutes pure divinae et theologicae. 2° Sic se habet propositio revelatorum per Ecclesiam respectu fidei, sicut se habet propositio bonitatis respectu amoris; sicut enim voluntas non potest amare obiectum, nisi propositum et cognitum, ita intellectus non potest credere, nisi sibi proponantur revelata. Atqui propositio bonitatis, respectu voluntatis et amoris, non est eius obiectum formale, sed tantum applicatio obiecti et conditio sine qua non. Ergo similiter propositio revelatorum per Ecclesiam, respectu intellectus et fidei.*

6 **I say** 2°: The rule for discerning revealed truths is not Scripture, nor the private spirit, but the Church alone.

> ***Dico** 2°: Regula discernendi revelata, non est Scriptura, neque spiritus privatus, sed sola Ecclesia.*

7 *It is proved* — the first part. The rule for discerning revealed truths from non-revealed ones must be incorruptible; otherwise it would expose one to error. Now Scripture is not incorruptible; for it can be corrupted and is corrupted daily, whether through the carelessness of typesetters or the malice of men; hence nothing certain can be drawn from it so long as it is not proposed by the Church as authentic and as containing the revealed truths. Therefore. The same must be said of the Creed, which, being scripture, is also liable to corruption, and besides does not contain all the revealed truths, any more than sacred Scripture does.

> Probatur *prima pars. Regula discernendi revelata a non revelatis, debet esse incorruptibilis; alias exponeret errori. Atqui Scriptura non est incorruptibilis; corrumpi enim potest et quotidie corrumpitur, sive ex incuria typographorum, sive malitia hominum: unde ex illa nihil certi erui potest, quamdiu ab Ecclesia non proponitur ut authentica et ut continens revelata. Ergo. Idem dicendum est de Symbolo, quod cum sit scriptura, etiam est obnoxium corruptioni, et aliunde non continet omnia revelata, sicut nec sacra Scriptura.*

8 *It is confirmed.* Scripture is obscure in many places. Therefore another rule must be assigned for drawing out its true and legitimate meaning.

> Confirmatur. *Scriptura in multis est obscura. Ergo debet assignari alia regula sensum eius verum et legitimum eruendi.*

9 *It is proved* — the second part. 1° The rule for discerning revealed truths from non-revealed ones must be certain, and not doubtful. Now the Spirit breathed by God into each one is not certain, but doubtful; for Calvinists deny that it is in Lutherans, Lutherans in Calvinists, and both in Catholics. 2° A sufficient rule for discerning revealed truths from non-revealed ones must be able to settle controversies in this matter. Now the private spirit of each one not only cannot settle controversies about revealed and non-revealed matters, but rather from it there have continually sprung schisms and dissensions, just as if in civil affairs everyone were constituted judge in his own cause. For if a Calvinist says, from his private spirit, that this article is revealed, a Lutheran will deny it, and a Catholic too will deny it, equally from his private spirit. Who will settle the controversy? Who will be able to instruct and convince the other? And hence so many sects mutually opposed among the

heretics themselves. 3° Here we are not dealing with private revelation which God can extraordinarily make to some private person, as he once made to the first parents, the patriarchs, the prophets, and the Apostles — in which case the interior light given, or the immediate revelation itself, would be the rule for discerning what must be believed; but we are dealing with revelation common to the whole society of the faithful, and therefore the proposition must be common, not private. On both parts of this see more in the following treatise, dissertation III, article 6.

> Probatur *secunda pars. 1° Regula discernendi revelata a non revelatis debet esse certa, et non dubia. Atqui Spiritus Dei unicuique afflatus non est certus, sed dubius; Calvinistae enim negant esse in Lutheranis, Lutherani in Calvinistis, utrique in Catholicis. 2° Regula sufficiens discernendi revelata a non revelatis debet posse dirimere controversias in hac materia. Atqui privatus spiritus cuiusque non solum non potest controversias circa reve lata et non revelata dirimere, sed e contra ex eo nata sunt sequi continuo schismata et dissensiones, non secus ac si in civilibus unusquisque constitueretur iudex in propria causa. Dicat enim Calvinista, ex suo privato spiritu, hunc articulum esse revelatum, negabit Lutheranus, negabit et Catholicus, ex suo pariter privato spiritu. Quis dirimet controversiam? Quis poterit alterum instruere et convincere? Et hinc tot sectae sibi contrariae inter ipsos haereticos. 3° Hic non agitur de revelatione privata quam Deus extraordinarie potest alicui privato facere, sicut fecit olim primis parentibus, patriarchis, prophetis et Apostolis, in quo casu lumen interius datum, vel ipsa immediata revelatio, foret regula discernendi credendum; sed agitur de revelatione communi toti societati fidelium, ideoque propositio debet esse communis, et non privata. De hac utraque parte plura vide tract. seq., dissert. III, a. 6.*

10 The third part follows from what has been said, and it is proved both from the notes of the Church and the motives of credibility, of which below, and from the Scriptures, from which we have that the Church is directed by the Holy Spirit and infallible: *Matt.*, XVI, 18: The gates of hell shall not prevail against her. *1 Tim.*, III, 15, she is called the pillar and firmament of truth.[5] *Matt.*, XXVIII, 20: Behold I am with you all days, even to the consummation of the world.

5 Editor's note: the print reads "I Tim., II, 15", but the verse quoted ("columna et firmamentum veritatis") is I Tim. III, 16; this appears to be a printer's error.

> *Tertia pars sequitur ex dictis, et probatur tum ex notis Ecclesiae et motivis credibilitatis, de quibus infra, tum ex Scripturis, ex quibus habemus Ecclesiam esse a Spiritu sancto directam et infallibilem:* Matth.*, XVI, 18: Portae inferi non praevalebunt adversus eam.* I Tim.*, III, 15, dicitur columna et firmamentum veritatis.*[5] Matth.*, XXVIII, 20: Ecce ego vobiscum sum omnibus diebus, usque ad consummationem saeculi.*
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> 5 *Editor's note: the print reads "I Tim., II, 15", but the verse quoted ("columna et firmamentum veritatis") is I Tim. III, 16; this appears to be a printer's error.*

11 The heretics have one thing to object, namely that we commit a circle in the resolution of our faith. For, they say, we believe revelation on account of the authority of the Church, and we believe the authority of the Church on account of revelation.

> *Unum habent quod opponant haeretici, nempe nos committere circulum in fidei nostrae resolutione. Nam, inquiunt, credimus revelationem propter authoritatem Ecclesiae, et credimus authoritatem Ecclesiae propter revelationem.*

12 *I answer.* 1° We believe the authority of the Church not only on account of revelation, but also and primarily on account of the notes of the Church herself and the motives of credibility. Hence in this respect there is no circle. 2° Even if we believe the authority of the Church on account of revelation, it is not under the same aspect under which we believe revelation on account of the authority of the Church, but under a different one. We believe revelation on account of the authority of the Church as applying that revelation; but we believe the authority of the Church on account of revelation or divine

veracity, as on account of the formal motive of assent; and thus in a different genus of cause. Now it is the ordinary case that causes are causes of one another in different genera. Thus fire depends upon application, as upon a condition, in order to burn, and the application depends upon the combustive power of fire, as upon an efficient cause. From this it is clear that our circle, in this respect, is only material, and not formal, nor vicious; a circle is vicious whose nature is to run from one thing to another and back again under the same aspect.

> Resp. *1° nos credere authoritatem Ecclesiae, non solum propter revelationem, sed etiam et primario propter notas ipsius Ecclesiae et motiva credibilitatis. Unde ex hac parte nullus est circulus. 2° Etsi credamus authoritatem Ecclesiae propter revelationem, non sub eadem ratione sub qua credimus revelationem propter authoritatem Ecclesiae, sed sub diversa. Credimus revelationem propter authoritatem Ecclesiae, ut applicantis ipsam revelationem; cre dimus autem authoritatem Ecclesiae propter revelationem seu veracitatem divinam, tamquam propter motivum formale assensus, et sic in diverso genere causae. Ordinarium autem est quod causae sint sibi invicem causae in diverso genere. Sic ignis pendet ab applicatione, tamquam a conditione, ut comburat, et applicatio a virtute combustiva ignis, tamquam a causa efficiente. Ex quo patet circulum nostrum ex hac parte esse materialem tantum, et non formalem, nec vitiosum, de cuius ratione est quod sit ab uno ad aliud, et vicissim, sub eadem ratione.*

13 This twofold answer is usually explained by the familiar and common example of a messenger carrying the letters of a king. When the trustworthiness of the messenger is not certain, his signs are looked into; once it is established, the letters of the king are accepted on account of the trustworthiness of the messenger: but what is contained in the king's letters is believed, not on account of the trustworthiness of the messenger, but on account of the trustworthiness of the king; and if in the king's letters the trustworthiness of the messenger is asserted, it is thereby confirmed and more firmly believed on account of the trustworthiness of the king. Apply this to the case.

> *Haec duplex responsio familiari et vulgari exemplo nuntii deferentis litteras regis solet explicari. Quando non est certa nuntii veracitas, inquiruntur eius indicia; ubi de illa constat, acceptantur litterae regis propter veracitatem nuntii: at contentis in litteris regis creditur, non propter veracitatem nuntii, sed propter veracitatem regis, et si in litteris regis asseratur veracitas nuntii, ea firmatur atque magis creditur propter veracitatem regis. Applica casui.*

14 The Church proposes that this and that is revealed by God. Concerning the veracity and infallibility of the Church we have certainty from her notes and motives of credibility, on account of which these things are accepted and believed to be revealed in Scripture or tradition; but the revealed truths themselves contained in Scripture or tradition we believe on account of the authority and veracity of God revealing. Hence you see that the knowledge of the veracity of the Church, though it is strengthened by Scripture, nevertheless does not depend upon it necessarily; for when the Church was being born, there was no Scripture, and yet the veracity of the Church was noted and certain; but it is had primarily from her notes and motives of credibility, though we do not deny that it is confirmed by Scripture: and thus, on the one hand, there is no circle at all, and, on the other, there is no formal and vicious circle, in which one returns to the same thing under the same aspect — just as, conversely, happens in the private spirit of the heretics themselves; for they say they know that this Scripture is true, because their private spirit dictates it to them, and they say they know that they have a private spirit, because Scripture says so.

> *Ecclesia proponit hoc et istud esse a Deo revelatum. De veracitate et infallibilitate Ecclesiae nobis constat ex eius notis atque motivis credibilitatis, ob quam acceptatur et creditur haec esse in Scripturis vel traditione revelata; ipsis autem revelatis in Scriptura vel traditione contentis credimus propter authoritatem et veracitatem Dei revelantis. Hinc vides*

notitiam veracitatis Ecclesiae, licet per Scripturam firmetur, ab ea tamen non pendere necessario; nascente enim Ecclesia, non erat Scriptura, et tamen nota et certa erat veracitas Ecclesiae, sed primitus habetur ex eius notis et motivis credibilitatis, licet per Scripturam confirmari non diffiteamur: sicque ex una parte nullum esse circulum, et ex alia, non esse circulum formalem et vitiosum in quo reditur ad idem sub eadem ratione, sicut et contra contigit in ipso spiritu privato haereticorum; dicunt enim se scire hanc Scripturam esse veram, quia id ipsis dictat spiritus privatus, et dicunt se seire se habere spiritum privatum, quia id dicit Scriptura.

15 *I insist*. According to this solution, it follows that the certainty of our faith is not supreme and divine. — *It is proved* — the inference.

Inst. *Iuxta hanc solutionem, sequitur quod certitudo fidei nostrae non sit summa et divina.* — Probatur *illatio*.

16 It hangs, as from an antecedent, upon the veracity of the Church, which is had at first only from the notes and motives of credibility. Now the certainty of the consequent is measured and taken from the certainty of the antecedent. Therefore.

Pendet tamquam ab antecedente a veracitate Ecclesiae, quae primitus habetur tantum ex notis et motivis credibilitatis. Atqui certitudo consequentis mensuratur et sumitur ex certitudine antecedentis. Ergo.

17 *I answer.* I deny the inference. To the proof of the antecedent, I distinguish the minor. The certainty of the consequent is measured and taken from the certainty of the antecedent in discursive knowledge — I concede: thus the certainty of the conclusion is derived and measured from the certainty of the antecedent from which it is drawn. In simple knowledge, such as the knowledge of faith is, I deny it. This is clear in the very knowledge of principles, which is simple; for principles are not proved. Although a teacher may set before his disciples many preliminaries, examples, comparisons, suppositions, and other things, to explain them, once these have been explained and made known, the intellect gives its assent with certainty, even though the preliminaries were not certain, but at one time only probable, at another false; for the intellect does not assent to the principles on account of those things, but on account of their clearly seen truth.

Resp. *Nego illationem. Ad probat., dist. min. Certitudo consequentis mensuratur et sumitur ex certitudine antecedentis in notitia discursiva, conc.: sic certitudo conclusionis desumitur et mensuratur ex certitudine antecedentis ex quo eruitur. In notitia simplici, qualis est notitia fidei, nego. Patet in ipsa notitia principiorum, quae est simplex; principia enim non probantur. Quamvis magister plura praemittat praeambula, exempla, paritates, suppositiones et alia, ut ea discipulis exponat, iis semel expositis et notis, intellectus certo assentitur, quamvis praeambula non fuerint certa, sed tantum quandoque probabilia, quandoque falsa; neque enim propter illa assentitur principiis, sed propter perspectam eorum veritatem.*

18 Similarly in the case at hand. The proposition of the Church precedes as a preamble explaining what is revealed; once this has been explained and taken as supposed, the intellect assents to the revealed truth, not on account of the Church proposing it — for that is something extrinsic to the assent of faith — but on account of the veracity of God revealing, just as we said above that assent is given to what is contained in the letters of the king on account of the veracity, not of the messenger, but of the king.

Similiter in casu. Praecedit propositio Ecclesiae tamquam praeambulum explicans quid sit revelatum; hoc semel explicato et supposito, intellectus assentitur revelato, non propter Ecclesiam proponentem, id enim est quid extrinsecum assensui fidei, sed propter veracitatem Dei revelantis, sicut dicebamus superius assensum praeberi contentis in litteris regis, propter veracitatem, non nuntii, sed regis.

19 [It is objected also: If the judgment of the Church is required in order that what must be believed with divine faith may become known, her sentence will have to be awaited, so that it may become certain that some doctrine pertains to the faith. Hence the faithful could not even have believed the divinity of Christ with divine faith before the Council of Nicaea. But this is repugnant. Therefore.]

> *[Obiicitur etiam: Si Ecclesiae iudicium requiritur ut quae fide divina credenda sint innotescat, eius sententia erit expectanda, ut certum fiat doctrinam aliquam ad fidem pertinere. Unde fideles nequidem divinitatem Christi fide divina credere potuissent ante concilium Nicaenum. Atqui hoc repugnat. Ergo.]*

20 *I answer.* This argument confuses the definition given by the Church concerning the articles to which the heterodox object, with the general and public consent of the Church. Whatever is known with certain and infallible reason to be contained in the word of God pertains to divine faith. That becomes known both from the constant sense and doctrine of the Church, and, where this doctrine seems darkened by new errors, through the decretorial judgment of the Church, which then does not create and introduce a new truth, but authentically and solemnly affirms her constant and universal faith, so that the Christian people, fortified against error, may be confirmed and strengthened in their former and ancient faith.

> Resp. *Confundit hoc argumentum definitionem datam ab Ecclesia circa articulos quibus contradicunt heterodoxi, cum generali et publico Ecclesiae consensu. Ad fidem divinam pertinet quidquid certa et infallibili ratione scitur in verbo Dei esse contentum. Illud autem innotescit tum ex constanti sensu et doctrina Ecclesiae, tum, ubi haec doctrina videtur novis erroribus obnubilata, per decretorium iudicium Ecclesiae, quae tunc non veritatem novam creat et inducit, sed fidem suam constantem et universalem authentice et solemniter affirmat, ita ut populus christianus, contra errorem munitus, in fide sua pristina et antiqua confirmetur et roboretur.*

21 It is objected besides: The Catholic way, as proposed, abounds in so many and so great difficulties that the multitude cannot follow it. Therefore the opposite way is to be preferred. — *Proof of the antecedent.* For a Catholic to be secure in his faith, he must know: 1° whether the Church is infallible; 2° whether the Roman Church is the true Church of Christ; 3° what the subject of infallibility is; 4° what this infallible Church teaches; 5° whether her decisions are clothed with all the conditions required for a legitimate judgment; 6° what the meaning of each judgment is; and many other things of this kind. Now it is far more difficult to discuss all these than to investigate the truth of the dogmas by way of examination. Therefore.

> *Obiicitur insuper: Via catholicis proposita tot et tantis difficultatibus scatet, ut multitudo eam sequi non possit. Ergo via opposita est anteponenda.* — Prob. ant. *Ut catholicus securus esse possit in sua fide, scire debet: 1° an Ecclesia sit infallibilis, 2° an Ecclesia Romana sit vera Christi Ecclesia, 3° quodnam sit infallibilitatis subiectum, 4° quid doceat haec infallibilis Ecclesia, 5° an eius decisiones omnibus conditionibus ad legitimum iudicium requisitis vestiantur, 6° quis sit cuiusque iudicii sensus, et alia eiusmodi multa. Atqui multo difficilius est haec omnia discutere, quam via examinis veritatem dogmatum investigare. Ergo.*

22 *I answer.* I deny the antecedent. To the proof, answering the first part: I deny the minor. For even if all these things had to be examined by a Catholic, there would be the greatest difference between a discussion of this kind and the examination of each individual dogma, as is clear. — Answer to the second part: I deny the major. If once a Catholic is persuaded that he is in the true Church of Christ, he will at once understand that, by following her, he cannot stray from the truth. Moreover, the arguments that demonstrate the divine origin and infallibility of the Church are obvious and suited to convince even unlearned minds. Protestants alleged that among Catholics there is dispute about the

subject of infallibility. But it has always been believed among us that the supreme power of judging in matters of faith was conferred by Christ upon the teaching Church, that is, the body of pastors. This rule, certain and safe from every danger of error, surely sufficed for the faithful. The greater and sounder part of theologians ascribed this magisterium personally to the Roman Pontiff, and at the same time to ecumenical councils, that is, assemblies of bishops judging together with the same Pontiff. After the Vatican Council, of which below, all Catholics firmly hold that the Roman Pontiff, fulfilling the office of teacher of all Christians and defining doctrine concerning faith or morals, is infallible — which takes nothing away from the collective infallibility of the Church together with the supreme Pastor teaching. Now this rule of faith is simple, obvious to all, and easiest in use. Therefore.

> Resp. *Nego ant. Ad prob. resp. 1°. Nego min. Etiamsi enim haec omnia examinanda forent catholico, maximum esset discrimen inter huiusmodi discussionem et examen singulorum dogmatum, ut patet. — Resp. 2°. Nego mai. Si catholico semel persuasum sit se esse in vera Christi Ecclesia, statim intelliget se, illam sequendo, a veritate aberrare non posse. Argumenta autem quae Ecclesiae divinam originem et infallibilitatem demonstrant, obvia sunt et ad convincendos etiam indoctorum animos accommodata. Allegabant Protestantes, inter catholicos disceptari de subiecto infallibilitatis. Sed semper apud nos creditum est, supremam potestatem iudicandi in rebus fidei Ecclesiae docenti, seu corpori pastorum, a Christo fuisse collatam. Haec certa et ab omni erroris periculo tuta regula fidelibus sane sufficiebat. Maior et sanior pars theologorum hoc magisterium Romano Pontifici personaliter adscribebat, et simul conciliis oecumenicis, id est coetibus episcoporum cum eodem Pontifice iudicantibus. Post concilium Vaticanum, de quo infra, omnes catholici firmiter tenent Romanum Pontificem omnium christianorum doctoris munere fungentem et doctrinam de fide vel moribus defi definientem, infallibilem esse : quod infallibilitati collectivae Ecclesiae cum supremo Pastore docentis nihil detrahit. Atqui haec regula fidei est simplex, omnibus obvia et usu facillima. Ergo.*

23 *You will ask* whether private revelations pertain to faith.

> Petes *utrum revelationes privatae pertineant ad fidem.*

24 *I answer.* Private revelations concerning things that are ordered to God as their supernatural author pertain to faith as it is a theological virtue, not as it is catholic.

> Resp. *Revelationes privatae de rebus quae ordinantur ad Deum ut authorem supernaturalem, pertinent ad fidem ut est virtus theologica, non ut est catholica.*

25 The reason of the former part is that for the notion of faith as a theological virtue only this is required: that it have God for its formal object quod, and the veracity of God revealing for its formal object under which; and this is found here. But the proposition of the Church is something extrinsic and accidental to faith as a theological virtue, as is clear in the angels in the wayfaring state, the first parents, the patriarchs, the prophets, and the Apostles, who had theological faith without the proposition of the Church.

> *Ratio prioris partis est, quia ad rationem fidei, ut est virtus theologica, requiritur tantum quod habeat Deum pro obiecto formali quod, et veracitatem Dei revelantis pro obiecto formali sub quo ; quod hic reperitur. Propositio autem Ecclesiae est quid extrinsecum et accidentale fidei ut est virtus theologica, sicut patet in angelis in via, primis parentibus, patriarchis, prophetis et Apostolis, qui habuerunt fidem theologicam absque propositione Ecclesiae.*

26 *Confirmation.* 1° The *Council of Trent*, session VI, chapter 12, decrees: « apart from special revelation, it cannot be known whom God has chosen for himself. » And canon 16 defines: « If anyone shall say that he will certainly have that great gift of perseverance unto the end, with absolute and infallible

certainty, unless he shall have learned this by special revelation; let him be anathema. » Therefore the sacred synod presupposes that private revelation can confer certainty of faith, and by that very fact that it is possible; otherwise the exception supposed in these places would become absurd.

> Confirm. *1°.* Concilium Trid.*, sess. vi, cap. 12, decernit, « nisi ex speciali revelatione, sciri non potest quos Deus sibi elegerit. » Et can. 16 definit : « Si quis magnum illud usque in finem perseverantiae donum se certo habiturum absoluta et infallibili certitudine dixerit, nisi hoc ex speciali revelatione didicerit ; anathema sit. » Supponit ergo sacra synodus privatam revelationem posse conferre certitudinem fidei, et hoc ipso hanc esse possibilem, cum alias inepta evaderet exceptio his in locis supposita.*

27 *Confirmation.* 2° Sacred Scripture, especially in *Heb.*, XI, recounts very many revelations made to the Fathers of the Old Testament, and elsewhere narrates similar ones which the Blessed Virgin, St. Joseph, Zacharias, and others received from God, and no one doubts that these pertained to their theological faith. In ecclesiastical history not a few examples of revelations of this kind are found concerning predestination and the death of certain saints, and other events, which it would be rash to refuse belief.

> Confirm. *2°. Sacra Scriptura, praesertim ad* Hebr.*, XI, recenset plurimas revelationes Patribus veteris Testamenti factas, et alibi similes narrat quas B. Virgo, S. Ioseph, Zacharias et alii divinitus acceperunt, et nemo dubitat eas ad fidem theologicam eorum pertinuisse. In historia ecclesiastica non pauca reperiuntur exempla huiusmodi revelationum circa praedestinationem et obitum aliquorum sanctorum, aliosque eventus, quibus fidem denegare temerarium foret.*

28 The reason of the latter part is that catholic faith, that is, universal, is concerned only with truths universal and common to the whole Church and to be proposed through the Church. Hence, if God were to reveal to some private person something pertaining to religion, that private person would be bound to believe it, but not others, even if he swore that it had been revealed to him; because it would not be proposed by the Church, which is the catholic rule for discerning revealed truths, as was said.]

> *Ratio posterioris partis est, quia fides catholica, hoc est universalis, versatur tantum circa veritates universales et communes toti Ecclesia et per Ecclesiam proponendas. Unde, si Deus alicui privato homini revelaret aliquid spectans religionem, iste privatus teneretur id credere, non vero alii, etsi iuraret id sibi fuisse revelatum ; quia hoc non proposeretur ab Ecclesia, quae est catholica regula discernendi revelata, ut dictum est.]*

Whether faith can rest upon what is false?

1 The sense of the question is twofold. First : Can God reveal falsehood, or lie ? Second : Can one elicit from divine faith a false assent, or believe something to be true and revealed by God which is not true nor revealed by God ?

> *Quaestionis sensus est duplex. Primus : An Deus possit revelare falsum, seu mentiri ? Secundus : An quis possit ex fide divina elicere assensum falsum, seu credere aliquid esse verum et a Deo revelatum, quod non est verum nec a Deo revelatum ?*

2 **I say** 1° : God cannot absolutely lie, or say what is false[6], according to that saying of the Apostle, *Hebr.*, VI, 18 : It is impossible for God to lie.

6 Ibid., a. 3, o.

> ***Dico** 1° : Deus non potest absolute mentiri, seu dicere falsum[6], iuxta illud Apostoli,* Hebr.*, VI, 18 : Impossibile est mentiri Deum.*

[6] *Ibid., a. 3, o.*

[3] *It is proved*. It is absolutely impossible for the first and essential truth to lie. But God is the first and essential truth. Therefore. — Proof of the major. To lie is to fall short of the truth. But it involves a contradiction for the first and essential truth to fall short of the truth ; otherwise it would fall short of itself, and thus would not be the first, essential, and unfailing truth.

> Probatur. *Est absolute impossibile primam et essentialem veritatem mentiri. Atqui Deus est prima et essentialis veritas. Ergo. — Prob. mai. Mentiri est deficere a veritate. Atqui implicat primam et essentialem veritatem a veritate deficere ; alias deficeret a seipsa, sicque non esset prima, essentialis et indeficiens veritas.*

[4] *Confirmed* 1°. If God could absolutely lie, our whole faith would waver. For whence should we know that He had not lied ? From revelation ? But about this very revelation there would be the same difficulty, the same doubt, whether He does not lie.

> Confirmatur *1°. Si Deus posset absolute mentiri, tota fides nostra nutaret. Unde enim sciremus non mentitum fuisse ? Ex revelatione ? Sed de hac revelatione foret eadem difficultas, idem dubium, an non mentiatur.*

[5] *Confirmed* 2°. A lie is intrinsically evil and a sin. Therefore it cannot be absolutely from God.

> Confirmatur 2°. *Mendacium est intrinsece malum et peccatum. Ergo non potest esse absolute a Deo.*

[6] **I say** 2° : Falsehood cannot be subject to faith on the part of the believer[7], that is, faith cannot incline toward a false assent, nor elicit it.

[7] Ibid.

> ***Dico** 2° : Fidei non potest subesse falsum ex parte credentis[7], id est, fides non potest inclinare ad assensum falsum, nec illum elicere.*
>
> [7] *Ibid.*

[7] *It is proved*. 1° Nothing is subject to a power or a habit, or even to an act, except through the formal reason of its object : just as color cannot be seen except through light, nor can a conclusion be drawn except through the middle term of a demonstration. But the formal reason of faith is the first truth in speaking, which, as we were just saying, cannot reveal falsehood. Therefore.

> Probatur. *1° Nihil subest alicui potentiae vel habitui, aut etiam actui, nisi mediante ratione formali sui obiecti : sicut color non potest videri, nisi per lucem, neque conclusio fieri potest, nisi per medium demonstrationis. Atqui ratio formalis fidei est prima veritas in dicendo, quae, ut modo dicebamus, non potest revelare falsum. Ergo.*

[8] 2° An intellectual virtue cannot be the principle of a false assent, just as the virtue of the rational appetite cannot be the principle of a vicious act. But faith is an intellectual virtue. Therefore. — Proof of the major. Every virtue is a good disposition and perfection of a power in relation to its object. But the object of the intellect is the true. Therefore.

> *2° Virtus intellectualis non potest esse principium assensus falsi, sicut virtus appetitus rationalis non potest esse principium actus vitiosi. Atqui fides est virtus intellectualis. Ergo. — Prob. mai. Omnis virtus est bona dispositio ac perfectio potentiae in ordine ad suum obiectum. Atqui obiectum intellectus est verum. Ergo.*

[9] Against the first conclusion certain apparent lies referred to in the Scriptures could be objected. But you have them abundantly solved in our larger Work, tract. *de Relig.*, dissert. IX, a. 2, where mental restriction is treated, of which we shall also speak below at the place cited.

Contra primam conclusionem opponi possent quaedam apparentia mendacia quae referuntur in Scripturis. Verum ea abunde soluta habes in maiori nostro Opere, tract. de Relig.*, dissert. IX, a. 2, ubi de restrictionibus mentalibus, de quibus etiam dicemus infra loco cit.*

On the obscurity in the object of faith and the evidence in the one attesting

1 *You will ask* 1° whether the object of faith is necessarily obscure and unevident.

Petes *1° utrum obiectum fidei sit necessario obscurum et inevidens.*

2 *I answer.* In the affirmative[8].

8 Ibid., a. 4, o.

Resp. *affirmative*[8].

8 Ibid., a. 4, o.

3 *It is proved* 1° from the Apostle, *Hebr.*, XI, 1, who says that faith is the evidence of things that appear not; and from Augustine, tract. xi, on *John*: « Faith is to believe what you do not see. »

Probatur 1° ex Apostolo, Hebr.*, XI, 1, dicente quod fides sit argumentum non apparentium, et ex Augustino, tract. xi, in* Ioann. *: « Fides est quod non vides credere. »*

4 *It is proved* 2° by reason[9]. Those things are said to be seen which of themselves move the intellect or the senses to knowledge of them, such as the first principles and conclusions evidently deduced from them, or sensible things duly presented to the senses. But the object of faith cannot of itself move the intellect or the senses to knowledge of itself, since it is not like the first principles, which become known from their very terms; nor like a conclusion, which is deduced from principles by an evident consequence; nor anything sensible, which is perceived by the senses. Therefore.

9 Ibid.

Probatur 2° ratione[9]*. Illa dicuntur videri, quae per seipsa movent intellectum vel sensum ad sui cognitionem, ut sunt prima principia et conclusiones ex ipsis evidenter deductae, vel sensibilia sensibus debite proposita. Atqui obiectum fidei non potest per se movere intellectum aut sensum ad sui cognitionem, cum non sit ad instar primorum principiorum, quae ex ipsis terminis innotescunt ; neque ad instar conclusionis, quae ex principiis per evidentem consequentiam deducitur ; neque aliquid sensibile, quod sensibus percipiatur. Ergo.*

9 Ibid.

5 *You will ask* 2° how obscurity stands with respect to the object of faith.

Petes *2° quomodo obscuritas se habeat ab obiectum fidei.*

6 *I answer.* Obscurity in the object of faith does not belong to the formal reason under which there is faith, but is only a condition sine qua non.

Resp. *Obscuritas in obiecto fidei non pertinet ad rationem formalem sub qua fidei, sed est tantum conditio sine qua non.*

7 *It is proved.* The formal reason under which there is faith is the motive and reason for assenting to the things that are believed. But the motive and reason why we assent to the things of faith is the first truth in speaking, as we said above, not obscurity; for I do not believe God to be triune because I do not see it, but because God, who is truthful, has revealed it — just as I do not believe Rome exists because I do not see it, but because a trustworthy man told me. Therefore.

> Probatur. *Ratio formalis sub qua fidei est motivum et ratio assentiendi rebus quae creduntur. Atqui motivum et ratio cur assentiamur rebus fidei est prima veritas in dicendo, ut diximus superius, non obscuritas ; non enim credo Deum esse trinum, quia non video, sed quia Deus, qui verax est, revelavit, sicut non credo Romam existere, quia non video, sed quia fide dignus mihi dixit. Ergo.*

8 It remains, therefore, that obscurity or unevidentness be required for the object of faith, just as the approach of fire for burning, the existence of a cause for causing, the apprehension of an end for moving the will.

> *Restat itaque quod obscuritas seu inevidentia requiratur ad obiectum fidei, sicut approximatio ignis ad comburendum, existentia causae ad causandum, apprehensio finis ad movendum voluntatem.*

9 *You will ask* 3° whether at least the evidence in attesting is compossible with faith.

> Petes *3° utrum saltem evidentia in attestante sit compossibilis cum fide.*

10 By evidence in attesting we understand the evidence, not of God revealing, nor of the thing revealed, but of the revelation itself, so that it be clearly established for me that it is from God, even though neither God nor the thing revealed is evident to me. Now this evidence can be considered in two ways: 1° alone, without any adjunct; 2° joined with this twofold cognition equally evident, that God cannot absolutely say what is false, and that he speaks in a natural sense, not metaphorical.

> *Per evidentiam in attestante intelligimus evidentiam, non Dei revelantis, neque rei revelatae, sed ipsius revelationis, ita quod mihi clare constet, quod sit a Deo, licet neque Deus, neque res revelata mihi sit evidens. Haec autem evidentia potest considerari dupliciter : 1° solitarie, sine aliquo adiuncto ; 2° coniuncta cum hac duplici cognitione pariter evidente, quod Deus non possit absolute dicere falsum, et quod loquatur in sensu naturali, non metaphorico.*

11 I suppose that evidence in attesting, taken alone, can stand with faith; because, however evident it may be to me that God reveals something, yet if it is not evident that he cannot say what is false, or that he does not speak in the literal sense, it will not be evident to me that things are so as God says, and thus the place of faith remains. Hence the question concerns evidence in attesting with the twofold cognition mentioned.

> *Suppono evidentiam in attestante solitarie sumptam stare posse cum fide ; quia, quantumvis sit mihi evidens Deum aliquid revelare, si tamen non sit evidens quod non possit dicere falsum, aut quod non loquatur in sensu litterali, non erit mihi evidens ita esse sicut Deus dicit, sicque remanebit locus fidei. Unde quaestio est de evidentia in attestante cum duplici cognitione dicta.*

12 *I answer.* Evidence in attesting, with its adjuncts, is compossible with faith.

> Resp. *Evidentia in attestante, cum suis adiunctis, est compossibilis cum fide.*

13 *It is proved.* That thing we believe by faith, to which we assent while it is unknown in itself on account of the sole authority of God attesting; for in this faith is distinguished from science and vision. But evidence in attesting, with its adjuncts, leaves the thing revealed unknown in itself; for it does not demonstrate the connection of the predicate with the subject, but only that it is revealed evidently, and as such to be certain. Therefore.

> Probatur. *Illud fide credimus, cui in seipso ignoto assentimur propter solam authoritatem Dei attestantis ; in hoc enim distinguitur fides a scientia et visione. Atqui evidentia in attestante, cum suis adiunctis, relinquit rem revelatam in se*

ignotam ; non enim demonstrat connexionem praedicati cum subiecto, sed tantum esse evidenter revelatam, et ut talem esse certam. Ergo.

Whether the mysteries of faith are evidently credible?

1 **I answer** : The mysteries of our faith are evidently credible[10], according to that of *Psal.*, XCI, 5 : Thy testimonies are become exceedingly credible.

10 Below, q. 5, aa. 1 and 2, o.

***Dico** : Mysteria fidei nostrae sunt evidenter credibilia[10], iuxta illud* Psal.*, XCI, 5 : Testimonia tua credibilia facta sunt nimis.*

10 Infra q. 5, a. 1 et 2, o.

2 *It is proved.* 1° That is evidently credible — with evidence, namely, not metaphysical but moral, excluding reasonable doubt — which is proved by competent witnesses, signs, and other extrinsic arguments. But the mysteries of our faith are of this kind. Therefore. — The minor will be clear from the motives of credibility to be set out below. — The major also is evident; for credibility, like truth, is not taken from within, from the connection of predicate with subject, or from what the thing is, but from extrinsic arguments, namely testimonies, signs, etc. Thus from the fact that competent witnesses affirm something at a trial, there is evidence, not that it is so — for they may lie — but that it is so credible and judgable, without reasonable fear of the other side.

Probatur. *1° Illud est evidenter credibile, evidentia scilicet non metaphysica, sed morali excludente rationabile dubium, quod idoneis testibus, signis et aliis argumentis extrinsecis probatur. Atqui sunt huiusmodi mysteria fidei nostrae. Ergo. — Min. patebit ex motivis credibilitatis infra exponendis. — Mai. etiam constat ; credibilitas enim non sumitur, sicut veritas, ab intrinseco ex connexione praedicati cum subiecto, seu ab eo quod res est, sed ab argumentis extrinsecis, scilicet testimoniis, signis, etc. Sic ex hoc quod in iudicio testes idonei aliquid affirment, habetur evidentia, non quod ita sit, possunt enim mentiri, sed quod sit ita credibile et iudicabile, absque rationabili alterius partis formidine.*

3 2° Nothing is knowable without the evidence of knowability, nor probable without the evidence of probability. Therefore neither is anything believable without the evidence of credibility.

2° Nihil est scibile sine evidentia scibilitatis, nec probabile sine evidentia probabilitatis. Ergo nec credibile sine evidentia credibilitatis.

4 [11]

11 Ibid., a. 4, ad 2.

11

11 Ibid., a. 4, ad 2.

5 3° The assent of faith ought to be prudent; for it is an act of virtue. And prudence dictates that nothing is to be believed except what is credible: For he that quickly believes, that is, rashly, is light of heart. *Eccli.*, xix, 4. But we are commanded to believe most firmly the mysteries of faith. Therefore they are supposed to be evidently credible, or worthy of faith.

3° Assensus fidei debet esse prudens ; est enim actus virtutis. Et prudentia dictat non esse credendum nisi quod est credibile : Qui enim cito, id est temere, credit, levis est corde. Eccli.*, xix, 4. Atqui iubemur credere firmissime mysteria fidei. Ergo supponuntur evidenter credibilia, seu fide digna.*

6 [*You will object* 1° : What is evidently credible is evidently true. But the mysteries of faith are not evidently true. Therefore.

> *[*Obi. *1° : Quod est evidenter credibile, est evidenter verum. Atqui mysteria fidei non sunt evidenter vera. Ergo.*

7 *I answer.* I deny the major. For truth, as was said, is sought from within, or from what the thing is; but credibility from testimonies and extrinsic motives.

> Resp. *Nego mai. Veritas enim, ut dictum est, petitur ab intrinseco, seu ab eo quod res est ; credibilitas autem a testimoniis et motivis extrinsecis.*

8 *I insist.* What is evidently credible is evidently possible. But, in divine things, to be possible and to be true are the same. Therefore.

> *Inst. Quod est evidenter credibile, est evidenter possibile. Sed, in divinis, idem est esse possibile et verum. Ergo.*

9 *I answer.* I deny the major; because possibility, like truth, is sought from within. Hence it sometimes happens that false things are more credible and more probable than true ones.

> Resp. *Nego mai. ; quia possibilitas, sicut veritas, petitur ab intrinseco. Unde aliquando contingit quod falsa sint credibiliora et probabiliora veris.*

10 *You will object* 2° : If the mysteries of faith were evidently credible, all to whom they are equally proposed would believe. But the consequent is false. Therefore.

> Obi. *2° : Si mysteria fidei essent evidenter credibilia, omnes quibus aequaliter proponuntur crederent. Atqui falsum consequens. Ergo.*

11 *I answer.* I deny the consequence, both because not all attend to them as they ought, but either from perversity of affection, or from carelessness for salvation, or because of the difficulty of the things to be believed in particular, remove their mind from examining them, and because they place an obstacle in the way of interior illumination, as was said elsewhere.

> Resp. *Nego sequelam, tum quia non omnes ad ea debite attendunt, sed vel ex pravitate affectus, vel ex incuria salutis, vel propter difficultatem credendorum in particulari, ab eorum examine intellectum amovent, tum quia ponunt obicem interiori illustrationi, ut alibi dictum est.*

12 *You will object* 3° : The mysteries of faith are opposed to reason. Therefore. — Proof of the antecedent. 1° They cannot be understood by reason. 2° They have no agreement with reason. 3° They can be attacked by arguments that cannot be dissolved by reason. Therefore.

> Obi. *3° : Mysteria fidei sunt rationi opposita. Ergo. — Prob. ant. 1° Non possunt per rationem intelligi. 2° Nullam habent cum ratione convenientiam. 3° Possunt oppugnari argumentis quae ratione dissolvi nequeunt. Ergo.*

13 *I answer.* I distinguish the antecedent. The mysteries of faith are opposed to reason apparently, I concede; truly and really, I deny. For true and real opposition cannot occur except between things of the same order, one of which directly excludes the other. But our reason is shut up within natural things, while the objects of faith are above nature. There cannot therefore be between them an opposition. true, whereby they would exclude one another, but only in this, that among the ideas of reason there is none that either clearly represents the truths of faith or even evidently excludes them: which opposition is merely apparent. Wherefore it must be diligently noted that it is one thing for something to be above reason, that is, that it is neither understood nor can be understood through

the ideas of reason, or that it exceeds and surpasses the grasp of our reason; another thing for it to be against reason, namely that it be evidently excluded through the ideas of reason, which exclusion would be wholly required for true and real opposition. Now the case stands thus between the mysteries of faith and reason, that reason simply does not grasp them. Hence, although they are above, they are not however against reason, nor can they be held by reason to be false.

> Resp. *Dist. ant. Mysteria fidei sunt rationi opposita apparenter, conc. ; vere ac realiter, nego. Etenim vera et realis oppositio dari non potest, nisi inter res eiusdem ordinis, quarum una directe excludit alteram. Ratio autem nostra concluditur intra res naturales, dum obiecta fidei sunt supra naturam. Non potest ergo inter eas esse oppositio vera, quae se invicem excludant, sed tantum in hoc, quod inter ideas rationis nulla sit quae veritates fidei vel clare repraesentet, vel etiam evidenter excludat : quae oppositio est mere apparens. Qua de re sedulo notandum est, aliud esse quod aliquid sit supra rationem, hoc est, quod per ideas rationis nec intelligatur nec intelligi possit, sive quod excedat et superet captum nostrae rationis ; aliud quod sit contra rationem, scilicet quod per ideas rationis evidenter excludatur, quae exclusio omnimode requireretur ad veram et realem oppositionem. Res autem ita se habet inter mysteria fidei et rationem, quod ratio ea solummodo non capit. Unde, licet sint supra, non sunt tamen contra rationem, nec pro falsis a ratione haberi possunt.*

14 To the first proof, I distinguish. That the mysteries cannot be understood by reason as to what they are and how they are, I concede; that they are and have a real object, I deny. Also in natural things there are many whose intrinsic mode of subsisting we by no means know, and yet we are certain that they truly exist.

> *Ad 1am probat., dist. Mysteria non possunt per rationem intelligi quid sint et quomodo sint, conc. ; quod sint et reale obiectum habeant, nego. In rebus quoque naturalibus plurima sunt quorum intrinsecum subsistendi modum minime cognoscimus, et tamen certi sumus quod revera existant.*

15 To the second proof, I distinguish. That the mysteries have no immediate agreement with reason, I concede; mediate, I deny. It is not denied that in every cognition some agreement with reason is necessary; for reason is the universal medium of all cognitions. But this agreement is mediate or immediate. In natural things, it is immediate, because reason is of itself apt to know them. But in things placed above nature, recourse is had in vain to the light of reason, which is not proportionate; an immediate agreement is undeservedly demanded which the essence of things does not allow. Recourse must therefore be had to mediate agreement, which consists in this, that on account of the infallible authority of God revealing we know many things that are not contained proximately in the ideas of reason, yet are understood by the light of reason to be most certain, since nothing is more consonant with reason than that full faith be given to God speaking.

> *Ad 2am probat., dist. Mysteria nullam habent cum ratione convenientiam immediatam, conc. : mediatam, nego. Non negatur in omni cognitione necessariam esse aliquam convenientiam cum ratione ; quia ratio est medium universale omnium cognitionum. Hac autem convenientia est mediata vel immediata. In rebus naturalibus, est immediata, quia ratio est per se apta ad eas cognoscendas. In rebus vero supra naturam positis, frustra recurritur ad lumen rationis, quod non est proportionatum, immerito exigitur convenientia immediata quam rerum essentia non patitur. Recurrendum est ergo ad convenientiam mediatam, quae in eo consistit, quod propter infallibilem authoritatem Dei revelantis cognoscimus multa quae in ideis rationis proxime non continentur, lumine tamen rationis certissima esse intelliguntur, cum nihil magis rationi consonum sit, quam ut Deo loquenti omnimoda fides sit adhibenda.*

16 To the third proof, I distinguish. That revealed truths can be attacked by arguments that cannot be dissolved by reason, apparently. I concede; truly and really, I deny. For a universal answer let it suffice

that, since it has been proved that the opposition between supernatural truths and the ideas of reason is merely apparent, the arguments brought from the principles of reason against the revealed mysteries cannot be truly and really insoluble, but only apparently. Let III *Contra gentes*, c. 7 be read on this question, where D. Thomas proves by several arguments what he asserts, namely: « Although the truth of the Christian faith exceeds the capacity of human reason, nevertheless those things which reason naturally has indwelling cannot be contrary to this truth. »]

> *Ad 3am probat., dist. Veritates revelatae oppugnari possunt argumentis quae ratione dissolvi non possunt apparenter conc. ; vere et realiter, nego. Pro universali responsione sufficiat quod, cum probatum sit oppositionem inter veritates supernaturales et ideas rationis non esse nisi apparentem, argumenta quae ex principiis rationis contra mysteria revelata afferuntur, non possint esse vere et realiter insolubilia, sed tantum apparenter. Legatur super hac quaestione III* Contra gentes*, c. 7, ubi D. Thomas pluribus argumentis probat quod asserit, scilicet : « Quamvis veritas fidei christianae humanae rationis capacitatem excedat, haec tamen quae ratio naturaliter indita habet, huic veritati contraria esse non possunt. »]*

17 *You will ask* 1° by what light the knowledge of credibility is had: by a supernatural or by a natural light?

> Petes *1° quo lumine habeatur cognitio credibilitatis : an supernaturali, an naturali ?*

18 *I answer.* It is more probably held to be had by natural light aided by some supernatural Light, namely the actual illuminations by which God illumines their intellect to perceive and judge the things that are of God; and it comes about that they attend to those things that are said and preached, as *Act.*, XVI, 14: The Lord opened the heart of Lydia, to attend to those things which were said by Paul; and that in them they observe and judge there to be divine credibility, to which faith finally follows.

> Resp. *probabilius haberi lumine naturali adiuto aliquo Lumine supernaturali, scilicet illustrationibus actualibus quibus Deus illuminat intellectum eorum, ad percipienda et iudicanda ea quae Dei sunt, et fit quod intendant iis quae dicuntur et praedicantur, sicut* Act.*, XVI, 14 : Dominus aperuit cor Lydiae, intendere his quae dicebantur a Paulo ; quodque in eis observent et iudicent esse divinam credibilitatem, ad quam tandem sequitur fides.*

19 *You will ask* 2° whether, in order that he believe something, it must necessarily be evident to him that the mysteries of faith are credible.

> Petes *2° utrum, ut aliquid credat, debeat necessario esse ipsi evidens mysteria fidei esse credibilia.*

20 *I answer.* Affirmatively. It is clear from what has been said; otherwise indeed he would believe imprudently. However, an equal evidence is not necessary for all; for sometimes the mere voice of the preacher suffices, with an interior light persuading the credibility of his words, as is clear in children and ruder believers believing the words spoken by pastors whom they know to speak in the name of the Church, in India believers believing missionaries preaching without miracles, in the Apostles following Christ at his mere call, before they had seen his miracles.

> Resp. *affirmative. Patet ex dictis ; alioquin enim imprudenter crederet. Attamen non aequalis omnibus est necessaria evidentia ; quandoque enim sufficit sola vox praedicantis, cum lumine interiori suadente dictorum credibilitatem, ut patet in pueris et rudioribus credentibus dictis a pastoribus, quos sciunt loqui nomine Ecclesiae, in India credentibus missionariis praedicantibus sine miraculis, in Apostolis sequentibus Christum ad solam eius vocationem, antequam eius miracula vidissent.*

On the Motives of Credibility of the Christian Religion, against Unbelievers, Commonly Called Deists

1 Unbelievers, or deists, are those who acknowledge a supreme being, that is, the true God, but deny that he revealed anything to men, and therefore regard the Christian Religion, with its mysteries, as a human fabrication. They will, however, be led by reason alone in matters that concern God, themselves, or others; and they acknowledge it as the one rule and judge of truth and life in all things.

> *Increduli seu deistae dicuntur, qui ens supremum seu verum Deum agnoscunt, sed negant eum quidquam revelasse hominibus, ideoque Religionem Christianam cum suis mysteriis figmentum humanum reputant. Volunt autem in his quae sive Deum, sive seipsos, sive alios spectant, sola ratione duci, eamque unam in omnibus et veritatis et vitae regulam ac iudicem agnoscunt.*

2 Hence they pass into various inventions. Some hold that the rational soul is material, and therefore deny its immortality; these are called Materialists; others acknowledge the rational soul to be spiritual and immortal. Some deny divine providence over human affairs, and that God punishes the wicked or rewards the good; others think the opposite. Some reckon justice and injustice to be mere words, and place the supreme rule in their own advantage; others subject the rational creature to certain duties toward God and its equals, according to the dictate of reason. Nor is it any wonder if they are thus torn apart among themselves; for since, as I said, they hold reason alone as their leader and rule, each one forges his own system at the nod of his own reason.

> *Hinc in varias abeunt adinventiones. Quidam censent animam rationalem esse materialem, ideoque negant eius immortalitatem, dicuntur Materialistae ; alii animam rationalem spiritualem et immortalem agnoscunt. Quidam negant providentiam divinam circa res humanas, Deumque mala punire aut bona praemiare ; alii contra sentiunt. Quidam iustitiam et iniustitiam non nisi verba reputant, summamque regulam in propria utilitate reponunt ; alii creaturam rationalem certis officiis erga Deum et aequales, secundum dictamen rationis, subiiciunt. Nec mirum, si sic inter se secindantur ; cum enim, ut dixi, unam rationem pro duce et regula habeant, quisque pro nutu suae rationis systema sibi cudit.*

3 Against this most pestilential error, subversive of all religion and gaining strength in these times, very many and most learned writings have appeared, in which its various systems are effectively assailed and the error utterly routed. But since I aim at brevity, for the benefit of studious youth, I think I have sufficiently accomplished my task if I have invincibly proved that the Christian Religion is divine, revealed and instituted by God. For this being granted, it plainly follows that all the things which it proposes to be believed, such as the mysteries of the Most Holy (it continues on p. 26).

> *Adversus hunc pestilentissimum errorem totius religionis eversivum et his temporibus invalescentem, plurima atque eruditissima prodierunt scripta, quibus varia eius systemata efficaciter impugnantur et error penitus profligatur. Verum ego compendio intendens in gratiam studiosae iuventutis, rem puto me sufficienter confecisse, si invicte probavero Religionem Christianam esse divinam, a Deo revelatam atque institutam. Hoc enim posito, palam sequitur omnia quae proponit credenda, ut sunt mysteria SS.*

4 Trinity and of the Incarnation, divine providence over human affairs, the immortality of the soul, the laws of morals, original sin, the eternity of punishments, the resurrection of the dead, the sacraments, etc., are true, and that to them a certain and undoubted faith must be given, notwithstanding their incomprehensibility; for God can neither be deceived nor deceive, as the deists

themselves concede; and thus all their fabrications and sophisms vanish. And since these men listen to reason alone, I shall assail them also by reason alone, setting forth the principal motives of credibility of the Christian Religion, against which no one can stand, unless he extinguish within himself the light of human reason.

> *Trinitatis et incarnationis, providentia divina circa res humanas, immortalitas animae, leges morum, peccatum originale, aeternitas poenarum, resurrectio mortuorum, sacramenta, etc., esse vera, eisque certam et indubitatam fidem esse adhibendam, non obstante eorum incomprehensibilitate ; Deus enim nec falli nec fallere potest, ut concedunt ipsi deistae ; sicque evanescunt omnia illorum figmenta et sophismata. Et cum hi solam rationem audiunt, etiam sola ratione eos impugnabo, exponendo praecipua motiva credibilitatis Religionis Christianae, quibus nemo, nisi humanae rationis lumen in se exstinguat, resistere potest.*

5 I argue, therefore, as follows. Reason persuades, indeed compels — unless it be wholly inverted and disordered — to acknowledge as true, revealed and instituted by God, that religion which, first, the prophets foretold long beforehand; secondly, which its author and his coworkers alike confirmed by the prophecies fulfilled and by most manifest miracles; finally, thirdly, which by the power of God alone was born, grew up, and was spread through the whole world against all the laws of human prudence. Now this is the Christian Religion. Therefore. — The major they cannot deny; for the three arguments assigned are the most evident proofs of divinity. Therefore only the minor needs to be proved. Whence it will be demonstrated in the following articles.

> *Sic ergo argumentor. Ratio suadet, imo cogit, nisi sit prorsus inversa et turbata, agnoscere hanc religionem esse veram, a Deo revelatam et institutam, quam 1° prophetae longe antea praenuntiarunt ; 2° quam eius author et illius cooperatores pariter prophetiis adimpletis et patentissimis miraculis confirmarunt ; 3° denique, quae sola virtute divina contra omnes humanae prudentiae leges est nata, adulta et per orbem universum propagata. Atqui haec est Religio Christiana. Ergo. — Maiorem negare non possunt deistae ; tria enim assignata sunt evidentissima divinitatis argumenta. Sola ergo minor est probanda. Unde in sequentibus articulis demonstrabitur.*

6 [Although reason alone can find the motives of credibility of the Christian Religion, proofs of this kind also belong to faith, as defined by the Vatican Synod thus decreeing: « If anyone shall say that divine revelation cannot be made credible by external signs, and that therefore men ought to be moved to faith by internal experience alone, or by private inspiration of each one: let him be anathema. »]

> *[Quamvis sola ratio motiva credibilitatis Religionis Christianae invenire possit, huiusmodi probationes etiam ad fidem pertinent, ut definitum est a synodo Vaticana ita decernente : « Si quis dixerit, revelationem divinam externis signis credibilem fieri non posse, ideoque sola interna cuiusque experientia aut inspiratione privata homines ad fidem moveri debere ; anathema sit. »]*

What is prophecy? Is it possible?

1 [**I say** 1°, with St. Thomas, 2ae 2ae, q. 171, a. 1 : « Prophecy consists first and principally in cognition,. namely, that prophets know things distant and remote from human knowledge... Prophecy secondarily consists in speech, insofar as prophets announce to others, for their edification, the things they know by divine instruction, according to *Isa.*, XXI, 10 : What I have heard from the Lord of hosts, the God of Israel, I have declared unto you. » Prophecy comes from two Greek words, προ, before, and φημί, I speak, and signifies in general an announcement made beforehand of an event. It is commonly defined thus : « A sure presentiment and prediction of some event which could not have

been foreknown from natural causes. » Or more narrowly : « The manifestation of a future thing hidden from creatures. » From this notion of prophecy it is clear that three conditions are required for it to be truly and properly such, namely : 1° that it be a sure prediction, not conjectural ; 2° that it be a prediction of a future contingent thing, which accordingly can be known neither by art nor by any natural science whatever ; 3° that it be so determinate that the event is not accommodated to the prophecy, but rather the prophecy determines the event : that is, that it not be so vague, obscure, and equivocal as to fit any event whatsoever, and its application not arbitrary ; so that prophecy, which is a true miracle, supplies its own proof.

> *[**Dico** 1°, cum D. Thoma, 2ae 2ae, q. 171, a. 1, o : « Prophetia primo et principaliter consistit in cognitione, videlicet prophetae cognoscunt ea quae sunt procul et remota ab hominum cognitione... Prophetia secundario consistit in locutione, prout prophetae ea quae divinitus edocti cognoscunt ad aedificationem aliorum annuntiant, secundum illud* Isa.*, XXI, 10 : Quae audivi a Domino exercituum, Deo Israel, annuntiavi vobis. » Prophetia a duabus vocibus graecis προ, ante et φημί, loquor, venit, et significat generatim annuntiationem ante eventum factam. Passim definitur : « Praesensio et praedictio certa alicuius eventus qui in causis naturalibus praesciri non potuit. » Vel pressius : « Manifestatio rei futurae creaturis occultae. » Ex qua prophetiae notione patet, tres conditiones ad eam vere et proprie talem constituendam requiri, scilicet : 1° ut sit praedictio certa, non coniecturalis ; 2° ut sit praedictio rei futurae liberae, qua proinde nec arte nec scientia naturali qualicumque cognosci possit ; 3° ut sit ita determinata, quod non accommodetur eventus prophetiae, sed potius prophetia determinet eventum : id est, quod non sit ita vaga, obscura et flexiloqua, quae omni eventui convenire possit, et applicatio non sit arbitraria ; ita ut prophetia, quae est verum miraculum, probationem suam sibi ipsa suppeditet.*

2 **I say** 2° : Prophecy is possible.

> ***Dico** 2° : Prophetia est possibilis.*

3 This is against the ancients and the more recent authors who denied the possibility of prophecy. Among the ancients were, on the testimony of Cicero[12], the Colophonian and Epicurus. The latter had no other reason for rejecting all divination than that he did not admit that mankind was of concern to the gods. Such was also the judgment of Carneades, as the same Cicero asserts[13]. Among the more recent, Spinoza and the Socinians deny to God himself the faculty of foreseeing future things. Finally, all rationalists now deny that man can receive a prophetic spirit from God.

12 *De divinat.*, lib. I, c. 3 ; *De natura deorum*, lib. I, c. 19.

13 *De fato*, c. 14.

> *Est contra veteres et recentiores qui possibilitatem prophetiae negarunt. Inter veteres fuerunt, Tullio teste[12], Colophonius et Epicurus. Hic posterior non aliam habebat causam cur omnem divinationem sperneret, quam quod humana diis curae esse non admittebat. Ita sensit et Carneades, ut idem Tullius asserit[13]. Ex recentioribus Spinosa atque Sociniani Deo ipsi abiudicant facultatem futura praevidendi. Nunc demum omnes rationalistae negant hominem spiritum propheticum a Deo accipere posse.*
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> 12 De divinat.*, lib. I, c. 3 ;* De natura deorum*, lib. I, c. 19.*
>
> 13 De fato*, c. 14.*

4 *Proof.* by reason. The possibility of prophecy reduces to these two questions : first, whether God can foreknow things future ; second, supposing the foreknowledge of things future, whether.

Prob. *ratione. Possibilitas prophetiae ad haec duo reducitur : primo, utrum Deus ea quae futura sunt praescire possit ; secundo, supposita futurorum praescientia, utrum*

5 God can manifest them to man. But both of these are possible. Therefore.

Deus eo homini manifestare possit. Atqui haec duo sunt possibilia. Ergo.

6 *Proof.* of the first part, minor. The first is not only possible but necessary. For in God there is omniscience, and therefore foreknowledge, which is included in perfect and infinite science. If God did not have this foreknowledge, he would not be infinitely perfect under this respect, and consequently would not be God. And this knowledge in God is not properly foreknowledge, but simply knowledge. This is proved by St. Thomas, [[Iª p., q. 14, a. 13, o|summa-theologiae:pars.I/quaestio.14/articulus.13]] : « Since God knows all things, not only those which actually exist, but also those which are in his own power or in the creature's, and since some of these are contingent as to their future occurrence, it follows that God knows future contingents... Now God knows all contingents, not only as they are in their causes, but also as each of them actually is in itself. And although contingents come into actual existence successively, God does not know contingents successively in their being, as we do, but simultaneously, because his knowledge is measured by eternity, as is also his being. And eternity, existing whole and at once, embraces all time. Hence all things which are in time are present to God from eternity, not only by the reason that he has the notions of things present within himself, as some say, but because his gaze is directed from eternity upon all things as they stand in their presentiality. Hence it is manifest that contingents are infallibly known by God, inasmuch as they are subject to the divine sight according to their presentiality ; and yet they remain future contingents in comparison with their proximate causes. » Therefore.

Prob. *prima pars min. Primum non tantum est possibile, sed necessarium. In Deo enim est omniscientia, et ideo praescientia, qua in scientia perfecta et infinita includitur. Si hanc praescientiam non haberet Deus, non esset sub hoc respectu infinite perfectus, consequenter nec Deus. Et haec cognitio in Deo non est proprie praescientia, sed simpliciter scientia. Quod sic a D. Thoma probatur, [[Iª p., q. 14, a. 13, o|summa-theologiae:pars.I/quaestio.14/articulus.13]] : « Cum Deus sciat omnia, non solum quae actu sunt, sed etiam quae sunt in potentia sua vel creaturae, horum autem quaedam sint contingentia nobis futura, sequitur quod Deus contingentia futura cognoscat... Deus autem cognoscit omnia contingentia, non solum prout sunt in suis causis, sed etiam prout unumquodque eorum est actu in seipso. Et licet contingentia fiant actu successive, non tamen Deus successive cognoscit contingentia prout sunt in suo esse, sicut nos, sed simul, quia sua cognitio mensuratur aeternitate, sicut etiam suum esse. Aeternitas autem tota simul existens ambit totum tempus. Unde omnia quae sunt in tempore, sunt Deo ab aeterno praesentia, non solum ex ratione qua habet rationes rerum apud se presentes, ut quidam dicunt, sed quia eius intuitus fertur ab aeterno supra omnia, prout sunt in sua praesentialitate. Unde manifestum est quod contingentia infallibiliter a Deo cognoscuntur, in quantum subduntur divino conspectui secundum suam praesentialitatem ; et tamen sunt futura contingentia, suis causis proximis comparata. » Ergo.*

7 It is confirmed by the manifold testimonies of Scripture, of which the following may suffice to cite. *Heb.*, IV, 13 : All things are naked and open to his eyes. *Ps.*, cxxxviii, 3 and 4 : You have understood my thoughts from afar... you have foreseen all my ways. *Wis.*, VIII, 8 : She knows the signs and wonders before they come to pass, and the events of times and ages. The prophecies recorded in the Scriptures, which were certainly fulfilled even in the smallest particulars, demonstrate this possibility evidently from the fact itself.

Confirmatur multiplicibus testimoniis Scripturae, quorum sequentia sufficiat referre. Hebr., IV, 13 : Omnia nuda et aperta sunt oculis eius. Psal. cxxxviii, 3 et 4 : Intellexisti cogitationes meas de longe... Omnes vias meas praevidisti. Sap., VIII, 8 : Signa et monstra scit antequam fiant, et eventus temporum et saeculorum. Prophetiae in Scripturis consignatae, quae certo fuerunt etiam in minimis adimpletae, hanc possibilitatem evidenter ex facto demonstrant.

8 *Proof.* of the second part, minor. If God could not manifest future things to man, the impediment would evidently stand only on the side of man, who would not be capable of such communication. But this incapacity cannot be admitted. Therefore. — *Proof.* of the minor. Man learns from man the things he does not know, and among these are many that learned men, aided by the natural light alone, foresaw as about to arise from their causes. But if it should please God, man can be taught by him no less, indeed much more, in the extraordinary way of inspiration, that is, of interior illumination whereby future contingents, naturally hidden, are opened up to him. Therefore.

Prob. *secunda pars min. Si Deus homini res futuras manifestare non posset, impedimentum non staret evidenter nisi ex parte hominis, qui huiusmodi communicationis non esset capax. Atqui ea incapacitas non potest admitti. Ergo.* — Prob. *min. Homo ab homine discit quae ignorat, et inter haec multa sunt quae docti, solo lumine naturali adiuti, praeviderunt tamquam oritura e causis suis. Atqui, si Deo placuerit, homo non minus, imo magis, ab eo doceri poterit via extraordinaria inspirationis, id est illustrationis interioris qua patefacientur ei futura contingentia naturaliter occulta. Ergo.*

9 It is confirmed by the consent of the human race; for it has always been the persuasion of men that some have received divine communications concerning things to come. Thence, among the pagans, oracles, divinations, auguries, and magical arts.]

Confirmatur humani generis consensu; nam semper persuasum fuit hominibus aliquos divinas communicationes de futuris accepisse. Inde, apud paganos, oracula, divinationes, auguria et artes magicae.]

Whether prophecies have force to prove the truth of revelation?

1 [I answer: affirmative.

[Resp. affirmative.

2 *Proof.* Holy Scripture, which most frequently invokes prophecies as proof of the truth of revelation. Christ himself says, *John*, v, 39: *Search the Scriptures, for you think that in them you have life everlasting. And they are they that testify of me.* So that he might prove to the disciples going to the town called Emmaus that all things that had happened of him had come to pass by the divine will, *Luke*, XXIV, 27, beginning from Moses and all the prophets, he interpreted to them in all the Scriptures the things that were concerning him. St. Peter, after narrating the prodigious transfiguration of Christ, in which the heavenly Father proclaimed him his own Son with an audible voice, adds, to refute more fully the unbelief of the Jews, 2 *Pet.*, I, 19: *And we have a firmer prophetic word, whereunto you do well to attend, as to a lamp shining in a dark place, until the day dawn.* St. Paul expounded to the Jews the heavenly doctrine, *Acts*, XXVIII, 23, testifying the kingdom of God and persuading them concerning Jesus out of the law of Moses and the prophets. Therefore.

Prob. *S. Scriptura, quae saepissime prophetias invocat in probationem veritatis revelatae. Ipse Christus ait,* Ioann.*, v, 39 :* Scrutamini Scripturas, quia vos putatis in ipsis vitam aeternam habere. Et illae sunt quae testimonium perhibent de me. *Ut discipulis in castellum nomine Emmaus euntibus probaret omnia quae acciderant de ipso voluntate divina contigisse,* Luc.*, XXIV, 27, incipiens a Moyse et omnibus prophetis, interpretabatur illis in*

omnibus Scripturis quae de ipso erant. S. Petrus, narrata prodigiosa transfiguratione Christi, in qua Pater coelestis eum suum proprium Filium voce sensibili proclamavit, ad plenius revincendam Iudaeorum incredulitatem, addit, II Petr.*, I, 19 :* Et habemus firmiorem propheticum sermonem, cui bene facitis attendentes, quasi lucernae lucenti in caliginoso loco, donec dies elucescat. *S. Paulus Iudaeis exponebat doctrinam coelestem,* Act.*, XXVIII, 23, testificans regnum Dei, suadensque eis de Iesu ex lege Moysi et prophetis. Ergo.*

3 *Proof.* by a second argument. Prophecy properly so called cannot be except from God; for, as the Angelic Doctor says, 2a 2ae, q. 171, a. 2, c., « the principle of those things that pertain to supernatural knowledge, which are made manifest through prophecy, is God himself, who is not seen by the prophets through essence. » Therefore, whenever a true prophecy is had as confirmed by the event, so often an unavoidable argument arises for divine and supernatural revelation. — The antecedent follows from the very notion of prophecy itself. — The consequent therefore cannot be denied.

Prob. *2° ratione. Prophetia proprie dicta non potest esse nisi a Deo; nam, ut ait Angelicus, 2a 2ae, q. 171, a. 2, c., « principium eorum quae ad supernaturalem cognitionem pertinent, quae per prophetiam manifestantur, est ipse Deus, qui per essentiam a prophetis non videtur. » Ergo, quoties vera habetur prophetia eventu comprobata, toties ineluctabile divinae ac supernae revelationis exsurgit argumentum. — Antecedens constat ex notione ipsa prophetiae. — Consequens ergo negari non potest.*

4 It is confirmed from this, that a true prophecy is a true miracle, and below it will be proved that a miracle demonstrates the truth of the doctrine in whose favor it is wrought.

Confirmatur ex hoc, quod vera prophetia est verum miraculum, et infra probabitur miraculum demonstrare veritatem doctrinae in cuius favorem patratur.

5 *Proof.* thirdly from the Fathers, of whom it will suffice to cite one and another. Tertullian, *Apologet.*, c. 20: « A fitting testimony of divinity, I think, is the truth of divination. Hence among us faith in things to come also is safe, because they were foretold along with those things which are daily proved. » Splendid is this passage of Augustine, *serm.* 43 *de Script.*, n. 5. Having recounted out of St. Peter the transfiguration of Christ, and having cited these words: *And we have a more certain prophetic word,* he says: « That voice sounded from heaven, and the prophetic word is more certain... Who among us does not marvel that, the voice having been brought down from heaven, the Apostle said the prophetic word was more certain? He said indeed more certain: more certain, not better, not truer. For that voice from heaven was as true as the prophetic word, as good, as useful. What then is more certain, except that in which the hearer is more confirmed? Why this? Because there are unbelieving men who so disparage Christ as to say that he did what he did by magical arts... But the prophets were before: I do not say before that voice, but before the flesh of Christ. Christ was not yet when he sent the prophets... Behold why the Apostle Peter says: We have a more certain prophetic word. A voice from heaven, whereby the faithful are admonished; a prophetic word, whereby the unbelieving are convinced. » Therefore.]

Prob. *3° ex Patribus, quorum unum et alterum sufficiat referre. Tertullianus,* Apologet.*, c. 20 : « Idoneum, opinor, testimonium divinitatis, veritas divinationis. Hinc igitur apud nos futurorum quoque fides tuta est, quia cum illis quae quotidie probantur praedicebantur. » Praeclarus est hic Augustini locus,* serm. *43* de Script.*, n. 5. Narrata ex S. Petro transfiguratione Christi, relatisque his verbis :* Et habemus certiorem propheticum sermonem, *dicit : « Sonuit vox illa de coelo, et certior est propheticus sermo... Quis nostrum non miretur, delata voce de coelo certiorem propheticum sermonem ab Apostolo dictum esse? Certiorem sane dixit : certiorem, non meliorem, non veriorem. Tam enim verus ille*

sermo de coelo, quam sermo propheticus, tam bonus, tam utilis. Quid est ergo certiorem, nisi in quo magis confirmetur auditor? Quare hoc? Quoniam sunt homines infideles qui sic detrahunt Christo, ut dicant eum magicis artibus fecisse quae fecit... Sed prophetae ante fuerunt : non dico ante istam vocem, sed ante Christi carnem. Nondum erat Christus, quando misit prophetas... Ecce quare ait apostolus Petrus : Habemus certiorem propheticum sermonem. Vox de coelo, qua fideles admoneantur; propheticus sermo, quo infideles convincantur. » Ergo.]

The predictions of the prophets concerning the Christian religion and its author

1 The prophecies of the Christian religion are contained in the books of Moses and of the other prophets.

Vaticinia religionis christianae continentur in libris Moysis et aliorum prophetarum.

2 1° God spoke to Moses, and revealed to him the Jewish religion, as is clear from *Exod.*, XIX, 3-6. Further, if the Jewish religion is true and revealed, then Christ is the Messiah. Therefore the Christian religion, which he instituted, and of which the Jewish religion was the foundation, is true and revealed.

1° Deus locutus est Moysi, eique religionem iudaicam revelavit, ut patet Exod.*, XIX, 3-6. Porro, si religio iudaica sit vera et revelata, ergo Christus est Messias. Ergo religio christiana, quam instituit et cuius religio iudaica erat fundamentum, est vera et revelata.*

3 2° In the books of Moses and the prophets are foretold the Messiah, his birth, the place, the time of his birth, his life, doctrine, works, miracles, passion, death, resurrection and other things pertaining to this, the calling of the nations, the rejection of the Jews, the abolition of the temple and of sacrifice, the substitution of a new law and a new sacrifice, etc. And yet all these things have been verified exactly of Jesus of Nazareth, the author of the Christian law. Therefore he himself is the Messiah; therefore his religion is true and divine.

2° In libris Moysis et prophetarum praenuntiatur Messias, eius nativitas, locus, tempus nativitatis, vita, doctrina, opera, miracula, passio, mors, resurrectio et alia huc spectantia, vocatio gentium, reiectio Iudaeorum, abolitio templi et sacrificii, substitutio novae legis et novi sacrificii, etc. Atqui haec omnia adamussim verificata sunt de Iesu Nazareno, authore legis christianae. Ergo ipse est Messias : ergo vera et divina eius religio.

4 *Proof of the minor*. 1° Our Christ was born after the scepter had been taken away from Judah, according to the prophecy of Jacob, *Genes.*, XLIX, 10; at the time fixed in the 70 weeks of Daniel, *Daniel*, IX, 24-27; before the destruction of the second temple, as *Aggaeus*, II, 8-10, and *Malachias*, III, 1 had foretold. — 2° He was born in Bethlehem, as had been foretold, *Mich.*, V, 2; of the tribe of Judah and the family of David, *Isa.*, XI, 1 and 10; of a virgin, *Isa.*, VII, 14. — 3° His coming was preceded by him who would prepare his ways, *Malach.*, III, 1. — 4° He worked miracles, as *Isaias*, LXI, 1 seqq. had foretold. — 5° He was sold for thirty pieces of silver, with which the potter's field was bought, as *Zacharias*, XI, 12 foretold. — 6° He was spat upon and struck in the face, *Isa.*, L, 6. — 7° He was scourged, *Psal.* XXXIV, 15 and CXXXVII, 3. — 8° His hands and feet were pierced, *Psal.* XXI, 17. — 9° He was crucified among thieves, *Isa.*, LII, 12. His garments were divided, cast by lot for the robe, *Psal.* XXI, 19. Hanging on the cross, he was given gall to drink, *Psal.*, LXVII, 22. As he was dying, the sun suffered an eclipse,

Prob. *min. 1° Noster Christus natus est adempto sceptro a Iuda, iuxta vaticinium Iacob,* Genes.*, XLIX, 10; tempore statuto in 70 hebdomadibus Danielis,* Daniel*, IX, 24-27; ante destructionem secundi templi, ut praedixerant*

> Aggaeus, *II, 8-10, et* Malachias, *III, 1. — 2° Natus est in Bethleem, ut praenuntiatum erat,* Mich., *V, 2; ex tribu Iuda et familia David,* Isa., *XI, 1 et 10; ex virgine,* Isa., *VII, 14. — 3° Adventum eius praecessit qui pararet vias eius,* Malach., *III, 1. — 4° Fecit miracula, ut praedixerat* Isaias, *LXI, 1 seqq. — 5° Venditus est triginta argenteis, quibus emptus est ager figuli, ut praedixit* Zacharias, *XI, 12. — 6° Conspuitur et caeditur in faciem,* Isa., *L, 6. — 7° Flagellatus fuit,* Psal. *XXXIV, 15 et CXXXVII, 3. — 8° Manus et pedes eius fuerunt perforati,* Psal. *XXI, 17. — 9° Fuit crucifixus inter latrones,* Isa., *LII, 12. Divisa sunt eius vestimenta, missa sorte in togam,* Psal. *XXI, 19. Pendens in cruce fuit felle potatus,* Psal., *LXVII, 22. Eo moriente, sol deliquium passus est,*

5 Amos, VIII, 9; he rose again, *Psal.* III, 6;[14] he ascended into heaven, *Psal.* LXVII, 34; he sent the Holy Spirit, *Ioel*, II, 28. — 10° He called the nations through the Apostles to his religion, and destroyed idolatry, as had been foretold, *Genes.*, XXII, 17 et 18; *Isa.*, II, 2, 3 et 18; XIX, 19; XLIX, 6 seqq.; *Zach.*, XII, 2, and elsewhere. — 11° He substituted a new priesthood for the Levitical, a new law for the Mosaic law, and finally rejected the Jews, as foretold everywhere in the prophets, *Isai.*, *Ierem.*, *Ose.*, *Amos*, *Mich.*

14 Editor's note: the print reads "Psal. III, 6"; the passage proves Christ's resurrection, which Psalm III, 6 ("Ego dormivi") does not treat, so the citation may be a printer's error (cf. Psal. II, 7 or XV, 10).

> *Amos, VIII, 9; resurrexit,* Psal. *III, 6;*[14] *ascendit in coelum,* Psal. *LXVII, 34; misit Spiritum sanctum,* Ioel, *II, 28. — 10° Vocavit per Apostolos gentes ad suam religionem, et idololatriam destruxit, ut praedictum erat,* Genes., *XXII, 17 et 18;* Isa., *II, 2, 3 et 18; XIX, 19; XLIX, 6 seqq.;* Zach., *XII, 2, et alibi. — 11° Novum sacerdotium substituit Levitico, novam legem legi Mosaicae, ac tandem Iudaeos reiecit, ut praenuntiatum est passim in prophetis,* Isai., Ierem., Ose., Amos, Mich.
>
> 14 *Editor's note: the print reads "Psal. III, 6"; the passage proves Christ's resurrection, which Psalm III, 6 ("Ego dormivi") does not treat, so the citation may be a printer's error (cf. Psal. II, 7 or XV, 10).*

6 Seek all these things set out more fully in our previous Work, *tract. de Incarn.*, dissert. II, a. 3.

> *Haec omnia latius exposita require in priori nostro Opere,* tract. de Incarn., *dissert. II, a. 3.*

7 What will the deist say to these things? Will he say that Moses is a teller of fables and an impostor, who fraudulently sold false and invented things to the Israelites as true?

> *Quid ad haec deista? Dicetne Moysen esse fabulatorem et impostorem, qui falsa et ficta pro veris fraudulenter venditavit Israelitis?*

8 *Sed contra* : 1° Moses calls the Israelites themselves eyewitnesses of the things he narrates. He narrates the plagues of Egypt, harmless to the Israelites looking on. He narrates that they passed unharmed through the Red Sea, while the Egyptians were drowned in it. He narrates that manna was given them from heaven for forty years, and that during that time their garments were not worn out. He narrates that the law was given them by God on Mount Sinai amid lightnings and thunders. He narrates that he drew forth a fountain from the rock for their relief, and that Dathan and Abiron, while they looked on, were swallowed alive into the earth, as he had foretold; he subjects them to a most harsh law, even under pain of death in certain matters. He narrates that he ordered twenty-five thousand men to be killed by the Levites for idolatry, and many other things. If therefore all these things are false, and Moses fraudulently sold them to the Israelites as true, it must be that Moses was foolish, to hope that he could persuade the Israelites that they had seen what they had not seen, and thereby subject them to a most harsh law; and that the Israelites were in like manner foolish, to

believe that they had seen what they had not seen, and thereby subject themselves to a most harsh law.

> Sed contra *: 1° Moyses eorum quae narrat ipsos Israelitas testes oculatos appellat. Narrat plagas Egypti, Israelitis videntibus innoxias. Narrat ipsos transiisse incolumes per mare rubrum, Egyptiis in eo submersis. Narrat manna coelitus ipsis datum per quadraginta annos, per id tempus eorum vestes non fuisse detritas. Narrat legem ipsis divinitus datam in monte Sinai inter fulgura et tonitrua. Narrat se in eorum sublevamen elicuisse fontem de rupe, Dathan et Abiron, ipsis spectantibus, vivos in terra fuisse absorptos, ut praedixerat; legi durissimae ipsos subiicit, etiam sub poena mortis in certis capitibus. Narrat se iussisse occidi per Levitas viginti quinque millia hominum propter idololatriam, et plura alia. Si ergo haec omnia falsa sunt et Moyses pro veris fraudulenter venditavit Israelitis, necesse est Moysen fuisse stultum, qui speraret se posse persuadere Israelitis eos vidisse quae non viderant, et inde eos legi durissimae subiicere; Israelitas pariter fuisse stultos, qui crederent se vidisse quae non viderant, et inde se subiicerent legi durissimae.*

9 2° In memory of the deeds and prodigies which Moses narrates, feasts and sacrifices were then instituted which are still scrupulously observed by the Jews. But who would believe that a whole nation instituted feasts and sacrifices for events not certainly known to it, or fabulous, and observed them so religiously through so many centuries.

> *2° In memoriam factorum et prodigiorum quae narrat Moyses, instituta fuerunt tunc festa et sacrificia quae etiam nunc scrupulose servantur a Iudaeis. Quis autem credat gentem integram instituisse festa et sacrificia pro eventibus sibi non certo notis, aut fabulosis, et ea per tot saecula tam religiose observare.*

10 3° Moses not only narrates deeds and prodigies, but foretells many future things that depend solely on the will of God, and which were fulfilled: likewise the other Prophets. But it is not for an impostor, nor for any other man whatsoever, to predict future things that depend solely on the will of God.

> *3° Moyses non solum facta et prodigia narrat, sed multa praenuntiat futura quae ex sola Dei voluntate pendent, et quae fuerunt adimpleta : similiter alii Prophetae. Non est autem impostoris, neque cuiusvis alterius hominis, praedicere futura quae ex sola Dei voluntate pendent.*

11 Perhaps he will reply that neither Moses nor the prophets ever existed; or, if they existed, that the books attributed to them are not their own, but were fabricated after the birth of Christianity by some impostor.

> *Reponet forte, neque Moysen, neque prophetas unquam exstitisse; aut, si exstiterint, libros qui ipsis tribuuntur non esse ipsis proprios, sed post natum Christianismum ab aliquo impostore fuisse fabricatos.*

12 *Sed contra* : 1° It is as certain that Moses and the prophets existed and wrote the things that are attributed to them, as it is certain that Cyrus, Alexander, Caesar, Cicero, Virgil existed, and that the writings attributed to them are their own. Of these latter no one doubts, on account of the constant tradition, against which nothing can be opposed. Therefore neither may one doubt about the former.

> Sed contra *: 1° Tam certum est exstitisse Moysen et prophetas, et scripsisse ea quae ipsis tribuuntur, quam certum est exstitisse Cyrum, Alexandrum, Caesarem, Ciceronem, Virgilium, et scripta quae eis tribuuntur esse ipsis propria. De his autem nullus dubitat, propter constantem traditionem, cui nihil opponi potest. Ergo nec de illis dubitare licet.*

13 Likewise, it is as certain that Moses and the Prophets existed, and that the works inscribed with their names were written by them, as it is certain that the Jewish nation existed and now exists, which always venerated and venerates them as Prophets and saints, and has always kept their

writings, as divine, with the greatest diligence, and keeps them. But that the Jewish nation existed before the rise of Christianity is known to the whole world.

> *Item, tam certum est Moysen et Prophetas exstitisse, et opera quae eorum nominibus inscribuntur esse ab illis scripta, quam certum est exstitisse et nunc existere gentem Iudaicam, quae illos ut Prophetas et sanctos semper coluit et colit, et eorum scripta, ut divina, summa diligentia semper custodivit et custodit. Existere autem et exstitisse gentem Iudaicam ante ortum Christianismum, universo orbi notum est.*

14 2° Aristeus, one of the legates of Ptolemy to Eleazar, high priest of the Jews, whose book exists in the *Bibliotheca Patrum*, tom. VII, Josephus and Philo, both Jews, relate that the Old Testament was translated from Hebrew into Greek by the 70 Interpreters, under Ptolemy king of Egypt, two hundred years before Christ was born. Likewise profane historians, Cicero, Phlegon, Tacitus, Suetonius, Sallustius, Quintus Curtius, make mention of the law, the temple and the wars of the Jews.

> *2° Aristeus, unus ex legatis Ptolemaei ad Eleazarum, summum Iudaeorum pontificem, cuius liber exstat in* Bibliotheca Patrum*, tom. VII, Ioseph et Philo, uterque Iudaeus, referunt vetus Testamentum ex hebraeo in graecum fuisse translatum a 70 Interpretibus, sub Ptolomaeo rege Egypti, ducentis annis ante Christum natum. Item historici profani, Cicero, Phlegon, Tacitus, Suetonius, Sallustius, Quintus Curtius, mentionem faciunt de lege, templo et bellis Iudaeorum.*

15 3° By what art could this impostor have persuaded the Jews that this was the history and law of their nation handed down by God, of which they had never heard anything, and which contains many things disgraceful to them and commands most harsh things, and could he have obtained from them so scrupulous an observance of this most harsh law, such as they profess even now? Whoever had attempted this would without doubt have been regarded by the Jews as a fanatic.

> *3° Qua arte iste impostor potuisset persuadere Iudaeis hanc esse historiam et legem suae gentis divinitus traditam, de qua nihil unquam audivissent, quaeque multa illis probrosa continet et durissima praecipit, atque ab eis obtinere tam scrupulosam huius legis durissima observantiam, qualem nunc etiam profitentur? Quisquis sane id tentasset, dubio procul ceu fanaticus a Iudaeis habitus fuisset.*

16 4° If the Old Testament is the work of a recent impostor, the same must be said of the New, since the latter is nothing but an explanation and fulfillment of the former, and Christ often appeals the Jews to Moses and to the prophets of the Old Testament.

> *4° Si vetus Testamentum sit opus recentis impostoris, idem dicendum erit de novo, cum istud non sit nisi explicatio et adimpletio veteris, Christusque saepe provocat Iudaeos ad Moysen et ad prophetas veteris Testamenti.*

17 5° Let the deists say who this impostor was, of what condition, stock and religion: whether a Jew, a Samaritan, or a Christian? If a Jew, he would have obtained nothing from the Samaritans, the bitterest enemies of the Jews. Likewise, if a Samaritan, with respect to the Jews. Moreover, neither would have inserted in these books things so ignominious to the Jewish and Samaritan nation, namely their crimes, ingratitudes, idolatries and punishments. If a Christian, how would he have been acceptable to the Jews and Samaritans, alike the bitterest enemies of the Christians?

> *5° Dicant deistae, quis fuerit iste impostor, cuius conditionis, generis et religionis : an Iudaeus, an Samaritanus, an Christianus? Si Iudaeus, nihil obtinuisset a Samaritanis, Iudaeorum hostibus infensissimis. Similiter, si Samaritanus, respectu Iudaeorum. Insuper neuter inseruisset in his libris quae nationi Iudaica et Samaritanae adeo sunt ignominiosa, eorum scilicet crimina, ingratitudines, idololatriam et punitiones. Si Christianus, quomodo a Iudaeis et Samaritanis, hostibus pariter Christianorum infensissimis, acceptus fuisset?*

18 6° Likewise, let them say at what time, in what year, in what part of the world this impostor appeared; whom he first deceived; how the Jews, Samaritans, and Christians dispersed through the whole world were at once and together furnished with copies of all these books, in every language, Hebrew, Syriac, Chaldaic, Greek, as they were at the birth of Christianity. To these things the deists fall silent. Let them acknowledge therefore their fictions, and that they betray themselves as impostors, while they plead the cause of a fictitious impostor.

> *6° Item, dicant quo tempore, quo anno, in qua parte mundi apparuit iste impostor; quos primo decepit; quomodo Iudaei, Samaritani, Christiani toto orbe dispersi, statim et simul fuerunt instructi exemplaribus omnium istorum librorum, in omni lingua, hebraica, syriaca, chaldaica, graeca, prout erant nascente Christianismo. Ad haec obmutescunt deistae. Agnoscant ergo sua figmenta, et seipsos prodere impostores, dum ficti impostoris causam agunt.*

19 Let there remain unmoved, therefore, that the books of Moses and the prophets are their genuine works, that the prophecies which they contain concerning the Christian religion and its author are divine and revealed, and consequently that the Christian religion is true, divine and revealed; for there is no more efficacious argument for the truth of any doctrine than prophecies concerning its author and its truth, since no one but God, or one inspired by the divine Spirit, can long beforehand predict future things, which depend solely on the will of God, with all their circumstances, according to that of *Isa.*, XLI, 23 : *Announce the things that are to come hereafter, and we shall know that you are gods.*

> *Maneat itaque inconcussum, libros Moysis et prophetarum esse genuina ipsorum opera, vaticinia quae continent de religione Christiana et eius authore esse divina et revelata, consequenter religionem Christianam esse veram, divinam et revelatam; nullum quippe est efficacius argumentum veritatis alicuius doctrinae, quam vaticinia de illius authore et veritate, siquidem nullus, nisi Deus, aut divino Spiritu afflatus, possit diu ante futura contingentia, qua ex sola Dei voluntate pendent, cum omnibus suis circumstantiis, praedicere, iuxta illud* Isa.*, XLI, 23 :* Annuntiate quae ventura sunt in futurum, et sciemus quia dii estis vos.

20 *Obi.* 1° that paganism also had its oracles.

> Obi. *1° paganismum etiam habuisse sua oracula.*

21 *I answer.* 1° No oracles ever, whether from the priests of idols, or from pythonesses, or from demons through idols, issued forth concerning a future event that depended solely on the will of God, like the oracles of Christianity; but they were either concerning recent events already accomplished elsewhere, or which they themselves were about to do, or concerning natural futures which they predicted conjecturally from circumstances; and therefore concerning these Cicero himself, book II *de Divinat.*, says that they were « partly false, partly true by chance. »

> Resp. *1° nulla unquam oracula, sive a sacerdotibus idolorum, sive a pythonibus, sive a daemonibus per idola, prodisse de eventu futuro qui ex sola Dei voluntate penderet, sicut oracula Christianismi, sed fuisse vel de eventibus recentibus alibi iam peractis, aut quae ipsi facturi erant, vel de futuris naturalibus quae ex circumstantiis coniecturaliter praenuntiabant, et ideo de illis ipse Cicero, lib. II* de Divinat.*, dicit quod erant « partim falsa, partim casu vera. »*

22 2° The oracles that looked to the future were ambiguous, such that whatever had happened, they were verified. Such was the oracle of Apollo of Delphi given to Croesus, king of Lydia, that « if he crossed the river Halys, he would destroy a great kingdom. » Whether his own, or another's? this remained to be divined. Likewise this one of the same Apollo given to Pyrrhus consulting about the outcome of the war against the Romans : « I say that you, descendant of Aeacus, can conquer the

Romans, » which signifies both that the Greeks can be conquered by the Romans and that the Romans can be conquered by the Greeks.

> *2° Oracula quae futurum spectabant, erant ambigua, ita ut quidquid evenisset, verificarentur. Tale fuit oraculum Apollinis Delphici datum Craeso, regi Lydi, quod, « si transiret flumen Halys, magna regna perdet. » An sua, an aliena? hoc restabat divinandum. Item istud eiusdem Apollinis datum Pyrrho consulenti de eventu belli contra Romanos : « Aio te, Aeacida, Romanos vincere posse, » quodque significat Graecos posse vinci a Romanis, ac Romanos posse vinci a Graecis.*

23 3° These oracles of paganism ceased at the birth of Christ and the advance of Christianity. Suidas, s.v. Augustus, Suetonius, in the *Octavius*, Nicephorus, lib. I, c. 17, relate that Apollo of Delphi, after having long remained mute, was finally compelled to answer Caesar Augustus consulting him thus :

> *3° Haec paganismi oracula cesserunt nascente Christo et proficiente Christianismo. Suidas, verbo Augustus, Suetonius, in Octavio, Nicephorus, lib. I, c. 17, referunt Apollinem Delphicum, postquam diu mutus mansisset, tandem Caesari Augusto ipsum consulenti coactum fuisse respondere sic :*

24 « Me a Hebrew boy, God himself ruling the gods, commands to yield my seat, and to return sad beneath the earth. Depart therefore henceforth in silence from our altars. »

> *« Me puer Hebraeus, divos Deus ipse gubernans, Cedere sede iubet, tristemque redire sub oraeum. Aris ergo dehinc tacitus abscedito nostris. »*

25 It is known that Apollo of Daphne in the suburb of Antioch long fell silent in like manner, notwithstanding the repeated sacrifices of Julian the Apostate, and finally answered him that the cause of his silence was certain dead men buried in a nearby place. These however were the holy martyrs, among whom St. Babylas.

> *Notum est Apollinem Daphniticum in suburbio Antiochiae diu pariter obmutuisse, non obstantibus sacrificiis iteratis Iuliani Apostatae, ac tandem illi respondisse, causam sui silentii esse quosdam mortuos in vicino loco sepultos. Hi autem erant SS. martyres, inter quos S. Babylas.*

26 Tertullian in the *Apolog.* affirms that any Christian meeting one first can render the demons mute and cast them out of bodies; and he challenges the Romans to make the experiment, consenting that this Christian be condemned to death if he should fail. Likewise Lactantius, lib. *de vera Sapientia*, relates that every Christian by the sign of the cross renders the demons mute and expels them from bodies.

> *Tertullianus in* Apolog. *affirmat quemlibet Christianum primo occurrentem posse reddere daemones mutos et eos e corporibus eiicere, provocatque Romanos ut experimentum faciant, et consentit hunc Christianum morti addici, si deficiat. Pariter Lactantius, lib.* de vera Sapientia, *refert omnem Christianum signo crucis daemones mutos efficere et e corporibus expellere.*

27 *I insist.* The sibylline verses have always been most celebrated, not only among the Gentiles, but also among the ancient Fathers of the Church, in which many future things are predicted. Moreover the pagans had their oracles. Therefore there were true prophecies also among them.

> Inst. *Celeberrima semper fuerunt, non solum apud gentiles, sed etiam apud antiquos Ecclesiae Patres, sybillina carmina, quibus multa futura praedicuntur. Habebant insuper pagani sua oracula. Ergo erant etiam apud ipsos vera vaticinia.*

28 *I answer.* that the sibylline oracles have long been held in low esteem by the learned. Even if, however, the authenticity of those verses be admitted, and that the virginity of the Sibyls was rewarded with the gift of prophecy by God, as St. Jerome says, *contra Iovin.*, unbelief finds in them no support, since many monuments of ancient tradition are contained in them, many prophecies concerning Christ and his religion, as can be seen in digr. 2 at the end of dissert. II in tract. de incarnat., in our greater Work. Therefore the holy Fathers cited the verses of the Sibyls with praise, because they saw in them religion rather confirmed than weakened. As to the other prophecies and oracles of the pagans, although there are not lacking those who attribute all of them to the frauds of priests, whose very many arts of deceiving Herodotus himself reports, lib. 5, 6, 7 and 8, yet theologians commonly judge that not all those are to be ascribed to human arts, but that many also were produced by demons. Whence St. Cyprian, lib. *de Idol. vanit.*, has thus : « These spirits therefore lurk beneath statues and images; these inspire the breasts of seers with their breath, and work oracles. » Although true prophecy is proper to God alone, nevertheless, considering the intelligence and nature of demons, they can know and foretell many things which can strongly excite the admiration of men. Thus they can predict evils of which they themselves will be the authors, manifest at almost the same moment what is done in a distant region, conjecture from present things certain ones soon to come, as has already been said. Since, however, the event even of things soon to come often depends on the free determination of men, and on the concourse of other things, which cannot certainly be foreseen from natural causes, hence the oracles of demons concerning these events were partly false, partly true by chance, commonly ambiguous and turning every way, so that they could be drawn even into contrary senses. The falsity of the oracles was attested, in Theodoret, by Porphyry himself, saying : « Asked about many things, they are found liars oftentimes. » They cannot therefore, except by the greatest folly and audacity, be compared to our prophecies by the oracles of the heathen, which Celsus did, whom Spinoza and other unbelievers followed. Let them show themselves any falsity, however small, in our prophecies : which they will in no way be able to accomplish; for it is evidently demonstrated that all oracles were fulfilled in Christ and in the Church. Hence augurs and soothsayers have existed indeed among all nations, but prophets nowhere, except in the people of God.

> Resp. *quod oracula sybillina iamdiu viluerunt eruditis. Etiamsi tamen admittatur carminum illorum authenticitas, et Sybillarum virginitatem prophetiae dono a Deo muneratam fuisse, ut ait s. Hieronymus,* contra Iovin., *nihil in illis praesidii reperit incredulitas, cum in illis multa contineantur antiquae traditionis monumenta, multa de Christo eiusque religione vaticinia, ut videri potest in digr. 2 ad calcem dissert. II in tract. de incarnat., in Opere nostro maiori. Ideo cum laude carmina Sybillarum citarunt SS. Patres, quod in iis magis confirmari viderent religionem, quam infirmari. Quoad caetera vero vaticinia et oracula paganorum, quamvis non desint qui omnia fraudibus sacerdotum attribuant, quorum plurimas decipiendi artes ipse Herodotus refert, lib. 5, 6, 7 et 8, theologi tamen communiter censent, non illa omnia humanis artibus esse adscribenda, sed plura etiam a daemonibus edita fuisse. Unde S. Cyprianus, lib.* de Idol. vanit., *sic habet : « Hi ergo spiritus sub statuis atque imaginibus delitescunt, hi altiatu suo vatum pectora inspirant, oracula efficiunt. » Quamvis enim verae prophetiae soli Deo sint propriae, spectata tamen daemonum intelligentia et natura, multa scire possunt et vaticinari, quae hominum admirationem valent excitare. Sic possunt praedicere mala quorum ipsi futuri sunt authores, eodem quasi momento manifestare quae in remota regione fiunt, ex praesentibus quaedam proxime futura coniicere, ut iam est dictum. Quia tamen eventus etiam proxime futuri non raro a libera hominum determinatione, aliarumque rerum concursu dependent, quae ex causis naturalibus certo praevideri non possunt, hinc daemonum oracula de his eventibus, partim falsa erant, partim casu vera, communiter ambigua et flexiloqua, ut in sensus etiam contrarios trahi possent. Oraculorum falsitatem testatus fuit, apud Theodoretum, ipse Porphyrius inquiens*

: « Multis de rebus interrogati, mendaces saepenumero inveniuntur. » Non possunt itaque, nisi per summam fatuitatem et audaciam, ethnicorum oracula nostris prophetiis comparari, quod fecit Celsus, quem Spinosa aliique increduli secuti sunt. Ostendant ipsi falsitatem aliquam vel minimam in prophetiis nostris : quod nullo modo poterunt perficere; omnia enim oracula in Christo et in Ecclesia fuisse completa evidenter demonstratur. Hinc augures et fatidici apud omnes nationes quidem exstiterunt, prophetae vero nullibi, nisi in populo Dei.

29 *Obi.* 2° with Rousseau : That prophecy may be a certain argument of truth, it would be required 1° that he who heard the prophecy be also witness of the event, 2° that it be certain that what was predicted did not happen by chance. But these do not concur in the same prophecy. Therefore.

Obi. *2° cum Rousseau : Ut prophetia certum veritatis argumentum esse possit, requireretur 1° ut idem qui audivit prophetiam, testis quoque esset eventus, 2° ut certum esset non casu evenisse quod praedictum est. Atqui haec in eadem prophetia non concurrunt. Ergo.*

30 *I answer* to the 1st: on this way of philosophizing nothing done by others can be believed, nothing said, unless it be heard with one's own ears. Therefore there will no longer be any historical faith, no certainty. Moreover, although the things Rousseau requires are not found joined in every prophecy, yet it happens in many cases. Thus the resurrection of Christ had been foretold to the Apostles, who afterwards saw him alive with their own eyes.

Resp. *ad 1um hac philosophandi ratione nihil credi posse ab aliis factum, nihil dictum, nisi quod propriis auribus audiatur. Nulla ergo erit amplius fides historica, nulla certitudo. Insuper, quamvis quae Rousseau exigit, non reperiantur coniuncta in omni prophetia, in multis tamen casibus evenit. Sic resurrectio Christi praedicta fuerat Apostolis, qui eum postea vivum propriis oculis viderunt.*

31 *I answer* to the 2nd: there is not here question of one or another deed predicted through ambiguous words, or of one or another prophecy announced through conjectures or natural causes, but of the prophets, who succeeded one another through many centuries, who although far apart among themselves in age, regions and manners, wonderfully agreed in predicting events, not only free and contingent, but depending uniquely on God, whose places, times, and even the smallest individual circumstances they foretold, as we saw above. But who would be so senseless as to say that everything responded by chance to oracles so manifest?

Resp. *ad 2um non hic agi de uno aut altero facto per verba ambigua praedicto, vel de uno aut altero vaticinio per coniecturas causasve naturales praenuntiato, sed de prophetis, quorum alii aliis per plura saecula successere, qui quamvis inter se aetate, regionibus et moribus dissiti, mirifice convenerunt in praenuntiandis eventibus, non modo liberis et contingentibus, sed a Deo unice pendentibus, quorum praedixere loca, tempora, singularisque etiam minimas circumstantias, ut superius iam vidimus. Quis autem adeo insipiens omnia dixerit fortuito respondisse oraculis adeo manifestis?*

32 *Obi.* 3° : Prophecies are not the work of God alone, if a natural faculty of prophesying be granted. But distinguished philosophers taught that this faculty is granted, as Aristotle, Plutarch, etc. Therefore.

Obi. *3° : Vaticinia non sunt solius Dei opus, si detur naturalis vaticinandi facultas. Atqui dari hanc facultatem insignes philosophi docuerunt, ut Aristoteles, Plutarchus, etc. Ergo.*

33 *I answer. I deny* the minor. Those testimonies of the Gentiles prove nothing else than the common persuasion of all that divination exists; since they did not know its true origin, they took refuge in

uncertain suppositions of this kind. For neither from reason nor from experience can any argument be brought forward by which this opinion is proved. We speak of prophecies properly so called, not of certain presensions arising from natural causes, whose sufficient reasons are already contained in things present or past.

> Resp. Nego *min. Illa gentilium testimonia nihil aliud probant, quam communem omnium persuasionem, divinationem existere, cuius cum veram originem non cognoscerent, ad incertas huiusmodi suppositiones confugerunt. Neque enim potest, aut ex ratione, aut ab experientia aliquod afferri argumentum quo haec opinio probetur. Loquimur de prophetiis proprie dictis, non de praesensionibus quibusdam ex causis naturalibus ortis, quarum rationes sufficientes in praesentibus aut praeteritis iam continentur.*

[34] *Obi.* 4° : A prophecy cannot be judged from the event, 1° if it can be fulfilled by the event without being true, as is said *Deut.*, XIII, 1-3 : *If there arise in the midst of thee a prophet... and foretell a sign and a wonder, and it come to pass that which he spoke, and he say to thee : Let us go and follow strange gods..., thou shalt not hear the words of this prophet;* 2° if the event does not always follow a prophecy made in the name of God, as Isaias foretold to Ezechias death for the morrow, Jonas the overthrow of Nineve. 3° An event, announced only after a long time, cannot be an argument of truth; which happens in countless prophecies. Therefore.

> Obi. *4° : Ex eventu non potest diiudicari prophetia, 1° si eventu compleri potest, quin sit vera, ut* Deut.*, XIII, 1-3, dicitur :* Si surrexerit in medio tui propheta... et praedixerit signum atque portentum, et evenerit quod locutus est, et dixerit tibi : Eamus et sequamur deos alienos..., non audies verba prophetae huius; *2° si eventus non semper sequatur prophetiam Dei nomine factam, ut Isaias praedixit Ezechiae mortem in crastinum futuram, Ionas Ninivae subversionem. 3° Eventus, nonnisi post longum tempus praenuntiatum, non potest esse veritatis argumentum; quod in innumeris prophetiis contigit. Ergo.*

[35] *I answer* to the 1st. Since a prophecy that contradicts certain truth is necessarily false, it follows that the one treated of in Deuteronomy cannot be held a true and proper prophecy. Other interpreters think those words contain an impossible hypothesis, to express the matter more forcibly, which hypotheses are not rarely used in common speech, as the *Apostle*, to the *Galatians*, I, 8 : *Though an angel from heaven evangelize to you otherwise than we have evangelized to you, let him be anathema.*

> Resp. *ad 1um. Cum prophetia quae certae veritati repugnat, necessario sit falsa, sequitur illam de qua agitur in Deuteronomio non posse haberi veram et propriam prophetiam. Alii interpretes putant, ea verba hypothesin impossibilem continere, ad rem fortius exprimendam, quae hypotheses in vulgari sermone non raro adhibentur, ut* Apost.*, ad* Gal.*, I, 8 :* Licet angelus de coelo evangelizet vobis praeterquam evangelizavimus vobis, anathema sit.

[36] Finally nothing prevents understanding those words of a prophet who, after he had uttered true prophecies, afterwards fallen into idolatry, abused his authority to corrupt the faith of the people.

> *Demum nihil impedit verba illa intelligere de propheta qui, cum veras edidisset prophetias, postmodum in idololatriam lapsus, authoritate sua abuteretur ad fidem populi corrumpendam.*

[37] *I answer* to the 2nd. Those predictions were not prophecies uttered in confirmation of any doctrine, but threats made, which were for the most part conditional.

> Resp. *ad 2um. Illae predictiones non erant vaticinia in confirmationem alicuius doctrinae edita, sed comminationes factae, quae ut plurimum erant conditionatae.*

38 *I answer* to the 3rd. A prophecy to be fulfilled long after could not be an argument of truth to those living at the time of the prophet, but to those who saw the event. Thus the prophecies concerning the Messiah proved nothing to the Jews living in the time of Isaias and Jeremias, but to those who were to be convinced from the prophecies in the time of the Messiah. Moreover the prophets always predicted even things soon to be, that by the events of the earlier prophecies they might win faith for the later ones.

> Resp. *ad 3um. Prophetia longo post tempore complenda, non poterat esse veritatis argumentum his qui tempore prophetae vivebant, sed iis qui eventum viderunt. Sic prophetiae de Messia nihil probabant Iudaeis viventibus tempore Isaiae et Ieremiae, sed iis qui tempore Messiae ex prophetiis convincendi erant. Insuper prophetae semper res etiam proxime futuras praedicebant, ut priorum prophetiarum eventibus fidem conciliarent posterioribus.*

39 *Obi.* 5° : The prophecies that foretell the last calamity of the Jews contain many things that were not fulfilled in the destruction of the city of Jerusalem. Therefore they prove nothing.

> Obi. *5° : Vaticinia quae extremam Iudaeorum cladem praenuntiant, multa continent quae in urbis Hierosolymitanae excidio impleta non sunt. Ergo nihil probant.*

40 *I answer.* the objection speaks of the prophecy read in *Matth.*, XXIV, *Marc.*, XIII and *Luc.*, XXI, in which, according to the common opinion of interpreters, Christ spoke at once of the consummation of the world, of which the extreme calamities of the Jewish nation exhibit the prelude. Yet it is not difficult to distinguish between the two, especially in the series of the narration related by St. Mark. 1° The destruction of the city of Jerusalem is treated from v. 1 up to 24. 2° The overthrow of the whole world from v. 24 to 27. Both events having been foretold, Christ answers this question of the disciples : Tell us when these things shall be. And indeed returning at v. 28 to the first event, he announces it as near at v. 30 : *This generation shall not pass, until all these things be done.* But as to the time of the final consummation of the world, he says at v. 32 that it pertains to the hidden judgments of God : But of that day or hour no man knoweth.]

> Resp. *sermonem esse in obiectione de vaticinio quod* Matth.*, XXIV,* Marc.*, XIII et* Luc.*, XXI legitur, in quo, iuxta communem interpretum sententiam, Christus simul de mundi consummatione locutus est, cuius praeludium exhibent extremae gentis Iudaicae calamitates. Difficile tamen non est inter utramque distinguere, praesertim in serie narrationis quae a S. Marco refertur. 1° De urbis Hierosolyma destructione agitur a v. 1 usque ad 24. 2° De totius orbis subversione a v. 24 ad 27. Utroque eventu praenuntiato, Christus respondet ad hanc discipulorum interrogationem : Dic nobis quando ista fient. Et quidem v. 28 ad primum eventum rediens, eum tamquam proximum annuntiat v. 30 :* Non transibit generatio haec, donec omnia fiant. *Quod autem tempus attinet extrema mundi consummationis, ait v. 32, illud ad occulta Dei iudicia pertinere : De die autem illo vel hora nemo scit.]*

The miracles of Christ and the Apostles, and likewise the promises of Christ fulfilled, in confirmation of the Christian religion

1 *You will ask* 1° what a miracle is.

> Petes *1° quid sit miraculum.*

2 [A miracle is named from wondering, and therefore by force of the word signifies a thing worthy of admiration. Moreover, admiration is caused by anything wonderful, and arises chiefly in a fourfold case: 1° Something is wonderful from the greatness of a thing or the art which shines forth in it. Hence those seven ancient works of the world, wrought with such industry and so often celebrated in

song, were called wonders and celebrated as miracles. Miracles taken in this widest sense do not concern us.

> *[Miraculum nominatum est a mirando, et ideo vi vocis significat rem admiratione dignam. Porro admiratio causatur propter quodcumque mirum, et fit potissimum in quadruplici casu : 1° Mirum est aliquid ex rei magnitudine vel arte quae in ea elucet. Unde septem illa mundi antiqua opera tanta industria elaborata totiesque decantata, mirabilia fuerunt nuncupata et pro miraculis celebrata. Hoc latissimo sensu sumpta miracula ad nos non pertinent.*

3 2° That is called wonderful which, since it has a cause exceeding the capacity of the perceiver, moves his admiration and impels him to inquire into this cause. Such is, e. g., the aurora borealis, which has not yet been conclusively explained by physicists. 3° That is called wonderful which happens rarely. Deeds of this kind are often called miracles, but are not, because they do not exceed the order of the whole of nature. 4° A work that exceeds human faculty is wonderful, and is called a miracle in a wide sense, although it does not surpass the natural power of certain higher agents, namely angels and even demons. Of this below, comparatively to the miracle properly so called, which is soon to be defined.

> *2° Mirum dicitur quod, cum causam habeat quae percipientis captum excedat, movet eius admirationem, et eum ad inquirendam hanc causam impellit. Tale est, V. g., lumen arcticum, quod a physicis nondum peremptorie fuit explicatum. 3° Mirum dicitur quod raro evenit. Huiusmodi facta saepe miracula dicuntur, sed non sunt, quia ordinem totius naturae non excedunt. 4° Mirum est, et miraculum large dicitur, opus quod excedit facultatem humanam, licet non superet naturalem potentiam aliquorum agentium superiorum, nempe angelorum et etiam daemonum. De hoc infra, comparative ad miraculum proprie dictum, quod mox est definiendum.*

4 Miracle is rejected: 1° by Atheists, who deny that worldly things have a superior cause existing outside themselves. 2° by Deists, who do not admit that God has care of this world, maintaining that God cannot influence the world. At the same time, with providence, the possibility of miracles is denied.

> *Miraculum respuunt : 1° Atheistae, qui negant res mundanas habere causam superiorem extra se existentem. 2° Deistae, qui Deum huius mundi curam habere non admittunt, statuentes Deum in mundum influere non posse. Negatur simul, cum providentia, possibilitas miraculorum.*

5 **3° Pantheists**, who teach that all things in the world come to pass by absolute necessity. **4°** Among theists those rationalists who, out of hatred of the Christian religion, devise various antitheses whereby they assail it, and rise up against miracles, that they may remove from the midst the argument drawn from them in favor of this religion. **5°** Neoplatonists, who said that he who had learned the theurgic art has no need of the help of God, by which he can sometimes disturb the laws of nature.]

> ***3° Pantheistae**, qui omnia in mundo fieri docent absoluta necessitate. **4°** Ex theistis illi rationalistae qui, ex odio religionis christianae, varias antitheses excogitant quibus eam impugnent, et contra miracula insurgunt, ut argumentum ex iis in favorem huius religionis depromptum e medio tollant. **5°** Neoplatonici, qui dixerunt nihil Dei auxilio opus esse ei qui artem theurgicam didicit, qua quandoque potest naturae leges turbare.]*

6 *I answer.* A miracle is an effect of the divine omnipotence against the common laws and above all the forces of the whole of nature, or, as St. Thomas says, beside the order of the whole of nature[15]. Hence neither angels, nor demons, nor any creature whatsoever can by its own power work a true miracle, but God alone; who, since in creating nature he freely established its laws for it, he alone can

derogate from them at a nod. Nor does it follow from this that God is changed, as Spinoza foolishly feigns; for he does not change his will by working a miracle, but does in time what he decreed from eternity to do.

15 I p., q. 110, a. 4, o.

> Resp. *Miraculum est effectus omnipotentiae divinae contra leges communes et supra omnes vires totius naturae, seu, ut dicit S. Thomas, praeter ordinem totius naturae*[15]*. Unde neque angeli, neque daemones, neque ulla quaevis creatura potest propria virtute facere verum miraculum, sed solus Deus, qui cum, condendo, naturam, illi libere leges constituit, sic solus illis potest ad nutum derogare. Neque inde sequitur quod Deus mutetur, ut stupide fingit Spinosa; non enim mutat voluntatem faciendo miraculum, sed facit in tempore quod ab aeterno decrevit facere.*
>
> *15 I p., q. 110, a. 4, o.*

7 When therefore angels or saints are said to work miracles, the sense is not that they have habitually inherent in themselves a permanent virtue of working miracles[16]. For since the principle of working miracles extends to all things that can be done supernaturally, it is nothing other than the divine omnipotence, which cannot be communicated to any creature. And moreover it would follow that they could work miracles whenever they wished, which is false. It is clear from the question of the Apostles, *Matt.*, XVII, 18: Why could not we cast him out? namely the demon. Likewise Eliseus could not raise the widow's son by the application of his staff. Likewise Paul asked that the sting of the flesh be removed from him, and did not obtain it. The sense therefore is that at their petition, or their word, or their contact with something belonging to them, God works the miracle, using those things as instruments.

16 Ibid., ad 1 ; 2. 2ae, q. 178, a. 1, ad 1.

> *Quando ergo angeli vel sancti dicuntur facere miracula, non est sensus quod habeant in se virtutem habitualiter permanentem faciendi miracula*[16]*. Cum enim principium operandi miracula se extendat ad omnia quae supernaturaliter fieri possunt, nihil est aliud quam omnipotentia divina quae nulli creaturae communicari potest. Et aliunde sequeretur quod possent facere miracula quando vellent, quod est falsum. Patet ex interrogatione Apostolorum,* Matth.*, XVII, 18 : Quare nos non potuimus eiicere illum? scilicet daemonem. Item Elizaeus non potuit suscitare filium viduae per sui baculi applicationem. Item Paulus petiit a se removeri stimulum carnis, nec obtinuit. Sensus est ergo quod ad eorum sive postulationem, sive vocem, sive contactum alicuius ad se pertinentis, Deus operetur miraculum, utens iis rebus tamquam instrumentis.*
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> *16 Ibid., ad 1 ; 2. 2ae, q. 178, a. 1, ad 1.*

8 *You will ask* 2° whether a miracle is possible.

> Petes *2° utrum miraculum sit possibile.*

9 *I answer.* Affirmatively.

> Resp. *affirmative.*

10 **1°** It is of faith. The Vatican Council, session III, constitution *Dei Filius*, thus defined: « If anyone shall say that miracles cannot be wrought, and that therefore all narratives concerning them, even those contained in Sacred Scripture, must be banished among fables or myths...; let him be anathema. »

> ***1°** Est de fide. Concilium Vaticanum, sess. III, constit.* Dei Filius*, ita definivit : « Si quis dixerit miracula nulla fieri posse, proindeque omnes de iis narrationes, etiam in Scriptura sacra contentas, inter fabulas vel mythos ablegandas*

esse… ; anathema sit. »

11 *It is proved* by reason. A miracle is possible if it repugns neither on the part of God the creator nor on the part of created nature. But it repugns on neither side. Therefore.

Prob. *ratione. Possibile est miraculum, si non repugnet neque ex parte Dei creatoris, neque ex parte naturae creatae. Atqui neutra ex parte repugnat. Ergo.*

12 *It is proved* as to the first part. A miracle would be impossible on the part of God if his power either were not extended so far, or were bound by an order already established among created things. But neither can be admitted. Therefore. — *Proof* of the first part of the minor. He who can do more can do less, in the same genus. But more is to produce all things from nothing than to make an exception, that is, a miracle. Less is it to stop the course of the sun or to shed darkness upon it in daytime than to imprint upon it perpetual motion; less is it to restore lost life to a man than to impart it to or preserve it in infinite thousands of men daily: which facts have been miraculous. Therefore. — *Proof* of the second part of the minor. The power of God would be bound by an established order, either because this order had been made necessary by creation, or because God, on account of his immutability, could not change it. But neither can be admitted. Not the first. For only that is truly necessary which, existence being supposed, is essentially such. But the order of the world is not essentially such, but merely contingent, because it is conceived otherwise by us, and God freely instituted it, seeing that God is absolutely free in his external operations. Therefore. Not the second. For although a miracle derogates from natural laws, it imports no mutation in God. For when God from eternity resolved to create the world and decreed to give it such general laws, he at the same time resolved to derogate from these laws in foreseen and determined cases, to manifest his glory: whence, as Augustine says most excellently, lib. I *Confess.*, c. 4, « changing his works, he changes not his counsel. » Therefore. — Add that, if we wished to speak properly,

Prob. *prima pars. Miraculum esset impossibile ex parte Dei, si eius potentia vel eo usque non extenderetur, vel ordine iam inter res creatas statuto ligaretur. Atqui neutrum admitti potest. Ergo.* — Prob. *prima pars min. Qui potest plus, potest et minus, in eodem genere. Atqui plus est omnia e nihilo producere, quam exceptionem, id est miraculum, facere. Minus est solis cursum sistere vel illi tenebras per diem offundere, quam perpetuum motum illi imprimere ; minus est omissam vitam homini reddere, quam eam infinitis hominum millibus quotidie impertiri aut conservare : quae facta sunt miraculosa. Ergo.* — Prob. *secunda pars min. Potentia Dei statuto ordine ligaretur, vel quia hic ordo per creationem necessarius factus esset, vel quia Deus, propter suam immutabilitatem, illum mutare non posset. Atqui neutrum admitti potest. Non primum. Nam vere necessarium non est, nisi quod, supposita existentia, est essentialiter tale. Atqui ordo mundi non est essentialiter talis, sed mere contingens, quia aliter a nobis concipitur et Deus libere eum instituit, siquidem Deus est absolute liber in suis operationibus externis. Ergo. Non secundum. Quamvis enim miraculum legibus naturalibus deroget, nullam mutationem in Deo importat. Cum enim Deus ab aeterno mundum creare constituit, eique tales leges generales dare decrevit, simul statuit his legibus in casibus praevisis et determinatis derogare, ad manifestandum gloriam suam : unde, ut optime ait Augustinus, lib. I* Confess.*, c. 4, « opera mutans, nec mutat consilium. » Ergo. — Adde quod, si proprie loqui velimus,*

13 God governs not genera and species, which are nothing but abstract ideas, and as such are immutable, but governs individuals, which alone are real; nor does he govern them by universal laws, which likewise are nothing but in our concept, arising thence, that we perceive God to govern in uniform manner the individuals of any genus whatever, but with a peculiar will he governs individual things one by one: whence, with respect to each single thing, whether he keep it within its

accustomed mode, or treat it otherwise, to obtain the end proposed, in either case he commits his eternal decree to execution, and there is ever verified what he said of himself, *Malach.*, I, 6: I am the Lord, and I change not.

> *Deus non regit genera et species, quae non sunt nisi ideae abstractae, et ut talia sunt immutabilia, sed regit individua, quae sola realia sunt; neque ea regit legibus universalibus, quae pariter non sunt nisi in conceptu nostro, exinde ortae, quod nos conspiciamus Deum modo uniformi individua cuiusvis generis gubernare, sed voluntate peculiari regit individua singula : unde, respectu uniuscuiusque, sive illud intra modum consuetum contineat, sive illud aliter tractet, ad finem propositum obtinendum, in utroque casu decretum suum aeternum executioni mandat, et semper verificatur quod de seipso dixit,* Malach.*, I, 6 : Ego Dominus, et non mutor.*

14 *It is proved* as to the second part, namely that a miracle does not repugn on the part of created nature. For **1°** nature depends on God as clay on the potter, and indeed still more absolutely, because God fashioned the world not only out of preexisting matter but freely created matter itself. **2°** Matter, as being essentially inert and idle, is plainly indifferent to motion or rest, to this or that figure and disposition of parts. It can therefore take this or that mode, put on this or that form, receive this or that disposition of parts, and so be accommodated to a miracle. Therefore.

> Prob. *secunda pars, scilicet quod miraculum non repugnat ex parte naturae creatae. Nam* ***1°*** *natura a Deo ita dependet, ut lutum a figulo, et etiam magis absolute, quia Deus non tantum ex materia praexistente orbem condidit, sed materiam ipsam libere creavit.* ***2°*** *Materia, utpote essentialiter iners et otiosa, ad motum vel quietem, ad hanc vel illam figuram partiumque dispositionem plane est indifferens. Potest igitur hunc vel illum modum accipere, hanc vel illam formam induere, hanc vel illam partium dispositionem suscipere, sicque ad miraculum accommodari. Ergo.*

15 *You will ask* 3° whether miracles have the power of proving the truth of revelation.

> Petes *3° utrum miracula vim habeant probandi veritatem revelationis.*

16 *I answer.* Affirmatively, with St. Thomas, 2. 2ae, q. 178, a. 2, c: Miracles are wrought « for the confirmation of the truths preached. »

> Resp. *affirmative cum S. Thoma, 2. 2ae, q. 178, a. 2, c : Miracula fiunt « ad veritatis praedicata confirmationem. »*

17 It is of faith, defined by the Vatican Council, session III, constitution *Dei Filius*: « If anyone shall say... that neither by miracles is the divine origin of the Christian religion rightly proved; let him be anathema. »

> *Est de fide definitum a concilio Vaticano, sess. III, constit.* Dei Filius *: « Si quis dixerit... nec miraculis divinam religionis christianae originem rite probari ; anathema sit. »*

18 *It is proved* 1° from Sacred Scripture. Since supernatural doctrine has no intrinsic evidence, that its extrinsic evidence or credibility may appear, Scripture is full of motives of this kind. And indeed **1°** that God alone is the author of a miracle the Apostles testify, that they may show the force and value of a miracle. Thus St. Peter says, *Acts*, I, 12 [III, 12]: Ye men of Israel, why wonder ye at this, or look upon us, as if by our own strength or power we had made this man to walk? Therefore a miracle is always the work of God. — **2°** That it is a testimony of truth appears, because the B. V. Mary received it as a pledge of the truth announced to her. For the angel says, *Luc.*, I, 36: And behold thy cousin Elizabeth, she also hath conceived a son in her old age. Christ the Lord proves himself the Messiah by legitimate testimony, namely a miracle, *Ioann.*, I, 51: Amen, amen I say to you, you shall see the heaven opened, and the angels of God ascending and descending upon the Son of man. The same

Lord Jesus, on the very day on which he ascended into heaven, having commanded the Apostles to go into the whole world and preach the Gospel, adds, *Marc.*, XVI, 17: And these signs shall follow them that believe: In my name they shall cast out devils, etc.

> Prob. *1° Scriptura sacra. Cum doctrina supernaturalis non habeat evidentiam intrinsecam, ut appareat eius evidentia extrinseca seu credibilitas, eiusmodi motivis plena est Scriptura. Et quidem* **1°** *quod Deus solus sit author miraculi, testantur Apostoli, ut vim et valorem miraculi demonstrent. Sic S. Petrus ait,* Act.*, I, 12 : Viri Israelitae, quid miramini in hoc, aut nos quid intuemini, quasi nostra virtute aut potestate fecerimus hunc ambulare? Ergo miraculum est semper opus Dei. —* **2°** *Quod sit testimonium veritatis apparet, quia B. V. Maria illud accepit ut arrham veritatis sibi annuntiatae. Dicit enim angelus,* Luc.*, I, 36 : Et ecce Elisabeth cognata tua, et ipsa concepit filium in senectute sua. Christus Dominus se Messiam probat legitimo testimonio, nempe miraculo,* Ioann.*, I, 51 : Amen, amen dico vobis, videbitis caelum apertum, et angelos Dei ascendentes et descendentes supra Filium hominis. Idem Dominus Iesus, ipso die quo ascendit in caelum, cum praecepisset Apostolis ut irent in mundum universum praedicare Evangelium, addit,* Marc.*, XVI, 17 : Signa autem eos qui crediderint haec sequentur : In nomine meo daemonia eiicient, etc.*

19 The Apostles too invoke miracles to confirm the divinity of Christ. Thus St. Peter brings forward the miracle of the transfiguration, *2 Pet.*, I, 18: And this voice we heard brought from heaven, when we were with him in the mount. The apologetic character of miracles shines forth *Ioann.*, 30 and 31: Many other signs also Jesus did... But these things are written that you may believe that Jesus is the Christ the Son of God, and that believing you may have life in his name. The Apostle Paul, *Rom.*, XV, 19, shows his mission to be legitimate in virtue of signs and wonders, and *2 Cor.*, XII, 12, says again: The signs of my apostolate have been wrought upon you in all patience, in signs and wonders and mighty deeds. It is certain, therefore, that a miracle by its nature is apt to add strength to truth, not indeed intrinsic, but extrinsic, and that this confirmation through prodigies is sufficient.

> *Apostoli quoque miracula invocant ad confirmandam divinitatem Christi. Sic S. Petrus transfigurationis miraculum affert,* II Petr.*, I, 18 : Et hanc vocem nos audivimus de caelo allatam, cum essemus cum ipso in monte. Apologeticus character miraculorum splendescit* Ioann.*, 30 et 31 : Multa quidem et alia signa fecit Iesus... Haec autem scripta sunt, ut credatis quia Iesus est Christus Filius Dei, et ut credentes, vitam habeatis in nomine eius. Apostolus Paulus,* Rom.*, XV, 19, legitimam esse suam missionem demonstrat in virtute signorum et prodigiorum, et* II Cor.*, XII, 12, iterum dicit : Signa apostolatus mei facta sunt super vos, in omni patientia, in signis et prodigiis et virtutibus. Certum est igitur, miraculum ex natura sua esse aptum ut veritati robur addat, non quidem intrinsecum, sed extrinsecum, et hanc per prodigia confirmationem esse sufficientem.*

20 *It is proved* 2° from the nature of a miracle. The Angelic Doctor says, ibid.: « True miracles cannot be wrought except by divine power. » But God is truth itself, nor can he ever either give countenance to error and falsehood, or set the seal of his omnipotence and authority to confirm error sown by others. Therefore a miracle is necessarily connected with truth.

> Prob. *2° ex natura miraculi. Angelicus dicit, ibid.: « Vera miracula non possunt fieri, nisi virtute divina. » Atqui Deus est ipsamet veritas, nec unquam potest vel adstipulari errori et falsitati, vel suae omnipotentiae et authoritatis sigillum apponere ad errorem ab aliis sparsum confirmandum. Ergo miraculum necessario connectitur cum veritate.*

21 *It is proved* 3° from the consensus of men. **1°** A universal and invincible propensity ought to be held as a firm argument of truth. But men are carried by universal and invincible propensity to judge that miracles are the resplendent signs of the divine will. Hence all peoples have been persuaded that miracles are as it were the voices of God. Hence I. J. Rousseau himself, after confessing that the question « Whether God can work miracles, » if it were not impious, ought to be called absurd, adds

that he does not wish to see miracles, lest he should go mad with astonishment. — **2°** This is shown by fact. For that has an ineluctable power of proof to which yielded the pertinacious obstinacy of Pharaoh and his magicians, so that they cried out, *Exod.*, VIII, 19: This is the finger of God; to which yielded the superstition of the gentiles grown old through so many centuries, to which yielded the whole world, embracing the faith of Christ. — **3°** It is confirmed by this, that all who attempted to spread abroad a religion, even a false one, that they might win faith and authority for it, brought forward certain deeds either supposititious or mendaciously interpreted as miraculous. Miracles therefore have the power of demonstrating truth.

> Prob. *3° consensu hominum. **1°** Propensio universalis et invincibilis ut firmum veritatis argumentum haberi debet. Atqui propensione universali et invincibili feruntur homines ad iudicandum miracula divinae voluntatis esse signa splendidissima. Hinc omnes populi persuasum habuerunt miracula esse quasi Dei voces. Hinc ipse I. I. Rousseau, postquam confessus est, quaestionem : « An possit Deus miracula facere, » si non esset impia, absurdam dici debere, addit se nolle videre miracula, ne insanus prae stupore fieret. — **2°** Id ostenditur ex facto. Etenim illud ineluctabilem vim probandi habet, cui cessit Pharaonis eiusque magorum pertinax obstinatio, ita ut clamarent,* Exod.*, VIII, 19 : Digitus Dei est hic ; cui cessit gentilium superstitio tot saeculis inveterata, cui cessit orbis universus, fidem Christi amplectendo. — **3°** Confirmatur ex hoc quod omnes qui religionem etiam falsam spargere tentaverunt, ut ei fidem et authoritatem conciliarent, quaedam facta vel supposititia vel mendaciter ut miraculosa interpretata protulerunt. Habent ergo miracula vim veritatem demonstrandi.*

22 If you object that the demons themselves can by the force of their natural power do certain things which seem supernatural to us, this difficulty will be solved below.

> *Si obiecias, daemones ipsos vi suae potentiae naturalis quaedam facere posse quae nobis supernaturalia videntur, haec difficultas infra solvetur.*

23 *You will ask* 4° whether a miracle as such can be known with certainty.

> Petes *4° utrum miraculum ut tale certo cognosci possit.*

24 *I answer.* Affirmatively.

> Resp. *affirmative.*

25 It is of faith. The Vatican Council, constitution *Dei Filius*, thus defined: « If anyone shall say... that miracles can never certainly be known...; let him be anathema. »

> *Est de fide. Concilium Vaticanum, constit.* Dei Filius*, ita definivit : « Si quis dixerit... miracula certo cognosci nunquam posse... ; anathema sit. »*

26 *It is proved* by reason. That a miracle may be known with certainty as such, two things are required, namely first that some effect be produced exceeding the powers and order of nature; secondly, that it be established that this effect exceeds the powers and order of nature. But both can be had. The first can be known by sense experience, that is empirically, or through the testimony of others, as the other sensible facts are known: and not only probably, but even with certainty; unless the force of the report of senses and the testimony of men be at once denied, in which case all faith, even in the natural order, would have to be denied. The second will appear through a serious examination instituted, when the effect is weighed by comparison with its causes, and it appears that in it the powers of nature have been surpassed and an extraordinary causality was present. By this reason is attained the historical and philosophical truth of the miracle. The former is obtained most easily, as

of the other natural facts. For a miracle, insofar as it is a sensible fact, is no less obvious to the senses than a natural fact. The second truth, or philosophical certainty, we reach equally. For testimony is given not concerning the supernatural mode in which the effect is produced, but concerning the effect itself, as regards its physical substance. Where such an effect is had which evidently could not proceed from a created cause, we conclude at once with metaphysical certainty that its cause is God omnipotent, acting outside the accustomed order and derogating from the laws established by himself. Therefore.

> Prob. *ratione. Ut miraculum certo cognosci possit ut tale, duo requiruntur, scilicet primo ut producatur aliquis effectus qui naturae vires et ordinem excedat ; secundo, ut hunc effectum naturae vires ordinem excedere constet. Atqui utrumque haberi potest. Primum experientia sensuum, id est empirice, potest cognosci, aut per alienum testimonium, ut caetera facta sensibilia cognoscuntur : neque solum probabiliter, sed etiam cum certitudine ; nisi relationis sensuum et testimonii hominum vis simul negetur, quo in casu omnis fides, etiam in ordine naturali, neganda est. Secundum per examen serio institutum apparebit, quando effectus ex comparatione ad eius causas expenditur, et videtur in eo natura vires superatas esse et extraordinariam causalitatem adfuisse. Hac ratione comparatur veritas miraculi historica et philosophica. Prima facillime, sicut et caeterorum factorum naturalium, obtinetur. Miraculum quippe, quatenus est factum sensibile, non minus est sensibus obvium quam factum naturale. Secundam veritatem, seu certitudinem philosophicam, pariter attingimus. Non enim de modo supernaturali quo effectus producitur, sed de ipso effectu, quoad physicam suam substantiam, datur testimonium. Ubi talis effectus habetur qui evidenter ex causa creata procedere non potuit, statim certitudine metaphysica concludimus quod eius causa sit Deus omnipotens, extra ordinem consuetum agens et legibus ab ipso constitutis derogans. Ergo.*

27 That we may pronounce some fact miraculous, it is not necessary that we discern all the forces of nature. It is true indeed that no one, however learned and perspicacious, knows all the forces of nature; but any man, even untrained, led by experience, can see how far nature cannot reach. And that an example may be put in the concrete (from which adversaries always flee, that they may hide themselves within the recesses of abstractions), although we confess that we do not know how far the most noble art of medicine raises itself, yet we know certainly that no physician by the nod of mere will, or by a spoken word, heals any sick man, consolidates a broken bone, recalls a dead man to life, and one indeed already buried four days and stinking; if these things came to pass, who would doubt of the miracle? Would not even the deists and rationalists themselves, abandoning all their abstract and contorted reasonings, proclaim a miracle? We might therefore here imitate him too, who, to solve the arguments propounded to him against motion, began to walk.

> *Ut factum aliquod miraculosum esse pronuntiemus, non necesse est ut omnes natura vires perspiciamus. Verum est quidem neminem, quantumvis sit doctus et perspicax, omnes naturae vires cognoscere ; at quilibet homo, etiam rudis, experientia ductus, videre potest quoad usque natura pertingere non possit. Atque ut in concreto exemplum ponatur (a quo semper fugiunt adversarii, ut intra abstractionum latebras sese tegant), etsi fateamur nos ignorare quousque sese attollat nobilissima ars medicinae, certo tamen scimus nullum medicum solius voluntatis nutu, vel voce prolata, infirmum quempiam sanare, os confractum consolidare, mortuum, et quidem iam quatriduo sepultum et faetentem, ad vitam revocare; qua si contingant, quis de miraculo ambigat? Nonne et ipsi deistae et rationalistae, relictis suis omnibus abstractis et contortis ratiocinationibus, miraculum proclamarent? Possemus proinde et nos hic eum imitari, qui ad solvenda argumenta sibi proposita adversus motum, coepit ambulare.*

28 And thus is answered the difficulty opposed by Renan, namely that a miracle can never be certain unless a society of learned men, chemists and investigators of nature investigated the fact and

pronounced judgment on the reality of the miracle, because otherwise it is impossible to recognize directly divine causality. How ineptly he demands this, is evident per se.]

> *Et ita respondetur difficultati a Renan oppositae, scilicet nunquam certum esse posse miraculum, nisi societas doctorum, chymicorum et naturae scrutatorum factum investigaret, promeretque iudicium de realitate miraculi, quia secus impossibile est causalitatem directe divinam agnoscere. Quam inepte hoc exigat, per se patet.]*

29 *You will ask* 5° whether all things which appear or are said to be miracles are true and properly so-called miracles.

> Petes *5° utrum omnia quae videntur aut dicuntur miracula, sint vera et proprie dicta miracula.*

30 *I answer.* Negatively[17]. For some are not true facts, but fantastic, by which man is deluded, so that there seems to him to be something which is not. Some are indeed true facts, or true things, but have not the character of true miracle, insofar as they are wrought by the power of certain natural causes unknown to us, and therefore are not called miracles simply, but only relatively to us. These two things demons can do, and magicians by the aid of demons. Such were the miracles of the magicians in Egypt, and will be the miracles of Antichrist, of which the Apostle says *2 Thessal.*, II, 9, that his coming will be according to the operation of Satan, in all power, and signs, and lying wonders. But God alone, as I said, works true miracles which surpass every power of the whole of nature.

17 I p., q. 114, a. 4, o.

> Resp. *negative[17]. Quaedam enim non sunt vera facta, sed phantastica, quibus ludificatur homo, ut videatur ei aliquid quod non est. Quaedam sunt quidem vera facta, seu verae res, sed non habent rationem veri miraculi, quatenus fiunt virtute aliquarum causarum naturalium nobis ignota, et ideo non dicuntur miracula simpliciter, sed quoad nos tantum. Haec duo facere possunt daemones, et magi ope daemonum. Huiusmodi fuerunt miracula magorum in Aegypto, et erunt miracula Antichristi, de quibus Apostolus dicit* II Thessal.*, II, 9, quod eius adventus erit secundum operationem Satanae, in omni virtute, et signis, et prodigiis mendacibus. Solus autem Deus, ut dixi, facit vera miracula quae omnem totius naturae virtutem superant.*
>
> *17 I p., q. 114, a. 4, o.*

31 *You will ask* 6° how any miracle can be discerned to have been wrought by divine power, and not by the power of a nature unknown to us, and therefore to be a true miracle.

> Petes *6° quomodo dignosci potest aliquod miraculum esse factum virtute divina, et non virtute naturae nobis ignota, ideoque esse verum miraculum.*

32 *I answer.* There is a threefold rule. As to the first, I suppose that there exist certain effects which, by the common and constant consent of all men of any time and nation, are reckoned to surpass all the forces of the whole of nature and to be truly miraculous, such is, e. g., the resurrection of a dead man. From whatsoever place, at whatsoever time a truly dead man rise again, as was the case, e. g., of Lazarus, there is no one who does not reckon it a true and properly so-called miracle; whence that saying of the man born blind, *Ioann.*, IX, 32 and 33: From the beginning of the world it hath not been heard that anyone opened the eyes of one born blind. Unless this man were of God, he could not do anything. This supposed, I say: When there is such an effect as is judged miraculous by the common and constant consent of all men of any time and nation, it is to be held with certainty to be a true miracle; because this consent, so constant and so universal of all men of any time and nation, the infinite goodness, wisdom and veracity of God being considered, cannot be false. Otherwise God,

who is the author of common sense and reason, would either deceive us, or permit us to be deceived, without our being able by any means to discern the error and be delivered from it; which repugns his infinite goodness, wisdom and veracity, especially if there be error about some dogma.

> Resp. *triplicem esse regulam. Pro prima, suppono esse quosdam effectus qui, communi et constanti sensu omnium hominum cuiusvis temporis et nationis, reputantur superare omnes totius naturae vires et vere miraculosi, qualis est, v. g., resurrectio mortui. Quovis e loco, quovis tempore resurgat homo vere mortuus, ut erat, v. g., Lazarus, nemo est qui non reputet verum et proprie dictum miraculum ; unde illud caeci nati,* Ioann.*, IX, 32 et 33 : A saeculo non est auditum quia aperuit quis oculos caeci nati. Nisi esset hic a Deo, non poterat facere quidquam. Hoc supposito, dico : Quando est talis effectus qui communi et constanti sensu omnium hominum cuiusvis temporis et nationis censetur miraculosus, certo tenendum est esse verum miraculum ; quia hic sensus tam constans et tam universalis omnium hominum cuiusvis temporis et nationis, attenta infinita Dei bonitate, sapientia et veracitate, non potest esse falsus. Alioquin Deus, qui est author sensus communis et rationis, aut nos deciperet, aut permitteret nos decipi, absque eo quod ullo medio possemus dignoscere errorem et ab eo liberari ; quod repugnat infinitae eius bonitati, sapientiae et veracitati, maxime si sit error circa aliquod dogma.*

33 As to the second rule, I suppose that true miracles are divine attestations of some truth to be introduced or confirmed. This supposed, I say: A miracle wrought in the name of God the creator in assertion of some dogma can never be false, nor lead into error; because it repugns the infinite goodness, wisdom and veracity of God **1°** that he permit his name to be interposed to substitute a false miracle for a true one; **2°** that he suffer his name to be brought in as witness of a lie, whence men would be necessarily and invincibly led into error against that which they owe to God and which is necessary for their salvation; for men have nothing which they can oppose to a miracle wrought in the name of God the creator in attestation of some dogma.

> *Pro secunda regula, suppono vera miracula esse testimonia divina alicuius veritatis inducendae aut confirmandae. Hoc supposito, dico : Miraculum factum in nomine Dei creatoris in assertionem alicuius dogmatis, nunquam potest esse falsum, nec inducere in errorem ; quia infinitae Dei bonitati, sapientiae et veracitati repugnat **1°** quod permittat suum nomen interponi ad substituendum falsum miraculum pro vero ; **2°** quod patiatur suum nomen adduci in testem mendacii ex quo homines necessario et invincibiliter inducerentur in errorem contra id quod debent Deo et est necessarium suae saluti ; nihil enim habent homines quod opponant miraculo facto in nomine Dei creatoris in attestationem alicuius dogmatis.*

34 Third rule. True miracles are discerned from the doctrine and morals of those who work them, and from the singular and permanent effects which follow from these miracles: namely if those who work miracles hand on doctrine honorable to God, conformable to right reason, leading to good morals and favorable to social life; if the same accurately fashion their life and morals according to the norm of this doctrine; finally, if from these miracles there permanently follow worship of the supreme deity, the overthrow of the worship of demons, reformation of morals conformed to right reason, concord of citizens and social life. For it is impossible that miracles of this kind be wrought with a demon as author, to his own ruin. This rule is taken from Origen, lib. I contra Celsum.

> *Tertia regula. Dignoscuntur vera miracula ex doctrina et moribus eorum qui illa operantur, et ex effectibus singularibus et permanentibus qui ex his miraculis sequuntur : si nempe qui operantur miracula, tradant doctrinam Deo honorificam, rectae rationi conformem, bonos mores inducentem et vitae sociali adfaventem ; si iidem vitam et mores ad huius doctrinae normam accurate componant ; denique, si ex his miraculis sequantur permanenter cultus supremi numinis, eversio cultus daemonum, reformatio morum conformiter ad rectam rationem, concordia civium et vita socialis.*

Impossibile est enim quod huiusmodi miracula fiant authore daemone in sui perniciem. Haec regula desumpta est ex Origene, lib. I contra Celsum.

35 *You will ask* 7° whence it can be discerned that a miraculous fact related is not supposititious and fabulous.

Petes *7° unde dignosci possit, factum miraculosum quod narratur non esse suppositum et fabulosum.*

36 *I answer.* It is then to be judged true and not supposititious, **1°** when it is an external fact, open to eyes or ears; **2°** when it is a fact wrought before many seeing or hearing witnesses attending, and maturely weighing all the circumstances of the fact; **3°** when in memory of this fact public monuments were then erected and obligations imposed, which endure. From these conditions, I say, placed together, the truth of the fact is certainly elicited.

Resp. *tunc censeri verum et non suppositum,* ***1°*** *quando est factum exterius, oculis vel auribus pervium ;* ***2°*** *quando est factum coram multis videntibus seu audientibus attendentibus, et omnes facti circumstantias maturae perpendentibus;* ***3°*** *quando in memoriam huius facti, tunc erecta sunt monumenta publica et onera imposita, quae perdurant. Ex his, inquam, conditionibus simul positis certo eruitur veritas facti.*

37 **§ II**

§ II

38 **True miracles have been wrought in confirmation of the Christian Religion.**

Facta sunt vera miracula in confirmationem Religionis Christianae.

39 I have already spoken of the miracles of Moses in confirmation of the law handed to him by God, which was the foundation of the Evangelical law.

Iam dixi de miraculis Moysis in confirmationem legis a Deo ipsi tradita, quae erat fundamentum legis Evangelica.

40 The miracles wrought by Christ and the Apostles in confirmation of the Christian Religion are contained in the books of the New Testament, namely the four Gospels of SS. Matthew, Mark, Luke and John, the Epistles of SS. Paul, Jude, James and John, and in the Acts of the Apostles written by St. Luke.

Miracula facta a Christo et Apostolis in confirmationem Religionis Christianae continentur in libris novi Testamenti, scilicet quatuor Evangeliis SS. Matthaei, Marci, Lucae et Ioannis, Epistolis SS. Pauli, Iudae, Iacobi et Ioannis, et in Actis Apostolorum a S. Luca scriptis.

41 Three things must here be made good by us against unbelievers: first, that these books are genuine writings of the Apostles whose names they bear; secondly, that the facts related are true; thirdly, that they are true miracles.

Tria nobis hic praestanda sunt adversus incredulos : primum, hos libros esse genuinos Apostolorum quorum nomina referunt ; secundum, facta quae narrant esse vera ; tertium, esse vera miracula.

42 **FIRST**

PRIMUM

43 **The books of the New Testament are not supposititious.**

> ***Libri novi Testamenti non sunt suppositi.***

44 That these books are not supposititious, but proper to those whose names they bear, is clear: **1°** From public faith and constant tradition, which has always adjudged them to their authors, no one ever gainsaying, whether of the Jews, or of the pagans, or of the heretics, although it concerned them most of all to deny it. To such public faith and constant tradition sure credence is given, unless a conclusive reason prove the contrary, which unbelievers lack.

> *Hos libros non esse suppositos, sed proprios eorum quorum nominibus inscribuntur, constat : **1°** Ex fide publica et constanti traditione, quae semper suis authoribus illos adiudicavit, nemine unquam, sive ex Iudaeis, sive ex paganis, sive ex haereticis, reclamante, quamvis maxime illorum interesset id denegare. Huiusmodi autem fidei publicae et constanti traditioni certa fides adhibetur, nisi contrarium evincat peremptoria ratio, quae deest incredulis.*

45 **2°** Let the deists say, if these books are not the Apostles', who fabricated them, and at what time: while the Apostles lived, or after their death? Not while they themselves lived, otherwise they would certainly have cried out against the fraud. Not after their death; for there exist the works of SS. Ignatius, Clement, Polycarp, who lived with the Apostles, likewise the works of SS. Justin and Irenaeus, who were disciples of the first disciples of the Apostles: and all these attribute the books of the New Testament to the Apostles, and so all in succession down to us.

> ***2°** Dicant deistae, si hi libri non sint Apostolorum, quis illos fabricavit, et quo tempore : an viventibus Apostolis, an post illorum mortem? Non ipsis viventibus, alioquin certo contra fraudem reclamassent. Non post eorum mortem ; nam exstant opera SS. Ignatii, Clementis, Polycarpi, qui cum Apostolis vixerunt, item opera SS. Iustini et Irenaei, qui fuerunt discipuli priorum discipulorum Apostolorum : et hi omnes libros novi Testamenti adscribunt Apostolis, et sic omnes deinceps usque ad nos.*

46 Likewise let them say, by what art this fabricator could persuade the Romans, Corinthians, Galatians, Ephesians, Thessalonians and Philippians, that the Epistles bearing the name of St. Paul had been written by him and directed to them, of which they had never heard anything?

> *Item dicant, qua arte iste fabricator potuit persuadere Romanis, Corinthiis, Galatis, Ephesiis, Thessalonicensibus et Philippensibus, Epistolas qua nomine S. Pauli inscribuntur, fuisse ab eo scriptas et ad se directas, de quibus nihil unquam audivissent?*

47 **3°** These books contain a Religion than which none is more sublime, none purer, none holier, none more austere. Therefore they are not the work of any impostor. Likewise, they contain truths and mysteries which exceed the grasp of human reason, and which therefore could not have been attained or devised by it without revelation, such as the mysteries of the SS. Trinity and Incarnation, original sin, the resurrection of the dead, etc.

> ***3°** Hi libri continent Religionem quae nulla est sublimior, nulla purior, nulla sanctior, nulla austerior. Ergo non sunt opus alicuius impostoris. Item, continent veritates et mysteria quae superant captum rationis humanae, et quae proinde ipsa attingi et excogitari non potuerunt absque revelatione, ut sunt mysteria SS. Trinitatis et Incarnationis, peccatum originale, resurrectio mortuorum, etc.*

48 **SECOND**

> ***SECUNDUM***

49 **The facts related are true.**

Facta quae narrant sunt vera.

50 It is clear **1°** because otherwise they could easily and openly have been convicted of falsehood. For they relate these things in the middle of Jerusalem, where very many of them were wrought, and a few years after their occurrence, so that they would have had as many witnesses of falsehood as there still then were men surviving from the death of Christ. For Matthew wrote his Gospel about nine years after the death of Christ, then the others.

*Constat **1°** quia alioquin facile et aperte mendacii argui potuissent. Ea enim narrant in medio Ierosolymae, ubi plurima fuerunt peracta, et paucis post annis ab eorum eventu, ita ut tot testes mendacii habuissent, quot adhuc erant tunc homines a morte Christi superstites. Matthaeus enim scripsit Evangelium novem circiter annis post Christi mortem, deinde caeteri.*

51 **2°** Because unto asserting the truth of the things they relate they undergo death. But no one is so foolish as to undergo death to assert a fact which he knows to be false, unless he hope for something better after death. But what better could impostors hope for after death?

***2°** Quia pro asserenda veritate eorum quae narrant, mortem oppetere. Nemo autem est adeo stultus, ut mortem oppetat pro asserendo facto quod scit esse falsum, nisi aliquid melius post mortem speret. Quid autem melius post mortem sperare poterant impostores?*

52 **3°** Very many of these facts were acknowledged as true by the enemies themselves of the Christian Religion, Jews and pagans. First of all, as many of the Jews and pagans as embraced the Christian Religion acknowledged all these things undoubtedly as true. These however are and have been innumerable, of every race and condition. Suetonius, concerning the emperor Claudius, cap. 44, narrates that by edict of this emperor the Jews who followed the Religion of Christ were driven from Rome; which fact is read in the Acts *Apost.*, XVIII, 1 [2]. Tacitus, *Annal.*, lib. XV, c. 44, relates that Christ underwent death under Pontius Pilate, governor of Judaea, Tiberius reigning, as is related in the Gospel. Celsus, than whom there was no bitterer adversary of the Christian Religion, acknowledges that Christ healed the lame and the blind. Behold his words in Origen, who attacked him, lib. II *contr. Cels.*: « Ye believed him to be the Son of God because he healed the lame and the blind. » Similarly Julian the Apostate, in Cyril, lib. VI, confesses that Christ healed the lame and the blind, and freed the energumens. Phlegon, who flourished in the court of the emperor Hadrian about the middle of the second century, in *Hist. Olympiad.*, lib. XIII, relates the eclipse of the sun and the earthquake which occurred at the dying of Christ, as we read *Matt.*, XXVII, 51; *Luc.*, XXIII, 45. Thallus, another pagan older than Phlegon, lib. III *Histor. Syriac.*, narrates that this eclipse occurred in the year 18 of the reign of Tiberius, in which Christ suffered. These two testimonies of Phlegon and Thallus joined together pressed most heavily Origen, Tertullian, Minucius Felix, St. Justin and others against Celsus, Porphyry and Julian, who fell silent before these things.

***3°** Plurima ex his factis agnoverunt vera ipsi Christianae Religionis hostes, Iudaei et pagani. In primis quotquot ex Iudaeis et paganis amplexi sunt Religionem Christianam, ea omnia indubie ut vera agnoverunt. Hi autem sunt et fuerunt innumeri ex omni gente et conditione. Suetonius de imperatore Claudio, cap. 44, narrat edito huius imperatoris pulsos fuisse Roma Iudaeos qui sequebantur Religionem Christi ; quod factum legitur in Actis* Apost.*, XVIII, 1. Tacitus,* Annal.*, lib. XV, c. 44, refert Christum subiisse mortem sub Pontio Pilato, Iudaeae gubernatore, imperante Tiberio, prout refertur in Evangelio. Celsus, quo nullus fuit infensior Religionis Christianae adversarius, agnoscit Christum sanasse claudos et caecos. En eius verba apud Origenem, qui illum impugnavit, lib. II* contr. Cels. *: « Credidistis ipsum esse Dei Filium, eo quod claudos et caecos sanavit. » Similiter Iulianus Apostata, apud Cyrillum, lib. VI, fatetur*

Christum sanasse claudos et caecos, et liberasse energumenos. Phlegon, qui florebat in aula Adriani imperatoris circa medium secundi saeculi, in Hist. Olympiad.*, lib. XIII, refert eclypsim solis et terrae motum qui contigerunt moriente Christo, ut legimus* Matth.*, XXVII, 51 ;* Luc.*, XXIII, 45. Thallus, alter paganus antiquior Phlegone, lib. III* Histor. Syriac.*, narrat hanc eclypsim contigisse anno 18 imperii Tiberii, quo passus est Christus. Haec duo testimonia Phlegonis et Thalli simul iuncta maxime urgebant Origenem, Tertullianum, Minutium Felicem, S. Iustinum et alios, contra Celsum, Porphyrium et Iulianum, qui ad haec obmutescebant.*

53 **4°** The truth of these facts is clear from the rule laid down in the preceding §. For these facts are external, open to eyes and ears. They were wrought before many seeing or hearing, attentively and maturely weighing all the circumstances. Finally, in memory of them public monuments were instituted, namely solemn feasts, which from the beginning even until now endure, and obligations imposed, namely of the evangelical law. These assert the truth of the facts, as has been said.

***4°** Constat de veritate istorum factorum ex regula § praecedenti posita. Haec enim facta sunt exteriora oculis et auribus pervia. Facta sunt coram multis videntibus vel audientibus, attente et mature omnes circumstantias perpendentibus. Denique in eorum memoriam instituta sunt monumenta publica, scilicet festa solemnia, quae ab exordio usque nunc permanent, et impositae obligationes, scilicet legis evangelicae. Haec autem veritatem factorum asserunt, ut dictum est.*

54 **THIRD**

TERTIUM

55 **These facts are true miracles.**

Ista facta sunt vera miracula.

56 It is proved from the threefold rule laid down in the first § and from other considerations.

Probatur ex triplici regula § primo posita et aliis momentis.

57 **1°** Among those facts several are which, according to the constant and universal consent of all men, surpass the powers of the whole of nature, and are held as true miracles, such as the raising of Lazarus and of the daughter of Jairus, the resurrection of Christ itself, the multiplication of five loaves wherewith five thousand men are filled, the mission of the Holy Spirit, the sudden transmutation of the disciples into other men, the gift of tongues and of miracles granted to them, etc. These, I say, and the like are held as true miracles according to the common consent of all men. Therefore they are such; for the common consent of all men cannot be false, as has been said.

***1°** Inter illa facta plura sunt quae, iuxta constantem et universalem omnium hominum sensum, superant vires totius naturae, et habentur pro veris miraculis, ut sunt suscitatio Lazari et filiae Iairi, ipsa Christi resurrectio, multiplicatio quinque panum quibus satiantur quinque millia hominum, missio Spiritus sancti, subita transmutatio discipulorum in alios viros, donum linguarum et miraculorum eis concessum, etc. Haec, inquam, et similia iuxta communem omnium hominum sensum habentur pro veris miraculis. Ergo talia sunt ; sensus enim communis omnium hominum non potest esse falsus, ut dictum est.*

58 **2°** All these miracles were wrought by Christ and the Apostles in the name of God, in attestation of the dogmas of the Christian Religion. Therefore they cannot be false, nor lead into error, as the second rule declares.

***2°** Omnia ista miracula facta sunt a Christo et Apostolis in nomine Dei, in attestationem dogmatum Religionis Christianae. Ergo non possunt esse falsa, nec inducere in errorem, ut fert secunda regula.*

59 **3°** Christ and the Apostles and their successors who wrought these miracles handed on doctrine worthy of God, conformable to right reason, leading to good morals and favorable to social life. They fashioned their life and morals most exactly according to the norm of this doctrine, and from their miracles innumerable men of all nations became and remain followers of their doctrine, imitators of their life, religious worshippers of the supreme deity, concordant among themselves in charity, enemies and conquerors of demons. But it is impossible, as has been said in the third rule, that these miracles were wrought with a demon as author, to the destruction of his own dominion.

> ***3°** Christus et Apostoli eorumque successores qui haec miracula patrarunt, tradebant doctrinam Deo dignam, rectae rationi conformem, bonos mores inducentem et vitae sociali faventem. Vitam suam et mores ad huius doctrinae normam adamussim componebant, et ex eorum miraculis innumeri homines omnium nationum facti sunt et permanent eorum doctrinae sectatores, eorum vitae imitatores, supremi numinis religiosi cultores, charitate inter se concordes, daemonum hostes et victores. Impossibile est autem, ut dictum est in tertia regula, haec miracula facta fuisse authore daemone, in suae dominationis destructionem.*

60 **4°** As many of the Jews and pagans as gave their name to the Christian Religion acknowledged these facts as true miracles. Among those however were men of the greatest erudition and most perspicacious genius, such as St. Justin Martyr, Lactantius, Arnobius, Minucius Felix, Quadratus, Aristides, Melito, Athenagoras, etc. These, I say, and others, only after exploring the truth of the miracles by accurate examination, as the importance of the matter required, stripped off the ancient religion favoring the senses, that they might put on the new one flatly repugnant to the senses, and for it very many underwent death. Who further of sound mind would not give credence to witnesses of this kind rather than to certain yesterday's unbelievers who assail our miracles only out of depravity of heart, supported by no reason? Add that the pagan emperors themselves acknowledged and venerated the truth of the miracles of Christ. Moved by these, Tiberius brought Christ before the senate, that he might be enrolled among the number of the gods; which the senate refused, because he was not the author of this counsel. So relates Tertull. in the Apology offered to the Roman senate itself. Lampridius, a pagan author, in the Life of Alexander Severus, narrates that the emperor Hadrian erected several temples without idols, with this mind, that he would consecrate those temples to Christ, but was deterred from his purpose, lest, if he did so, all the other temples would be abandoned and all would embrace the religion of Christ, as the oracles had answered. The same Lampridius relates again, ibid., that Alexander Severus had in his palace an oratory in which he adored Christ and offered sacrifices to him.

> ***4°** Quotquot ex Iudaeis et paganis Religioni Christianae nomen dederunt, haec facta ut vera miracula agnoverunt. Inter illos autem erant viri maximae eruditionis et perspicacissimi ingenii, ut S. Iustinus Martyr, Lactantius, Arnobius, Minutius Felix, Quadratus, Aristides, Melito, Athenagoras, etc. Hi, inquam, et alii, non nisi explorata veritate miraculorum per accuratum examen, ut momentum rei exigebat, antiquam religionem sensibus faventem exuerunt, ut novam sensibus plane repugnantem induerent, et pro ea plurimi mortem subirent. Quis porro sanae mentis huiusmodi testibus fidem non adhibeat, potius quam hesternis quibusdam incredulis, qui non nisi ex pravitate cordis, et nulla fulti ratione, miracula nostra impugnant? Adde quod ipsimet imperatores pagani veritatem miraculorum Christi agnoverint et venerati sint. His motus Tiberius, Christum detulit senatui, ut numero deorum adscriberetur; quod abnuit senatus, eo quod non esset author huius consilii. Ita refert Tertull. in Apologetico ipsi senatui Romano oblato. Lampridius, author paganus, in Vita Alexandri Severi, narrat imperatorem Adrianum plura templa absque idolis erexisse, eo animo ut illa templa Christo consecraret, sed a proposito fuisse deterritum, ne, si id faceret, omnia alia templa desererentur, et omnes*

Christi religionem amplecterentur, prout responderant oracula. Refert iterum idem Lampridius, ibid., Alexandrum Severum habuisse in suo palatio oratorium in quo Christum adorabat et illi sacrificia offerebat.

61 **5°** Not only do the Apostles narrate Christ's miracles as true, and offer themselves to death and torments to assert their truth, but moreover they testify that they received from him the power to work true miracles. Either, then, they worked true miracles, or they did not. If they did, that suffices for us; if they did not, then they publicly presented themselves of their own accord as impostors. Who would believe it? Unless you suppose them to have been completely out of their minds.

***5°** Non solum Apostoli miracula Christi ut vera narrant, et se pro eorum veritate asserenda morti et suppliciis offerunt, sed insuper testantur se ab eo accepisse virtutem faciendi vera miracula. Vel ergo fecerunt vera miracula, vel non. Si fecerint, nobis sufficit; si non fecerint, ergo sponte se pro impostoribus palam exhibebant. Quis credat? Nisi supponas illos fuisse omnino mente captos.*

62 I pass over innumerable other miracles that the successors of the Apostles and holy men, invoking the name of God or of Christ, at any time and everywhere wrought in confirmation of the Christian Religion. Many are reported by SS. Ambrose, Augustine, Gregory, the ecclesiastical annals, and other approved authors. Likewise no one is declared a saint unless it be most invincibly proved that he worked true miracles. If you deny all these things, no true history will stand, and everything will have to be reckoned among fables.

Omitto innumera alia miracula quae successores Apostolorum et sancti viri, invocato Dei vel Christi nomine, quovis tempore et ubique fecerunt in confirmationem Religionis Christianae. Plurima referunt SS. Ambrosius, Augustinus, Gregorius, annales ecclesiastici et alii probati authores. Item nullus declaratur sanctus, nisi invictissime probetur edidisse vera miracula. Quae omnia si neges, nulla stabit vera historia, et omnia inter fabulas erunt recensenda.

63 **6°** Finally, if anyone obstinately deny true miracles in confirmation of the Christian Religion, let him acknowledge the greatest miracle of all: that this religion, which we shall describe in the next article, spread through the whole world without miracles. Thus, after Augustine, the Author argues, *Contra Gent.* I, c. 6 : « Since it is established, he says, that the Roman empire and the whole world, filled with so many powerful men, philosophers, and orators, at first resisting the doctrine of Christ, was afterwards converted to it: I ask whether this change was wrought by the power of signs and prodigies, away from the rites of antiquity and a religion long observed, into this new and unheard-of religion? If you shall confess that the world was drawn to this persuasion by the force of miracles, which it could by no means resist, you will have to confess that this Religion proceeded from God, the author of miracles, who alone works great wonders. But if on the other hand you deny that the world was summoned to receive this faith by any miracles, then in denying miracles you thrust upon yourself an immense miracle. For what could be said to be more wonderful than that the Roman empire and all paganism should have embraced of its own accord, deserting the rites of their fathers, with no signs seen nor wondrous works displayed, that Religion which they were so bitterly assailing and striving to subvert, and have been so constant in retaining it? »

***6°** Denique, si quis proterve neget vera miracula in confirmationem Religionis Christianae, agnoscat omnium miraculorum maximum, quod haec religio, quam art. seq. describemus, absque miraculis totum mundum pervaserit. Ita, post Augustinum, argumentatur Author,* I Contra Gent.*, c. 6 : « Cum constet, inquit, Romanum imperium universumque orbem tot potentibus viris, philosophis, oratoribus refertum, Christi doctrinae ante repugnantem, ad eam postmodum fuisse conversum : quaero, an virtute signorum et prodigiorum, ab antiquis ritibus diuque observata religione, in hanc novam et inauditam, sit haec facta mutatio? Si fateberis mundum ad hanc persuasionem tractum*

fuisse vi miraculorum, quibus contradicere nequaquam poterat, fateri oportebit a Deo authore miraculorum, et qui facit mirabilia magna solus, Religionem hanc processisse. Sin autem negas ullis miraculis mundum ad hanc recipiendam fidem fuisse provocatum, negando miracula, ingens miraculum ingeris. Quid enim potest dici mirabilius, quam Romanum imperium, totamque gentilitatem, Religionem quam tam acriter impugnabant subvertereque moliebantur, desertis paternis ritibus, nullis visis signis mirandisque operibus, sponte suscepisse, et in ea retinenda tam constantes fuisse? »

64 The deists object miracles wrought by the Gentiles, and thence infer that the truth of the Christian Religion cannot be proved from miracles. Thus, they say, the magicians in Egypt turned their staffs into serpents and produced frogs; thus Vespasian healed a blind man and a lame man; thus Apollonius of Tyana, among many miracles, raised a dead girl to life.

Opponunt deistae miracula facta a gentilibus, et inde inferunt, non posse probari veritatem Religionis Christianae ex miraculis. Sic, inquiunt, magi in Aegypto virgas suas in serpentes converterunt, et ranas produxerunt; sic Vespasianus sanavit caecum et claudum; sic Apollonius Thyanaeus, inter plura miracula, resuscitavit puellam mortuam.

65 *I answer.* 1° I deny that any true miracle was ever wrought by the Gentiles: both because none was wrought in the name of God the creator, which is the token of a true miracle; and because those that are reported either do not surpass the powers of nature, or are false and fabricated.

Resp. *1° Nego ullum verum miraculum unquam factum fuisse a gentibus: tum quia nullum factum est in nomine Dei creatoris, quod est tessera veri miraculi; tum quia quae referuntur, non superant vires naturae, aut sunt falsa et supposita.*

66 As for the prodigies of the magicians of Egypt, many hold them to have been mere delusions of the senses. Others, and more commonly, with St. Thomas, judge that they were indeed real frogs and real serpents, not such as the magicians produced above all the powers of all nature, but such as they effected from seeds dispersed in the elements, by applying natural active virtue to passive principles, as can be done in those things that arise from putrefaction, as St. Thomas teaches[18], after Augustine, or else exhibited serpents carried away from elsewhere, which seems more probable. And when it came to the fourth prodigy, the idle art of the magicians came to a stand, and they were compelled to say of Moses's miracles, *Exod.*, VIII, 19 : This is the finger of God?

18 I p., q. 114, a. 4, c et ad 2. The Angelic Doctor indeed seems, with Aristotle, to admit that living beings are produced from putrefaction, what is today called spontaneous generation. But, if his opinion be attentively weighed, it will be clear that he in no way really attributed a generative power to putrefaction, as though it were of itself a principle of life. For he says of the power of demons, in the place cited : « Corporeal matter does not obey angels, good or bad, at their nod, so that demons could by their own power transmute matter from form to form; but they can employ certain seeds found in the elements of the world to bring about effects of this kind, as Augustine says in III *de Trinitate*. And therefore it must be said that all transmutations of corporeal things that can be brought about by certain natural powers to which the aforesaid seeds belong, can be brought about by the operation of demons, these seeds being employed : as when certain things are changed into serpents or frogs, which can be generated by putrefaction. But those transmutations of corporeal things that cannot be wrought by the power of nature can in no wise be accomplished in truth by the operation of demons. » The necessity of seeds that our Doctor requires for the production of such beings overthrows the doctrine of spontaneous generation, that is, the system they call transformism ; for these seeds can proceed only from beings of similar species, as the old adage has it : « Omne vivum ex ovo, » which accords with divine Scripture saying, *Genes.*, I, 21 and 22 : God created... every living and moving creature which the waters brought forth according to their kinds... And he blessed them, saying : Increase and multiply. From which it clearly appears that God by creation founded all genera and every species, which must needs be perpetuated by way of generation

Quantum ad prodigia magorum Aegypti, plures volunt fuisse tantum ludificationes sensuum. Alii et communius, cum S. Thoma, existimant fuisse quidem veras ranas et veros serpentes, non quos magi supra omnes virtutes totius naturae produxerint, sed quos ex seminibus in elementis dispersis, applicando virtute naturali activa passivis, effecerunt, ut fieri potest in his quae ex putrefactione nascuntur, ut docet S. Thomas[18]*, post Augustinum, vel aliunde asportatos exhibuerunt, quod videtur probabilius. serpens horum serpentes devoraverit, et cum perventum est ad quartum prodigium, steterit iners ars magorum, et coacti fuerint dicere de miraculis Moysis,* Exod.*, VIII, 19 : Digitus Dei hic est?*

[18] *I p., q. 114, a. 4, c et ad 2. Videtur quidem Angelicus admittere, cum Aristotele, quod entia viventia ex putrefactione producantur, quod hodie generatio spontanea vocatur. Sed, si eius sententia attente perpendatur, constabit eum nullo modo putrefactioni vim generativam revera tribuisse, quasi sit per se principium vitae. Dicit enim de potestate daemonum, in loco citato : « Materia corporalis non obedit angelis bonis seu malis ad nutum, ut daemones sua virtute possint transmutare materiam de forma in formam; sed possunt adhibere quaedam semina quae in elementis mundi inveniuntur, ad huiusmodi effectus complendos, ut Augustinus dicit III* de Trinit. *Et ideo dicendum est quod omnes transmutationes corporalium rerum quae possunt fieri per aliquas virtutes naturales ad quas pertinent praedicta semina, possunt fieri per operationem daemonum, huiusmodi seminibus adhibitis : sicut cum aliquae res transmutantur in serpentes vel ranas, quae per putrefactionem generari possunt. Illae vero transmutationes corporalium rerum quae non possunt virtute naturae fieri, nullo modo operatione daemonum secundum rei veritatem perfici possunt. » Necessitas seminum quam Doctor noster requirit ad productionem talium entium, doctrinam generationis spontaneae, seu systema quod transformismum vocant, evertit ; haec enim semina nonnisi ex entibus specie similibus procedere possunt, ut fert vetus adagium : « Omne vivum ex ovo, » quod concinit divinae Scripturae dicenti,* Genes.*, I, 21 et 22 : Creavit Deus... omnem animam viventem atque motabilem quam produxerant aquae in species suas... Benedixitque eis, dicens : Crescite et multiplicamini. Ex quo clare apparet, Deum per creationem condidisse omnia genera omnesque species, qua via generationis perpetuari necesse est*

67 What is reported about Vespasian rests on no witness, but on uncertain rumor. Moreover, the lame man and the blind man whom he is said to have healed were not, in the judgment of physicians, naturally incurable, as Tacitus himself relates, Hist. lib. IV, n. 81.

Quae de Vespasiano referuntur, nullo teste, sed fama incerta nituntur. Insuper claudus et caecus quos dicitur sanasse, non erant, medicorum iudicio, naturaliter insanabiles, ut refert ipse Tacitus, Hist. lib. IV, n. 81.

68 As for Apollonius, one Philostratus more than a hundred years after Apollonius's death wrote his history stuffed with fables, and reports this raising of a certain girl from uncertain rumors, without any testimony; nor does it appear from his narrative that the girl was truly dead. Then, that Apollonius was held an impostor is proved from this, that he had no follower, and made no sect.

Quantum ad Apollonium, unus Philostrates centum et amplius annis post Apollonii mortem eius historiam fabulis refertam scripsit, istamque cuiusdam puellae suscitationem ex rumoribus incertis, absque ullo testimonio, refert, nec constat ex eius narratione vere mortuam fuisse puellam. Deinde Apollonium habitum fuisse impostorem inde evincitur, quod nullum sectatorem habuerit, nec sectam fecerit.

69 *I answer.* 2°. Given that God, for causes known to himself, might work some miracle in paganism, he would never work it in confirmation of idolatry; for that repugns his goodness, wisdom, and truthfulness, as we said above. But the miracles of Christ, of the Apostles and of their successors were wrought, upon invocation of the name of God, in confirmation of the divinity of Christ, of his mission, and of the religion instituted by him.

Resp. 2°. *Dato quod Deus, propter causas sibi notas, faceret aliquod miraculum in paganismo, nunquam illud faceret in confirmationem idololatriae; id enim repugnat eius bonitati, sapientiae et veracitati, ut supra diximus. Miracula vero Christi, Apostolorum et successorum facta sunt, invocato nomine Dei, in confirmationem divinitatis Christi, eius missionis et religionis ab ipso institutae.*

70 **§ III**

§ III

71 *The prophecies and promises of Christ fulfilled.*

Prophetiae et promissiones Christi adimpletae.

72 1° Christ promised that he would rise on the third day, *Ioann.*, II, 19 ; *Matth.*, XX, 19, and elsewhere. 2° He promised that after death he would turn the nations to himself and reject the Jews, *Ioann.*, XII, 32, 40 ; *Matth.*, VIII, 11 and 12, and XXIII, 1 seqq., and *Luc.* XIII, 24 seqq. 3° He promised to the Apostles to make them fishers of men, *Matth.*, IV, 19 ; *Marc.*, I, 17 ; *Luc.*, V, 10 ; to send them the Holy Spirit, *Ioann.*, XV, 26 ; to grant them the gift of wisdom, fortitude, and tongues, *Luc.*, XXI, 15 ; *Ioann.*, XV, 26 and 27, and XVI, 13. Finally he promised to be with them until the consummation of the age, *Matth.*, XXVIII, 20. None but God alone can make good all these things. Christ made them good : he rose on the third day, he turned the nations to himself and rejected the Jews, these things are plain before our eyes; he made the Apostles fishers of men, he sent them the Holy Spirit. Finally he was with them, is with them, will be with them, that is, with his indefectible Church, until the consummation of the age. Therefore Christ is God. Therefore his Religion is true and divine.

1° Christus promisit se tertia die resurrecturum, Ioann.*, II, 19 ;* Matth.*, XX, 19, et alibi. 2° Promisit se post mortem conversurum ad se gentes et Iudaeos reiecturum,* Ioann.*, XII, 32, 40 ;* Matth.*, VIII, 11 et 12, et XXIII, 1 seqq., et* Luc. *XIII, 24 seqq. 3° Promisit Apostolis se facturum illos piscatores hominum,* Matth.*, IV, 19 ;* Marc.*, I, 17 ;* Luc.*, V, 10 ; se missurum illis Spiritum sanctum,* Ioann.*, XV, 26 ; se collaturum illis donum sapientiae, fortitudinis et linguarum,* Luc.*, XXI, 15 ;* Ioann.*, XV, 26 et 27, et XVI, 13. Tandem promisit se illis adfuturum usque ad consummationem saeculi,* Matth.*, XXVIII, 20. Haec omnia praestare non potest nisi solus Deus. Praestitit Christus : resurrexit die tertia, convertit ad se gentes et reiecit Iudaeos, haec ad oculum patent; fecit Apostolos piscatores hominum, misit illis Spiritum sanctum. Denique adfuit, adest, aderit illis, id est suae Ecclesiae indefectibili, usque ad consummationem saeculi. Ergo Christus est Deus. Ergo vera et divina eius Religio.*

The wonderful and plainly divine manner in which the Christian religion was founded and propagated

1 [« That we might be able to fulfill our duty of embracing the true faith and of persevering in it steadfastly, God instituted the Church through His only-begotten Son, and furnished His institution with manifest notes, so that it could be recognized by all as the guardian and teacher of the revealed word. For to the Catholic Church alone belong all those things which have been disposed by God in so many and so marvelous ways for the evident credibility of the Christian faith. Nay, the Church of itself, by reason of its admirable propagation, its eminent holiness and its inexhaustible fruitfulness in all good things, by reason of its catholic unity and its invincible stability, is a great and perpetual motive of credibility and an irrefragable testimony of its own divine legation. » *Synod. Vaticana*, constit. *Dei Filius*, cap. 3, de Fide.]

[« Ut officio veram fidem amplectendi, in eaque constanter perseverandi, satisfacere possemus, Deus per Filium suum unigenitum Ecclesiam instituit, suaeque institutionis manifestis notis instruxit, ut ea tamquam custos et magistra verbi revelati ab omnibus posset agnosci. Ad solam enim catholicam Ecclesiam ea pertinent omnia quae ad evidentem fidei christianae credibilitatem tam multa et tam mira divinitus sunt disposita. Quin etiam Ecclesia per se ipsa, ob suam nempe admirabilem propagationem, eximiam sanctitatem et inexhaustam in omnibus bonis faecunditatem, ob catholicam unitatem invictamque stabilitatem, magnum quoddam et perpetuum est motivum credibilitatis et divinae suae legationis testimonium irrefragabile. » Synod. Vaticana*, constit.* Dei Filius*, cap. 3, de Fide.]*

2 That the whole force of this argument may be well perceived, several things are to be observed.

Ut tota vis huius argumenti bene percipiatur, plura sunt observanda.

3 1° This Religion spread very quickly. For Paul, at *Coloss.*, I, 6, says that already in his time the faith of Christ was growing and bearing fruit in the whole world. Justin Martyr, who flourished at the beginning of the second century, in his Dialogue with Trypho says there is no race of men among whom it is not worshiped. Likewise Irenaeus, book I, c. 3; Tertull., book against the Jews, c. 7; and Pliny the Younger, who also flourished at the beginning of the second century, book X, epist. 97, to Trajan: « Not only cities, he says, but villages and fields have been overrun by the contagion of that superstition (the Christian). »

1° Haec Religio celerrime diffusa est. Paulus enim, ad Coloss., *I, 6, ait iam tempore suo Christi fidem in universo mundo crescere et fructificare. Iustinus Martyr, qui florebat initio secundi saeculi, in Dialogo cum Triphone dicit, nullum esse genus hominum, apud quos non colatur. Similiter Irenaeus, lib. I, c. 3 ; Tertull., lib. contr. Iudaeos, c. 7, et Plinius iunior, qui etiam florebat ineunte secundo saeculo, lib. X, epist. 97, ad Traianum : « Non civitates tantum, inquit, sed vicos atque agros superstitionis istius (Christianae) contagio pervagata est. »*

4 2° It was introduced and propagated through a few fishermen, plebeian men, unskilled, ignorant, poor and contemptible: not, like other religions, by the power of arms, the favor of magnates, or the enticements of riches, pleasures and honors, nor by force of human eloquence; but solely by the power and wisdom of Christ, according to that saying of the Apostle, *I Cor.*, I, 27 and 28: The foolish things of the world hath God chosen, that he may confound the wise; and the weak things of the world hath God chosen, that he may confound the strong; and the base things of the world, and things despised, hath God chosen, and those things that are not, that is, which are reputed as nothing, to destroy those things that are, that is, which are held as greatest.

2° Introducta et propagata est per paucos piscatores, homines plebeios, rudes, ignaros, pauperes et contemptibiles : non, ut aliae religiones, armorum potentia, magnatum favore, opum, voluptatum, honorum illecebris, aut vi eloquentiae humana; sed sola Christi virtute et sapientia, iuxta illud Apost., I Cor., *I, 27 et 28 : Quae stulta sunt mundi elegit Deus, ut confundat sapientes ; et infirma mundi elegit Deus, ut confundat fortia; et ignobilia mundi et contemptibilia elegit Deus, et ea quae non sunt, id est, quae pro nihilo reputantur, ut ea quae sunt, id est quae pro maximo habentur, destrueret.*

5 3° This doctrine of the faith is such that it would seem to men rather folly than wisdom: namely, that a man driven to the cross amid outrages and dead should be worshiped as true God; that he rose again; that there is no other name in which we must be saved than the name of this crucified man. Whence the Apostle, *I Cor.*, I, 23 and 24: We preach Christ crucified, unto the Jews indeed a stumbling block, and unto the Gentiles foolishness; but to them that are called, both Jews and Greeks, Christ the power of God and the wisdom of God. Such, I say, is this Religion and doctrine, whereby nothing conduces to earthly happiness; which teaches that the passions must be restrained, that honors, riches and pleasures must be despised; which inculcates nothing but tears, penance, mortification; which promises nothing in this world but perils, afflictions, persecutions, humiliations, torments, crosses.

3° Haec fidei doctrina talis est, ut potius hominibus videretur stultitia quam sapientia : nimirum, quod homo inter opprobria in crucem actus et mortuus, sit verus Deus colendus ; quod resurrexerit ; quod non sit aliud nomen in quo oporteat nos salvos fieri, quam in nomine huius hominis crucifixi. Unde Apost., I Cor., *I, 23 et 24 : Nos praedicamus Christum crucifixum, Iudaeis quidem scandalum, gentibus stultitiam ; ipsis autem vocatis Iudaeis atque Graecis, Christum Dei virtutem et Dei sapientiam. Talis est, inquam, haec Religio et doctrina, qua nihil conducit ad terrenam*

felicitatem ; quae passiones refrenandas, honores, divitias, voluptates contemnendas docet ; quae nihil nisi lacrymas, poenitentiam, mortificationem inculcat ; nihil in hoc mundo promittit, nisi pericula, afflictiones, persecutiones, humiliationes, tormenta, cruces.

6 4° Under the yoke of this Religion, apparently foolish, so hard and severe, these few contemptible fishermen brought into subjection not only the unlettered and simple, but most learned men: Dionysius, Clement, Irenaeus, Justin, Arnobius, Athenagoras, Lactantius, Tertullian, etc. Nor only common people, but princes themselves, kings, emperors.

4° Sub huius Religionis apparenter stultae, tam durae et asperae iugo, hi pauci piscatores contemptibiles subiecerunt, non indoctos solum et simplices, sed viros doctissimos, Dionysium, Clementem, Irenaeum, Iustinum, Arnobium, Athenagoram, Lactantium, Tertullianum, etc. Neque solum plebeios, sed ipsos principes, reges, imperatores.

7 **5°** Finally, this Religion and doctrine was propagated and grew amid persecutions, with princes and magistrates opposing it, philosophers contradicting it, the devil raging and resisting with every kind of torment; and the more it was assailed, the more it grew and prevailed, so that the blood of martyrs became the seed of Christians.

***5°** Denique, haec Religio atque doctrina propagata est et crevit in mediis persecutionibus, impugnantibus principibus et magistratibus, contradicentibus philosophis, saeviente diabolo atque omni suppliciorum genere contranitente, et quanto magis impugnabatur, tanto magis crevit ac praevaluit, ita ut sanguis martyrum factus sit semen Christianorum.*

8 Who of sound mind, if he attends to these things, would not recognize that the Religion we have described, born, grown to maturity and propagated in this manner, is not an invention of human genius, but the work of almighty God. For it could never have come about that a doctrine so alien from human wisdom, so repugnant to the senses, so harsh and severe, should so quickly pervade the whole world, and should, amid the persecutions, torments and contradictions of men and demons, be received by princes and learned men, and that too through a few fishermen, poor and unskilled, unless God had wrought most efficaciously, both in those who preached it and in those who received it.

Quis sanae mentis, si ad haec attendat, non cognoscat Religionem, qualem descripsimus, hoc modo natam, adultam et propagatam, non esse ingenii humani inventum, sed opus Dei omnipotentis. Neque enim fieri potuit ut doctrina a sapientia humana tam aliena, tam sensibus repugnans, tam aspera et dura, orbem universum tam celeriter pervaderet, et inter persecutiones, tormenta et contradictiones hominum et daemonum reciperetur a principibus et eruditis, idque per paucos piscatores, pauperes et rudes, nisi Deus efficacissime operatus fuisset, tam in eis qui illam praedicarunt, quam in eis qui illam receperunt.

9 These things being posited, I recapitulate the argument made at the beginning of the dissertation. Reason persuades, nay compels, unless it be wholly inverted and disturbed, to acknowledge that this Religion is true, revealed and instituted by God: 1° that which the Prophets long before foretold; 2° which its author and its cooperators alike confirmed by prophecies fulfilled and by most evident miracles; 3° finally, which by divine power alone, against all the laws of human prudence, was born, grew to maturity and was propagated throughout the whole world. Now this is the Christian Religion. Therefore reason persuades, nay compels, unless it be inverted and disturbed, to acknowledge the Christian Religion to be true, revealed and instituted by God. — No one of sound mind can deny the major. — We have invincibly proved the minor. The conclusion therefore stands

unshaken, and consequently it is necessary either that the deist send back the messenger to reason, or that he acknowledge the Christian Religion to be true and divine.

> *His positis, resumo argumentum initio dissertationis factum. Ratio suadet, imo cogit, nisi sit prorsus inversa et turbata, agnoscere hanc Religionem esse veram, a Deo revelatam et institutam, 1° quam Prophetae longe antea praenuntiarunt ; 2° quam eius author et illius cooperatores pariter prophetiis adimpletis et miraculis patentissimis confirmarunt ; 3° denique quae sola virtute divina contra omnes humanae prudentiae leges est nata, adulta et per orbem universum propagata. Atqui haec est Religio Christiana. Ergo ratio suadet, imo cogit, nisi sit inversa et turbata, agnoscere Religionem Christianam esse veram, a Deo revelatam et institutam. — Maiorem nemo sanae mentis negare potest. — Minorem invicte probavimus. Stat itaque inconcussa conclusio, proindeque necessum est ut, vel deista nuntium remittat rationi, vel agnoscat Religionem Christianam esse veram et divinam.*

On the Internal and External Act of Faith

1 (*St. Thomas, qq. 2 et 3.*)

> (D. Thomas, q. 2 et 3.)

Whether it is of the necessity of salvation to believe something above natural reason, and what?

1 It has been necessary at all times, by necessity of means for salvation, to believe with supernatural faith, determinately and explicitly, these two things: namely, that God is the author of grace and the remunerator of glory.

> *Fuit omni tempore necessarium necessitate medii ad salutem credere fide supernaturali determinate et explicite haec duo : scilicet Deum esse authorem gratiae et remuneratorem gloriae.*

2 *Proof.* from the Apostle, *Heb.*, XI, 6, who says : Without faith it is impossible to please God. For he who comes to God must believe that he is, and is a remunerator to those who seek him. That the Apostle speaks of God and the remunerator in the supernatural order, namely, that he is the author of grace and the remunerator of glory, is evident : 1° because, when he says : he must believe, he speaks of supernatural faith, which he had defined shortly before, ibid., 1 : the substance of things to be hoped for, the evidence of things that appear not. For things to be hoped for surpass the grasp of human understanding, and things that appear not cannot be investigated by human reason. 2° Because afterwards, in the same chapter, 14, he says of Abraham that, together with the other holy Fathers, he desired a better country, that is, a heavenly one ; and of Moses, ibid., 26, that, despising the treasures of the Egyptians, he looked to the remunerator, namely the heavenly one.

> Prob. *ex Apostolo,* Hebr.*, XI, 6, dicente : Sine fide impossible est placere Deo. Credere enim oportet accedentem ad Deum, quia est et inquirentibus se remunerator sit. Apostolum loqui de Deo et remuneratore in ordine supernaturali, scilicet quod sit author gratiae et remunerator gloriae, constat : 1° quia, cum dicit : Credere oportet, loquitur de fide supernaturali quam antea definierat, ibid., 1 : Rerum sperandarum substantia, argumentum non apparentium. Res enim sperandae humani ingenii captum superant, et res non apparentes humana ratione investigari non possunt. 2° Quia postea in eodem capite, 14, dicit de Abraham, quod cum aliis SS. Patribus, meliorem patriam, id est caelestem, appeteret, et de Moyse, ibid., 26, quod, thesauro Aegyptiorum contempto, aspiciebat in remuneratorem, utique caelestem.*

3 It is urged by reason. According to the ordinary providence, it is necessary by necessity of means for salvation that man, who is governed by reason, know the ultimate end toward which he tends, and

the means by which one arrives at it. The ultimate end toward which man tends is the fellowship of the glory of God ; the means by which one arrives at it are grace and the acts of the supernatural virtues of faith, hope, and love, elicited through grace. But man cannot know this end and these means by natural reason, but only by revelation ; for they are supernatural, nor does natural reason dictate that God wills to admit man into the fellowship of his glory, nor does it explain the means by which one arrives at it. Therefore.

> *Suadetur ratione. Secundum providentiam ordinariam, necessarium est necessitate medii ad salutem, quod homo, qui ratione regitur, cognoscat finem ultimum in quem tendit, et media quibus ad illum pervenitur. Finis ultimus in quem homo tendit, est consortium gloriae Dei ; media quibus ad illum pervenitur, sunt gratia et actus virtutum supernaturalium fidei, spei et amoris, per gratiam eliciti. Atqui hunc finem et haec media homo cognoscere non potest per rationem naturalem, sed per solam revelationem ; sunt enim supernaturalia, nec ratio naturalis dictat Deum velle admittere hominem ad consortium suae gloriae, neque explicat media quibus ad illud pervenitur. Ergo.*

4 **I say 2° :** After the Gospel has been sufficiently promulgated, explicit faith in the Incarnation and the Trinity is necessary for all, by necessity of means, unto salvation.

> ***Dico 2° :*** *Post Evangelium sufficienter promulgatum, fides explicita Incarnationis et Trinitatis est omnibus necessaria necessitate medii ad salutem.*

5 This opinion is more probable and more common. Understand, however, the necessity not from the nature of the thing, otherwise it would have been the same at all times, but from a necessity arising from the institution and will of God for this state of the law of grace.

> *Est probabilior et communior. Intellige tamen de necessitate non ex natura rei, alioquin eadem fuisset omni tempore, sed de necessitate ex institutione et voluntate Dei pro hoc statu legis gratiae.*

6 [It is said, « after the Gospel has been sufficiently promulgated, » because it is supposed that before the said promulgation implicit faith in these mysteries was commonly sufficient, from the Apostle, *Gal.*, III, 23 : But before faith came, we were kept under the law shut up, unto that faith which was to be revealed. I said « commonly, » that is, for the lesser and the common people. For it seems that the greater, that is, priests and doctors, who offered the sacrifices prefiguring Christ and expounded the prophecies concerning Christ to come, were bound, at least by necessity of precept, to know in some way the sacred significance of these things.]

> *[Dicitur, « post Evangelium sufficienter promulgatum, » quia supponitur, ante dictam promulgationem, fidem implicitam horum mysteriorum fuisse communiter sufficientem, ex Apostolo, ad* Galat.*, III, 23 : Prius autem quam veniret fides, sub lege custodiebamur conclusi in eam fidem qua revelanda erat. Dixi « communiter, » id est minoribus et communi populo. Videtur enim quod maiores, seu sacerdotes et doctores, offerentes sacrificia praefigurativa Christi, et explicantes prophetias de Christo venturo, tenebantur saltem necessitate praecepti aliquo modo harumce rerum sacrarum significationem cognoscere.]*

7 *Proof of the first part*. 1° From Scripture. Christ, *John.*, III, 14 and 15, says : As Moses lifted up the serpent in the desert, so must the Son of man be lifted up, that whosoever believeth in him may not perish, but may have life everlasting. Now the looking upon the serpent was a means necessary to bodily health. Therefore also faith in Christ unto spiritual health. But that he speaks of explicit faith is clear from what he subjoins there : He that, he says, believeth in him is not judged ; but he that doth not believe is already judged, because he doth not believe in the name of the Only-begotten Son of God. τὸ ὄνομα designates the person ; τὸ τοῦ ὀνόματος of the Only-begotten Son of God

distinguishes him from the other persons. Therefore he speaks of explicit faith, and indeed of faith absolutely necessary ; because he who does not believe is already judged.

> Prob. prima pars. *1° Ex Scriptura. Christus,* Ioann.*, III, 14 et 15, dicit : Sicut Moyses exaltavit serpentem in deserto, ita exaltari oportet Filium hominis, ut omnis qui credit in ipsum, non pereat, sed habeat vitam aeternam. Atqui aspectus serpentis erat medium necessarium ad sanitatem corporalem. Ergo et fides in Christum ad sanitatem spiritualem. Ipsum autem loqui de fide explicita, patet ex his quae ibidem subdit : Qui, inquit, credit in eum, non iudicatur ; qui autem non credit, iam iudicatus est, quia non credit in nomine Unigeniti Filii Dei. τὸ ὄνομα designat personam ; τὸ τοῦ ὀνόματος Unigeniti Filii Dei distinguit a caeteris personis. Ergo loquitur de fide explicita, et quidem absolute necessaria ; quia qui non credit, iam iudicatus est.*

[8] *John.*, XIV, 1, Christ says : You believe in God ; believe also in me. Where he demands equal faith in himself as in God. Now explicit faith concerning God is necessary by necessity of means. Therefore also concerning Christ. Many other similar passages are read in the Gospel and in the Epistles of Paul.

> Ioann.*, XIV, 1, Christus dicit : Creditis in Deum, et in me credite. Ubi parem exigit fidem de seipso ac de Deo. Atqui fides explicita de Deo est necessaria necessitate medii. Ergo et de Christo. Plura alia similia leguntur in Evangelio et in Epistolis Pauli.*

[9] *Proof 2°* from the Fathers and the Council of Trent. St. Augustine, book *de Corrept. et Gratia*, c. 7, n. 11 : « From this damnation, he says, they will not deliver themselves who can say they have not heard the Gospel. » Where he speaks of explicit faith, since he speaks of the faith of the Gospel, and asserts a necessity absolute and inexcusable, even from invincible ignorance, which implies necessity of means.

> Prob. 2° *ex Patribus et concil. Trid. S. Augustinus, lib.* de Corrept. et Gratia*, c. 7, n. 11 : « Ab hac damnatione, inquit, non se liberabunt, qui poterunt dicere se non audivisse Evangelium. » Ubi loquitur de fide explicita, quia loquitur de fide Evangelii, et necessitatem adstruit absolutam atque inexcusabilem, etiam ex ignorantia invincibili, quod importat necessitatem medii.*

[10] St. Thomas, here art. 7, c, where at the beginning he speaks of what is necessary by necessity of means, concludes thus at the end : « After the time of revealed grace, both the great and the small are held to have explicit faith concerning the mysteries of Christ. » And still more expressly in *III Sentent.*, dist. 25, q. 2, a. 2, quaestiunc. 2 : « After the coming of Christ, he says, all, both great and small, are held to believe explicitly ; and if anyone should lack instruction, God would reveal it to him, unless he remained behind through his own fault. » Therefore he plainly holds that explicit faith is necessary by necessity of means, and not merely of precept ; otherwise, if one lacked instruction, he would be excused from its precept : which the holy Doctor does not admit, but recurs to the extraordinary means of revelation, which then would be owed.

> *S. Thomas, hic a. 7, c, ubi initio loquitur de eo quod est necessarium necessitate medii, in fine sic concludit : « Post tempus gratiae revelatae, tam maiores quam minores tenentur habere fidem explicitam de mysteriis Christi. » Et adhuc expressius in* III Sentent.*, dist. 25, q. 2, a. 2, quaestiunc. 2 : « Post adventum Christi, inquit, omnes tam maiores quam minores tenentur ad credendum explicite, et si aliquis instructionem non haberet, Deus ei revelaret, nisi ex culpa sua remaneret. » Ergo aperte sentit fidem explicitam esse necessariam necessitate medii, et non tantum praecepti ; alias, si instructione careat, excusaretur ab eius praecepto : quod non admittit S. Doctor, sed recurrit ad medium extraordinarium revelationis, quod tunc esset debitum.*

11 Trent, sess. VI, cap. 6, treating of the disposition to justification and of the things that are to be believed for it, says : « They are disposed unto that justice itself when, roused by divine grace and aided, receiving faith by hearing, they are moved freely toward God, believing to be true what has been divinely revealed and promised ; and this above all, that the impious man is justified by God through his grace, through the redemption which is in Christ Jesus. » Further, if it is necessary « above all » to believe this concerning redemption through Christ, therefore nothing is more necessary. Therefore this explicit faith concerning the redemption of Christ is to be placed among the first things to be believed, and necessary before the others, consequently by necessity of means.

> *Trid., sess. VI, cap. 6, agens de dispositione ad iustificationem et de iis quae ad illam sunt credenda, dicit : « Disponuntur autem ad ipsam iustitiam, dum excitati divina gratia et adiuti, fidem ex auditu concipientes, libere moventur in Deum, credentes vera esse quae divinitus revelata et promissa sunt ; atque illud in primis, a Deo iustificari impium per gratiam eius, per redemptionem quae est in Christo Iesu. » Porro, si sit necessarium « in primis » hoc credere de redemptione per Christum, ergo nihil magis necessarium. Ergo haec fides explicita de Christi redemptione est inter prima credibilia reponenda, et prae caeteris necessaria, consequenter necessitate medii.*

12 *Proof 3°* by reason. A more perfect faith of the Incarnation is required in the new law, in which this mystery has been accomplished and revealed, than in the old law, in which it was veiled. Now in the old law implicit faith of the Incarnation was necessary by necessity of means. Therefore in the new law explicit faith is necessary. — Proof of the minor, 1° from the Apostle, *Gal.*, II, 16, who says : A man is not justified by the works of the law, but by the faith of Jesus Christ. 2° Just as the redemption of Christ is necessary, so also is faith in him ; for through faith redemption is applied, according to that, *Rom.*, III, 22 : The justice of God, through the faith of Jesus Christ, unto all and upon all who believe in him. Now the redemption of Christ is and was necessary to all, at whatever time, by necessity of means unto salvation, as the Apostle teaches, *Rom.*, V, 18 : As by the offense of one, unto all men to condemnation ; so by the justice of one, unto all men unto the justification of life. Therefore.

> Prob. 3° *ratione. Perfectior fides Incarnationis requiritur in nova lege, in qua istud mysterium est peractum et revelatum, quam in veteri lege, in qua erat velatum. Atqui in veteri lege fides implicita Incarnationis erat necessaria necessitate medii. Ergo in nova lege est necessaria fides explicita. — Prob. min. 1° ex Apostolo,* Galat.*, II, 16, dicente : Non iustificatur homo ex operibus legis, nisi per fidem Iesu Christi. 2° Sicut necessaria est redemptio Christi, ita et fides illius ; per fidem enim applicatur redemptio, iuxta illud,* Rom.*, III, 22 : Iustitia Dei per fidem Iesu Christi, in omnes et super omnes qui credunt in eum. Atqui redemptio Christi est et fuit omnibus, pro quovis tempore, necessaria necessitate medii ad salutem, ut docet Apostolus,* Rom.*, V, 18 : Sicut per unius delictum in omnes homines in condemnationem, sic per unius iustitiam in omnes homines in iustificationem vitae. Ergo.*

13 The second part follows from the first. Because explicit faith of the Incarnation, namely that the Son of God was incarnate and conceived by the Holy Spirit, cannot be had without explicit faith of the Trinity. Add that the Incarnation is only a secondary object of our faith, while the Trinity is the primary object. Therefore, if in the new law explicit faith of the secondary object is required, with stronger reason that of the primary object.

> *Secunda pars sequitur ex prima. Quia non potest haberi fides explicita Incarnationis, nempe quod Filius Dei sit incarnatus et conceptus de Spiritu sancto, absque fide explicita Trinitatis. Adde quod Incarnatio sit tantum obiectum secundarium fidei nostrae, Trinitas autem primarium. Ergo, si in nova lege requiratur fides explicita obiecti secundarii, a fortiori obiecti primarii.*

14 Both parts are confirmed by the Symbol of St. Athanasius received by the Church, where, after the holy Doctor expounded the mysteries of the Trinity and the Incarnation, he concludes : « This is the Catholic faith, which unless each one believe faithfully and firmly, he cannot be saved. »

> *Utraque pars confirmatur ex Symbolo sancti Athanasii ab Ecclesia recepto, ubi cum S. Doctor explicuit mysteria Trinitatis et Incarnationis, concludit : « Haec est fides catholica, quam nisi quisque fideliter firmiterque crediderit, salvus esse non poterit. »*

15 I said : « After the Gospel has been sufficiently promulgated ; » because, from the advent of Christ until the sufficient promulgation of the Gospel, the same thing must be judged as concerning the time preceding the Incarnation, namely, that implicit faith concerning Christ sufficed ; since what has not been sufficiently promulgated ought not to be considered a means necessary to salvation. For that repugns the goodness of God and his gentle providence, as Bernard argues, epist. 77. Yet those to whom the Gospel had been promulgated in particular were bound by precept to explicit faith. When, however, the Gospel was sufficiently promulgated for all, it is uncertain. It is probable that this happened around the fortieth year after the ascension of Christ, when the temple of Jerusalem and the republic of the Jews were overthrown by the Romans.

> *Dixi : « Post Evangelium sufficienter promulgatum ; » quia, ab adventu Christi usque ad sufficientem Evangelii promulgationem, idem censendum est ac de tempore praecedente Incarnationem, scilicet satis fuisse fidem implicitam de Christo ; quia non debet reputari medium ad salutem necessarium, quod non est sufficienter promulgatum. Id namque repugnat Dei bonitati et suavi eius providentiae, ut arguit Bernardus, epist. 77. Ii tamen quibus erat in particulari promulgatum Evangelium, tenebantur ex praecepto ad fidem explicitam. Quando autem sufficienter fuit pro omnibus promulgatum Evangelium, incertum est. Probabile est id contigisse quadragesimo circiter anno post Christi ascensionem, quando templum Hierosolymitanum et respublica Iudaeorum per Romanos fuerunt subversa.*

16 [I say 3° : Explicit faith of each mystery is necessary by necessity of means, not only unto the second salvation, namely glorification, but also unto the first, namely justification.

> *[Dico 3° : Fides explicita utriusque mysterii est necessaria necessitate medii, non solum ad secundam salutem, scilicet glorificationem, sed etiam ad primam, scilicet iustificationem.*

17 This is against Cano and Bannez.

> *Est contra Canum et Bannez.*

18 *Proof.* 1° from Holy Scripture. *John.*, III, 14 and 15, cited in the proof of the first part of the second conclusion. *Mark.*, XVI, 15 and 16 : Preach the Gospel to every creature. He who believes and is baptized shall be saved ; but he who does not believe shall be condemned. *John.*, III, 36, Christ not only says that he who does not believe the Son shall not see life, but adds that the wrath of God abides upon him, that is, that he remains a sinner and unjust.

> Prob. *1° ex S. Scriptura.* Ioann., *III, 14 et 15, cit. in prob. prima partis secundae conclusionis.* Marc., *XVI, 15 et 16 : Praedicate Evangelium omni creaturae. Qui crediderit et baptizatus fuerit, salvus erit ; qui vero non crediderit, condemnabitur.* Ioann., *III, 36, Christus non solum dicit quod qui incredulus est Filio, non videbit vitam, sed addit quod ira Dei manet super eum, id est quod remanet peccator et iniustus.*

19 *Proof 2°* from the Tridentine passage cited there, where there is question, not only of glorification, but also and especially of justification. To this accords the response of the Congr. of the Holy Office, which, being asked : « Whether an adult who was in the article of death, and who promised that, after

recovering his health, he would learn the truths of the faith, could be baptized, » replied on May 10, 1703 : « The promise does not suffice ; but the missionary is bound to explain to the adult, even though moribund, provided he is not altogether incapable, the mysteries of faith which are necessary by necessity of faith, such as above all the mysteries of the Trinity and the Incarnation. »

> Prob. 2° *ex loco Tridentini ibidem citato, ubi agitur, non solum de glorificatione, sed etiam et praecipue de iustificatione. Cui consonat responsum Congr. S. Officii, quae interrogata : « Utrum adultus qui in mortis articulo versaretur, quique promitteret fore ut, post recuperatam sanitatem, fidei veritates addisceret, baptizari posset, » rescripsit die 10 maii 1703 : « Non sufficere promissionem; sed missionarium teneri adulto, etiam moribundo, qui incapax omnino non sit, explicare mysteria fidei quae sunt necessaria necessitate fidei, ut sunt praecipue mysteria Trinitatis et Incarnationis. »*

20 *Proof 3°* by reason. The just man is an adoptive son of God and heir of glory. Therefore, if implicit faith suffices for justification, it suffices also for glory ; which the adversaries do not admit.

> Prob. 3° *ratione. Iustus est filius Dei adoptivus et haeres gloriae. Ergo, si fides implicita sufficiat ad iustificationem, sufficit etiam ad gloriam ; quod non admittunt adversarii.*

21 Several cases are objected in which implicit faith of the Incarnation and the Trinity seems to suffice for salvation. 1° A boy nourished in the woods, or among barbarous nations, if he follows the guidance of right reason in the flight of evil and the pursuit of good, will be saved, according to St. Thomas. 2° If a boy, when he has attained the age of reason, is not instructed concerning the aforementioned mysteries, provided he converts to God, he will be justified. 3° Some are so rude and stupid that they cannot apprehend these mysteries by concept. The same must be said of the deaf and mute from birth. Yet salvation cannot be said to be impossible to them : otherwise God would not provide sufficiently for them.

> *Obiiciuntur plures casus in quibus videtur sufficere ad salutem fides implicita Incarnationis et Trinitatis. 1° Puer enutritus in silvis, aut inter barbaras nationes, si sequatur ductum rectae rationis in fuga mali et prosecutione boni, secundum D. Thomam salvabitur. 2° Si puer, cum instans rationis attigerit, non instruatur de mysteriis praefatis, dummodo convertatur ad Deum, iustificabitur. 3° Sunt adeo rudes et stupidi, ut non valeant conceptu apprehendere haec mysteria. Idem dicendum de surdis et mutis a nativitate. Non tamen dici potest salutem illis esse impossibilem : alioquin Deus non satis illis provideret.*

22 *I answer.* to the 1st, with St. Thomas, *de Verit.*, q. 14, a. 11, ad 1 : « If one so nourished followed the guidance of natural reason in the desire of good and the flight of evil, it is most certainly to be held that God would reveal to him, either by internal inspiration, the things necessary to be believed, or would direct to him some preacher of the faith, as he sent Peter to Cornelius, *Acts.*, x. »

> Resp. *ad 1um, cum D. Thoma,* de Verit.*, q. 14, a. 11, ad 1 : « Si aliquis taliter nutritus, ductum naturalis rationis sequeretur in appetitu boni et fugam mali, certissime est tenendum quod et Deus vel per internam inspirationem revelaret ea quae sunt ad credendum necessaria, vel aliquem fidei praedicatorem ad eum dirigeret, sicut misit Petrum ad Cornelium,* Act.*, x. »*

23 *I answer.* to the 2nd. The age of reason is moral, having some duration, within which the boy can be instructed, whether by God, or by an angel, or by a man. These extraordinary instructions ought not to be called miraculous, because they follow naturally from the will of God to save men.

> Resp. *ad 2um. Instans rationis est morale, habens aliquam durationem, in qua sive a Deo, sive ab angelo, sive ab homine potest puer instrui. Quae extraordinariae instructiones non debent dici miraculosae, quia consequuntur naturaliter ad voluntatem Dei salvandi homines.*

24 *I answer.* to the 3rd. Intelligence is not required for faith, but assent, nor is anyone so stupid that, helped by the aid of grace, he could not apprehend the mysteries of the Incarnation and the Trinity at least confusedly and as to their substance. But if you deny this, those are to be numbered among infants and the insane who, without actual faith, by habitual faith alone received in baptism, are saved.]

> Resp. *ad 3um. Non requiritur ad fidem intelligentia, sed assensus, nec ullus est adeo stupidus qui, auxilio gratiae adiutus, non possit mysteria Incarnationis et Trinitatis saltem in confuso et quoad substantiam apprehendere. Quod si neges, ii sunt adnumerandi inter infantes et amentes, qui sine fide actuali, per solam fidem habitualem in baptismo susceptam salvantur.]*

25 From what has been said you will gather that those who are ignorant of the aforesaid mysteries of the Incarnation and the Trinity as to their substance, even if invincibly, are incapable of absolution, and that all confessions made in this ignorance are null and to be repeated, nor does it suffice ever to have believed them, if they are now in fact unknown.

> *Ex dictis colliges, eos qui praefata mysteria Incarnationis et Trinitatis quoad substantiam ignorant, etiamsi invincibiliter, esse absolutionis incapaces, et omnes confessiones in hac ignorantia factas, esse nullas et iterandas, neque sufficere ea aliquando credidisse, si de facto nunc ignorentur.*

26 (To this tend the following propositions condemned by Innocent XI on March 2, 1679 : « Man is capable of absolution, however greatly he may labor under ignorance of the mysteries of faith, and even if, through negligence, even culpable negligence, he does not know the mystery of the most holy Trinity and the Incarnation of our Lord Jesus Christ, » n. 64. — « It suffices to have believed those mysteries once, » n. 65.]

> *(Huc faciunt propositiones sequentes damnatae ab Innocentio XI, die 2 martii 1679 : « Absolutionis capax est homo, quantumvis laboret ignorantia mysteriorum fidei, et etiamsi per negligentiam etiam culpabilem nesciat mysterium sanctissimae Trinitatis et Incarnationis Domini nostri Iesu Christi, » n. 64. — « Sufficit illa mysteria semel credidisse, » n. 65.]*

The remaining difficulties concerning the internal act of faith are weighed

1 *You will ask* 1° what things are to be believed by necessity of precept.

> Petes *1° quae sint credenda necessitate praecepti.*

2 *I answer.* All the faithful, in this state of the evangelical law, are bound by a precept binding under mortal sin to believe explicitly, at least as to substance and principal circumstances: 1° all the articles contained in the Apostles' Creed; 2° all the precepts of the Decalogue and of the Church; 3° the Lord's Prayer; 4° the sacraments necessary to be received, which are three: baptism, the eucharist and penance.

> Resp. *Omnes fideles in hoc statu legis evangelicae tenentur ex praecepto obligante sub peccato mortali credere explicite, saltem quoad substantiam et praecipuas circumstantias : 1° omnes articulos contentos in Symbolo Apostolorum ; 2° omnia praecepta Decalogi et Ecclesiae; 3° orationem Dominicam ; 4° sacramenta necessario suscipienda, quae sunt tria: baptismus, eucharistia et paenitentia.*

3 The reason of the first part is that the Apostles were bound by the precept of Christ to teach those articles explicitly, according to that saying, *Marc.*, XVI, 15: Preach the Gospel to every creature; and

therefore they composed this Creed before they began to preach. Therefore there is in the faithful the obligation of believing them. For the precept of instructing would be useless if there were not the obligation of believing. And so it is prescribed cap. *Baptizandos*, de consecr., dist. 4, cap. 58. Whence the Roman Catechism, p. I, c. 1, n. 2: « Those things which Christian men must first hold, says he, are those which... the holy Apostles, inspired by the divine Spirit, distinguished in twelve articles of the Creed. »

> *Ratio prima partis est, quia Apostoli ex praecepto Christi tenebantur illos articulos docere explicite, iuxta illud,* Marc., *XVI, 15 : Praedicate Evangelium omni creaturae; et ideo hoc Symbolum composuerunt antequam inciperent praedicare. Ergo inest fidelibus obligatio illos credendi. Inutile namque foret praeceptum instruendi, si non sit obligatio credendi. Et ita praecipitur cap.* Baptizandos*, de consecr., dist. 4, cap. 58. Unde Catechismus Romanus, p. I, c. 1, n. 2 : « Qua primum, inquit, Christiani homines tenere debent, illa sunt quae... sancti Apostoli, divino Spiritu afflati, duodecim Symboli articulis distinxerunt. »*

4 The reason of the second part is that each of the faithful is bound to keep the precepts of the Decalogue and of the Church. Therefore also to know, or believe, them.

> *Ratio secundae partis est, quia quilibet fidelis tenetur praecepta Decalogi et Ecclesiae servare. Ergo et illa scire, seu credere.*

5 The reason of the third part is drawn from the necessity of knowing those things which we ought to ask of God. These however are contained in the Lord's Prayer.

> *Ratio tertiae partis petitur ex necessitate cognoscendi ea quae a Deo petere debemus. Haec autem continentur in oratione Dominica.*

6 The reason of the fourth part is that he cannot receive these sacraments rightly who is ignorant of them and of the dispositions required for them.

> *Ratio quartae partis est, quia haec sacramenta rite suscipere non potest, qui ea et dispositiones ad illa requisitas ignorat.*

7 I said: « At least as to substance and principal circumstances; » because, as the Author says, certain persons are bound to believe more or less explicitly the subtle considerations concerning these mysteries, according as it befits the state and office of each one; more the pastors, doctors, preachers, confessors, who are deputed to instruct others, than the faithful among the people.

> *Dixi : « Saltem quoad substantiam et praecipuas circumstantias ; » quia, ut ait author, subtiles considerationes circa haec mysteria tenentur aliqui magis vel minus explicite credere, secundum quod statui et officio uniuscuiusque competit; magis pastores, doctores, praedicatores, confessarii, qui aliis instruendis sunt deputati, quam fideles de populo.*

8 *You will ask* 2° when the precept of faith binds.

> Petes *2° quandonam obliget praeceptum fidei.*

9 Twofold is the precept of faith: one affirmative, to assent to revealed truths; the other negative, not to deny the faith received or acknowledged. The latter binds always; not the former, but at a determined time, like the other affirmative precepts. But at what time?

> *Duplex est praeceptum fidei: unum affirmativum, assentiendi veritatibus revelatis ; aliud negativum, non negandi fidem susceptam seu agnitam. Hoc secundum obligat pro semper; non primum, sed determinato tempore, sicut alia praecepta affirmativa. Quo autem tempore?*

10 *I answer.* 1° The affirmative precept of faith binds per se an adult possessed of reason immediately morally, as soon as the things to be believed and the motives for believing are sufficiently proposed to him; because faith is a necessary means to salvation, as we said. But an adult is bound immediately morally to employ the means necessary for his salvation, especially since, if he do not believe, there is danger lest he positively dissent from the truth acknowledged, and thus sin against the negative precept. Add that, since this precept binds per se at some time, no more convenient time can be assigned than the first instant of moral life, or of sufficient illumination.

> Resp. *1° Praeceptum fidei affirmativum obligat per se adultum rationis compotem statim moraliter ac credenda et credendi motiva ipsi sufficienter proponuntur ; quia fides est medium necessarium ad salutem, ut diximus. Tenetur autem adultus statim moraliter adhibere medium suae saluti necessarium, praesertim cum, si non credat, periculum sit ne agnitae veritati positive dissentiat, sicque peccet contra praeceptum negativum. Adde quod, cum hoc praeceptum per se aliquando obliget, non possit assignari tempus convenientius, quam primum instans vitae moralis, aut sufficientis illuminationis.*

11 I said: « Immediately morally; » because with children one must not act too scrupulously; for it often happens that, even when they have acquired the use of reason, the mysteries of faith are not sufficiently proposed to them, or that they do not apprehend the grave obligation of believing. Whence they rarely sin against this precept by not eliciting at once an act of faith.

> *Dixi : « Statim moraliter ; » quia, quoad pueros, non est nimis scrupulose cum ipsis agendum ; saepe enim accidit quod, etiam adepto usu rationis, mysteria fidei non sufficienter ipsis proponantur, aut quod non apprehendant obligationem gravem credendi. Unde raro peccant contra hoc praeceptum, non eliciendo statim actum fidei.*

12 2° The affirmative precept of faith binds per se in danger of death, in which the precepts of hope and charity bind, and man reaches his term.

> *2° Praeceptum fidei affirmativum obligat per se in periculo mortis, in quo obligant praecepta spei et charitatis, et homo attingit suum terminum.*

13 3° Besides these cases, the affirmative precept of faith binds per se many times in life. It is clear 1° from the following propositions condemned by Innocent XI. The first: « It suffices to elicit an act of faith once in life. » It is the 17th among the condemned. Another: « It suffices to have believed those mysteries [namely of the Trinity and Incarnation] once. » It is the 65th. 2° Because, according to Scripture, *Rom.*, I, 17, the just liveth by faith. But how would he live by faith if he elicited only one act of it in the whole of his life? 3° Because the precepts of the other virtues, hope, charity, etc., bind many times in life. Why not also that of faith?

> *3° Praeter hos casus, praeceptum fidei affirmativum obligat per se pluries in vita. Patet 1° ex sequentibus propositionibus damnatis ab Innocentio XI. Prima : « Satis est actum fidei semel in vita elicere. » Est 17a inter damnatas. Altera : « Sufficit illa mysteria [scilicet Trinitatis et Incarnationis] semel credidisse. » Est 65a. 2° Quia, iuxta Scripturam,* Rom., *I, 17, iustus ex fide vivit. Quomodo autem viveret ex fide, si unum illius actum tantum in tota vita eliceret. 3° Quia praecepta aliarum virtutum, spei, charitatis, etc., pluries obligant in vita. Quidni et fidei?*

14 But how often does it bind in life? It cannot be determined with certainty. Marvelously on this point authors vary. For some say on every Sunday and feast day; others, every month; others, once a year; others, on the greater solemnities.

At quoties obligat in vita? Certo determinari non potest. Mirè hac in re variant authores. Quidam enim dicunt singulis diebus dominicis et festis ; alii, singulis mensibus ; alii, semel in anno ; alii, in maioribus solennitatibus.

15 [St. Liguori says, lib. III, n. 7: « The Salmanticenses think quite probably, together with others, that the faithful are bound at least once a year to exercise an act of faith. » And he adds that this opinion is common. The same observes that satisfaction is made sufficiently for this precept also through the exercise of the other virtues, whether through the reception of the sacraments, or from whatever other occasion acts of faith are placed.

[S. Ligorius dicit, lib. III, n. 7 : « Sat probabiliter putant Salmanticenses, cum aliis, teneri saltem semel in anno fideles ad exercendum actum fidei. » Et addit, hanc sententiam esse communem. Advertit idem, quod huic praecepto fiat satis etiam per exercitium aliarum virtutum, sive per susceptionem sacramentorum, sive ex quacumque alia occasione actus fidei ponantur.

16 It is expedient that the faithful be led to elicit explicit acts of faith every day, when they recite their accustomed prayers, to which the formulas of acts of faith, hope and charity are commonly added. Thus the habit of faith is confirmed, the obligation is abundantly satisfied, and the merit annexed to this virtue is multiplied.

Expedit ut fideles inducantur ad actus fidei explicite eliciendos singulis diebus, cum preces consuetas recitant, quibus eommuniter adduntur formulae actuum fidei, spei et charitatis. Ita habitus fidei confirmatur, abundanter obligationi satisfit, et meritum huic virtuti annexum multiplicatur.

17 But are we bound to elicit these acts formally, namely from the motive of God revealing? This motive indeed is very well enunciated in an explicit act, but it is sufficiently included in any act of faith, even implicit, although there be no reflex act from the proper motive. « For he who, says St. Liguori, ibid., has often placed faith as the rule of his actions, by which he wishes to tend to God, whatever good he does afterwards, directs to God exercitively by the same rule already, although he advert not. »]

An vero teneamur hos actus elicere formaliter, scilicet ex motivo Dei revelantis? Optime quidem hoc motivum in actu explicito enuntiatur, sed sufficienter includitur in quocumque actu fidei, etiam implicito, quamvis non fiat reflexe ex motivo proprio. « Qui enim, ait S. Ligorius, ibid., saepius posuit fidem tamquam regulam suarum actionum, quibus vult ad Deum tendere, quidquid postea boni agit, ex eadem regula iam ad Deum dirigit'exercite, licet non advertat. »]

18 *I answer.* 2° The affirmative precept of faith binds per accidens when a grave temptation presses, either against faith or against another virtue, which can be overcome only by an express act of faith. 2° Whenever some other precept urges which cannot be fulfilled without faith, as while one is bound to repent, to receive some sacrament, to celebrate or hear mass, etc.; because he who is bound to the end is bound to the means. In these cases however it does not seem necessary that there intervene an express act of faith in actu signato, whereby one say: « I believe that God exists whom I now implore; I believe the sacrament which I now receive; » but it suffices that he believe implicitly and in actu exercito, insofar as from knowledge of the faith, knowing that God exists, that he is the Redeemer, that this is a sacrament, etc., he intends to pray to God, love him, offer sacrifice, receive the sacrament, etc.

Resp. 2° *Praeceptum fidei affirmativum obligat per accidens, quando urget gravis tentatio, sive contra fidem, sive contra aliam virtutem, quae non nisi expresso fidei actu superari potest. 2° Quoties urget aliquod aliud praeceptum quod sine fide impleri non potest, ut dum quis tenetur paenitere, aliquod sacramentum suscipere, missam celebrare aut audire, etc.;*

quia qui tenetur ad finem, tenetur ad media. In his tamen non videtur necesse quod interveniat actus fidei expressus et in actu signato, quo quis dicat : « Credo Deum esse, quem nunc oro; credo sacramentum quod nunc suscipio ; » sed sufficit quod implicite et in actu exercito credat, quatenus ex notitia fidei sciens Deum esse, Redemptorem esse, hoc esse sacramentum, etc., intendit Deum orare, diligere, sacrum celebrare, sacramentum suscipere, etc.

19 [It must be added: after falling into heresy, or denying the faith, because the injury offered to the first Truth must be repaired of necessity. So all.]

[Addendum est : post lapsum in haeresim, aut fidem negatam, quia de necessitate reparanda est iniuria prima Veritati illata. Ita omnes.]

20 *You will ask* 3° whether a pious motion of the will is required for the assent of faith.

Petes *3° utrum ad assensum fidei requiratur pia motio voluntatis.*

21 *I answer.* Affirmatively [19].

19 This q. 2, a. 1, ad 3; q. 1, a. 4, o.

Resp. *affirmative* [19].

19 Hic q. 2, a. 1, ad 3; q. 1, a. 4, o.

22 [This the Vatican Council teaches in the constitution *Dei Filius*, cap. 3, in these words: « Although the assent of faith is by no means a blind movement of the mind, nevertheless no one can consent to the evangelical preaching as is required for attaining salvation without the illumination and inspiration of the Holy Spirit, who gives to all sweetness in consenting and believing the truth [20]. Wherefore faith itself in itself, even though it work not through charity, is a gift of God, and its act is a work pertaining to salvation, by which man renders to God himself free obedience, consenting and cooperating with his grace, against which he could resist. »

20 Synod. Arausic., II, can. 1

[Hoc docet concilium Vaticanum in constit. Dei Filius*, cap. 3, his verbis : « Licet fidei assensus nequaquam sit motus animi caecus, nemo tamen evangelicae praedicationi consentire potest sicut oportet ad salutem consequendam, absque illuminatione et inspiratione Spiritus sancti, qui dat omnibus suavitatem in consentiendo et credendo veritati [20]. Quare fides ipsa in se, etiamsi per charitatem non operetur, donum Dei est, et actus eius est opus ad salutem pertinens, quo homo liberam praestat ipsi Deo obedientiam, gratiae eius, cui resistere posset, consentiendo et cooperando. »*

20 Synod. Arausic., II, can. 1

23 *It is proved* 1° because at *Rom.*, X, 10, it is said: With the heart we believe unto justice, that is with the will moving the intellect to believe, as the Angelic Doctor explains there, lect. 2. And it is gathered from the usage of Holy Scripture, according to which heart is wont to be taken for will. Whence Augustine, *Tract.* XXIV in *Ioann.*, n. 2: « Anyone can enter the church unwilling, can approach the altar unwilling, can receive a sacrament unwilling: he cannot believe unless willing. »]

Prob. *1° quia ad* Rom.*, x, 10, dicitur: Corde creditur ad iustitiam, id est voluntate movente intellectum ad credendum, ut ibidem explicat Angelicus, lect. 2. Et colligitur ex usu S. Scripturae, iuxta quem cor pro voluntate sumi solet. Unde Augustinus,* Tract. *XXIV in* Ioann.*, n. 2: « Intrare quisquam ecclesiam potest nolens, accedere ad altare potest nolens, accipere sacramentum potest nolens : credere non potest, nisi volens. »]*

24 2° The intellect is determined only either by an evident object or by the will. But for the assent of faith it is not determined by the object, which is necessarily obscure and unevident. Therefore by the will.

> *2° Intellectus non determinatur nisi vel ab obiecto evidenti, vel a voluntate. Atqui ad assensum fidei non determinatur ab obiecto, quod est necessario obscurum et inevidens. Ergo a voluntate.*

25 3° The act of faith is free both as regards exercise and as regards specification, namely in the character of assent rather than dissent. Therefore it needs the motion of the will, whereby the intellect be determined to assent rather than to dissent.

> *3° Actus fidei est liber tam quoad exercitium quam quoad specificationem, scilicet in ratione assensus, potius quam dissensus. Ergo indiget motione voluntatis, qua determinetur intellectus ad assensum potius quam ad dissensum.*

26 [This motion is called « pious, » because it is necessarily from the help of grace, otherwise it would not be supernatural, and the beginning of salvation would be from us; which was condemned in the semi-Pelagians. Whence the Council of Trent teaches, session VI, cap. 6, that men « are disposed to justice itself, while excited and helped by divine grace, conceiving faith from hearing, they are freely moved towards God, believing those things to be true which divinely have been revealed and promised. »]

> *[Haec motio dicitur « pia, » quia est necessario ab auxilio gratiae, alioquin non foret supernaturalis, et initium salutis esset a nobis; quod fuit damnatum in semi-pelagianis. Unde concilium Tridentinum docet, sess. VI, cap. 6, quod homines « disponuntur ad ipsam iustitiam, dum excitati divina gratia et adiuti, fidem ex auditu concipientes, libere moventur in Deum, credentes vera esse quae divinitus revelata et promissa sunt. »]*

27 This pious motion moreover is a certain complacency or affection, from the help of grace, towards the supreme veracity of God, by force of which it determines the intellect to assent with that firmness which surpasses every firmness arising from any scientific or experimental act.

> *Ista autem pia motio est complacentia quaedam seu affectus, ex auxilio gratiae, erga summam Dei veracitatem, vi cuius determinat intellectum ad assentiendum ea firmitate quae superat omnem firmitatem ortam ex quovis actu scientifico vel experimentali.*

28 [*You will ask* 4° whether it suffices to adhere to the truths defined by the Church as to be believed of faith, neglecting or even considering as free the other doctrinal decisions which the Roman Pontiffs have published.

> *[*Petes *4° utrum sufficiat adhaerere veritatibus ut de fide credendis definitis ab Ecclesia, negligendo vel etiam ut liberas considerando alias decisiones doctrinales quas Romani Pontifices ediderunt.*

29 *I answer.* Negatively. So decreed Leo XIII in the Encyclical *Immortale Dei*, 1 November 1885: « Indeed in judging, whatever the Roman Pontiffs have handed down or shall hand down, each thing must be held grasped by stable judgment, and openly professed whenever occasion requires; and specially concerning those which in latest times have been sought under the name of liberties, it behooves one to stand by the judgment of the Apostolic See, and to hold the same as she has judged, each and all. » The reason is that the supreme Pontiff enjoys the inerrancy granted divinely to him not only when he defines something as to be believed of faith, which rarely happens, but whenever as universal doctor he pronounces upon the truth or falsity of any doctrine.

Resp. *negative. Ita statuit Leo XIII in Encyclica* Immortale Dei*, 1 novemb. 1885 : « In opinando quidem, inquit, quaecumque Pontifices Romani tradiderint vel tradituri sunt, singula necesse est et tenere iudicio stabili comprehensa, et palam, quoties res postulaverit, profiteri ; ac nominatim de iis quas libertates vocant novissimo tempore quaesitas, oportet Apostolica Sedis stare iudicio, et quod ipsa senserit, idem sentire singulos. » Ratio est, quia summus Pontifex inerrantia sibi divinitus concessa gaudet, non tantum cum aliquid tamquam de fide credendum definit, quod raro contingit, sed quoties ut doctor universalis de veritate vel falsitate alicuius doctrinae pronuntiat.*

30 Hence it is that the Vatican Council, having condemned several errors by the constitution *Dei Filius*, adds: « But since it is not enough to avoid heretical pravity unless those errors also be diligently fled which more or less approach it, we admonish all of the duty of observing also the constitutions and decrees by which such perverse opinions, which are not expressly enumerated there, have been proscribed and prohibited by this Holy See. »

Hinc est quod concilium Vaticanum, pluribus erroribus damnatis per constitutionem Dei Filius*, addit : « Quoniam vero satis non est haereticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur qui ad illam plus minusve accedunt, omnes officii monemus servandi etiam constitutiones et decreta quibus pravae eiusmodi opiniones quae isthic diserte non enumerantur, ab hac Sancta Sede proscripta et prohibitae sunt. »*

31 The opposite opinion had already been exploded by the condemnation of the following proposition, which is read in the Syllabus attached to the Encyclical *Quanta cura*, 8 December 1864, under no. 22: « The obligation by which Catholic teachers and authors are absolutely bound is restricted to those things alone which are propounded by the infallible judgment of the Church as dogmas of faith to be believed by all. » Pius IX had noted this proposition in the preceding year as erroneous and to be rejected by all, in an epistle to the Archbishop of Freiburg.

Sententia opposita iam fuerat explosa per damnationem sequentis propositionis, quae in Syllabo Encyclica Quanta cura*, 8 decemb. 1864, adnexo, sub n° 22 legitur : « Obligatio qua catholici magistri et scriptores omnino adstringuntur, coaretatur in iis tantum quae ab infallibili Ecclesiae iudicio veluti fidei dogma ab omnibus credenda proponuntur. » Hanc propositionem anno praecedenti ut erroneam et ab omnibus reiiciendam notaverat Pius IX, in epistola ad archiepiscopum Friburgensem.*

32 Whence resolve that anyone formally embracing and pertinaciously holding doctrine proscribed by the Apostolic See as erroneous commits a sin mortal of its genus, although the contradictory proposition be not taught as to be held of faith. I say « mortal of its genus; » because, since the Church freely permits many opposite opinions to be agitated, every error positively proscribed by her ought to be judged grave.]

Unde resolves, quemlibet formaliter amplectentem et pertinaciter tenentem doctrinam ab Apostolica Sede proscriptam ut erroneam, etsi propositio contradictoria non doceatur ut de fide tenenda, peccatum ex genere suo mortale committere. Dico « ex genere suo mortale; » quia, cum Ecclesia multas sententias oppositas liberrime agitari sinat, omnis error ab ea positive proscriptus gravis censeuri debet.]

On the external act of faith

1 Twofold is the precept concerning the external act of faith, as we said concerning hell: one negative, not to deny the faith externally; the other affirmative, to confess the faith externally.

Duplex est praeceptum de actu fidei externo, sicut diximus de inferno: unum negativum, non negandi fidem exterius; alterum affirmativum, confitendi fidem exterius.

2 **I say** 1°: In no case whatsoever, even to avoid death, is it licit to deny by word or deed the faith retained in the heart, or to profess or simulate it false externally.

> ***Dico** 1° : In nullo unquam casu, etiam vitandae mortis, licet fidem corde retentam ore vel facto negare, falsamve exterius profiteri seu simulare.*

3 It is clear 1° from the words of Christ, *Matt.*, X, 33, and *Luc.*, XII, 9, where he says: He that shall deny me before men, I will deny him before my Father. And *Apost.*, 2 Tim., II, 12: If we deny him, he also will deny us. It is therefore a divine negative precept not to deny the faith. Such however is the nature of a negative precept that it binds always and forever.

> *Constat 1° ex verbis Christi,* Matth.*, x, 33, et* Luc.*, XII, 9, ubi dicit : Qui me negaverit coram hominibus, negabo eum coram Patre meo. Et* Apost.*, II* Tim.*, II, 12 : Si negaverimus, et ille negabit nos. Est ergo praeceptum divinum negativum non negandi fidem. Ea est autem natura praecepti negativi, quod semper et pro semper obliget.*

4 2° To deny the faith is to say that God revealed what is false, or did not reveal a dogma of faith. But either is a lie injurious to God. Therefore it is never licit.

> *2° Negare fidem, est dicere Deum revelasse falsum, vel fidei dogma non revelasse. Atqui utrumque est mendacium Deo iniuriosum. Ergo nunquam licitum.*

5 I said 1°: « By word or deed; » because in both there is a lie [21], with this sole difference, that a lie by deed is called simulation.

21 This q. II, a. 1, o.

> *Dixi 1° : « Ore vel facto; » quia utrimque est mendacium [21], cum hac sola differentia, quod mendacium facto dicatur simulatio.*
>
> *21 Hic q. II, a. 1, o.*

6 I said 2°: « Or profess or simulate it false externally; » because to simulate and outwardly profess a false faith or religion is just as much as to deny the true one; for he who says in word, or exhibits in deed, that he is a Calvinist denies himself to be a Catholic.

> *Dixi 2° : « Vel falsam exterius profiteri seu simulare ; » quia falsam fidem seu religionem simulare et exterius profiteri, perinde est ac veram negare; qui enim se verbo dicit aut facto exhibet Calvinistam, se negat Catholicum.*

7 *You will ask* when in practice someone is judged by deed to simulate or outwardly profess a false religion.

> Petes *quandonam in praxi quis censeatur facto simulare aut profiteri exterius falsam religionem.*

8 *I answer.* And let it be a general rule. To make use of signs, rites, ceremonies, vestments, actions which are primarily distinctive of sect from sect, or which either of themselves, or by institution, or from circumstances are primarily significant of the profession of a false faith, is to profess that false faith externally; and therefore never licit. Those things however which distinguish not primarily sect from sect but nation from nation, or which only per accidens, indirectly and secondarily, are significant of the profession of a false faith, although they are to be avoided lest we give some occasion for believing that we denied the faith — provided nevertheless there subsist a just cause of necessity preponderating over this deception — may be used licitly; because this is not absolutely to

profess a false faith. From this rule rightly understood and applied you will resolve many cases. I shall relate some.

> Resp. *et sit regula generalis. Usurpare signa, ritus, caeremonias, vestes, actiones quae sunt primario distinctiva sectae a secta, seu quae sive ex se, sive ex institutione, sive ex circumstantiis sunt primario significativa professionis falsae fidei, est istam falsam fidem exterius profiteri; et ideo nunquam licitum. Quae vero distinguunt primarium, non sectam a secta, sed gentem a gente, seu quae per accidens tantum indirecte et secundario sunt significativa professionis falsae fidei, quamvis sint vitanda, ne demus aliquibus occasionem credendi nos negasse fidem, subsistente tamen iusta necessitatis causa huic deceptioni praeponderante, possunt licite usurpari ; quia hoc non est absolute falsam fidem profiteri. Ex hac regula rite intellecta et applicata, multos casus resolves. Quosdam referam.*

9 Hence therefore you will infer 1° that it has never been licit to bend the knee before an idol, to offer incense to it, even if the intention be directed to a hidden crucifix, to wear the image of Mohammed hung about the neck, to take the supper of the Calvinists, to sing psalms in their temples, to play the organs, to contract marriage before a minister blessing the nuptials according to the rite of his sect; because these are primarily distinctive of sect from sect, and per se primarily significant of a false religion.

> *Hinc igitur inferes 1°, flectere genua coram idolo, ei thus adolere, etiamsi intentio dirigatur ad occultum crucifixum, gestare imaginem Mahumeti in collo appensam, sumere caenam Calvinistarum, psalmos in eorum templis cantare, pulsare organa, contrahere matrimonium coram ministro benedicente nuptias secundum ritum suae sectae, nunquam esse licitum; quia haec sunt primario distinctiva sectae a secta, et primo per se falsae religionis significativa.*

10 [By the constitution *Ex quo singulari*, given 11 July 1742, Benedict XIV, confirming the constitution of Clement XI *Ex illa die*, declared that Chinese Christians might not exhibit external signs of adoration to an idol, although the intention were directed to a cross hidden under their garments. He permitted them to keep only those usages which could be held as civil only, such as those which had been instituted in honor of Confucius, provided all rites in which religious worship was included were done away with.

> *[Constitutione* Ex quo singulari*, 11 iulii 1742 data, Benedictus XIV, constitutionem Clementis XI* Ex illa die *confirmans, declaravit non licere Sinensibus christianis externa adorationis signa exhibere idolo, quamvis intentio dirigeretur ad crucem sub veste latentem. Eis permisit eos tantum servare usus qui nonnisi civiles haberi poterant, ut erant ii qui in honorem Confucii fuerant instituti, dummodo amandarentur omnes ritus in quibus cultus religiosus includebatur.*

11 You will infer 2° that it is regularly not licit for Catholics to be present at the sermons, baptisms and marriages of heretics or schismatics, as was declared by the Congregation of the Holy Office on 10 May 1770. Whence conclude that undertaking the office of godfather at the baptism of heretics, and of witness at their marriages, is forbidden a fortiori by the same decree. This is elicited from the Instruction of Pius VI of 26 September 1791, and from his replies to the clergy of France of 28 May 1793. — As to mere assistance, it was said that it is regularly not licit, because if the presence be merely material, as can sometimes happen, and it be sufficiently gathered from the circumstances that it contains or supposes no communication in divine things with heretics, and moreover offers no occasion of scandal, it can be excused from sin. — But truly, as evidently appears, if any Catholic, despising the laws of the Church, contracts marriage before a minister of a dissenting cult, it is licit to no Catholic to assist at such a marriage, even though he do not inwardly assent to it. Nay, parents and those more closely joined by blood are bound positively to disapprove it. — To the question: « Is

it licit for Catholics to enter the temples of heretics? » the Congregation of the Holy Office replied on 14 January 1718: « It is licit, if they enter out of mere curiosity, without any communication in sacred things. » — If funerals of heretics be in question, a distinction must be made. Things pertaining to a merely civil office, such as accompanying the body to the door of the temple or cemetery, can be permitted. Other things which have the nature or species of communion with heretics are to be prohibited. Moreover several things which could be admitted in one place cannot be tolerated in another, because from circumstances or from the customs of the region they receive a different signification. Whence one must attend to local custom, and in doubt superiors must be consulted. So Gury-Dumas, num. 192, 5°.

> *Inferes 2° catholicis regulariter non licere haereticorum aut schismaticorum concionibus, baptismis et matrimoniis interesse, ut fuit declaratum a Congreg. S. Officii die 10 maii 1770. Unde concludes quod munus patrini in haereticorum baptismate, et testis in eorum matrimoniis, suscipere, a fortiori eodem decreto prohibetur. Hoc eruitur ex Instructione Pii VI, die 26 sept. 1791, et ex eiusdem responsis ad clerum Galliarum, die 28 maii 1793. — Quantum ad simplicem assistentiam, dictum est eam regulariter non esse licitam, quia si presentia sit mere materialis, ut quandoque accidere potest, et ex adiunctis satis deprehendatur eam nullam continere aut supponere communicationem in divinis cum haereticis, et aliunde scandali occasionem non praebeat, a peccato excusari poterit. — At vero, ut evidenter apparet, si quis catholicus, spretis Ecclesiae legibus, nuptias coram ministro cultus dissidentis contrahat, nemini catholico tali matrimonio assistere licet, etiamsi interius illi non assentiat. Imo parentes et sanguine coniunctiores id positive improbare tenentur.— Quaestioni : « An liceat catholicis adire templa haereticorum? » Congreg. S. Officii respondit, die 14 ianuarii 1718: « Licere, si adeant merae curiositatis causa, absque ulla communicatione in sacris. » — Si de funeribus haereticorum agatur, distinguendum est. Quae ad officium mere civile pertinent, veluti comitari corpus usque ad fores templi vel caemeterii, permitti possunt. Alia quae naturam aut speciem communionis cum haereticis habent, sunt prohibenda. Caeterum plura quae in uno loco admitti possent, in alio nequeunt tolerari, propterea quod ex circumstantiis vel ex moribus regionis diversam accipiunt significationem. Unde attendere oportet ad locorum consuetudinem, et in dubio superiores sunt consulendi. Ita Gury-Dumas, num. 192, 5°.*

12 You will infer 3° that those gravely sin who are present at the merely civil funerals of those who abjured the Catholic faith; because funerals of this kind, from which all signs of religion are deliberately excluded, are nothing but an open profession of impiety, which not even the relatives of the deceased may cooperate in.]

> *Inferes 3° eos graviter peccare qui funeribus mere civilibus eorum qui fidem catholicam abiurarunt intersunt; quia huiusmodi funera, ex quibus omnia signa religionis consulto excluduntur, non sunt nisi aperta impietatis professio, cui ne proximis quidem defuncti licet cooperari.]*

13 You will infer 4° that on the contrary it is licit, for a just cause, to wear long Turkish dress, or even what they call a turban, to conceal the faith. For although it has never been licit to deny the faith, it is nevertheless licit sometimes to hide and dissemble it; nor is that garment primarily for the distinction of religion but of nation, nor does the Catholic assume it so that he be believed to profess the Turkish religion, but that the occasion of attending to and inquiring about his religion be taken away. Say the same of the vestments of other idolatrous nations which are not destined precisely for the uses of their religion. Say the same of their standards in war, that thus they may be deceived and conquered.

> *Inferes 4° e contra licitum esse ex iusta causa gestare vestem longam Turcicam, aut etiam quam turbantem vocant, ad occultandam fidem. Quamvis enim nunquam licitum sit fidem negare, licet tamen eam quandoque celare et dissimulare,*

nec illa vestis est primario ad distinctionem religionis, sed gentis, nec eam assumit Catholicus ut credatur profiteri religionem Turcicam, sed ut auferatur occasio attendendi et inquirendi de religione. Idem dic de vestibus aliarum nationum idololatrarum, quae non sunt destinatae praecise usibus suae religionis. Idem de earum vexillis in bello, ut sic decipiantur et vincantur.

14 **I say** 2°: By the precept of Christ the faithful is bound sometimes to confess his faith externally [22].

22 This q. 3, a. 2, o.

***Dico** 2° : Ex praecepto Christi tenetur fidelis aliquando fidem suam exterius confiteri* [22].

22 *Hic q. 3, a. 2, o.*

15 *It is proved.* Christ, *Matt.*, X, 32, says: Every one that shall confess me before men, I will also confess him before my Father. *Luc.*, IX, 26: He that shall be ashamed of me and of my words, him will the Son of man be ashamed of. And the Apostle, *Rom.*, X, 10: With the heart we believe unto justice; but with the mouth confession is made unto salvation. Therefore confession is sometimes necessary to salvation.

Prob. *Christus,* Matth., *x, 32, dicit : Omnis qui confitebitur me coram hominibus, confitebor et ego eum coram Patre meo.* Luc., *IX, 26 : Qui me erubuerit et meos sermones, hunc Filius hominis erubescet. Et Apostolus,* Rom., *X, 10 : Corde creditur ad iustitiam, ore autem confessio fit ad salutem. Ergo est aliquando necessaria confessio ad salutem.*

16 The Author here [23] assigns two cases in which this affirmative precept of confessing the faith binds, namely: « When through omission of this confession honor due to God would be withheld, and also utility to be bestowed on neighbors: suppose that anyone questioned about the faith kept silence, and from this it were believed either that he had no faith, or that the faith was not true, or that others were turned away from the faith by his silence. » All theologians follow the Saintly Doctor. And deservedly, for the precept of confessing the faith binding sometimes being supposed, cases cannot be assigned in which its observance presses more than these two which St. Thomas assigns.

23 Ibid.

Author hic [23] *duos casus assignat, in quibus hoc praeceptum affirmativum fidei confitendae obligat, scilicet : « Quando per omissionem huius confessionis subtraheretur honor debitus Deo, et etiam utilitas proximis impendenda : puta, si aliquis interrogatus de fide, taceret, et ex hoc crederetur, vel quod non haberet fidem, vel quod fides non esset vera, vel alii per eius taciturnitatem averterentur a fide. » S. Doctorem sequuntur omnes theologi. Et merito, supposito enim praecepto fidei confitendae aliquando obligante, non possunt assignari casus in quibus urgeat magis eius observatio, quam hi duo quos assignat S. Thomas.*

23 *Ibid.*

17 [Whence the following proposition was condemned by Innocent XI, on 2 March 1679, which is the 18th: « If anyone be questioned by the public authority, I counsel him sincerely to confess the faith, as glorious to God and the faith; I do not condemn silence as sinful. »

[Unde damnata est ab Innocentio XI, die 2 martii 1679, propositio sequens, quae est 18a: « Si a potestate publica quis interrogetur, fidem ingenue confiteri, ut Deo et fidei gloriosum, consulo; tacere, ut peccaminosum non damno. »

18 It must be noted however that this proposition was condemned as too general, because namely it includes also the cases in which silence would be equivalent to denial of the faith. For it is commonly

admitted, with St. Liguori, lib. III, n. 13, that for a just cause it is licit to conceal the faith, or to cover truth with words or other ambiguous and indifferent signs, whenever the precept of professing the faith does not press, which, insofar as it is affirmative, binds indeed always but not forever. Hence one questioned about the faith not in juridical form may keep silence or answer obscurely. For it is not generally true that one questioned by those who exercise public authority is bound to profess the faith, unless this profession be made necessary by the circumstances, lest he seem to deny the faith before bystanders. Much more will it be lawful for anyone to refuse to satisfy the curiosity of private persons: unless questioned about the faith out of hatred of religion he would seem, by acting thus, to deny the truth; which is to be judged from the circumstances.]

> *Notandum est tamen hanc propositionem ut nimis generalem fuisse damnatam, quia scilicet includit etiam casus in quibus silentium negationi fidei aequivaleret. Communiter enim admittitur, cum S. Ligorio, lib. III, n. 13, licere, iusta de causa, occultare fidem, seu veritatem tegere verbis aliisve signis ambiguis et indifferentibus, quoties non urget praeceptum fidem profitendi, quod, in quantum est affirmativum, obligat quidem semper, sed non pro semper. Hinc de fide non in forma iuridica interrogatus, potest tacere vel obscure respondere. Non est enim generatim verum quod interrogatus ab iis qui auctoritatem publicam exercent, teneatur fidem profiteri, nisi haec professio ex adiunctis necessaria fiat, ne adstantibus videatur fidem negare. Multo magis fas erit alicui nolle privatorum curiositati satisfacere : nisi rogatus de fide in odium religionis, sic agendo, videretur veritatem negare; quod ex circumstantiis iudicandum est.]*

19 **I say** 3°: By ecclesiastical law, under mortal sin, the following are bound to external profession of faith, from the Council of Trent, session XXIV, cap. 12 de reform.: « Those provided with benefices of whatever kind having care of souls shall be bound, from the day of acquired possession, within at least two months, in the hands of the bishop himself, or, he being hindered, before his general vicar or official, to make public profession of the orthodox faith, and to promise and swear that they will persevere in obedience to the Roman Church. Those provided moreover with canonries and dignities in cathedral churches are bound to do the same not only before the bishop or his official, but also in chapter. Otherwise let all the aforesaid provisors, as above, not receive their fruits, nor let possession avail them. » — From the tenor of this decree, those provided with canonries in merely collegiate churches, or with simple benefices, are not bound to the said profession. — The most sacred council commands moreover, session XXV, cap. 2 de reform., that patriarchs, primates, archbishops and bishops emit the same profession of faith in the first provincial synod in which they themselves take part; likewise that the same be done in the first diocesan synod in which all the rest who are to hold ecclesiastical benefices ought to assemble. Pius IV extends this law to all prelates of religions, even military, and Pius VI to all who are to be promoted to doctors, masters, regents and professors. De Angelis warns, *Praelect.* iuris canon., lib. I, tit. 1, n. 2, « that the constitution of Pius IV is not received in usage as regards those prelates who are placed over the government of religious not by the Holy See but by their superiors or by the chapter. » Sanchez truly, c. 3, n. 4, says the decree of Pius V does not bind where it was not received in usage. As regards the penalty of not receiving his fruits imposed by Trent upon those omitting the profession of faith, St. Liguori judges, lib. III, n. 11, that these are not bound to it before sentence.

> ***Dico** 3° : Ad fidei professionem externam iure ecclesiastico tenentur, sub peccato mortali, ex concilio Trident., sess. XXIV, cap. 12 de reform., sequentes: « Provisi de beneficiis quibuscumque curam animarum habentibus, teneantur a die adeptae possessionis, ad minus intra duos menses, in manibus ipsius episcopi, vel, eo impedito, coram generali eius vicario seu officiali, orthodoxa suae fidei publicam facere professionem, et in Romana Ecclesiae obedientia se permansuros spondeant ac iurent. Provisi autem de canonicatibus et dignitatibus in ecclesiis cathedralibus, non solum coram episcopo seu eius*

officiali, sed etiam in capitulo idem facere teneantur. Alioquin praedicti omnes provisi, ut supra, fructus non faciant suos, nec illis possessio suffragetur. » — Ex tenore huius decreti, non tenentur ad dictam professionem provisi de canonicatibus in ecclesiis tantum collegiatis, vel de beneficiis simplicibus. — Praecipit insuper sacrosanctum concilium, sess. XXV, cap. 2 de reform., ut patriarchae, primates, archiepiscopi et episcopi eamdem professionem fidei emittant in prima synodo provinciali in qua ipsi interfuerint; item ut idem faciant in prima synodo dioecesana in qua convenire debent caeteri omnes qui beneficia ecclesiastica sunt habituri. Hanc legem extendit Pius IV ad omnes praelatos religionum, etiam militarium, et Pius VI ad omnes promovendos in doctores, magistros, regentes et professores. Monet De Angelis, Praelect. *iuris canon., lib. I, tit. 1, n. 2, « constitutionem Pii IV non esse usu receptam quoad illos praelatos qui non a S. Sede, sed a superioribus suis vel a capitulo regimini regularium praeficiuntur. » Sanchez vero, c. 3, n. 4, dicit decretum Pii V non obligare ubi usu non fuit receptum. Quantum ad poenam fructus non faciendi suos in omittentes professionem fidei a Trident. latam, aestimat S. Ligorius, lib. III, n. 11, ad eam hos non teneri ante sententiam.*

20 It must be noted that this profession of faith is to be made according to the formula prescribed by Pius IV, into which, by order of Pius IX, express mention is to be inserted of those things « which have been handed down, defined and declared by the ecumenical Vatican Council, especially concerning the primacy and infallible magisterium of the Roman Pontiff. »

Notandum est hanc professionem fidei faciendam esse secundum formulam a Pio IV praescriptam, in qua inserenda est, iussu Pii IX, expressa mentio de his « quae ab oecumenico concilio Vaticano tradita, definita ac declarata fuerunt, praesertim de Romani Pontificis primatu et infallibili magisterio. »

21 Although it is probable that this profession can be made through a procurator, it is nevertheless more probable that the promoted person is bound personally. The reason is that otherwise it does not seem that satisfaction is sufficiently made by oath, which must be made personally. St. Lig., lib. I, n. 11.

Etsi probabile est hanc professionem fieri posse per procuratorem, probabilius tamen est, promotum teneri personaliter. Ratio est, quia alias non videtur fieri satis iuramento, quod personaliter faciendum est. S. Lig., lib. I, n. 11.]

On the Habit and Subject of Faith

1 (*St. Thomas, qq. 4 et 5.*)

*(*D. Thomas, qq. 4 et 5.*)*

On the habit of faith

1 *You will ask* 1° whether faith is rightly defined by the Apostle, *Hebr.* XI, 1: the substance of things to be hoped for, the proof of things that appear not.

Petes *1° utrum fides recte definiatur ab Apostolo,* Hebr. *XI, 1: Sperandarum substantia rerum, argumentum non apparentium.*

2 *I answer.* [24] this definition, although the words are not arranged under the form of a definition, is legitimate, because it contains all that pertains to the definition of faith, as will appear from the following explanation.

24 Here q. 4, a. 1, o.

Resp. [24] *hanc definitionem, quamvis verba non ordinentur sub forma definitionis, esse legitimam, quia continet omnia quae pertinent ad fidei definitionem, ut patebit ex sequenti explicatione.*

[24] *Hic q. 4, a. 1, o.*

3 It is called *substance*, in Greek hypostasis or subsistence: partly because faith is the beginning, basis and foundation of our hope; for substance is the substratum of all qualities: partly because it makes the things to be hoped for subsist in our intellect, and makes us assent to them as certainly as if they were present.

Dicitur *substantia, graece hypostasis seu subsistentia: partim quia fides est inchoatio, basis et fundamentum spei nostrae; substantia enim est substratum omnibus qualitatibus: partim quia facit res sperandas subsistere in nostro intellectu, ac eis tam certo assentire, ac si essent presentes.*

4 It is called the proof of things that appear not, taking proof for its effect, or, as another reading has it, conviction; for just as an argument leads the intellect to adhere to some truth, so through faith the intellect firmly adheres to truths that appear not, on account of the authority of God revealing.

Dicitur argumentum non apparentium, sumpto argumento pro eius effectu, seu, ut habet alia littera, convictio; sicut enim argumentum inducit intellectum ad inhaerendum alicui vero, ita per fidem intellectus firmiter adhaeret veritatibus non apparentibus, propter authoritatem Dei revelantis.

5 It is called, of things that appear not: both because the object of faith is unseen; and to signify that more things pertain to faith than are hoped for, such as past goods and evils to come upon sinners, e. g., hell.

Dicitur, non apparentium: tum quia obiectum fidei est non visum; tum ut significetur plura ad fidem pertinere quae non sperantur, ut sunt bona praeterita et mala peccatoribus obventura, v. g., infernus.

6 By this definition faith is distinguished from all other intellectual habits. By the phrase, substance of things to be hoped for, it is distinguished from human faith, by which one is not ordered to the happiness hoped for. By τῷ proof, it is distinguished from opinion, suspicion and doubt. By τῷ of things that appear not, it is distinguished from science and the understanding of first principles.

Per hanc definitionem fides distinguitur ab omnibus aliis habitibus intellectualibus. Per hoc quod dicitur, substantia rerum sperandarum, distinguitur a fide humana, qua non ordinatur ad beatitudinem speratam. Per τῷ argumentum, distinguitur ab opinione, suspicione et dubitatione. Per τῷ non apparentium, distinguitur a scientia et intellectu primorum principiorum.

7 If therefore anyone wishes to reduce these words into the form of a definition, he may say [25] that faith is « a habit of the mind whereby eternal life begins in us, making the intellect assent firmly to things that appear not, on account of the authority of God revealing. » And this definition coincides with that other one commonly current: « A virtue infused by God, whereby the intellect firmly assents to those things that have been revealed by God, on account of the authority of him who reveals them. »

25 *Ibid.*

Si quis ergo haec verba in formam definitionis reducere velit, potest dicere [25] quod fides sit « habitus mentis quo inchoatur vita aeterna in nobis, faciens intellectum firmiter assentire non apparentibus, propter authoritatem Dei revelantis. » Et haec definitio coincidit cum hac altera, qua communiter circumfertur: « Virtus divinitus infusa, per quam intellectus firmiter assentitur iis quae a Deo revelata sunt, propter ipsius revelantis authoritatem. »

[25] Ibid.

8 [*You will ask* 2° whether unformed faith is a virtue,

> *[*Petes *2° utrum fides informis sit virtus,*

9 It must be noted that the ultimate form of faith, as of the other virtues, is charity. But charity is not the intrinsic and essential form of faith [26], but is its extrinsic and accidental form, insofar as through charity faith, like all the other virtues, is ordered to the supernatural last end, and thus from charity it has it that its act is perfect and meritorious. This granted,

26 *Ibid.*, a. 3, c and ad 2.

> *Notandum formam ultimam fidei, sicut et caeterarum virtutum, esse charitatem. Charitas vero non est forma intrinseca et essentialis fidei [26], sed est forma extrinseca et accidentalis, quatenus per charitatem fides, sicut omnes aliae virtutes, ordinatur ad ultimum finem supernaturalem, sicque ex charitate habet quod eius actus sit perfectus et meritorius. Hoc posito,*
>
> *26* Ibid.*, a. 3, c et ad 2.

10 *I answer.* Faith is of itself a true virtue, but imperfect.

> Resp. *Fides est per se vera virtus, sed imperfecta.*

11 *Proof.* of the first part. 1° Because it is the principle of a good act determining the intellect to assent to revealed truths. Hence, although it does not make its possessor good simply, in the moral order, which belongs to a perfect virtue, it nevertheless makes him good in its own order, namely the intellective. 2° Because the definition of virtue applies to it. For it is a good quality of the mind whereby one lives well, namely the principle of a good act, and which no one uses as a bad principle. 3° It is the same habit as formed faith; for charity does not create this habit, but perfects it only extrinsically and accidentally. 4° Precepts are given only concerning acts of virtues. But a precept is given concerning the act of unformed faith, as appears in *Hebr.*, XI, 6: He that cometh to God must believe that he is, and is a rewarder to them that seek him. Moreover, he who comes to God is not yet perfectly united to him; which union takes place only through charity. Therefore.

> Prob. *prima pars. 1° Quia est principium boni actus determinans intellectum ad assentiendum veritatibus revelatis. Unde, quamvis non faciat habentem simpliciter bonum in genere moris, quod est proprium virtutis perfectae, facit tamen bonum in suo genere, scilicet intellectivo. 2° Quia competit ei definitio virtutis. Est enim bona qualitas mentis, qua bene vivitur, scilicet principium boni actus, et qua nemo ut principio malo utitur. 3° Est idem habitus cum fide formata; nam charitas hunc habitum non creat, sed eum perficit tantum extrinsece et accidentaliter. 4° Praecepta non dantur nisi de actibus virtutum. Datur autem praeceptum de actu fidei informis, ut patet* Hebr.*, XI, 6: Credere oportet accedentem ad Deum quia est, et inquirentibus se remunerator sit. Porro accedens ad Deum nondum ei perfecte unitur; quae unio non fit nisi per charitatem. Ergo.*

12 Proof. of the second part [27]; because unformed faith does not make a man good simply. For although it is the principle of a good act, yet this act is not meritorious in order to the last end, namely eternal life, and thus faith does not have the state and mode of a perfect virtue.]

27 *Ibid.*, a. 5, ad 3.

> *Prob. secunda pars [27]; quia fides informis non facit hominem simpliciter bonum. Licet enim sit principium actus boni, non tamen hic actus est meritorius in ordine ad finem ultimum, scilicet ad vitam aeternam, sicque fides non habet statum et modum perfectae virtutis.]*

[27] Ibid., *a. 5, ad 3*.

13 *You will ask* 3° whether faith is more certain than all natural cognitions.

Petes *3° utrum fides sit certior omnibus cognitionibus naturalibus*.

14 *I answer.* Faith is more certain, in itself, than all natural cognitions, but not as regards us.

Resp. *Fides est certior, quoad se, omnibus cognitionibus naturalibus, non quoad nos*.

15 *Proof.* of the first part [28], Faith has its certitude from the divine truth, which cannot be deceived, and which is applied with certainty to the revealed truths through the infallible Church. Natural cognitions, however, have their certitude from the natural light of reason, which, although the object about which it deals is sometimes certain, is nevertheless enveloped in darkness through sin and liable to error, nor is it certain that it is applied rightly to the things apprehended. Therefore.

[28] *Ibid.*

Prob. *prima pars [28], Fides habet certitudinem ex divina veritate, qua falli non potest, et quae veritatibus revelatis certo applicatur per Ecclesiam infallibilem. Cognitiones vero naturales habent certitudinem ex naturali lumine rationis, quod, quamvis obiectum circa quod versatur quandoque sit certum, est tamen per peccatum tenebris involutum et errori obnoxium, nec certum an recte rebus apprehensis applicetur. Ergo*.

[28] Ibid.

16 Proof. of the second part [29], That is said to be more certain as regards us which the intellect attains more fully, which is more connatural and proportionate to it, and which satisfies and quiets it more, although it assents to it less certainly from elsewhere. Now natural cognitions are more connatural and proportionate to the human intellect, are penetrated more deeply by it, satisfy and quiet it more on account of the evidence of things, in which the human intellect ultimately rests, than does faith, which is concerned with obscure and unevident things: hence it happens that, although it is most certain on the side of the motive, it nevertheless suffers, on the side of the subject, certain undeliberated movements of doubt, on account of the weakness of a mind not yet seeing the truth. Therefore.

[29] *Ibid.*

Prob. secunda pars [29], Illud dicitur magis certum quoad nos, quod intellectus plenius consequitur, quod est illi magis connaturale et proportionatum, quodque ipsum magis satiat et quietat, licet aliunde minus certo assentiatur. Atqui cognitiones naturales sunt magis connaturales et proportionatae intellectui humano, magis ab ipso penetrantur, magis ipsum satiant et quietant propter rerum evidentiam, in qua ultimo quiescit intellectus humanus, quam fides, quae est de obscuris et inevidentibus: unde fit quod, quamvis ex parte motivi sit certissima, patiatur tamen ex parte subiecti quosdam motus indeliberatos dubitationis, propter debilitatem ingenii nondum videntis veritatem. Ergo.

[29] Ibid.

17 *You will ask* 4° whether faith is discursive.

Petes *4° utrum fides sit discursiva*.

18 *I answer.* negatively; because, as by the same vision we see color and light, so by the same act we assent to the thing revealed and to the revelation; for the object of faith is the thing revealed, not

materially, but formally as revealed. In a discursive process, however, the assent to the principles is really distinguished from the assent to the conclusion.

> Resp. *negative; quia, sicut eadem visione videmus colorem et lucem, sic eodem actu assentimur rei revelatae et revelationi; obiectum enim fidei est res revelata, non materialiter, sed formaliter ut revelata. In discursu autem, assensus principiorum realiter distinguitur ab assensu conclusionis.*

19 [*You will ask* 5° whether faith is free.

> *[*Petes *5° utrum fides sit libera.*

20 *I answer.* affirmatively, from the Vatican Council defining thus: « If anyone shall say that the assent of Christian faith is not free, but is necessarily produced by arguments of human reason; or that the grace of God is necessary for faith alone living, which works through charity; let him be anathema. »]

> Resp. *affirmative, ex concilio Vaticano ita definiente: « Si quis dixerit, assensum fidei christianae non esse liberum, sed argumentis humanae rationis necessario produci; aut ad solam fidem vivam, quae per charitatem operatur, gratiam Dei necessariam esse; anathema sit. »]*

On the subject of faith

1 1°: Faith remains in a sinner who does not commit the sin of unbelief.

> *1°: Fides remanet in peccatore qui non committit peccatum infidelitatis.*

2 *It is proved*, firstly, from the Apostle, *1 Cor.*, XIII, 2, where he says: If I should have all faith..., but have not charity, I am nothing. By these words he plainly supposes that charity can be separated from faith while faith remains, and thus that faith can be in a sinner.

> Prob. *1° ex Apost.*, I Cor., *XIII, 2, ubi dicit: Si habuero omnem fidem..., charitatem autem non habuero, nihil sum. Quibus verbis aperte supponit charitatem posse separari a fide remanente, sicque fidem posse esse in peccatore.*

3 Secondly, from Trent, session VI, canon 28, defining thus: « If anyone shall say that when grace is lost through sin faith is always lost with it, or that the faith which remains is not true faith, though it is not living...; let him be anathema. » Hence this conclusion is de fide. To this point tends this proposition condemned by Alexander VIII, the 12th: « When in great sinners all love fails, faith also fails, and even if they seem to believe, it is not divine faith, but human. » Likewise this 52nd of Quesnel: « All other means of salvation are contained in faith, as in its germ and seed; but this faith is not without love and confidence. »

> *2° Ex Trid., sess. VI, can. 28, sic definiente: « Si quis dixerit, amissa per peccatum gratia, simul et fidem semper amitti, aut fidem qua remanet non esse veram fidem, licet non sit viva...; anathema sit. » Unde haec conclusio est de fide. Huc facit haec propositio 12a ab Alexandro VIII damnata: « Quando in magnis peccatoribus deficit omnis amor, deficit etiam fides, et etiamsi videantur credere, non est fides divina, sed humana. » Item haec 52a Quesnelli: « Omnia alia salutis media continentur in fide, tamquam in suo germine et semine; sed haec fides non est absque amore et fiducia. »*

4 Thirdly, by reason. Not every sin is contrary to faith, nor does it destroy the formal reason of its object: thus one who steals does not for that reason cease to believe that God is the first and infallible truth in speaking. Therefore.

> *3° Ratione. Non omne peccatum est contrarium fidei, nec destruit rationem formalem obiecti ipsius: sic qui furatur, non ideo desinit credere Deum esse primam et infallibilem veritatem in dicendo. Ergo.*

5 But when the holy Fathers say that there is no faith or any virtue without charity, they speak of living faith and of the virtues in their perfect state of being, as we have already noted.

> *Quando autem SS. Patres dicunt non esse fidem aut ullam virtutem sine charitate, loquuntur de fide viva et virtutibus in esse perfecto, ut iam monuimus.*

6 **I say**, secondly: In demons and the damned there does not remain infused and supernatural faith [30].

30 This work, q. 5, a. 2, c, and ad 2.

> ***Dico** 2°: In daemonibus et damnatis non remanet fides infusa et supernaturalis [30].*
>
> *30 Hic q. 5, a. 2, c, et ad 2.*

7 *It is proved*. Demons and the damned are stripped of all gratuitous gifts, especially those ordered to beatitude, which they neither hope for nor can hope for. Now faith is a gratuitous gift by its nature ordered to beatitude; for it is, according to the Apostle, *Hebr.*, XI, 1, the substance of things to be hoped for, and according to the Council of Trent, session VI, cap. 8, « the beginning of salvation, the root and foundation of justification. » Therefore.

> Prob. *Daemones et damnati sunt spoliati omnibus donis gratuitis, praesertim iis quae ordinantur ad beatitudinem, quam nec sperant, nec sperare possunt. Atqui fides est donum gratuitum ex sua natura ordinatum ad beatitudinem; est enim, secundum Apostolum,* Hebr.*, XI, 1, sperandarum substantia rerum, et secundum Tridentinum, sess. VI, cap. 8, « initium salutis, radix et fundamentum iustificationis. » Ergo.*

8 *It is confirmed*. For supernatural faith there is required a pious motion of the will, or a good affect of credulity toward the first truth revealing. Now there is in demons and the damned no pious motion of the will, no good will, since it is fixed in evil; and although what they do is sometimes good from its proximate object, yet they always do it from a depraved intention of the end, and thus it is always evil.

> Confir. *Ad fidem supernaturalem requiritur pia motio voluntatis, seu bonus affectus credulitatis erga primam veritatem revelantem. Atqui nulla est in daemonibus et damnatis pia motio voluntatis, nulla bona voluntas, quippe quae est firmata in malo, et quamvis id quod agunt sit quandoque ex obiecto proximo bonum, illud tamen semper agunt ex prava intentione finis, sicque est semper malum.*

9 *You will say*: 1° *James*, II, 19, says: The demons believe, and tremble. Therefore. 2° Demons and damned Christians know in hell the supernatural truths they knew on the way. Now they cannot know these supernatural truths except through faith, which alone among the intellectual virtues is supernatural. Therefore.

> Dices*: 1°* Iacob.*, II, 19, dicitur: Daemones credunt, et contremiscunt. Ergo. 2° Daemones et Christiani damnati cognoscunt in inferno veritates supernaturales quas cognoverunt in via. Atqui has veritates supernaturales cognoscere non possunt nisi per fidem, qua sola est supernaturalis inter virtutes intellectuales. Ergo.*

10 *I answer* to the first. That demons believe with infused faith arising from a pious motion of the will, I deny; that they believe with natural faith, and in a manner coerced, both from the evidence of signs which they penetrate with the keen acumen of a perspicacious mind, and from the miserable experience by which they feel God as their avenger, I concede. Nor does it matter that St. James compares their faith with the faith of sinners, which is true infused faith; for the comparison holds

not as to the nature of either faith, but as to the sterility of each, because neither suffices for salvation, since both are without works. The solution is clear from the text.

> Resp. *ad primum. Daemones credunt fide infusa ex pia motione voluntatis, nego; fide naturali et quodammodo coacta, tum ex evidentia signorum quae perspicaci mentis acumine penetrant, tum miserabili experientia qua Deum vindicem sentiunt. Conc. Neque refert quod S. Iacobus comparet eorum fidem cum fide peccatorum, quae est vera fides infusa; tenet enim comparatio, non quoad utriusque fidei naturam, sed quoad utriusque sterilitatem, quia neutra sufficit ad salutem, cum utraque sit sine operibus. Solutio patet ex textu.*

11 *I answer* to the second. I deny the minor. For the faith by which demons and the damned believe and know supernatural truths, although it can be called supernatural on the part of the object, is nonetheless natural on the part of the motive or principle; for it is acquired either from the state of the wayfarer, or from the event of things, or from prophecies fulfilled, or from the punishments they feel: just as, if someone from a merely natural motive, say from the report of parents or of some learned man, were to believe our mysteries, although the object of this faith would be supernatural, the faith itself in itself and on the part of its principle would be natural.

> Resp. *ad secundum. Nego min. Fides enim qua daemones et damnati credunt et cognoscunt veritates supernaturales, licet dici possit supernaturalis ex parte obiecti, est tamen naturalis ex parte motivi seu principii; est enim acquisita vel ex statu viae, vel ex rerum eventu, vel ex prophetiis impletis, vel ex poenis quas sentiunt: sicut, si quis ex motivo mere naturali, puta ex relatione parentum aut alicuius viri docti, crederet mysteria nostra, licet huius fidei obiectum foret supernaturale, ipsa tamen in se et ex parte principii foret naturalis.*

12 **I say**, thirdly: Faith does not remain in the blessed [31], yet it does remain in the souls in purgatory.

31 I. IIae, q. 67, a. 3, o.

> Dico 3°: *Fides non remanet in beatis [31], bene tamen in animabus purgatorii.*
>
> *31 I. IIae, q. 67, a. 3, o.*

13 *It is proved*, first part. 1° From the Apostle, *1 Cor.*, XIII, 9 and 10, who says: We know in part and we prophesy in part; but when that which is perfect shall come, that which is in part shall be done away. That is, when vision shall have come, faith shall be done away. And *2 Cor.*, V, 6 and 7: While we are in the body, we are absent from the Lord; for we walk by faith, and not by sight. Whence Aug., book XIV On the Trinity, c. 2, n. 4: « For, he says, there will no longer be faith [in heaven], by which things that are not seen are believed, but sight, by which things that were believed are seen. »

> Prob. *prima pars. 1° Ex Apost.* I Cor., *XIII, 9 et 10, dicente: Ex parte cognoscimus et ex parte prophetamus; cum autem venerit quod perfectum est, evacuabitur quod ex parte est. Id est, cum venerit visio, evacuabitur fides. Et* II Cor., *V, 6 et 7: Dum sumus in corpore, peregrinamur a Domino; per fidem enim ambulamus, et non per speciem. Unde Aug., lib. XIV de Trinit., c. 2, n. 4: « Neque enim, inquit, iam fides erit [in patria] qua credantur quae non videntur, sed species qua videantur quae credebantur. »*

14 It is proved, 2° [32] The formal object of faith being destroyed, faith does not subsist. Now in the blessed the formal object of faith is destroyed; for the formal object of faith is the first truth not seen, which the blessed see intuitively. Therefore.

32 *Ibid.*, in the argument, On the contrary.

> *Prob. [32] 2° Destructo obiecto formali fidei, non subsistit fides. Atqui in beatis destruitur obiectum formale fidei; est enim obiectum formale fidei prima veritas non visa, quae intuitive videtur a beatis. Ergo.*

[32] Ibid., *in arg. Sed contra.*

15 Hence the second part stands proved. For the souls in purgatory (the same must be said of the Fathers who were in limbo) do not yet enjoy the beatific vision, and thus the formal object of faith remains in them, namely the first truth not seen. Add that they hope for beatitude; but the foundation of hope is faith, since no one hopes for beatitude unless he believes he can attain it.

> *Hinc manet probata secunda pars. Animae enim in purgatorio (idem dicendum de Patribus qui erant in limbo), nondum fruuntur visione beata, sicque remanet inipsis obiectum formale fidei, scilicet prima veritas non visa. Adde quod sperent beatitudinem; fundamentum autem spei est fides, cum nemo speret beatitudinem, nisi credat se posse illam adipisci.*

16 **I say**, fourthly: Faith, whether habitual or actual, does not remain in a heretic who pertinaciously discredits even one single article of faith [33] [34]. This is common opinion with the Author, against a few.

[33] *Ibid.*, c.

[34] This work, q. 5, a. 3, o.

> Dico *4°: Fides sive habitualis sive actualis non remanet in haeretico qui vel unum tantum fidei articulum pertinaciter discredit* [33] [34] ^. *Est communis cum Authore, contra paucos.*
>
> [33] Ibid., *c.*
>
> [34] *Hic q. 5, a. 3, o.*

17 ***It is proved***, 1° from the Apostle, *Gal.*, V, 4, who says to those who held that observance of the legal rites was necessary for salvation: You are emptied of Christ, that is, of the Spirit of faith, as he explains in the following verse. Trent, session VI, cap. 15: « It must be asserted, he says, not only by unbelief, whereby faith itself also is lost, etc. » Now any heresy, even about one article alone, is unbelief.

> Prob. *1° Apost.*, Galat., *V, 4, iis qui sustinebant observantiam legalium esse necessariam ad salutem, dicit: Evacuati estis a Christo, id est a Spiritu fidei, ut explicat versu sequenti. Tridentinum, sess. VI, cap. 15: « Asserendum est, inquit, non modo infidelitate, per quam et ipsa fides amittitur, etc. » Quelibet autem haeresis, etiam circa unum tantum articulum, est infidelitas.*

18 It is proved, 2°, by reason [35] The formal object ceasing, by which habit and act are specified, the habit and act cease and are destroyed. Now in a heretic who pertinaciously denies even one article of faith, the formal object of faith ceases, both habitual and actual. Therefore. — The minor is proved. The formal object of faith, whether habitual or actual, is the first truth in speaking, as manifested by the Church. Now one who pertinaciously denies one article of faith does not believe the others he holds on account of the first truth as manifested by the Church; otherwise he would believe this one too, which he denies, since it also, like the others, was revealed by the first truth and proposed as such by the Church; but he rejects this one and holds the others by his own judgment and his own choice. Whence Aug., book XVII Contra Faustum, c. 3, addressing the Manichees: « You, he says, believe in the Gospel what you wish, and what you do not wish you do not believe; you believe yourselves rather than the Gospel. »

[35] *Ibid.*

Prob. 2° ratione [35] *Cessante obiecto formali a quo habitus et actus specificantur, cessant et destruuntur habitus et actus. Atqui in haeretico qui pertinaciter negat vel unum articulum fidei, cessat obiectum formale fidei tam habitualis quam actualis. Ergo. — Prob. min. Obiectum formale fidei sive habitualis sive actualis, est prima veritas in dicendo, ut manifestata per Ecclesiam. Atqui qui negat pertinaciter unum articulum fidei, non credit alios quos tenet propter primam veritatem, ut manifestatam per Ecclesiam, alioquin et hunc quem negat crederet, cum sit etiam, sicut alii, revelatus a prima veritate et propositus ut talis ab Ecclesia; sed hunc reiicit et illos tenet ex proprio iudicio et propria electione. Unde Aug., lib. XVII Cont. Faust., c. 3, alloquens Marichaeos: « Qui, inquit, in Evangelio quod vultis creditis, quod vultis non creditis, vobis potius quam Evangelio creditis. »*

[35] Ibid.

19 [Let it be noted, therefore, that although faith, on the part of its object, is an integral whole consisting of parts, inasmuch as it regards the many things revealed by God, nevertheless in the character of a habit and a quality it is one and simple in each believer, since it inclines him to assent to many things under one indivisible motive, namely on account of the first truth in speaking; whence this whole and entire habit perishes in a heretic. But if it happens that a heretic after his heresy believes the articles he still holds with the same ease and firmness as before, this happens because heretics believe with the same firmness and ease not only the articles of faith, but also their errors, so that they sometimes die asserting them. Firmness, therefore, comes from sheer obstinacy of the will, but ease from a habit of faith acquired either, according to some, through acts of previous faith, not as supernatural but as vital acts; or, according to others, through acts of faith natural on the part of their principle, though supernatural on the part of their object; for often a believer, whether from the instruction of parents, or from the teaching of catechists, or from custom, without attending to the revealing first truth, elicits acts which, being natural on the part of their principle, generate an equally natural habit, which remains in heresy. But the habit of supernatural faith is destroyed by the destruction of its formal object. Therefore, when a heretic, by denying one article of faith, denies the first truth, and by this act physically destroys in his intellect the object of faith, in the same way he destroys mediately the habit of faith.]

[Advertendum itaque quod, licet fides ex parte obiecti sit totum integrale constans partibus, quatenus respicit plura a Deo revelata, in ratione tamen habitus et qualitatis est una et simplex in unoquoque credentium, cum inclinet ad assentiendum pluribus sub uno indivisibili motivo, scilicet propter primam veritatem in dicendo, unde hic habitus totus et integer perit in haeretico. Quod si contingat haereticum post haeresim eadem facilitate et firmitate credere articulos quos adhuc tenet, ac ante, id contingit quia haeretici eadem firmitate et facilitate credunt, non solum articulos fidei, sed etiam suos errores, ita ut aliquando pro iis asserendis moriantur. Firmitas ergo provenit ex sola pertinacia voluntatis, facilitas autem ex habitu fidei acquisito, sive, iuxta aliquos, per actus praecedentis fidei, non qua supernaturales, sed qua vitales; sive, iuxta alios, per actus fidei naturales ex parte principii, licet supernaturales ex parte obiecti; saepe enim fidelis, vel ex instructione parentum, vel ex doctrina catechistarum, vel ex consuetudine, non attendendo ad primam veritatem revelantem, elicit actus qui, cum sint naturales ex parte principii, generant habitum pariter naturalem, qui remanet in haeresi. Habitus autem fidei supernaturalis destruitur ad destructionem sui obiecti formalis. Cum ergo haereticus, negans unum fidei articulum, neget primam veritatem, et per hunc actum physice destruat in suo intellectu obiectum fidei, eodem modo destruit mediate habitum fidei.]

Whether a false religion can be tolerated by the true

1 [The Latitudinarians, under the specious pretext of entering into mutual concord among all Christians, rise up sharply against Catholics because their intolerance fosters dissentions, and impiously contend that communion must be held with all those who have in any way received divine

revelation, even if they have received only some of the things contained in it — persons whom they assert can attain salvation by a faith, though but a halved one, no less than Catholics. And hence has arisen the absurd distinction of the articles of faith into fundamental and non-fundamental ones, although not even they themselves have yet agreed among themselves on assigning them. But from what has been said it is clear how impiously these things are proposed: for without faith it is impossible to please God and to attain eternal life; but a halved faith can in no way be called divine faith. For, as the Apostle says, *2 Cor.*, VI, 15: What concord hath Christ with Belial? or what part hath the believer with the unbeliever? Therefore

> *[Latitudinarii, sub specioso praetextu mutuae concordiae inter omnes Christianos ineundae, contra Catholicos acriter insurgunt, quod sua intolerantia dissensiones foveant, et impie contendunt, cum omnibus illis communionem esse habendam, qui quocumque modo divinam revelationem receperint, quamvis aliqua tantum eorum quae in ea continentur receperint, quos fide licet dimidiata, non secus ac Catholicos, salutem consequi posse asserunt. Atque hinc orta absurda distinctio articulorum fidei in fundamentales et non fundamentales, in quibus tamen assignandis ne ipsi quidem adhuc inter se convenerunt. Ex his autem quae dicta sunt patet, quam impie haec proponantur: sine fide enim impossibile est placere Deo, et vitam aeternam consequi; fides autem dimidiata nullimode fides divina dici potest. Nam, ut dicit Apost.,* II Cor.*, VI, 15, qua conventio Christi ad Belial? aut quae pars fideli cum infideli? Itaque*

2 *I say* 1°: The true religion can tolerate no other religion diverse from itself, and the intolerance of the true religion ought to be its proper character.

> Dico *1°: Vera religio nullam aliam religionem a se diversam tolerare potest, atque intolerantia verae religionis proprius character esse debet.*

3 Before the proof, I suppose that there can be only one true religion — a point on which both the Latitudinarians and the other sectaries ought to agree, since, as they themselves confess, that is the true religion which follows divine revelation, which rests upon the truthfulness of God revealing, who can neither deceive nor be deceived. That alone, therefore, is the true religion which follows divine revelation in the way that is fitting. And so, if any religion exceeds or falls short in admitting revealed things, or admits things that are not true, or does not admit things that are true, it cannot itself be true. Just as, therefore, if truth be mixed with falsehood, it ceases to be truth and can no longer be called simply true; so, if falsehoods be mixed with the dogmas of the true religion, it ceases to be the true religion and can no longer be called simply true.

> *Ante probationem, suppono veram religionem unam tantum esse posse, in quo tum Latitudinarii, tum alii sectarii consentire debent, cum, ipsis fatentibus, ea est vera religio quae divinam sequitur revelationem, quae innititur veracitati Dei revelantis, qui nec fallere nec falli potest. Illa igitur tantum est vera religio, quae divinam revelationem ea qua par est ratione sequitur. Itaque, si aliqua religio in admittendis revelatis excedat vel deficiat, aut admittat quae vera non sunt, aut non admittat quae vera sunt, ipsa non potest esse vera. Sicut ergo, si verum falso misceatur, verum esse desinit, et simpliciter verum amplius dici non potest; ita, si dogmatibus verae religionis falsa misceantur, vera religio esse desinit, et simpliciter vera amplius dici non potest.*

4 I prove, therefore, the conclusion. Tolerance carries with it some association. But the true religion can have no association with the dogmas of another religion diverse from itself, as is clear from the supposition stated above. Therefore the true religion can tolerate no religion diverse from itself.

> *Prob. itaque conclusio. Tolerantia quamdam consociationem secum affert. Atqui vera religio nullam consociationem habere potest cum dogmatibus alterius religionis a se diversae, ut patet ex allata suppositione. Ergo vera religio nullam*

> *religionem a se diversam tolerare potest.*

5 Nay, just as the proper note of truth is to admit no association with error, so also the intolerance of any other religion ought to be the proper character of the true religion.

> *Imo, sicut veritatis propria nota est nullam cum errore consociationem admittere, ita etiam proprius character vere religionis esse debet intolerantia cuiusvis alterius religionis.*

6 Yet it does not follow from this, as the Latitudinarians babble, that men's minds are divided against one another and each becomes an enemy to the other. For Catholics keep before their minds the command of Christ, that they love also those from whom they have received evil. Therefore they ought to conduct themselves on the same ground toward those from whom, although they follow dogmas different from theirs, they receive no harm. Indeed the errors of such men are hated by those who profess the true Christian religion, and they would wish, if they could, to recall them to the way of salvation and of truth; but so far is it from being the case that any traces of alienation of mind appear, that quite the contrary it appears most evidently that nothing is dearer to them than to procure for those men their true and solid welfare. Who does not know that already from the beginnings of the Church the professors of the true religion have taken care, at how great peril to themselves, to lead barbarians and unbelievers to the knowledge of God and to eternal salvation, and still take care? And when they do this, they serve the salvation of men who differ from them in religion, even at the cost of their own life.

> *Non inde tamen sequitur, sicut Latitudinarii effutiunt, quod hominum animi inter se dividantur, unusque alteri inimicus evadat. Catholici enim praeceptum Christi, ut eos quoque diligant a quibus mala acceperunt, suae menti propositum habent. Eadem ergo ratione se gerere debent erga illos a quibus, quamvis alia ac ipsi dogmata sequantur, nullum detrimentum accipiunt. Istorum quidem errores odio habentur ab iis qui veram christianam religionem profitentur, eosque, si possent, in viam salutis atque veritatis revocare vellent; at in hoc tantum abest ut animi alieni vestigia aliqua occurrant, quin potius evidentissime apparet, nihil magis eis cordi esse, quam veram solidamque utilitatem illorum procurare. Quis ignoret, iam inde ab Ecclesiae initiis, verae religionis professores quantopere quantisque cum suis periculis barbaros atque infideles ad Dei cognitionem et ad salutem aeternam adducere curaverint, et curent? Quod cum faciunt, hominum a se de religione dissidentium saluti, etiam cum impendio suae vitae, inserviunt.*

7 *I say* 2°: Such is the condition of a false religion that, as regards dogmas, it can enter into association with other religions diverse from itself.

> Dico 2°: *Falsae religionis ea conditio est, ut quoad dogmata consociationem cum aliis religionibus a se diversis inire possit.*

8 *Proof.* Although truth is opposed to every falsehood, this is not so with falsehood, and nothing prevents two equally false religions from joining in association with each other. And indeed, if it is once laid down that divine revelation proceeds from divine authority, and yet that some revealed things can be rejected by certain Christians, how will those be able to be condemned who have despised and rejected other things handed down and revealed by God? For one must permit others also to use the same right that he himself uses. And hence not only ethnics introduced into their own religion the superstitions of other religions, but Christians too who declined from the truth of the faith either decreed that all sects whatsoever, or at least some, were to be tolerated; and the true Christian religion alone judged that no association with other sects could be entered into as regards dogmas.

Prob. *Licet veritas cuique falsitati opponatur, non item falsitas, et nihil obstat quin duo aeque falsa inter se consocientur. Et revera, si semel statuatur divinam revelationem a divina authoritate procedere, et tamen posse ab aliquibus Christianis reiici aliqua revelata, quomodo damnari poterunt qui alia divinitus tradita et revelata contempserint atque reiecerint? Quo enim iure quis utitur, et aliis etiam eodem uti permittat, necesse est. Atque hinc non solum ethnici aliarum religionum superstitiones in suam introduxerunt, sed etiam Christiani qui a fidei veritate declinaverunt, vel omnes omnino sectas, vel saltem aliquas tolerandas esse statuerunt; et sola vera religio Christiana quoad dogmata nullam cum aliis sectis consociationem iniri posse censuit.*

9 Locke objects that it suffices for eternal salvation to believe Christ to be the Messiah and the Son of God, and he tries to prove this by several testimonies of Sacred Scripture in which Christ required this of all. Yet almost all the sects of heretics admit this dogma of faith. Therefore.

Obiicit Lockius, sufficere ad salutem aeternam, ut credamus Christum esse Messiam et Dei Filium, idque probare conatur pluribus sacrae Scripturae testimoniis, in quibus hoc Christus ab omnibus exegit. Atqui omnes pene haereticorum sectae admittunt hoc fidei dogma. Ergo.

10 *I answer* with a distinction. That Christ first required this of all, namely that they believe him to be the true Son of God, and that the Apostles were especially solicitous to persuade all of this first, I concede; that Christ required faith in this dogma only, I deny.

Resp. *cum dist. Christus hoc primo ab omnibus exegit, ut se verum Dei Filium esse crederent, et Apostoli maxime solliciti fuerunt ut id omnibus primo persuaderent. Conc.; Christus exegit huius tantummodo dogmatis fidem, nego.*

11 Christ, as Son of God, had come to promulgate a new law. Therefore, in order to establish his authority, whereby he was the Son of God, he had first to see to it that all believed him to be the Son of God, and the Apostles likewise strove for the same. The divinity of Christ is therefore, as it were, the base and foundation of evangelical revelation. Yet did not Christ himself will that all should have faith also in everything else that he handed down? He commanded the Apostles to teach all men what they had heard from him, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost. *Mark*, I, 15, Christ says: The time is fulfilled, and the kingdom of God is at hand; repent, and believe the Gospel. After the resurrection he commanded the Apostles, *Mark*, XVI, 15: Going into the whole world, preach the Gospel to every creature. He that believeth and is baptized shall be saved; but he that believeth not shall be condemned. And the Apostles, obeying his commands, went forth and preached everywhere, the Lord working withal and confirming the word with signs that followed, ibid., 20.

Christus, uti Dei Filius, novam legem promulgaturus advenerat. Ut igitur firmaret suam authoritatem, qua erat Dei Filius, id primo curare debuit, ut omnes se Filium Dei esse crederent, idemque etiam Apostoli contenderunt. Est itaque Christi divinitas velut basis et fundamentum evangelicae revelationis. Nonne tamen ipse Christus voluit ut caeterorum quoque omnium quae tradidit cuncti fidem haberent? Praecepit Apostolis ut quae ab ipso audierant omnes docerent, baptizantes eos in nomine Patris, et Filii, et Spiritus sancti. Marc., *I, 15, Christus dicit: Quoniam impletum est tempus, et appropinquavit regnum Dei, paenitemini et credite Evangelio. Post resurrectionem, praecepit Apostolis,* Marc., *XVI, 15: Euntes in mundum universum, praedicate Evangelium omni creaturae. Qui crediderit et baptizatus fuerit, salvus erit; qui vero non crediderit, condemnabitur. Et Apostoli praeceptis obtemperantes, profecti praedicaverunt ubique, Domino cooperante et sermonem confirmante sequentibus signis, ibid., 20.*

12 The Latitudinarians object, together with Bayle, Rousseau and Voltaire: It must be said that a man does not reverence God more than another because he understands Holy Scripture better than the

other; it is enough that both accept Holy Scripture as their rule, even though one of them departs from the will of God in particular points and through error. For just as he who receives Holy Scripture in the sense in which he ought receives this sense because he thinks it true, not because it is true in itself, and because, were he to receive another sense, he would think he displeased God; so he who receives Holy Scripture in a false sense prefers this sense, not because it is false, but because it seems true to him, and he judges that he would displease God if he received it in another. Therefore he who follows the sense of Holy Scripture which he thinks to be true can please God and attain eternal salvation.

> *Obiiciunt Latitudinarii, cum Bayle, Rousseau et Voltaire: Dicendum non est unum prae altero magis revereri Deum, si unus prae altero S. Scripturam melius intelligat; sed satis est ut utrique S. Scripturam sicut regulam admittant, quamvis unus eorum in particulari et per errorem a Dei voluntate recedat. Sicuti enim qui S. Scripturam accipit eo sensu quo debet, ideo hunc sensum accipit, quia verum eum esse putat, non quia in se est verus, et quia, si alium acciperet, Deo se displicere crederet; ita qui S. Scripturam in falso sensu accipit, hunc sensum praefert, non quia falsus est, sed quia verus ipsi videtur, et se displicere Deo existimat, si in alio acciperet. Ergo qui sequitur S. Scripturae sensum quem verum esse putat, Deo placere et aeternam salutem consequi potest.*

13 *I answer* by asking the Latitudinarians whether they wish Holy Scripture to be the rule of men's own senses, or rather the senses of men the rule of Holy Scripture? If Holy Scripture, as it truly ought to be, is the rule of men's senses, and men ought to accommodate themselves to it in their senses, he fails most shamefully who does not attain its sense and understands it otherwise than he ought. For a rule is the norm to which one must conform, to which one must be subject and upon which one must depend, just as the measure is the norm of the thing measured, not the thing measured the norm of the measure itself. Does he equally reverence his lawgiver — he who not only shows veneration to the law promulgated, but moreover with study and diligence attains its legitimate sense and acts according to it — and he who reverences the law generically as a rule, yet, on account of his malice, obstinacy and culpable ignorance, does not attain its sense and acts against it? Therefore the true sense of Holy Scripture is attributed to it when it is conformed to the mind of God speaking; nor is it true for that reason because he who rightly understands it thinks it true, but because it is right in itself and has conformity with God speaking. Indeed, to avoid deception, it is required that this sense also be thought true; yet it does not for that reason become true because it is so thought. Hence it comes about that he who attributes a false sense to Holy Scripture, although he himself thinks it true, nevertheless does not attribute the true sense, nor does his false judgment make it conformed to the mind of God speaking. Nor does it matter that he intends to please God, both he who rightly and he who wrongly understands Holy Scripture; for he who employed all diligence to attain the true sense of Scripture, and consequently attained it, truly pleases God; but he who, on account of his malice, obstinacy and culpable ignorance, did not attain the true sense of Scripture, although he thought he pleased God, nevertheless thought falsely and impiously.]

> Resp. *quaerendo a Latitudinariis an velint S. Scripturam esse regulam sensuum ipsorum hominum, an vero sensus hominum regulam S. Scripturae? Si S. Scriptura, uti revera esse debet, est regula sensuum hominum, eique homines in suis sensibus se accommodare debent, turpissime fallitur qui sensum eiusdem non assequitur, et eam aliter quam debet intelligit. Regula enim est norma cui conformari oportet, illi subiici et ab ea pendere, sicut mensura est norma mensurati, non vero mensuratum norma ipsius mensurae. Numquid aeque reveretur suum legislatorem, tam qui legi promulgatae non solum venerationem adhibet, sed praeterea studio et diligentia legitimum eius sensum assequitur, et secundum eam operatur, quam qui legem uti regulam generatim reveretur, at, propter suam malitiam, obstinationem et culpabilem*

ignorantiam, non assequitur eius sensum, et contra eam agit? Tunc ergo verus sensus S. Scripturae tribuitur, quando est conformis menti Dei loquentis, nec ideo est verus, quia qui eum recte intelligit putat esse verum, sed quia in se rectus est et conformitatem cum Deo loquente habet. Requiritur quidem, ad deceptionem vitandam, ut is sensus verus quoque esse putetur, non ideo tamen verus evadit, quia talis esse putatur. Inde vero est ut qui falsum sensum S. Scripturae tribuit, quamvis ipse verum eum esse putet, verum tamen non tribuat, nec eius falsa existimatio illum reddit menti Dei loquentis conformem. Nec refert quod Deo placere intendat tam qui recte, quam qui prave S. Scripturam intelligit; qui enim adhibuit omnem diligentiam ut verum Scripturae sensum assequeretur, adeoque assecutus est, revera Deo placet : at qui, propter suam malitiam, obstinationem, culpabilemque ignorantiam, verum Scripturae sensum assecutus non fuerit, licet se Deo placere putaverit, falso tamen ac impie putavit.]

Whether faith excludes natural reason?

1 *I answer.* So far is faith from excluding natural reason that it rather elevates it, illumines it, and strengthens it.

Resp. *Nedum fides rationem naturalem excludat, eam potius relevat, illustrat et firmat.*

2 *Proof.* Faith could not exclude natural reason unless it were contrary to reason and impeded its exercise. Yet faith is in no wise contrary to reason; on the contrary, a perfect analogy exists between the two; nor does faith impede the exercise of reason, but, like a higher light, it merely adds strength to reason by elevating it, illumining it, and strengthening it. Therefore it does not exclude it.

Prob. *Fides rationem naturalem non potest excludere, nisi sit ei contraria et eius exercitium impediat. Atqui nullo titulo fides est rationi contraria, sed, ex adverso, perfecta analogia inter utramque existit; nec fides exercitium rationis impedit, sed tantum, ut lumen superius, illam relevando, illustrando et firmando, ei vires addit. Ergo eam non excludit.*

3 Both parts of the minor were expounded and demonstrated more decisively and more clearly by the Vatican Synod, in the constitution *Dei Filius*, chapter 4, on Faith and Reason: « This perpetual consent of the Catholic Church has held and holds that there is a twofold order of cognition, distinct not only in its principle but also in its object: in its principle, indeed, because in the one we know by natural reason, in the other by divine faith; in its object, moreover, because besides those things to which natural reason can attain, there are proposed to us for belief mysteries hidden in God, which, unless divinely revealed, cannot become known. Wherefore the Apostle, who testifies that God was known by the nations through the things that are made, yet discoursing of the grace and truth which came by Jesus Christ, *Ioann.*, I, 17, pronounces: We speak the wisdom of God in a mystery, a wisdom which is hidden, which God foreordained before the ages unto our glory, which none of the princes of this world knew..., but God hath revealed to us by his Spirit; for the Spirit searches all things, yea, even the deep things of God, *I Cor.*, II, 7-10. And the Only-begotten himself confesses to the Father: Thou hast hidden these things from the wise and prudent, and hast revealed them to little ones.

Utraque pars minoris decretorie et luculenter fuit explicata et demonstrata a synodo Vaticana, in constit. Dei Filius, *cap. 4, de Fide et Ratione : « Hoc perpetuus Ecclesiae catholicae consensus tenuit et tenet, duplicem esse ordinem cognitionis, non solum principio, sed obiecto etiam distinctum : principio quidem, quia in altero naturali ratione, in altero fide divina cognoscimus; obiecto autem, quia praeter ea ad quae naturalis ratio pertingere potest, credenda nobis proponuntur mysteria in Deo abscondita, quae, nisi revelata divinitus, innotescere non possunt. Quocirca Apostolus, qui a gentibus Deum per ea qua facta sunt cognitum esse testatur, disserens tamen de gratia et veritate, quae per Iesum Christum facta est,* Ioann., *I, 17, pronuntiat : Loquimur Dei sapientiam in mysterio, quae abscondita est, quam praedestinavit Deus ante saecula in gloriam nostram, quam nemo principum huius saeculi cognovit..., nobis autem*

revelavit Deus per Spiritum suum; Spiritus enim omnia scrutatur, etiam profunda Dei, I Cor., *II, 7-10. Et ipse Unigenitus confitetur Patri, quia abscondisti haec a sapientibus et prudentibus, et revelasti ea parvulis.*

4 And indeed reason, when illumined by faith, if it seek earnestly, piously, and soberly, attains, with God granting, some understanding of the mysteries, and that most fruitful, partly from the analogy of those things which it knows naturally, partly from the connection of the mysteries themselves with one another and with the last end of man; yet never does it become capable of perceiving them in the manner of the truths which constitute its own proper object. For the divine mysteries of their very nature so far exceed created intellect that, even though handed down by revelation and received by faith, they nevertheless remain covered by the veil of faith itself and wrapped in a kind of obscurity, so long as in this mortal life we are pilgrims away from the Lord; for we walk by faith, and not by sight, *II Cor.*, V, 6 and 7.

Ac ratio quidem, fide illustrata, cum sedulo, pie et sobrie quaerit, aliquam, Deo dante, mysteriorum intelligentiam eamque fructuosissimam assequitur, tum ex eorum quae naturaliter cognoscit analogia, tum e mysteriorum ipsorum nexu inter se et cum fine hominis ultimo; nunquam tamen idonea redditur ad ea percipienda instar veritatum quae proprium ipsius obiectum constituunt. Divina enim mysteria suapte natura intellectum creatum sic excedunt, ut etiam revelatione tradita et fide suscepta, ipsius tamen fidei velamine contecta et quadam quasi caligine obvoluta maneant, quamdiu in hac mortali vita peregrinamur a Domino; per fidem enim ambulamus, et non per speciem, II Cor., *V, 6 et 7.*

5 But although faith is above reason, there can nevertheless never be any true dissension between faith and reason, since the same God who reveals the mysteries and infuses faith has implanted in the human mind the light of reason; and God cannot deny himself, nor can truth ever contradict truth[36]. The vain show of such contradiction arises chiefly from this, that either the dogmas of faith have not been understood and set forth according to the mind of the Church, or the figments of opinions are taken for utterances of reason. We therefore define that every assertion contrary to the truth of enlightened faith is altogether false. Moreover, the Church, which together with her apostolic office of teaching has received the charge of guarding the deposit of faith, holds by divine right also the right and duty of forbidding knowledge falsely so called, lest anyone be cheated by philosophy and vain deceit, *Coloss.*, II, 8. Wherefore all Christian faithful are forbidden not only to defend as legitimate conclusions of science opinions of this kind which are known to be contrary to the doctrine of faith, especially if they have been reproved by the Church, but they are rather bound to hold them altogether as errors which bear before themselves a fallacious appearance of truth.

36 Concil. Later. V, bulla Apostolici regiminis.

Verum, etsi fides sit supra rationem, nulla tamen unquam inter fidem et rationem vera dissensio esse potest, cum idem Deus qui mysteria revelat et fidem infundit, animo humano rationis lumen indiderit; Deus autem negare seipsum non possit, nec verum vero unquam contradicere[36]. Inanis autem huius contradictionis species inde potissimum oritur, quod vel fidei dogmata ad mentem Ecclesiae intellecta et exposita non fuerint, vel opinionum commenta pro rationis effatis habeantur. Omnem igitur assertionem veritati illuminatae fidei contrariam omnino falsam esse definimus. Porro Ecclesia, quae una cum apostolico munere docendi, mandatum accepit fidei depositum custodiendi, ius etiam et officium divinitus habet falsi nominis scientiam prohibendi, ne quis decipiatur per philosophiam et inanem fallaciam, Coloss., *II, 8. Quapropter omnes christiani fideles huiusmodi opiniones quae fidei doctrinae contraria esse cognoscuntur, maxime si ab Ecclesia reprobatae fuerint, non solum prohibentur tamquam legitimas scientiae conclusiones defendere, sed pro erroribus potius, qui fallacem veritatis speciem prae se ferant, habere tenentur omnino.*

36 Concil. Later. V, bulla Apostolici regiminis.

6 Not only can faith and reason never be at variance with each other, but they also render each other mutual aid: right reason demonstrates the foundations of the faith, and, illumined by its light, cultivates the science of divine things; faith, in turn, sets reason free from errors and protects it, and furnishes it with manifold knowledge. Wherefore so far is the Church from opposing the cultivation of human arts and disciplines that she aids and promotes it in many ways. For she neither ignores nor despises the advantages which flow from them to the life of men; nay, she confesses that, as they have issued from God, the Lord of sciences, so, if they be rightly pursued, they lead back to God, his grace helping. Nor does she indeed forbid these disciplines to use within their own sphere each its own principles and its own method; but acknowledging this just liberty, she diligently takes care lest, by withstanding divine doctrine, they take upon themselves errors, or, transgressing their proper limits, occupy and disturb the things that are of faith.

> *Neque solum fides et ratio inter se dissidere nunquam possunt, sed opem quoque sibi mutuam ferunt, cum recta ratio fidei fundamenta demonstret, eiusque lumine illustrata rerum divinarum scientiam excolat, fides vero rationem ab erroribus liberet ac tueatur, eamque multiplici cognitione instruat. Quapropter tantum abest ut Ecclesia humanarum artium et disciplinarum culturae obsistat, ut hanc multis modis iuvet atque promoveat. Non enim commoda ab iis ad hominum vitam dimanantia aut ignorat aut despicit: fatetur imo eas, quemadmodum a Deo, scientiarum Domino, profectae sunt, ita, si rite pertractentur, ad Deum, iuvante eius gratia, perducere. Nec sane ipsa vetat ne huiusmodi disciplinae in suo quaeque ambitu propriis utantur principiis et propria methodo; sed iustam hanc libertatem agnoscens, id sedulo cavet, ne, divinae doctrinae repugnando, errores in se suscipiant, aut fines proprios transgressae, ea quae sunt fidei occupent et perturbent.*

7 For the doctrine of faith which God has revealed has not been proposed to human minds to be perfected like a philosophical invention, but has been delivered to the Spouse of Christ as a divine deposit, to be faithfully guarded and infallibly declared. Hence also that sense of the sacred dogmas must forever be retained which holy Mother Church has once declared, nor must one ever depart from that sense under the specious name and pretext of a higher understanding. Let understanding, science, and wisdom therefore increase and progress greatly and vigorously in individuals and in all, in one man and in the whole Church, through the steps of the ages and centuries: but only in their own kind, namely, in the same dogma, the same sense, and the same opinion[37]. »

37 Vinceat. Lirin., Commonit., n. 28.

> *Neque enim fidei doctrina, quam Deus revelavit, velut philosophicum inventum proposita est humanis ingeniis perficienda, sed tamquam divinum depositum Christi Sponsae tradita, fideliter custodienda et infallibiliter declaranda. Hinc sacrorum quoque dogmatum is sensus perpetuo est retinendus, quem semel declaravit sancta Mater Ecclesia, nec unquam ab eo sensu, altioris intelligentiae specie et nomine, recedendum. Crescat igitur et multum vehementerque proficiat, tam singulorum quam omnium, tam unius hominis quam totius Ecclesiae, aetatum ac saeculorum gradibus, intelligentia, scientia, sapientia : sed in suo dumtaxat genere, in eodem scilicet dogmate, eodem sensu, eademque sententia[37]. »*
>
> *37 Vinceat. Lirin., Commonit., n. 28.*

8 The Angelic Doctor had demonstrated this analogy and concord of faith with natural reason in [[I *Contra gentes*, cap. 7|summa-contra-gentiles-liber-primus:liber.1/capitulum.7]] : « Nothing, he says, that is instilled into the soul of the disciple by the teacher contains the knowledge of the teacher, unless he teach deceitfully; which it is impious to say of God. Now the knowledge of principles naturally known has been divinely implanted in us, since God himself is the author of our nature.

These principles, therefore, divine wisdom also contains. Whatever, therefore, is contrary to principles of this kind is contrary to divine wisdom. It cannot, therefore, be from God. Those things, therefore, which are held by faith from divine revelation cannot be contrary to natural knowledge... From which it is evidently gathered that, whatever arguments are brought against the documents of faith, these do not proceed rightly from principles implanted in nature and self-evident in themselves. Hence they have not the force of demonstration, but are either probable reasons or sophistical, and thus room is left for answering them. »

> *Hanc analogiam et concordiam fidei cum ratione naturali demonstraverat Angelicus in [[I* Contra gentes*, cap. 7|summa-contra-gentiles-liber-primus:liber.1/capitulum.7]] : « Nihil idem, inquit, quod inducitur in animam discipuli a docente, doctoris scientia continet, nisi doceat ficte; quod de Deo nefas est dicere. Principiorum autem naturaliter notorum cognitio nobis divinitus est indita, cum ipse Deus sit author nostrae natura. Haec ergo principia etiam divina sapientia continet. Quidquid igitur principiis huiusmodi contrarium est, est divinae sapientiae contrarium. Non igitur a Deo esse potest. Ea igitur quae ex revelatione divina per fidem tenentur, non possunt naturali cognitioni esse contraria... Ex quo evidenter colligitur, quaecumque argumenta contra fidei documenta ponantur, haec ex principiis naturae inditis, per se notis, non recte procedere. Unde nec demonstrationis vim habent, sed vel sunt rationes probabiles, vel sophisticae, et sic ad ea solvenda locus relinquitur. »*

9 Concerning the relations of faith with natural reason, the aforementioned Vatican Synod published the following canons. On faith: 1. « If anyone shall say that human reason is so independent that faith cannot be commanded to it by God: let him be anathema. » — 2. « If anyone shall say that divine faith is not distinguished from natural knowledge concerning God and moral things, and that consequently for divine faith it is not required that the revealed truth be believed on account of the authority of God who reveals it: let him be anathema. » — On faith and reason: 1. « If anyone shall say that in divine revelation there are contained no true and properly so called mysteries, but that all the dogmas of faith can be understood and demonstrated from natural principles by reason duly cultivated: let him be anathema. » — 2. « If anyone shall say that the human disciplines are to be treated with such liberty that their assertions, even though they be opposed to revealed doctrine, are to be retained as true, and cannot be proscribed by the Church: let him be anathema. » — 3. « If anyone shall say that it can happen that at some time, according to the progress of science, another sense is to be attributed to the dogmas proposed by the Church than that which the Church understood and understands: let him be anathema. »

> *De relationibus fidei cum ratione naturali, sequentes canones edidit praedicta synodus Vaticana. De fide : 1. « Si quis dixerit, rationem humanam ita independentem esse, ut fides ei a Deo imperari non possit; anathema sit. » — 2. « Si quis dixerit, fidem divinam a naturali de Deo et rebus moralibus scientia non distingui, ac propterea ad fidem divinam non requiri, ut revelata veritas propter authoritatem Dei revelantis credatur; anathema sit. » — De fide et ratione : 1. « Si quis dixerit, in revelatione divina nulla vera et proprie dicta mysteria contineri, sed universa fidei dogmata posse per rationem rite excultam e naturalibus principiis intelligi et demonstrari; anathema sit. » — 2. « Si quis dixerit, disciplinas humanas ea cum libertate tractandas esse, ut earum assertiones, etsi doctrinae revelatae adversentur, tamquam verae retineri, neque ab Ecclesia proscribi possint; anathema sit. » — 3. « Si quis dixerit, fieri posse ut dogmatibus ab Ecclesia propositibus aliquando, secundum progressum scientiae, sensus tribuendus sit alius ab eo quem intellexit et intelligit Ecclesia; anathema sit. »*

10 That it may be found with what great solicitude the Catholic Church has always watched over the defense of the dignity and rights of human reason, it will help to add here the four propositions by which the excessive ardor of certain men was repressed, who, in favor of faith, had depressed reason

too much. Drawn up by the sacred Congregation of the Index on June 11, 1835, they were approved on the 15th of the same month by Pius IX, who ordered them published.

> *Ut compertum sit quanta sollicitudine Ecclesia catholica dignitati et iuribus rationis humanae tuendis semper invigilaverit, iuvabit hic adiicere quatuor propositiones quibus fuit repressus nimius ardor aliquorum qui, in gratiam fidei, rationem plus sibi depresserant. A sacra Congregatione Indicis exaratae die 11 iunii 1835, fuerunt approbatae, die 15 eiusdem mensis, a Pio IX, qui eas publicari mandavit.*

11 1° « Although faith is above reason, nevertheless no true dissent, no discord between the two can ever be found, since both arise from one and the same unchangeable source of truth, God best and greatest, and thus render each other mutual aid. » — From the Encyclical of Pius IX, November 9, 1846.

> *1° « Etsi fides sit supra rationem, nulla tamen vera dissensio, nullum dissidium inter ipsas inveniri unquam potest, cum ambae ab uno eodemque immutabili veritatis fonte, Deo Optimo Maximo, oriantur, atque ita sibi mutuam opem ferant. » — Ex Encyclica Pii IX, 9 novemb. 1846.*

12 2° Reasoning can prove with certainty the existence of God, the spirituality of the soul, and the liberty of man. Faith is subsequent to revelation, and consequently it cannot fitly be alleged to prove the existence of God against the atheist, or to prove the spirituality and liberty of the rational soul against the follower of naturalism and fatalism. » — Subscribed by D. Bautain, September 8, 1840.

> *2° Ratiocinatio Dei existentiam, anima spiritualitatem, hominis libertatem cum certitudine probare potest. Fides posterior est revelatione, proindeque ad probandum Dei existentiam contra atheum, ad probandum animae rationalis spiritualitatem ac libertatem contra naturalismi ac fatalismi sectatorem, allegari convenienter nequit. » — Subscripta a D. Bautain, 8 sept. 1840.*

13 3° « The use of reason precedes faith, and leads man to it by the aid of revelation and grace. » Subscribed by the same, on the same day.

> *3° « Rationis usus fidem praecedit, et ad eam hominem ope revelationis et gratiae conducit. » Subscripta ab eodem, eadem die.*

14 4° « The method which D. Thomas, D. Bonaventura, and other scholastics after them made use of does not lead to rationalism, nor was it the cause why philosophy in the schools of today ran headlong into naturalism and pantheism. Consequently it is not lawful to bring into accusation those doctors and masters for having employed this method, especially with the approbation, or at least the tacit consent, of the Church. » — This proposition is opposed to divers propositions professed by D. Bonnetty.

> *4° « Methodus qua usi sunt D. Thomas, D. Bonaventura et alii post ipsos scholastici, non ad rationalismum ducit, neque causa fuit cur apud scholas hodiernas philosophia in naturalismum et pantheismum impingeret. Proinde non licet in crimen doctoribus et magistris illis vertere, quod methodum hanc, praesertim approbante vel saltem tacente Ecclesia, usurpaverint. » — Haec propositio diversis propositionibus a D. Bonnetty professis opponitur.*

15 Whoever desires more concerning the relations of reason with faith, let him consult Fr. Perrone, *Praelect. theol.*, De analogia rationis cum fide.]

> *Qui plura desiderat de relationibus rationis cum fide, adeat P. Perrone,* Praelect. theol.*, De analogia rationis cum fide.]*

On the Vices Opposed to Faith

1 (*St. Thomas, qq. 10, 11, 12 et 13.*)

(D. Thomas, qq. 10, 11, 12 et 13.)

On unbelief in general

1 Unbelief in general is the absence of faith[38]. And it is either negative, privative, or contrary. Negative unbelief is the absence of faith in one who has heard nothing of the faith, or has not heard sufficiently. Privative unbelief is the absence of faith in one who has heard sufficiently of the faith and does not will to assent to it, without however asserting the contrary. Contrary unbelief is the absence of faith in one who, though sufficiently instructed concerning the faith, not only refuses to embrace it, but even asserts the contrary and maintains a positive error against the faith.

38 Hic q. 10, a. 1, o.

Infidelitas in communi est carentia fidei[38]. Et est vel negativa, vel privativa, vel contraria. Infidelitas negativa est carentia fidei in eo qui nihil audivit de fide, vel non audivit sufficienter. Privativa est carentia fidei in eo qui audivit sufficienter de fide, et non vult ei assentiri, absque eo tamen quod contrarium asserat. Contraria est carentia fidei in eo qui sufficienter de fide instructus, non solum detrectat illam amplecti, sed etiam contrarium asserit, et errorem positivum contra fidem sustinet.

38 Hic q. 10, a. 1, o.

2 *You will ask* 1° whether unbelief is a sin.

Petes *1° utrum infidelitas sit peccatum.*

3 *I answer.* 1°. Merely negative unbelief is not a sin, but a punishment of sin[39].

39 Ibid.

Resp. *1°. Infidelitas mere negativa non est peccatum, sed poena peccati[39].*

39 Ibid.

4 *Proof.* 1° Christ, *Ioann.*, XV, 22, says of the Jews: If I had not come and spoken to them, they would not have sin. Expounding this, Aug., *Tract. LXXXIX in Ioann.*, says that Christ speaks of the sin by which they did not believe in Christ. But Christ spoke to negative unbelievers neither by himself nor through his ministers, at least not sufficiently. 2° No one sins by omitting what he cannot do.

Prob. *1° Christus,* Ioann., *XV, 22, dicit de Iudaeis : Si non venissem et locutus fuissem eis, peccatum non haberent. Quod exponens Aug.,* Tract. LXXXIX in Ioann., *dicit quod Christus loquatur de peccato quo non crediderunt in Christum. Infidelibus autem negative Christus neque per se, neque per suos ministros locutus est, saltem sufficienter. 2° Nemo peccat omittendo quod facere non potest.*

5 How shall they believe in him whom they have not heard? It is just as if he had said: « They cannot believe. » 3° This proposition, the 68th among those of Baius: « Purely negative unbelief, in those to whom Christ has not been preached, is a sin, » was condemned by St Pius V, October 1, 1567, by Gregory XIII, January 29, 1579, and by Urban VIII, March 6, 1641.

Quomodo credent ei quem non audierunt? Perinde est ac si diceret : « Credere non possunt. » 3° Haec propositio 68a inter Baianas : « Infidelitas pure negativa, in his quibus Christus non est praedicatus, peccatum est, » damnata est a S. Pio V, 1 oct. 1567, Gregorio XIII, 29 ianuar. 1579, et Urbano VIII, 6 mart. 1641.

6 *I answer.* 2°. Privative and contrary unbelief is a sin[40].

40 Ibid.

> Resp. 2°. *Infidelitas privativa et contraria est peccatum*[40].
>
> 40 *Ibid.*

7 1° Because no one is condemned except on account of sin. But he who will not have believed shall be condemned, *Marc.*, XVI, 16. 2° Because faith is the necessary medium unto salvation. Therefore he to whom it is sufficiently proposed is bound to accept it.

> *1° Quia nemo condemnatur, nisi propter peccatum. Qui autem non crediderit, condemnabitur,* Marc.*, XVI, 16. 2° Quia fides est medium necessarium ad salutem. Ergo is cui sufficienter proponitur, tenetur eam acceptare.*

8 *You will ask* 2° whether all the works of unbelievers are sins.

> Petes *2° utrum omnia opera infidelium sint peccata.*

9 *I answer.* Negatively[41]. We weighed this question expressly in the treatise on Grace, dissertation III, § 1. Look for it there.

41 Ibid., a. 4, o.

> Resp. *negative*[41]. *Hanc quaestionem ex professo expendimus in tract. de Gratia, dissert. III, § 1. Require ibi.*
>
> 41 *Ibid., a. 4, o.*

10 *You will ask* 3° how many species of unbelief there are.

> Petes *3° quot sint species infidelitatis.*

11 *I answer.* That three are commonly assigned, namely paganism, Judaism, and heresy[42]. For the sin of unbelief consists in resisting the faith. But one can resist the faith in three ways. For either one resists the faith which he has not yet professed himself to receive as true, and this is the unbelief of the pagans, who are so called from the pagi into which, expelled from the cities by command of the Christian emperors, they withdrew to worship their idols: before that time they were called gentiles. Or one resists the faith which he professed in figure, and this is the unbelief of the Jews. Or finally one resists the faith which he professed in the manifestation of the truth, and this is the unbelief of heretics.

42 Ibid., a. 5, o.

> Resp. *tres communiter assignari, nempe paganismum, iudaismum et haeresim*[42]. *Quia peccatum infidelitatis consistit in renitendo fidei. Tripliciter autem quis potest reniti fidei. Vel enim renititur fidei quam nondum professus est se suscipere ut veram, et est infidelitas paganorum, qui sic dicti sunt a pagis in quos ab urbibus, mandato imperatorum Christianorum, expulsi, se recipiebant, ut colerent sua idola : antea gentiles dicebantur. Vel renititur fidei quam professus est in figura, et est infidelitas Iudaeorum. Vel tandem renititur fidei quam professus est in manifestatione veritatis, et est infidelitas haereticorum.*
>
> 42 *Ibid., a. 5, o.*

12 I said: « Which he has professed himself to receive; » because for Judaism or heresy there seems not to be required that one have truly received the faith in figure or in manifested truth, but it suffices if he have outwardly professed himself to receive it. Hence unbaptized infants of heretics,

who therefore never received the faith, are called heretics because in estimation they profess together with their parents the faith of Christ.

> *Dixi : « Quam professus est se suscipere; » quia ad iudaismum vel haeresim videtur non requiri quod revera susceperit fidem in figura vel veritate manifestata, sed sufficere si exterius professus fuerit se suscipere. Unde infantes haereticorum non baptizati, qui ideo nunquam fidem susceperunt, dicuntur haeretici, eo quod secundum aestimationem profiteantur cum parentibus fidem Christi.*

13 To paganism belong atheists, deists, and Mohammedans; because they have never professed themselves to receive the faith of Christ, whether in figure or in truth. For although the Mohammedans acknowledge Christ as a prophet, they do not acknowledge him as God.

> *Ad paganismum pertinent athaei, deistae et Mahumetani; quia nunquam professi sunt se suscipere, sive in figura, sive in veritate, fidem Christi. Licet enim Mahumetani agnoscant Christum ut prophetam, non tamen eum agnoscunt ut Deum.*

14 Apostasy seems not to be distinguished from heresy except according to more and less; for the apostate abandons the whole faith which he professed, the heretic only a part: understand this objectively. Similarly other forms of unbelief can be reduced to one of the aforementioned.

> *Apostasia non videtur distingui ab haeresi, nisi secundum magis et minus; quia apostata deserit totam fidem quam professus est, haereticus partem tantum : intellige obiective. Similiter ad unam ex praedictis possunt reduci alia infidelitates.*

15 [You will ask 4° whether unbelievers are to be compelled to the faith.

> *[Petes 4° utrum infideles cogendi sint ad fidem.*

16 *I answer.* Those who have never received the faith, whether they be subject to Christian princes or not, are by no means to be compelled to embrace the faith; they can, however, be compelled not to impede the faith and the preaching of the faith by blasphemies, wicked persuasions, or open proclamations.

> Resp. *Qui nunquam fidem susceperunt, sive subdantur principibus christianis, sive non, nullatenus sunt cogendi ad fidem amplectendam; possunt tamen cogi ne impediant fidem fideique praedicationem blasphemiis, malis persuasionibus, aut apertis praedicationibus.*

17 The first part is clear; because the Church has no jurisdiction over those who have not received the faith, according to that saying, *I Cor.*, V, 12: What have I to do to judge those who are without? And the Council of Trent, session XIV, chapter 5, declares that « the Church exercises judgment upon no one who has not first entered her through the door of baptism. » Christian princes likewise have no jurisdiction over foreigners, but over subjects they have jurisdiction by which they govern them politically; this jurisdiction nevertheless does not include the right of compelling them to the faith. And although they can compel subjects to abandon idolatry, which is against the natural law, of which every prince is the guardian, their power nevertheless does not extend to the law of faith, which is of the supernatural order.

> *Patet prima pars; quia Ecclesia non habet iurisdictionem in eos qui non susceperunt fidem, iuxta illud,* I Cor.*, V, 12 : Quid mihi de iis qui foris sunt iudicare? Et concilium Trident., sess. XIV, cap. 5, declarat quod « Ecclesia in neminem iudicium exercet, qui non prius in ipsam per baptismi ianuam fuerit ingressus. » Principes etiam christiani nullam in extraneos, in subditos autem habent iurisdictionem qua politice eos gubernent; haec iurisdictio non includit tamen ius*

eos ad fidem cogendi. Et quamvis possint cogere subditos ad deserendam idololatriam, quae est contra ius naturale, cuius quilibet princeps est custos, non tamen eorum potestas se extendit ad legem fidei, quae est ordinis supernaturalis.

18 This conclusion is confirmed by the decisive words of Leo XIII, in the Encyclical *Immortale Dei*, November 1, 1885: « If, he says, the Church judges it unlawful that the various kinds of divine worship hold the same right as the true religion, she does not on that account condemn those moderators of commonwealths who, for the sake of obtaining some great good or preventing some great evil, patiently bear by custom and usage that each of these things hold a place in the state. — The Church likewise greatly takes care that no one be compelled to embrace the Catholic faith against his will; because, as Augustine wisely admonishes, *Tract. XXVI in Ioann.*, n. 2, man cannot believe unless he is willing. »

Haec conclusio confirmatur verbis decretoriis Leonis XIII, in Encyclica Immortale Dei*, 1 novemb. 1885 : « Si, inquit, divini cultus varia genera eodem iure esse, quo veram religionem, Ecclesia iudicat non licere, non ideo tamen eos damnat rerum publicarum moderatores qui, magni alicuius aut adipiscendi boni aut prohibendi causa mali, moribus atque usu patienter ferunt ut ea habeant singula in civitatem locum. — Atque illud quoque magnopere cavere Ecclesia solet, ut ad amplexandam fidem catholicam nemo invitus cogatur; quia, quod sapienter Augustinus monet,* Tract. XXVI in Ioann.*, n. 2, « credere non potest homo, nisi volens. »*

19 The second part is also clear. For the Church has from Christ the command, and consequently the right, of preaching the Gospel in the whole world, *Matth.*, XXVIII, 19. If therefore barbarians impede this preaching, Christian princes can, and at times must, wage war against them and subdue rebels, that they may guard the violated rights of the Church and defend the innocent, both those who have the right of preaching and those who have the right of hearing.]

Secunda pars etiam patet. Ecclesia enim habet a Christo mandatum et consequenter ius praedicandi Evangelium in universo mundo, Matth.*, XXVIII, 19. Si ergo barbari praedicationem hanc impediant, possunt principes christiani et aliquando debent bellum contra eos movere, rebelles domare, ut tueantur iura Ecclesiae violata et innocentes defendant, tam eos qui ius habent praedicandi, quam eos qui habent ius audiendi.]*

On heresy

1 What is heresy, and how manyfold?

Quid et quotuplex sit haeresis?

2 Heresy is a Greek word importing choice, because the heretic by his own judgment chooses to believe what he wills.

Haeresis est vox graeca, importans electionem, quia haereticus proprio iudicio eligit credendum quod vult.

3 **I say** 1°: Heresy is « a pertinacious error manifestly contrary to the faith, in one who has professed the faith of Christ in truth. »

***Dico** 1° : Haeresis est « error pertinax manifeste contrarius fidei, in eo qui fidem Christi in veritate professus est. »*

4 It is called error, that is, a positive assent to the false, or dissent from the true.

Dicitur error, id est, positivus assensus falsi, seu dissensus veri.

5 It is called manifestly contrary to the faith, because if anyone held something contrary to the faith about which it were not certain and manifest that it was contrary to it, he would not be a heretic, at

least a formal one. That, moreover, is certainly and manifestly of the faith which is manifestly and certainly revealed by God, whether privately, or in Scripture, or in the definitions of the Church, and which all Catholics hold as of faith.

> *Dicitur manifeste contrarius fidei, quia, si quis teneret aliquid contrarium fidei, de quo certum et manifestum non foret quod illi esset contrarium, non esset haereticus, saltem formalis. Illud autem est certo et manifeste de fide, quod est manifeste et certo a Deo revelatum, sive privatim, sive in Scriptura, sive in definitionibus Ecclesiae, et quod tamquam de fide tenent omnes Catholici.*

6 It is called pertinacious error. Pertinacity is an obstinate adhesion to one's own opinion against the faith sufficiently manifested: for this neither length of time is required, nor that one be canonically admonished several times; but voluntary dissent from the faith sufficiently proposed by the Church suffices, which can occur in an instant.

> *Dicitur error pertinax. Pertinacia est obstinata adhaesio propriae sententiae contra fidem sufficienter manifestatam : ad quod non requiritur diuturnitas temporis, neque quod quis sit pluries canonice monitus; sed sufficit dissensus voluntarius fidei per Ecclesiam sufficienter proposita, quod potest haberi in instanti.*

7 That such pertinacity is required for heresy is clear partly from the very name; for it is, as we said, a choice: partly because, just as for faith there is required the pious motion of the will inclining the intellect to assent with certainty to truth obscurely revealed, so for heresy, which is opposed to faith, there is required the perverse affection of the will to dissent pertinaciously from the truth proposed by the Church: partly from the law, cap. Dixit, cap. Qui in Ecclesia, cause 24, q. 3, and Clement. *Ex gravi*, book V, title 5, on usuries, where those only are acknowledged as heretics who have been pertinacious in denying some article of faith. Hence that saying of Augustine: « I may err, but I shall not be a heretic, » namely through want of pertinacity. The same St Thomas, q. 8 *de Malo* and on chapter 11 of *I Cor.*, lecture 4. Hence you will infer that one who through ignorance, even culpable, crass, and supine, yet not affected, withstands the faith, being ready to assent if instructed, is not a formal heretic; for although he sins mortally against the affirmative precept of the faith by voluntarily ignoring what he ought to know, he would not nevertheless be pertinacious. Nay, he would not even sin, if his ignorance were involuntary and inculpable, as happens among uneducated Catholics, or those neglected through the carelessness of parents and pastors, and even among those brought up among heretics, who have never heard anything of the Catholic faith except mockeries and blasphemies against it, nor are they beset by any doubt in this matter; so that, if they hold what must be believed under necessity of means, and are disposed in mind to believe the rest if duly proposed, they do not seem to be outside the way of salvation. Nor does it stand in the way that outside the Church no one is saved; for these, by reason of baptism, likewise of the faith which they have, and of their interior disposition to believe the rest, can be said to be in the Church.

> *Huiusmodi pertinaciam requiri ad haeresim, patet tum ex ipso nomine; est enim, ut diximus, electio : tum quia, sicut ad fidem requiritur pia motio voluntatis inclinans intellectum ad assentiendum certo veritati obscure revelata, ita ad haeresim, quae fidei opponitur, requiritur prava affectio voluntatis ad dissentendum pertinaciter veritati per Ecclesiam proposita : tum ex iure, cap. Dixit, cap. Qui in Ecclesia, causa 24, q. 3, et Clement.* Ex gravi, *lib. V, tit. 5, de usuris, ubi non agnoscuntur pro haereticis nisi qui fuerint pertinaces in negando aliquo articulo fidei. Hinc illud dictum Augustini : « Errare potero, haereticus non ero, » defectu scilicet pertinaciae. Idem S. Thomas, q. 8.* de Malo *et in cap. 11* I Cor., *lect. 4. Hinc inferes eum qui ignorantia etiam culpabili, crassa et supina, non tamen affectata, repugnat fidei, paratus assentiri, si esset instructus, non esse haereticum formalem; quamvis enim mortaliter peccet contra praeceptum fidei*

affirmativum, ignorando voluntarie quae debet scire, non esset tamen pertinax. Imo neque peccaret, si ignorantia eius esset involuntaria et inculpabilis, ut contingit esse inter Catholicos rudes, aut qui a parentibus et pastoribus incuriis negliguntur, et etiam inter enutritos apud haereticos, qui nihil unquam de fide catholica, aut nonnisi irrisiones et blasphemias contra illam audierunt, nec ullo dubio hâc in re pulsantur; ita ut, si alia necessitate medii credenda teneant, et sint animo parati caetera credere, si debite proponerentur, non videantur esse extra viam salutis. Nec obstat quod extra Ecclesiam nemo salvatur; hi enim ratione baptismatis, item fidei quam habent, et internae dispositionis caetera credendi, dici possunt esse in Ecclesia.

8 Nor does it stand in the way that for other sins voluntariness in the cause suffices: thus one who kills a man through culpable ignorance is truly a homicide. For the disparity is that other sins are not said to arise from election, as heresy is, for which the common voluntariness, whereby every sin must be voluntary, does not suffice, but there is required a special and pertinacious voluntariness opposed to the faith.

Neque etiam obstat quod ad alia peccata sufficiat voluntarium in causa : sic qui occidit hominem ex ignorantia culpabili, est vere homicida. Disparitas est enim quod alia peccata non dicantur ab electione, sicut haeresis, ad quam ideo non sufficit voluntarium commune, quo omne peccatum debet esse voluntarium, sed requiritur voluntarium speciale et pertinax oppositum fidei.

9 *You will ask* whether one doubting in the faith is a heretic.

Petes *utrum dubius in fide sit haereticus.*

10 It seems that he is not; because the doubter has no error in the intellect, since he neither assents nor dissents; for doubt is a suspension between assent and dissent.

Videtur quod non; quia dubius non habet errorem in intellectu, cum nec assentiat, nec dissentiat; dubium enim est suspensio inter assensum et dissensum.

11 Before the resolution, a twofold doubt must be distinguished: one negative, the other positive. Negative, which some call in actu exercito, is when someone, having apprehended both opposite sides, whether this be true or false, assenting to neither, remains suspended without any positive act. Positive, which others call in actu signato, is when someone likewise, having apprehended both opposite sides, assenting to neither, judges by a positive act that the thing is doubtful and uncertain.

Ante resolutionem, distinguendum est duplex dubium : unum negativum, alterum positivum. Negativum, quod quidam vocant in actu exercito, est quando quis, apprehensa utraque parte opposita, an hoc sit verum vel falsum, neutri assentiens, absque ullo actu positivo suspensus manet. Positivum, quod alii vocant in actu signato, est quando quis similiter, apprehensa utraque parte opposita, neutri assentiens, actu positivo iudicat rem esse dubiam et incertam.

12 *I answer.* 1°. Whoever deliberately doubts with a positive doubt concerning some article of the faith sufficiently proposed by the Church, v. g., whoever judges it doubtful whether there is a Purgatory, whether Christ is in the Eucharist, while knowing that it is so handed down and believed by the whole Church, is formally a heretic; because, although he does not deny the truth about which he doubts, he nevertheless judges positively that it, and the infallibility of the Church, are not certain: and thus he has a positive and pertinacious error in the intellect, if not explicitly against the truth of faith about which he doubts, at least against the firmness and certitude of the Church's infallibility, which is of the essence of the faith. By which the argument set down at the beginning is answered.

And of one so doubting is verified what is said in the law: « Doubting in the faith, he is an unbeliever, » and he incurs the excommunication reserved to the Pope, no otherwise than other heretics.

> Resp. *1°. Qui deliberate dubitat dubio positivo de aliquo articulo fidei sufficienter proposito ab Ecclesia, v. g., qui iudicat dubium esse an detur Purgatorium, an Christus sit in Eucharistia, cum tamen sciat ita tradi et credi a tota Ecclesia, est formaliter haereticus; quia, licet non neget veritatem de qua dubitat, iudicat tamen positive eam et infallibilitatem Ecclesiae non esse certas : sicque habet errorem positivum et pertinacem in intellectu, si non explicite contra veritatem fidei de qua dubitat, saltem contra infallibilitatis Ecclesiae firmitatem et certitudinem, quae est fidei essentialis. Per quod solvitur argumentum initio positum. Et de illo dubitante verificatur quod in iure dicitur : « Dubius in fide est infidelis, » incurritque excommunicationem Papae reservatam, non secus ac alii haeretici.*

13 *I answer.* 2°. Whoever doubts with a merely negative doubt about some article of the faith sufficiently proposed by the Church, that is, precisely suspends judgment without any positive act, because, v. g., he wishes now to attend to other things, or does not wish at the moment to fatigue his head in a matter so great, or wishes to inquire more fitly and agreeably into the motives for assenting, or on account of like motives, is not formally a heretic; because, since he has no judgment, for he suspends it, he has no positive error in the intellect. Nor does he seem to sin of itself, at least mortally, setting aside the danger of consenting to a positive doubt, unless the affirmative precept of the faith then press.

> Resp. *2°. Qui de aliquo articulo fidei sufficienter ab Ecclesia proposito dubitat dubio negativo tantum, id est, suspendit praecise iudicium sine ullo positivo actu, quia, v. g., vult nunc aliis attendere, vel non vult in re tanta modo defatigare caput, vel vult inquirere motiva commodius et suavius assentiendi, aut propter similia motiva, non est formaliter haereticus; quia, cum non habeat iudicium, illud enim suspendit, non habet errorem positivum in intellectu. Neque videtur per se peccare, saltem mortaliter, secluso periculo consensus in dubium positivum, nisi tunc urgeat praeceptum affirmativum fidei.*

14 If, however, such suspension of judgment proceeded from a motion of the will on account of difficulties propounded by the intellect, which nevertheless does not judge, as though terrified by them and beguiled about the truth: some hold, not improbably, that the malice of heresy is included therein, so that the suspension ensuing upon that evil motion of the will is a kind of virtual and implicit judgment concerning the uncertainty of the object of faith. Moreover, the matter is exceedingly perilous, and there is no doubt that voluntary negative doubt can easily pass into positive, or arise from it.

> *Si tamen talis suspensio iudicii procederet ex motione voluntatis propter difficultates propositas ab intellectu, non iudicante tamen, quasi iis territa et veritatis deceptionem : quidam non improbabiliter existimant ibi includi malitiam haereseos, ita ut suspensio subsecuta ad illam malam motionem voluntatis, sit quoddam virtuale et implicitum iudicium de incertitudine obiecti fidei. Caeterum res est admodum periculosa, neque dubium est quin voluntarium dubium negativum facile possit transire in positivum, aut ex illo oriri.*

15 [That every doubt concerning things that are of the faith is grave sin the Vatican Synod defined by the following canon: « If anyone shall say that the condition of the faithful and of those who have not yet attained to the one only true faith is equal, so that Catholics may have a just cause for calling into doubt, with suspended assent, the faith which they have already received under the magisterium of the Church, until they shall have completed a scientific demonstration of the credibility and truth of their faith: let him be anathema. »]

[Omne dubium de his quae sunt fidei esse peccatum grave, definivit synodus Vaticana, per canonem sequentem : « Si quis dixerit, parem esse conditionem fidelium atque eorum qui ad fidem unice veram nondum pervenerunt, ita ut catholici iustam causam habere possint, fidem quam sub Ecclesiae magisterio iam susceperunt, assensu suspenso, in dubium vocandi, donec demonstrationem scientificam credibilitatis et veritatis fidei suae absolverint; anathema sit. »]

16 **I say** 2°: Heresy is divided 1° into material and formal. Formal is that which we defined and have explained hitherto. Material is the error of a baptized man against the truth of the faith arising from ignorance, and without pertinacity. This is clear from what has been said.

***Dico** 2° : Haeresis dividitur 1° in materialem et formalem. Formalis est quam definivimus et huc usque explicuimus. Materialis est error hominis baptizati contra veritatem fidei ex ignorantia, et sine pertinacia. Patet ex dictis.*

17 2° Heresy is divided into internal only, external only, and internal and external together. Internal only is the voluntary error against the faith abiding in the mind alone and manifested by no exterior sign. External only is when one denies by mouth or by deed the faith retained in the heart. Internal and external together, which is complete heresy, is that which, conceived in the mind, is outwardly manifested by word or sign, even if no one be present; provided only the sign be such that, if anyone were present, he would straightway understand that an article of the faith is denied, of which more presently.

2° Dividitur haeresis in internam tantum, externam tantum, et in internam et externam simul. Interna tantum est error voluntarius contra fidem in sola mente sistens et nullo signo exteriori manifestatus. Externa tantum est cum quis ore vel facto negat fidem corde retentam. Interna et externa simul, quae est haeresis completa, est quae, mente concepta, verbo vel signo exterius manifestatur, etiamsi nemo adsit; modo sit tale signum, ut, si quis adesset, statim intelligeret negari articulum fidei, de quo plura modo.

18 3° External heresy is divided into occult and manifest. Occult is that which becomes known to none or to few; manifest, that which is known to many.

3° Haeresis externa dividitur in occultam et manifestam. Occulta est quae nulli vel paucis innotescit; manifesta, quae multis nota est.

19 **§ II. On the punishments of heretics.**

§ II. De poenis haereticorum.

20 The punishments of heretics are of twofold genus. Some are spiritual, as excommunication, irregularity, deprivation of every benefice, jurisdiction, and ecclesiastical dignity, likewise of ecclesiastical burial. Others are corporal, as confiscation of all goods, exemption of subjects from the oath of fidelity, infamy, and capital punishment. The temporal punishments belong to the secular forum. Wherefore, omitting these, we shall speak only of the spiritual ones.

Poenae haereticorum sunt duplicis generis. Quaedam sunt spirituales, ut excommunicatio, irregularitas, privatio omnis beneficii, iurisdictionis et dignitatis ecclesiasticae, item et sepultura ecclesiastica. Alia sunt corporales, ut confiscatio omnium bonorum, exemptio subditorum a iuramento fidelitatis, infamia et poena capitis. Poenae temporales pertinent ad forum saeculare. Unde, iis omissis, dicemus tantum de spiritualibus.

21 **I say** 1°: Neither the material heretic, nor the merely internal, nor the merely external heretic incurs the excommunication and the other spiritual punishments of heretics.

> ***Dico** 1°: Neque haereticus materialis, neque mere internus, neque mere externus incurrit excommunicationem et alias poenas spirituales haereticorum.*

22 The first part is clear; for the material heretic is not truly and formally a heretic, because he is not pertinacious.

> *Prima pars patet; haereticus enim materialis non est vere et formaliter haereticus, quia non est pertinax.*

23 The second part is likewise evident; because, although the merely internal heretic is in the forum of conscience and before God truly a heretic, he is not such in the external forum and before the Church, which does not judge of interior things, and therefore he is not subjected to the punishments decreed by her against heretics.

> *Secunda pars etiam constat; quia, licet haereticus mere internus sit in foro conscientiae et coram Deo vere haereticus, non est tamen talis in foro externo et coram Ecclesia, quae non iudicat de internis, et ideo poenis ab ea decretis in haereticos non subiicitur.*

24 The third part is likewise evident; because the merely external heretic, as one who either through fear, or hope of gain, or anger, or some other like motive, retaining faith in the heart, utters a heretical proposition, tramples upon the crucifix or the images of the saints, exhibits worship to an idol, shares in the banquets of heretics, etc., although he sins most grievously, is not nevertheless truly a heretic; because heresy is an error of the mind. Ecclesiastical punishments, however, are inflicted only upon those who are truly heretics.

> *Tertia pars etiam constat; quia haereticus mere externus, ut qui vel metu, vel spe lucri, vel ex ira, aliove simili motivo, fide corde retenta, profert propositionem haereticam, crucifixum aut sanctorum imagines conculcat, cultum idolo exhibet, haereticorum coenae communicat, etc., quamvis gravissime peccet, non est tamen revera haereticus; quia haeresis est error mentis. Poenae autem ecclesiasticae non feruntur nisi in eos qui revera sunt haeretici.*

25 Nor does it matter that one who kills a man through fear or hope of gain is truly a homicide. The disparity is that for homicide the slaying of a man without legitimate authority suffices; for heresy, however, error in the mind is required.

> *Neque refert quod qui occidit hominem ex metu vel spe lucri, vere sit homicida. Disparitas est, quod ad homicidium sufficiat occisio hominis absque legitima authoritate; ad haeresim autem requiritur error in mente.*

26 And all these consequently can be absolved by any confessor; unless the external heretic has been publicly denounced as a heretic by the Church (which judges nothing but exterior things, and from exterior things presumes the interiors); for then, on account of scandal, he would have to be avoided, nor ought he to be absolved unless reconciled to the Church.

> *Et hi omnes consequenter possunt absolvi a quolibet confessario; nisi externus ab Ecclesia (quae non nisi exteriora iudicat, et per exteriora de interioribus praesumit), esset publice denuntiatus ut haereticus; tunc enim propter scandalum foret vitandus, nec nisi Ecclesiae reconciliatus deberet absolvi.*

27 **I say** 2°: The internal heretic, by this very act whereby he manifests his heresy outwardly, distinctly, and assertively, even if no one hear or see him, incurs excommunication reserved specially to the Pope alone. *Cap.* Excommunicamus, *de haereticis*; cap. Noverit, *de sent. excommunicat.*; and in the *Bulla Coenae.*

***Dico** 2°: Haereticus internus, hoc ipso quo suam haeresim exterius distincte et assertive manifestat, etiamsi nullo audiente aut vidente, incurrit excommunicationem soli Papae reservatam.* Cap. *Excommunicamus,* de haereticis*; cap. Noverit,* de sent. excommunicat.*; et in* Bulla Coenae.

28 I said: « Even if no one hear or see him; » for it suffices that the sign be such that, if anyone were present, he would straightway understand that the faith is denied. For such heresy belongs to the outward forum of the Church, and thus it lies under excommunication, which is of the external forum; but that it cannot be proven is not because of itself it is not of the external forum, but per accidens, through defect of witnesses.

Dixi: « Etiamsi nullo audiente aut vidente; » sufficit enim esse tale signum ex quo, si quis adesset, statim intelligeret negari fidem. Talis enim haeresis pertinet ad forum exterius Ecclesiae, sicque subiacet excommunicationi, quae est fori exterioris; quod autem probari non possit, non est quod secundum se non sit fori exterioris, sed per accidens, defectu testium.

29 [From the constitution of the Apostolic See, 4° idus octobris 1869, promulgated by Pius IX, « all apostates from the Christian faith, and each and every heretic, by whatever name they be accounted and of whatever sect they exist; their believers, their receivers, favorers, and generally any defenders whatsoever of them, » lie under the excommunication latae sententiae reserved in a special manner to the Roman Pontiff. The *Bulla Coenae,* § 1, accords plainly. — Likewise, by the same constitution, « all and singular those knowingly reading, without the authority of the Apostolic See, the books of the same apostates and heretics upholding heresy, as well as the books of any author prohibited nominatim by apostolic letters, and retaining, printing, and defending those same books in any way whatever, » are excommunicated. So the bull *Coenae,* § 1, and reg. X of the *Index*. — The articles mentioned above will be expounded in the treatise on Censures.]

[Ex constitutione Apostolicae Sedis, 4° idus octobris 1869 a Pio IX promulgata, excommunicationi latae sententiae speciali modo Romano Pontifici reservatae subiacent « omnes a christiana fide apostatae, et omnes ac singuli haeretici, quocumque nomine censeantur et euiuscumque sectae existant; eisque credentes, eorumque receptores, fautores, ac generaliter quilibet illorum defensores. » Bulla Coenae, *§ 1, plane concordat. — Similiter excommunicantur, ex eadem constitutione, « omnes et singuli scienter legentes, sine authoritate Sedis Apostolicae, libros eorundem apostatarum et haereticorum haeresim propugnantes, necnon libros cuiusvis authoris per apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes et quomodolibet defendentes. » Ita bulla* Coenae, *§ 1, et reg. X* Indicis. — *Articuli supradicti explicabuntur in tract. de Censuris.]*

30 As to the other spiritual punishments of heretics, some hold that manifest heretics are not by this very fact deprived of their benefices, but that the sentence of a judge is required, because in cap. *Ut commissi, de Haeret., in 6°*, the Pontiff says they are to be deprived, or declared deprived. Others hold that by this very fact they are deprived of the title of benefice, but not of the possession.

Quantum ad alias poenas spirituales haereticorum, quidam censent haereticos manifestos non hoc ipso privari suis beneficiis, sed requiri sententiam iudicis, quia cap. Ut commissi, de Haeret., in 6°, *Pontifex dicit esse privandos, aut privatos declarandos. Alii volunt hoc ipso privari titulo beneficii, sed non possessione.*

31 [Indeed, from the prefaced chapter it seems that deprivation of all dignity, benefice, and office is incurred by the law itself, but that only after a declaratory sentence is this deprivation to be brought into execution[43]]

43 Marc. Institut. Alphonsianae, n. 442, quaest. 2.

[Videtur quidem, ex praefato capite, privationem omnis dignitatis, beneficii et officii ipso iure incurri, sed post sententiam declaratoriam tantum hanc privationem ad executionem deducendam esse[43]]

[43] *Marc. Institut. Alphonsianae, n. 442, quaest. 2.*

32 As to ecclesiastical burial, Sylvius here holds that a manifest heretic ought to be deprived of it before the sentence of a judge; because in cap. *Quicumque, de Haereticis, in 6°*, it is decreed indefinitely that heretics, believers, harborers, defenders, and favorers are to be deprived of burial, and that those who presume to do otherwise are excommunicated. Yet, supposing the truth of this opinion, I judge it must be understood of heretics and of the others designated insofar as they are so manifest that by no tergiversation and by no plea of law could they be excused, which I deem rare in practice; otherwise material would be furnished for lawsuits and contentions.

Quantum ad sepulturam ecclesiasticam, Sylvius hic censet haereticum manifestum debere illa privari ante sententiam iudicis; quia cap. Quicumque, de Haereticis, in 6°, *decernitur indefinite haereticos, credentes, receptatores, defensores et fautores esse privandos sepultura, et qui aliter facere praesumpserint, excommunicantur. Verum, supposita veritate huius sententiae, arbitror esse intelligendam de haereticis et aliis assignatis ita manifestis, ut nulla tergiversatione et nullo iuris suffragio possent excusari, quod rarum puto in praxi; alioquin praeberetur materia litibus et contentionibus.*

33 [This interpretation agrees with the text of the chapter; for the punishment of excommunication is decreed against those who knowingly presume to hand over heretics to ecclesiastical burial. Now only they truly violate this law knowingly who concede ecclesiastical burial to manifest heretics. The aforesaid excommunication is not enunciated so generically in the constit. *Apostolicae Sedis*, but is comprehended limitatively in the following, which is the 17th among the excommunications simply reserved to the supreme Pontiff: « Clerics knowingly and spontaneously communicating in divine things with persons excommunicated nominatim by the Roman Pontiff, and receiving them in offices. » This excommunication, therefore, is incurred, and by these alone, who knowingly and spontaneously concede ecclesiastical burial to heretics excommunicated nominatim by the Roman Pontiff, because they receive them in liturgical offices, of which mention is made here.

[Textui capitis concordat haec interpretatio; nam poena excommunicationis decernitur in eos qui scienter praesumpserint haereticos ecclesiastica sepultura tradere. Porro ii tantum vere scienter hanc legem infringunt, qui haereticis manifestis sepulturam ecclesiasticam concedunt. Excommunicatio praedicta in constit. Apostolicae Sedis *non ita generatim enuntiatur, sed comprehenditur limitative in sequenti, quae est 17a inter excommunicationes summo Pontifici simpliciter reservatas: « Clericos scienter et sponte communicantes in divinis cum personis a Romano Pontifice nominatim excommunicatis, et ipsos in officiis recipientes. » Hanc ergo excommunicationem incurrunt, et ii soli, qui scienter et sponte sepulturam ecclesiasticam concedunt haereticis nominatim excommunicatis a Romano Pontifice, quia ipsos in officiis liturgicis, de quibus hic agitur, recipiunt.*

34 By the same constit., « those ordering or compelling notorious heretics, or persons excommunicated or interdicted nominatim, whether by the Pope or by the bishop, to be delivered to ecclesiastical burial, » lie under excommunication latae sententiae reserved to no one. Alexander VI, cap. *Quicumque, de Haereticis, in 6°*; Clement V, cap. *Eos qui, de sepult.*

Ex eadem constit. excommunicationi latae sententiae nemini reservatae subiacent « mandantes seu cogentes tradi ecclesiasticae sepulturae haereticos notorios, aut nominatim excommunicatos vel interdictos, » sive a Papa, sive ab episcopo. Alexander VI, cap. Quicumque, de Haereticis, in 6°*; Clemens V, cap.* Eos qui, de sepult.

35 But whoever admitted to ecclesiastical burial one excommunicated nominatim by a bishop would be punished with simple interdict, according to the same constit.: « Those knowingly... admitting those excommunicated nominatim... to ecclesiastical burial incur by the law itself interdict from entrance into the church, until they have made due satisfaction to the arbitrament of him whose sentence they contemned. »]

> *Qui vero nominatim excommunicatum ab episcopo ad sepulturam ecclesiasticam admitteret, solo interdicto plecteretur, ex eadem constit.: « Scienter... nominatim excommunicatos... ad ecclesiasticam sepulturam admittentes, interdictum ab ingressu ecclesiae ipso iure incurrunt, donec ad arbitrium eius cuius sententiam contempserunt competenter satisfecerint. »]*

36 As to irregularity, some hold that it is incurred as soon as heresy becomes external, although it remain occult, from the same chapter Quicumque. Others hold that it must be noted and manifest, because Boniface VIII, cap. *Statutum* 2, on the same title *de Haereticis*, seems to interpret the praised chapter Quicumque, as regards irregularity, of manifest and proven heretics.

> *Quantum ad irregularitatem, quidam volunt incurri statim ac haeresis fit exterior, licet maneat occulta, ex eodem cap.* Quicumque. *Alii volunt debere esse notam et manifestam, quia Bonifacius VIII, cap.* Statutum 2, eod. tit. de Haereticis*, videtur interpretari laudatum caput* Quicumque*, quoad irregularitatem, de haereticis manifestis et probatis.*

37 Nor do heretics alone incur irregularity, but the believers themselves, their harborers and favorers, nay, even their children, unto the second generation, if the father die in heresy; unto the first, if the mother die in heresy, from both chapters cited above, Quicumque and Statutum.

> *Neque solum haeretici incurrunt irregularitatem, sed ipsi credentes, eorum receptatores et fautores, imo et ipsorum filii, usque ad secundam generationem, si pater moriatur in haeresi; usque ad primam, si mater moriatur in haeresi, ex utroque capite citato* Quicumque *et* Statutum.

38 [It must be noted, however, that in regions where heretics are constituted in religious society, and heresy is not held as an infamous crime, the children of heretics are not irregular from this source[44]

44 Ferraris, v. Haereticus, D. 75.

> *[Notandum tamen quod, in regionibus ubi haeretici in societate religiosa constituuntur, et haeresis pro crimine infami non habetur, filii haereticorum non sunt ex hoc capite irregulares[44]*
>
> *44 Ferraris, v. Haereticus, D. 75.*

39 Irregularity arisen from heresy is reserved to the supreme Pontiff.]

> *Irregularitas ex haeresi nata summo Pontifici reservatur.]*

40 As to the deprivation of jurisdiction, the difficulty is graver. It is certain by the ancient law that all manifest heretics are deprived of jurisdiction. Thus St Thomas resolves it, below q. 39, a. 3, o. But the question is of the more recent law in the Council of Constance. Hence

> *Quantum ad privationem iurisdictionis, gravior est difficultas. Certum est iure antiquo omnes haereticos manifestos privari iurisdictione. Ita resolvit S. Thomas, infra q. 39, a. 3, o. Sed quaestio est de iure recentiori in concilio Constantiensi. Unde*

41 **I say** 3°: Heretics, even manifest ones, unless they be denounced nominatim, or unless they themselves withdraw from the Church, retain jurisdiction and absolve validly.

> ***Dico*** *3°: Haeretici, etiam manifesti, nisi sint nominatim denuntiati, aut nisi ipsi recedant ab Ecclesia, retinent iurisdictionem et valide absolvunt.*

42 *Proof.* From the bull *Ad evitanda scandala* of Martin V, in the Council of Constance, wherein, as related by St Antoninus, III p., lit. 25, c. 2, it is thus enacted: « To avoid scandals and many perils which can befall timorous consciences, we mercifully grant to the faithful of Christ, by the tenor of these presents, that no one henceforth be bound to abstain from communion with anyone, in the administration or reception of the sacraments, or in other divine things whatsoever, or outside them, on pretext of any sentence or censure ecclesiastical promulgated generally by law or by man, or to avoid anyone, or to observe an ecclesiastical interdict, unless such sentence or censure has been published and denounced specially and expressly by a judge against a person, or against a college, or community, church, or place, or a certain land; notwithstanding the apostolic constitutions and whatsoever others making to the contrary. » Then it excepts only the notorious assailants of clerics. From which it is argued thus. The Church grants to the faithful that they may receive the sacraments from heretics not denounced expressly and nominatim. Therefore she leaves to them jurisdiction for the valid administration of the sacraments; otherwise the concession made to the faithful would be null.

> Prob. *ex bulla* Ad evitanda scandala *Martini V, in concilio Constantiensi, in qua, prout refertur a S. Antonino, III p., lit. 25, c. 2, sic statuitur: « Ad evitanda scandala et multa pericula quae conscientiis timoratis contingere possunt, Christi fidelibus, tenore praesentium, misericorditer indulgemus, quod nemo deinceps a communione alicuius, in sacramentorum administratione vel receptione, aut aliis quibuscumque divinis, vel extra, praetextu cuiuscumque sententiae aut censura ecclesiasticae a iure vel ab homine generaliter promulgatae, teneatur abstinere, vel aliquem vitare, aut interdictum ecclesiasticum observare, nisi sententia aut censura huiusmodi fuerit in vel contra personam, vel contra collegium, vel universitatem, ecclesiam, vel locum certum vel certam terram a iudice publicata et denuntiata specialiter et expresse; constitutionibus apostolicis et aliis in contrarium facientibus non obstantibus quibuscumque. » Deinde excipit solum notorios percussores clericorum. Ex quibus sic arguitur. Ecclesia concedit fidelibus ut possint recipere sacramenta ab haereticis non denuntiatis expresse et nominatim. Ergo his relinquit iurisdictionem ad validam sacramentorum administrationem, alioquin nulla foret concessio facta fidelibus.*

43 *Confirmation.* From the practice of the whole Church today. For no one thinks today that Lutherans and Calvinists, notoriously heretical and excommunicate, are to be avoided. No one avoids his own pastor, even as regards the reception of the sacraments, so long as he is left in his benefice, although he be manifestly, in the judgment of all or at least of many, a Jansenist and rebellious against the definitions of the Church. And so of the rest.

> Confir. *ex hodierna totius Ecclesiae praxi. Nemo enim putat hodie vitandos esse Lutheranos et Calvinistas, notorie haereticos et excommunicatos. Nemo vitat suum pastorem, etiam quoad receptionem sacramentorum, quam diu relinquitur in suo beneficio, quamvis sit omnium aut saltem plurium iudicio manifestus Iansenista et Ecclesiae definitionibus rebellis. Et sic de caeteris.*

44 I said in the conclusion: « Or unless they themselves withdraw from the Church; » partly because by this very act whereby they withdraw from the Church they renounce its jurisdiction, which therefore the Church is not considered to continue to them; partly because the council speaks of heretics living among Catholics, insofar as, if manifest heretics were to be avoided before denunciation, dangers of souls and anxieties of consciences would be bred while it was not established that they were manifest, some affirming it, others denying it, as in fact occurs in the case

of Jansenism, and it would be most difficult for a layman to discern with certainty whether anyone is manifestly a heretic or not, since the matter of heresy for the most part surpasses their grasp. For which reasons the council rightly enacted that only the denounced are to be avoided. These causes, however, cease while the heretics themselves withdraw from the Church.

> *Dixi in conclusione: « Vel nisi ipsi ab Ecclesia recedant; » tum quia hoc ipso quo recedunt ab Ecclesia, renuntiant eius iurisdictioni, quam ideo Ecclesia non censetur illis continuare; tum quia concilium loquitur de haereticis inter Catholicos versantibus, quatenus si vitandi essent manifesti ante denuntiationem, generarentur pericula animarum et anxietates conscientiarum, dum non constaret esse manifestos, aliis affirmantibus, aliis negantibus, ut de facto contingit in casu Iansenismi, et difficillimum sit laticis discernere certo an aliquis sit manifeste haereticus, vel non, cum materia haereseos ut plurimum superet eorum captum. Quibus de causis concilium merito statuit solos denuntiatos esse vitandos. Haec vero causae cessant, dum ipsimet haeretici ab Ecclesia recedunt.*

45 *You will say*: This bull is not found in the acts of the Council of Constance. Therefore.

> Dices*: Haec bulla non reperitur in actibus concilii Constantiensis. Ergo.*

46 *I answer.* It is related by St Antoninus, a contemporary of the council, and by all authors everywhere.

> Resp. *Refertur a S. Antonino, concilio coaetaneo, et ab omnibus passim authoribus.*

47 *I insist.* 1°: This bull is related partly by the Council of Basel, session XX, and the Fifth Lateran, session XI, with the greater exception; for it declares that all notoriously excommunicated persons, for whatever cause they be excommunicated, are to be avoided. Therefore.

> Inst. *1°: Haec bulla refertur partim a concilio Basilensi, sess. XX, et Lateranensi V, sess. XI, cum maiori exceptione; declaratur enim esse vitandos omnes notorie excommunicatos, quacumque de causa sint excommunicati. Ergo.*

48 *I answer.* That this addition made by those councils has not been received in usage. Hence Dominic Soto, *in IV Sentent.*, dist. 22, q. 1, a. 4, after relating these councils, says: « By the custom and usage of the Church it is most received that we avoid only those two species of excommunications (namely those denounced nominatim, and the notorious assailants of clerics), which the aforesaid council (of Constance) commanded... And thus it must be held without any fear. » And it is clear from the confirmation of the conclusion.

> Resp. *Hanc additionem ab his conciliis factam non esse usu receptam. Unde Dominicus Soto,* in IV Sentent.*, dist. 22, q. 1, a. 4, postquam retulit haec concilia, dicit: « More et usu Ecclesiae receptissimum est, ut non vitemus nisi illas duas excommunicationum species (scilicet nominatim denuntiatos, et notorios percussores clericorum), quas praedictum concilium (Constantiense) iussit... Et ita absque ullo metu tenendum est. » Et patet ex confirmatione conclusionis.*

49 *You will ask* 1° who can absolve from heresy.

> Petes *1° quis possit absolvere ab haeresi.*

50 *I answer.* The Council of Trent, session XXIV, chapter 6, *de Reformat.*, grants to bishops the faculty of absolving by themselves, or through a vicar specially deputed for this, from all occult cases reserved to the Holy See, and from the occult crime of heresy by themselves alone.

> Resp. *Concilium Trid., sess. XXIV, cap. 6,* de Reformat. *concedit episcopis facultatem absolvendi per se, vel per vicarium specialiter ad id deputandum, ab omnibus casibus occultis S. Sedi reservatis, et a crimine occulto haeresis per seipsos tantum.*

51 But this faculty seems revoked by the bull *Coenae*, as issued after Trent by Sixtus V, Gregory XIII, Clement VIII, and Paul V, not only as regards heresy, but even as regards the other cases contained in this bull; hence in places where this bull prevails, it seems that, apart from danger of death, the Pontiff alone, or he to whom he commits it, can absolve from occult heresy and the other occult cases of the bull *Coenae*.

> *Verum haec facultas videtur revocata per bullam* Coenae, *prout edita est post Trid. a Sixto V, Gregorio XIII, Clemente VIII et Paulo V, non solum quoad haeresim, sed etiam quoad alios casus in hac bulla contentos; unde in locis ubi viget ista bulla, videtur quod, extra periculum mortis, solus Pontifex, aut is cui committit, possit absolvere ab haeresi occulta et aliis casibus occultis bullae* Coenae.

52 [And indeed, by the constit. *Apostolicae Sedis*, « all apostates from the Christian faith, and each and every heretic, by whatever name they be accounted and of whatever sect they exist; their believers, their receivers, favorers, and generally any detainers whatsoever of them, » incur the excommunication reserved in a special manner to the Roman Pontiff. This excommunication is renewed by the bull *Coenae,* § 1. Hence bishops cannot absolve from it, even if they have obtained the general faculty of absolving from the cases reserved to the Holy See, unless it be enunciated specially and expressly in the indult.

> *[Et quidem excommunicationem speciali modo Romano Pontifici reservatam incurrunt, ex constit.* Apostolicae Sedis, *« omnes a christiana fide apostatae, et omnes ac singuli haeretici, quocumque nomine censeantur et cuiuscumque sectae existant; eisque credentes, eorumque receptores, fautores, ac generaliter quilibet illorum detentores. » Haec excommunicatio ex bulla* Coenae, *§ 1, renovatur. Unde ab ea absolvere non possunt episcopi, etiamsi facultatem generalem absolvendi a casibus Sanctae Sedi reservatis obtinuerint, nisi specialiter et expresse in indulto enuntietur.*

53 Nevertheless, since excommunication is not incurred except on account of contumacy, which must be proven in the external forum, any confessor can absolve both the guilty of merely internal heresy and heretics who, by reason of ignorance, have incurred no censure.]

> *Attamen, cum excommunicatio non incurratur nisi propter contumaciam, quae in foro externo probari debet, quivis confessarius potest absolvere, tum reos haeresis mere internae, tum etiam haereticos qui, ratione ignorantia, nullam incurrerunt censuram.]*

54 *You will ask* 2° what punishment those incur who read the books of heretics.

> Petes *2° quam poenam incurrant legentes libros haereticorum.*

55 [I answer. They are excommunicated with excommunication latae sententiae, reserved in a special manner to the Roman Pontiff: « all and singular those knowingly reading, without the authority of the Apostolic See, the books of apostates and heretics upholding heresy, as well as the books of any author prohibited nominatim by apostolic letters, and retaining, printing, and defending those same books in any way whatever. » So the constit. *Apostolicae Sedis*, after the bull *Coenae* and several constitutions of the Pontiffs, namely of Pius IV, constit. 77, of Sixtus V, constit. 74, of Clement VIII, constit. 36, in Cherubin. See what has been said concerning the authority of the Index of prohibited books, in the treatise on Laws, dissertation III, art. 1, *You will ask* 3°.]

> *[Resp. Excommunicantur excommunicatione latae sententiae, speciali modo Romano Pontifici reservata, « omnes et singuli scienter legentes, sine authoritate Sedis Apostolicae, libros apostatarum et haereticorum haeresim propugnantes, necnon libros cuiusvis authoris per apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes*

et quomodolibet defendentes. » Ita constit. Apostolicae Sedis, *post bullam* Coenae *et plures Pontificum constitutiones, scilicet Pii IV, constit. 77, Sixti V, constit. 74, Clementis VIII, constit. 36, apud Cherubinum. Vide quae dicta sunt de authoritate Indicis librorum prohibitorum, in tract. de Legibus, dissert. III, art. 1,* Petes 3°.*]*

On apostasy

1 Apostasia in Greek means the same as discessio or desertio, departure or desertion, in Latin. It is taken here for a withdrawal from a good which one has solemnly professed. And apostasy is threefold: from the faith, from religion, and from order[45]

45 This q. 12, a. 1, o.

Apostasia graece idem est ac latine discessio seu desertio. Sumitur hic pro discessione a bono quod quis solemniter professus est. Et est triplex apostasia: a fide, a religione et ordine[45]

45 *Hic q. 12, a. 1, o.*

2 **I say** 1°: Apostasy from the faith is the desertion of the whole of the faith. And by this it is distinguished from heresy, which is a desertion of the faith as to a part only.

***Dico** 1°: Apostasia a fide est desertio totius fidei. Et per hoc distinguitur ab haeresi, qua est desertio fidei quoad partem tantum.*

3 [Nor indeed does the crime of apostasy require the profession of some false religion. Hence under the name of apostates come those who vindicate to themselves the liberty of thinking and of admitting whatever pleases them, by that very fact rejecting Catholic doctrine: among whom must be numbered rationalists, deists, naturalists, pantheists, spiritists, and in general all who, after receiving baptism, have withdrawn entirely from the Christian faith, even if they have not passed over to Protestantism, or Judaism, or Mohammedanism, or paganism.

[Nec vero ad crimen apostasia requiritur alicuius falsae religionis professio. Unde sub nomine apostatarum veniunt qui libertatem cogitandi et admittendi quidquid ipsis placuerit sibi vindicant, eo ipso doctrinam catholicam respuentes: inter quos adnumerari debent rationalistae, deistae, naturalistae, pantheistae, spiritistae, et generatim omnes qui, post susceptum baptismum, a christiana fide penitus recesserunt, quamvis ad protestantismum, vel iudaismum, vel mahumetismum, vel paganismum non transierint.

4 From what has been said it is clear that apostasy does not differ from heresy essentially, but only according to more and less, which does not diversify the species. For, as the Angelic Doctor says, this q. 12, a. 1, ad 3, « apostasy looks to infidelity as the term to which the movement of one withdrawing from the faith tends. Hence apostasy does not import a determinate species of infidelity, but a certain circumstance aggravating it, according to that of *2 Pet.*, II, 21: It had been better for them not to have known the way of truth, than, after they have known it, to turn back. »

Ex dictis patet apostasiam non essentialiter ab haeresi differre, sed tantum secundum plus et minus, qua non diversificant speciem. Etenim, ut ait Angelicus, hic q. 12, a. 1, ad 3, « apostasia respicit infidelitati ut terminum ad quem est motus recedentis a fide. Unde apostasia non importat determinatam speciem infidelitatis, sed quamdam circumstantiam aggravantem, secundum illud, II Petr.*, II, 21: Melius erat eis veritatem non cognoscere, quam post cognitam retroire. »*

5 Apostates are bound by the same excommunication as heretics, as was related above, de Poenis haereticorum.]

Eadem excommunicatione innodantur apostatae, qua haeretici, ut fuit relatum supra, de Poenis haereticorum.]

6 **I say** 2°: He who abandons an approved religion which he has professed tacitly or expressly, without the legitimate license of his superiors, with the intention of not returning, even if he does not lay aside the habit, is an apostate[46]; because, as the habit does not make the monk, but the profession of the religious life, so the laying aside of the habit does not make the apostate, but the withdrawal from the religious life. Those who laid aside the habit were formerly excommunicated by that very fact, by the chapter *Ut periculosa*, tit. *Ne clerici et monachi*, in 6°, lib. III. But he who does not lay aside the habit is not excommunicated by the common law; each one, however, ought to consult the laws of his own Order. In our Order of Preachers he is excommunicated by that very fact, dist. I, cap. 20, litt. A. Likewise, if he rashly lays aside the habit, that is, with the mind of wandering about, even though with the will of returning, he is indeed not an apostate, yet he is excommunicated by that very fact by the cited chapter, *Ut periculosa*.

46 Ibid.

***Dico** 2°: Qui religionem approbatam quam tacite vel expresse professus est, sine legitima superiorum licentia deserit cum animo non redeundi, etiamsi non dimisso habitu, est apostata[46]; quia, sicut habitus non facit monachum, sed professio vitae religiosae, sic dimissio habitus non facit apostatam, sed recessus a vita religiosa. Dimittentes habitum, ipso facto olim excommunicabantur, ex cap.* Ut periculosa, *tit.* Ne clerici et monachi, *in 6°, lib. III. Qui vero non dimittit habitum, iure communi non excommunicatur, sed unusquisque consulere debet leges sui Ordinis. In nostro Praedicatorum Ordine, excommunicatur ipso facto, dist. I, cap. 20, litt. A. Item, si temere dimittat habitum, animo scilicet vagandi, etsi cum voluntate redeundi, non est quidem apostata, attamen ipso facto excommunicatur cap. citato,* Ut periculosa.

46 Ibid.

7 But if he lays aside the habit not rashly and for the sake of wandering about, but for a legitimate cause, either within the cloister, for instance for the sake of sleep, rest, infirmity, etc., or outside the cloister, for instance for fear of death while traveling through the lands of the infidels, or for the sake of avoiding scandal while traveling by night, or for some other reasonable cause, he does not sin, nor does he incur excommunication; because the celebrated canon is directed only against the rash laying aside of the habit, whereby there would be matter apt for wandering about.

Si vero non temere et causa vagandi, sed ex legitima causa dimittat habitum, sive intra claustrum, puta causa somni, quietis, infirmitatis, etc., sive extra claustrum, puta metu mortis, incedendo per terras infidelium, vel causa vitandi scandali, incedendo noctu, aliave causa rationabili, non peccat, nec incurrit excommunicationem; quia laudatus canon est tantum contra dimissionem habitus temerariam qua sit materia apta evagationi.

8 [By the constitution *Apostolicae Sedis*, « regulars or nuns who presume to contract marriage after a solemn vow of chastity » incur excommunication latae sententiae reserved to their Ordinaries, that is, their major superiors. This crime includes not only a violation of the vow of chastity, but also involves apostasy from the religious life. — It must be observed that this censure was decreed only against those solemnly professed.]

[Ex constit. Apostolicae Sedis, *« regulares aut moniales post votum solemne castitatis matrimonium contrahere praesumentes, » incurrunt excommunicationem latae sententiae suis Ordinariis, id est superioribus maioribus, reservatam. Hoc crimen non tantum violationem voti castitatis includit, sed etiam apostasiam a vita religiosa implicat. — Animadvertendum est hanc censuram nonnisi contra solemniter professos fuisse decretam.]*

9 **I say** 3°: He who withdraws from sacred orders back to the secular state without legitimate dispensation is an apostate and sins mortally; because he abandons the state to which he had been solemnly bound over by the Church, and which many canons forbid him to abandon, penalties being imposed against transgressors.

> ***Dico*** *3°: Qui ab ordine sacro sine legitima dispensatione retrocedit ad statum saecularem, est apostata et peccat mortaliter; quia deserit statum cui per Ecclesiam erat solemniter mancipatus, et quem deserere vetant plures canones, poenis impositis contra transgressores.*

10 [The aforesaid constitution, with excommunication latae sententiae reserved to bishops or ordinaries, punishes « clerics constituted in sacred orders who presume to contract marriage ». For such men despise more than the law of chastity, and are held as apostates. And it suffices for incurring this censure that the attempt at marriage be made before a civil magistrate, in places where the Tridentine decree on clandestinity is in force. So pronounced the S. Congregation of the Holy Office on December 22, 1880.]

> *[Supradicta constit. excommunicatione latae sententiae episcopis sive ordinariis reservata plectit « clericos in sacris constitutos matrimonium contrahere praesumentes. » Tales enim, praeterquam legem castitatis spernunt, ut apostatae habentur. Et sufficit ad hanc censuram incurrendam, ut attentatio matrimonii fiat coram magistratu civili, in locis ubi viget decretum Tridentinum de clandestinitate. Ita pronuntiavit Cong. S. Officii die 22 decembris 1880.]*

On liberty of worship

1 [By liberty of worship there is understood today, on the part of private individuals, the faculty of embracing any form of worship whatever, among dissident and opposed ones, and even of rejecting them all alike; but on the part of the state, the right of publicly professing no religion, and of attributing the same value to all forms of worship, or at least to many, and of conceding them the same rights.

> *[Per cultuum libertatem intelligitur hodie, ex parte privatorum, facultas quemlibet cultum, inter dissidentes et oppositos, amplectendi, et etiam omnes pariter respuendi; ex parte vero reipublicae, ius nullam religionem publice profitendi et omnibus, vel saltem pluribus, eumdem valorem tribuere, eademque iura concedere.*

2 **I say:** Liberty of worship is altogether to be reprobated.

> ***Dico:*** *Cultuum libertas est omnino reprobanda.*

3 *Proof.* 1° from the unhappy and never sufficiently deplorable outcome of this system, namely that through the use of such liberty men are cast outside the way of salvation. For,

> Prob. *1° ex infelici et nunquam satis deplorando exitu huius systematis, scilicet quod usu talis libertatis homines extra viam salutis coniiciantur. Etenim,*

4 That the Catholic faith alone is true, alone salvific, alone imposed by divine law upon all and each man, together with the obligations and duties which flow from it, and that it shines marked with notes of credibility so splendid that its divinity cannot be doubted, no one using reason will sincerely deny. Moreover, liberty or equality of worship evidently sets itself against so excellent and necessary a good. Through it indeed, as Pius IX testifies in the Encyclical of 9 November 1846, there is thrust into Catholic kingdoms « that horrible system, most repugnant even to the natural light of reason itself, of indifference towards any religion whatsoever, which, every distinction between truth and

error being taken away, holds that men can attain eternal salvation in the worship of any religion. » But this indifference casts man outside the way of salvation. Therefore.

> *Quod fides catholica sola vera sit, sola salvifica, sola omnibus atque singulis hominibus, cum obligationibus et officiis quae ex ea dimanant, lege divina imposita, quaeque credibilitatis notis adeo splendidis insignita refulget, ut de eius divinitate dubitari non possit, nemo ratione utens sincere negabit. Porro huic bono tam praestanti et necessario libertas seu aequalitas cultuum evidenter adversatur. Per eam enim, ut testatur Pius IX in Encyclica 9 novembris 1846, in regna catholica invehitur « horrendum illud ac vel ipsi naturali rationis lumini maxime repugnans, de cuiuslibet religionis indifferentia systema, quod, omni veritatis et erroris sublato discrimine, homines in cuiusvis religionis cultu aeternam salutem assequi posse. » Atqui haec indifferentia hominem extra viam salutis coniicit. Ergo.*

5 *Proof.* 2° from the bond by which society is bound to God. This Leo XIII expounds most beautifully in the encyclical letter *Immortale Dei*: « Nature and reason, he says, which command every individual to worship God holily and religiously, because we are in his power and, having proceeded from him, must return to him, bind by the same law civil society. For men joined together in common society are no less under the power of God than individuals; nor does society owe less grace to God than individuals, by whose author it coalesced, by whose nod it is preserved, by whose benefit it has received the innumerable abundance of goods with which it abounds. Wherefore, just as no one is permitted to neglect his own duties towards God, and it is the greatest of duties to embrace religion in mind and morals, not that which each one may prefer, but that which God has commanded, and which by certain and by no means doubtful signs is established to be the one true religion among all: in the same way states cannot without crime conduct themselves as if God in no way existed, or cast aside the care of religion as something foreign and of no profit, or take up indifferently out of several kinds whichever they please; and they must altogether adopt in worshipping God that manner and mode by which God himself has shown that he wills to be worshipped. » But liberty of worship breaks this bond of society towards God. Therefore.

> Prob. 2° *ex vinculo quo societas obstringitur Deo. Hoc praeclare exponit Leo XIII in litteris encyclicis* Immortale Dei*: « Natura et ratio, inquit, quae iubet singulos sancte religioseque Deum colere, quod in eius potestate sumus, et quod ab eo profecti, ad eumdem reverti debemus, eadem lege adstringit civilem communitatem. Homines enim communi societate coniuncti, nihilo sunt minus in Dei potestate, quam singuli; neque minorem quam singuli gratiam Deo societas debet, quo authore coaluit, cuius nutu conservatur, cuius beneficio innumerabilem bonorum quibus affluit copiam accepit. Quapropter, sicut nemini licet sua adversus Deum officia negligere, officiumque est maximum amplecti et animo et moribus religionem, nec quam quisque maluerit, sed quam Deus iusserit, quamque certis minimeque dubitandis indiciis unam ex omnibus veram esse constiterit: eodem modo civitates non possunt citra scelus gerere se tamquam si Deus omnino non esset, aut curam religionis velut alienam nihilque profuturam abiicere, aut adsciscere de pluribus generibus indifferenter quod libeat, omninoque debent eum in colendo numine morem usurpare modumque, quo coli se Deus ipse demonstravit velle. » Atqui cultuum libertas hoc vinculum societatis erga Deum disrumpit. Ergo.*

6 *Proof.* 3° from the ultimate end of civil society. If indeed its proximate end is to provide for the temporal goods and felicity of its members, its ultimate end is the same which was appointed by God for rational creatures, namely that individual men attain eternal salvation.

> Prob. 3° *ex fine ultimo societatis civilis. Si nempe eius finis proximus sit ut commodis et felicitati temporalibus membrorum suorum provideat, finis eius ultimus est idem qui a Deo creaturis rationalibus fuit praestitutus, scilicet ut homines singulares salutem aeternam assequantur.*

7 The same Pontiff proves this in the same place thus: « Holy must the name of God be held among princes, and it must be placed among their chiefest duties to embrace religion with favor, to guard it with benevolence, to shield it with authority and the sanction of laws, and to institute or decree nothing contrary to its welfare. This they owe also to the citizens over whom they preside. For we are born and received into being for a certain supreme and ultimate good, towards which all counsels are to be referred, placed in the heavens beyond this frailty and brevity of life. But since upon this depends the felicity of men, everywhere complete and perfect, therefore to attain the end mentioned is of such great concern to each one that nothing can be of greater concern. Civil society, therefore, born for the common utility, in safeguarding the prosperity of the republic must consult citizens in such a way that, by obtaining and acquiring that supreme and unchangeable good which they spontaneously desire, not only should no disadvantage ever accrue, but every opportunity possible should be brought forward. Of these the chiefest is that care be given to religion, to be preserved holy and inviolate, whose offices join man to God. » But liberty of worship subverts this end. Therefore.

> *Quod ibidem sic adstruit idem Pontifex: « Sanctum oportet apud principes esse Dei nomen, ponendumque in praecipuis eorum officiis religionem gratia complecti, benevolentia tueri, authoritate nutuque legum tegere, nec quippiam instituere aut decernere quod sit eius incolumitati contrarium. Id et civibus debent quibus praesunt. Nati enim susceptique homines sumus ad summum quoddam et ultimum bonorum, quo sunt omnia consilia referenda, extra hanc fragilitatem brevitatemque vitae in caelis collocatum. Quoniam autem hinc pendet hominum undique expleta ac perfecta felicitas, idcirco assequi eum qui commemoratus est finem tanti interest singulorum, ut pluris interesse non possit. Civilem igitur societatem, communi utilitati natam, in tuenda prosperitate reipublicae necesse est sic consulere civibus, ut obtinendo adipiscendoque summo illi atque incommutabili bono, quod sponte appetunt, non modo nihil importet unquam incommodi, sed omnes quascumque possit opportunitates afferat. Quarum praecipua est, ut detur opera religioni sancte inviolateque servandae, cuius officia hominem Deo coniungunt. » Atqui hunc finem subvertit cultuum libertas. Ergo.*

8 *Proof.* 4° from the condemnation repeatedly inflicted upon this doctrine by the supreme Pontiffs.

> Prob. *4° ex damnatione pluries a summis Pontificibus huic doctrinae inusta.*

9 1° Pius VI, in the epistle addressed to Cardinal de la Rochefoucauld and the other prelates of France, on 10 March 1791, exclaims: « What more insane thing could be devised than to establish such equality and liberty among all [forms of worship]? »

> *1° Pius VI, in epistola ad card. de la Rochefoucault caeterosque praelatos Galliarum directa, die 10 martii 1791, exclamat: « Quid insanius excogitari potest, quam talem aequalitatem libertatemque inter omnes [cultus] constituere? »*

10 2° Leo XIII commemorates the doctrinal judgment delivered against liberty of worship by Gregory XVI, sanctioning it, in the above-praised Encyclical: « Thus Gregory XVI, by the encyclical letter beginning *Mirari vos*, of 15 August in the year 1832, struck down with great weight of judgment those things which were then being preached: that no choice need be employed in divine worship; that it belongs integrally to each one to judge of religion as he prefers; that each one's conscience alone is his judge. »

> *2° Iudicium doctrinale contra cultuum libertatem a Gregorio XVI latum ita commemorat, illud sanciendo, Leo XIII in praelaudata Encyclica: « Sic Gregorius XVI per encyclicas litteras hoc initio* Mirari vos*, die 15 augusti anno 1832, magna sententiarum gravitate ea perculit quae iam praedicabantur: in cultu divino nullum adhibere delectum oportere; integrum singulis esse quod malint de religione iudicare; solam quique suam esse conscientiam iudicem. »*

11 3° There was related above the judgment of Pius IX, by which he calls that system « horrible », and « repugnant in the highest degree even to the natural light of reason itself ».

> *3Â° Supra relatum est iudicium Pii IX, quo systema illud « horrendum » appellat, ac vel « ipsi naturali rationis lumini maxime repugnans ».*

12 4° The same Leo XIII, in the same place, equates the principle of the equality and liberty of worship with indifferentism and atheism: « To think concerning religion, he says, that there is no difference between dissimilar and contrary forms, this plainly has this outcome, to refuse to approve any by judgment, to refuse any by use. But this, if it differs from atheism by name, differs nothing in reality. For those who are persuaded that God exists, provided they wish to be consistent and not utterly absurd, necessarily understand that the customary forms in divine worship, so great is their difference, and their dissimilarity and conflict even about the greatest matters, cannot all equally be probable, equally good, equally acceptable to God. »

> *4Â° Idem Leo XIII, ibidem, principium aequalitatis et libertatis cultuum indifferentismo et atheismo aequiparat: « De religione, inquit, putare, nihil inter formas dispares et contrarias interesse, hunc plane habet exitum, nolle ullam probare iudicio, nolle usu. Atqui istud ab atheismo, si nomine aliquid differt, re nihil differt. Quibus enim Deum esse persuasum est, ii, modo constare sibi nec esse perabsurdi velint, necessario intelligunt, usitatas in cultu divino rationes, quarum tanta est differentia maximisque etiam de rebus dissimilitudo et pugna, aeque probabiles, aeque bonas, aeque Deo acceptas esse omnes non posse. »*

13 5° This system is condemned most expressly in the *Syllabus* of the principal errors of our age, whose value and authority the same Leo XIII expresses thus, in the same place: « Pius IX, as opportunity offered himself, marked several of the false opinions which had begun to prevail most widely, and afterwards ordered the same to be gathered into one collection, so that, namely, amid so great a flood of errors Catholic men might have what they might follow without offense. » Further, in the *Syllabus*, among the errors which are referred to the liberalism of today, the three following propositions are enumerated and noted as condemned: LXXVII: « In this age of ours it is no longer expedient that the Catholic religion be held as the one religion of the state, to the exclusion of all other forms of worship whatsoever. » *Alloc. Nemo vestrum*, 26 July 1853. — LXXVIII: « Hence it has been laudably provided by law in some regions bearing the Catholic name, that it shall be lawful for men immigrating thither to hold the public exercise of their own respective form of worship. » *Alloc. Acerbissimum*, 27 September 1852. — LXXIX: « Moreover, it is false that the civil liberty of every form of worship, and the full power given to all of manifesting any opinions and thoughts openly and publicly, conduce to the corrupting of the morals and minds of peoples more easily, and to the spreading abroad of the pestilence of indifferentism. » *Alloc. Nunquam fore*, 15 December 1856. Which proposition is related by Leo XIII as condemned among the notes with which the *Encyclical Immortale Dei* is adorned.

> *5Â° Hoc systema expressissime damnatur in* Syllabo *praecipuorum nostrae aetatis errorum, cuius valorem et authoritatem sic exprimit idem Leo XIII, ibidem: « Pius IX, ut sese opportunitas dedit, ex opinionibus falsis quae maxime valere coepissent, plures notavit, easdemque postea in unum cogi iussit, ut scilicet in tanta errorum colluvione haberent catholici homines quod sine offensione sequerentur. » Porro in* Syllabo*, inter errores qui ad liberalismum hodiernum referuntur, tres propositiones sequentes recensentur et ut damnatae notantur: LXXVII: « Aetate hac nostra non amplius expedit religionem catholicam haberi tamquam unicam status religionem, caeteris quibuscumque cultibus exclusis. »* Alloc. Nemo vestrum*, 26 Iulii 1853. — LXXVIII: « Hinc laudabiliter in quibusdam catholici nominis*

regionibus lege cautum est, ut hominibus illue immigrantibus liceat publicum proprii cuiusque cultus exercitium habere. » Alloc. Acerbissimum*, 27 septembris 1852. — LXXIX: « Enimvero falsum est, civilem cuiusque cultus libertatem, itemque plenam potestatem omnibus attributam quaslibet opiniones cogitationesque palam publiceque manifestandi conducere ad populorum mores animosque facilius corrumpendos, ac indifferentismi pestem propagandam. »* Alloc. Nunquam fore*, 15 decembris 1856. Quae propositio a Leone XIII refertur ut damnata inter notulas quibus ornatur* Encyclica Immortale Dei.

14 Hence resolve:

Resolves inde:

15 1° A Catholic prince or legislator is bound to impede the free exercise of the worship of sects by all the means he can.

1Â° Princeps seu legislator catholicus tenetur liberum sectarum cultum omnibus quibus potest modis impedire.

16 The truth of this conclusion is clear, both from the preceding arguments and authorities, and from this reason, namely that, if it is not permitted to the legislator to indulge lesser vices, much less can he favor those which universally pervert minds, corrupt morals, undermine the very foundations of the republic, and moreover, which is the gravest of evils, turn subjects away from their ultimate end, that is, from the attainment of eternal felicity.

Veritas huius conclusionis patet, tum ex praecedentibus argumentis et authoritatibus, tum ex hac ratione, scilicet quod, si legislatori minoribus vitiis indulgere non liceat, multo minus iis favere potest quae universaliter animos pervertunt, mores corrumpunt, ipsius reipublicae fundamenta convellunt, et insuper, quod malorum gravissimum est, subditos a fine suo ultimo, id est a consecutione felicitatis aeternae, avertunt.

17 2° But since in human affairs it is not permitted to pursue a good except insofar as the circumstances of things allow, if greater evils ought to arise from the violent suppression of an unhappily introduced liberty, it can be tolerated by the public authority, provided it be restrained within due limits, until it can be wholly removed without grave danger. Thus is to be understood what Pius VI wrote in the above-praised epistle: « Let us consider the difference which intervenes between men who have always been outside the bosom of the Church, such as infidels and Jews, and between those who subjected themselves to the Church herself through the sacrament of baptism received. For the former ought not to be constrained to the profession of Catholic obedience; but on the contrary the latter are to be compelled, » supposing indeed that good ought to prevail over evil. And the same Leo XIII says without limitation in the *Encyclical Immortale Dei*: « Nor does a just cause arise, he says, for anyone to accuse the Church, either of being confined more than is right in lenity and facility, or of being hostile to that liberty which is genuine and legitimate. In truth, if the Church judges that it is not licit for the various kinds of divine worship to exist by the same right as the true religion, she does not therefore condemn those moderators of commonwealths who, for the sake of attaining some great good or of prohibiting some evil, patiently suffer by custom and usage that those forms each have place in the state. And she is accustomed to guard this also most greatly, that no one be compelled unwillingly to embrace the Catholic faith, because, as Augustine wisely warns, *Tract.* XXVI *in Ioann.*, n. 2, « Man cannot believe unless he wills. »

2Â° Quia vero in rebus humanis bonum prosequi non licet nisi in quantum rerum adiuncta patiuntur, si maiora mala exoriri debeant ex violenta suppressione libertatis infeliciter introductae, tolerari poterit ab authoritate publica, dummodo intra fines debitos coerceatur, usquedum sine gravi periculo omnino tolli possit. Ita intelligendum est quod

scribebat Pius VI, in epistola praelaudata: « Discrimen inspiciamus quod intercedit inter homines qui extra gremium Ecclesiae semper fuerunt, quales sunt infideles et Iudaei, atque inter illos qui se Ecclesiae ipsi per susceptum baptismi sacramentum subiecerunt. Primi enim constringi ad catholicam obedientiam profitendam non debent, contra vero alteri sunt cogendi, » supposito nempe quod bonum malo praevalere debeat. Et idem sine limitatione dicit Leo XIII in Encyclica Immortale Dei*: « Neque causa iusta nascitur, inquit, ut Ecclesiam quisquam criminetur, aut esse in lenitate facilitateque plus aequo restrictam, aut ei qua germana et legitima sit libertati inimicam. Revera, si divini cultus varia genera eodem iure esse, quo veram religionem, Ecclesia iudicat non licere, non ideo tamen eos damnat rerum publicarum moderatores, qui magni alicuius aut adipiscendi boni, aut prohibendi causa mali, moribus atque usu patienter ferunt ut ea habeant singula in civitate locum. Atque illud quoque magnopere cavere Ecclesia solet, ut ad amplexandam fidem catholicam nemo invitus cogatur, quia, quod sapienter Augustinus monet,* Tract. *XXVI* in Ioann.*, n. 2, « Credere non potest homo, nisi volens. »*

18 This the Angelic Doctor likewise teaches and excellently demonstrates, this q. 10, a. 11, c.: « Human government, he says, is derived from divine government, and ought to imitate it. God, however, although he is omnipotent and supremely good, nevertheless permits certain evils to come to pass in the universe, which he could prevent, lest, those being removed, greater goods should be taken away, or even worse evils should follow. Thus therefore in human government those who preside rightly tolerate certain evils, lest certain goods be impeded, or even lest worse evils be incurred, as Augustine says in book II *de Ordine*, cap. 4, num 2: « Remove the prostitutes from human affairs, and you will confound everything » with lusts. Thus therefore, although infidels sin in their rites, they can be tolerated, either on account of some good which proceeds from them, or on account of some evil which is avoided. From the fact, however, that the Jews observe their rites, in which of old the truth of the faith which we hold was prefigured, this good proceeds, that we have testimony of our faith from enemies, and that there is represented to us as it were in figure that which we believe: and therefore they are tolerated in their rites. But the rites of other infidels, who bring no truth or utility, are not to be tolerated in any degree, except perhaps to avoid some evil, namely to avoid the scandal or discord which could proceed from this, or the impediment to the salvation of those who, thus tolerated, are gradually converted to the faith. For this reason the Church sometimes tolerated the rites of heretics and pagans, when the multitude of infidels was great. » That which is said here of the Jews is confirmed by example; for the Roman Pontiffs have always, on account of the reasons here set forth, tolerated them in the city of Rome and have even protected them with their protection.]

Hoc similiter docet et eximie demonstrat Angelicus, hic q. 10, a. 11, c.: « Humanum regimen, inquit, derivatur a divino regimine, et ipsum debet imitari. Deus autem, quamvis sit omnipotens et summe bonus, permittit tamen aliqua mala fieri in universo, quae prohibere posset, ne, eis sublatis, maiora bona tollerentur, vel etiam peiora mala sequerentur. Sic ergo in regimine humano, illi qui praesunt recte aliqua mala tolerant, ne aliqua bona impediantur, vel etiam ne aliqua mala peiora incurrantur, sicut Augustinus dicit in lib. II de Ordine*, cap. 4, num 2: « Aufer meretrices de rebus humanis, turbaveris omnia » libidinibus. » Sic ergo, quamvis infideles in suis ritibus peccent, tolerari possunt, vel propter aliquod bonum quod ex eis provenit, vel propter aliquod malum quod vitatur. Ex hoc autem quod Iudaei ritus suos observant, in quibus olim praefigurabatur veritas fidei quam tenemus, hoc bonum provenit, quod testimonium fidei nostrae habemus ab hostibus, et quasi in figura nobis repraesentatur quod credimus: et ideo in suis ritibus tolerantur. Aliorum vero infidelium ritus, qui nihil veritatis aut utilitatis afferunt, non sunt aliquatenus tolerandi, nisi forte ad aliquod malum vitandum, scilicet ad vitandum scandalum vel dissidium quod ex hoc posset provenire, vel impedimentum salutis eorum qui paulatim, sic tolerati, convertuntur ad fidem. Propter hoc enim haereticorum et paganorum ritus aliquando Ecclesia*

toleravit, quando erat magna infidelium multitudo. » Quod de Iudaeis hic dicitur, exemplo confirmatur; nam semper Romani Pontifices, propter rationes hic expositas, in urbe Roma eos toleraverunt et etiam protectione sua tutati sunt.]

On blasphemy

1 Blasphemy is a *Greek* word signifying the same as *in Latin* malediction. It is taken by theologians for a malediction detracting from the excellency of goodness, especially divine goodness. Hence **I say** 1°: Blasphemy can be defined[47]: « A speaking of the heart or of the mouth by which, in the manner of an insult, something is said derogating from the excellency of the divine goodness. » Or more briefly: « A contumelious utterance against God. »

47 This q. 13, a. 1, o.

Blasphemia est vox graeca *significans idem ac* latine *maledictio. Sumitur a theologis pro maledictione derogante excellenti bonitati, praecipue divinae. Unde* ***Dico*** *1Â°: Blasphemia definiri potest[47]: « Cordis vel oris locutio qua per modum convicii dicitur aliquid derogans excellentiae divinae bonitatis. » Seu brevius: « Contumeliosa contra Deum locutio. »*

47 Hic q. 13, a. 1, o.

2 It is explained. It is said 1° « of the heart or of the mouth; » because we speak with both, and the demons, who speak only in mind, blaspheme.

Explicatur. Dicitur 1Â° « cordis vel oris; » quia utroque loquimur, et daemones, qui non nisi mente loquuntur, blasphemant.

3 It is said 2° « in the manner of an insult. » By this it is distinguished from simple infidelity, which consists in assent against the faith. For blasphemy does not require assent against the faith, but it suffices that something be said of God in the manner of an insult.

Dicitur 2Â° « per modum convicii. » Per quod distinguitur ab infidelitate simplici, quae consistit in assensu contra fidem. Ad blasphemiam autem non requiritur assensus contra fidem, sed sufficit quod de Deo dicatur aliquid per modum convicii.

4 Nor is there required for this, mark well, an explicit and express intention of insulting and dishonoring God, but virtual and implicit suffices, insofar as by words, or by the manner of pronouncing them, according to the common apprehension, God is dishonored and contemned. Hence I do not assent to those who say that it is not blasphemy but only a vain use of the divine name, when someone, out of indignation against man, not against God, utters his head, his death, his blood, and the like. For those words so pronounced are contumelious to God, though uttered on occasion of another. Consequently there is there a virtual and implicit intention of dishonoring God. And otherwise blasphemies would be exceedingly rare, whereas they are reckoned most frequent. Hence St. Thomas, this a. 2, ad 3, says that he who suddenly breaks out into blasphemous words from some passion, adverting to their signification, commits mortal blasphemy; but he who utters these and the like words not only contumeliously, but either *recitatively*, or *historically*, is not a blasphemer: whence special attention must be given to the manner of pronouncing.

Neque ad id requiritur, quod bene nota, explicita et expressa intentio Deum conviciandi et inhonorandi, sed sufficit virtualis et implicita, quatenus per verba, aut per modum ea pronuntiandi, iuxta communem apprehensionem, Deus dehonoratur et contemnitur. Unde non assentior iis qui dicunt non esse blasphemiam, sed tantum vanum usum divini nominis, quando quis indignando, non Deo, sed homini, profert caput, mortem, sanguinem Dei, et similia. Ista enim

verba eo modo pronuntiata, sunt Deo contumeliosa, licet alterius occasione prolata. Consequenter ibi est virtualis et implicita intentio dehonorandi Deum. Et alioquin rarae admodum forent blasphemiae, cum tamen reputentur frequentissimae. Unde S. Thomas, hic a. 2, ad 3, dicit quod qui subito ex aliqua passione in verba blasphema prorumpit, advertens ad eorum signicationem, blasphemiam mortalem committat; qui autem haec et similia profert non modo contumelioso, sed vel recitative, *vel* historice, *non est blasphemus: unde specialiter attendendum est ad modum pronuntiandi.*

5 It is said « derogating from the excellency of the divine goodness. » And this is done not only when something contumelious is said directly against God, but also against the saints and sacred things; not indeed per se (for thus it would not be properly blasphemy, but the vice of irreligion, opposed to dulia), but with some relation at least virtual to God. For just as, says the Author, God is praised in his saints, insofar as the works which God works in the saints are praised, so also blasphemy committed against the saints redounds consequently to God. Therefore he who would say that St. Peter was impious and damned, that the Blessed Virgin was a harlot, would be a blasphemer. But he who spoke of them, not as saints, but as they were men on earth, e. g., if he called St. Peter bald, St. Crispin a shoemaker, would not be properly a blasphemer, since here there is no respect to God. But if he uttered these things out of hatred and indignation, he would sin mortally against dulia and the observance due to the saints; if however out of jest or levity, it would be venial sin.

Dicitur « derogans excellentiae divinae bonitatis. » Et hoc fit, non solum quando directe contra Deum aliquid contumeliose dicitur, sed etiam contra sanctos et res sacras, non quidem secundum se (sic enim non esset proprie blasphemia, sed vitium irreligiositatis? duliae oppositum), sed cum aliqua habitudine saltem virtuali ad Deum. Sicut enim, inquit Author, Deus in sanctis suis laudatur, in quantum laudantur opera quae Deus in sanctis facit, ita et blasphemia qua fit in sanctos ex consequenti in Deum redundat. Qui ergo diceret S. Petrum esse impium et damnatum, B. Virginem esse meretricem, esset blasphemus. Qui vero loqueretur de illis, non prout sancti sunt, sed prout fuerunt homines in terra, v. g., si nominaret S. Petrum calvum, S. Crispinum sutorem, non esset proprie blasphemus, cum hic nullus sit respectus ad Deum. Sed, si ista proferret ex odio et indignatione, peccaret mortaliter contra duliam et observantiam debitam sanctis; si autem ex ioco vel levitate, esset peccatum veniale.

6 Therefore blasphemy is committed: 1° by denying to God what befits him, or asserting of him what does not befit him: and this whether it be done enuntiatively, optatively, imperatively, or in imperfect speech; 2° by attributing to him what befits him, but mockingly and as something blameworthy, as by naming contemptuously the members of Christ and of the saints; 3° by attributing to a creature what is proper to God, as omnipotence; 4° by deeds equivalent to contumelious words, as spitting upon a crucifix.

Itaque blasphematur: 1Â° denegando Deo quod ipsi convenit, vel asserendo de eo quod ipsi non convenit: et hoc sive fiat enuntiative, sive optative, sive imperative, sive sermone imperfecto; 2Â° tribuendo quod ei convenit, sed irrisorie et quasi quid vituperabile, ut nominando contemptibiliter membra Christi et sanctorum; 3Â° tribuendo creaturae quod est proprium Deo, ut omnipotentiam; 4Â° factis aequivalentibus verbis contumeliosis, ut spuere in crucifixum.

7 **I say** 2°: Blasphemy is divided into heretical and non-heretical[48]. Heretical is that which asserts something contrary to the faith, or denies something pertaining to the faith. Non-heretical is that by which, although nothing openly contrary to the faith is contained, nevertheless the things that are of faith are uttered contemptuously and contumeliously, as if they were blameworthy.

48 Ibid., o.

> ***Dico*** *2Â°: Blasphemia dividitur in haereticalem et non haereticalem[48]. Haereticalis est quae asserit aliquid contrarium fidei, aut negat aliquid ad fidem pertinens. Non haereticalis est qua, licet nihil contra fidem aperte contin neat, ea tamen quae sunt fidei contemptibiliter et contumeliose, quasi essent vituperabilia, profert.*
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> [48] *Ibid., o.*

[8] **I say** 3°: Blasphemy is of its genus the gravest mortal sin[49], nor can it become venial from smallness of matter, but only from involuntary indeliberateness of the act.

[49] Ibid., a. 2, c. et ad 3.

> ***Dico*** *3Â°: Blasphemia est ex genere suo gravissimum peccatum mortale[49], nec fieri potest veniale ex parvitate materiae, sed solum ex indeliberatione involuntaria actus.*
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> [49] *Ibid., a. 2, c. et ad 3.*

[9] The first part is clear, 1° from the gravest punishments by which it is punished[50]. In the old law, *Lev.*, XXIV, 16, the blasphemer was stoned. In canon law several punishments are established against blasphemers; and if they despise these, they are to be deprived of ecclesiastical burial, cap. *Statutum*, tit. *de maledicis*, lib. V *Decretal.*, and elsewhere. 2° Because it gravely repugns charity, since it is against the excellency of the divine goodness; likewise it is opposed to faith and religion, as I shall say presently.

[50] Ibid., in arg. *Sed contra.*

> *Patet prima pars, 1Â° ex gravissimis poenis quibus punitur[50]. In veteri lege,* Levit.*, XXIV, 16, blasphemus lapidabatur. In iure canonico plures poenae statuuntur contra blasphemus, quas si refugiant, sepultura ecclesiastica sunt privandi, cap.* Statutum*, tit.* de maledicis*, lib. V* Decretal.*, et alibi. 2Â° Quia graviter repugnat charitati, cum sit contra excellentiam divinae bonitatis; item opponitur fidei et religioni, ut mox dicam.*
>
> [50] *Ibid., in arg.* Sed contra.

[10] The second part is also clear; because, however slight anything may be per se, that God should be dishonored and held in contempt is always the gravest evil.

> *Patet etiam secunda pars; quia, quantumvis quid secundum se leve dicatur, ut Deus dehonoretur et vilipendatur, est semper gravissimum malum.*

[11] The third part is clear in like manner; because in every species of sin involuntary indeliberateness excuses from the whole or grave sin, because from it it comes about that the act is not perfectly human.

> *Patet pariter tertia pars; quia in omni genere peccati indeliberatio involuntaria excusat a toto vel tanto peccato, quia ex ea fit quod actus non sit perfecte humanus.*

[12] I said « involuntary indeliberateness; » because, if it arise from a habit which the blasphemer does not care to eradicate as far as he can, it does not excuse from mortal sin, because it is voluntary in its cause, namely in that voluntary habit. Let confessors attend to this.

> *Dixi « indeliberatio involuntaria; » quia, si sit ex consuetudine quam blasphemus non curat pro viribus eradicare, non excusat a mortali, quia est voluntaria in causa, scilicet in ista consuetudine voluntaria. Ad hoc advertant confessarii.*

[13] *You will ask* against what virtue blasphemy is opposed.

> Petes *cui virtuti opponatur blasphemia.*

14 *I answer.* Insofar as it contains implicitly or explicitly something false concerning God, it is opposed to the confession of faith; insofar as it is a dishonoring of God, it is opposed to religion, whose formal object is worship, honor rendered to God.

> Resp. *Quatenus continet implicite vel explicite falsum de Deo, opponitur confessioni fidei; quatenus est Dei inhonratio, opponitur religioni, cuius obiectum formale est cultus, honor Deo reddendus.*

On Hope

On Hope

1 (*D. Thomas, IIa IIae, from q. 17 to q. 22.*)

*(*D. Thomas, IIae IIae, a q. 17 ad q. 22.*)*

On hope in itself and on its object

1 Hope taken generally is « a movement of the appetitive part toward a future good, arduous or difficult, yet possible of attainment. » Taken theologically, it is « a habit of mind infused by God, by which we expect with certain confidence the eternal life that is a good to be obtained with divine assistance. » It can be considered together with charity, and is then called formed hope; or without charity, and is then called unformed hope, as was said of faith.

Spes generaliter sumpta est « motus appetitivae partis in bonum futurum arduum seu difficile, possibile tamen adeptu. » Theologice sumpta, est « habitus animi divinitus infusus per quem certa cum fiducia aeterna vita bona, auxilio divino obtinenda, expectamus. » Potest considerari cum charitate, et dicitur spes formata, vel sine charitate, et dicitur spes informis, sicut dictum est de fide.

2 *You will ask* 1° whether unformed Christian hope is a virtue.

Petes *1° utrum spes christiana informis sit virtus.*

3 *I answer.* Unformed hope is a virtue, but an imperfect one. [107]

[107] Here q. 17, a. 1, o.

Resp. *Spes informis est virtus, sed imperfecta.* [107]

[107] *Hic q. 17, a. 1, o.*

4 The reason for the first part is that even unformed Christian hope fits the definition of a virtue; for it is a good quality of mind infused by God, by which one lives rightly, and no one misuses it as a principle.

Ratio primae partis est, quia spei christianae etiam informi convenit definitio virtutis ; est enim bona qualitas mentis a Deo infusa, qua bene vivitur et nemo male utitur ut principio.

5 The reason for the second part is that hope without charity does not make a man simply good; for although it is a principle of a good act, it is not of an act meritorious in order to the last end, namely eternal life; and therefore it has not the standing and character of perfect virtue, as we said before of unformed faith.

Ratio secundae partis est, quia spes sine charitate non facit hominem simpliciter bonum ; licet enim sit principium actus boni, non tamen meritorii in ordine ad finem ultimum, vitam scilicet aeternam : ideoque non habet statum et modum perfectae virtutis, sicut ante diximus de fide informi.

6 *Ob.* That it is not hope, but presumption, to hope for beatitude without charity.

Ob. *Non esse spem, sed presumptionem, sperare beatitudinem sine charitate.*

7 *I answer.* That a sinner can hope without charity for beatitude, yet as to be obtained through charity; for at least he implicitly hopes to obtain the remission of sins, and thus, once charity has been obtained, to attain eternal life through it.]

Resp. *Posse peccatorem sperare sine charitate beatitudinem, sed obtinendam per charitatem ; saltem enim tacite consequi sperat remissionem peccatorum, et ita obtenta charitate, per eam consequi vitam aeternam.]*

8 *You will ask* 2° what the formal object quod of hope is.

Petes *2° quodnam sit obiectum formale quod spei.*

9 I suppose 1° that the adequate and extensive material object of hope is eternal beatitude and all things leading to it, because all these fall under the object quo, that is, under the formal aspect of hope, which is assisting omnipotence, as I shall say presently.

Suppono 1° obiectum materiale adaequatum et extensivum spei, esse aeternam beatitudinem et omnia ad illam conducentia, quia haec omnia cadunt sub obiecto quo, seu sub ratione formali spei, qua est omnipotentia auxilians, ut dicam modo.

10 I suppose 2° that among all these beatitude is the primary and principal object, which is called the formal object quod, because it is that which is principally and first of all hoped for on its own account and by reason of itself, while the rest are hoped for by reason of it. But the difficulty is why beatitude should be the formal object quod of hope: is it formal or objective? Objective beatitude is God himself; formal beatitude is the possession of God, or the beatific vision.

Suppono 2° inter haec omnia beatitudinem esse obiectum primarium et principale, quod dicitur formale quod, quia est id quod principaliter primo per se et ratione sui speratur, caetera autem ratione illius. Sed difficultas est qua beatitudo sit obiectum formale quod spei : an formalis, vel obiectiva ? Beatitudo obiectiva est ipse Deus, formalis est possessio Dei, seu visio beatifica.

11 *I answer.* The formal object quod of hope is not formal but objective beatitude [108], although it connotes [109] formal beatitude, or the beatific vision.

[108] Ibid., a. 2, o.

[109] That is called a connotate which is included in some thing, and is known from its notion as naturally and necessarily following from it.

Resp. *Obiectum formale quod spei non est beatitudo formalis, sed obiectiva [108], connotans [109] tamen beatitudinem formalem, seu visionem beatificam.*

[108] Ibid., a. 2, o.

[109] Id dicitur connotatum, quod includitur in re aliqua, ex cuius notione cognoscitur ut naturaliter et necessario ex ea sequens.

12 *Proof.* of the first part. 1° The formal object quod and immediate object of hope, which is a theological virtue, must be something purely divine and uncreated, as appears in faith and charity; otherwise religion, through whose mediation God is attained by worship, would be a theological virtue — which is commonly denied. Yet only objective beatitude, that is, God himself, is something divine and uncreated, not formal beatitude, which is a created act. Therefore.

Prob. *prima pars. 1° Obiectum formale quod et immediatum spei, quae est virtus theologica, debet esse aliquid pure divinum et increatum, ut patet in fide et charitate ; quia alioquin religio, qua mediante cultu altingit Deum, foret virtus theologica : quod communiter negatur. Atqui sola beatitudo obiectiva, seu Deus ipse, est quid divinum et increatum, non beatitudo formalis, qua est actus creatus. Ergo.*

13 2° That is the formal object quod of hope which hope principally and first attains on its own account and by reason of itself, and by reason of which the rest are attained. Yet only objective beatitude, that is, God himself, is that, and not formal beatitude. Therefore. — Proof of the minor. The one who hopes does not seek God on account of the possession, otherwise he would place his last end in a created act; but he seeks the possession of God on account of God. Likewise, he does not seek the possession of God as a thing that beatifies, but as the mode and application of the God who beatifies, so that the whole reason of beating is God himself. Thus the avaricious man seeks money as a thing, but he does not seek possession as a thing; for he does not seek possession as something to be possessed, but as the mode and application of the thing to be possessed. Therefore.

2° Illud est obiectum formale quod spei, quod principaliter primo per se et ratione sui a spe attingitur, et ratione cuius caetera attinguntur. Atqui id est sola beatitudo obiectiva, seu Deus ipse, non beatitudo formalis. Ergo. — Prob. min. Sperans non quaerit Deum propter possessionem, alias poneret finem ultimum in actu creato ; sed quaerit possessionem Dei propter Deum. Item, non quaerit possessionem Dei ut rem beatificantem, sed ut modum et applicationem Dei beatificantis, ita ut tota ratio beatificans sit ipse Deus. Sic avarus quaerit pecuniam ut rem, possessionem autem non quaerit ut rem ; non enim quaerit possessionem ut possidendam, sed ut modum et applicationem rei possidendae. Ergo.

14 *Proof.* of the second part. God is not the object of hope except as to be possessed. Yet he is possessed through the beatific vision, which is formal beatitude. Therefore in the formal object quod of hope there is conveyed by connotation and obliquely the beatific vision, or formal beatitude, as the condition and application of the formal object.

Prob. *secunda pars. Deus non est obiectum spei, nisi ut possidendus. Atqui possidetur per visionem beatificam, quae est beatitudo formalis. Ergo in obiecto formali quod spei importatur de connotato et in obliquo visio beatifica, seu beatitudo formalis tamquam conditio et applicatio obiecti formalis.*

15 [From this you will gather that neither can the aggregate of formal and objective beatitude be called the formal object quod of hope, both because this aggregate is not something purely divine and uncreated, and because formal and objective beatitude in the object of hope are not two things or two causes, but only one thing and one cause with the application of the cause; so that the whole formal aspect of the object is objective beatitude, that is, God, while its possession is only the condition required in order that it beatify: just as, when fire applied to wood burns it, fire and the application are not two causes but one only, which is fire alone.]

[Ex his colliges quod neque aggregatum ex beatitudine formali et obiectiva possit dici obiectum formale quod spei, tum quia istud aggregatum non est quid pure divinum et increatum, tum quia beatitudo formalis et obiectiva in obiecto spei non sunt duae res aut duae causae, sed una res tantum et una causa cum applicatione causae ; ita ut tota ratio formalis obiecti sit beatitudo obiectiva, seu Deus, eius autem possessio, conditio tantum requisita ut beatificet : sicut, dum ignis, applicatus ligno, comburit, ignis et applicatio non sunt duae causae, sed una tantum, quae est solus ignis.]

16 *You will ask* 3° what the formal object quo of hope is.

Petes *3° quodnam sit obiectum formale quo spei.*

17 *I answer.* The formal object quo of hope is assisting omnipotence, that is, affording or offering helps [110].

110 Ibid., a. 1, c., and the unique question on hope, a. 1.

> Resp. *Obiectum formale quo spei est omnipotentia auxilians, id est praebens aut offerens auxilia* [110].
>
> *110 Ibid., a. 1, c., et quaest. unica de spe, a. 1.*

18 *Proof.* That is the formal object quo of hope which is the motive and reason why we hope for or expect from God, with certain confidence, eternal beatitude and the means leading to it. Yet this motive is assisting omnipotence. Therefore. — Proof of the minor. We cannot hope with certain confidence for beatitude except from one whom we know to be able and willing to give it. Yet God, as omnipotent, can give it, and as assisting, that is, affording or offering helps, wills to give it. Therefore.

> Prob. *Illud est obiectum formale quo spei, quod est motivum et ratio cur speramus seu expectamus a Deo, certa cum fiducia, beatitudinem aeternam et media ad illam conducentia. Atqui istud motivum est omnipotentia auxilians. Ergo. — Prob. min. Non possumus sperare certa cum fiducia beatitudinem, nisi ab eo quem novimus posse et velle eam dare. Atqui Deus, ut omnipotens, potest eam dare, et ut auxilians, seu praebens aut offerens auxilia, vult illam dare. Ergo.*

19 [You will ask 4° whether it is lawful to hope in man.

> *[Petes 4° utrum liceat sperare in homine.*

20 *I answer.* It is not lawful to hope in man [111], but in God alone, as in the primary cause of our beatitude; because he alone, as principal cause, can lead us to it. But it is lawful to hope in man, or in some creature, as in a secondary and instrumental agent through whom we are helped to attain whatever goods are ordered to beatitude: and in this way we turn to the saints, and ask certain things of other men.

111 Ibid., a. 4, o.

> Resp. *Non licet sperare in homine* [111]*, sed in solo Deo, tamquam in primaria causa beatitudinis nostrae ; quia ipse solus tamquam causa principalis ad eam nos perducere potest. Licet autem sperare in homine, vel in aliqua creatura, tamquam in agente secundario et instrumentali per quod adiuvamur ad consequenda quaecumque bona in beatitudinem ordinata : et hoc modo convertimur ad sanctos, et ab aliis hominibus aliqua petimus.*
>
> *111 Ibid., a. 4, o.*

21 Hence you will infer that it is also lawful to place some hope in our own merits acquired by the grace of God, as in instrumental causes, since they are means ordered by God to salvation, and all confidence is ultimately referred back to the very author of grace and of merits.]

> *Hinc inferes etiam esse licitum spem aliquam ponere in propriis meritis ex gratia Dei acquisitis, tamquam in causis instrumentalibus, siquidem sint media a Deo ad salutem ordinata, et tota fiducia ultimate refundatur in ipsum authorem gratiae et meritorum.]*

In whom hope is found

1 1° : Hope remains in all faithful wayfarers, even in sinners who do not despair or presume.

> *1° : Spes remanet in omnibus fidelibus viatoribus, etiam peccatoribus, qui non desperant vel praesumunt.*

[2] *Proof.* 1° because the Council of Trent, session VI, chapter 6 and canon 3, and session XIV, chapter 4, requires hope in sinners who dispose themselves to justification. St. Thomas, in the preceding question 17, a. 8, teaches that hope, in the order of generation, precedes charity, and in Ia IIae, q. 65, a. 4, that faith and hope can exist without charity.

> Prob. *1° quia Tridentinum, sess. VI, cap. 6 et can. 3, et sess. XIV, cap. 4, requirit spem in peccatoribus qui se ad iustificationem disponunt. S. Thomas, quaest. praecedenti 17, a. 8, docet spem, ordine generationis, praecedere charitatem, et Ia IIae, q. 65, a. 4, fidem et spem posse esse sine charitate.*

[3] 2° A habit is destroyed either accidentally, by the destruction of its foundation, or per se by its contrary, or by the destruction of its object. Yet the foundation of hope, which is faith, remains in faithful sinners, and sins of any kind, except despair and presumption, are not contrary to hope; there remains also the formal object quod of hope, namely future beatitude arduous and possible, and the formal object quo, at least assisting omnipotence. For although a sinner cannot hope to attain beatitude while remaining in the same state, he can nevertheless hope, by the assistance of omnipotence, to change his state, and, once it is changed, to obtain beatitude through grace and charity.

> *2° Habitus destruitur, vel per accidens, ad destructionem fundamenti, vel per se a suo contrario, aut ex destructione obiecti. Atqui fundamentum spei, quod est fides, remanet in peccatoribus fidelibus, et peccata quaecumque, praeter desperationem et praesumptionem, non sunt spei contraria ; remanet etiam obiectum spei formale quod, beatitudo scilicet futura ardua, possibilis, et formale quo, minimum ommipotentia auxilians. Quamvis enim peccator non possit sperare beatitudinem adipisci manendo in eodem statu, potest tamen sperare, ex omnipotentia auxiliante, statum mutare, et eo mutato, beatitudinem per gratiam et charitatem obtinere.*

[4] [I said 1° : « In all faithful wayfarers, » because in heretics, since in them the foundation of hope, which is faith, is destroyed, hope also is destroyed; hence, although they may seem to hope, their hope is not theological, but human and false.

> *[Dixi 1° : « In omnibus fidelibus viatoribus, » quia in haereticis, cum in iis destruatur fundamentum spei, quod est fides, destruitur etiam spes : unde, quamvis videantur sperare, spes eorum non est theologica, sed humana et falsa.*

[5] I said 2° : « Who do not despair or presume, » because despair and presumption are contrary to hope: of these below.]

> *Dixi 2° : « Qui non desperant aut praesumunt, » quia desperatio et praesumptio contrariantur spei : de quibus infra.]*

[6] **I say** 2° : In the damned hope does not remain, but it does remain in the souls in Purgatory. [112]

[112] Ibid., q. 18, a. 3, o.

> ***Dico** 2° : In damnatis non remanet spes, bene tamen in animabus in Purgatorio.* [112]
>
> [112] *Ibid., q. 18, a. 3, o.*

[7] *Proof.* of the first part. Hope is concerned with future beatitude as possible. Yet it belongs to the condition of the misery of the damned that they know that they can in no way escape damnation and arrive at beatitude. Therefore.

> Prob. *prima pars. Spes est de beatitudine futura possibilis. Atqui ad conditionem miseriae damnatorum pertinet, ut ipsi sciant quod nullo modo possunt damnationem evadere et ad beatitudinem pervenire. Ergo.*

8 *It is confirmed.* Hope is founded on faith. Yet faith does not remain in the damned, as we said in the treatise on Faith, dissertation IV, article 2, On those having faith, I say 2°. Therefore neither does hope.

> Confirm. *Spes fundatur in fide. Atqui fides non remanet in damnatis, ut diximus in tract. de Fide, dissert. IV, art. 2, De habentibus fidem, dico 2°. Ergo nec spes.*

9 *Proof.* of the second part. With respect to the souls in Purgatory, beatitude is still absent, arduous, and to be attained through grievous punishments, and thus it is the object of hope.

> Prob. *secunda pars. Respectu animarum in Purgatorio, beatitudo est adhuc absens, ardua et per graves poenas assequenda, sicque obiectum spei.*

10 **I say** 3° : Theological hope, neither as to its act nor as to its habit, remains in the blessed. [113]

113 Ibid., a. 2, o.

> ***Dico** 3° : Spes theologica, neque quoad actum, neque quoad habitum, manet in beatis.* [113]
>
> *113 Ibid., a. 2, o.*

11 *Proof.* 1° from the Apostle, *Rom.*, VIII, 24, who says : Hope that is seen is not hope; for what does a man see, why doth he hope?

> Prob. *1° ex Apostolo,* Rom.*, VIII, 24, dicente : Spes quae videtur, non est spes ; nam quod videt quis, quid sperat ?*

12 *Proof.* 2°. When that which gives the species is removed, the species is dissolved, and the same thing cannot remain. [114] Yet in the blessed the formal object from which hope has its species is removed. Therefore. — Proof of the minor. The formal object of hope is future beatitude not yet possessed. Therefore in the blessed, etc. Hence, although the blessed still seem to hope for something, either for themselves, as the glory of the body, or for others, as essential beatitude itself, it is not theological hope, but hope commonly and broadly so called, or rather desire flowing from the love of charity.

114 Ibid., o.

> Prob. *2°. Subtracto eo quod dat speciem, resolvitur species, et non potest res eadem remanere.* [114] *Atqui in beatis subtrahitur obiectum formale a quo spes habet speciem. Ergo. — Prob. min. Obiectum formale spei est beatitudo futura et nondum habita. Ergo in beatis, etc. Unde, quamvis beati videantur adhuc aliquid sperare, vel sibi, ut gloriam corporis, vel aliis, ut beatitudinem ipsam essentialem, non est spes theologica, sed spes communiter et late dicta, seu potius desiderium ex amore charitatis profluens.*
>
> *114 Ibid., o.*

13 [You will ask whether fear joined to hope is good.

> *[Petes utrum timor spei coniunctus sit bonus.*

14 *I answer.* A fourfold fear is distinguished : human, servile, filial, and initial. [115]

115 Here q. 19, a. 2, o.

> Resp. *Quadruplex distinguitur timor : humanus, servilis, filialis et initialis.* [115]
>
> *115 Hic q. 19, a. 2, o.*

15 1° Human or worldly fear is the flight from temporal evil through offense against God. It is mortally or venially evil, according as it leads into mortal or venial sin. Hence that saying, *Matt.*, X, 28 : Do not be afraid of those who kill the body. And, *Luc.*, IX, 26 : Whoever shall be ashamed of me and of my words, of him the Son of man shall be ashamed. Nevertheless, just as evil love of temporal things does not constitute a particular species of vice, but wanders generically through all the vices; so too, proportion being kept, human fear, considered absolutely.

1° Timor humanus seu mundanus est fuga mali temporalis per offensam Dei. Est mortaliter vel venialiter malus, prout in mortale vel veniale peccatum inducit. Hinc illud, Matth., *X, 28 : Nolite timere eos qui occidunt corpus. Et,* Luc., *IX, 26 : Qui me erubuerit, et meos sermones, hunc Filius hominis erubescet. Attamen, sicut amor malus temporalis non constituit peculiarem speciem vitii, sed generatim per omnia vitia vagatur ; ita, proportione servata, timor humanus, absolute spectatus.*

16 2° Servile fear of God is the flight from sin out of dread of the punishment to be inflicted by God. It is twofold : 1° Fear servilely or formally servile, by which only the punishment is dreaded, without the mind pursuing guilt with hatred; so that a man would wish to sin if no punishment impended. This fear is evil and vicious, both because it does not exclude the will to sin, and because it holds the punishment of sin dearer than the guilt itself. 2° Fear servile only materially, by which the mind truly turns away from guilt on account of punishment indeed, yet is not so disposed that it would commit sin if the punishment were absent. This latter fear corresponds to the virtue of hope, and it is good, though not perfect; for it arises from a well-ordered love of self. Hence Christ the Lord, *Luc.*, XII, 5 : I will show you whom you shall fear. Fear him who, after he has killed, has power to cast into hell. Yea, I say to you, fear him. And the Council of Trent, session VI, canon 8 : « If anyone shall say that the fear of hell, through which we take refuge in the mercy of God with sorrow for sins, or abstain from sinning, is a sin, or makes sinners worse : let him be anathema. »

2° Timor Dei servilis est fuga peccati ob formidinem poenae a Deo infligendae. Duplex est : 1° Timor serviliter seu formaliter servilis, quo sola poena reformidatur, quin animus odio prosequatur culpam ; ita ut homo peccare vellet, si poena non impenderet. Hic timor malus est atque vitiosus, tum quia voluntatem peccandi non excludit, tum quia peccati poenam ipsa culpa potiorem habet. 2° Timor materialiter tantum servilis, quo animus vere aversatur culpam propter poenam quidem, sed non ita dispositus, ut peccatum ageret, si poena abesset. Hic posterior correspondet virtuti spei, et bonus est, quamvis non perfectus ; nam oritur ex amore sui bene ordinato. Unde Christus Dominus, Luc., *XII, 5 : Ostendam vobis quem timeatis. Timete eum qui, postquam occiderit, habet potestatem mittere in gehennam. Ita dico vobis, hunc timete. Et Tridentinum, sess. VI, can. 8 : « Si quis dixerit, gehennae metum, per quem ad misericordiam Dei, de peccatis dolendo, confugimus, vel a peccando abstinemus, peccatum esse, aut peccatores peiores facere ; anathema sit. »*

17 3° Filial, or chaste, fear is the fear of sin, in order to avoid offending God. « It belongs to sons to fear the offense of a father, » says the Angelic Doctor [116]. This fear is most excellent, because it arises from charity; indeed it grows as charity grows; for the more one loves God, the more one fears to displease him by sin. Such fear wonderfully aids hope, since the more we shrink from offending God and distrust our own strength, the greater reason we have for hoping.

116 Ibid.

3° Timor filialis, seu castus, est timor peccati, ad cavendam Dei offensam. « Filiorum est timere offensam patris, » ait Angelicus [116]. Hic timor est optimus, quia oritur ex charitate : imo crescit, crescente charitate ; nam quo magis quis Deum diligit, eo magis timet ei per peccatum displicere. Talis timor spem mirifice adiuuat, siquidem eo maiorem sperandi rationem habemus, quo magis Dei offensam reformidamus et de viribus nostris diffidimus.

[116] *Ibid.*

18 4° Initial fear is the flight from sin primarily as it is the evil of guilt, secondarily as it is the cause of punishment. It is called initial, 1° because it belongs to those beginning to walk in the way of God's commandments; for they are led partly by love of virtue, partly by dread of punishment; 2° because the fear of the Lord is the beginning of wisdom, *Ps.* cx, 10.]

4° Timor initialis est fuga peccati primario ut est malum culpae, secundario ut est causa poenae. Dicitur initialis, 1° quia competit incipientibus ambulare viam mandatorum Dei ; hi enim ducuntur partim amore virtutis, partim formidine poenae ; 2° quia initium sapientiae timor Domini, Psal. *cx, 10.]*

On the necessity of hope

1 [Necessity is either of means or of precept; it concerns hope whether habitual or actual.

[Necessitas est vel medii, vel praecepti ; respicit autem spem sive habitualem, sive actualem.

2 **I say** 1° : Habitual hope is necessary for all men, both children and adults, by necessity of means for justification and salvation.

***Dico** 1° : Spes habitualis omnibus hominibus, tam parvulis quam adultis, necessaria est necessitate medii ad iustificationem et salutem.*

3 *Proof.* 1° Sacred Scripture. The Apostle says, *Rom.*, VII, 24 : By hope we are saved. Therefore without hope, just as without faith and charity, there is no salvation; consequently neither justification, since only the just man is to be saved. The same, *1 Cor.*, XIII, 13 : Now there remain faith, hope, charity, these three; but the greater of these is charity. Hope is here placed among the three virtues which now, that is, in the present life, are necessary for the life of the soul, or for justification. To those who had come to the Church from paganism the same Apostle says, *Ephes.*, II, 12 : You were at that time without Christ,... strangers to the covenants, having no hope of the promise, and without God in this world. Whence those who have no hope are estranged from Christ and God, and therefore not just. Similar things are read *Tit.*, III, 7 ; *Hebr.*, X, 23.

Prob. *1° Scriptura sacra. Apostolus dicit,* Rom.*, VII, 24 : Spe salvi facti sumus. Ergo sine spe, sicut et sine fide et charitate, non est salus ; consequenter nec iustificatio, cum iustus solus sit salvandus. Idem,* I Cor.*, XIII, 13 : Nunc autem manent fides, spes, charitas, tria haec. Maior autem horum charitas. Spes hic reponitur inter tres virtutes qua nunc, id est in praesenti vita, sunt necessariae ad vitam animae, seu ad iustificationem. Ad eos qui ex gentilitate ad Ecclesiam venerant dicit idem Apostolus,* Ephes.*, II, 12 : Eratis in illo tempore sine Christo,... hospites testamentorum, promissionis spem non habentes, et sine Deo in hoc mundo. Unde qui spem non habent, sunt alienati a Christo et Deo, nec ideo iusti. Similia leguntur* Tit.*, III, 7 ;* Hebr.*, X, 23.*

4 *Proof.* 2° from Trident., sess. VI, cap. 7 : « Faith, unless hope and charity come to it, neither unites one perfectly with Christ, nor makes him a living member of his body. » What is dealt with here is not acts, but the habits of these three virtues.

Prob. 2° *ex Trident., sess. VI, cap. 7 : « Fides, nisi ad eam spes accedat et charitas, neque unit perfecte cum Christo, neque corporis eius vivum membrum efficit. » Hic agitur, non de actibus, sed de habitibus trium harumce virtutum.*

5 *Proof.* 3° by reason. Man is not just unless his will is ordered to his last end, that is, to eternal beatitude. Yet he cannot be thus ordered unless he hopes that he will obtain this end. Therefore.

Prob. *3° ratione. Homo non est iustus, nisi voluntas eius ad finem suum ultimum, seu ad beatitudinem aeternam, ordinetur. Atqui sic ordinari non potest, nisi hunc finem se obtenturum speret. Ergo.*

6 **I say** 2° : Actual hope is necessary for all adults possessed of reason, by necessity both of means and of precept.

***Dico** 2° : Spes actualis omnibus adultis ratione pollentibus necessaria est, necessitate tam medii quam praecepti.*

7 *Proof.* first part. 1° The just, without hope, cannot ask of God graces and helps of every kind for persevering in justice and for attaining the last end. This is intimated by the text of Paul cited above : By hope we are saved. — 2° Sinners certainly need hope in order to dispose themselves for justification, as Trident. teaches, loc. cit. Moreover, in both cases the habit alone does not suffice, but an act is required, that man may be moved toward God.

Prob. *prima pars. 1° Iusti sine spe non possunt postulare a Deo gratias et cuiusvis generis auxilia ad perseverandum in iustitia et ad finem ultimum consequendum necessaria. Hoc innuitur textu Pauli supra relato : Spe salvi facti sumus. — 2° Peccatores spe certe indigent ut ad iustificationem se disponant, ut docet Trident. ubi supra. Porro in utroque casu habitus solus non sufficit, sed actus requiritur, ut homo ad Deum moveatur.*

8 *Confirmation.* The habit of hope is necessary by necessity of means for justification. Yet this habit is ordered to act. Therefore.

Confirm. *Habitus spei necessarius est necessitate medii ad iustificationem. Atqui hic habitus ordinatur ad actum. Ergo.*

9 *Proof.* second part. 1° The Apostle, *Hebr.*, X, 23 : Let us hold fast the confession of our hope without wavering ; for he is faithful who hath promised. The confession of hope is nothing else than an act, and the precept is expressed by this word, let us hold fast. *1 Tim.*, V, 5 : But she that is a widow indeed, let her hope in God, and continue in supplications. Let her hope contains alike the act and the precept. Ibid., VI, 17 : Charge them... not to hope in the uncertainty of riches, but in the living God. The same, *I Petr.*, I, 13 : Being sober,... hope perfectly for the grace that is offered you in the revelation of Jesus Christ. — 2° Acts of faith, hope, and charity, which are of necessity of means, are likewise necessary by necessity of precept, because God certainly and necessarily wills these means to be employed. Yet the act of hope is necessary by necessity of means. Therefore. — 3° This necessity is brought out by the condemnation of the following proposition, n. 1, by Alexander VII : « Man is never bound, at any time of his life, to elicit an act of faith, hope, and charity in virtue of the divine precepts pertaining to those virtues. »

Prob. *secunda pars. 1° Apostolus,* Hebr.*, X, 23 : Teneamus spei nostrae confessionem indeclinabilem ; fidelis enim est qui repromisit. Confessio spei nihil aliud est quam actus, et praeceptum exprimitur per hoc verbum, teneamus.* 1 Tim.*, V, 5 : Quae autem vere vidua est, speret in Deum, et instet obsecrationibus. Speret continet pariter actum et praeceptum. Ibid., VI, 17 : Praecipe... neque sperare in incerto divitiarum, sed in Deo vivo. Idem* I Petr.*, I, 13 : Sobrii... et perfecte sperete in eam gratiam quae vobis offertur in revelatione Iesu Christi. — 2° Actus fidei, spei et charitatis, qui sunt de necessitate medii, sunt pariter necessaria necessitate praecepti, quia Deus vult certe et necessario haec media adhiberi. Atqui actus spei est necessarius necessitate medii. Ergo. — 3° Haec necessitas eruitur ex condemnatione propositionis sequentis, n. 1, ab Alexandro VII : « Homo nullo unquam vitae suae tempore tenetur elicere actum fidei, spei et charitatis ex vi praeceptorum divinorum ad eas virtutes pertinentium. »*

10 The necessity of the act of hope was denied by the Quietists. Indeed, Michael de Molinos went so far as to teach that the interior life consists in this, that man annihilate his powers and hold himself

merely passive, because « to will to act actively is to offend God, who wills to be himself the only agent. » Applying this principle, which is destructive of every act of every virtue, to hope, Molinos said : « The soul ought not to think either of reward or of punishment; nor of paradise, nor of hell; nor of death, nor of eternity. » This proposition is the 7th among the 68 condemned by Innocent XII. The doctrine of absolute quietism had already been reprobated by this definition of Trident., sess. VI, can. 31 : « If anyone shall say that the justified man sins when he performs good works with a view to eternal reward; let him be anathema. » The Semi-Quietists, among whom the most illustrious Fénelon held first place for some time, did not indeed reprobate the act of hope as evil, but they held it to be less perfect, teaching that the soul can be raised to a state of charity so pure as to become wholly indifferent to the things that concern itself, and « to will nothing for itself, all things for God. » This system is sufficiently known from these three propositions, which are the 1st, 2nd, and 4th among the 23 condemned by Innocent XII : « There is given a habitual state of the love of God which is pure charity, and in which there is no admixture whatsoever of interested motive. Neither the fear of punishments nor the desire of rewards have any longer a part in it. God is loved no longer on account of merit, nor on account of perfection, nor on account of the happiness to be found in loving. » — « In the state of the contemplative or unitive life, every motive of interested fear and hope is lost. » — « In the state of holy indifference, the soul no longer has voluntary and deliberate desires on account of its own interest, except on those occasions in which it fails faithfully to cooperate with all its grace. »

> *Necessitas actus spei fuit negata a Quietistis. Imo, eo usque processit Michael Molinos, ut doceret, vitam internam in hoc consistere, quod homo suas potentias annihilet, et mere passive se habeat, quia « velle operari active, est Deum offendere, qui vult esse ipse solus agens. » Hoc principium omnis actus cuiuslibet virtutis destructivum spei applicans, dicebat Molinos : « Non debet anima cogitare nec de praemio, nec de punitione; nec de paradiso, nec de inferno; nec de morte, nec de aeternitate. » Haec propositio est 7ª inter 68 ab Innocentio XII damnatas. Doctrina quietismi absoluti iam fuerat reprobata hac definitione Trident., sess. VI, can. 31 : « Si quis dixerit, iustificatum peccare, dum intuitu mercedis aeternae bene operatur; anathema sit. » Semi-Quietistae, inter quos illustrissimus Fenelon per aliquod tempus primum locum tenuit, actum spei non reprobabant quidem ut malum, sed illum ut minus perfectum habebant, docentes animam ad statum charitatis tam purae elevari posse, ut prorsus indifferens fiat ad ea quae seipsam respiciunt, et « nihil sibi, omnia Deo velit. » Hoc systema sufficienter noscitur ex tribus his propositionibus, quae sunt 1ª, 2ª et 4ª inter 23 ab Innocentio XII damnatas : « Datur habitualis status amoris Dei qui est charitas pura, et sine ulla admixtione motivi proprii interesse. Neque timor punarum neque desiderium remunerationum habent amplius in eo partem. Non amatur amplius Deus propter meritum, reque propter perfectionem, neque propter felicitatem in amando inveniendam. » — « In statu vitae contemplativae sive unitivae, amittitur omne motivum interessatum timoris et spei. » — « In statu sanctae indifferentiae, anima non habet amplius desideria voluntaria et deliberata propter suum interesse, exceptis iis occasionibus in quibus toti suae gratiae fideliter non cooperatur. »*

11 All know how humbly and even cheerfully Fénelon embraced the pontifical decree, of whom it is reported that Innocent said that « the Archbishop of Cambrai sinned only through excess of the love of God. »

> *Omnes norunt quam humiliter et etiam alacriter decretum pontificium amplexus sit Fénelon, de quo Innocentium dixisse refertur, quod « Cameracensis peccavit tantum excessu amoris Dei. »*

12 *You will ask* when the precept of hope binds.

> Petes *quandonam praeceptum spei obliget.*

13 *I answer.* 1° It binds, like the precept of faith, per se : 1° at the beginning of the use of reason, namely when eternal beatitude has been sufficiently proposed as the last end to which everyone must tend; 2° in danger of death, that man may be strengthened against the temptations that then commonly arise, and be borne toward God as the end soon to be attained; 3° frequently in life, at least once each year; for without an act of hope we can neither persist in the state of justice nor act meritoriously. Besides, virtual hope suffices, which the faithful exercise everywhere, e. g., when they pray or receive the sacraments.

> Resp. *1° Obligat, sicut praeceptum fidei, per se : 1° initio usus rationis, quando nempe aeterna beatitudo sufficienter proposita est tamquam finis ultimus, ad quem unusquisque tendere debet; 2° in periculo mortis, ut homo contra tentationes tunc exsurgere solitas roboretur, et in Deum ultimum finem mox consequendum feratur; 3° saepius in vita, ad minus semel quolibet anno; quia sine actu spei nec in statu iustitiae persistere, nec meritorie operari possumus. De caetero, sufficit spes virtualis, quae a fidelibus passim exercetur, v. g., cum orant vel sacramenta recipiunt.*

14 2° It binds per accidens : 1° when an act of another virtue must be elicited by precept, e. g., of prayer or of penance, which cannot be exercised without at least an implicit act of hope; 2° when one finds himself in danger of despair; 3° in every temptation, when there is danger of consenting to it unless hope raises up the mind.[117]

117 S. Lig., lib. II, n. 20; Homo apost., IV, 13.

> *2° Obligat per accidens : 1° quando ex praecepto eliciendus est actus alterius virtutis, v. g., orationis aut poenitentiae, qui sine actu spei saltem implicito exerceri non potest; 2° quando quis versatur in periculo desperationis; 3° in omni tentatione, cum adest periculum ei consentiendi, nisi spes animum erigat.*[117]
>
> *117 S. Lig., lib. II, n. 20; Homo apost., IV, 13.*

What are the vices opposed to theological hope?

1 [The sins opposed to hope are of two kinds: some of them are contrary to the desire for eternal beatitude, others to the confidence of obtaining it.

> *[Peccata spei contraria duplicis sunt generis : horum alia adversantur desiderio beatitudinis aeternae, alia fiduciae illam obtinendi.*

2 **I say 1°:** To the desire for eternal beatitude are opposed: 1° the affection of this age, whereby earthly things are desired more than eternal ones; 2° a disordered affection for heavenly felicity, whereby out of weariness of life and labor ultimate happiness is sought.

> ***Dico 1° :** Desiderio beatitudinis aeternae adversantur : 1° huius saeculi affectus, quo terrena magis quam aeterna cupiuntur; 2° affectus inordinatus felicitatis coelestis, quo ex taedio vitae et laboris beatitas ultima appetitur.*

3 The former affection is a mortal sin if earthly things are set up as the ultimate end: e.g., if one were so disposed as to wish to dwell perpetually in the present life and to leave heaven to God, if God were willing to leave him the earth. The latter does not exceed venial, unless there be present an express rebellion against divine providence. One may licitly wish for his own death in order to avoid sin or some other immense evil, provided he submit himself to the divine will,[118] and in no other sense than the Apostle when he says, *Rom.*, VII, 24: Unhappy man that I am! who will deliver me from the body of this death?

118 Id., ibid.

Prior affectus est peccatum mortale, si in terrenis ultimus finis reponatur : v. g., si quis ita comparatus sit, ut optet perpetuo in praesenti vita degere, et Deo relinquere coelum, si Deus ipsi terram relinquere vellet. Posterior non excedit veniale, nisi adsit expressa rebellio contra divinam providentiam. Licite vero sibi quis mortem exoptat, ut vitet peccatum vel aliud ingens malum, dummodo divinae voluntati se submittat[118]*, et non alio sensu quam Apostolus dicat,* Rom., *VII, 24 : Infelix ego homo! quis me liberabit de corpore mortis huius?*

[118] *Id., ibid.*

4 **I say 2°:** To the fiducial expectation of eternal beatitude there is opposed, by way of defect, despair; by way of excess, presumption.

Dico 2° : *Expectationi fiduciali beatitudinis aeternae adversatur, per defectum, desperatio; per excessum, praesumptio.*

5 1° Despair is « a giving over of the soul, or a movement of the will, whereby one refuses to attain beatitude through the ordinary means. » It is also defined otherwise, « a want of confidence in obtaining beatitude, or the means necessary for obtaining it. »

1° Desperatio est « animi desponsio, seu motus voluntatis, quo quis refugit adipisci beatitudinem per media ordinaria. » Definitur etiam aliter, « diffidentia obtinendi beatitudinem, vel media ad illam obtinendam necessaria. »

6 Despair is a sin; which the Angelic Doctor proves thus, here q. 20, a. 1, o: « Every appetitive movement conformed to true understanding is good in itself; but every appetitive movement conformed to false understanding is evil in itself and sin. Now the true judgment of the intellect concerning God is that salvation comes from Him, and pardon is granted to sinners...; but it is a false opinion that forgiveness is denied to a repentant sinner, or that God does not convert sinners to Himself through justifying grace. And therefore, just as the movement of hope, which conforms to true judgment, is praiseworthy and virtuous; so the opposite movement of despair, which conforms to a false judgment about God, is vicious and a sin. »

Desperatio est peccatum; quod sic probat Angelicus, hic q. 20, a. 1, o : « Omnis motus appetitivus conformiter se habens intellectui vero, est secundum se bonus; omnis autem motus appetitivus conformiter se habens intellectui falso, est secundum se malus et peccatum. Circa Deum autem vera existimatio intellectus est quod ex ipso provenit hominum salus, et venia peccatoribus datur...; falsa autem opinio est quod peccatori poenitenti veniam deneget, vel quod peccatores ad se non convertat per gratiam iustificantem. Et ideo, sicut motus spei, qui conformiter se habet ad existimationem veram, est laudabilis et virtuosus; ita oppositus motus desperationis, qui se habet conformiter existimationi falsae de Deo, est vitiosus et peccatum. »

7 This sin is mortal, and indeed most grievous, yet less than the sin of unbelief and hatred of God, but more dangerous, as is shown by the same Doctor, ibid., a. 3, o: « That which has aversion from God first and in itself is the most grievous sin among mortal sins. Now to the theological virtues are opposed unbelief, despair, and hatred of God: among which hatred and unbelief, if compared with despair, are found in themselves, that is according to the account of their own species, graver. For unbelief arises from this, that man does not believe the very truth of God; hatred of God from this, that man's will is opposed to the divine goodness itself; but despair from this, that man does not hope to partake of the goodness of God. From this it is evident that unbelief and hatred of God are against God as He is in Himself, but despair as His good is partaken of by us. Hence it is a greater sin, speaking absolutely, not to believe the truth of God, or to hate God, than not to hope to obtain glory from Him. But if despair be compared to those two sins on our part, then despair is more dangerous; because by hope we are recalled from evils and led on to pursue goods. And therefore,

when hope is taken away, men unrestrained fall into vices and are withdrawn from laborious goods... And Isidore says in his book *de Summo bono*: « To commit any crime is the death of the soul; but to despair is to descend into hell. »

> *Hoc peccatum est mortale, et quidem gravissimum, minus tamen peccato infidelitatis et odii Dei, sed periculosius, ut demonstratur ab eodem Doctore, ibid., a. 3, o : « Quod primo et per se habet aversionem a Deo, est gravissimum peccatum inter peccata mortalia. Virtutibus autem theologicis opponuntur infidelitas, desperatio et odium Dei : inter quae odium et infidelitas, si desperationi comparentur, inveniuntur secundum se quidem, id est secundum rationem propriae speciei, graviora. Infidelitas enim provenit ex hoc quod homo ipsam Dei veritatem non credit; odium vero Dei provenit ex hoc quod voluntas hominis ipsi divinae bonitati contrariatur; desperatio autem ex hoc quod homo non sperat se bonitatem Dei participare. Ex quo patet quod infidelitas et odium Dei sunt contra Deum secundum quod in se est, desperatio autem secundum quod eius bonum participatur a nobis. Unde maius peccatum est, secundum se loquendo, non credere Dei veritatem, vel odisse Deum, quam non sperare consequi gloriam ab ipso. Sed, si comparetur desperatio ad duo peccata ex parte nostra, sic desperatio est periculosior; quia per spem revocamur a malis et inducimur ad bona prosequenda. Et ideo, sublata spe, irrefraenati homines labuntur in vitia et a bonis laboribus retrahuntur... Et Isidorus dicit in lib.* de Summo bono *: « Perpetrare flagitium aliquod, mors animae est; sed desperare, est descendere in infernum. »*

8 It follows that despair properly so called admits no parvity of matter, although at times it may become venial, owing to a defect of full consent.[119] Therefore the confessor must examine whether, out of an affect of despair, the customary exercises of piety have been intermitted, especially while the precept urged, or not. Thence he will have a sufficiently safe indication of consent given or refused. He should note, however, that many penitents despair not of God's mercy, but of their own cooperation with His grace; which ought not properly to be called despair, but is pusillanimity, which admits parvity of matter.

119 S. Lig., lib. II, n. 20, Resolv. 2°.

> *Sequitur, desperationem proprie dictam non admittere materiae parvitatem, quamvis aliquando venialis fieri possit, ob defectum pleni consensus.[119] Ideo confessarius examinare debet an ex desperationis affectu consueta pietatis officia, praesertim cum praeceptum urgebat, intermissa fuerint, necne. Inde satis tutum praestiti vel negati consensus indicium habebit. Advertat tamen, plures poenitentes, non de Dei misericordia, sed de sua eius gratiae cooperatione desperare; quod proprie desperatio vocari non debet, sed est pusillanimitas, quae admittit materiae parvitatem.*
>
> *119 S. Lig., lib. II, n. 20, Resolv. 2°.*

9 2° Presumption, which is more frequent than despair, arises from a defect of the fear of God, and is defined: « A rash expectation of beatitude or of the means thereto. »

> *2° Praesumptio, quae est desperatione frequentior, oritur ex timoris Dei defectu, et definitur : « Temeraria expectatio beatitudinis mediorumve ad illam. »*

10 It is a sin, and indeed, according to St. Thomas, here q. 21, a. 1, o, « it is properly a species of sin against the Holy Ghost, because by such presumption the aid of the Holy Spirit, whereby man is recalled from sin, is removed or contemned. »

> *Est peccatum, et quidem, secundum D. Thomam, hic q. 21, a. 1, o, « est proprie species peccati in Spiritum sanctum, quia scilicet per huiusmodi praesumptionem tollitur vel contemnitur adiutorium Spiritus sancti, per quod homo revocatur a peccato. »*

11 It is a grave sin in itself, which is not excused from being so, save by the imperfection of the act. The Angelic Doctor gives the reason, ibid., a. 2, o: « As was said above concerning despair, every appetitive movement which conforms to false understanding is evil in itself and sin. But presumption is a certain appetitive movement, because it imports a certain disordered hope; and it conforms to false understanding, as does despair. For if it is false that God does not grant forgiveness to penitents, or that He does not convert sinners to penance; so too it is false that He grants forgiveness to those persevering in sin, and bestows glory on those ceasing from good work: to which judgment the movement of presumption conforms itself. And therefore presumption is a sin, yet less than despair; because it is more proper to God to have mercy and to spare than to punish, on account of His infinite goodness. For the former belongs to God in Himself, the latter on account of our sins. »

> *Est peccatum per se grave, quod non excusatur a tanto, nisi per actus imperfectionem. Rationem affert Angelicus, ibid., a. 2, o : « Sicut supra dictum est circa desperationem, omnis motus appetitivus qui conformiter se habet ad intellectum falsum, secundum se malus est et peccatum. Praesumptio autem est motus quidam appetitivus, quia importat quamdam spem inordinatam; habet autem se conformiter intellectui falso, sicut et desperatio. Si enim falsum est quod Deus poenitentibus non indulgeat, vel quod peccantes ad poenitentiam non convertat; ita falsum est quod in peccato perseverantibus veniam concedat, et a bono opere cessantibus gloriam largiatur : cui existimationi conformiter se habet praesumptionis motus. Et ideo praesumptio est peccatum, minus tamen quam desperatio; quoniam magis proprium est Deo misereri et parcere, quam punire, propter eius infinitam bonitatem. Illud enim secundum se Deo convenit, hoc autem secundum nostra peccata. »*

12 Hence: 1° He sins who hopes for salvation either on account of his own merits, or on account of the merits of Christ, without any cooperation of his own works.[120] — 2° Likewise he sins mortally who, in hope of pardon, is induced to sin, because, e.g., God forgives many sins as easily as one. But it is otherwise if he were to say that he would confess many sins as easily as one: which of itself is only venial.[121] — 3° He contracts no guilt of presumption properly so called who sins in hope of pardon, so that this hope is not the motive of sinning, but merely accompanies the sin. — 4° Those who persevere in sin in the hope of repenting sometime are with difficulty excused from grave sin against the charity due to themselves, since they expose themselves to great danger of damnation.[122]

120 S. Lig., lib. II, n. 21.

121 Id., ibid.

122 Id., ibid.; Homo apost., IV, 8.

> *Unde : 1° Ille peccat, qui salutem sperat, vel propter propria merita, vel propter merita Christi, absque ulla cooperatione suorum operum[120]. — 2° Item mortaliter peccat, qui ob spem veniae inducitur ad peccandum, quia, v. g., Deus tam facile plura peccata quam unum ignoscit. Secus vero, si diceret se tam facile declaraturum in confessione plura peccata quam unum : quod per se non est nisi veniale[121]. — 3° Praesumptionis proprie dictae reatum non contrahit, qui peccat cum spe veniae, ita ut haec spes non sit motivum peccandi, sed peccatum comitetur tantum. — 4° Difficile excusantur a peccato gravi contra charitatem sibi debitam, qui perseverant in peccato sub spe aliquando poenitendi, cum magno periculo damnationis se exponant[122].*
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> *120 S. Lig., lib. II, n. 21.*
>
> *121 Id., ibid.*
>
> *122 Id., ibid.; Homo apost., IV, 8.*

13 It must be observed that with the sin of either despair or presumption there is sometimes joined the sin of heresy, e.g., if one were to judge, like Cain, his own sin to be unforgivable; or if one were to hope for salvation by the sole powers of nature, as the Pelagians; or by faith alone, without works, as the Lutherans.]

> *Animadvertendum est, cum peccato sive desperationis sive praesumptionis coniungi aliquando peccatum haeresis, v. g., si quis iudicaret, ut Cain, suum peccatum esse irremissibile; aut si quis per solas naturae vires salutem speraret, sicut Pelagiani; vel per solam fidem, sine operibus, ut Lutherani.]*

On Charity

1 (*St. Thomas, qq. 23 to 46.*)

*(*D. Thomas, a q. 23 ad q. 46.*)*

On Charity in Itself

1 (*St. Thomas, q. 23.*)

*(*D. Thomas, q. 23.*)*

Comprising all that concerns charity in itself

1 [Charity is also called love. Love is an inclination toward good. For the good proposed to the appetite moves and inclines it toward itself like a weight, according to the most famous saying of Augustine, book XIII of the *Confess.*, ch. 9, n. 10 : « My weight is my love ; by it I am carried wherever I am carried. » This inclination of the appetite toward good is called love or complacency. If it is with the election of one good over another, it is called dilection. If it is of a good that is esteemed at a great price, it is called charity. If finally it is with mutual affection, it is called friendship. Love therefore extends more widely than dilection, charity and friendship.

[Charitas dicitur etiam amor. Amor est inclinatio in bonum. Bonum enim propositum appetitui, quasi pondus ipsum movet et inclinat ad se, secundum notissimum Augustini effatum, lib. XIII Confess.*, c. 9, n. 10 : « Pondus meum amor meus ; eo feror quocumque feror. » Ista inclinatio appetitus in bonum dicitur amor seu complacentia. Si sit cum electione unius boni prae alio, dicitur dilectio. Si sit boni quod magno pretio aestimatur, dicitur charitas. Si tandem sit cum redamatione, dicitur amicitia. Amor igitur latius patet quam dilectio, charitas et amicitia.*

2 Love is threefold : 1° natural, by which each thing, even non-cognitive, appetites the good suitable to itself; thus a heavy body is said to love the center. 2° animal or sensitive, which follows the apprehension of the senses, and is found also in brutes. 3° rational, which follows the apprehension of the intellect, and this again is twofold, namely of concupiscence, which tends to the object that is loved; and of benevolence, which tends to the person for whom it is loved, and if in addition there be a return of affection on the part of the person loved, it will be the love of friendship. What is loved with the love of benevolence is loved simply and in itself; but what is loved with the love of concupiscence is not loved simply and in itself, but is loved for another. Hence the love of benevolence is love simply, and the love of concupiscence is love in a certain respect.]

Amor est triplex : 1° naturalis, quo unaquaeque res etiam non cognoscitiva appetit bonum sibi conveniens, ut grave dicitur amare centrum. 2° animalis seu sensitivus, qui sequitur apprehensionem sensuum, et est etiam in brutis. 3° rationalis, qui sequitur apprehensionem intellectus, et est iterum duplex, scilicet concupiscentiae, qui tendit in obiectum quod amatur; benevolentiae, qui tendit in personam cui amatur, et in hoc ultimo si quae sit redamatio ex parte personae amatae, erit amor amicitiae. Quod amatur amore benevolentiae, simpliciter et per se amatur; quod autem amore concupiscentiae, non simpliciter et secundum se amatur, sed amatur alteri. Unde amor benevolentiae est amor simpliciter, et amor concupiscentiae est amor secundum quid. Quaestio est hic de charitate habituali.]

3 Habitual charity is usually defined thus : « A virtue divinely infused, by which God is loved for Himself and the neighbor for God. »

> *Charitas habitualis definiri solet : « Virtus divinitus infusa, qua Deus propter se et proximus propter Deum diligitur. »*

4 *You will ask* 1° whether charity is properly called friendship with God.

> Petes *1° utrum charitas sit proprie dicta amicitia cum Deo.*

5 *I answer.* Charity is true and properly called friendship between God and man[123]

123 Here q. 23, a. 1, o.

> Resp. *Charitas est vera et proprie dicta amicitia inter Deum et hominem*[123]
>
> *123 Hic q. 23, a. 1, o.*

6 *Proof.* 1° from Scripture[124] : *Christ*, *John*, XV, 14 et 15, says to the Apostles : You are my friends, and : I will no longer call you servants. But I have called you friends. *James*, II, 23 : Abraham was called the friend of God. *Ps.*, CXXXVIII, 17 : Exceedingly magnified are thy friends, O God. Now nothing can be assigned whereby men are the friends of God except charity.

124 Ibid., o.

> Prob. *1° ex Scriptura*[124] : Christus, Ioann., *XV, 14 et 15, dicit Apostolis : Vos amici mei estis, et : Iam non dicam vos servos. Vos autem dixi amicos.* Iacob., *II, 23 : Abraham amicus Dei appellatus est.* Psal., *CXXXVIII, 17 : Nimis honorificati sunt amici tui, Deus. Nihil autem assignari potest quo homines sint Dei amici, nisi charitas.*
>
> *124 Ibid., o.*

7 *Proof.* 2° For true and properly so-called friendship three conditions are commonly required[125] : first, that the love be of benevolence, whereby we wish good to someone for his sake; not of concupiscence, whereby we wish good for our own sake. The second condition is that the love be mutual; for a friend is a friend to his friend, and is called as it were one who loves back (amicatus), so that such love is as it were a bond between two. The third condition is that this mutual love be founded on some sharing; for those who share in nothing have no union with one another. Now these three conditions are found in the love of charity. Therefore.

125 Ibid., in arg. Sed contra.

> Prob. *2° Ad veram et proprie dictam amicitiam tres conditiones communiter requiruntur*[125] *: prima, quod amor sit benevolentiae, quo volumus alicui bonum propter ipsum; non concupiscentiae, quo volumus bonum propter nos. Secunda conditio est, ut amor sit mutuus; amicus enim est amico amicus, et dicitur quasi amicatus, ita ut talis amor sit quasi nexus inter duos. Tertia conditio est, quod ille amor mutuus fundetur in aliqua communicatione; qui enim in nullo communicant, nullam inter se habent coniunctionem. Atqui hae tres conditiones reperiuntur in amore charitatis. Ergo.*
>
> *125 Ibid., in arg. Sed contra.*

8 *It is proved* 1° By charity man loves God for Himself as last end, and God loves man for his sake, not as for His last end, but for his benefit, or as for the subject to whom He wills eternal beatitude, and thus on both sides it is love of benevolence. 2° It is mutual love; for by charity we love him who loves us, according to that text, *Prov.*, VIII, 17 : I love them that love me, and, *John*, XIV, 21 : He that loveth me shall be loved of my Father, and I will love him. 3° There is a communication of beatitude here through grace in right and in hope, in heaven in fact. Therefore.

Probatur *1° Per charitatem homo diligit Deum propter se ut ultimum finem, et Deus diligit hominem propter se, non tamquam propter finem ultimum, sed propter eius utilitatem, seu tamquam propter subiectum cui vult aeternam beatitudinem, et sic utrinque est amor benevolentiae. 2° Est amor mutuus; diligimus enim per charitatem eum qui nos diligit, iuxta illud* Proverb., *VIII, 17 : Ego diligentes me diligo, et,* Ioann., *XIV, 21 : Qui diligit me, diligitur a Patre meo, et ego diligam eum. 3° Est communicatio beatitudinis hic per gratiam in iure et in spe, in patria in re. Ergo.*

9 *You will ask* 2° what is the object of charity.

Petes *2° quodnam sit obiectum charitatis.*

10 *I answer.* 1° It is certain that God is the thing loved by charity, that is, its material, principal and primary object, and in this respect its formal object quo. For by charity we understand nothing else than the dilection of God, according to that text, *Matt.*, XXII, 37 et 38 : Thou shalt love the Lord thy God.... This is the first and greatest commandment. Likewise it is certain that the neighbor is the secondary material object of charity; because charity is, as we said, the friendship of man with God. But the law of friendship requires that we love not only the friend, but all who specially belong to him. Hence that text, ibid., 39 : Thou shalt love thy neighbor as thyself.

Resp. *1° Certum est Deum esse rem amatam a charitate, seu eius obiectum materiale, principale et primarium, et hac ratione obiectum eius formale quo. Per charitatem enim nihil aliud intelligimus quam dilectionem Dei, iuxta illud,* Matth., *XXII, 37 et 38 : Diliges Dominum Deum tuum... Hoc est primum et maximum mandatum. Pariter certum est quod proximus sit obiectum charitatis materiale secundarium; quia charitas est, ut diximus, amicitia hominis cum Deo. Lex autem amicitiae postulat ut non tantum diligamus amicum, sed etiam omnes qui ad illum specialiter pertinent. Unde illud, ibid., 39 : Diliges proximum tuum sicut teipsum.*

11 *I answer.* 2° The formal object quo, or the motivating formal reason of charity, is uncreated goodness as lovable in itself and for itself, knowable in the supernatural light[126]

126 Here q. 23, a. 5, o and ad 2 ; q. 25, a. 1, o.

Resp. *2° Obiectum formale quo, seu ratio formalis motiva charitatis, est bonitas increata ut est in se et propter se amabilis, lumine supernaturali cognoscibilis*[126]

126 *Hic q. 23, a. 5, o et ad 2 ; q. 25, a. 1, o.*

12 *Proof.* Charity 1° is love. But love is not of anything except under the reason of good. 2° It is love of God. Therefore it is of God under the reason of divine good. 3° It is love, not of concupiscence, which generates hope ; but of benevolence. Therefore under the reason of divine good, not as advantageous to us, but as it is in itself and lovable for itself.

Prob. *Charitas 1° est amor. Amor autem non est de aliquo, nisi sub ratione boni. 2° Est amor Dei. Ergo est de Deo sub ratione boni divini. 3° Est amor, non concupiscentiae, quae generat spem ; sed benevolentiae. Ergo sub ratione boni divini, non ut nobis commodi, sed ut est in se et propter se amabilis.*

13 I said : « Knowable in the supernatural light ; » because to love God for his goodness as known by the natural light would be natural love, not supernatural, such as charity is.

Dixi : « Lumine supernaturali cognoscibilis ; » quia diligere Deum propter eius bonitatem naturali lumine cognoscibilem, esset amor naturalis, non supernaturalis, qualis est charitas.

14 *You will ask* 3° whether God and the neighbor are loved by charity of the same species.

Petes *3° utrum eadem specie charitatis diligatur Deus et proximus.*

15 *I answer.* God and the neighbor are loved by charity of the same species : God for Himself, the neighbor for God[127]

127 Here q. 25, a. 1, o.

> Resp. *Eadem specie charitatis diligitur Deus et proximus : Deus propter seipsum, proximus propter Deum*[127]
>
> 127 *Hic q. 25, a. 1, o.*

16 *Proof.* The act whereby God is loved for Himself and the act whereby the neighbor is loved for God are of the same species[128]. Therefore the habit of charity is of the same species. — The consequence is plain, because habits are specified by acts. — *Proof of antecedent.* The act which bears on the reason of an object and the act which bears on an object under such a reason are of the same species : just as the vision whereby light is seen and the vision whereby color is seen are of the same species; for the species of the act is taken from the object according to its formal reason. Now the formal reason for loving the neighbor is God; for this is what we must love in the neighbor, that God may be in him, that he may cling to Him as to the last end, and thence God may be loved, praised and glorified for His infinite goodness and perfection : and thus it is plain that the formal reason for loving the neighbor is the infinite goodness of God, lovable in itself and for itself. Therefore.

128 Ibid.

> Prob. *Idem est specie actus quo diligitur Deus propter se, et proximus propter Deum*[128]*. Ergo idem specie habitus charitatis. — Patet conseq., quia habitus specificantur ab actibus.* — Prob. ant. *Idem est specie actus qui fertur in rationem obiecti et qui fertur in obiectum sub tali ratione : sicut eadem est specie visio qua videtur lumen, et qua videtur color; species enim actus sumitur ex obiecto secundum rationem formalem ipsius. Atqui ratio formalis diligendi proximum Deus est; hoc enim debemus in proximo diligere, ut in Deo sit, ut illi tamquam fini ultimo haereat, indeque Deus ametur, laudetur et glorificetur propter infinitam eius bonitatem et perfectionem : sicque patet quod ratio formalis diligendi proximum sit infinita Dei bonitas in se et propter se amabilis. Ergo.*
>
> 128 *Ibid.*

17 *You will conclude* 1° that to love the neighbor from another motive, say for benefits received, for his outstanding qualities, whether natural or supernatural, inasmuch as they are his perfections, is not the love of charity; because he is not thus formally loved in reason of the divine goodness : but it is natural love. Nor does it matter that perhaps they are supernatural qualities; for supernaturality there plays a material role, if the reason for loving is not supernatural : thus e. g., the impenitent sinner, who knows heaven by the light of faith, loves it with natural love.

> Colliges *1° quod amare proximum ex alio motivo, puta propter beneficia accepta, propter egregias eius qualitates, sive naturales, sive supernaturales, quatenus sunt ipsius perfectiones, non sit amor charitatis; quia sic non amatur formaliter ratione bonitatis divinae : sed est amor naturalis. Nec refert quod forte sint qualitates supernaturales; supernaturalitas enim ibi se habet materialiter, si ratio amandi non sit supernaturalis : sic v. g., peccator impoenitens, qui per lumen fidei cognoscit paradisum, illum amat amore naturali.*

18 I said : « Inasmuch as they are his perfections ; » because, if they are considered as participations of the divine perfection, it seems that they are even thus loved with the love of charity; for, although they are infinitely distant from the infinite perfection of God, yet it is not so much he himself as the very perfection of God in them that is loved : just as in an image the prototype is loved, who is the whole reason for loving the image.

Dixi : « Quatenus sunt eius perfectiones ; » quia, si considerentur ut participationes divinae perfectionis, videtur quod etiam sic amentur amore charitatis; quia, licet in infinitum distent ab infinita Dei perfectione, tamen non tam ipse quam ipsa Dei perfectionis in illis amatur : sicut in imagine amatur prototypus, qui est tota ratio amandi imaginem.

19 *You will conclude* 2° that charity is one virtue whole in species[129]; because, if from any head it were divided into several species, especially from this head, that it is concerned with God and the neighbor. But from this head it is not diversified, as has been proved. Therefore.

129 Here q. 23, a. 5, o.

Colliges *2° charitatem esse unam virtutem specie totam[129]; quia, si ex aliquo capite divideretur in plures species, maxime ex eo quod versetur circa Deum et proximum. Atqui ex eo capite non diversificatur, ut probatum est. Ergo.*

129 Hic q. 23, a. 5, o.

20 *You will ask* 4° how charity stands in relation to the other virtues.

Petes *4° quomodo charitas se habeat ad alias virtutes.*

21 *I answer.* 1° Charity is more excellent than the other virtues.

Resp. *1° Charitas est excellentior aliis virtutibus.*

22 *Proof.* 1° from the Apostle, *1 Cor.*, XIII, 13 : And now there remain faith, hope, charity, these three. But the greater of these is charity. 2° Faith and hope are compatible with sin, charity is not. 3° Hope and faith involve imperfection : hope, one's own advantage; faith, obscurity; neither of these is in charity of itself.

Prob. *1° ex Apost.*, I Cor., *XIII, 13 : Nunc autem manent fides, spes, charitas, tria haec. Maior autem horum est charitas. 2° Fides et spes compatiuntur peccatum, charitas non. 3° Spes et fides involvunt imperfectionem : spes proprium commodum, fides obscuritatem; nihil horum charitas ex se.*

23 *I answer.* 2° Without charity there can be true virtue, but imperfect[130]; because without charity there can be a good quality which is a steadfast principle of a good act, consequently true virtue. But because without charity it does not order to the last end, nor make one act meritoriously for eternal life, it is not perfect virtue. See the treatise on the Virtues, dissert. II, a. 4, § 3, where we treated this matter ex professo.

130 Ibid., a. 8, o.

Resp. *2° Sine charitate potest esse vera virtus, sed imperfecta[130]; quia sine charitate potest esse bona qualitas quae sit constanter principium boni actus, consequenter vera virtus. Sed, quia sine charitate non ordinat ad ultimum finem, neque facit operari meritorie ad vitam aeternam, non est perfecta virtus. Vide tract. de Virtutibus, dissert. II, a. 4, § 3, ubi hanc materiam ex professo tractavimus.*

130 Ibid., a. 8, o.

24 *I answer.* 3° Charity is the form of the other virtues, not intrinsically and essentially, otherwise all virtues would be of the same species; but extrinsically and accidentally, inasmuch as by it they are referred to the supernatural last end, by which as it were by an ornament they are formed in the supernatural order.

Resp. *3° Charitas est forma aliarum virtutum, non intrinseca et essentialis, alias omnes virtutes essent eiusdem speciei; sed extrinseca et accidentalis, quatenus per eam referuntur ad finem ultimum supernaturalem, quo veluti ornamento*

formantur in ordine supernaturali.

25 That charity is distinguished from grace we proved in many ways in the treatise on Grace, dissert. IV, a. 1, *You will ask* 4°. Let the reader consult it.

Charitatem distingui a gratia multis probavimus in tract. de Gratia, dissert. IV, a. 1, Petes *4°. Adeat lector.*

On the Subject, Cause, Increase, and Loss of Charity

1 (*St. Thomas, q. 24.*)

*(*D. Thomas, q. 24.*)*

On the Subject, Cause, Increase, and Loss of Charity

1 *You will ask* 1° what is the subject of charity.

Petes *1° quodnam sit subiectum charitatis.*

2 *I answer.* that it is the will[131], because the act of charity, which is love, is elicited from the will; but a virtue is in that power in which its act is.

131 Here q. 24, a. 1, o.

Resp. *esse voluntatem[131], quia actus charitatis, qui est amor, elicitur a voluntate; virtus autem est in ea potentia in qua est eius actus.*

131 Hic q. 24, a. 1, o.

3 *You will ask* 2° what is the efficient cause of charity.

Petes *2° quae sit causa efficiens charitatis.*

4 *I answer.* that the habit of charity is not acquired by our acts, but infused by God[132], according to that, *Rom.*, V, 5 : The charity of God is poured forth in our hearts by the Holy Spirit, who is given to us. The reason is, because charity is a certain friendship of man with God, which is founded in the communication of beatitude. But this communication is not according to natural goods, but according to gratuitous gifts. Therefore charity exceeds the faculty of nature. Add that its object is supernatural good, and that it is a property consequent upon the infusion of grace.

132 Ibid., a. 2, o.

Resp. *habitum charitatis non acquiri nostris actibus, sed a Deo infundi[132], iuxta illud,* Rom.*, V, 5 : Charitas Dei diffusa est in cordibus nostris per Spiritum sanctum, qui datus est nobis. Ratio est, quia charitas est quaedam amicitia hominis cum Deo, qua fundatur in communicatione beatitudinis. Hac autem communicatio non est secundum bona naturalia, sed secundum dona gratuita. Ergo charitas naturae facultatem excedit. Adde quod eius obiectum sit bonum supernaturale, et quod sit proprietas consequens ad gratiae infusionem.*

132 Ibid., a. 2, o.

5 If you say, that from acts of infused charity some habit of love is generated, as the Author teaches, q. 17 *de Veritate*, a. 1, ad 4,

Si dicas, ex actibus charitatis infusae generari aliquem habitum dilectionis, ut docet Author, q. 17 de Veritate*, a. 1, ad 4,*

6 *I answer.* that this habit is not the charity by which we are friends and adopted sons of God, but a habit of different species arising from the acts of this infused charity, and therefore acquired, yet not natural absolutely — namely in the sense that it be caused by nature — but in some way supernatural, namely arisen from supernatural acts. Whence, when St. Thomas, 1ae 2ae, q. 51, a. 4, ad 3, says that from acts no habit of an infused habit is produced, he understands a habit of the same species, as the argument required. So interprets Sylvius.

> Resp. *hunc habitum non esse charitatem qua sumus Dei amici et filii adoptivi, sed habitum diversae speciei ex actibus huius charitatis infusae ortum, ideoque acquisitum, neque tamen naturalem absolute, hoc sensu scilicet quod per naturam causetur, sed aliquo modo supernaturalem, nempe ex actibus supernaturalibus ortum. Unde, cum S. Thomas, 1ae 2ae, q. 51, a. 4, ad 3, dicit ex actibus habitus infusi non produci aliquem habitum, intelligit de habitu eiusdem speciei, prout argumentum requirebat. Ita interpretatur Sylvius.*

7 *You will ask* 3° whether charity can increase.

> Petes *3° utrum charitas possit augeri.*

8 *I answer.* That the charity of the wayfarer can increase without limit[133] : so it was defined in the council of Vienne, Clementina *Ad nostrum*, against the Beghards and Beguines[134]. Likewise in the council of Trent, sess. VI, cap. 10 : «This increase of justice, he says, holy Church asks when she prays : «Give us, Lord, an increase of faith, hope and charity.»»

133 Ibid., a. 4, c., and a. 7, o.

134 Ibid., a. 4, o.

> Resp. *Charitatem viae posse augeri sine termino[133] : sic est definitum in concilio Viennensi, Clementina* Ad nostrum *contra Beguardos et Beguinas[134]. Item in concil. Trid., sess. VI, cap. 10 : « Hoc, inquit, justitia incrementum petit sancta Ecclesia, cum orat : « Da nobis, Domine, fidei, spei et charitatis augmentum. »*
>
> *133 Ibid., a. 4, c., et a. 7, o.*
>
> *134 Ibid., a. 4, o.*

9 *Proof.* moreover 1° from Scripture. *Ephes.*, IV, 15 : *Doing truth in charity, let us grow in him through all things, who is the head Christ*. *Philip.*, I, 9 : *I pray that your charity may abound more and more*.

> Prob. *insuper 1° ex Scriptura.* Ephes.*, IV, 15 :* Veritatem facientes in charitate, crescamus in illo per omnia, qui est caput Christus. Philip.*, I, 9 :* Oro ut charitas vestra magis ac magis abundet.

10 *Proof.* 2nd by reason. From this we are called wayfarers, that we tend toward a destined term, which is God. But it is of the notion of wayfarers that they can tend toward the term in such wise that they approach it more and more; otherwise the way of progress would cease. Ergo we can tend toward God in such wise that we approach him more and more. — I subsume. But it is charity that makes this approach; for we do not approach God with steps of the body, but with affections of mind whereby we are united to him. Ergo charity can always be increased in this life.

> Prob. *2° ratione. Ex hoc dicimur viatores, quod in terminum destinatum, qui est Deus, tendimus. Atqui de ratione viatorum est, quod ita tendere possint ad terminum, ut magis ac magis ad illum appropinquent; alioquin cessaret via progressus. Ergo ita possumus tendere in Deum, ut magis ac magis ad illum appropinquemus. — Subsumo. Atqui istam appropinquationem facit charitas; non enim appropinquamus Deo passibus corporis, sed affectibus mentis quibus illi unimur. Ergo charitas in hac vita potest semper augeri.*

11 *You will ask* 4° how charity is increased.

> Petes *4° quomodo charitas augeatur.*

12 *I answer.* 4°. Charity is not increased extensively, but intensively only[135] ; because even the least charity extends itself to all those things which are to be loved out of charity. For since it is efficacious love of the last end, namely God, it has in itself sufficient power for loving other things for God's sake. And if actually it is not extended to counsels and to goods of supererogation, this is not from defect of habitual charity itself, but of the will; because we use habits when we will.

135 Ibid., a. 5, o.

> Resp. *4°. Charitas non augetur extensive, sed intensive tantum[135] ; quia etiam minima charitas se extendit ad omnia illa quae sunt ex charitate diligenda. Cum enim sit amor efficax ultimi finis, scilicet Dei, habet secundum se sufficientem virtutem ad amandum caetera propter Deum. Quod si actu non extendatur ad consilia et ad bona supererogationis, non est ex defectu ipsius charitatis habitualis, sed voluntatis ; quia habitibus utimur cum volumus.*
>
> *135 Ibid., a. 5, o.*

13 *I answer.* 2°. Charity is not increased intensively by the addition of charity to charity[136] ; for this would be to multiply charity, not to increase it : but by deeper rooting in the subject, or by greater actualization of the subject, or by closer adherence to the subject; for to be an accident is to inhere. All these are one and the same thing, and St. Thomas uses now one, now another, while he treats of the intension of qualities. Likewise whether you call this greater a new degree or a new mode, it is all one for our purpose; for this question, about the intension of qualities, is philosophical, and therefore we remit it to the physicists.

136 Ibid.

> Resp. *2°. Charitas non augetur intensive per additionem charitatis ad charitatem[136] ; hoc enim esset charitatem multiplicari, non augeri : sed per maiorem radicationem in subiecto, sive per maiorem actuationem subiecti, sive per maiorem inhaesionem subiecto ; accidentis enim esse, est inhaerere. Haec omnia sunt unum et idem, et modo unum, modo alterum usurpat S. Thomas, dum agit de intensione qualitatum. Item sive istud maius dicas novum gradum, sive novum modum, est perinde ad propositum ; est enim ista quaestio, de intensione qualitatum, philosophica, et ideo eam ad physicos remittimus.*
>
> *136 Ibid.*

14 [*You will ask* 5° whether charity can be perfect in this life.

> *[*Petes *5° utrum charitas in hac vita possit esse perfecta.*

15 *I answer.*[137] If perfection of charity be taken on the part of the lovable, no creature's charity can be perfect. For God is infinitely lovable. But any created virtue is finite. Ergo no creature can love God infinitely. On the part indeed of the lover, charity is perfect when he loves as much as he can; which happens threefoldly : 1° When the whole heart of man is actually always borne toward God; and this is the perfection of the charity of the homeland, than which nothing is possible in this life, in which it is impossible, because of the weakness of human life, always actually to think of God and be moved by love of him. 2° When man devotes his study to occupying himself with God and divine things, others being set aside, except insofar as the necessity of the present life requires; and this perfection is possible in the wayfarer's state, yet it is not common to all having charity. 3° When habitually

someone places his whole heart in God, so that he wills nothing that is contrary to divine love; and this perfection is necessary and common to all who have charity.]

137 Ibid., a. 8, o.

> Resp.[137] *Si perfectio charitatis sumatur ex parte diligibilis, nulla creaturae charitas potest esse perfecta. Est enim Deus infinite diligibilis. Qualibet autem virtus creata est finita. Ergo nulla creatura potest Deum infinite diligere. Ex parte vero diligentis, est perfecta charitas quando diligit tantum quantum potest ; quod tripliciter contingit : 1° Cum totum cor hominis actualiter semper fertur in Deum ; et haec est perfectio charitatis patriae, qua non est possibilis in hac vita, in qua impossibile est, propter humanae vitae infirmitatem, semper actu cogitare de Deo et moveri dilectione ad ipsum. 2° Cum homo studium suum deputat ad vacandum Deo et rebus divinis, praetermissis aliis, nisi quantum necessitas praesentis vitae requirit ; et haec perfectio est possibilis in via, non tamen est communis omnibus habentibus charitatem. 3° Cum habitualiter aliquis totum cor suum ponit in Deo, ita ut nihil velit quod divinae dilectioni sit contrarium ; et haec perfectio est necessaria et communis omnibus charitatem habentibus.]*
>
> [137] *Ibid., a. 8, o.*

16 *You will ask* 6° whether charity is increased by every act of charity, even remiss.

> Petes *6° utrum quolibet actu charitatis, etiam remisso, augeatur charitas.*

17 Before the answer, I suppose 1° that our acts do not efficiently and physically cause the increase of charity, because the reason of increase and of production of habit is the same; for increase is as it were the continued production of a thing. But our acts preceding charity, however elicited with supernatural help, do not efficiently produce charity, as we said above. Ergo.

> *Ante responsionem, suppono 1° actus nostros non causare efficienter physice augmentum charitatis, quia eadem est ratio augmenti et productionis habitus ; augmentum enim est veluti continuata rei productio. Atqui actus nostri praecedentes charitatem, quantumvis ex auxilio supernaturali eliciti, non producunt efficienter charitatem, ut diximus superius. Ergo.*

18 I suppose 2° that our acts concur dispositively to the increase of charity, not only morally or meritoriously, but also physically; because, as I was already saying, the reason of increase and of production of habit is the same, and our acts are physical dispositions to the production of grace and charity. Both suppositions we proved in the tract. *on Grace*, dissert. VI, art. 3. See it.

> *Suppono 2° actus nostros concurrere ad augmentum charitatis dispositive, non solum moraliter seu meritorie, sed etiam physice ; quia, ut iam dicebam, eadem est ratio augmenti et productionis habitus, actus autem nostri sunt dispositiones physicae ad productionem gratiae et charitatis. Utramque suppositionem probavimus in tract.* de Gratia*, dissert. VI, art. 3. Vide.*

19 *I answer.* Every act of charity, even remiss, whether elicited or imperate, merits de condigno the increase of charity[138].

138 Ibid., a. 6, ad 1, and elsewhere.

> Resp. *Quilibet actus charitatis, etiam remissus, sive elicitus, sive imperatus, meretur de condigno augmentum charitatis*[138].
>
> [138] *Ibid., a. 6, ad 1, et alibi.*

20 *Proof.* 1° from the council of Trent, sess. VI, can. 32, where it defines thus : «If anyone shall say..., that the justified man does not truly merit by good works done by him through the grace of God and the merit of Jesus Christ, whose living member he is, an increase of grace... ; let him be anathema.»

But the act of charity, even remiss, is a good work done by the just man through the grace of God and the merit of Christ. Ergo it merits the increase of grace, consequently of charity, which is a property consequent upon grace.

> Prob. *1° ex conc. Trid., sess. VI, can. 32, ubi sic definit : « Si quis dixerit..., iustificatum bonis operibus quae ab eo per Dei gratiam et Iesu Christi meritum, cuius vivum membrum est, fiunt, non vere mereri augmentum gratiae... ; anathema sit. » Atqui actus charitatis, etiam remissus, est bonum opus factum a iusto per Dei gratiam et Christi meritum. Ergo est meritorius augmenti gratiae, consequenter charitatis, quae est proprietas consequens ad gratiam.*

21 *Proof.* 2nd. An act of charity, even remiss, has all the conditions required for merit de condigno of an increase of charity. Ergo. — Proof of the antecedent. A remiss act of charity is supernatural, made by grateful and friendly man in homage of God, and ordained by God to reward, since he promises a reward even to the least acts, such as the giving of a cup of water in his name. These however are the conditions of merit de condigno, as we explained in the tract. *on Grace*, dissert. VI, art. 1. Ergo.

> Prob. *2°. Actus charitatis, etiam remissus, habet omnes conditiones requisitas ad meritum de condigno augmenti charitatis. Ergo. — Prob. ant. Actus charitatis remissus est supernaturalis, ab homine grato et amico in obsequium Dei factus, et a Deo ordinatus ad praemium, siquidem actibus etiam minimis, ut calici aquae dato in suo nomine, promittat mercedem. Hae autem sunt conditiones meriti de condigno, ut expendimus in tract.* de Gratia, *dissert. VI, art. 1. Ergo.*

22 *You will ask* 7° when the increase of grace and charity due to remiss acts is conferred.

> Petes *7° quandonam confertur augmentum gratiae et charitatis actibus remissis debitum.*

23 Before the answer, note that grace and charity are considered two ways : 1° in physical being, insofar as they are qualities; 2° in moral being, insofar as they give right to glory as reward.

> *Ante responsionem, nota gratiam et charitatem considerari dupliciter : 1° in esse physico, quatenus sunt qualitates ; 2° in esse morali, prout dicunt ius ad gloriam ut mercedem.*

24 If you say that right to glory is founded on grace and charity taken physically, answer that this is true of physical and intrinsic right to glory as inheritance, such as belongs to infants dying after baptism, but not of moral and extrinsic right to glory as reward; for this latter is founded on good works which God accepts unto glory as crown and reward. As if the son of a king, heir of a kingdom, had merited a crown by insignia and heroic deeds proposed by the father, he would have a twofold right to the kingdom : one physical and intrinsic, founded in birth, to the kingdom as inheritance; the other moral and extrinsic, founded in distinguished deeds, to the kingdom as crown and prize.

> *Si dicas ius ad gloriam fundari in gratia et charitate physice sumptis, resp. id verum esse de iure physico et intrinseco ad gloriam ut haereditatem, quale competit infantibus post baptismum decedentibus, non vero de iure morali et extrinseco ad gloriam ut mercedem ; illud enim fundatur in bonis operibus quae Deus acceptat ad gloriam ut coronam et mercedem. Sicut, si filius regis regni haeres, insignibus et heroicis factis a patre propositis coronam meruisset, duplex ius ad regnum haberet : unum physicum et intrinsecum, in nativitate fundatum, ad regnum ut haereditatem ; alterum morale et extrinsecum, fundatum in egregiis factis, ad regnum ut coronam et praemium.*

25 *I answer.* 1°. Grace and charity are increased morally straightway by remiss acts, or, which is the same, man by remiss acts of charity acquires new right to the increase of grace, charity and glory. It is evident from what was said above, where we proved that man by remiss acts merits de condigno an increase of grace, charity and glory. Merit moreover is right to reward.

Resp. *1°. Gratia et charitas statim moraliter augentur per actus remissos, seu, quod idem est, homo per actus charitatis remissos acquirit ius novum ad augmentum gratiae, charitatis et gloriae. Patet ex supra dictis, ubi probavimus hominem per actus remissos mereri de condigno augmentum gratiae, charitatis et gloriae. Meritum autem est ius ad premium.*

26 *I answer.* 2°. Grace and charity are not straightway increased in physical being by remiss acts.

Resp. *2°. Gratia et charitas non statim augentur in esse physico per actus remissos.*

27 *Proof.* The increase of grace and charity is not conferred except according to the disposition of the subject. But remiss acts, say up to two in one having charity as six, are not sufficient dispositions for increasing charity physically beyond six, since they are disproportionate to such increase and less perfect than the habit itself. Ergo. — Proof of the major. 1° Grace and charity are not infused into adults except according to the dispositions of the subject, as we proved, On Grace, dissert. VI, art. 3. But the reason of increase and of first production is the same, as we already said, since increase is as it were the continued production of a thing. Ergo. 2° Of spiritual things, proportion observed, we must speak as of natural things, unless the contrary appear from revelation; for the sweet providence of God requires this, to dispose of supernatural things as of natural things known to us : otherwise it would be licit for anyone to feign anything whatever concerning supernatural things. But natural effects, whether in growth or in first production, are produced only according to the dispositions of the subject. Ergo.

Prob. *Augmentum gratiae et charitatis non confertur nisi iuxta dispositionem subiecti. Atqui actus remissi, puta ad duo in habente charitatem ut sex, non sunt dispositiones sufficientes ad augendam physice charitatem ultra sex, cum sint tali augmento improportionati et imperfectiores ipso habitu. Ergo. — Prob. mai. 1° Gratia et charitas non infunduntur adultis nisi iuxta dispositiones subiecti, ut probavimus, de Gratia, dissert. VI, art. 3. Atqui eadem est ratio augmenti et primae productionis, ut iam diximus, cum augmentum sit veluti continuata rei productio. Ergo. 2° De spiritualibus, proportione servata, loquendum est sicut de naturalibus, nisi contrarium ex revelatione constet ; id enim exigit suavis Dei providentia, ut de supernaturalibus disponat sicut de naturalibus quae nobis sunt nota : alias cuilibet fas erit fingere quodlibet circa supernaturalia. Atqui effectus naturales, sive in augmento, sive in prima productione, non producuntur nisi iuxta dispositiones subiecti. Ergo.*

28 *I answer.* 3°. When the just man breaks forth into a more fervent act, the increase of charity which he acquires corresponds to this single more fervent act alone, not to the prior remiss acts, so that there be not one reward conferred under a double title. This is against Bannes and Contenson.

Resp. *3°. Quando iustus prorumpit in actum ferventiorem, augmentum charitatis quod acquirit correspondet isti soli actui ferventiori, non actibus prioribus remissis, ita quod non sit unum praemium duplici titulo collatum. Est contra Bannem et Contensonum.*

29 *Proof.* 1°. Between merit de condigno and reward equality ought to be observed. But if the increase of grace and charity which responds to the more intense act were conferred under another title to the remiss acts, equality is not preserved; for those remiss acts are defrauded of their reward. As if one laboring through six days in the vineyard deserved twenty asses daily, and at the end of the week there were given to him only once twenty asses under several titles, he is defrauded of his hire, nor is equality preserved between merit and reward. Ergo.

Prob. *1°. Inter meritum de condigno et praemium debet servari aequalitas. Atqui, si augmentum gratiae et charitatis quod respondet actui intensiori idem conferatur alio titulo actibus remissis, non servatur aequalitas ; hi enim actus remissi fraudantur suo praemio. Sicut, si laborans per sex dies in vinea, mereatur quotidie viginti asses, et in fine*

hebdomadae dentur tantum illi semel viginti asses pluribus titulis, fraudatur sua mercede, nec servatur aequalitas inter meritum et praemium. Ergo.

30 *Proof.* 2nd from absurdities. From the opposite opinion it follows 1° that the just man who through many years should have elicited more than a thousand remiss acts, if he elicit not a more fervent act, and thus die, will perpetually lack the reward owed to his remiss acts. 2° It follows that one who during a long life should have elicited countless remiss acts, as eight, and dying elicit an intense act as ten, obtains no greater essential reward than the most flagitious man who at the end of life elicits an act of charity as ten.

Prob. 2° *ab absurdis. Ex opposita sententia sequitur 1° quod iustus qui per plures annos actus remissos mille et amplius elicuisset, si non eliciat actum ferventiorem, et sic moriatur, perpetuo carebit praemio suis actibus remissis debito. 2° Sequitur quod qui innumeros actus remissos ut octo per longam vitam elicuisset, et moriendo eliciat actum intensum ut decem, non obtineat maius praemium essentiale, quam flagitiosissimus qui in fine vitae elicit actum charitatis ut decem.*

31 *I answer.* 4°. The increase owed to remiss acts is not conferred in this life, but deferred until entry into glory, or until the first instant of glorification. So John of St. Thomas, Serra, de Marinis, Gonet, etc.

Resp. *4°. Augmentum debitum actibus remissis, non confertur in hac vita, sed differtur usque ad ingressum gloriae, seu ad primum instans glorificationis. Ita Ioannes a S. Thoma, Serra, de Marinis, Gonet, etc.*

32 *Proof* of the first part. The just man is never sufficiently disposed in this life to the increase of grace and charity owed to remiss acts. Ergo. — *Proof* of the antecedent. When the just man elicits a more fervent act, he is disposed thereby to increase corresponding to this act, and at once merits it and receives it. But this increase adequately responds to the more fervent act and is given for it alone, as though no remiss act had preceded, as was proved. Ergo no disposition remains for the increase owed to the remiss acts.

Prob. *prima pars. Iustus nunquam est sufficienter dispositus in hac vita ad augmentum gratiae et charitatis debitum actibus remissis. Ergo.* — Prob. *ant. Quando iustus elicit actum ferventiorem, per illum disponitur ad augmentum huic actui correspondens et simul illud meretur atque recipit. Atqui istud augmentum adaequate actui ferventiori respondet et pro solo illo datur, ac si nullus actus remissus praecessisset, ut probatum est. Ergo nulla relinquitur dispositio ad augmentum actibus remissis debitum.*

33 *Proof* of the second part. The just man at entry into glory, or in the first instant of glorification from the clear vision of God, breaks forth into a most fervent act of such intensity as was the merit of the remiss acts : and since that act is not meritorious, because it is no longer the act of a wayfarer, but only a physical disposition, the whole increase proportioned to this disposition will correspond to the remiss acts alone elicited in the way. Ergo.

Prob. *secunda pars. Iustus in ingressu gloriae, seu in primo instanti glorificationis ex clara Dei visione, erumpit in actum ferventissimum tantae intensionis, quantae fuit meritum actuum remissorum : et cum ille actus non sit meritorius, quia non est amplius viatoris, sed tantum dispositio physica, totum augmentum huic dispositioni proportionatum correspondebit solis actibus remissis elicitis in via. Ergo.*

34 *It is confirmed.* Remiss acts by which man merited de condigno an increase of grace and charity cannot be defrauded of their reward. But they cannot receive it in this life, by lack of disposition, as was proved. Ergo they receive it in the homeland.

Confirm. *Actus remissi quibus homo meruit de condigno augmentum gratiae et charitatis, non possunt fraudari suo praemio. Atqui illud recipere non possunt in hac vita, defectu dispositionis, ut probatum est. Ergo recipiunt in patria.*

35 [*You will ask* 8° whether charity can be lost.

*[*Petes *8° utrum charitas possit amitti.*

36 *I answer.* affirmatively, against Calvin, who, condemned by the council of Trent, had renewed the error of Jovinian and of the Beghards and Beguines already proscribed by the council of Vienne, Clement. *Ad nostrum,* On Heretics.

Resp. *affirmative, contra Calvinum, qui, damnatus a concil. Trident., renovaverat errorem Ioviniani et Beguardorum ac Beguinarum iam proscriptum a concilio Viennensi, Clement.* Ad nostrum*, de Haeret.*

37 It is of faith, as is evident from the following definition of the council of Trent, sess. VI, can. 23 : «If anyone shall say that a man once justified cannot sin more, nor lose grace, and hence that he who falls and sins was never truly justified... ; let him be anathema.»

Est de fide, ut patet ex definitione sequenti conc. Trid., sess. VI, can. 23 : « Si quis hominem semel iustificatum dixerit amplius peccare non posse, neque gratiam amittere, atque adeo eum qui labitur et peccat nunquam vere fuisse iustificatum... ; anathema sit. »

38 *Proof.* 1° from Sacred Scripture. *Ezech.*, XVIII, 26 : *When the just man shall turn himself away from his justice and shall commit iniquity, he shall die in them. Galat.*, V, 4 : *You are made void of Christ, you who are justified in the law; you have fallen from grace. Rom.*, XI, 20 : *Thou standest by faith : be not highminded, but fear. I Cor.*, IX, 27 : *I chastise my body and bring it into subjection, lest perhaps, while I preach to others, I myself become a castaway*.

Prob. *1° ex Scriptura sacra.* Ezech.*, XVIII, 26 :* Cum averterit se iustus a iustitia sua et fecerit iniquitatem, morietur in eis. Galat.*, V, 4 :* Evacuati estis a Christo, qui in lege iustificamini ; a gratia excidistis. Rom.*, XI, 20 :* Tu fide statis : noli altum sapere, sed time. I Cor.*, IX, 27 :* Castigo corpus meum et in servitutem redigo, ne forte, cum aliis praedicaverim, ipse reprobus efficiar.

39 *It is confirmed.* Adam, David, St. Peter were just, and yet by sinning fell from justice and charity. Likewise all infants who are baptized receive grace and charity through baptism. Who would say that none of them ever falls from grace and charity by sinning?

Confirm. *Adam, David, S. Petrus erant iusti, et tamen peccando a iustitia et charitate exciderunt. Item, omnes infantes qui baptizantur, accipiunt per baptismum gratiam et charitatem. Quis dicat eos omnes nunquam a gratia et charitate peccando excidere ?*

40 *Proof.* 2nd from the holy Fathers, who in this are unanimous. Cyprian, *de Unitate Ecclesiae* and *de Lapsis*. *Tertull., de Praescript.*, cap. 3. Ambrose, *de Poenitentia*. *Hieron.*, lib. II *contra Iovinian*. Augustine, epist. 217[139] and lib. *de Correpț. et Gratia,* cap. 12, 13 and 14. Prosper, *in Resp. ad capita Gallor.*, cap. 2 and 7, and elsewhere.

139 Formerly 107.

Prob. *2° ex SS. Patribus, qui in hoc sunt unanimes. Cyprianus,* de Unitate Ecclesiae *et* de Lapsis. Tertull.*,* de Praescript.*, cap. 3. Ambrosius,* de Poenitentia. Hieron.*, lib. II* contra Iovinian. *Augustinus, epist. 217[139] et lib.* de Correpț. et Gratia*, cap. 12, 13 et 14. Prosper,* in Resp. ad capita Gallor.*, cap. 2 et 7, et alibi.*

139 Olim 107.

41 *Proof.* 3rd by reason[140]. Those forms alone are inamissible which fill the whole capacity of matter or object; but those which fill not the whole capacity of matter or subject are amissible by the introduction of another form. But although the charity of the homeland fills the whole capacity of the will, because it is exercised about the highest good clearly seen in itself and is always in act, and therefore inamissible; yet the charity of the wayfarer fills not the whole capacity of the will, because it is exercised about the highest good obscurely and imperfectly known only, nor is it always in act : whence, when actually it is not borne toward God, something can occur whereby charity is lost through the mutability of free choice. Ergo.

140 Here q. 24, a. 11, o.

> Prob. *3° ratione[140]. Eae solae formae sunt inamissibiles, quae replent totam capacitatem materiae seu obiecti ; quae autem non replent totam capacitatem materiae seu subiecti, sunt amissibiles per introductionem alterius formae. Atqui, licet charitas patriae repleat totam capacitatem voluntatis, quia versatur circa summum bonum clare visum in se et semper est in actu, ideoque inamissibilis ; charitas tamen viae non replet totam capacitatem voluntatis, quia versatur circa summum bonum obscure tantum et imperfecte cognitum, nec semper est in actu : unde, quando actu in Deum non fertur, potest aliquid occurrere per quod charitas amittatur ex mutabilitate arbitrii. Ergo.*
>
> *140 Hic q. 24, a. 11, o.*

42 *You will object* : According to the Apostle, *I Cor.*, XIII, 8, charity never falls away. Ergo.

> Obi. *: Secundum Apostolum,* I Cor*., XIII, 8, charitas nunquam excidit. Ergo.*

43 *I answer.* Charity is compared here to faith and hope, which pertain to the condition of the wayfarer. For through faith we walk, and not through species, *II Cor.*, V, 7. Through faith we know in part... But when that which is perfect shall come, that which is in part shall be done away, *I Cor.*, XIII, 9 and 10. Hope likewise shall be done away, the good which we now hope for being attained. But charity, far from needing to be done away in the homeland, will rather be perfected and remain forever, provided it have been finally had in the way : because God then will necessarily be loved as the highest good and possessed inamissibly. Therefore the cited text is beside the purpose.]

> Resp. *Charitas comparatur hic ad fidem et spem, quae pertinent ad conditionem viatoris. Per fidem enim ambulamus, et non per speciem,* II Cor*., V, 7. Per fidem ex parte cognoscimus... Cum autem venerit quod perfectum est, evacuabitur quod ex parte est,* I Cor*., XIII, 9 et 10. Spes item evacuabitur, adepto bono quod nunc speramus. Charitas vero, nedum evacuari debeat in patria, perficietur potius et in aeternum permanebit, dummodo finaliter fuerit habita in via : quia Deus tunc necessario diligetur ut summum bonum summum bonum et inamissibiliter possidebitur. Non est ergo ad rem textus allatus.]*

44 *You will ask* 9° whether charity is lost by one mortal sin.

> Petes *9° utrum per unum peccatum mortale amittatur charitas.*

45 *I answer.* affirmatively[141].

141 Ibid., a. 12, o.

> Resp. *affirmative[141].*
>
> *141 Ibid., a. 12, o.*

46 It is of faith, decided in the council of Trent, sess. VI, cap. 15, in these words : «It must be asserted that the grace of justification once received is lost, not only by infidelity, whereby faith itself also is

lost, but by any mortal sin whatsoever, although faith be not lost.»

Est de fide decisa in concil. Trid., sess. VI, cap. 15, his verbis : « Asserendum est, non modo infidelitate, per quam et ipsa fides amittitur, sed etiam quocumque alio mortali peccato, quamvis non amittatur fides, acceptam iustificationis gratiam amitti. »

47 *It is proved* moreover by theological arguments. 1° By mortal sin man becomes worthy of eternal death[142], according to that, *Rom.*, VI, 23 : *The wages of sin is death*. And everyone having charity is worthy of eternal life. But no one can be at once worthy of eternal death and of eternal life. Ergo.

142 Ibid., in arg. *Sed contra*.

Probatur *insuper argumentis theologicis. 1° Per peccatum mortale, homo fit dignus morte aeterna[142], secundum illud,* Rom.*, VI, 23 :* Stipendia peccati mors. *Et quilibet habens charitatem est dignus vita aeterna. Atqui nemo potest esse simul dignus morte aeterna et vita aeterna. Ergo.*

142 Ibid., in arg. Sed contra.

48 2° One contrary is expelled by another supervening contrary[143]. But any mortal sin whatsoever is contrary to charity according to its proper notion. For charity is the union of friendship with God as last end; mortal sin is aversion from God as last end : charity makes man will to love God above all things, and to subject himself to all his precepts; mortal sin prefers a creature to God, and violates his precepts. Ergo.

143 Ibid., o.

2° Unum contrarium pellitur per aliud contrarium superveniens[143]. Atqui quodlibet peccatum mortale contrariatur charitati secundum propriam rationem. Charitas enim est unio amicitiae cum Deo, ut ultimo fine ; peccatum mortale est aversio a Deo, ut ultimo fine : charitas facit hominem velle diligere Deum super omnia, et se omnibus eius praeceptis subiicere ; peccatum mortale praefert creaturam Deo, et violat eius praecepta. Ergo.

143 Ibid., o.

49 Nor does it stand in the way that an act is directly contrary to a habit, and that therefore one act does not destroy a habit; for this is true of acquired habits, but not of infused habits, such as charity is.

Nec obstat quod actus contrarietur directe habitui, quodque ideo unus actus non destruat habitum; id namque verum est de habitibus acquisitis, non vero de habitibus infusis, ut est charitas.

On Charity toward the Neighbor

1 (*St. Thomas, q. 25.*)

*(*D. Thomas, q. 25.*)*

2 We have said in dissertation I that the neighbor is the secondary proximate object of charity. The question now is who come under the name of neighbor.

Diximus dissert. I proximum esse secundarium obiectum charitatis. Quaestio nunc est, qui veniant sub nomine proximi.

Whether man ought from charity to love himself, his own body, and sinners?

1 1° : Man must love himself out of charity[144].

144 This q. 23, a. 4, sol.

> *1° : Homo debet seipsum diligere ex charitate*[144].
>
> 144 *Hic q. 23, a. 4, o.*

2 *It is proved.* Man must love his neighbor as himself, *Matt.*, XIX, 19. Now he must love his neighbor out of charity. Therefore also himself.

> Prob. *Homo debet diligere proximum sicut seipsum,* Matth., *XIX, 19. Atqui debet diligere proximum charitate. Ergo et seipsum.*

3 *It is confirmed.* 1°. God, as infinitely good, is worthy to be loved by all with the love of friendship. Therefore man must, on account of God, will this love to himself. Now this is to love oneself with the love of charity. Therefore.

> Confirm. *1°. Deus, ut infinite bonus, dignus est ut ab omnibus amore amicitiae diligatur. Ergo homo debet propter Deum hunc amorem sibi velle. Atqui hoc est se amare amore charitatis. Ergo.*

4 *It is confirmed.* 2°. The friendship of charity is founded in the communication of beatitude. Therefore those are to be loved out of charity to whom we will beatitude. Now man must will beatitude to himself. Therefore.

> Confirm. *2°. Amicitia charitatis fundatur in communicatione beatitudinis. Ergo illi sunt ex charitate diligendi, quibus beatitudinem volumus. Atqui homo debet sibi velle beatitudinem. Ergo.*

5 **I say** 2° : Man must love his own body out of charity[145], not only as what he wills to his friend as a good, but even as that to which he wills good. The reason of the first part is that our body can be an instrument of good works by which God is honored. The reason of the second part is that, although our body is not capable of eternal beatitude consisting in knowing and loving God, it is nevertheless capable of a participated beatitude which overflows from the glorified soul into it.

145 Ibid., a. 5, c., and ad 2.

> ***Dico** 2° : Homo debet ex charitate diligere corpus suum*[145]*, non solum ut id quod tamquam bonum vult amico, sed etiam ut id cui vult bonum. Ratio primae partis est, quia corpus nostrum potest esse instrumentum bonorum operum quibus Deus honoretur. Ratio secundae partis est, quia, licet corpus nostrum non sit capax aeternae beatitudinis Deum cognoscendo et amando, est tamen capax beatitudinis participatae quae ex anima gloriosa in ipsum redundat.*
>
> 145 *Ibid., a. 5, c., et ad 2.*

6 **I say** 3° : Sinners are to be loved out of charity according to nature, not according to guilt[146]. The reason of the first part is : partly because sinners, according to nature, are capable of beatitude, which we must will them for God's sake ; and partly because a sinner does not cease to be a neighbor, according to that word, *Matt.*, XVIII, 15 : *If thy brother sin against thee*. If brother, then neighbor. Finally, we are commanded to love our enemies, as will presently be proved. Therefore also sinners ; for sinners are enemies. The reason of the second part is evident ; for guilt is contrary to God and is an impediment to beatitude. Whence David said, *Psal.* CXVII, 113 : *The wicked I have hated*.

146 Ibid., a. 6, sol.

> ***Dico** 3° : Peccatores sunt ex charitate diligendi secundum naturam, non secundum culpam*[146]*. Ratio primae partis est : tum quia peccatores secundum naturam sunt capaces beatitudinis, quam ipsis propter Deum debemus velle ; tum quia*

peccator non desinit esse proximus, iuxta illud, Matth.*, XVIII, 15 :* Si peccaverit in te frater tuus. *Si frater, ergo proximus. Denique iubemur diligere inimicos, ut mox probabitur. Ergo et peccatores ; sunt enim inimici peccatores. Ratio secundae partis est aperta ; culpa enim contrariatur Deo et est beatitudinis impedimentum. Unde dicebat David,* Psal. *CXVII, 113 :* Iniquos odio habui.

[146] *Ibid., a. 6, o.*

7 *You will say* : Holy men imprecate evils upon sinners, as *Psal.* IX, 18 : *Let the sinners be turned into hell*. *Psal.* CIII, 35 : *Let the sinners fail from the earth, and the wicked, so that they be no more*. *Isa.*, VI, 10 : *Blind the heart of this people, and make his ears heavy*. Therefore.

Dices *: Viri sancti apprecantur mala peccatoribus, ut* Psal. *IX, 18 :* Convertantur peccatores in infernum. Psal. *CIII, 35 :* Deficiant peccatores a terra, et iniqui, ita ut non sint. Isa.*, VI, 10 :* Excoeca cor populi huius, et aures eius aggrava. *Ergo.*

8 *I answer.*[147] Imprecations of this kind are to be understood either by way of foretelling, not of wishing. Thus is understood that word : *Let the sinners be turned into hell*, that is, they will be turned; and this : *Blind the heart of this people*, that is, thou shalt blind. Or indeed by way of wishing ; yet so that the desire is not referred to the punishment of men, but either to the justice of God punishing, so that it becomes as it were an approbation of the divine justice, or to the removal and destruction of guilt : in which sense is understood : *Let the sinners fail from the earth, and the wicked, so that they be no more* ; that is, according as they are sinners and wicked, or according to guilt.

147 Ibid., ad 3.

Resp.[147] *Imprecationes huiusmodi intelligendas esse, vel per modum praenuntiationis, non optationis. Sic intelligitur illud :* Convertantur peccatores in infernum*, id est, convertentur, et istud :* Excoeca cor populi huius*, id est, excaecabis. Vel per modum optationis quidem ; sic tamen ut desiderium non referatur ad poenam hominum, sed vel ad iustitiam Dei punientis, ut sit quasi approbatio iustitiae divinae, vel ad remotionem et destructionem culpae : quo sensu intelligitur :* Deficiant peccatores a terra, et iniqui, ita ut non sint *; id est, secundum quod sunt peccatores et iniqui, seu secundum culpam.*

[147] *Ibid., ad 3.*

9 [Hence you will gather that it is not lawful to wish eternal damnation upon anyone still living in this world : partly because it cannot be a means toward obtaining a greater good, or avoiding a greater evil ; partly because it is contrary to the end for which we must love our neighbor out of charity ; and finally because no man is to be despaired of while he lives. Nor is it even lawful for anyone to desire that another sin, because to sin is simply evil. It is permitted, however, according to many, to wish that God permit some to sin, so that from it they may rise again humbler and more cautious ; for then sin is not desired as an evil, but insofar as God can draw forth a good from it, or rather there is desired the good which is hoped to arise from it, should it please God to procure that good by this means.]

[Hinc colliges non licere optare damnationem aeternam cuilibet adhuc in saeculo viventi : tum quia non potest esse medium ad maius bonum habendum, vel ad maius malum vitandum ; tum quia est contraria fini propter quem debemus charitate diligere proximum ; tum denique quia de nullo homine est desperandum, quamdiu vivit. Neque etiam licet alicui desiderare ut peccet, quia peccare est simpliciter malum. Licet tamen, iuxta plures, optare quod Deus permittat aliquos peccare, ut inde humiliores et cautiores resurgant ; tunc enim peccatum non desideratur ut malum, sed quatenus

ex eo bonum Deus educere potest, seu potius desideratur bonum quod ex eo oriturum speratur, si Deo placeat hoc medio illud procurare.]

Whether enemies are to be loved from charity, and signs and works of charity shown to them?

1 1° : Enemies are to be loved out of charity, not as enemies, for that would be to love sin, but as men ; certainly with a common love, not a special one, speaking per se[148].

148 Ibid., a. 8, o.

1° : Inimici sunt ex charitate diligendi, non qua inimici, sic enim esset diligere peccatum, sed qua homines ; dilectione utique communi, non speciali, per se loquendo[148].

148 Ibid., a. 8, o.

2 *Proof.* 1° From that text, *Matt.*, V, 44 : *Love your enemies*. And so that Christ may prove it to be a precept for all, he adds, ibid., 45 : *That you may be the children of your Father who is in heaven*. But it is necessary for all unto salvation to be children of the heavenly Father[149].

149 Ibid., in arg. Sed contra.

Prob. *1° ex illo,* Matth., *V, 44 :* Diligite inimicos vestros. *Et ut probet Christus esse praeceptum omnibus, addit, ibid., 45 :* Ut sitis filii Patris vestri qui in coelis est. *Est autem omnibus necessarium ad salutem esse filii Patris coelestis*[149].

149 Ibid., in arg. Sed contra.

3 2° In the Lord's Prayer, *Matt.*, VI, 12, we ask God to forgive us our debts, as we also forgive our debtors. Therefore it is a precept to forgive enemies, otherwise forgiveness is not given to us. Likewise, ibid., 15 : *If you will not forgive men, neither will your Father forgive you your sins*.

2° In Oratione Dominica, Matth., *VI, 12, petimus ut Deus dimittat nobis debita nostra, sicut et nos dimittimus debitoribus nostris. Ergo praeceptum est dimittere inimicis, alias non dimittitur nobis. Item, ibid., 15 :* Si non dimiseritis hominibus, nec Pater vester dimittet vobis peccata vestra.

4 3° There is a precept that we love our neighbor. Yet the enemy is a neighbor ; for the reason of neighbor consists in this, that one be made to the image of God and can be a partaker of eternal beatitude. Therefore.

3° Praeceptum est ut diligamus proximum. Atqui inimicus est proximus ; ratio enim proximi consistit in eo quod quis sit factus ad imaginem Dei et possit esse particeps aeternae beatitudinis. Ergo.

5 I said : « Certainly with a common love, not a special one, speaking per se ; » because the love of an enemy can be considered in two ways[150] : 1° In general, as when someone loving God and neighbor does not exclude his own enemies from that generality of the love of neighbor ; and thus the love of enemies is of the necessity of charity. 2° In particular, namely that someone be moved by a particular motion of love toward an enemy ; and this is not of the necessity of charity absolutely and per se speaking, but of its perfection ; since to be moved by a motion of love in particular toward any and every man singly is not of the necessity of charity, since this is impossible. It is nevertheless of the necessity of charity according to the preparation of mind, namely that a man have a mind ready for this, that he would love his enemies individually and bestow special benefits upon them, if necessity should occur.

[150] Ibid., o.

> *Dixi : « Dilectione utique communi, non speciali, per se loquendo ; » quia dilectio inimici potest considerari dupliciter*[150] *: 1° In universali, sicut quis diligens Deum et proximum, ab illa generalitate dilectionis proximi inimicos suos non excludat; et sic dilectio inimicorum est de necessitate charitatis. 2° In speciali, ut scilicet quis in speciali moveatur motu dilectionis ad inimicum, et istud non est de necessitate charitatis absolute et per se loquendo, sed de eius perfectione ; quia sic moveri motu dilectionis in speciali ad quoslibet homines singulariter, non est de necessitate charitatis, cum hoc sit impossibile. Est tamen de necessitate charitatis secundum praeparationem animi, ut scilicet homo habeat animum paratum ad hoc, quod in singulari inimicos diligeret et specialia beneficia praestaret, si necessitas occurreret.*
>
> [150] *Ibid., o.*

[6] **I say** 2° : Speaking per se, the common signs and works of charity are to be shown to enemies, not special ones[151].

[151] Here q. 25, a. 9, o.

> ***Dico** 2° : Per se loquendo, signa et opera communia charitatis sunt exhibenda inimicis, non specialia*[151].
>
> [151] *Hic q. 25, a. 9, o.*

[7] *Proof.* 1° Interior love toward an enemy in common is of the necessity of charity absolutely[152] ; in particular, however, it is not of the necessity absolutely, but only according to the preparation of mind, as has been said. Therefore the same must be said of the works and signs of love to be shown.

[152] Ibid.

> Prob. *1° Dilectio interior ad inimicum in communi est de necessitate charitatis absolute*[152] *; in speciali autem non est de necessitate absolute, sed secundum praeparationem animi tantum, ut dictum est. Ergo idem dicendum est de operibus et signis dilectionis exhibendis.*
>
> [152] *Ibid.*

[8] 2° By the virtue of charity we are bound to give scandal to no one. Yet, by denying an enemy the common signs of love, we are a scandal to him and to others ; not so by denying special signs. Therefore. — Proof of the minor. By denying an enemy the common signs of love which are commonly shown to all, the enemy rightly presumes that this is done out of hatred of him and resentment for vengeance, and thence is moved to persevere in enmity and to grow more obstinate ; for it is common among men to hate those who hate them. But it is not so when the special signs which are not shown to others, even to non-enemies, are not shown to him.

> *2° Ex virtute charitatis obligamur nulli esse scandalo. Atqui, denegando inimico signa communia dilectionis, sumus illi et aliis scandalo ; secus denegando signa specialia. Ergo. — Prob. min. Denegando inimico signa communia dilectionis quae omnibus communiter exhibentur, inimicus iure praesumit ita fieri ex odio in ipsum et livore vindictae, indeque movetur ut in inimicitia perseveret atque magis obfirmetur ; commune enim est inter homines odisse odientes se. Secus vero non exhibendo ipsi specialia signa quae aliis, etiam non inimicis, non exhibentur.*

[9] Therefore, for the explanation of this conclusion, especially with regard to practice, the signs of love must be distinguished

> *Pro huius itaque conclusionis explicatione, praesertim in ordine ad praxim, distinguenda sunt signa dilectionis*

[10] Common signs are called those which are commonly shown to all, or perhaps better, those which a Christian commonly shows to any Christian, a fellow citizen to any fellow citizen, a kinsman to any

kinsman, etc. ; because, although these can be special respectively with respect to all men, they are nevertheless common in their class. Special ones are those which are shown to determinate persons, such as friends and familiars.

> *Communia dicuntur quae communiter omnibus exhibentur, vel forte melius, quae christianus a quovis christiano, concivis a quovis concive, cognatus a quovis cognato, etc. communiter exhibentur; quia, licet haec possint esse specialia respective ad omnes homines, sunt tamen communia in sua classe. Specialia sunt quae exhibentur determinatis personis ac amicis et familiaribus.*

11 I said : « Speaking per se ; » because per accidens the common signs can sometimes be denied to enemies without sin, or at least without grave sin ; and sometimes there is a precept to give them special signs.

> *Dixi: « Per se loquendo; » quia per accidens possunt aliquando sine peccato, aut saltem sine gravi, denegari signa communia inimicis; et aliquando praeceptum est illis dare signa specialia.*

12 Therefore we are not bound to give the common signs when charity toward ourselves or our neighbor, or justice, persuades the contrary, or a reasonable cause excuses it. 1° Charity toward ourselves and our neighbor, as when from the denial of the common signs the enemy is hoped to be amended and not scandalized ; or when, from the sight of or conversation with the enemy, you should fear that the recollection of injuries, a greater agitation, or new quarrels might arise. Nevertheless, in this case it ought to be made known that the denial does not come from hatred. 2° Justice, as when parents or superiors, in the just punishment and correction of a son or subject, say on account of an infamous crime, an unworthy contracted marriage, etc., deny conversation, a kindly countenance, or other benefits and signs usually shown to sons or subjects, without internal hatred ; yet this vengeance or punishment must not exceed the measure of the offense, nor endure forever. 3° A reasonable cause, as when you deny speech, a reply, a salutation, etc., to one who has offended you, at the instant of the injury received, or afterward for a brief while, not out of hatred on account of the injury received, and this appears outwardly. Likewise, if the scandal is slight. Likewise, if on account of an injury gravely defaming you or your family you show a sterner countenance or sadness, or deny conversation and salutation, lest you seem to make little account of so great an injury. In these cases you could be excused from sin, at least from grave sin.

> *Itaque non tenemur dare signa communia, quando charitas erga nos vel proximum, aut iustitia, contrarium suadet, aut rationabilis causa excusat. 1° Charitas erga nos et proximum, ut si ex denegatione signorum communium speratur inimicus emendandus et non scandalizandus; si ex aspectu aut colloquio cum inimico, timeas ne iniuriarum recordatio, maior commotio aut novae rixae insurgant. Deberet tamen in hoc casu innotescere, id non denegari ex odio. 2° Iustitia, ut si parentes aut superiores, in punitionem iustam et correctionem filii aut subditi, puta ob crimen infame, contractum indignum matrimonium, etc., denegent absque interno odio alloquium, aspectum benignum, aliave beneficia et signa filiis aut subditis exhiberi solita; modo tamen haec vindicta seu poena non excedat modum delicti, nec in perpetuum duret. 3° Rationabilis causa, ut si te offendenti deneges loquelam, responsum, salutationem, etc., in instanti iniuriae acceptae, vel post, ad breve moram, non ex odio et iniuria accepta, idque exterius appareat. Item, si sit leve scandalum. Item, si ob iniuriam te aut familiam graviter diffamantem exhibeas austeriorem vultum aut tristitiam, vel deneges alloquium et salutationem, ne videaris parvi aestimare tantam iniuriam. In his casibus poteris excusari a peccato saltem gravi.*

13 On the contrary, however, per accidens we are bound to show the special signs of love to an enemy especially in two cases : 1° When the enemy asks pardon. 2° When his need, at least a grave bodily or

spiritual one, so requires. The reason is, that since in certain cases we are bound to do good to an enemy, more fitting cases cannot be assigned than when he suffers grave need, or asks reconciliation ; otherwise it will be a sign of internal hatred and a grave scandal, both to others and to the enemy himself, who will thence be more exasperated and hardened in enmity.

> *E contra vero per accidens tenemur signa dilectionis specialia exhibere inimico in duobus praesertim casibus: 1° Quando inimicus veniam petit. 2° Quando eius necessitas saltem gravis corporalis vel spiritualis ita exigit. Ratio est, quia cum in certis casibus teneamur benefacere inimico, non possunt convenientiores assignari, quam quando patitur gravem necessitatem, aut petit reconciliationem; alioquin erit signum interni odii et grave scandalum, tam aliis, quam ipsi inimico, qui inde magis exacerbabitur et in inimicitia obfirmabitur.*

14 *You will ask* whether the offended party is bound to forgive or remit everything to the enemy asking reconciliation.

> Petes *utrum offensus teneatur omnia condonare seu remittere inimico reconciliationem petenti.*

15 *I answer.* The offended party is bound, toward the enemy asking reconciliation, to remit the simple offense which is without violation of strict right or loss, or, what is the same, to lay aside aversion, indignation, or hatred, and to show certain signs of this laying aside : it is clear from the foregoing. But he is not bound to remit the injury or the violation of right and the loss, and he can demand for the injury satisfaction, and for the loss restitution ; because everyone can pursue his right before a legitimate judge. Care must nevertheless be taken lest the enemy be compelled to satisfaction or restitution with too great loss to himself, or lest satisfaction be demanded before a judge when he himself offers a reasonable one ; for this can scarcely happen without some appetite for vengeance. Likewise, where the matter concerns a capital punishment or a mutilation, and no benefit accrues from it to the injured party, it is expedient, for the same reason, not to press it. Otherwise it would be, if the community or family of the offended party would remain infamous should the offender not be punished according to the laws.

> Resp. *Offensus tenetur inimico petenti reconciliationem remittere offensam simplicem quae est sine laesione iuris stricti aut damno, seu, quod idem est, deponere aversionem, indignationem seu odium, et huius depositionis quaedam signa exhibere: constat ex praecedentibus. Sed non tenetur remittere iniuriam seu laesionem iuris et damnum, potestque exigere pro iniuria satisfactionem, et pro damno restitutionem; quia unusquisque potest ius suum persequi apud legitimum iudicem. Cavendum est tamen ne inimicus ad satisfactionem vel restitutionem cum nimio suo damno cogatur, aut ne a iudice petatur satisfactio, quando ipse rationabilem offert; id enim vix fieri potest absque aliquo appetitu vindictae. Item, ubi agitur de poena capitis aut mutilatione, et nullum emolumentum parti lesae inde obvenit, expedit, propter eamdem rationem, illam non urgere. Secus esset, si communitas aut familia offensi maneret infamis, si offendens non puniatur secundum leges.*

On the Order and the Principal Act of Charity, which is Love

1 (*St. Thomas, IIa IIae, qq. 26 and 27.*)

> *(*D. Thomas, IIae IIae, qq. 26 et 27.*)*

Whether God is to be loved from charity more than the neighbor?

1 Theologians commonly observe that one thing can be loved more than another in a threefold way: 1° Objectively, when we wish a greater good for one than for another, as if I were to desire the empire

for Titius and the dukedom for Caius, I love Titius objectively more than Caius. 2° Appretiatively, when one is held in higher esteem than the other, and the lover is so disposed toward him that he would rather lose his friendship than that of the other. 3° Intensively, when one is loved with a more intense endeavor, with a more fervent and more perfect affection according to intensive degrees, than the other.

> *Observant communiter theologi, unum plus altero posse diligi tripliciter: 1° Obiective, quando volumus ei maius bonum quam alteri, ut si optem imperium Titio, ducatum Caio, plus obiective diligo Titium quam Caium. 2° Appretiative, quando unus pluris aestimatur quam alter, et amans ita illi afficitur, ut magis refugiat eius quam alterius amicitiam perdere. 3° Intensive, quando unus diligitur intensiori conatu, affectu ferventiori et perfectiori secundum gradus intensionales, quam alter.*

2 **I say** 1°: God is to be loved out of charity above all things and before all things, objectively and appretiatively; and thus, simply speaking, he is to be loved more than our neighbor, and than we ourselves[153].

153 Here q. 26, a. 2, c., and a. 3, c.

> ***Dico** 1°: Deus est ex charitate diligendus super omnia et prae omnibus obiective et appretiative; sicque, simpliciter loquendo, est magis diligendus quam proximus, et quam nos ipsi[153].*
>
> *153 Hic q. 26, a. 2, c. et a. 3, c.*

3 The reason is that we ought to will God every good, the infinite good, his infinite and lovable perfections, and to take complacency in them. Likewise we ought to esteem him so, and be so affectionately disposed toward him, that we would rather lose all things and endure anything than forsake him. But this is precisely to love him above all things objectively and appretiatively. Therefore.

> *Ratio est, quia debemus velle Deo omne bonum, bonum infinitum, infinitas et amabiles eius perfectiones, in iisque complacere. Item debemus ita illum aestimare, ita illi affici, ut mallemus omnia perdere et pati, potius quam ipsum deserere. Atqui hoc est super omnia ipsum diligere obiective et appretiative. Ergo.*

4 And this is expressed in several places of Scripture. *Matt.*, XXII, 37 and 38: Thou shalt love the Lord thy God with thy whole heart, and with thy whole soul, and with thy whole mind. This is the greatest and the first commandment. Ibid., X, 37: He that loveth father or mother more than me, is not worthy of me.

> *Idque exprimitur in pluribus locis Scripturae.* Matth.*, XXII, 37 et 38: Diliges Dominum Deum tuum ex toto corde tuo, et in tota anima tua, et in tota mente tua. Hoc est maximum et primum mandatum. Ibid., X, 37: Qui amat patrem aut matrem plus quam me, non est me dignus.*

5 In this conclusion all agree, but the difficulty concerns the intensity of love: whether by the precept of charity God is to be loved more intensively than our neighbor?

> *In hac conclusione omnes conveniunt, sed difficultas est de intensione dilectionis: an ex praecepto charitatis Deus sit intensius diligendus, quam proximus?*

6 I suppose 1° that intensity is not required, of itself, for the nature of charity; for the least charity justifies, and every act of charity, even a remiss one, merits eternal life, as was proved in dissertation II.

Suppono 1° ad rationem charitatis, secundum se non requiri intensionem; minima enim charitas iustificat, et quilibet actus charitatis, etiam remissus, meretur vitam aeternam, ut dissert. II probatum est.

7 I suppose 2° that God is worthy to be loved with the most perfect and more intense love than any creature whatsoever; for he cannot be so perfectly loved by any creature that he is not worthy of a more perfect love. And therefore it would be inordinate to choose to love a creature more intensely than God; for this would be to judge that she is worthy of a more intense love, and consequently that she is a greater good and to be loved more appretiatively: which is altogether false and inordinate. Therefore man ought to choose to love God with the highest love and more intensely than a creature. But whether, if this greater intensity is not found in the act of love, on account of the condition of nature, as we shall explain presently, there is inordination and sin? Some of the Louvain theologians affirm this, with Peter Soto. They are not, however, in agreement among themselves; for some say this sin is mortal, others that it is only venial. The more common opinion denies it, in agreement with which

Suppono 2° Deum esse dignum qui ametur amore perfectissimo et magis intenso, quam quaelibet creatura; non potest enim tam perfecte ab ulla creatura diligi, quin perfectiori dilectione sit dignus. Et ideo inordinatum foret eligere creaturam amare intensius quam Deum; hoc enim esset iudicare eam esse dignam intensiori amore, consequenter esse maius bonum et magis appretiative amandum: quod totum est falsum et inordinatum. Debet ergo homo eligere amare Deum summo amore et intensius quam creaturam. At utrum, si in actu dilectionis non reperiatur ista maior intensio, ex conditione naturae, ut mox explicabimus, sit inordinatio et peccatum? Affirmant quidam Lovanienses, cum Petro Soto. Non sunt tamen inter se concordes; quidam enim dicunt hoc peccatum esse mortale, alii veniale tantum. Communior sententia negat, cum qua

8 **I say** 2°: He does not sin against the precept of charity who loves his neighbor with a more intense love, whether natural or supernatural, than God.

***Dico** 2°: Non peccat contra praeseptum charitatis, qui intensiori amore, sive naturali, sive supernaturali, diligit proximum quam Deum.*

9 *Proof.* 1° by the same argument by which in the treatise on Penance we shall prove that sorrow for sins need not necessarily be the greatest intensively. The intensity of an act of the will arises from the vehemence of the object that moves it; hence it comes about that the will is borne toward that object with greater endeavor and fervor. But the sensible object, such as our neighbor, moves the will more vehemently than the spiritual object, such as God. Therefore. — *Proof of the minor.* The nearer an object is to the will, the more vehemently does it move it. But the sensible object, in this state, is nearer to the will than the spiritual. Therefore. — *Proof of the minor.* Sensible things are proximate and immediate to the senses. But the will, in this state, operates conformably to them and depends upon them, inasmuch as it follows the cognition of the intellect, which in this state draws its cognition from the senses. Therefore.

Prob. *1° eodem argumento quo in tract. de Paenitentia probabimus, dolorem de peccatis non debere necessario esse maximum intensive. Intensio actus voluntatis provenit ex vehementia obiecti moventis illam; inde enim fit quod maiori conatu et fervore feratur in ipsum. Atqui obiectum sensibile, ut est proximus, vehementius movet voluntatem, quam spirituale, ut est Deus. Ergo.* — Prob. min. *Quo obiectum est propinquius voluntati, eo vehementius illam movet. Atqui obiectum sensibile, pro hoc statu, est propinquius voluntati, quam spirituale. Ergo.* — Prob. min. *Sensibilia sunt proxima et immediata sensibus. Voluntas autem pro hoc statu operatur conformiter ad illos, et ab illis dependet, quatenus sequitur cognitionem intellectus, qui pro hoc statu desumit cognitionem a sensibus. Ergo.*

10 *It is confirmed.* The will tends more intensively toward a lesser present good than toward a greater absent one, and flees a lesser present evil more intensively than a greater absent one; this is known from experience, and it happens for no other reason than that the present object is nearer to the will and moves it more; yet in its appretiation it would rather lose the lesser present good than the greater absent one, and suffer the lesser present evil than the greater absent one.

> Confirmatur. *Voluntas intensius fertur in minus bonum praesens, quam in maius absens, et intensius refugit minus malum praesens, quam maius absens; id experientia notum est, nec alia ratione contingit, quam quia obiectum praesens propinquius est voluntati et magis ipsam movet; quamvis tamen in appretiatione mallet perdere minus bonum praesens quam maius absens, et pati minus malum praesens quam maius absens.*

11 *It is proved* 2°. All agree, as we have supposed, that we are not bound, speaking absolutely, to the maximum intensity of charity, nor to a definite degree of love, in order to satisfy the precept of charity. I suppose therefore that I now elicit an act of the love of God at four. This act is good and meritorious. Afterwards I elicit an act of honest love, whether natural or supernatural, of my neighbor at five. This second act cannot bring it about that the first, which was good, becomes bad; for the good act passes away, and is no longer subject to mutation. Therefore.

> Prob. 2°. *Omnes conveniunt, ut supposuimus, nos non teneri, per se loquendo, ad maximam intensionem charitatis, neque ad certum gradum dilectionis, ut satisfiat praecepto charitatis. Suppono itaque quod nunc eliciam actum dilectionis Dei ad quatuor. Iste actus est bonus et meritorius. Postea elicio actum honestum amoris, sive naturalis, sive supernaturalis proximi ad quinque. Iste secundus actus non potest efficere quod primus, qui fuit bonus, fiat malus; transit enim bonus, nec est amplius mutationi obnoxius. Ergo.*

12 If you say that the question is about two acts elicited at the same time, comparing God and man,

> *Si dicas, quaestionem esse de duobus actibus eodem tempore elicitis, comparando inter Deum et hominem,*

13 *I answer.* I deny the supposition; for two really distinct acts are not elicited at the same time, but succeed one another, and when the second arrives, the first passes away. Moreover, if the question were only about two acts elicited at the same time, comparing God and man with each other, the question scarcely arises; for when does this ever happen? Nay, the question vanishes entirely; for it would thus be choosing to love God less intensely than man, which is beside the question and which we confess to be inordinate.

> Resp. *Nego suppositum; duo enim actus realiter distincti non eliciuntur eodem tempore, sed sibi succedunt, et adveniente secundo, primus transit. Insuper, si quaestio sit tantum de duobus actibus eodem tempore elicitis, comparando inter se Deum et hominem, vix est quod moveatur quaestio; quandonam enim sic contingit? Imo totaliter evanescit quaestio; sic enim esset eligere amare Deum minus intense quam hominem, quod est extra quaestionem et quod fatemur esse inordinatum.*

Whether man ought from charity to love himself more than the neighbor?

1 In man there are two things, namely a spiritual nature and a bodily nature[154]. To that extent does man love himself or his neighbor, inasmuch as he loves himself or his neighbor according to his spiritual nature.

154 Ibid., a. 4, c.

> *In homine duo sunt, scilicet natura spiritualis et corporalis[154]. In tantum homo dicitur diligere seipsum aut proximum, in quantum diligit se vel proximum secundum naturam spiritualem.*

> [154] *Ibid., a. 4, c.*

[2] **I say** 1°: Man ought to love himself more out of charity than his neighbor[155].

[155] Ibid.

> ***Dico** 1°: Homo debet ex charitate se magis diligere, quam proximum[155].*
>
> *[155] Ibid.*

[3] *It is proved* 1° from that passage, *Matt.*, XXII, 39: You shall love your neighbor as yourself. From this it seems that man's love for himself is the exemplar of the love which is for another[156].

[156] Ibid., in arg. Sed contra.

> Prob. *1° ex illo,* Matth., *XXII, 39: Diliges proximum tuum sicut teipsum. Ex quo videtur quod dilectio hominis ad seipsum sit exemplar dilectionis quae est ad alterum[156].*
>
> *[156] Ibid., in arg. Sed contra.*

[4] But the exemplar is prior to what is exemplified. Hence Augustine, book I de Civit., c. 20: « He who loves received, he says, from himself the rule of loving his neighbor. » Therefore.

> *Exemplar autem est potius quam exemplatum. Unde Aug., lib. I de Civit., c. 20: « Regulam diligendi proximum, inquit, a semetipso dilector accepit. » Ergo.*

[5] *It is proved* 2°. God is loved as the principle of the good on which the love of charity is founded[157]; but man loves himself as a participator of that good, and his neighbor as an associate in this good. Now participation is more excellent than association, just as unity is more excellent than union. Therefore man ought out of charity to love himself more than his neighbor.

[157] Ibid., c.

> Prob. *2°. Deus diligitur ut principium boni super quod fundatur dilectio charitatis[157]; homo autem diligit seipsum ut participem illius boni, et proximum ut socium in isto bono. Atqui participatio est potior consociatione, sicut unitas est potior unione. Ergo homo debet ex charitate magis se diligere quam proximum.*
>
> *[157] Ibid., c.*

[6] **I say** 2°: Man ought to love his neighbor more than his own body; because that thing is more to be loved out of charity which has the fuller account of being lovable out of charity. Now association in the full participation of beatitude, which is the account of loving one's neighbor with respect to his soul, is a greater account of loving than participation in beatitude by way of overflowing, which is the account of loving one's own body. Therefore.

> ***Dico** 2°: Homo magis debet diligere proximum quam proprium corpus; quia illud magis est ex charitate diligendum, quod habet pleniorem rationem diligibilis ex charitate. Atqui consociatio in plena participatione beatitudinis, quae est ratio diligendi proximum quantum ad animam, est maior ratio diligendi, quam participatio beatitudinis per redundantiam, quae est ratio diligendi proprium corpus. Ergo.*

[7] Yet, because the precept of loving one's neighbor, taking the proper body for his spiritual salvation, is affirmative, and although it always binds, nevertheless it does not bind at every moment, but in certain cases of necessity. A threefold necessity is distinguished: extreme, grave, and common. It is called extreme when the neighbor will perish for eternity unless he is helped; as if an infant were about to die without baptism. Grave, when without help he can be saved absolutely, but with great

difficulty; as if someone near death and in mortal sin should ask for confession, without which he can be saved absolutely by contrition alone, but far more difficultly than by the sacrament. Common is the necessity in which sinners commonly find themselves, who run into common occasions of sinning.

> *Verum, quia praeceptum diligendi proximum exponendo proprium corpus pro eius salute spirituali, est affirmativum vum, licet semper obliget, non tamen obligat pro semper, sed in certis casibus necessitatis. Triplex autem distinguitur necessitas: extrema, gravis et communis. Extrema dicitur, quando proximus est in aeternum periturus, nisi adiuvetur; ut si infans sit sine baptismo moriturus. Gravis, quando sine adiutorio potest absolute salvari, sed valde difficile; ut si quis morti proximus et in peccato mortali existens, petat confessionem, sine qua potest absolute salvari sola contritione, sed longe difficilius quam sacramento. Communis est in qua communiter versantur peccatores, qui communes peccandi occasiones incurrunt.*

8 According to this threefold necessity,

> *Iuxta hanc triplicem necessitatem,*

9 **I say** 3°: In extreme necessity, anyone is bound to expose his own life for the eternal salvation of his neighbor, if there is hope that he can be helped. In grave necessity, only those are bound upon whom the care of souls rests by office. In common necessity, no one is bound.

> ***Dico** 3°: In extrema necessitate, quilibet tenetur exponere propriam vitam pro salute aeterna proximi, si sit spes quod iuvari possit. In gravi necessitate, tenentur solum ii quibus incumbit ex officio cura animarum. In necessitate communi, nemo tenetur.*

10 *Proof.* first part. 1° According to Scripture, *1 John*, III, 16, we ought to lay down our lives for our brethren; which is true at least in extreme necessity. Hence Augustine, in the book de Mendacio, c. 6, n. 9, says: « A Christian will plainly not hesitate to lose his temporal life for the eternal life of his neighbor. »

> Prob. *prima pars. 1° Iuxta Scripturam,* I Ioann., *I, 16, nos debemus pro fratribus nostris animas ponere; quod verum est saltem in extrema necessitate. Unde Aug., lib. de Mendacio, c. 6, n. 9, ait: « Temporalem plane vitam suam pro aeterna vita proximi non dubitabit Christianus amittere. »*

11 2° We are bound to expose goods of fortune for saving the bodily life of a neighbor placed in extreme necessity, according to that passage, *1 John*, III, 17: Whoever shall have the substance of this world, and shall see his brother in need, and shall shut up his bowels from him: how does the charity of God abide in him? Therefore, to save his spiritual life we ought to expose our bodily life. — The consequence is plain; because our bodily life stands related to the spiritual life of our neighbor as our riches do to his bodily life.

> *2° Tenemur exponere bona fortunae pro salvanda vita corporali proximi in extrema necessitate positi, iuxta illud,* I Ioann., *III, 17: Qui habuerit substantiam huius mundi, et viderit fratrem suum necessitatem habere, et clauserit viscera sua ab eo: quomodo charitas Dei manet in illo? Ergo pro salvanda eius vita spirituali debemus vitam corporalem exponere. — Patet conseq.; quia sic se habet vita nostra corporalis ad vitam spiritualem proximi, sicut opes nostrae ad vitam eius corporalem.*

12 Take note, however, that those are not reckoned to be in extreme necessity who thrust themselves into danger of damnation through their own malice, such as those who enter into an unjust war, take up a duel, and the like, who can withdraw themselves from the danger by their own means.

Adverte autem eos non censeri in extrema necessitate, qui ex propria malitia se in periculum damnationis iniiciunt, ut sunt qui bellum iniustum ingrediuntur, duellum suscipiunt, et similes, qui possunt seipsis a periculo recedere.

13 *Proof.* second part. Those are more bound to provide for their flock, upon whom the care of souls rests by office, than those upon whom this care does not rest. Now these are bound in extreme necessity, while neither is bound in common necessity. Therefore those are bound in grave necessity upon whom the care of souls rests by office, and not others.

Prob. *secunda pars. Magis tenentur ii quibus incumbit ex officio cura animarum gregi suo providere, quam ii quibus haec cura non incumbit. Atqui hi tenentur in extrema necessitate, neutri tenentur in communi. Ergo ii tenentur in gravi necessitate, quibus incumbit ex officio cura animarum, et non alii.*

14 Besides, it would be hard to oblige a private person, who has undertaken no care of another beyond that general one which God has enjoined on everyone concerning his neighbor, to pour out his life for his salvation outside extreme necessity. Otherwise would it be, if the question concerned some loss in goods of fortune; for a private person ought to endure that for the salvation of his neighbor.

Aliunde, durum foret obligare privatum, qui nullam alterius curam suscepit quam eam generalem quam cuique Deus mandavit de proximo suo, pro eius salute vitam profundere extra extremam necessitatem. Secus esset, si ageretur tantum de aliquo damno in bonis fortunae; illud enim pati deberet privatus pro salute proximi.

15 From this you will infer that pastors are bound, at the peril of their life, say in time of plague, to administer the sacrament of penance to their parishioners; because, although they could be saved absolutely with contrition, it is nevertheless difficult, and indeed far easier with attrition and the sacrament: hence they are in necessity, if not extreme, at least grave. As to the administration of the sacraments of the Eucharist and Extreme Unction, see what we wrote in the treatise on the Eucharist, dissert. VII, a. 4, *You will ask* 1° and in the treatise on Extreme Unction art. 7, *You will ask* 2°.

Hinc inferes, pastores teneri cum periculo vitae, puta tempore pestis, administrare sacramentum poenitentiae suis parochianis; quia, licet possint absolute salvari cum contritione, difficile tamen, longe autem facilius cum attritione et sacramento: unde sunt, si non extrema, saltem in gravi necessitate. Quantum ad administrationem sacramentorum Eucharistiae et Extrema Unctionis, vide quae scripsimus in tract. de Eucharistia, dissert. VII, a. 4, Petes *1° et in tract. de Extrema Unctione art. 7,* Petes 2°.

16 The third part is manifest; because common necessity, from which each person cannot so difficultly extricate himself, and better than anyone else, is not so great that we are bound to pour out our life for it.

Tertia pars est manifesta; quia necessitas communis, a qua quilibet seipsum non ita difficile expedire potest, et melius quam quivis alius, non est tanta, ut pro illa vitam profundere teneamur.

17 [Nevertheless in common or ordinary necessity of either order, namely bodily and spiritual, one must succor one's neighbor even at slight inconvenience. 1° One must succor him, because love of neighbor demands this, and besides, if everyone omitted this duty, common necessity would become grave or even extreme. 2° At slight inconvenience only, because ordinarily the neighbor easily extricates himself from such a necessity, and if he is forced to endure it for a short time, it is not too burdensome for him.

[Attamen in communi seu ordinaria necessitate utriusque ordinis, corporalis scilicet et spiritualis, proximo succurrendum est cum levi incommodo. 1° Succurrendum est, quia amor proximi hoc exposcit, et aliunde, si omnes hoc officium omitterent, necessitas communis gravis vel etiam extrema evaderet. 2° Cum levi incommodo tantum, quia ordinarie proximus facile se expedit a tali necessitate, et si per breve tempus eam pati cogatur, non est ei nimis molesta.

18 Nor are you bound to come to the aid of everyone placed in common necessity; because others are held by the same obligation, and no one could fulfill it alone.

Nec teneris omnibus in communi necessitate positis opitulari; quia alii eadem obligatione tenentur, et nemo posset eam solus implere.

19 *You will ask* whether a man may expose his own bodily life for the bodily life of his neighbor.

Petes *utrum homo possit exponere propriam vitam corporalem pro vita corporali proximi.*

20 Before I answer, I suppose 1° that it is lawful, indeed sometimes necessary, to expose temporal goods for the bodily salvation of one's neighbor; for the life of one's neighbor is more precious than our temporal goods.

Ante resp., suppono 1° licere, imo quandoque oportere exponere bona temporalia pro salute corporali proximi, pretiosior enim est vita proximi bonis nostris temporalibus.

21 I suppose 2° that where the common good is at stake, and the life of persons necessary to the republic, anyone can and is bound to expose his own life for preserving its life.

Suppono 2°, ubi agitur de bono communi, et vitae personae reipublicae necessariae, quemlibet posse et teneri exponere vitam propriam pro eius vita servanda.

22 I suppose 3° that where the lives are equal, if I believe myself to be in mortal sin, or if my life is necessary to my family or others, it is not lawful for me to expose my life for the life of another. These things supposed,

Suppono 3°, ubi agitur de vitae aequalis, si me credam in peccato mortali, aut si vita mea sit familiae meae vel aliis necessaria, non licere vitam meam pro alterius vita exponere. His suppositis,

23 *I answer.* It is not lawful to expose one's own life for the life of another equal considered precisely in itself, or looking precisely at life and life; for that would be to love one's neighbor not as oneself, but more than oneself, which is against the order of charity. More probably, however, it is lawful out of a motive of Christian virtue.

Resp. *Non licet vitam propriam exponere pro vita alterius aequalis secundum se praecise considerata, seu spectando praecise vitam et vitam; esset enim diligere proximum, non sicut seipsum, sed plus quam seipsum, quod est contra ordinem charitatis. Probabilius tamen licet ex motivo virtutis christianae.*

24 *Proof.* this second part from the words of Christ, *John.*, XV, 13: Greater love than this no one has, than that he lay down his life for his friends; which can be understood generally also of bodily welfare, as Chrysostom understood it, book II *de Sacerd.* Besides, it is lawful to prefer the good of virtue to the good of the body, where necessity so requires.

Prob. *haec secunda pars verbis Christi,* Ioann., *XV, 13: Maiorem hac dilectionem nemo habet, ut animam suam ponat quis pro amicis suis; quod potest generaliter intelligi etiam de salute corporali, ut intellexit Chrysost., lib. II* de Sacerd. *Praeterea, licitum est praeferre bonum virtutis bono corporis, ubi necessitas ita exigit.*

25 From this probable opinion many theologians infer that, if two men are in extreme necessity, one may give to the other the only bread he has; in flight from enemies he may give up his horse, though he cannot flee on foot; with plague raging, he may serve the sick; in shipwreck, he may yield the plank which he could occupy, or already has occupied: provided however he has not yet begun to use it; for in this case, says Sylvius, to yield the plank would be to throw oneself into the sea, which seems to belong to the killing of oneself, which is never lawful.]

> *Ex hac probabili sententia inferunt plures theologi quod, si duo sint in extrema necessitate, unus possit alteri dare unicum panem quem habet; in fuga hostium possit concedere equum, quamvis pedibus fugere non possit; grassante peste, possit servire infirmis; in naufragio, possit cedere tabulam quam posset occupare, aut iam occupavit: si tamen nondum ea coepit uti; in hoc enim casu, inquit Sylvius, cedere tabulam, esset se praecipitare in mare, quod videtur pertinere ad occisionem sui, qua nunquam licita est.]*

What order is to be kept in the love of our neighbors?

1 [Since, in those things in which some principle is found, order is attended to according to comparison with that principle, and since the principle of love is God and the lover himself, it is necessary that, according to the greater nearness to one of these principles, the affection of love be greater.]

> *[Cum, in iis in quibus invenitur aliquod principium, ordo attendatur secundum comparationem ad illud principium, et cum principium dilectionis sit Deus et ipse diligens, necesse est quod secundum maiorem propinquitatem ad alterum istorum principiorum maior sit dilectionis affectus.*

2 **I say** 1°: The better are to be loved more objectively than those more closely joined to us who are less good: inasmuch as, according to their present state of justice, we ought to will them a greater participation in beatitude than those more closely joined to us but less good, according to their present state; because it belongs to charity that it will the justice of God to be preserved, according to which those who are better participate more in beatitude[158].

158 Hic q. 26, a. 7, c.

> ***Dico** 1°: Meliores sunt magis obiective diligendi, quam nobis coniunctiores minus boni: quatenus secundum eorum praesentem iustitiae statum debemus illis velle maiorem beatitudinis participationem, quam nobis coniunctioribus minus bonis, secundum praesentem eorum statum; quia ad charitatem pertinet ut velit iustitiam Dei servari, secundum quam qui sunt meliores, plus beatitudinis participant[158].*
>
> *158 Hic q. 26, a. 7, c.*

3 **I say** 2°: Those more closely joined to us according to the flesh are, speaking per se, to be loved more intensively than better strangers[159]

159 Ibid.

> ***Dico** 2°: Nobis secundum carnem coniunctiores, sunt, per se loquendo, magis intensive diligendi, quam meliores extranei[159]*
>
> *159 Ibid.*

4 *It is proved*. 1° because the intensity of the motion depends on its proper agent[160], which is naturally apt to influence those nearer more vehemently than those farther away. Therefore.

160 Ibid.

Prob. *1° quia intensio motus pendet a proprio agente*[160], *quod natum est vehementius influere in propinquiora, quam in remotiora. Ergo.*

[160] *Ibid.*

5 2° Scripture in several places specially commends to us the love of relatives, besides the special precept of honoring parents, as *Isa.*, LVIII, 7, after enumerating various works of mercy, adds: And despise not thy own flesh, that is, those who are joined to thee carnally. *I Tim.*, V, 8: If anyone have not care of his own, and especially of those of his house, he hath denied the faith, and is worse than an infidel. Where the Apostle calls his own those who are joined in any way whatever, but those of his house those who are joined by blood.

2° Scriptura pluribus in locis nobis specialiter commendat dilectionem coniunctorum, praeter speciale praeceptum honorandi parentes, ut Isa., *LVIII, 7, post enumerata varia misericordiae opera, additur: Et carnem tuam ne despexeris, id est eos qui tibi carnaliter sunt coniuncti.* I Tim., *V, 8: Si quis suorum, et maxime domesticorum, curam non habet, fidem negavit, et est infideli deterior. Ubi Apostolus vocat suos, qui quovis modo sunt coniuncti, domesticos autem, qui sanguine sunt iuncti.*

6 Toward those who are not joined to us we have only the friendship of charity; toward relatives, however, we have other friendships as well, according to the mode of union: the friendship of sons toward parents, and conversely, of brother toward brother, of citizen toward fellow citizen, etc. And although these loves are natural or moral, in well-ordered men they are nevertheless commanded by charity; because the good on which any honest friendship is founded is ordered as to an end to the good on which charity is founded; whence it follows that charity commands the act of every other friendship, as the art that is about the end commands the art that is about those things that are directed to the end.

3° Ad eos qui non sunt nobis coniuncti, non habemus nisi amicitiam charitatis; ad coniunctos vero habemus alias amicitias, secundum modum coniunctionis, ut amicitiam filiorum ad parentes, et e contra, fratris ad fratrem, civis ad concivem, etc. Et quamvis isti amores sint naturales, aut morales, in hominibus tamen bene ordinatis imperantur a charitate; quia bonum super quod fundatur quaelibet amicitia honesta, ordinatur tamquam ad finem ad bonum super quod fundatur charitas; unde sequitur quod charitas imperet actui cuiuslibet alterius amicitiae, sicut ars qua est circa finem, imperat arti quae est circa ea qua sunt ad finem.

7 I said, « speaking per se, » because per accidens it happens that the better are to be loved more than those joined according to the flesh; as if a person to be saved were necessary for the common good; if someone snatched you from death, whether corporal or spiritual, which your parents wished to inflict on you; if he received you when abandoned by your brothers in extreme necessity and cared for you; if among those spiritually joined there be the closest bond, and scarcely any among more remote blood relations, as in the third, fourth, or fifth degree. In these and similar cases, the better are to be loved more than those joined carnally.

Dixi, « per se loquendo, » quia per accidens contingit quod meliores sint magis diligendi quam coniunctiores secundum carnem; ut si persona salvanda sit necessaria bono communi; si quis te a morte sive corporali sive spirituali, quam inferre volebant parentes, eripuit; si te a fratribus in extrema necessitate derelictum suscepit et curavit; si inter spiritualiter coniunctos sit arctissima necessitudo, et vix ulla inter remotiores consanguineos, ut in tertio, quarto vel quinto gradu. In his et similibus casibus, magis diligendi sunt meliores, quam carnaliter coniuncti.

8 What is objected against this conclusion is easily solved, having before one's eyes the distinction between objective and intensive love.

> *Quae contra hanc conclusionem obiiciuntur, facile solventur, habita prae oculis distinctione dilectionis obiectivae et intensivae.*

9 **I say** 3°: Among variously joined persons, those joined carnally, speaking per se, are to be loved more, in things pertaining to nature, than those otherwise joined[161].

161 Ibid., a. 8, c.

> ***Dico** 3°: Inter varie coniunctos, carnaliter coniuncti, per se loquendo, sunt magis diligendi, in his quae pertinent ad naturam, quam aliter coniuncti*[161].
>
> *161 Ibid., a. 8, c.*

10 The conclusion presupposes various modes of union: 1° according to the flesh, as between parents and blood relations; 2° according to political society, as between fellow citizens and comrades in arms, both among themselves and with their magistrates and leaders; 3° according to the reason of service, whether spiritual or temporal.

> *Supponit conclusio varios coniunctionis modos: 1° secundum carnem, ut inter parentes et consanguineos; 2° secundum societatem politicam, ut inter concives et commilitones, tum inter se, tum cum suis magistratibus et ducibus; 3° secundum rationem obsequii, sive spiritualis, sive temporalis.*

11 *It is proved* of the conclusion; because the intensity of love arises from the union of the beloved with the lover; but the carnal union of origin is prior and more immovable, and it is according to that which pertains to substance, while the others are supervening. Therefore.

> Prob. *concl.; quia intensio dilectionis est ex coniunctione dilecti ad diligentem; coniunctio autem carnalis originis est prior et immobilior, et est secundum id quod pertinet ad substantiam, aliae autem sunt supervenientes. Ergo.*

12 I said, « in things pertaining to nature; » because in things pertaining to the other unions, those are to be loved more who are joined according to those unions[162]; understand this, however, outside necessity. Hence in war obedience is given to the general rather than to the father. Comparing, however, love with love, union with union, carnal union is to be preferred to any whatsoever, so that, if the things pertaining to carnal union and the things proper to those other unions cannot both be rendered, these latter are to be omitted, and the unions abandoned, if need be. Thus a soldier ought to leave military service so as to succor the necessity of his parents, a Religious to leave the monastery for the same end. Whence, speaking simply, those joined carnally are to be loved more than those otherwise joined.

162 Ibid.

> *Dixi, « in his quae pertinent ad naturam; » quia in his quae pertinent ad alias coniunctiones, sunt magis diligendi qui secundum illas coniunguntur*[162]*; intellige tamen extra necessitatem. Unde in re bellica, magis obeditur duci quam patri. Comparando tamen dilectionem dilectioni, coniunctionem coniunctioni, carnalis est cuicunque praeferrnda, ita ut, si non possint praestari ea quae pertinent ad carnalem coniunctionem et ea quae sunt propria illis coniunctionibus, ista sint omittenda, et coniunctiones deserendae, si necesse sit. Sic miles debet militiam deserere, ut subveniat necessitati parentum, Religiosus exire e monasterio in eumdem finem. Unde, simpliciter loquendo, carnaliter coniuncti sunt magis diligendi, quam aliter coniuncti.*

[162] *Ibid.*

13 *You will gather*: 1° that in grave or extreme necessity, speaking per se, succor is to be given to parents, children, wife, and probably also brothers and sisters, rather than to any benefactor however distinguished. I said, « speaking per se; » which is true under the same exceptions appended to the second conclusion. 2° Also in equal spiritual necessity, it is more probable that carnal parents and children are to be preferred to spiritual parents and children. 3° A father is to be loved more objectively than a son[163]; for he is loved under the reason of principle, which has the reason of a more eminent good, and more like to God: but a son is to be loved more intensively than a father[164]; for a son is more something of the father, than the father is something of the son. Speaking absolutely, however, the father in necessity is to be preferred to the son, because the father is loved as cause, the son as effect; and greater is the obligation of effect toward cause, than of cause toward effect. 4° A father, speaking per se, is to be loved more than a mother, because he is a nobler principle than the mother[165]. 5° A father, for the reason adduced above, is to be loved more objectively and appreciatively than a wife, but a wife more intensively than father and children; for she is more closely joined than father and children[166].

[163] Ibid., a. 9, c.

[164] Ibid.

[165] Ibid., a. 10, o.

[166] Ibid., a. 11, o.

Colliges*: 1° in gravi vel extrema necessitate, per se loquendo, magis esse succurrendum parentibus, filiis, uxori, et probabilius etiam fratribus et sororibus, quam cuivis benefactori quantumvis insigni. Dixi, « per se loquendo; » quod est verum sub iisdem exceptionibus secundae conclusioni appositis. 2° Etiam in pari necessitate spirituali, probabilius parentes et filios carnales esse praeferrndos parentibus et filiis spiritualibus. 3° Patrem esse plus diligendum obiective quam filium[163]; diligitur enim sub ratione principii, quod habet rationem eminentioris boni, et similioris Deo: filium autem esse diligendum plus intensive quam patrem[164]; est enim filius magis aliquid patris, quam pater sit aliquid filii. Absolute tamen loquendo, pater in necessitate est praeferrndus filio, quia pater diligitur ut causa, filius ut effectus; maior est autem obligatio effectus ad causam, quam causae ad effectum. 4° Patrem, per se loquendo, magis esse diligendum quam matrem, quia est nobilius principium quam mater[165]. 5° Patrem, propter rationem supra allatam, esse magis diligendum obiective et appretiative, quam uxorem, uxorem vero plus intensive quam patrem et filios; est enim coniunctior patre et filiis[166].*

[163] *Ibid., a. 9, c.*

[164] *Ibid.*

[165] *Ibid., a. 10, o.*

[166] *Ibid., a. 11, o.*

14 [Moreover theologians observe that to change the order in the last three conclusions is not a grave sin, because there is no notable excess of one above another.]

[Caeterum observant theologi, ordinem in tribus ultimis consectariis immutare, non esse grave peccatum, quia non est notabilis excessus unius supra alium.]

Whether, and in what sense, it is lawful to love God and serve him for the sake of reward?

1 [By faith it is certain that it is licit in some sense to serve God, whether loving him or exercising other works of virtue, on account of retribution.]

> *Fide certum est licere aliquo sensu Deo servire, sive illum diligendo, sive alia virtutum opera exercendo, propter retributionem.*

2 Thus it was defined in the Council of Trent, session VI, chapter 11 and canon 31, in these words: « If anyone shall say that the justified man sins while he does good works with a view to eternal reward; let him be anathema. »

> *Ita definitum est in concilio Trid., sess. VI, cap. 11 et can. 31, his verbis : « Si quis dixerit, iustificatum peccare, dum intuitu aeternae mercedis bene operatur; anathema sit. »*

3 [This is true even if man is not in the state of justice, as is clear from the condemnation of the following proposition by Alexander VIII: « Whosoever serves God even with a view to eternal reward, if he lack charity, is not without fault, as often as he acts with a view even to beatitude. » It is the 13th.]

> *[Hoc verum est, etiamsi homo non sit in statu iustitiae, ut patet ex condemnatione sequentis propositionis ab Alexandro VIII : « Quisquis etiam aeternae mercedis intuitu Deo famulatur, charitate si caruerit, vitio non caret, quoties intuitu licet beatitudinis operatur. » Est 13ª.]*

4 It is evident from Scripture in several places. David says, *Psal.* CXVIII, 112: I have inclined my heart to do thy justifications, on account of retribution. The Apostle relates, *Hebr.*, XI, 8, 26, that Abraham and Moses did good with a view to eternal reward. Christ incites the Apostles to patience in sufferings with a view to reward: Rejoice, he says, and exult, because your reward is abundant in heaven. And the Church sings of the martyrs: « They delivered their bodies to torments, that they might become heirs in the house of the Lord. »

> *Constat ex Scriptura, in pluribus locis. David,* Psal. *CXVIII, 112, dicit : Inclinavi cor meum ad faciendas iustificationes tuas, propter retributionem. Apost.,* Hebr.*, XI, 8, 26, refert Abraham et Moysen bona egisse intuitu mercedis aeternae. Christus,* Matth.*, V, 12, incitat Apostolos ad tolerantiam passionum intuitu mercedis : Gaudete, inquit, et exultate, quoniam merces vestra copiosa est in coelis. Et Ecclesia canit de martyribus : « Tradiderunt corpora sua ad supplicia, ut haeredes fierent in domo Domini. »*

5 **I say 2°:** It is not licit to love God or serve him on account of retribution as on account of an end of the thing loved, that is, of God[167]: partly because God cannot be ordered to anything as to an end, since he himself is the last end to which all things are ordered; partly because otherwise the retribution would be loved more than God; for the end is loved more than those things which are directed to the end.

167 In III Sentent., dist. 29, a. 4, o.

> ***Dico 2° :*** *Non licet diligere Deum aut illi servire propter retributionem, tamquam propter finem rei amatae, seu Dei[167] : tum quia Deus non potest ordinari ad aliquid tamquam ad finem, cum ipse sit finis ultimus ad quem omnia ordinantur ; tum quia alioquin retributio amaretur plus quam Deus; finis enim plus amatur quam ea quae sunt ad finem.*
>
> *167 In III Sentent., dist. 29, a. 4, o.*

6 **I say 3°:** It is licit to serve God, whether loving him or exercising works of virtue, on account of eternal retribution, in such a way that the retribution be the end of love and good works, not ultimate, but further orderable to God[168].

168 Ibid.

> ***Dico 3° :*** *Licet servire Deo, sive ipsum diligendo, sive virtutum opera exercendo, propter retributionem aeternam, sic ut retributio sit finis dilectionis et bonorum operum, non ultimus, sed ulterius ordinabilis ad Deum*[168].
>
> [168] *Ibid.*

7 *It is proved* as to the first part. 1° There is no disorder in that means are ordered to their own proper and legitimate end, and merits to reward. Now the proper and legitimate end of good works and their reward is eternal beatitude, according to that word, *Matt.*, XIX, 17: If thou wilt enter into life, keep the commandments. And *1 Pet.*, 1, 9: Bearing about the end of your faith, the salvation of souls. This the things we adduced for the first conclusion prove.

> Prob. *prima pars. 1° Nulla est inordinatio, quod media ad finem suum proprium et legitimum, et merita ad praemium ordinentur. Atqui finis proprius et legitimus bonorum operum, eorumque praemium, est aeterna beatitudo, iuxta illud,* Matth.*, XIX, 17 : Si vis ad vitam ingredi, serva mandata. Et,* 1 Petr.*, 1, 9 : Reportantes finem fidei vestrae, salutem animarum. Idque probant ea quae protulimus pro prima conclusione.*

8 2° It belongs to friends to seek mutual fruition. Now our reward is nothing else than to enjoy God. Therefore.

> *2° Amicorum est ut quaerant invicem frui. Atqui merces nostra nihil aliud est quam frui Deo. Ergo.*

9 *It is proved* as to the second part. Our last end is God. Now eternal beatitude, although objectively it is God, formally nevertheless is not God, but something created, namely the beatific vision. Therefore.

> Prob. *secunda pars. Finis noster ultimus est Deus. Atqui beatitudo aeterna, licet obiective sit Deus, formaliter tamen non est Deus, sed quid creatum, scilicet visio beatifica. Ergo.*

10 Hence follows the third part. For if we can serve God on account of eternal retribution as on account of the end of good works, but not ultimate: therefore as on account of an end further orderable to God, so that we intend to see God, that we may love him more securely and more intensely, and praise and glorify him for eternity; so affected, that if no beatitude were to be hoped for, we would nonetheless love him and serve him.

> *Hinc sequitur tertia pars. Si enim possumus servire Deo propter retributionem aeternam tamquam propter finem bonorum operum, sed non ultimum : ergo tamquam propter finem ulterius ordinabilem ad Deum, ita quod intendamus videre Deum, ut eum securius et intensius diligamus, atque in aeternum laudemus et glorificemus; sic affecti, ut si nulla esset beatitudo speranda, nihilominus diligeremus illum atque illi serviremus.*

11 **I say 4°:** It is licit to serve God with a view to temporal reward, not as an end properly so called of good works — for it would be disordered that acts of virtue, which are more excellent than temporal goods, be ordered as means to them as to an end — but as accompanying some good, or conducing to it, so that they hold the place only of certain accessory motives. For temporal goods help us toward attaining the supernatural end: 1° inasmuch as through them this corporal life, in which alone

opportunity is given for meriting beatitude, is sustained; 2° inasmuch as they serve us organically for acts of virtue.

> ***Dico 4° :*** *Licet servire Deo intuitu mercedis temporalis, non tamquam finis proprie dicti bonorum operum; inordinatum enim esset quod actus virtutum, qui sunt praestantiores bonis temporalibus, tamquam media ad illa ut ad finem ordinarentur; sed tamquam boni alicuius, vel finem comitantis, vel ad eum conducentis, ita ut se habeant tantum ut quaedam motiva accessoria. Iuvant enim nos bona temporalia ad finem supernaturalem consequendum : 1° in quantum per illa vita haec corporalis, in qua sola datur copia beatitudinem merendi, sustentatur ; 2° in quantum nobis organice deserviunt ad actus virtutum.*

12 The practice of the Church confirms this, which asks of God serenity, rain, fruits, etc. Indeed Christ himself commands us to ask in the Lord's Prayer for our daily bread.

> *Id confirmat praxis Ecclesiae, quae petit a Deo serenitatem, pluviam, fruges, etc. Imo ipse Christus, qui iubet nos in Oratione Dominica petere panem nostrum quotidianum.*

On the precept of charity

1 *You will ask* 1° whether there is given a special precept of loving God by an internal act.

> Petes *1° utrum detur speciale praeceptum diligendi Deum actu interno.*

2 Not a few have taught that no special precept distinct from the others is given of loving God by an explicit internal act, but that the love of God prescribed is nothing else than the observance of the other commandments, even without any internal affection of love; which certainly offends pious ears not a little. Against whom therefore

> *Non pauci docuerunt, non dari praeceptum speciale et a caeteris distinctum diligendi Deum actu interno explicito, sed dilectionem Dei praeceptam nihil aliud esse quam observantiam caeterorum mandatorum, etiam sine ullo interno dilectionis affectu; quod sane non parum offendit pias aures. Contra quos itaque*

3 *I answer.*[169] A special precept, distinct from the others, is given of loving God with an explicit internal affection and act, and not only in effect, by observing the other commandments.

169 Hic q. 44, a. 1, ad 1.

> Resp.[169] *: Datur speciale et a caeteris distinctum praeceptum diligendi Deum affectu et actu interno explicito, et non solum effectu, observando caetera mandata.*
>
> *169 Hic q. 44, a. 1, ad 1.*

4 *It is proved*. 1° from these words of Christ, *Matt.*, XXII, 37-40: Thou shalt love the Lord thy God with thy whole heart, and with thy whole soul, and with thy whole mind. This is the greatest and first commandment. And the second is like to this: Thou shalt love thy neighbor as thyself. On these two commandments dependeth the whole law. The same is read *Deut.*, VI, 5, and *Luke*, X, 27.

> Prob. *1° ex his Christi verbis,* Matth.*, XXII, 37-40 : Diliges Dominum Deum tuum ex toto corde tuo, et in tota anima tua, et in tota mente tua. Hoc est maximum et primum mandatum. Secundum autem simile est huic : Diliges proximum tuum sicut teipsum. In his duobus mandatis universa lex pendet. Idem legitur* Deuter.*, VI, 5, et* Luc.*, X, 27.*

5 From these I form a threefold argument.

> *Ex his triplex formo argumentum.*

6 *First.* According to Augustine and all interpreters, the words of Scripture are to be taken in the natural and obvious sense unless some grave inconvenience stands in the way. Now these words: to love with the whole heart, with the whole soul, with the whole mind, naturally and obviously signify an internal affection and act of love, nor can they be twisted into another sense except by open violence; nor does any inconvenience stand against this sense; indeed all things conspire toward it. Therefore.

> Primum. *Iuxta Augustinum et omnes interpretes, verba Scripturae in sensu naturali et obvio accipienda sunt, nisi obstet grave inconveniens. Atqui ista verba : diligere ex toto corde, in tota anima, in tota mente, naturaliter et obvie affectum et actum internum dilectionis significant, nec nisi per apertam violentiam in alium sensum detorqueri possunt, neque huic sensui ullum obstat inconveniens ; quin imo in hunc sensum omnia conspirant. Ergo.*

7 *Second.* Among things that are not distinct, one cannot be counted first, second, and third, nor can one be called the greatest: this is evident per se. Now, according to the cited Scripture, the precept of the love of God among the others is numbered first, the precept of the love of neighbor second, the others, which hang on these two, third. Likewise, the precept of the love of God is said to be the greatest among the others. Therefore the precept of the love of God is special and distinct from the other precepts.

> Secundum. *Inter ea quae distincta non sunt, non potest numerari primum, secundum et tertium, neque unum potest dici maximum : hoc per se patet. Atqui, iuxta Scripturam citatam, praeceptum dilectionis Dei inter caetera numeratur primum, praeceptum dilectionis proximi, secundum, caetera quae in his duobus pendent, tertium. Item, praeceptum dilectionis Dei dicitur maximum inter alia. Ergo praeceptum dilectionis Dei est speciale et distinctum a caeteris praeceptis.*

8 *Third.* Nothing hangs on itself. Now the law, or the precepts of the whole law, hang on these two precepts. Therefore these two precepts are distinct from the others.

> Tertium. *Nihil pendet a seipso. Atqui lex seu praecepta totius legis pendent ab his duobus praeceptis. Ergo hae duo praecepta sunt a caeteris distincta.*

9 *It is confirmed.* Scripture distinguishes the love of God and the observance of the commandments as cause and effect, as sign and thing signified, *John*, XIV, 15: If you love me, keep my commandments. Where love is assigned as the cause of the observance of the commandments, and the observance of the commandments as the sign of love.

> Confirm. *Scriptura distinguit dilectionem Dei et observantiam mandatorum, ut causam et effectum, ut signum et significatum,* Ioann.*, XIV, 15 : Si diligitis me, mandata mea servate. Ubi dilectio assignatur ut causa observantiae mandatorum, et observantia mandatorum ut signum dilectionis.*

10 To this point the following condemned propositions tend: First: « Man at no time of life whatsoever is held to elicit an act of faith, hope, and charity by force of the divine precepts pertaining to those virtues. » It is the first among those condemned by Alexander VII, in the year 1665. — Second: « Whether he sins mortally who would elicit once only in life an act of the love of God, we do not dare to condemn. » — Third: « It is probable that the precept of charity toward God obliges per se not even rigorously every five years. » — Fourth: « Then it obliges only when we are held to be justified, and have no other way by which we can be justified. » These are the fifth, sixth, and seventh among those condemned by Innocent XI, in the year 1679. — Fifth: « Man is not held to love the last

end neither at the beginning nor in the course of his life morally. » It is condemned by Alexander VIII, August 24, 1690.

Huc faciunt sequentes propositiones damnatae : Prima : « Homo nullo unquam vitae tempore tenetur elicere actum fidei, spei et charitatis ex vi praeceptorum divinorum ad eas virtutes pertinentium. » Est prima inter damnatas ab Alexandro VII, anno 1665.—Secunda: « An peccet mortaliter qui actum dilectionis Dei semel tantum in vita eliceret, condemnare non audemus. »—Tertia : « Probabile est, ne singulis quidem rigorose quinquenniis per se obligare praeceptum charitatis erga Deum. »—Quarta : « Tunc solum obligat, quando tenemur iustificari, et non habemus aliam viam qua iustificari possumus. » Sunt quinta, sexta et septima inter damnatas ab Innocent. XI, anno 1679. — Quinta : « Finem ultimum homo non tenetur amare neque in principio, neque in decursu vitae suae moraliter. » Est damnata ab Alexandro VIII, 24 aug. 1690.

11 What we have said about the precept of loving God internally must be said about the precept of loving one's neighbor internally, for the same reasons; to which add: We are commanded to love our neighbor as ourselves; but we love ourselves with an internal affection. Likewise Christ says, *John*, XV, 12: This is my commandment, that you love one another, as I have loved you. But Christ loved us not only through external works, but with internal affection.

Quod diximus de praecepto diligendi interne Deum, dicendum est de praecepto diligendi interne proximum, propter easdem rationes, quibus adde : Iubemur diligere proximum sicut nos ipsos ; nos autem diligimus nos affectu interno. Item, Ioann.*, XV, 12, dicit Christus: Hoc est praeceptum meum, ut diligatis invicem, sicut dilexi vos. Christus autem dilexit nos, non solum per opera externa, sed affectu interno.*

12 Neither say that the neighbor is relieved merely by an external work, and that the internal affection need not be attended to. For both assumptions are false. For the neighbor is relieved also by internal prayers, and he would scorn the external work if it were shown him without affection.

Neque dicas, proximum sublevari dumtaxat opere externo, nec curare affectum internum. Falsum namque est utrumque assumptum. Sublevatur enim proximus etiam orationibus internis, et dedignaretur opus externum, si sine affectu illi exhiberetur.

13 Hence the following propositions condemned by Innocent XI: « We are not held to love our neighbor by an internal and formal act. » It is the tenth. — « We can satisfy the precept of loving our neighbor through external acts alone. » It is the eleventh.

Hinc sequentes propositiones damnatas ab Innocentio XI: « Non tenemur proximum diligere actu interno et formali. » Est decima. — « Praecepto proximum diligendi satisfacere possumus per solos actus externos. » Est undecima.

14 [*You will ask* 2° whether we are held always to act from the *motive of charity*.

*[*Petes *2° an teneamur ad agendum semper ex* motivo charitatis.

15 *I answer.* Negatively. 1° Acts of the other virtues elicited on account of their proper motives are good, as acts of faith and hope, which are obligatory even in the state of sin. The *Council* of Trent, session XIV, chapter 4, declares attrition to be a gift of God and to dispose the penitent to justification. Likewise session VI, canon 31, defines: « If anyone shall say that the justified man sins while he does good works with a view to eternal reward; let him be anathema. »

Resp. *negative. 1° Actus aliarum virtutum propter propria motiva eliciti sunt boni, ut actus fidei et spei, qui etiam in statu peccati sunt obligatorii.* Conc. *Trid., sess. XIV, cap. 4, declarat attritionem esse donum Dei et disponere*

paenitentem ad iustificationem. Item sess. VI, can. 31, definitur : « Si quis dixerit iustificatum peccare, dum intuitu aeternae mercedis bene operatur; anathema sit. »

16 The following propositions were condemned by Alexander VIII: the 8th, « An infidel must sin in every work. » — the 13th, « Whosoever serves God even with a view to eternal reward, if he lack charity, is not without fault, as often as he acts with a view even to beatitude. » — the 15th, « Attrition conceived from fear of hell and punishments, without the love of benevolence toward God for himself, is not a good motive or supernatural. »

Damnata sunt ab Alexandro VIII propositiones sequentes : 8ª « Necesse est infidelem in omni opere peccare. » - 13ª « Quisquis etiam aeternae mercedis intuitu Deo famulatur, charitate si caruerit, vitio non caret, quoties intuitu licet beatitudinis operatur. » — 15ª « Attritio qua gehennae et poenarum metu concipitur, sine dilectione benevolentia Dei propter se, non est bonus motus ac supernaturalis. »

17 2° There are given acts indifferent from their species[170], that is, acts which possess a certain natural goodness but are neither good nor evil in the supernatural order; and these acts are licit, as was proved in the treatise *on Human Acts*, dissertation IV, article 4. Now if we were always bound to act from the motive of charity, such acts would not be licit. Therefore.]

170 1, 2, q. 18, a. 8, o.

2° Dantur actus indifferentes ex sua specie[170], id est actus qui quandam bonitatem naturalem habent, sed neque boni neque mali sunt in ordine supernaturali ; et hi actus sunt liciti, ut probatum est in tract. de Actib. hum.*, dissert. IV, art. 4. Atqui, si semper ex motivo charitatis esset agendum, tales actus non essent liciti. Ergo.]*

170 1, 2, q. 18, a. 8, o.

18 *You will ask* 3° when the precept of charity obliges.

Petes *3° quandonam obliget praeceptum charitatis.*

19 *I answer.* The precept of the love of God obliges per se: 1° At the beginning of sufficient use of reason. Of this I have said enough in the treatise *on Sins*, dissertation VIII, article 6.

Resp. *Praeceptum dilectionis Dei per se obligat : 1° Initio usus rationis ad hoc sufficientis. De quo sat dixi in tract.* de Peccatis*, dissert. VIII, art. 6.*

20 2° It obliges per se at the end of life; because then the spirit returns to God who created it, and the devil lies in wait for him most of all, man would be accused of most grave negligence and contempt if he did not convert himself through love to God, with whom he hopes to be joined in eternal love in beatitude.

2° Obligat per se in fine vitae; quia, cum tunc spiritus revertatur ad Deum qui creavit illum, et diabolus maxime illi insidietur, gravissimae negligentiae et contemptus accusaretur homo, si non se converteret per amorem ad Deum, cui sperat amore aeterno coniungi in beatitudine.

21 3° It obliges per se frequently during life, since charity is the principal virtue by which we tend toward the end for which we were created. But how often and when, is uncertain.

3° Obligat per se saepius in vita, cum charitas sit virtus praecipua qua tendimus in finem propter quem creati sumus. At quoties et quando, incertum est.

22 Some assign Sundays and feast days, on which, when the faithful honor God as the principle of all things, they are thereby incited also to love him. Others require an act of love once or twice in the week. But since, as I said, these things are uncertain, the faithful are to be exhorted to exercise themselves often, and as often as they can, in these acts of charity. This they will easily accomplish if they recite the Lord's Prayer with attention and affection, in whose recitation the formal act of the love of God is exercised by saying: Hallowed be thy name; for this is nothing else than to will that the name of God be held holy everywhere and by all, and be glorified.

> *Quidam assignant dies dominicos et festos, in quibus cum fideles colunt Deum ut omnium rerum principium, inde incitantur etiam ad eum amandum. Alii semel aut bis in septimana actum dilectionis requirunt. Sed cum, ut dixi, haec incerta sint, hortandi sunt fideles ut saepe et saepissime, in quantum possunt, in his actibus charitatis se exerceant. Quod facile praestabunt, si cum attentione et affectu recitent Orationem Dominicam, in cuius recitatione exercetur actus formalis dilectionis Dei, dicendo: Sanctificetur nomen tuum ; hoc enim non est aliud quam velle quod nomen Dei ubique et ab omnibus habeatur sanctum et glorificetur.*

23 [Thus *St. Liguori, Homo apost.*, IV, 13: « Regarding the act of charity, the opinion pleases me more of those who require it once in the month, since he will scarcely be able to observe the divine law who frequently does not exercise his love for God in positive acts. »

> *[Sic autem* S. Ligor.*,* Homo apost.*, IV, 13 : « Circa actum charitatis, magis mihi arridet sententia eorum qui eum requirunt semel in mense, dum difficulter observare poterit legem divinam, qui frequenter suum ergo Deum amorem actibus positivis non exercet. »*

24 That acts of charity are to be elicited frequently is clear from these words, *Deut.*, VI, 5-8: Thou shalt love the Lord thy God with thy whole heart and with thy whole soul, and with thy whole strength. And these words, which I command thee this day, shall be in thy heart, and thou shalt tell them to thy children, and thou shalt meditate upon them sitting in thy house, and walking on thy journey, sleeping and rising, and thou shalt bind them as a sign on thy hand. It is clear moreover from the text itself that implicit acts are included under this precept and fulfilled by them; for the enumerated actions are not per se acts of charity. Whence the faithful who live piously satisfy the precept of charity easily: they pray, receive the sacraments, avoid sin lest they offend God and displease him, embrace the divine will in all things and prefer it to their own, etc. They are nevertheless to be exhorted to elicit explicit acts frequently, because they are most pleasing to God, confirm the habit of charity, and from them devotion grows.

> *Quod frequenter eliciendi sint actus charitatis, patet ex sequentibus verbis,* Deuter.*, VI, 5-8 : Diliges Dominum Deum tuum ex toto corde tuo et ex tota anima tua, et ex tota fortitudine tua. Eruntque verba haec, quae ego praecipio tibi hodie, in corde tuo, et narrabis ea filiis tuis, et meditaberis in eis sedens in domo tua et ambulans in itinere, dormiens atque consurgens, et ligabis ea quasi signum in manu tua. Apparet autem ex ipso textu quod actus impliciti sub hoc praecepto includantur et per eos impleatur; nam actiones enumeratae non sunt per se charitatis actus. Unde praecepto charitatis facile satisfaciunt fideles qui pie vivunt, orant, sacramenta suscipiunt, vitant peccatum ne Deum offendant et ei displiceant, divinam voluntatem in omnibus amplectuntur et propria voluntati praeponunt, etc. Hortandi sunt tamen ut actus explicitos frequenter eliciant, quia sunt Deo gratissimi, habitum charitatis firmant et ex eis crescit devotio.*

25 It is clear that those do not satisfy the precept of charity, even though ignorance excuses them at least in part, who remain in mortal sin for months; nor those who indeed detest sin, but from attrition alone, which does not attain to the reason of true charity.]

Patet eos praecepto charitatis non satisfacere, etsi ignorantia saltem ex parte excusentur, qui in statu peccati mortalis per menses remanent ; nec eos qui peccatum quidem detestantur, sed ex sola attritione, quae ad rationem verae charitatis non attingit.]

26 But per accidens the precept of charity obliges whenever another precept presses which cannot be fulfilled without the love of God; because whoever is held to the end is held to the means.

Per accidens autem obligat praeceptum charitatis, quoties urget aliud praeceptum quod non potest impleri sine dilectione Dei; quia qui tenetur ad finem, tenetur ad media.

On Almsgiving

1 (*St. Thomas, q. 32.*)

(D. Thomas, q. 32.)

2 Eleemosyna in Greek is the same as misericordia in Latin; in common usage, however, mercy is taken for the virtue or habit, and alms for the act: It can be defined[171] as « the work by which something is given to one in need out of compassion, on account of God. » In which definition alms is not taken, as it often is, for the thing given, but for the act of giving. It is said, « on account of God, » because here we are dealing with Christian almsgiving, as distinguished from philosophical almsgiving, which is done by a pagan or anyone else without order to God.

171 Hic q. 32, a. 1, o.

Eleemosyna graece idem est ac latine misericordia; in communi tamen usu misericordia sumitur pro virtute seu habitu, et eleemosyna pro actu : Definiri potest[171] : « Opus quo datur aliquid indigenti ex compassione, propter Deum. » In qua definitione eleemosyna non sumitur, ut saepe solet, pro re data, sed pro actione dandi. Dicitur, « propter Deum, » quia hic agitur de eleemosyna christiana, prout distinguitur a philosophica, quae fit ab ethnico vel quovis alio, sine ordine ad Deum.

171 Hic q. 32, a. 1, o.

3 It is an act elicited by mercy[172]; for mercy is « the virtue inclining the will to compassion for and relief of another's misery, » and it is commanded by charity; for mercy is an effect of charity and is born, so to speak, from its innermost parts, since from love of neighbor there is born the will to relieve his misery, which we regard as our own. But if alms be done from another motive, say to make satisfaction for sins, it will be an act commanded by religion.

172 Ibid.

Est actus elicitus a misericordia[172] ; est enim misericordia « virtus inclinans voluntatem ad alienae miseriae compassionem et sublevationem, » et imperatus a charitate; misericordia enim est effectus charitatis, et ex eius quasi visceribus nascitur, siquidem ex amore proximi nascatur voluntas sublevandi eius miseriam, quam velut nostram reputamus. Quod si fiat eleemosyna ex alio motivo, puta ad satisfaciendum pro peccatis, erit actus imperatus a religione.

172 Ibid.

4 Alms are of two kinds[173] , corporal and spiritual, according to the twofold misery or defect of man, namely of body and soul.

173 Ibid., a. 2, o.

Duplicis generis sunt eleemosynae[173] , corporales et spirituales, iuxta duplicem miseriam seu defectum hominis, corporis scilicet et animae.

[173] Ibid., a. 2, o.

5 There are seven corporal works of mercy[174] , namely to feed the hungry, to give drink to the thirsty, to clothe the naked, to harbor the harborless, to visit the sick, to ransom the captive, and to bury the dead, which are contained in this verse.

[174] Ibid. in arg. 1.

Septem sunt eleemosynae corporales[174] , scilicet pascere esurientem, potare sitientem, vestire nudum, recolligere hospitem, visitare infirmum, redimere captivum et sepelire mortuum, quae in hoc versu continentur.

[174] Ibid. in arg. 1.

6 *I visit, I give drink, I feed, I ransom, I cover, I gather up, I entomb.*

Visito, poto, cibo, redimo, tego, colligo, condo.

7 There are also seven spiritual works of mercy[175] , namely to instruct the ignorant, to counsel the doubtful, to comfort the sorrowful, to correct the sinner, to forgive offenses, to bear burdensome and heavy burdens, and to pray for all, which are also contained in this verse.

[175] Ibid.

Sunt etiam septem eleemosynae spirituales[175] , scilicet docere ignorantem, consulere dubitanti, consolari tristem, corrigere peccantem, remittere offendenti, portare onerosos et graves, et pro omnibus orare, quae etiam hoc versu continentur.

[175] Ibid.

8 *Counsel, correct, console, forgive, bear, pray.*

Consule, castiga, solare, remitte, fer, ora.

9 Yet so that under τὸ consule both counsel and doctrine are understood.

Ita tamen quod sub τὸ consule, intelligantur consilium et doctrina.

Whether to give alms is a matter of precept, and when?

1 *It is to be noted* 1° that the precept of almsgiving is affirmative, and therefore, although it always obliges, it does not oblige for always. Its obligation depends on two things and must be measured by the necessity of another and one's own means; namely, on the part of the giver, that he have superfluous goods, on the part of the receiver, that he suffer some necessity.

Notandum *1° praeceptum eleemosynae esse affirmativum, et ideo, licet semper obliget, non obligat tamen pro semper. Obligatio autem eius a duobus pendet, et metienda est a necessitate aliena et facultate propria; nimirum, ex parte dantis, ut habeat bona superflua, ex parte recipientis, ut patiatur aliquam necessitatem.*

2 Whence

Unde

3 *It is to be noted* 2° that a threefold necessity is distinguished on the part of the recipient: extreme, grave, and common. Extreme is when the life of a neighbor evidently perishes unless he be succored:

nor need the moment of death be awaited, in which alms would no longer profit. Grave necessity is when death does not indeed impend evidently, but is probably feared; or some notable evil less than death evidently impends, such as grave illness, amputation of a limb, hard and prolonged imprisonment, madness, grave defamation, loss of status, so that one is forced to live a miserable life unworthy of men of his condition. Common necessity is what common poor who beg from door to door suffer; who although they are in need and ask only for the necessities of life, because they nevertheless ask from many and receive, their necessity is not judged grave, but common.

> Notandum 2° *ex parte accipientis triplicem distingui necessitatem, extremam, gravem et communem. Extrema est, cum vita proximi evidenter periclitetur, nisi ei succurratur: nec expectandus est articulus mortis, in quo non amplius prodesset eleemosyna. Necessitas gravis est, quando mors, non equidem evidenter imminet, sed probabiliter timetur; aut evidenter imminet aliquod notabile damnum minus morte, ut gravis morbus, abscissio membri, durus et diuturnus carcer, amentia, gravis diffamatio, amissio status, sic ut quis cogatur miseram vitam agere hominibus suae conditionis indignam. Communis necessitas est quam patiuntur pauperes communes ostiatim mendicantes, qui quamvis indigeant et non nisi necessaria vitae petant, quia tamen a multis petunt et accipiunt, eorum necessitas non censetur gravis, sed communis.*

4 *It is to be noted* 3° that on the part of the giver, the goods he has can be doubly necessary and superfluous to him: namely with respect to life and with respect to status[176] . Necessary for life are those things required of necessity to preserve his own life and that of those whose care devolves upon him, such as parents, wife, and children. For preserving life there is necessarily required food, clothing, and dwelling. The remaining goods beyond these are superfluous to life. Necessary to status are those without which one cannot live suitably according to his state and condition. Whence goods superfluous to status are those without which he can decently maintain his own state and that of his family.

176 Ibid., a. 6, o.

> Notandum 3° *ex parte dantis, bona quae habet posse esse illi dupliciter necessaria et superflua, scilicet quantum ad vitam et quantum ad statum[176] . Necessaria vitae sunt quae requiruntur necessario ad conservandam vitam suam et suorum, quorum cura ipsi incumbit, ut parentum, uxoris et liberorum. Ad vitam autem conservandam necessario requiritur victus, amictus et domicilium. Reliqua bona praeter ipsa sunt superflua vitae. Necessaria statui sunt, sine quibus quis non potest convenienter vivere secundum statum et conditionem suam. Unde bona superflua statui sunt, sine quibus potest decenter suum et familiae statum conservare.*
>
> *176 Ibid., a. 6, o.*

5 *It is to be noted* 4° that this decency of status does not consist in something indivisible, but admits of latitude[177] . Yet nobles and potentates should beware lest, according to the abuse of the present age, they account the greatest luxury whatever as belonging to the reason and decency of their status.

177 Ibid.

> Notandum 4° *hanc decentiam status non consistere in indivisibili, sed admittere latitudinem[177] . Caveant tamen nobiles et potentes ne, secundum abusum hodierni temporis, summum quemque luxum reputent esse de ratione et decentia sui status.*
>
> *177 Ibid.*

6 Likewise in judging the necessity of status, regard must be had not only to the present time but also to the future[178] ; for what now is not necessary can prudently be judged necessary later, as for a time

of illness, old age, imminent war, for bringing up and dowering children, for decently augmenting one's status, provided however its hope be probable.

178 Hic, a. 5, ad 3.

> *Item in iudicando necessario status, non est tantum habenda ratio praesentis temporis, sed etiam futuri*[178] *; quod enim nunc non est necessarium, potest prudenter iudicari fore postea necessarium, ut pro tempore morbi, senectutis, belli imminentis, pro educandis et dotandis liberis, pro augendo decenter statu, cuius tamen spes sit probabilis.*
>
> *178 Hic, a. 5, ad 3.*

7 But caution is needed lest future necessities be feigned from ambition or avarice where there is no probability of them, as if you were to become blind, if your house were burned, etc. The words of the Author are to be noted singly[179] : « Nor ought one, he says, to consider all cases which can occur in the future; for this would be to think about tomorrow, which the Lord forbids, *Matt.*, VI, 34. But the superfluous and the necessary ought to be judged according to those things which probably, in most cases, occur. » Otherwise all things would always be necessary, and nothing would ever be superfluous in the rich; which was condemned by Innocent XI in this proposition: « Scarcely will you find in seculars, even in kings, anything superfluous to status. And thus scarcely anyone is held to alms, when he is held only out of what is superfluous to status. » It is the 13th. Whence in these matters, both for present and future time, a fearful man should consult a prudent and learned director and stand by his judgment; for no surer rule than this can be laid down in this matter. These things noted,

179 Ibid.

> *Sed cavendum ne ex ambitione aut ex avaritia fingantur necessitates futurae, ubi nulla est illarum probabilitas, ut si caecus fieres, si domus combureretur, etc. Notanda sunt singulariter verba Authoris*[179] *: « Nec oportet, inquit, quod consideret omnes casus qui possunt contingere in futurum; hoc enim esset de crastino cogitare, quod Dominus prohibet,* Matth.*, VI, 34. Sed debent diiudicari superfluum et necessarium, secundum ea quae probabiliter ut in pluribus occurrunt. » Alioquin omnia semper forent necessaria, et nulla unquam in divitibus essent superflua; quod damnatum est ab Innocentio XI, in haec propositione: « Vix in saecularibus invenies, etiam in regibus, superfluum statui. Et ita vix aliquis tenetur ad eleemosynam, quando tenetur tantum ex superfluo statui. » Est 13ª. Unde in his, tam pro praesenti quam pro futuro tempore, vir timoratus consulat directorem prudentem et doctum, et eius stet iudicio; nulla enim alia regula certior hac in re statui potest. His notatis,*
>
> *179 Ibid.*

8 **I say 1°:** To give alms is of natural precept and positive divine precept[180] .

180 Ibid., o.

> ***Dico 1° :** Dare eleemosynam est in praecepto naturali et divino positivo*[180] *.*
>
> *180 Ibid., o.*

9 That it is of natural precept is evident from this general principle of the law of nature: All things whatsoever you will that men do to you, do you also to them. Now no one is placed in true necessity who would not wish that relief be given him by one having means. Therefore. From which you will infer that not even infidels themselves are exempt from the obligation of giving alms.

> *De praecepto naturali constat ex hoc principio generali legis naturae : Quaecumque vultis ut faciant vobis homines, et vos facite illis. Atqui nullus est in vera necessitate positus, qui non velit ut sibi subveniatur ab habente facultatem. Ergo.*

Ex quo inferes, nec ipsos infideles eximi ab obligatione dandi eleemosynam.

10 As regards the positive divine precept, it is evident from the Scriptures. It is said *Prov.*, XXI, 13: He that stoppeth his ear against the cry of the poor shall himself cry and shall not be heard. *Ecclus.*, IV, 1: Defraud not the poor man of alms, and turn not away thy eyes from the poor. And ibid., XXIX, 12: By commandment take care of the poor man, and do not dismiss him empty because of his poverty. But especially Christ[181] , *Matt.*, XXV, 41 et 42: Depart from me, you cursed, into everlasting fire... For I was hungry, and you gave me not to eat, etc. Now no one is condemned except for omission of an act prescribed to him.

181 Ibid. in arg. Sed contra.

Quantum ad praeceptum divinum positivum, constat ex Scripturis. Prov.*, XXI, 13, dicitur : Qui obturat aurem suam ad clamorem pauperis, et ipse clamabit, et non exaudietur.* Eccli.*, IV, 1 : Eleemosynam pauperis ne defraudes, et oculos ne transvertas a paupere. Et ibid., XXIX, 12 : Propter mandatum assume pauperem, et propter inopiam eius ne dimittas eum vacuum. Sed praecipue Christus[181] ,* Matth.*, XXV, 41 et 42 : Discedite a me, maledicti, in ignem aeternum... Esurivi enim, et non dedistis mihi manducare, etc. Nullus autem damnatur, nisi propter omissionem actus qui fuit ei praeceptus.*

181 Ibid. in arg. Sed contra.

11 *It is proved* by reason[182] . Since love of neighbor is of precept, it is necessary that all those things fall under precept without which love of neighbor is not preserved. Now it pertains to love of neighbor that we not only will good to our neighbor but also work for him, according to that word, *1 John*, III, 18: Let us not love in word nor in tongue, but in deed and in truth. But that we may will and work the good of another, it is required that we relieve his necessity; which is done through almsgiving. Therefore the giving of alms is of precept.

182 Ibid., o.

Prob. *ratione[182] . Cum dilectio proximi sit in praecepto, necesse est omnia illa cadere sub praecepto, sine quibus dilectio proximi non conservatur. Atqui ad dilectionem proximi pertinet ut proximo non solum velimus bonum, sed etiam operemur, secundum illud,* I Ioann.*, III, 18: Non diligamus verbo, neque lingua, sed opere et veritate. Ad hoc autem quod velimus et operemur bonum alicuius, requiritur quod eius necessitati subveniamus; quod fit per eleemosynam. Ergo eleemosynarum largitio est in praecepto.*

182 Ibid., o.

12 From this conclusion it follows that we are bound under mortal sin to give alms to one suffering extreme necessity out of goods superfluous both to nature and to status; because, since this precept binds in some case, none is more certain than where there is extreme necessity on the part of the recipient, and goods are superfluous to nature and status on the part of the giver. But whether it binds in other cases?

Ex hac conclusione sequitur quod sub mortali teneamur facere eleemosynam patienti extremam necessitatem, ex bonis tam natura quam statui superfluis; quia, cum istud praeceptum in aliquo casu obliget, nullus est certior, quam ubi est necessitas extrema ex parte recipientis, et sunt superflua naturae et statui ex parte dantis. An autem in aliis casibus obliget ?

13 **I say 2°:** Of goods superfluous to nature, even though necessary to status, we are bound under mortal sin to give alms to one suffering extreme necessity. It is common.

***Dico* 2° :** *De superfluis natura, etsi necessariis statui, tenemur sub mortali facere eleemosynam patienti extremam necessitatem. Est communis.*

14 *It is proved*. 1° from chapter III of *Luke*, 9-11, where Christ said to the crowds: Every tree that bringeth not forth good fruit shall be cut down and cast into the fire. And the crowds asked him, saying: What therefore shall we do? But he answering said to them: He that hath two coats, let him give to him that hath none; and he that hath meat, let him do in like manner. From the prior words of this text it is clear that here a rigorous precept is treated of, and not merely counsel. From the latter it is clear that we are held to succor one in extreme want even out of things necessary to status, as the second coat ought to be judged. Thus *Jerome* interprets it, Epist. 150. To this point belongs that solemn saying of Ambrose: « Feed one dying of hunger. If thou hast not fed him, thou hast killed him. »

Prob. *1° ex cap. III* Luc., *9-11, ubi Christus dicebat turbis : Omnis arbor non faciens fructum bonum, excidetur et in ignem mittetur. Et interrogabant eum turba, dicentes : Quid ergo faciemus? Respondens autem, dicebat illis : Qui habet duas tunicas, det non habenti, et qui habet escas, similiter faciat. Ex prioribus verbis huius textus patet, hic agi de praecepto rigoroso, et non solum de consilio. Patet ex posterioribus, nos teneri succurrere extreme indigenti, etiam de necessariis ad statum, prout debet censeri secunda tunica. Et ita interpretatur* Hieron., *Epist. 150. Huc etiam pertinet illud solemne Ambrosii: « Pasce fame morientem. Si non pavisti, occidisti. »*

15 *It is proved*. 2° by reason. 1° According to the order of charity, we ought to love the life of our neighbor more than the decency of our status. Therefore. 2° One who is in extreme necessity can secretly take from another those things that are superfluous to the other as to life, even though necessary as to status; nor can anyone lawfully hinder him; because, as we said above from the Author, in extreme necessity all things are common. Therefore the other was bound to give them to him.

Prob. *2° ratione. 1° Secundum ordinem charitatis, debemus plus diligere vitam proximi, quam status nostri decentiam. Ergo. 2° Qui est in extrema necessitate, potest ab altero surripere quae sunt ipsi superflua quoad vitam, etsi necessaria quoad statum, nec quisquam potest iure illum impedire ; quia, ut superius dicebamus ex Authore, in extrema necessitate omnia sunt communia. Ergo tenebatur alter illi dare.*

16 Yet from this conclusion do not infer that the rich man or nobleman is bound to cast himself down from his status, or to expend an immense sum of money, say thousands of gold pieces, though not altogether necessary to his status, for saving the life of one private person placed in extreme necessity: 1° Because, although human life in itself is more precious than another's status and whole estate, yet in order to the public good a great quantity of goods or moneys avails more than the life of one private person. 2° Because no one is held to preserve the life of his neighbor more keenly than his own. Now no one is held, for preserving his own life, to pour out riches in such a way that, made healthy or free again, he becomes miserable; for that is morally compared to death; nor is he even held to expend an immense sum of money for procuring himself the most exquisite medicines. Therefore much less is he held to these things for another. Hence charity prescribes succor through ordinary means, not extraordinary ones. Whence in these cases counsel of a prudent man is needed, who, attending to the circumstances, says how much one ought to diminish of his status and give out of his superfluity.

Neque tamen ex hac conclusione inferas, divitem aut nobilem teneri se a suo statu deiicere, vel ingentem pecuniae summam, puta millia aureorum, etsi suo statui non omnino necessaria, expendere pro salvanda vita unius privati in

extrema necessitate positi : 1° Quia, licet vita hominis secundum se sit pretiosior alterius statu et toto censu, in ordine tamen ad bonum publicum magis valet magna bonorum seu pecuniarum quantitas, quam vita unius privati. 2° Quia nemo tenetur acrius vitam proximi quam suam conservare. Nullus autem tenetur ad vitam suam conservandam sic opes effundere, ut sanus vel liber factus, miser evadat; id enim moraliter morti comparatur ; neque etiam tenetur ingentem pecuniae summam expendere pro comparandis sibi exquisitissimis medicamentis. Ergo a fortiori ad haec non tenetur pro altero. Itaque ordinariis mediis praecipit charitas succurrere, non extraordinariis. Unde in his casibus opus est consilio viri prudentis, qui attentis circumstantiis, dicat quantum quis de suo statu minuere et de superfluo dare debeat.

17 [It is to be observed that if a neighbor needs only the use of a thing, on account of a momentary necessity, it suffices to lend him the thing. Whence the obligation is fulfilled if you lend a garment to one stripped by enemies, or a horse to one wounded, until he has returned home. The reason is, because he is not absolutely poor during the time of the necessity, which ought soon to cease.[183]]

183 *St. Lig.*, lib. II, n. 31, at the end. Cf. lib. III, n. 320, qu. 5.

[Advertendum quod, si proximus rei usu tantum egeat, propter necessitatem momentaneam, sufficit ei rem commodare. Unde obligatio impletur, si ab hostibus spoliato vestem commodes, vel vulnerato equum, donec domum reversus fuerit. Ratio est, quia ille non est absolute pauper tempore necessitatis, quae brevi cessare debet.[183]]

183 S. Lig., *lib. II, n. 31, in fine. Cfr. lib. III, n. 320, qu. 5.*

18 **I say 3°:** In grave necessity of a neighbor we are bound under mortal sin to relieve him from some way out of things necessary to status. I express the conclusion thus, because the obligation in grave necessity is less than in extreme, and therefore less must be contributed out of things necessary to status. It is more common.

***Dico 3° :** In gravi necessitate proximi tenemur sub mortali illi subvenire de aliquo modo necessariis statui. Sic exprimo conclusionem, quia minor est obligatio in necessitate gravi, quam in extrema, et ideo minus tribuendum de necessariis statui. Est communior.*

19 *It is proved*. 1° from that word, *1 John*, III, 17: He that shall have the substance of this world, and shall see his brother in need, and shall shut up his bowels from him, how doth the charity of God abide in him? It is not likely the Apostle speaks of extreme necessity alone, which is very rare. And he who has sufficiency for life and status is truly said to have the substance of this world. Therefore.

Prob. *1° ex illo,* I Ioann., *III, 17 : Qui habuerit substantiam huius mundi, et viderit fratrem suum necessitatem habere, et clauserit viscera sua ab eo, quomodo charitas Dei manet in eo ? Non est verisimile Apostolum loqui de sola extrema necessitate, quae rarissima est. Et qui habet sufficientia vitae et statui, vere dicitur habere substantiam huius mundi. Ergo.*

20 2° Charity requires that we relieve a neighbor suffering grave necessity, as if, e. g., he labors under grave illness, is sharply afflicted by cold, suffers grave peril of reputation or honor, whenever we can without grave inconvenience to ourselves. Therefore we are bound to relieve him out of some way from things necessary to status; for that is not a grave inconvenience, seeing that it can easily be repaired.

2° Charitas exigit ut proximo gravem necessitatem patienti, ut si, v. g., gravi morbo laboret, frigore acriter affligatur, famae vel honoris grave periculum patiatur, subveniamus, dum possumus absque gravi nostro incommodo. Ergo tenemur illi subvenire de aliquo modo necessariis statui ; id enim non est grave incommodum, quippe quod facile resarciri potest.

21 **I say 4°:** In common necessity everyone is bound at some time, according to place and time, to give alms out of what is superfluous to status.

> ***Dico 4° :*** *In necessitate communi, quilibet tenetur aliquando, pro loco et tempore, facere eleemosynam de superfluo status.*

22 Attend to the terms of the conclusion. It is said, « at some time, according to place and time; » because the rich man having superfluities is not held to give always and to every poor person coming his way, nor to this one determinately, but at some time, now to one, now to another, as prudence shall judge. It is said, « out of what is superfluous, » and not superfluous to status; because in common necessity he is not held straightway to give everything superfluous to status, but he can reserve it either for other pious uses, or for rationally augmenting his status, for acquiring other possessions, or even for greater necessity of the poor or the republic.

> *Attende ad terminos conclusionis. Dicitur, « aliquando, pro loco et tempore ; » quia dives habens superflua, non tenetur semper et omnibus pauperibus occurrentibus dare, neque huic determinate, sed aliquando, modo uni, modo alteri, prout prudens iudicaverit. Dicitur, « de superfluo, » et non superflua status ; quia non tenetur statim omnia superflua status dare in communi necessitate, sed potest reservare, vel in alios pios usus, vel ad augendum rationabiliter statum, aliasve possessiones acquirendas, vel etiam pro maiori necessitate pauperum aut reipublicae.*

23 The conclusion so understood seems now common, especially after this proposition was condemned by Innocent XI: « Scarcely in seculars, etc., » as above, note 4°; so that he who never gave alms, or proposed never to give out of what is superfluous to status in common necessities, would not seem excusable from mortal sin.

> *Conclusio sic intellecta videtur nunc communis, praesertim post damnatam hanc propositionem ab Innocentio XI : « Vix in saecularibus, etc., » ut supra, notamine 4° ; ita ut qui nunquam faceret eleemosynam, aut proponeret nunquam facere de superfluo status in communibus necessitatibus, non videatur excusandus a peccato mortali.*

24 Therefore the first conclusion is proved from the places of Scripture already cited and others, *1 John*, III, 17: He that shall have the substance of this world, etc. *I Tim.*, VI, 17 et 18: Charge the rich of this world... to give easily, to communicate. But they would not give easily who waited for grave or extreme necessity. Compare the other places in the first conclusion.

> *Prob. itaque 1° conclusio ex locis iam citatis Scripturae et aliis,* I Ioann.*, III, 17 : Qui habuerit substantiam huius mundi, etc.* I Tim.*, VI, 17 et 18 : Divitibus huius saeculi praecipe,... facile tribuere, communicare. Non autem facile tribuerent, qui expectarent gravem aut extremam necessitatem. Confer alia loca in prima conclusione.*

25 The second conclusion is proved by reason. 1° Everyone is held by charity to love his neighbor as himself. Now he does not love his neighbor as himself who loves his own superfluities more than what is necessary to his brother for relieving his necessity. Therefore. 2° Although single common necessities are not so grave a thing that to pass over this or that one is sin, nevertheless many occurring in any city produce a notable burden and grave misery, which the rich ought each in some part to relieve. Therefore, although it is not of precept to give alms to individuals, to this one or that one, yet it is of precept to give at some time, according to place and time. 3° If no rich man, having absolutely superfluous goods, were held to give alms in common necessity, soon common necessity would become grave, and grave extreme. Therefore.

Prob. 2° ratione. 1° Quisque tenetur ex charitate diligere proximum sicut seipsum. Atqui non diligit proximum sicut seipsum, qui magis diligit sibi superflua, quam fratri necessaria ad sublevandam eius necessitatem. Ergo. 2° Quamvis singulae necessitates communes non sint ita quid grave, ut hanc vel illam praeterire sit peccatum, attamen multae occurrentes in aliqua civitate, efficiunt notabile gravamen et gravem miseriam, quam divites debent singuli pro aliqua parte sublevare. Ergo, quamvis non sit praeceptum dare singulis, huic vel illi, eleemosynam, est tamen praeceptum aliquando dare, pro loco et tempore. 3° Si nullus dives, habens absolute superflua, teneatur dare eleemosynam in necessitate communi, brevi communis necessitas evadet gravis, et gravis extrema. Ergo.

26 [Many denied, with St. Antoninus, this obligation to be grave; because, since the common misery of the poor is light and tolerable, the fault does not seem grave if someone deny them aid. But the more common opinion is that expounded here, which *St. Liguori* embraced, for the same reasons[184]. « If anyone rich and abundant for a long time denies all alms, with the intention of giving in a better and more suitable place and time, or to poorer persons, or of turning them into another pious use, he does not sin, since he has a just cause for denying[185] » Yet truly such a one would easily lie under the indirect obligation of relieving the common poor at least several times, namely lest this manner of acting, whose motive is not evident to all, yield occasion of scandal to many.]

184 Lib. III, n. 32.

185 *Ibid.*

[Multi negaverunt, cum S. Antonino, hanc obligationem esse gravem, quia, cum pauperum communis miseria sit levis et tolerabilis, culpa non videtur gravis, si quis eis auxilium deneget. At est communior sententia hic exposita, quam amplexus est S. Lig., *propter easdem rationes[184]. « Si quis dives et abundans diu neget omnes eleemosynas, cum proposito dandi meliore et commodiore loco ac tempore, vel egentioribus, vel in alium pium usum convertendi, is non peccat, cum habeat iustam causam negandi[185] » At vero talis facile subiaceret obligationi indirecta pauperibus communibus saltem aliquoties subveniendi, nimirum ne haec agendi ratio, cuius motivum omnibus non patet, pluribus in occasionem scandali cederet.]*

184 Lib. III, n. 32.

185 Ibid.

Various questions on almsgiving briefly solved

1 *You will ask* 1° whether one satisfies the precept of almsgiving by lending money, lending goods, or selling on credit to a poor man.

Petes *1° utrum quis satisfaciat praecepto eleemosynae, pauperi mutuando, commodando, vel vendendo credito.*

2 Before the answer, note that someone can be doubly poor: simply and secundum quid. I call poor simply he who neither in act, here or elsewhere, has goods, nor is in proximate potency to have them; poor secundum quid, who, although he does not have here goods by which he can now be helped, nevertheless has them elsewhere, or is in proximate potency to have them, whether through skill and industry, or through an expected inheritance.

Ante responsionem, nota aliquem posse esse dupliciter pauperem, simpliciter et secundum quid. Voco pauperem simpliciter, qui neque actu, hic aut alibi, habet bona, neque est in potentia propinqua ut habeat ; pauperem secundum quid, qui, licet non habeat hic bona quibus iuvari nunc possit, habet tamen alibi, vel est in potentia propinqua ut habeat, sive per artem et industriam, sive per expectatam haereditatem.

3 *I answer.* 1°. The precept of almsgiving is not satisfied by relieving him who is simply poor by lending money, lending goods, or selling on credit.

> Resp. *1°. Non satisfit praecepto eleemosynae, subveniendo illi qui simpliciter est pauper, mutuando, commodando, aut vendendo credito.*

4 *It is proved.* 1° Because it is certain that alms is of precept. Now to lend money, lend goods, sell on credit, is not to give alms; for alms is given gratis, nor do those who ask a loan, a loan of goods, or buy on credit, said to be asking alms. Therefore. 2° It would be inhuman and ridiculous to give to a poor man who has nothing, neither in fact nor in hope, under the condition of restoring later. Therefore.

> Prob. *1° Quia certum est eleemosynam esse in praecepto. Atqui mutuare, commodare, vendere credito, non est facere eleemosynam ; eleemosyna enim gratis datur, neque qui petunt mutuum, commodatum, aut emunt credito, dicuntur petere eleemosynam. Ergo. 2° Inhumanum et ridiculum foret dare pauperi qui nihil, neque in re, neque in spe, habet, sub conditione restituendi in posterum. Ergo.*

5 *I answer.* 2°. The precept of almsgiving is satisfied by relieving the poor man secundum quid by lending money, lending goods, or selling on credit; because the poor man secundum quid is not truly poor, and his present necessity is removed by lending money, lending goods, or selling on credit. Understand this of greater alms, not of small ones; for it is unusual, and would be inhuman, to bind beggars to repayment.

> Resp. *2°. Satisfit praecepto eleemosynae, subveniendo pauperi secundum quid, mutuando, commodando, aut vendendo credito ; quia pauper secundum quid non est vere pauper, et praesens necessitas tollitur ipsi mutuando, commodando aut vendendo credito. Intellige de maioribus eleemosynis, non de minutis ; insolitum est enim et inhumanum foret obligare mendicantes ad refusionem.*

6 [You will ask 2° how much the rich are held to disburse to the poor.

> *[Petes 2° quantum divites teneantur pauperibus erogare.*

7 Answer. They are not held to expend all their superfluity thus; but neither does it suffice to disburse so moderate a part, relative to the amount of their substance, that, if other rich men used the same frugality, relief would be lacking to the poor. But commonly it is judged that the rich satisfy this obligation by giving to the poor placed in common need a fiftieth part of their revenues; which proportion can be diminished when riches greatly exceed[186]. Except beneficed clerics, who are held to distribute all their superfluous goods to the poor or to pious works and places, as will be seen in its place.

186 *St. Lig.*, lib. III, n. 32.

> *Resp. Non tenentur totum superfluum sic impendere ; sed nec sufficit erogare tam modicam partem, pro quantitate suae substantiae, ut, si alii divites eadem parcimonia uterentur, pauperibus subsidium deesset. Communiter autem censetur divites huic obligationi satisfacere largiendo pauperibus in necessitate communi constitutis quinquagesimam partem suorum redituum ; quae proportio minui potest, cum divitiae multum excedunt[186]. Excipe beneficiatos, qui tenentur totum suum superfluum pauperibus aut operibus et locis piis distribuere, ut suo loco videbitur.*
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> *186* S. Lig., *lib. III, n. 32.*

8 You will ask 3° from what goods alms ought or can be given.

Petes 3° ex quibus bonis dari debeat aut possit eleemosyna.

9 Answer. 1° From one's own, of which one has free administration[187]

187 *Ibid.*, n. 33.

Resp. 1° Ex propriis, quorum quis liberam habet administrationem[187]

187 Ibid., *n. 33.*

10 *I say*, « from one's own, » because it is not licit out of goods subject to restitution; nor licit for those burdened with debt, to the damage of creditors; nor licit for sons out of the goods of parents, nor servants out of the goods of heirs, unless pardon be duly granted them. I say, « of which one has free administration. » Whence a wife ought not bestow extraordinary alms without the consent of her husband, except from her own goods, namely those whose dominion and full administration she herself enjoys and whose fruits she receives. Yet she can make ordinary and common alms from domestic goods, according to the custom of wives of her condition; and this even while the husband forbids it, since he does not reasonably oppose it, and custom grants this right to wives.

Dico, *« ex propriis, » quia non licet ex bonis restitutioni obnoxiis ; nec licet aere alieno gravatis, cum damno creditorum ; nec licet filiis ex bonis parentum, nec famulis ex bonis haeredum, nisi venia fuerit illis rite concessa. Dico, « quorum quis liberam habet administrationem. » Unde uxor non debet extraordinarias eleemosynas elargiri sine mariti consensu, nisi ex bonis propriis, quorum ipsa scilicet dominio et plena administratione gaudet, quorumque fructus percipit. Ordinarias tamen et communes eleemosynas facere potest ex bonis domesticis, iuxta morem uxorum suae conditionis ; id vero etiam marito prohibente, quia non est rationabiliter invitus, et consuetudo hoc ius uxoribus tribuit.*

11 Answer. 2° From the goods of another, if either the poor man be in extreme necessity, and alms cannot be given him from his own; or the owner consents, or is reasonably presumed to consent. Hence it is licit for sons to bestow small alms, and for servants bread and the like[188].

188 *Ibid.*, 2°.

Resp. 2°. Ex alienis, si vel pauper sit in necessitate extrema, et de propriis ei dari non possit ; vel dominus consentiat, aut consentire rationabiliter praesumatur. Hinc filiis licet largiri tenues eleemosynas, et famulis panem et similia[188].

188 Ibid., *2°.*

12 Likewise tutors can give from the goods committed to them those modest alms which they would owe to give, since they hold the person of the pupils[189]]

189 *Ibid.*, 3°

Similiter possunt tutores ex bonis sibi commissis dare illas modicas eleemosynas quas dare deberent pupilli, cum eorum personam gerant[189]*]*

189 Ibid., *3°.*

13 You will ask 4° whether alms can be made from things illicitly acquired.

Petes 4° utrum possit fieri eleemosyna de illicite acquisitis.

14 Answer. If the acquisition itself is illicit and unjust, as in theft and rapine, it is not licit; because those things are subject to restitution, unless perhaps the poor man were in extreme necessity, who could not otherwise be relieved.

Resp. Si acquisitio ipsa sit illicita et iniusta, ut in furto et rapina, non licet ; quia illa sunt obnoxia restitutioni, nisi forte pauper esset in extrema necessitate, cui aliter succurri non posset.

15 But if the acquisition itself is not illicit, yet that from which one acquires is illicit, as when a woman acquires through prostitution, it is licit; because, although she practices prostitution disgracefully, nevertheless in what she receives she does not act unjustly. You have this matter disputed at length in the treatise on Contracts, dissertation I, article 8.

Si autem ipsa acquisitio non sit illicita, sed tamen id ex quo acquiritur est illicitum, ut quando mulier acquirit per meretricium, licet ; quia, quamvis turpiter exerceat meretricium, in eo tamen quod accipit non agit iniuste. Hanc materiam fuse disputatam habes de Contractibus, dissert. I, art. 8.

16 You will ask 5° who can give alms.

Petes 5° quis possit facere eleemosynam.

17 Answer. Speaking per se, he and only he can give alms who has free administration of his own goods[190]. For this see dissertation II on Contracts, article 2, § 2, where we discuss who can donate, and resolve many questions concerning minors, sons of families, wives, and religious, which pertain to the present question. Compare also dissertation II on Justice, article 3.

190 *Ibid.*, a. 8, o.

Resp. Per se loquendo, is et solus potest facere eleemosynam, qui habet liberam administrationem suorum bonorum[190]. Pro quo vide dissert. II de Contractibus, art. 2, § 2. Ubi expendimus quis donare possit, et plura resolvimus circa minorennes, filios-familias, uxores et religiosos, quae ad praesentem quaestionem pertinent. Confer etiam dissert. II de Iustitia, art. 3.

190 Ibid., *a. 8, o.*

18 You will ask 6° whether clerics are more strictly bound than laymen to alms.

Petes 6° utrum clerici strictius quam laici teneantur ad eleemosynas.

19 Answer. Affirmatively, especially from ecclesiastical goods superfluous to suitable support. For this see more in dissertation III on Justice, article 3, conclusion 2.

Resp. affirmative, praesertim ex bonis ecclesiasticis congruae sustentationi superfluis. Pro quo vide plura dissert. III de Iustitia, art. 3, conclus. 2.

20 You will ask 7° whether a feigned poor man sins by begging and receiving alms, and whether he is bound to restore them.

Petes 7° utrum fictus pauper peccet petendo et accipiendo eleemosynas, teneaturque illas restituere.

21 Answer. Affirmatively; because givers are not judged to give except to a poor man, and under that tacit condition that he be poor. Whence this donation is null, and the reception theft, according to the Roman Catechism, part III, on the 7th precept of the Decalogue, n. 17, 5°: « Theft, he says, moreover, they seem also to commit who make promises with simulated words, or extort money by deceitful begging; whose sin is the graver because they heap falsehood upon theft. » Therefore they must restore to true poor men, because donors are judged to have renounced the dominion of these alms in favor of the poor.

Resp. affirmative ; quia dantes non censentur dare nisi pauperi, et sub ea conditione tacita, quod sit pauper. Unde haec donatio est nulla et receptio furtum, iuxta Catechismum Tridentinum, III part., in 7um praeceptum Decalogi, n. 17, 5° : « Furtum, inquit, praeterea facere videntur, qui fietis simulatisque verbis, quive fallaci mendicitate pecuniam extorquent ; quorum eo gravius est peccatum, quod furtum mendacio cumulant. » Debent ergo restituere veris pauperibus, quia donantes censentur abdicasse harum eleemosynarum dominium in favorem pauperum.

22 Some except small and ordinary alms; because, they say, these are presumed to be given absolutely. But that presumption does not seem to us sufficiently founded. Yet if someone were truly poor, but feigned himself poorer, that he might obtain an alms more easily or larger, he does not seem bound to restitution; because it is common opinion that the poor ordinarily exaggerate their poverty, and donors presuppose it.

Quidam excipiunt minutas et ordinarias eleemosynas ; quia, inquiunt, praesumitur has fieri absolute. Sed ista praesumptio non videtur nobis satis fundata. Si tamen quis esset vere pauper, sed fingeret se pauperiorem, ut facilius aut largiorem obtineret eleemosynam, non videtur adstrictus restitutioni ; quia est communis opinio, quod pauperes exaggerent ordinarie suam paupertatem, et id supponunt donantes.

23 [You will ask 8° whether one appointed to the distribution of alms can retain a part for himself, if he be truly poor.

[Petes 8° utrum qui praeficitur distributioni eleemosynarum, possit sibi retinere partem, si vere sit pauper.

24 Answer. Affirmatively, since he is not in a worse condition than the other poor[191]. Except, however, unless designated poor persons be given the alms, to the exclusion of any others.

191 Hic q. 32, a. 9, ad 3.

Resp. affirmative, cum non sit peioris conditionis quam alii pauperes[191]. Excipe tamen nisi designati sint pauperes quibus faciendae sunt eleemosynae, exclusis quibusvis aliis.

191 Hic q. 32, a. 9, ad 3.

25 You will ask 9° whether magistrates can hinder foreign poor from begging in their places.

Petes 9° utrum magistratus possint impedire ne in suis locis pauperes extranei mendicent.

26 Answer. That they cannot hinder all altogether; because there are many poor who are forced to go into exile from their native places, whether by sentence of a judge, or because they have enemies there or have suffered disgrace, or because cities and villages have been devastated either by incursion of enemies or by fire; and these must still live. Whence then shall they live, if repelled by all? Hence it is clear that magistrates who absolutely and indiscriminately forbid the poor to beg in their territories impede the lawful use of charity and injure the right of the poor.

Resp. non posse omnes omnino impedire ; quia plures sunt pauperes qui e suis locis natalibus exulare coguntur, sive sententia iudicis, sive quia ibi habent inimicos aut dedecus passi sunt, sive quia urbes et pagi vel incursione hostium vel incendio sunt devastati ; et hi tamen debent vivere. Unde autem vivent, si ab omnibus repellantur ? Inde patet legitimum charitatis usum impedire, et ius pauperum laedere, magistratus qui absolute et indiscriminatim prohibent ne in suis territoriis pauperes mendicent.

27 You will ask 10° whether alms should be given voluntarily to poor men who, if they wished, would not be in need.

Petes 10° utrum facienda sit eleemosyna voluntarie pauperibus, qui, si vellent, non egerent.

28 Answer. Alms ought to be given to those who are voluntarily poor on account of Christ and from love of virtue, whether in religion or outside it, as were St. Benedict Joseph Labre; because they abase themselves into this state for a just cause and from divine vocation, and in them is found the object of mercy. See the Angelic Doctor, below q. 187, a. 3, 4 and 5, and the Opuscule Against Those Who Attack Religion. But alms is not to be given to those who are poor from laziness, love of idleness, and greed for gain: partly because it is not licit for them to beg, partly because charity exercised thus toward them would nourish their idleness and greed. Yet one ought not inquire too curiously about the condition of beggars, lest perhaps true poor men be defrauded of aid necessary to them. For there are many who do not dare declare themselves poor out of shame; but less is the inconvenience of giving to one not in need, than of denying one in need.]

> *Resp. faciendam esse iis qui sunt voluntarie pauperes propter Christum et ex amore virtutis, sive in religione, sive extra, ut fuit S. Benedictus Iosephus Labre ; quia ob iustam causam et ex vocatione divina ad hunc statum se demittunt, et reperitur in illis obiectum misericordiae. Vide Angelicum, infra q. 187, a. 3, 4 et 5, et Opusc. Contra impugnantes religionem. Iis vero qui sunt pauperes ex ignavia, amore otii et cupiditate lucri, non est facienda eleemosyna, tum quia illis non licet mendicare, tum quia charitas sic erga eos exercita eorum ignaviam et cupiditatem foveret. Non est tamen curiosius inquirendum de conditione mendicantium, ne forte veri pauperes subsidio sibi necessario fraudentur. Plures sunt enim qui ex verecundia se pauperes declarare non audent ; minus autem est incommodi dare non indigenti, quam denegare indigenti.]*

On Fraternal Correction

1 (*St. Thomas, q. 33.*)

> *(*D. Thomas, q. 33.*)*

2 Although, if the force of the words be attended to, correction and admonition differ — for admonition is a reprehension directed to the amendment of a brother, correction is the amendment itself — by accepted usage among theologians they are confounded and taken for one and the same.

> *Quamvis, si verborum vis attendatur, differant correptio et correctio ; correptio enim est reprehensio ad emendationem fratris, correctio est ipsa emendatio : usu tamen recepto inter theologos confunduntur et pro uno et eodem sumuntur.*

3 There is a twofold admonition of a delinquent[192]: One which applies a remedy to sin inasmuch as it is some evil of the sinner himself and is ordered to his amendment, called *fraternal*. The other is that which applies a remedy to sin inasmuch as it is to the evil of others, and especially to the harm of the common good, and is called *judicial*. This latter is an act of justice, whose office is to preserve the rectitude of justice of one toward another. Fraternal, however, since it is a spiritual work of mercy, is an act elicited by mercy and commanded by charity.

192 Hic, q. 33, a. 1, o.

> *Duplex est correptio delinquentis[192] : Una, quae adhibet remedium peccato in quantum est quoddam malum ipsius peccantis et ordinatur ad eius emendationem, dicitur* fraterna. *Altera est quae adhibet remedium peccato secundum quod est in malum aliorum et praecipue in nocumentum boni communis, et dicitur* iudicialis. *Haec est actus iustitiae, cuius est conservare rectitudinem iustitiae unius ad alium. Fraterna autem, cum sit eleemosyna spiritualis, est actus elicitus a misericordia et imperatus a charitate.*
>
> *192 Hic, q. 33, a. 1, o.*

4 Judicial admonition is not treated here, but only fraternal, which can be defined: « An act of charity and mercy by which, through fitting speech or something equivalent, we strive to turn our neighbor from the evil of sin to the good of virtue.

> *De correptione iudiciali hic non agitur, sed tantum de fraterna, quae definiri potest : « Actus charitatis et misericordiae, quo per convenientem sermonem, vel aliquid aequivalens, proximum a malo peccati ad bonum virtutis convertere nitimur. »*

Whether fraternal correction is a matter of precept, and what conditions are required for it to oblige?

1 Fraternal admonition is of natural precept and positive divine precept[193].

193 *Ibid.*, a. 2, o.

> *Correptio fraterna est in praecepto naturali et divino positivo[193].*
>
> *193* Ibid., *a. 2, o.*

2 *It is proved*. 1° from *Scripture*. Christ says, *Matt.*, XVIII, 15: If thy brother shall sin against thee, go and rebuke him between thee and him alone. If he shall hear thee, thou shalt gain thy brother.

> Prob. *1° ex* Scriptura. *Christus,* Matth.*, XVIII, 15, dicit : Si peccaverit in te frater tuus, vade et corripe eum inter te et ipsum solum. Si te audierit, lucratus eris fratrem tuum.*

3 *It is proved*. 2° by reason. 1° By natural precept we are held to relieve a neighbor in corporal want. Therefore much more one in spiritual want. 2° By the law of nature we are held to lead back the wandering ox of our neighbor. Therefore much more the neighbor himself who wanders. 3° Finally, we are held to love our neighbor. But love of neighbor necessarily imports not only willing and procuring his good, but also averting evil from him when we can. Therefore.

> Prob. *2° ratione. 1° Praecepto naturali tenemur subvenire proximo corporaliter indigenti. Ergo, a fortiori, spiritualiter indigenti. 2° Lege naturae tenemur reducere bovem proximi errantem. Ergo, a fortiori, ipsum proximum errantem. 3° Denique, tenemur diligere proximum. Dilectio autem proximi necessario importat, non solum velle et praestare ei bonum, sed etiam ab eo avertere malum, cum possumus. Ergo.*

4 **I say 2°:** That the precept of admonition may bind, there is required 1° sufficient matter, namely that the sin committed or to be committed be, speaking per se, mortal; 2° certain knowledge of it is required; 3° hope of amendment; 4° necessity of the admonition.

> ***Dico 2° :*** *Ut praeceptum correptionis obliget, requiritur 1° materia sufficiens, nimirum quod peccatum commissum vel committendum sit, per se loquendo, mortale ; 2° requiritur certa eius notitia ; 3° spes emendationis ; 4° necessitas correptionis.*

5 These conditions are proved and explained.

> *Probantur et explicantur istae conditiones.*

6 *Sufficient matter.* — That only mortal sin, and not venial, is per se sufficient and proper matter of fraternal admonition is evident: 1° from the very words of Christ, *Matt.*, XVIII, 15, where, explaining this precept, he says: If he shall hear thee, thou shalt gain thy brother. Therefore he had perished. Now no one perishes as regards spiritual life except through mortal sin. Christ adds that, if he hear not the one admonishing him, witnesses are to be brought in, then he is to be denounced to the Church and held as a heathen and publican. It seems certain these things are not prescribed for venial

sins, because they are daily and are found even in the just themselves. 2° Since every admonition is burdensome to the one admonishing and odious to the one admonished, and venial sins are most frequent, if the obligation of admonishing them were urged on, the burden would be unbearable both for those admonishing and those to be admonished, nor could peace or tranquility be preserved among men.

> Materia sufficiens. — *Solum peccatum mortale, et non veniale, esse per se materiam sufficientem et propriam correptionis fraternae, constat 1° ex verbis ipsis Christi,* Matth.*, XVIII, 15, ubi in explicatione huius praecepti dicit : Si te audierit, lucratus eris fratrem tuum. Ergo perierat. Nemo autem perit quoad vitam spiritualem, nisi per peccatum mortale. Addit Christus quod, si corripientem non audiat, adhibendi sunt testes, deinde denuntiandus sit Ecclesiae et habendus ut ethnicus et publicanus. Certum autem videtur haec non praecipi de peccatis venialibus, quia quotidiana sunt et in ipsis iustis reperiuntur. 2° Cum omnis correptio sit onerosa corripienti et odiosa correpto, et peccata venialia sint frequentissima, si urgeret obligatio ea corripiendi, onus foret importabile tam corripientibus quam corripiendis, et neque pax neque tranquillitas inter homines servari posset.*

7 I said, « speaking per se; » because per accidens venial sins can be necessary matter of fraternal admonition, as if from them there would follow scandal, disturbance of tranquility in a community, proximate danger of sinning mortally, or detriment to regular discipline.

> *Dixi, « per se loquendo ; » quia per accidens peccata venialia possunt esse materia necessaria correptionis fraternae, ut si ex his sequeretur scandalum, perturbatio tranquillitatis in communitate, periculum proximum peccandi mortaliter, aut detrimentum disciplinae regularis.*

8 *Knowledge of the sin.* — In order that anyone be held to admonish a neighbor, he must have morally certain knowledge of the sin committed or about to be committed. Whence doubt, suspicion, scruple, or rumor does not suffice; because, since correction inflicts shame and is odious to the corrected, he would justly complain if accused of a sin which does not appear; and often imprudent corrections arising from doubts and uncertain indications cause grave contentions and dissensions. Add that in doubt there must be presumption in favor of the neighbor. For this reason scrupulous persons, who fear and suspect sin in all things, are usually exempted from making the admonition.

> Notitia peccati. — *Ad hoc ut quis teneatur corripere proximum, debet habere notitiam moraliter certam peccati commissi vel committendi. Unde non sufficit dubium, suspicio, scrupulus aut rumor ; quia, cum correctio pudorem ingerat et sit correcto odiosa, iuste conquereretur, si argueretur de peccato quod non constat, et saepe imprudentes correctiones ex dubiis et incertis indicibus causant graves tricas et dissensiones. Adde quod in dubio praesumendum sit in favorem proximi. Hac ratione plerumque eximuntur a correptione facienda scrupulosi, qui in omnibus timent et suspicantur peccatum.*

9 *Hope of amendment.* — That hope of amendment is required is evident[194], because, the end ceasing, the reason for acting on account of the end ceases; but the end of fraternal admonition is the amendment of the neighbor, wherein it differs from judicial admonition, whose end is the common good. Add that by this very fact that the admonition does not profit, it harms, because the admonished, not repenting, sins more gravely. And for this reason those of inferior condition than the one correcting are often excused from fraternal admonition.

194 *Ibid.*, a. 6, o.

> Spes emendationis. — *Requiri spem emendationis manifestum est[194], quia, cessante fine, cessat ratio operandi propter finem ; finis autem correptionis fraternae est emendatio proximi, in quo differt a correptione iudiciali, cuius finis*

est bonum commune. Adde quod hoc ipso quo non prodest correptio, obsit, quia correptus non resipiscens gravius peccat. Et hac ratione saepe excusantur a correptione fraterna qui sunt inferioris conditionis corrigiendo.

194 Ibid., *a. 6, o.*

10 Yet certain hope is not required, but probable suffices, provided also it be probable that the admonition will do no harm. If it be doubted whether it will profit, and it is certain it will not harm, it is to be applied, just as physicians apply a medicine they certainly know will not harm, although they doubt whether it will profit, while there is no other way of helping the sick man. If truly it be doubtful whether it will profit, and equally doubtful whether it will harm, as often happens with strangers and unknown persons whose character we do not know, the hoped-for utility is to be compared with the damage feared, and the greater is to be preferred to the less.

Non tamen requiritur spes certa, sed sufficit probabilis, modo etiam sit probabile correptionem non obfutura. Si dubitetur an sit profutura, et certum quod non sit obfutura, adhibenda est, sicut medici adhibent medicinam quam certo sciunt non nocituram, quamvis dubitent an sit profutura, dum non est alius modus iuvandi aegrotum. Si vero dubium sit an proderit, et pariter dubium an nocebit, ut saepe contingit in extraneis et ignotis, quorum ingenium non novimus, conferenda est utilitas sperata cum damno quod timetur, et maius est minori praeferendum.

11 Understand these things of admonition precisely fraternal and intending nothing else than the amendment of the delinquent; because, if it be a question of an admonition which would be taken up toward some other end, as toward impeding injury to a third party or to the republic, or the dishonoring of God through blasphemies, or the seduction of the people by heretics, even if there were no hope of amendment in the sinner, if there be hope of impeding the evil or damage consequent upon his sin, admonition and reproof can and ought to be applied.

Haec intellige de correptione praecise fraterna et quae nihil aliud intendit quam emendationem delinquentis ; quia, si agatur de correptione quae assumeretur ad alium aliquem finem, ut ad impediendum damnum tertii vel reipublicae, aut dehonorationem Dei per blasphemias, vel seductionem populi per haereticos, etiamsi nulla esset spes emendae in peccante, si sit spes impediendi malum aut damnum ex eius peccato consequens, potest et debet adhiberi correptio et redargutio.

12 *Necessity of admonition.* — Namely for the amendment of the brother; because, as the Author runs through it[195], fraternal correction is ordered to the amendment of a brother, and therefore falls under precept in this way, inasmuch as it is necessary for that end, but not so that the delinquent be corrected at any place or time whatsoever.

195 *Ibid.*, a. 2, o.

Necessitas correptionis. — *Scilicet ad emendationem fratris ; quia, ut discurrit Author[195], correctio fraterna ordinatur ad fratris emendationem, et ideo hoc modo cadit sub praecepto, secundum quod est necessaria ad istum finem, non autem quod quolibet loco vel tempore delinquens corrigatur.*

195 Ibid., *a. 2, o.*

13 Whence it follows that, if the brother be already amended, or it be probable that he will amend himself, as is lawfully presumed in those who take care of their salvation and are accustomed frequently to receive the sacraments, nor meanwhile be danger of relapse, you are not held to admonish him. Likewise if he ought to be admonished by others. Yet truly, if there be present some

who could perhaps admonish better and more usefully, and yet do not, you are held; because, as was said of corporal alms, all who know are held in solidum.

> *Hinc sequitur quod, si frater sit emendatus, aut probabile sit quod ipse se emendabit, ut iure praesumitur in iis qui suae salutis non sunt incurii et solent frequentare sacramenta, nec interim sit periculum relapsus, non tenearis corripere. Similiter si per alios sit corripiendus. At vero, si adsint quidam qui possent forte melius et utilius corripere, et tamen non faciunt, teneris ; quia, ut dictum est de eleemosyna corporali, omnes scientes tenentur in solidum.*

14 Moreover it is to be observed that, since these conditions are rarely found all together, rarely also are private men held, at least under grave sin, to fraternal admonition.

> *Caeterum observandum est quod, cum istae conditiones raro omnes simul reperiantur, raro etiam homines privati teneantur, saltem sub gravi peccato, ad correptionem fraternam.*

15 *You will ask* 1° whether the precept of fraternal admonition binds with loss to the one admonishing.

> Petes *1° utrum praeceptum correptionis fraternae obliget cum damno corripientis.*

16 Answer. If the brother be in grave spiritual necessity, from which indeed he could absolutely free himself, yet only with difficulty, whether on account of the vehemence of passion, or on account of inveterate custom and obstinacy in evil, or on account of ignorance or another cause: everyone is held to admonish him with some loss of his temporal goods, because we ought to love the eternal salvation of our neighbor more than certain temporal goods. But those on whom the care of souls devolves by office are held even with peril of life in grave necessity; because they are bound more than others, and ought to be ready to lay down their life for their sheep.

> *Resp. Si frater sit in gravi necessitate spirituali, a qua licet absolute possit se liberare, nonnisi tamen difficile, sive ob vehementiam passionis, sive ob inveteratam consuetudinem et obstinationem in malo, sive ob ignorantiam aut ob aliam causam ; quilibet tenetur cum aliquo damno suorum temporalium illum corripere, quia plus debemus diligere salutem aeternam proximi, quam quaedam bona temporalia. Ii autem quibus cura animarum incumbit ex officio, tenentur etiam cum periculo vitae in gravi necessitate ; quia ii magis tenentur quam alii, et debent esse parati ponere animam suam pro ovibus suis.*

17 Compare what I said above, dissertation IV on the order of charity, especially article 3.

> *Confer quae superius dixi dissert. IV de ordine charitatis, praesertim art. 3.*

18 I said, « in grave spiritual necessity; » because extreme spiritual necessity, namely from which one cannot absolutely free himself, can scarcely be given.

> *Dixi, « in gravi necessitate spirituali ; » quia vix aut ne vix dari potest extrema necessitas spiritualis, a qua scilicet quis absolute non potest se liberare.*

19 [You will ask 2° whether sinners themselves are held by this precept.

> *[*Petes *2° an peccatores ipsi hoc praecepto teneantur.*

20 Answer. Affirmatively. « The correction of the delinquent, says the Angelic Doctor[196], pertains to someone inasmuch as right judgment of reason flourishes in him. But sin does not take away the whole good of nature, so that something of right judgment of reason remains in the sinner. And according to this it can belong to him to accuse the delinquency of another. » Yet if he is a public sinner, he ought to abstain from correction on account of scandal, mindful of the words of the

Apostle, *Rom.*, II, 21-24: Thou that teachest another, teachest not thyself; thou that preachest that men should not steal, stealest... For the name of God through you is blasphemed among the Gentiles.

196 *Ibid.*, a. 5, o.

> *Resp. affirmative. « Correctio enim delinquentis, ait Angelicus[196], pertinet ad aliquem in quantum viget in eo rectum iudicium rationis. Peccatum autem non tollit totum bonum naturae, quin remaneat in peccatore aliquid de recto iudicio rationis. Et secundum hoc potest sibi competere alterius delictum arguere. » Si tamen est peccator publicus, a correctione abstinere debet propter scandalum, memor verborum Apostoli,* Rom.*, II, 21-24 : Qui alios doces, te ipsum non doces ; qui praedicas non furandum, furaris... Nomen enim Dei blasphematur per vos inter gentes.*
>
> *[196]* Ibid.*, a. 5, o.*

21 You will ask 3° whether even inferiors are held by this precept toward superiors.

> *Petes 3° an etiam inferiores teneantur hoc praecepto erga superiores.*

22 Answer. Affirmatively, with St. Thomas saying[197] : « The correction which is an act of justice through coercion by punishment does not belong to a subject toward a prelate. But fraternal correction, which is an act of charity, belongs to each one toward any person whatever toward whom he owes charity, if there be found in him something correctible. For an act proceeding from some habit or power extends itself to all things contained under the object of that power or habit, as vision to all things contained under the object of sight. But because a virtuous act ought to be moderated by due circumstances, therefore in the correction by which subjects correct prelates a fitting mode should be used, namely that they be admonished not with insolence and harshness, but with mildness and reverence. Whence the Apostle says, I Tim., V, 1: An ancient man rebuke not, but entreat him as a father. »

197 *Ibid.*, a. 4, o.

> *Resp. affirmative cum S. Thoma dicente[197] : « Correctio quae est actus iustitiae per coercionem poenae, non competit subdito respectu praelati. Sed correctio fraterna, quae est actus charitatis, pertinet ad unumquemque respectu cuiuslibet personae ad quam charitatem debet habere, si in ea aliquid corrigibile inveniatur. Actus enim ex aliquo habitu vel potentia procedens, se extendit ad omnia quae continentur sub obiecto illius potentiae vel habitus, sicut visio ad omnia quae continentur sub obiecto visus. Sed quia actus virtuosus debet esse moderatus debitis circumstantiis, ideo in correctione qua subditi corrigunt praelatos debet modus congruus adhiberi, ut scilicet non cum protervia et duritia, sed cum mansuetudine et reverentia corripiantur. Unde Apostolus dicit, I Tim., V, 1 : Seniorem ne increpaveris, sed obsecra ut patrem. »*
>
> *[197]* Ibid.*, a. 4, o.*

23 *You will ask* 4° whether he who sins from ignorance ought to be admonished.

> Petes *4° an corripiendus sit qui peccat ex ignorantia.*

24 *I answer.* 1°. If he sins from vincibile ignorance, certainly he is to be admonished, because then he is in bad faith, nor is he excused from sin.

> Resp. *1°. Si peccat ex ignorantia vincibili, certe corripiendus est, quia tunc est in mala fide, neque excusatur a peccato.*

25 *I answer.* 2°. If he offends from invincible ignorance, he is to be warned: 1° when things necessary to salvation are in question, or turning away the scandal of others. Nor is admonition to be passed over, even though the amendment of the delinquent could scarcely be hoped for, lest perhaps others judge

licit what will not be corrected. If it be objected that his sin will then become formal from material, and he could thence perish spiritually: it must be answered that in the prior case he would likewise perish, from invincible ignorance too, of the things necessary to salvation; in the latter case, that charity requires that the scandal of the neighbor be prevented. 2° When divine law, natural or positive, is violated, even if only materially, and the fruit of warning can be hoped for; for knowledge and observance of the certain law is always something good and above all desirable. So commonly. But if amendment cannot probably be foreseen, the delinquent is to be left in good faith, lest he sin formally. 3° If truly mere human law is in question, several contradicting: more probably the warning is to be made, if it seem able prudently to be done, for removing the depraved habit[198] . Certainly they must take notice of such a delinquent who are held by office to teach their subjects, as a prelate, confessors, masters[199] .

198 St. Lig., lib. III, d. 36.

199 Id., lib. VI, n. 610, obi. 1ª at the end.

> Resp. 2°. *Si delinquit ex ignorantia invincibili, monendus est : 1° cum agitur de necessariis ad salutem, vel de scandalo aliorum avertendo. Nec praetereunda est correptio, tametsi delinquentis emendatio vix sperari possit, ne alii forte id pro licito iudicent quod non corrigetur. Si obiiciatur, peccatum eius ex materiali tunc formale evasurum et eum inde spiritualiter perire posse; respondendum, id priori casu, eum similiter periturum ex ignorantia etiam invincibili necessariorum ad salutem; in posteriori casu, charitatem requirere ut scandalum proximi praeveniatur. 2° Cum violatur, etsi solum materialiter, lex divina, naturalis aut positiva, et sperari potest monitionis profectus; cognitio enim et observantia legis certae est semper quid bonum et maxime optandum. Ita communiter. Si vero emendatio non probabiliter praevideatur, relinquendus est delinquens in bona fide, ne formaliter peccet. 3° Si vero ius mere humanum sit in causa, pluribus contradicentibus, probabilius monitio est facienda, si prudenter fieri posse videatur, ad pravum habitum removendum*[198] *. Certo autem in huiusmodi delinquentem animadvertere debent, qui ex officio subditos docere tenentur, ut praelatus, confessarii, magistri*[199] *.*
>
> *198 S. Lig., lib. III, d. 36.*
>
> *199 Id., lib. VI, n. 610, obi. 1ª in fine.*

On the order of fraternal correction

1 Christ handed down this order, *Matt.*, XVIII, 15-17, in these words: If thy brother shall sin against thee, go and rebuke him between thee and him alone. If he shall hear thee, thou shalt gain thy brother; but if he will not hear thee, take with thee yet one or two more, that in the mouth of two or three witnesses every word may stand. But if he will not hear them, tell the Church; and if he will not hear the Church, let him be to thee as a heathen and publican. There are therefore three grades in the order of fraternal admonition: first, to admonish secretly; second, to admonish before one or two witnesses; third, to tell the Church or the prelate. The question is whether this order is of precept as regards all its grades[200] .

200 Hic q. 33, a. 7, c.

> *Hunc ordinem tradidit Christus,* Matth.*, XVIII, 15-17, his verbis : Si peccaverit in te frater tuus, vade et corripe eum inter te et ipsum solum. Si te audierit, lucratus eris fratrem tuum; si autem te non audierit, adhibe tecum adhuc unum vel duos, ut in ore duorum vel trium testium stet omne verbum. Quod si non audierit eos, dic Ecclesiae ; si autem Ecclesiam non audierit, sit tibi sicut ethnicus et publicanus. Sunt ergo tres gradus in ordine correptionis fraternae :*

primus, corripere secreto; secundus, corripere coram uno vel duobus; tertius, dicere Ecclesiae seu praelato. Quaestio est utrum iste ordo sit in praecepto quoad omnes suos gradus[200] .

[200] *Hic q. 33, a. 7, c.*

2 **I say 1°:** If the sin be public, that is, known to the greater part of the community, secret admonition ought not necessarily precede denunciation, but he is to be reproved publicly, according to that word, *I Tim.*, V, 20: Them that sin reprove before all, that the rest also may have fear; which Augustine understands of public sins, Serm. 822, concluding: « Therefore those things themselves are to be reproved before all which are sinned before all; those themselves are to be reproved more secretly which are sinned more secretly. »

Dico 1° : *Si peccatum sit publicum, id est maiori parti communitatis notum, admonitio secreta non debet necessario praecedere denuntiationem, sed est publice arguendum, iuxta illud,* I Tim., *V, 20 : Peccantes coram omnibus argue, ut caeteri timorem habeant; quod de peccatis publicis intelligit Aug., Serm. 822, concludens : « Ergo ipsa corripienda sunt coram omnibus, quae peccantur coram omnibus; ipsa corripienda sunt secretius, quae peccantur secretius. »*

3 The reason is[201] : 1° Because, when sin is public, a remedy is not only to be applied to him who sinned, that he become better, but also to others into whose knowledge it comes, that they be not scandalized. 2° Because the end on account of which secret admonition should precede, which is preservation of reputation, ceases when through the publicity of the sin the reputation of the sinner has been lost.

[201] Ubi supra.

Ratio est[201] *: 1° Quia, quando peccatum est publicum, non est tantum adhibendum remedium ei qui peccavit, ut melior fiat, sed etiam aliis in quorum notitiam devenit, ut non scandalizentur. 2° Quia finis propter quem praemittenda est admonitio secreta, qui est conservatio famae, cessat cum per publicitatem peccati fama peccantis sit perdita.*

[201] *Ubi supra.*

4 **I say 2°:** If the sin be hidden, but tending to the harm of others, whether corporal or spiritual — say if someone secretly treat of betraying his fatherland, if a heretic privately turn men from the faith, if a magician or sorcerer secretly act to the destruction of others, if an apothecary sell pernicious drugs, etc. — one must proceed straightway to denunciation, secret admonition not having preceded, so that such harm may be impeded[202] : partly because then the words of the Lord have no place, for the brother sinning does not sin against thee only; partly because we ought rather to care that an innocent neighbor not be injured in body or soul than that the sinner's reputation be lost.

[202] Ibid.

Dico 2° : *Si peccatum sit occultum, sed vergens in nocumentum aliorum, sive corporale, sive spirituale, puta si aliquis occulte tractet de proditione patriae, si haereticus privatim homines a fide avertat, si magus aut sortiarius occulte agat in perniciem aliorum, si pharmacopola vendat pharmaca perniciosa, etc.; oportet statim procedere ad denuntiationem, non praemissa admonitione secreta, ut huiusmodi nocumentum impediatur*[202] *: partim quia tunc non habent locum verba Domini, frater enim peccans non peccat in te tantum; partim quia debemus magis curare ne proximus innocens in corpore vel anima laedatur, quam ne fama peccatoris perdatur.*

[202] *Ibid.*

5 Except, unless perhaps someone firmly judge that he could straightway impede evils of this kind through private admonition[203] . But this scarcely holds place with heretics, who are unwilling to hear

even the Church herself, and with magicians and sorcerers, on account of their obstinate will in evil.

[203] Ibid.

> *Excipe, nisi forte aliquis firmiter existimet quod statim per secretam admonitionem posset huiusmodi mala impedire*[203] *. Sed hoc vix locum habet in haereticis, qui nec ipsam Ecclesiam audire volunt, et in magis ac sortiariis, propter obstinatam voluntatem in malo.*
>
> [203] *Ibid.*

6 **I say 3°:** If the sin be hidden and harmful only to the sinner himself and to him against whom it is sinned, speaking per se, a secret warning must necessarily precede denunciation[204] .

[204] Ibid.

> ***Dico 3° :*** *Si peccatum sit occultum et soli peccanti ac ei in quem peccatur noxium, per se loquendo, necessario est praemittenda secreta monitio denuntiationi*[204] *.*
>
> [204] *Ibid.*

7 *It is proved*. 1° from the words of Christ: If thy brother shall sin against thee, go and rebuke him between thee and him alone. 2° By natural law we are held to cure our neighbor with less, so far as can be done, damage to his reputation; for reputation is useful both in temporal and in spiritual things: just as a physician confers bodily health upon the sick man, if he can, without amputation of any limb; but if he cannot, he cuts off the less necessary limb, that the life of the whole be preserved. Therefore the reputation of the sinning brother ought not to be diminished before a superior when amendment is hoped for through private correction. 3° Because immediate denunciation without secret warning often moves the neighbor to indignation against the denouncer, and to further fall, according to that word of Jerome on the cited words of Matt.: « The brother must be rebuked apart, lest, if once he lose shame or modesty, he remain in sin. » For many are withheld from sin by fear of infamy who, when they see themselves defamed, sin unrestrainedly.

> Prob. *1° ex verbis Christi : Si peccaverit in te frater tuus, vade et corripe inter te et ipsum solum. 2° Lege naturali tenemur curare proximum cum minori, quantum fieri potest, damno eius famae; est enim fama utilis et in temporalibus et in spiritualibus : sicut medicus corporalis sanitatem aegroto confert, si potest, sine alicuius membri abscissione; si autem non potest, abscindit membrum minus necessarium, ut vita totius conservetur. Ergo fama fratris peccantis non est minuenda apud superiorem, quando per privatam correptionem speratur emendatio. 3° Quia immediata denuntiatio sine secreta monitione saepe movet proximum ad indignationem contra denuntiantem, et ad ulteriorem lapsum, iuxta illud Hieronymi, in verba citata Matth. : « Corripiendus est seorsim frater, ne, si semel pudorem vel verecundiam amiserit, permaneat in peccato. » Multi enim timore infamiae a peccato retrahuntur, qui quando se infamatos vident, irrefrenate peccant.*

8 I said, « speaking per se; » because per accidens secret correction is not to precede denunciation in certain cases. 1° It is not to precede if it be solidly presumed not profitable[205] . 2° If the one about to correct be less fit for correcting, and it appear that it will be done better by the prelate, inasmuch as the prelate is pious, discreet, spiritual, not bearing rancor or hatred against the subject, and able to impede the sin in many ways, although delation be made to him at once. He says the same concerning some other pious and prudent man.

[205] Quodl. 11, a. 13, c.

Dixi, « per se loquendo; » quia per accidens non est praemittenda secreta correptio denuntiationi in certis casibus. 1° Non est praemittenda, si fundate praesumatur non profutura[205] *. 2° Si correpturus sit minus idoneus ad corripiendum, et videatur quod melius fiet per praelatum, quatenus praelatus est pius, discretus, spiritualis, non habens rancorem aut odium adversus subditum, potestque pluribus modis impedire peccatum, licet statim illi fieri delatio. Idem dicit de aliquo alio viro pio et prudenti.*

[205] *Quodl. 11, a. 13, c.*

9 Nor is this to tell the Church; because it is not said to the prelate as to a judge and superior, but as to a person profiting toward the correction and amendment of a neighbor, and quasi as a brother.

Neque hoc est dicere Ecclesiae ; quia non dicitur praelato ut iudici et superiori, sed ut personae proficienti ad correctionem et emendationem proximi, et quasi fratri.

10 Nor even thereby is the precept of the Lord violated of secret warning preceding denunciation; because, since it is affirmative and directed to the good of correcting, it ought to be observed insofar as the circumstances of places, times, and persons indicate it ought to be observed. Nor can the corrected one complain of his defamation before a superior; for this defamation is light, attending to the prudence, probity, and benevolence presupposed in the prelate, and he ought to endure it for obtaining a better manner of his salvation.

Neque etiam in hoc violatur praeceptum Domini de monitione secreta praemittenda denuntiationi ; quia, cum sit affirmativum et in bonum corripiendi, debet observari in quantum circumstantiae locorum, temporum et personarum indicant observandum. Neque conqueri potest corripiendus de sui diffamatione apud superiorem; levis enim est haec diffamatio, attentis prudentia, probitate et benevolentia quae supponuntur in praelato, debetque illum sufferre pro consequenda meliori modo sua salute.

11 **I say 4°:** If after secret admonition applied several times fruitlessly there be hope that, proceeding further, the brother will amend himself, we ought to proceed further, bringing in witnesses, then denouncing the prelate as a father, however hidden the sin be. But if there be no hope that, proceeding further, the brother will amend himself, one must not proceed beyond private warning[206] .

[206] Ibid., c. et ad 1.

Dico 4° : *Si post pluries adhibitam infructuose admonitionem secretam, sit spes quod ulterius procedendo frater emendabitur, debemus ulterius procedere, adhibendo testes, deinde denuntiando praelato, ut patri, quantumvis peccatum sit occultum. Si vero non sit spes quod ulterius procedendo frater emendabitur, non est ultra privatam monitionem procedendum*[206] *.*

[206] *Ibid., c. et ad 1.*

12 *It is proved* as to the first part: 1° from the law enacted by Christ. 2° By charity we are held to consult the reputation and salvation of our neighbor, salvation however more than reputation, if both cannot be had. Therefore if the introduction of witnesses or denunciation be necessary to the salvation of our neighbor, the light injury to reputation from the introduction of witnesses or from the denunciation made to the prelate as to a father ought to be neglected, that salvation be obtained; just as a prudent physician, for preserving the life of the whole, cuts off the less necessary member, as we said above from the Author.

Prob. *prima pars : 1° ex lege statuta a Christo. 2° Ex charitate tenemur consulere famae et saluti proximi, magis tamen saluti quam famae, si utraque haberi non possit. Si ergo inductio testium aut denuntiatio sit necessaria saluti proximi, negligi debet leve famae detrimentum ex adhibitione testium aut ex denuntiatione facta praelato tamquam patri, ut salus obtineatur; sicut prudens medicus pro conservatione vitae totius abscindit membrum minus necessarium, ut iam diximus ex Authore.*

13 *It is proved* as to the second part. Fraternal correction and its whole process are ordered to the good and amendment of the brother; wherefore, when the amendment of the brother is not hoped for from proceeding to the introduction of witnesses and to denunciation, one must abstain from these.

Prob. *secunda pars. Correptio fraterna et totus eius processus ordinantur ad bonum et emendationem fratris; quare, quando non speratur emendatio fratris procedendo ad inductionem testium et ad denuntiationem, abstinendum est ab illis.*

14 I said, « denouncing the prelate as a father; » because, if the hidden sin of the brother be harmful only to himself, nor such that the common good requires its being brought to judgment, it is not licit to denounce by juridical denunciation the prelate as judge, but only as father; nor can the prelate, to whom this sin becomes known by way of fraternal correction, proceed judicially against that brother, nor punish him with public excommunication or other defaming penalty: because fraternal correction itself and its whole order and process are ordered to the good alone and amendment of the brother, but judicial process to the common and public good only. Add that the brother through his hidden sin has not lost his right to reputation, nor does the good of the republic require that he be defamed. Therefore the delinquent subject-brother is to be denounced fraternally to the prelate as father, so that the prelate cannot chastise him with public excommunication or with other defaming penalties of law, but before the denouncer and witnesses, or a few grave men, reprove him and chastise him with moderate private penalties, as flagellation, fasting, and the like, and forbid him under penalty of excommunication lest he relapse into such sin. But if he obey not, he shall be excommunicated, and thus as a heathen and publican, as the sentence of Christ declares, yet not publicly, but privately; nor can he be denounced as such while the sin remains hidden.

Dixi, « denuntiando praelato, ut patri; » quia, si peccatum occultum fratris non sit nisi ipsi noxium, neque tale quod bonum commune exigat deferri ad iudicium, non licet denuntiare denuntiatione iuridica praelato ut iudici, sed tantum ut patri; neque potest praelatus cui istud peccatum per viam correptionis fraternae innotescit, contra illum fratrem iudicialiter procedere, neque excommunicatione publica aut alia poena diffamante punire : quia et ipsa correptio fraterna et totus eius ordo atque processus ad solum bonum et emendationem fratris ordinantur, processus autem iudicialis ad bonum dumtaxat commune et publicum. Adde quod frater per suum peccatum occultum non amisit ius ad famam, neque reipublicae bonum exigit ut diffametur. Ergo praelato ut patri subditus delinquens fraterne est denuntiandus, sic ut praelatus non possit ipsum excommunicatione publica, aut aliis poenis iuris infamantibus plectere, sed coram denuntiatore et testibus, seu paucis viris gravibus, ipsum corripere et moderatis poenis privatis, ut flagellatione, ieiunio et similibus castigare, ipsique prohibere sub poena excommunicationis ne in tale peccatum relabatur. Quod si non obtemperet, erit excommunicatus, atque ita sicut ethnicus et publicanus, ut fert sententia Christi, non tamen publice, sed privatim; neque poterit denuntiari ut talis, quamdiu peccatum manebit occultum.

On the Vices Opposed to Charity

1 (*St. Thomas, from q. 34 to q. 43.*)

*(*D. Thomas, a q. 34 ad q. 43.*)*

2 The vices opposed to charity are, according to the Author, in the questions cited: hatred of God and of neighbor, which is opposed to love itself; sloth, which is opposed to joy in the divine good; envy, which is opposed to joy in the good of another; discord, which is opposed to the effect of charity, which is peace; contention, which is opposed to peace as regards speech; schism, war, strife, and sedition, which are opposed to peace as regards deed; and scandal, which is opposed to charity as regards beneficence. Of all these we shall speak at greater or lesser length, according to the greater or lesser necessity of the subject matter, in this dissertation.

> *Vitia charitati opposita sunt, iuxta Authorem, quaestionibus citatis, odium Dei et proximi, quod opponitur ipsi dilectioni ; acedia, qua opponitur gaudio de bono divino ; invidia, quae opponitur gaudio de bono proximi; discordia, quae opponitur effectui charitatis, qui est pax ; contentio, quae opponitur paci quantum ad locutionem; schisma, bellum, rixa et seditio, quae opponuntur paci quantum ad opus; scandalum, quod opponitur charitati quantum ad beneficientiam. De his omnibus plus aut minus, secundum maiorem vel minorem materiae necessitatem, dicemus in hac dissertatione.*

On hatred of God and of the neighbor; on sloth, envy, discord, contention, and schism

1 I. *Hatred of God.* — Hatred in common is an act or movement of the will whereby one is borne with malevolence toward something. It is twofold, hatred of abomination and hatred of enmity. Hatred of abomination is that whereby we avert ourselves from something as evil to us and unbecoming. Hatred of enmity is that whereby we will evil to someone so that it be ill with him; whence this hatred is not so much aversion as pursuit of something which we apprehend as good to ourselves and evil to another.

> *I.* Odium Dei. — *Odium in communi est actus seu motus voluntatis quo quis malevole fertur in aliquid. Est duplex, odium abominationis et odium inimicitiae. Odium abominationis est quo aversamur aliquid ut nobis malum et disconveniens. Odium inimicitiae est quo volumus alicui malum ut illi male sit; unde istud odium non tam est aversio quam prosecutio alicuius quod apprehendimus ut nobis bonum et alteri malum.*

2 Hatred of God is the gravest of all sins[207] ; because the reason of fault consists in voluntary aversion from God. But this aversion is stronger and greater in hatred of God than in other sins; because in hatred of God it is intended directly and per se, but in other sins indirectly only and through another thing : thus, e.g., one who fornicates does not intend directly and per se to turn away from God, but intends disordered delight, to which aversion from God is annexed.

207 Here q. 34, a. 2, c.

> *Odium Dei est omnium peccatorum gravissimum[207] ; quia ratio culpae consistit in voluntaria aversione a Deo. Haec autem aversio est potior et maior in odio Dei quam in aliis peccatis; quia in odio Dei directe et per se intenditur, in aliis autem peccatis indirecte tantum et per aliud : sic, v. g., qui fornicatur, non intendit directe et per se averti a Deo, sed intendit inordinatam delectationem, cui est annexa aversio a Deo.*
>
> *207 Hic q. 34, a. 2, c.*

3 II. *Hatred of neighbor.* — Hatred of neighbor, whether of abomination or of enmity, is ex genere suo mortal sin[208] ; because it is directly contrary to charity, which is the life of the soul. But out of charity we are bound to love our neighbor according to what he has from God, that is, according to nature and grace. Ergo to turn away from the neighbor according to nature and grace, and to will him evil, is ex genere suo mortal sin. See more in what was said on the love of enemies.

[208] Ibid., a. 3, c.

> *II.* Odium proximi. — *Odium proximi sive abominationis, sive inimicitiae, est ex genere suo peccatum mortale*[208] *; quia directe contrariatur charitati, quae est vita animae. Charitate autem tenemur diligere proximum secundum id quod habet a Deo, id est secundum naturam et gratiam. Ergo aversari proximum secundum naturam et gratiam, et ipsi malum velle, est ex genere suo peccatum mortale. Plura vide in dictis de dilectione inimicorum.*
>
> [208] *Ibid., a. 3, c.*

4 Both however can become venial, not only from indeliberation of act, but also from lightness of matter : hatred of enmity, if some light evil be wished the neighbor. Hatred of abomination is rarely mortal; because simple displeasure at a created person subject to many defects and without imprecation of evil on account of them does not seem so great a disorder : unless such as that someone refuse pardon to one asking it, or the common offices of charity, or unless there be grave cause of scandal, or unless it endure while the precept of loving the neighbor urges.

> *Potest tamen utrumque fieri veniale, non solum ex indeliberatione actus, sed etiam ex levitate materiae : odium inimicitiae, si leve malum optetur proximo. Odium abominationis raro est mortale; quia simplex displicentia personae creatae multis defectibus subiectae et propter illos sine mali imprecatione, non videtur tanta inordinatio : nisi talis sit ut quis recuset veniam petenti, vel communia charitatis officia, aut nisi sit causa gravis scandali, vel duret, dum urget praeceptum diligendi proximum.*

5 [From these things you gather 1° that it is never licit to wish evil upon the neighbor under the notion of evil, but otherwise under the notion of good, that is, that from the evil wished some good outweighing the evil come to him. Care must be taken nevertheless lest beneath the cloak of a better good the poison of hatred or vengeance lie hidden. And because the life of an innocent man outweighs the goods of fortune of any private person, the following propositions were rightly condemned by Innocent XI, under numbers 13, 14 and 15 : «If you act with due moderation, you can without mortal sin grieve over the life of anyone and rejoice naturally over his death, ask and desire it ineffectually with affection, not indeed from displeasure at the person, but on account of some temporal emolument.» — «It is licit with absolute desire to covet the death of a father, not indeed as an evil of the father, but as a good of the one coveting, since plainly the rich inheritance will accrue to him.» — «It is licit for a son to rejoice over the parricide of a parent committed by himself in drunkenness, on account of the immense riches thence obtained by inheritance.»

> *[Ex his colliges 1° nunquam esse licitum optare proximo malum sub ratione mali, secus vero sub ratione boni, id est ut ex malo optato obveniat ei bonum malo praeponderans. Cavendum tamen ne sub pallio melioris boni virus odii aut vindictae lateat. Et quia vita hominis innocentis praeponderat bonis fortunae alicuius privati, iure damnata sunt ab Innocentio XI sequentes propositiones, sub num. 13, 14 et 15 : « Si cum debita moderatione facias, potes absque peccato mortali de vita alicuius tristari et de illius morte naturali gaudere, illam inefficaci affectu petere et desiderare, non quidem ex displicentia personae, sed ob aliquod temporale emolumentum. » — « Licitum est absoluto desiderio cupere mortem patris, non quidem ut malum patris, sed ut bonum cupientis, quia nimirum ei obventura est ei pinguis haereditas. » — « Licitum est filio gaudere de parricidio parentis a se in ebrietate perpetrato, propter ingentes divitias inde ex haereditate consecutas. »*

6 You gather 2° that someone can wish death for himself that he may enjoy God and offend him no more, as did the Apostle, saying, *Rom.*, VII, 24 : Unhappy man that I am! who shall deliver me from the body of this death? But what of him who wished death for himself that he might be delivered from the miseries of this life? I answer that this is per se illicit, because death is more terrible than all

evils of this life : unless it be wished under the condition that it please God thus, and with the desire at least implicit of a better life, namely eternal.]

> *Colliges 2° aliquem posse sibi optare mortem ut fruatur Deo, et eum non amplius offendat, ut fecit Apostolus, dicens,* Rom.*, VII, 24 : Infelix ego homo ! quis me liberabit de corpore mortis huius ? Sed quid de illo qui sibi optaret mortem ut liberaretur a miseriis huius vitae ? Respondeo id esse per se illicitum, quia mors est omnium malorum huius vitae terribilius : nisi hoc optetur sub conditione quod ita placeat Deo, et cum desiderio saltem implicito melioris vitae, scilicet aeternae.]*

7 III. *Sloth (Acedia)*. — Sloth theologically taken is weariness or sadness about spiritual good[209] . If it be about spiritual good in common, it is not a special vice, but a circumstance of every vice; for every vice shuns the spiritual good of the opposite virtue. But it is special sin, insofar as it is weariness about divine good pertaining to us, apprehended as proper evil; as if anyone were saddened by friendship with God, by beatitude set before him, or by means necessary to friendship with God and beatitude, as the sacraments, the divine precepts, good works, insofar as they are necessary to friendship with God and beatitude.

209 Here q. 35, a. 1 et 2, c.

> *III.* Acedia. — *Acedia theologice sumpta est taedium seu tristitia de bono spirituali[209] . Si sit de bono spirituali in communi, non est speciale vitium, sed circumstantia omnis vitii; omne enim vitium refugit bonum spirituale virtutis oppositae. Sed est speciale peccatum, quatenus est taedium de bono divino ad nos pertinente, apprehenso ut malo proprio; ut si quis tristetur de amicitia Dei, de beatitudine sibi proposita, aut de mediis ad Dei amicitiam et beatitudinem necessariis, ut de sacramentis, de divinis praeceptis, de bonis operibus, quatenus sunt ad Dei amicitiam et beatitudinem necessaria.*
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> *209 Hic q. 35, a. 1 et 2, c.*

8 For this reason sloth is mortal sin from its genus[210] , because it is contrary to charity, through which spiritual life is had; for the proper effect of charity is joy in God, but sloth is sadness about divine good pertaining to us, as was said.

210 Ibid., a. 3, c.

> *Hac ratione acedia est peccatum mortale ex suo genere[210] , quia contrariatur charitati, per quam habetur vita spiritualis; proprius enim effectus charitatis est gaudium de Deo, acedia autem est tristitia de bono divino ad nos pertinente, ut dictum est.*
>
> *210 Ibid., a. 3, c.*

9 IV. *Envy*. — It is sadness about another's good estimated as proper evil, insofar as it is diminutive of one's own glory and excellence.

> *IV.* Invidia. — *Est tristitia de bono alieno aestimato ut malo proprio, quatenus est diminutivum propriae gloriae et excellentiae.*

10 It is sin, because he grieves over what he ought to rejoice over, namely the neighbor's good. It is sin ex genere suo mortal, because it is contrary to charity. Yet it can be venial, both from indeliberation of act, and from lightness of matter, as if it be about some slight good of the neighbor.

> *Est peccatum, quia dolet de eo de quo est gaudendum, scilicet de bono proximi. Est peccatum ex genere suo mortale, quia contrariatur charitati. Potest tamen esse veniale, tum ex indeliberatione actus, tum ex levitate materiae, ut si sit de exiguo bono proximi.*

11 V. *Discord.* — Discord of which we treat here and as it is opposed to charity, is dissension of wills concerning divine good or the neighbor's good, to which we are bound to consent out of charity; because, if we be bound to consent not out of charity, but out of another virtue, it will not be against charity, but against that other virtue. It is ex genere mortal sin, on account of contrariety to charity.

> *V.* Discordia. — *Discordia de qua hic agimus et prout opponitur charitati, est dissensio voluntatum circa bonum divinum vel proximi, in quod tenemur ex charitate consentire ; quia, si non teneamur consentire ex charitate, sed ex alia virtute, non erit contra charitatem, sed contra illam aliam virtutem. Est ex genere peccatum mortale, propter contrarietatem ad charitatem.*

12 VI. *Contention.* — Contention generally taken is a battle of words; specially however, as taken here, it is defined by Ambrose : «Assault upon truth with confidence of clamor.» Understand truth which one knows, or can and ought to know, as in heretics. Understand also assault upon truth from the heart, not for exercise or examination's sake.

> *VI.* Contentio. — *Contentio generaliter sumpta est pugna verborum; specialiter autem, prout hic sumitur, definitur ab Ambrosio : « Impugnatio veritatis cum confidentia clamoris. Intellige veritatem quam quis novit, aut potest ac debet noscere, ut in haereticis. Intellige etiam impugnationem veritatis ex animo, non exercitii aut examinis causa.*

13 It is ex genere suo mortal sin[211] , because it is contrary to charity, insofar as it is contrary to peace, which is the effect of charity.

211 Here q. 38, a. 1, c.

> *Est ex genere suo peccatum mortale[211] , quia contrariatur charitati, quatenus contrariatur paci, quae est effectus charitatis.*
>
> *211 Hic q. 38, a. 1, c.*

14 VII. *Schism.* — Schism, in Greek, in Latin scission, according to usage received among ecclesiastical writers, is taken for a special sin, which is defined : «Voluntary separation of oneself from the unity of the Church[212] .» The unity of the Church moreover is chiefly regarded in two things, namely in the connection or communion of the members of the Church with each other, and in the order of all members toward one head, which is Christ himself, whose place the supreme Pontiff holds in the Church.

212 Here q. 39, a. 1, c.

> *VII.* Schisma. — *Schisma graece, latine scissio, ex usu recepto apud scriptores ecclesiasticos, sumitur pro speciali peccato, quod definitur : « Voluntaria separatio sui ipsius ab unitate Ecclesiae[212] . » Unitas autem Ecclesiae in duobus potissimum attenditur, scilicet in connexione seu communicatione membrorum Ecclesiae ad invicem, et in ordine omnium membrorum ad unum caput, quod est ipse Christus, cuius vicem gerit in Ecclesia summus Pontifex.*
>
> *212 Hic q. 39, a. 1, c.*

15 Whence one can become schismatic three ways : 1° separating himself from the head; 2° from the members; 3° from head and members at once.

> *Unde triplici modo potest quis fieri schismaticus : 1° se separando a capite; 2° a membris; 3° a capite et membris simul.*

16 [Schism is one thing pure, opposed only to charity and peace, as in those who believe one holy Church, under visible head the Roman Pontiff, and whatever the Roman Church teaches, yet out of pride refuse to submit and obey the Pope, or to be united with the other members of the Church.

Another is joined with heresy, in those who separate themselves from obedience to the Pope because they acknowledge not his power. Hence, although all heretics are schismatics, but not conversely, and schism can be severed absolutely from heresy, nevertheless scarcely or hardly ever is true schism found re ipsa without some heresy, or at least without breaking forth into heresy. Schismatics, whether they depart from the unity of the Church, or withdraw themselves from due obedience to the Pope, are punished with excommunication latae sententiae specially reserved in the Roman manner to the Roman Pontiff in the constitutio *Apostolicae Sedis*, in these words : «Schismatics and those who pertinaciously withdraw themselves or recede from the obedience of the Roman Pontiff existing for the time being.» This censure was renewed by the bull *Coenae*. From it follows privation of jurisdiction, when schism is manifest[213] .]

[213] Ibid., a. 3, o.

> *[Schisma aliud est purum, quod charitati solum et paci opponitur, ut in iis qui credunt unam sanctam Ecclesiam, sub visibili capite Romano Pontifice, et quidquid Ecclesia Romana docet, ex superbia autem nolunt Papae subesse et obedire, vel reliquis Ecclesiae membris uniti esse. Aliud haeresi coniungitur, in iis qui se separant ab obedientia Papae, quia eius potestatem non agnoscunt. Hinc, quamvis omnes haeretici sint schismatici, non vero e contra, et schisma absolute ab haeresi seiungi possit, attamen vix aut ne vix quidem verum schisma sine aliqua haeresi reipsa reperitur, vel quod saltem in haeresim non erumpat. Schismatici, sive qui ab unitate Ecclesiae discedunt, sive qui obedientiae Papae debitae se subtrahunt, excommunicatione latae sententiae speciali modo Romano Pontifici reservatae plectuntur in constit.* Apostolicae Sedis*, his verbis : « Schismaticos et eos qui a Romani Pontificis pro tempore existentis obedientia pertinaciter se subtrahunt vel recedunt. » Haec censura fuit renovata a bulla* Coenae*. Ex ea sequitur privatio iurisdictionis, quando schisma est manifestum[213] .]*
>
> [213] *Ibid., a. 3, o.*

On war

1 War can be defined : «A clash by force and arms between two hostile armies.» By which it differs from a duel, which is a clash of one against one.

> *Bellum definiri potest : « Congressio vi et armis inter duos exercitus contrarios. » Per quod differt a duello, quod est congressio unius contra unum.*

2 War is twofold : offensive, which is for obtaining satisfaction for an injury inflicted, and defensive, which is for repelling an injury being inflicted.

> *Duplex est bellum : offensivum, quod est ad obtinendam satisfactionem pro iniuria illata, et defensivum, quod est propulsandam iniuriam inferendam.*

3 *You will ask* 1° whether war is licit.

> Petes *1° utrum bellum sit licitum.*

4 [That war is always sin the Manichaeans once dogmatized, from St. Aug., lib. XXII contra Faustum, cap. 74; then the Wyclifites, as Waldensis testifies. But Luther proclaimed that to fight against the Turks was to contradict God willing through them to punish our sins. Erasmus contended that all war is forbidden Christians, against whom]

> *[Bellum esse semper peccatum dogmatizarunt olim Manichaei, ex S. Aug., lib. XXII contra Faustum, cap. 74; deinde Wiclefistae, teste Waldensi. Lutherus autem proclamavit, pugnare contra Tureas, esse contradicere Deo volenti per eos peccata nostra punire. Erasmus contendit omne bellum esse christianis interdictum, contra quos]*

5 *I answer.* To make war is not per se evil, but, with three conditions posited, namely legitimate authority of declaring war, just cause and right intention, it is licit[214] .

214 Here q. 40, a. 1, o.

> Resp. *Bellare non est per se malum, sed, positis tribus conditionibus, scilicet legitima authoritate indicendi bellum, iusta causa et recta intentione, est licitum*[214] .
>
> 214 *Hic q. 40, a. 1, o.*

6 *Proof.* from Scripture. In the ancient Law, God often commanded or approved war : *Exod.*, XXII, 8 seqq. ; *Num.*, XXI, 2 et 3 and XXV, 17 et 18 ; *Deuter.*, VII, 1 seqq. ; I *Reg.*, XV, 2 et 3 ; II *Reg.*, VIII, 1 seqq. ; *Josue*, I, 2 seqq., VI, 2 seqq., VIII, 1 seqq., X, 8 seqq., and elsewhere often.

> Prob. *ex Scriptura. In antiqua Lege, Deus saepe iussit aut probavit bellum :* Exod.*, XXII, 8 seqq. ;* Num.*, XXI, 2 et 3 et XXV, 17 et 18 ;* Deuter.*, VII, 1 seqq. ; I* Reg.*, XV, 2 et 3 ; II* Reg.*, VIII, 1 seqq. ;* Iosue*, I, 2 seqq., VI, 2 seqq., VIII, 1 seqq., X, 8 seqq., et alibi saepe.*

7 In the new Law[215] , *Luc.*, III, 14, when soldiers asked what they should do that they might flee the coming wrath which John the Baptist threatened to sinners, the holy Precursor did not bid them desert military service, but to use it well : Do nothing violently, he says, nor accuse anyone falsely, and be content with your pay. By which words he tacitly approves war, as Augustine teaches, *Epist.* 138[216] , to Marcellinus.

215 Ibid., in arg. Sed contra.

216 Formerly 5.

> *In Lege nova*[215] , Luc.*, III, 14, militibus quaerentibus quid facerent ut fugerent venturam iram quam Ioannes Baptista peccatoribus intentabat, non iussit S. Praecursor militiam deserere, sed ea bene uti : Neminem, inquit, concutiatis, neque calumniam faciatis, et contenti estote stipendiis vestris. Quibus verbis tacite approbat bellum, ut docet Aug.,* Epist. *138*[216] *, ad Marcellinum.*
>
> 215 *Ibid., in arg. Sed contra.*
>
> 216 *Olim 5.*

8 *It is confirmed.* from the usage of the Church, which in several councils decreed war for the recovery of the Holy Land.

> Confirm. *ex usu Ecclesiae, quae in pluribus conciliis decrevit bellum pro recuperatione Terrae sanctae.*

9 *Proof* by reason. By the law of nature it is licit to repel force by force. Ergo defensive war is licit. As to offensive : A private man who has suffered injury or damage can seek satisfaction or restitution. Ergo likewise can the state. — I subsume. But sometimes satisfaction or restitution cannot otherwise be had than by arms, say if those who injure or damage, being required, refuse to satisfy or restitute, nor have they a superior who would or could compel them to satisfaction or restitution. Ergo.

> Prob. *ratione. Lege naturae licet vim vi repellere. Ergo bellum defensivum est licitum. Quantum ad offensivum : Privatus iniuriam aut damnum passus, potest petere satisfactionem aut restitutionem. Ergo similiter potest respublica. — Subsumo. Atqui aliquando satisfactio seu restitutio haberi aliter non potest quam armis, puta si iniuriantes aut damnificantes requisiti nolint satisfacere seu restituere, neque habeant superiorem qui illos velit aut possit compellere ad satisfaciendum seu restituendum. Ergo.*

10 I said : «With certain conditions posited, namely legitimate authority, just cause and right intention.»

> *Dixi : « Positis certis conditionibus, scilicet legitima authoritate, iusta causa et recta intentione. »*

11 The authority required for declaring an offensive war must be supreme[217] , acknowledging no other superior in temporal matters, such as emperors, kings, certain dukes, independent states have, such as Venice, Switzerland, etc. 1° Because whoever has a superior can prosecute his right before him. But war cannot be undertaken except when there is no other way of prosecuting his right. 2° Offensive war is an act of supreme vindicative justice. Ergo it pertains to the supreme prince. But defensive war, the danger pressing, dependent princes, dukes, magistrates can declare it by natural law, since it is licit even to any private person to repel force by force. Understand, while danger and necessity last; these ceasing, they ought to seek and await from the supreme prince or independent state the judgment, power and execution of the injury to be avenged.

217 Here q. 40, a. 1, c.

> *Authoritas requisita ad indicendum bellum offensivum, debet esse suprema[217] , quae nullam aliam in temporalibus superiorem agnoscat, qualem habent imperatores, reges, quidam duces, respublicae independentes, ut Veneta, Helvetica, etc. 1° Quia quicumque habet superiorem, potest apud ipsum prosequi ius suum. Bellum autem moveri non potest, nisi quando non est alia via ius suum prosequendi. 2° Bellum offensivum est actus supremus iustitiae vindicativae. Ergo ad supremum principem pertinet. Bellum autem defensivum, instante periculo, principes, duces, magistratus dependentes possunt iure naturae illud indicere, cum cuique etiam privato liceat vim vi repellere. Intellige, durante periculo et necessitate ; his enim cessantibus, debent vindicandae iniuriae iudicium, potestatem et executionem a supremo principe vel republica independente petere et expectare.*
>
> *217 Hic q. 40, a. 1, c.*

12 The just cause of declaring offensive war, generally speaking, is single, namely grave injury or damage inflicted, unrepaired, nor repairable in any other way.

> *Causa iusta indicendi bellum offensivum, generaliter loquendo, est unica, nempe iniuria seu damnificatio gravis illata, non reparata, nec alio modo reparanda.*

13 As to right intention, war must not be waged except from intention of justice and common good, as Augustine teaches, *Epist.* 189[218] and lib. XXII contra Faustum, cap. 74.

218 Formerly 205.

> *Quantum ad rectam intentionem, non debet geri bellum, nisi ex intentione iustitiae et boni communis, ut docet Aug.,* Epist. *189[218] et lib. XXII contra Faustum, cap. 74.*
>
> *218 Olim 205.*

14 *You will ask* 2° whether, in doubt about the justice of a war, it is licit to make war.

> Petes *2° utrum in dubio de iustitia belli, sit licitum bellare.*

15 *I answer.* 1°. If reparation of injury is at stake, a prince doubtful about the justice of the war cannot declare war; because in doubt, especially of such moment, the safer part must be chosen. If recovery of possession is at stake, the condition of the possessor is better in doubt, and therefore war cannot be moved against him. If neither possess, it is licit to bring war against him who refuses to divide the thing pro rata of the doubt.

Resp. *1°. Si agatur de reparatione iniuriae, princeps dubius de iustitia belli, non potest bellum indicere; quia in dubio, praesertim tanti momenti, oportet eligere tutiorem partem. Si agatur de possessione recuperanda, in dubio melior est conditio possidentis, et ideo contra illum non potest moveri bellum. Si neuter possideat, licet bellum inferre contra illum qui non vult rem dividere pro rata dubii.*

16 [The true reason why, in doubt about the justice of a war, it is not licit to declare it, is because no one acts licitly, when the act can be good or evil, unless he be morally certain of the honesty of his action, as was explained and proved in the treatise on Human Acts, dissert. V, on Conscience.

[Vera ratio cur, in dubio de iustitia belli, non licet illud declarare, est quia nemo licite agit, cum actus potest esse bonus vel malus, nisi moraliter certus sit de honestate suae actionis, ut in tractatu de Actibus humanis, dissert. V, de Conscientia, fuit expositum et probatum.

17 When neither possesses, and the right is doubtful, it does not seem that this one or that one should be compelled by violence and arms to divide the thing pro rata of the doubt, because, proceeding thus, the one or the other would be despoiled of his right; but the titles invoked on either side are to be examined and weighed, and if the parties cannot compose their litigation between themselves, they ought to commit the decision of the cause to the arbitration of another, whose sentence they promise themselves to stand by. But if the contenders should come forward voluntarily to agree upon dividing the litigated thing between them, so that each abandon part of the right which perhaps belongs to him, this manner of proceeding is certainly to be commended, whereby justice is fully satisfied, but it seems nowise to be imposed.]

Cum neuter possidet, et ius est dubium, non videtur hunc vel illum per vim et arma cogendum esse ad rem pro rata dubii dividendam, quia, ita procedendo, unus vel alter iure suo spoliaretur; sed examinandi sunt et ponderandi tituli ex utraque parte invocati, et si partes inter se litem componere non valeant, decisionem causae arbitrio alterius committere debent, cuius sententiae se stare promittant. Quod si contendentes ultro conveniant de re litigiosa inter se dividenda, ita ut uterque ius quod forsan sibi competit ex parte derelinquat, probandus est certe hic procedendi modus, quo iustitiae plene satisfit, sed nullatenus imponendus videtur.]

18 *I answer.* 2°. Those who are subjects of a warring prince, when ordered, can and ought to enroll themselves in the militia, and enrolled to make war, even if they doubt of the justice of the war, forming however for themselves a practical judgment that they may licitly obey and make war; because 1° the superior has a certain right of commanding, nor is he stripped of his right by the subject's doubt. Ergo the subject is bound to obey; for the right of commanding and the obligation of obeying are correlatives. 2° From denial of obedience, while its cause manifest cannot be assigned, authority is enervated in superiors, and the whole government subverted. From these principles therefore the subject can form the practical judgment that when ordered he may licitly make war. Confer what I wrote dissert. V on Human Acts, art. 2, *You will ask* 3°.

Resp. *2°. Qui sunt subditi principi bellum gerenti, iussi possunt et debent inscribi militiae, et inscripti bellare, etiamsi dubitent de iustitia belli, formando tamen sibi iudicium practicum quod sibi liceat obedire et bellare; quia 1° superior habet ius certum praecipiendi, neque ob dubium subditi exuitur suo iure. Ergo subditus tenetur obedire; sunt enim correlativa ius praecipiendi et obligatio obediendi. 2° Ex denegatione obedientiae, dum eius causa manifesta assignari non potest, enervatur authoritas in superioribus, totumque regimen subvertitur. Ex his itaque principiis subditus potest formare iudicium practicum, quod iussus possit licite bellare. Confer quae scripsi dissert. V de Actibus humanis, art. 2,* Petes *3°.*

19 *I answer.* 3°. Those who are not subjects of the warring prince, in doubt about the justice of the war, cannot serve as soldiers; because by not soldiering they injure no one, since they have not the necessity of obeying like the subjects of whom in the preceding answer; but by soldiering they expose themselves to inflict grave injury upon another prince. The same seems altogether the reason concerning the subjects of the warring prince, if, not ordered, but of their own will, they serve for pay.

> Resp. *3°. Qui non sunt subditi principi bellum gerenti, in dubio de iustitia belli, non possunt militare; quia non militando nemini faciunt iniuriam, cum non habeant necessitatem obediendi sicut subditi de quibus in responsione praecedenti; militando autem exponuntur facere gravem iniuriam alteri principi. Eadem omnino videtur ratio de subditis principi belligeranti, si non iussi, sed sua voluntate, militent pro stipendio.*

20 However, since the causes of wars are often not manifest, and the justice of a war also often is obscure even to theologians and jurists themselves, from this answer, true elsewhere per se, it would follow that almost all soldiers were blameworthy; for who among them, whether subjects or not, inquires into the causes and justice of the war? Therefore several weighty authors judge that, if their doubt be merely negative, insofar as they have no reasons for or against, and from the probity and prudence of the prince and his counsels they can persuade themselves that they would not move war unless it were just, they may licitly serve.

> *Attamen, quia causae belli saepe non sunt manifestae et iustitia belli etiam saepe est obscura etiam ipsis theologis et iurisperitis, ex hac responsione, aliunde secundum se vera, sequeretur quod omnes ferme milites essent culpandi; quis enim ex illis, sive sint subditi, sive non, inquirit de causis et iustitia belli? Ideo plures graves authores existimant quod, si dubium eorum sit tantum negativum, quatenus non habent rationes pro aut contra, et propter principis et eius consiliorum probitatem et prudentiam possint sibi persuadere quod bellum non moverent, nisi esset iustum, licite militent.*

21 But those who are ready to make war whether the war be just or unjust, are certainly in the state of damnation, because of the will to make war even unjustly.

> *Qui vero sunt parati bellare, sive bellum sit iustum, sive sit iniustum, sunt certo in statu damnationis, propter voluntatem bellandi etiam iniuste.*

22 *You will ask* 3° whether there can be a just war on both sides.

> Petes *3° utrum possit dari bellum iustum ex utraque parte.*

23 *I answer.* War per se from the nature of the thing cannot be just on both sides, but it can per accidens and from ignorance, or, others say, it cannot be just on both sides materially, well however formally : because it cannot come to pass, according to the truth of the thing, that in one there be right of seeking satisfaction or restitution without there being in the other obligation of satisfying or restituting; for right and obligation are correlatives. Ergo, if he resist, he resists unjustly, and conversely if he resists justly, the other seeks unjustly. But truly, if one ignore the right of the other, he sins not by resisting, and thus per accidens, by reason of ignorance, the war is just on both sides.

> Resp. *Bellum per se ex natura rei non potest esse iustum ex utraque parte, potest autem per accidens et ex ignorantia, seu, alii dicunt, non potest esse iustum ex utraque parte materialiter, bene tamen formaliter: quia fieri non potest, secundum rei veritatem, quod in uno sit ius petendi satisfactionem aut restitutionem, quin sit obligatio in alio satisfaciendi vel restituendi; sunt enim correlativa ius et obligatio. Ergo, si resistat, iniuste resistit, et e contra si iuste*

resistit, alter iniuste petit. At vero, si unus ignoret ius alterius, non peccat resistendo, et sic per accidens, ratione ignorantiae, bellum est iustum ex utraque parte.

24 *You will ask* 4° whether in a just war it is licit to kill innocents.

Petes *4° utrum in bello iusto liceat occidere innocentes.*

25 *I answer.* In a just war it is never licit per se and by intention to kill innocents, unless special authority has been made by God. Yet it is licit per accidens and beside intention. Proof of the first part. 1° From that general command of God, *Exod.*, XXIII, 7: Thou shalt not kill the innocent and just. 2° An innocent cannot be killed in a just war except on account of the guilt of the state. But that is not licit. Ergo. — Proof of the minor. The state cannot be punished by the enemy except in goods over which it has dominion. But the state has not dominion over the life of innocents, but God alone, who granted not the right of the sword to the state except against those who do evil. Ergo.

Resp. *In bello iusto nunquam licet per se et ex intentione occidere innocentes, nisi facta sit a Deo specialis authoritas. Licet tamen per accidens et praeter intentionem.* Prob. *prima pars. 1° Ex illo generali Dei mandato,* Exod., *XXIII, 7: Insontem et iustum non occides. 2° Innocens non potest occidi in bello iusto, nisi propter culpam reipublicae. Atqui id non licet. Ergo.* — Prob. *min. Respublica non potest puniri ab hoste, nisi in bonis quorum habet dominium. Atqui respublica non habet dominium in vitam innocentium, sed solus Deus, qui reipublicae non concessit ius gladii nisi adversus eos qui male agunt. Ergo.*

26 Under the name of innocents come infants, children unfit for war, women, peasants, plebeians, merchants having nothing to do with war, clerics and religious, cap. de treuga et pace, lib. I Decretal., tit. 34, c. 2. All these, I say, by presumption of law are judged innocent, until the contrary be proved of them.

Innocentium autem nomine veniunt infantes, impubes, bello inepti, foeminae, rustici, plebeii, mercatores nihil ad bellum positi, clerici et religiosi, cap. de treuga et pace, lib. I Decretal., tit. 34, c. 2. Hi omnes, inquam, iuris presumptione censentur innocentes, donec contrarium de illis probetur.

27 Proof of the second part: 1° If neither per accidens and beside intention killing innocents were licit in a just war, it would be impossible to carry out a war : a city could not, e.g., be stormed, or a tower demolished in which innocents were enclosed; enemies could not be attacked who placed innocents in the front of battle, which they would never omit, and thus the justice of the combatants would be frustrated. 2° When two effects, equally immediate, of one act, the one good, the other evil, can, a just reason subsisting, the good effect be intended and the evil permitted.[219] But the demolition of a tower or the explosion of war machines upon enemies is immediately protective of the homeland and destructive of innocents. Ergo the first effect can be intended for the common good, and the other permitted. This principle of the Author more widely drawn out and expounded you have dissert. VIII, On Justice, art. 2.

219 Here q. 64, a. 7, o.

Prob. *secunda pars: 1° Si neque per accidens et praeter intentionem liceret in bello iusto occidere innocentes, impossibile foret bellum perficere: non posset v. g., expugnari civitas aut turris everti in qua includerentur innocentes; non possent impeti hostes qui innocentes in fronte praelii constituerent, quod nunquam omitterent, sicque iustitia bellantium frustraretur. 2° Quando unius actus sunt duo effectus aeque immediati, unus bonus, alter malus, potest, subsistente iusta ratione, intendi bonus effectus et malus permitti.*[219] *Atqui eversio turris aut explosio tormentorum bellicorum in hostes,*

est immediate detensiva patriae et occisiva innocentium. Ergo primus effectus potest intendi propter bonum commune, et alter permitti. Hoc principium Authoris latius deductum et explicatum habes dissert. VIII, de Iustitia, art. 2.

[219] *Hic q. 64, a. 7, o.*

28 *You will ask* 5° what are the obligations and sins of combatants.

Petes *5° quae sint obligationes et peccata bellantium.*

29 *I answer.* 1°. Supreme princes and leaders of armies 1° are bound ex officio to see that military discipline be observed insofar as they can, and to coerce soldiers from plunderings, thefts, burnings, ravishments, etc.; otherwise they sin mortally and are bound to restitution of those damages. 2° They sin mortally if they provide not just pay to the soldiers, and they are bound to restitute damages which soldiers inflict by lack of pay.

Resp. *1°. Principes supremi et duces exercitus 1° tenentur ex officio curare, in quantum possunt, disciplinam militarem observari, et coercere milites a rapinis, furtis, incensionibus, stupris, etc.; alioquin peccant mortaliter et tenentur ad restitutionem horum damnorum. 2° Peccant mortaliter, si non provideant iusta stipendia militibus, et tenentur restituere damna quae milites defectu stipendii inferunt.*

30 *I answer.* 2°. Subordinate leaders sin mortally and are bound to restitution : 1° If, no necessity compelling, they rashly expose soldiers to sure slaughter. 2° If they retain part of the pay or moneys conceded for soldiers. 3° If they have a smaller number of soldiers and receive pay for a greater, such are those who, while the troops are mustered, present not real soldiers in military dress, commonly called *passe-volants*, or present the same twice or thrice : into which sin also those muster-masters or commissaries implicate themselves who knowingly admit it; nor are they bound only for theft of pay, but for the damage which can accrue to the state on account of insufficient number of soldiers. Except how, they shall have seen. 4° Those sin and are bound to restitution who, while they lead troops through a province, on account of accepted gifts from certain villages or citizens, burden other villages, or citizens, with the number of soldiers.

Resp. *2°. Duces subordinati peccant mortaliter et tenentur ad restitutionem: 1° Si, nulla cogente necessitate, milites exponant temere certae internecioni. 2° Si partem stipendii vel pecuniarum pro militibus concessarum retineant. 3° Si minorem numerum militum habeant, et pro maiori stipendia recipiant, quales sunt qui, dum lustrantur copiae, non milites sub habitu militari praesentant, vulgo* passe-volants*, vel eundem bis aut ter praesentant: quo etiam peccato implicantur ipsi lustratores seu commissarii, qui id scienter admittunt; neque tantum de furto stipendii tenentur, sed de damno quod provenire potest reipublicae ob insufficientem militum numerum. Excipe quomodo, ipsi viderint. 4° Peccant et tenentur ad restitutionem, qui dum ducunt copias per provinciam, ob accepta munera a certis pagis vel civibus, alios pagos, sive cives numero militum aggravant.*

31 *I answer.* 3°. Common soldiers 1° ought to be content with their pay, according to the precept of the holy Precursor, *Luc.*, III, 14. Whence they sin mortally and are bound to restitution if, in lands not hostile, beyond roof, bed, straw, etc., as custom allows, they extort moneys, despoil, pillage, or otherwise do damage. Nor does the authority or connivance of leaders excuse them, unless perchance, the pay failing or diminished, they take precisely what is necessary for urgent need. 2° They are bound, even with certain peril of life, not to desert their post, or fortress, unless victory be plainly despaired of.

Resp. *3°. Milites gregarii 1° debent esse contenti suis stipendiis, iuxta praeceptum S. Praecursoris,* Luc.*, III, 14. Unde peccant mortaliter et tenentur ad restitutionem, si in terris non hostilibus praeter tectum, lectum, paleas, etc., ut fert*

consuetudo, pecunias extorqueant, spolient, rapiant, aliterve damnificent. Neque eos excusat ducum authoritas aut dissimulatio, nisi forte, deficiente aut diminuto stipendio, sumerent praecise necessaria urgenti necessitati. 2° Tenentur, etiam cum certo vitae periculo, non deserere stationem, aut arcem, nisi plane desperata victoria.

32 [*I answer.* 4°. While war lasts, all those things are licit which are permitted by the law of nations and are necessary for obtaining the end. Hence it is licit to prepare ambushes, employ stratagems, e.g., feign flight, etc. In a just war it is licit to besiege cities and storm them, deprive them of water. Likewise to despoil innocents of goods, if they be members of the enemy state, nor can victory be had otherwise. It is licit even to demolish churches, if enemies use them for defense. Sometimes, but only from the most urgent cause, cities can be delivered to plunder. This however is adverse to modern customs, besides the case where a justly imposed tribute is denied.

*[*Resp. *4°. Durante bello, ea omnia licent quae iure gentium permittuntur et necessaria sunt ad finem obtinendum. Hinc licet insidias parare, stratagemata adhibere, v. g., fugam simulare, etc. In bello iusto licet urbes obsidere et expugnare, aqua eas privare. Item innocentes bonis expoliare, si ipsi sint membra reipublicae hostilis, nec alio modo victoria haberi possit. Licet etiam ecclesias evertere, si hostes ad defensionem iis utantur. Interdum, at solum ex urgentissima causa, civitates direptioni tradi possunt. Hoc tamen hodiernis moribus adversatur, praeter casum quo tributum iuste impositum denegatur.*

33 But illicit are frauds which can be guarded against by no prudence, as to infect wells and fountains with poison. Nor is it licit to hire assassins who secretly slay the leader of the opposing army; for, by consent of all, perfidy can never be made honorable.

Illicita vero sunt fraudes quae nulla prudentia praecaveri possunt, ut puteos et fontes veneno inficere. Nec licet subornare sicarios qui ducem exercitus adversi occulte trucident; nam, ex consensu omnium, perfidia nunquam cohonestari potest.

34 Likewise it is not licit to kill captives taken in war and all who can harm no longer, except in punishment of crime. Captives moreover can flee, if no promise given by them stand in the way.[220]

220 Cfr. Marci, *Institut. morales Alphonsianae*, n. 751.

Similiter non licet captos in bello et omnes qui iam nocere non possunt interficere, nisi in poenam criminis. Captivi autem fugere possunt, si non obstet promissio ab eis data.[220]

220 *Cfr. Marci,* Instit. morales Alphonsianae*, n. 751.*

35 *You will ask* 6° whether it is licit for a Catholic prince to call heretics or Gentiles to aid.

Petes *6° an liceat principi catholico haereticos aut gentiles in auxilium advocare.*

36 *I answer.* affirmatively per se, at least speaking speculatively, provided scandal and peril of faith be far off. But it can be per accidens illicit, namely on account of damages imminent to religion.

Resp. *affirmative per se, saltem speculative loquendo, modo absit scandalum et fidei periculum. Sed potest esse per accidens illicitum, ob damna nempe religioni imminentia.*

37 *You will ask* 7° when do the fighting become irregular.

Petes *7° quandonam praeliantes irregulares fiant.*

38 *I answer.* In a just defensive war, even those who kill do not become irregular. But in a just offensive war, those alone who kill incur irregularity, not indeed others. But in an unjust war, though only one

be killed, all aggressors are irregular, because they act after the manner of one agent.[221] This last is drawn out from St. Thomas.[222] Of these things more fully below, on Irregularity.

221 Id., lib. VII, n. 459.

222 Here q. 64, a. 8, o, and ad 3.

> Resp. *In bello iusto defensivo, non fiunt irregulares etiam ii qui occidunt. In bello autem iusto offensivo, ii soli qui occidunt irregularitatem incurrunt, non vero alii. In bello vero iniusto, etiamsi unus tantum occidatur, omnes aggressores sunt irregulares, quia per modum unius agunt.*[221] *Hoc ultimum eruitur ex S. Thoma.*[222] *De his fusius infra, de Irregularitate.*
>
> 221 *Id., lib. VII, n. 459.*
>
> 222 *Hic q. 64, a. 8, o, et ad 3.*

On the duel

1 *You will ask* 1° what a duel is.

> Petes *1° quid sit duellum.*

2 *I answer.* A duel, in Greek *monomachia,* is the fight of one against one, and thus taken broadly it is the brawl of two between themselves; but as it is taken in law and with respect to ecclesiastical censures, it is commonly defined :[223] «A dangerous fight of two entered into by agreement or compact, with designation of time and place.» And because the matter of censures is odious, and therefore to be restricted, all parts of this definition are to be taken strictly. Therefore

223 S. Lig., lib. IV, n. 406.

> Resp. *Duellum, graece* monomachia*, est pugna unius contra unum, et sic late sumptum est rixa duorum inter se; prout autem accipitur in iure et in ordine ad censuras ecclesiasticas, definitur communiter:*[223] *« Periculosa duorum pugna ex composito seu condicto inita, cum designatione temporis et loci. » Et quia materia censurarum est odiosa, et ideo restringenda, omnes huius definitionis partes sunt stricte accipiendae. Itaque*
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> 223 *S. Lig., lib. IV, n. 406.*

3 *It is called* 1° «the fight of two;» because, if several promiscuously fight against several, there will be simply a brawl, not a duel, unless single ones determined against single ones determined fight, as is done in a solemn duel. For a twofold duel is distinguished : one solemn or public, when certain ceremonies are employed, as the choice of godfathers or, as they call them, seconds, the assumption of witnesses, letters of challenge, or libels of citation commonly called cartel, etc.; another simple, when these ceremonies are not employed.

> Dicitur *1° « pugna duorum; » quia, si plures promiscue contra plures pugnent, erit simpliciter rixa, non duellum, nisi singuli determinati contra singulos determinatos pugnent, ut fit in duello solemni. Duplex namque distinguitur duellum, unum solemne seu publicum, quando adhibentur quaedam caeremoniae, ut electio patrinorum, seu, ut vocant, secundantium, assumptio testium, litterae provocatoriae, seu libelli citatorii vulgo cartel, etc.; aliud simplex, quando non adhibentur ista caeremoniae.*

4 *It is called* 2nd «a dangerous fight;» because fights which are made without peril of killing or grave wounding, such as with fists, a light staff, pulling of hair, etc., although sometimes they are grave sins, are nevertheless not properly duels.

Dicitur 2° *« periculosa pugna; » quia pugnae quae fiunt sine periculo occisionis aut gravis laesionis, ut pugnis, levi baculo, avulsione crinium, etc., quamvis quandoque sint gravia peccata, non tamen sunt proprie duella.*

5 *It is called* 3rd «by agreement or compact.» So express it Gregory XIII, constitutio *Ad tollendam*, given in the year 1582, and Clement VIII, in the constitutio *Illius vices*, given in the year 1592; that is, from an agreement previously made of fighting at a determinate place and time. Whence those who meeting unexpectedly fight, or if one has sought out another, or threatened him, there is no duel, for lack of compact. Similarly, if of two quarreling, one or both run home and return with arms and fight; likewise, if in a rush of anger they say : «Let us fight here,» and they fight, there is not properly a duel, for lack of compact.

Dicitur *3° « ex composito seu condicto. » Ita exprimunt Gregorius XIII, constit.* Ad tollendam*, data anno 1582, et Clemens VIII, in constit.* Illius vices*, data anno 1592; id est, ex conventione prius facta pugnandi determinato loco et tempore. Unde qui sibi ex improviso occurrentes pugnant, aut si unus alterum quaesierit, vel minatus fuerit, non est duellum, defectu condicti. Similiter, si e duobus rixantibus, unus vel uterque currunt ad domum et cum armis redeunt et pugnant; item, si in impetu ira dicant: « Hic pugnemus, » et pugnent, non est proprie duellum, defectu condicti.*

6 *It is called* 4th «with designation of time and place.» Thus require Gregory XIII and Clement VIII, in the cited constitutions; so that, if the designation either of a determinate place or of a determinate time be wanting, there is no duel properly subject to censures.

Dicitur *4° « cum designatione temporis et loci. » Ita requirunt Gregorius XIII et Clemens VIII, in laudatis constitutionibus; ita ut, si designatio vel loci determinati vel temporis determinati desit, non sit proprie duellum censuris obnoxium.*

7 *You will ask* 2° whether the duel is licit.

Petes *2° utrum duellum sit licitum.*

8 *I answer.* 1°. The duel by private authority is not licit : 1° because every private vengeance is illicit; 2° because by the precept Thou shalt not kill not only is killing forbidden, but also proximate peril of killing, as in other precepts; 3° because both the Church and Christian princes prohibit the duel under gravest penalties. Trent, sess. XXV, On Reform., cap. 19; Gregory XIII and Clement VIII, in the cited constitutions.

Resp. *1°. Duellum privata authoritate non est licitum: 1° quia omnis vindicta privata est illicita; 2° quia praecepto: Non occides, non solum prohibetur occisio, sed etiam periculum proximum occidendi, ut in aliis praeceptis; 3° quia tam Ecclesia quam principes christiani duellum sub gravissimis poenis prohibent. Trid., sess. XXV, de Reform., cap. 19; Greg. XIII et Clemens VIII, constitutionibus citatis.*

9 [Specially Alexander VII condemned this proposition, n. 2 : «A horseman challenged to a duel can accept it, lest he incur the mark of timidity among others.» Since afterwards several authors asserted that the duel is licit in some circumstances, Benedict XIV, constitutio *Detestabilem*, given November 10, 1752, condemned the following five propositions as false, scandalous and pernicious :

[Speciatim Alexander VII damnavit hanc propositionem, n. 2: « Vir equestris ad duellum provocatus, potest illud acceptare, ne timiditatis notam apud alios incurrat. » Cum postea plures authores duellum licitum esse in quibusdam circumstantiis asseruissent, Benedictus XIV, constit. Detestabilem*, data die 10 nov. 1752, quinque sequentes propositiones damnavit tamquam falsas, scandalosas ac perniciosas:*

10 1° «A military man who, unless he offer or accept a duel, would be held as fearful, timid, abject and unfit for military duties, and thence would be deprived of the office whereby he sustains himself and his own, or ought perpetually to lack hope of promotion otherwise due and merited by him, would be without fault and punishment, whether he offer or accept a duel.»

> *1° « Vir militaris qui, nisi offerat vel acceptet duellum, tamquam formidolosus, timidus, abiectus et ad officia militaria ineptus haberetur, indeque officio quo se suosque sustentat privaretur, vel promotionis alias sibi debitae ac promeritae spe perpetuo carere deberet, culpa et poena vacaret, sive offerat, sive acceptet duellum. »*

11 2° «They can also be excused, for the sake of guarding honor or avoiding contempt among men, who accept duels or challenge to them, when they certainly know that the fight will not follow, namely because it will be impeded by others.»

> *2° « Excusari possunt etiam, honoris tuendi vel humanae vilipensionis vitandae gratia, duellum acceptantes vel ad illud provocantes, quando certo sciunt pugnam non esse secuturam, utpote ab aliis impediendam. »*

12 3° «A duke or military official accepting a duel out of grave fear of loss of fame and office does not incur the ecclesiastical penalties laid down by the Church against duellists.»

> *3° « Non incurrit ecclesiasticas poenas ab Ecclesia contra duellantas latas dux vel officialis militia acceptans duellum ex gravi metu amissionis famae et officii. »*

13 4° «In the natural state of man it is licit to accept and offer a duel, for preserving fortunes with honor, when the loss of them can by no other remedy be warded off.»

> *4° « Licitum est, in statu hominis naturali, acceptare et offerre duellum, ad servandas cum honore fortunas, quando alio remedio eorum iactura propulsari nequit. »*

14 5° «The asserted license for the natural state can also be applied to the state of a badly ordered city, in which plainly justice is denied either through negligence or malice of magistrates.»

> *5° « Asserta licentia pro statu naturali, applicari etiam potest statui civitatis male ordinatae, in qua nimirum vel negligentia vel malitia magistratus iustitia aperte denegatur. »*

15 It must be added that it is no more licit to take up a duel on this law, that, one being wounded, the fight must cease : because besides the prohibition and scandal, there is present danger of lethal wound. Even if it were certain that the wound would not prove lethal, nevertheless the combat would be illicit : both because any voluntary wound and even blows are included under the precept Thou shalt not kill; and because Clement VIII, constitutio *Illius vices*, of the year 1592, forbade «duels even non-lethal.»]

> *Addendum est, non magis licere duellum suscipere, ea lege ut, uno vulnerato, pugna cessare debeat: quia praeter prohibitionem et scandalum, adest periculum vulneris lethalis. Etiamsi certum esset vulnus non evasurum lethale, certamen nihilominus illicitum esset: tum quia quodcumque vulnus voluntarium et etiam verbera sub praecepto: Non occides includuntur; tum quia Clemens VIII, constit.* Illius vices*, anni 1592, vetavit « duella etiam non lethalia. »]*

16 *I answer.* 2°. The duel by public authority is rarely licit. Proof 1° In the first place it is not licit for sake of spectacle or ostentation of strength; because the prince has no right over the life of subjects except malefactors.

> Resp. 2°. *Duellum authoritate publica est raro licitum.* Prob. *1° In primis non est licitum spectaculi aut ostentationis virium causa; quia princeps non habet ius in vitam subditorum, nisi malefactorum.*

17 2° It is certain that the duel is illicit for detecting crime or innocence, as was once frequent; because in a duel the innocent as equally as the guilty can fall. Whence the manifestation of truth would be awaited either from the devil, and it would be superstition; or from God, and it would be temptation of God.

> *2° Certum est duellum esse illicitum ad detegendum crimen vel innocentiam, ut olim frequentabatur; quia in duello aeque potest cadere innocens ac nocens. Unde veri tatis manifestatio expectaretur vel a diabolo, et esset superstitio; vel a Deo, et esset tentatio Dei.*

18 3° It is not licit to have a duel for ending litigation or controversy between private persons : because either the duel is instituted that through its outcome it may be discerned on which side justice stands, and thus returns the preceding argument; or it is instituted only for this, that, a duel having been made, the parties cease from litigation, and then it is insane and diabolical to wish to incur peril of life, that they desist from a litigation from which they can desist by their own will and with safe life, or which can be terminated by authority of the supreme prince, or by a lot free of danger.

> *3° Non est licitum duellum ad finiendam litem vel controversiam inter privatos: quia vel instituitur duellum, ut per eius eventum dignoscatur qua parte stet iustitia, et sic redit argumentum praecedens; vel instituitur tantum ad hoc, ut, facto duello, partes a lite cessent, et tunc insanum et diabolicum est velle incurrere periculum vitae, ut desistant a lite, a qua possunt propria voluntate et tuta vita desistere, aut quae potest authoritate supremi principis, vel sorte non periculosa terminari.*

19 4° Speaking per se, it is not licit to have a duel for ending a controversy, or for avoiding or terminating war between supreme princes; because the duel neither from God nor from nature is a means ordained and proportioned to warding off injury, or to obtaining satisfaction for injury inflicted, which are the two causes of wars and controversies between supreme princes. Ergo. — Proof of the antecedent. He whose state has the right can equally be conquered as the other. For either the faculty of fighting of each is equal, or if one be more practiced, very many things are wont to happen in this singular combat, on account of which often the stronger and more practiced succumbs; and therefore the justice and common good of the state, whether in warding off injury, or in obtaining satisfaction, which ought to be defended by the common forces of the whole community, is exposed to the hazard of the duel. Ergo.

> *4° Per se loquendo, non est licitum duellum ad finiendam controversiam, seu ad evitandum aut terminandum bellum inter supremos principes; quia duellum neque a Deo neque a natura est medium ordinatum et proportionatum ad propulsandam iniuriam, vel ad obtinendam satisfactionem pro iniuria illata, quae sunt duae bellorum et controversiarum causae inter supremos principes. Ergo.* — Prob. *ant. Is cuius respublica habet ius, potest aeque vinci ac alter. Vel enim est par utriusque pugnandi facultas, vel si unus sit exercitatior, plurima solent in hoc singulari certamine accidere, ob quae saepe fortior et exercitatior succumbit; adeoque iustitia et bonum commune reipublicae, sive in propulsanda iniuria, sive in obtinenda satisfactione, quod communibus totius communitatis viribus propugnari debet, exponitur aleae duelli. Ergo.*

20 Nor do you say that the common good is likewise exposed to the hazard of war. For a supreme prince cannot enter into war, whether defensive or offensive, except a greater hope of conquering shine forth, whether by force, by stratagems, by help of confederates; or, should he be conquered, of restoring and increasing his forces. For the enemy holds himself toward his enemy as agent toward patient; but the agent acts not unless he be stronger than the patient.

Neque dicas pariter bonum commune exponi aleae belli. Non enim potest princeps supremus inire bellum sive defensivum, sive offensivum, nisi maior spes affulgeat vincendi, sive vi, sive insidiis, sive ope confederatorum; aut, si vincatur, restaurandi et augendi vires. Hostis enim in hostem se habet ut agens in passum; agens autem non agit nisi sit fortius passo.

21 Therefore when it is opposed, that it is better to end a war by the death of one than of many, it is answered that this is true when the killing of one is a means ordained and proportioned to usefully ending the war for the state; which we deny of the duel, except per accidens, in the cases to be reported below. And therefore I said, «speaking per se, it is not licit».

Cum ergo opponitur, melius esse terminare bellum morte unius quam multorum, respondetur id verum esse quando occisio unius est medium ordinatum et proportionatum ad utiliter pro republica terminandum bellum; quod negamus de duello, nisi per accidens, in casibus infra referendis. Et ideo dixi, « per se loquendo, non est licitum ».

22 I said also in the answer that the duel is «rarely» licit by public authority; because several cases are assigned by many in which it seems licit by public authority.

Dixi etiam in responsione, « raro » duellum esse licitum authoritate publica; quia a pluribus assignantur quidam casus in quibus videtur esse licitum authoritate publica.

23 The first is, if he who justly wages war feel himself inferior in forces to the enemy, and that he must either fight and succumb, or fight a duel, he can both accept and offer a duel; because he defends the common good in the better way he can and chooses the lesser danger. The same, for the same reason, seems to be said, if he be doubtful about victory, nor is there hope of restoring the army if it be routed.

Primus est, si is qui iuste bellum gerit, se viribus inferiorem hosti sentiat, et esse aut confligendum et succumbendum, aut duellandum, potest et acceptare et offerre duellum; quia bonum commune eo meliori modo quo potest defendit et minus periculum eligit. Idem, propter eamdem rationem, videtur dicendum, si sit dubius de victoria, nec sit spes restaurandi exercitum casu si profligetur.

24 Second case. If leaders, weighing the inconveniences of war, the detriments of goods, the deaths of many, etc., judge it more useful to the state to settle the controversy by duel than by war; for then the duel is judged by many licit on the part of him who wages just war, provided however that thence victory become not more doubtful than in war.

Secundus casus. Si duces, attentis belli incommodis, bonorum detrimentis, multorum necibus, etc., utilius reputent reipublicae controversiam duello quam bello dirimere; tunc enim reputatur a pluribus duellum licitum ex parte eius qui bellum iustum gerit, modo tamen inde non fiat victoria magis dubia quam in bello.

25 Third case is, if from this, that a duel offered by the enemy be not accepted, the enemy become bolder and stronger, the other cast down and more timid. Then also that it can be accepted is the opinion of many. And David seems in a like case to have fought against Goliath; or it must be said that he fought thus by divine instinct.

Tertius casus est, si ex hoc quod duellum ab hoste oblatum non acceptetur, fiat hostis audacior et potentior, alter deiectus et timidior. Tunc etiam posse acceptari, multorum est opinio. Et videtur in pari casu David pugnasse contra Goliath; aut dicendum, sic pugnasse ex instinctu divino.

26 *You will ask* 3° what are the punishments of duellists.

Petes 3° *quae sint poenae duellantium.*

27 [The following were laid down by the council of Trent, sess. XXV, On Reform., cap. 19: «Emperors, kings, dukes, princes, marquesses, counts and temporal lords by whatever other name, who shall have conceded a place for monomachy in their lands among Christians, let them be by that very fact excommunicate and understand themselves deprived of jurisdiction and dominion over the city, castle or place in which or near which they permitted the duel to be made, which they hold from the Church, and if they be fiefs, let them be acquired straightway by their direct lords. Those truly who committed the fight, and those called their godfathers, let them incur penalty of excommunication, proscription of all their goods, perpetual infamy : and let them be bound to be punished as homicides according to the sacred canons, and if they die in the conflict itself, let them lack forever ecclesiastical burial. Those also who give counsel in the cause of a duel both in law and in fact, or by whatever other reason persuade anyone thereto, as well as spectators, let them be held in the bond of excommunication and perpetual malediction : notwithstanding any privilege or evil custom whatsoever, even immemorial.»

[Positae sequentes fuerunt a concilio Trident., sess. XXV, de Reform., cap. 19: « Imperator, reges, duces, principes, marchiones, comites et quocumque alio nomine domini temporales, qui locum ad monomachiam in terris suis inter Christianos concesserint, eo ipso sint excommunicati ae iurisdictione et dominio civitatis, castri aut loci in quo vel apud quem duellum fieri permiserint, quod ab Ecclesia obtinent, privati intelligantur, et si feudalia sint, directis dominis statim acquirantur. Qui vero pugnam commiserint, et qui eorum patrini vocantur, excommunicationis, ac omnium bonorum suorum proscriptionis, ac perpetuae infamiae: poenam incurrant, et ut homicida, iuxta sacros canones, puniri debeant, et si in ipso conflictu decesserint, perpetuo careant ecclesiastica sepultura. Illi etiam qui consilium in causa duelli tam in iure quam in facto dederint, aut alia quacumque ratione ad id quemquam suaserint, necnon spectatores, excommunicationis ac perpetuae maledictionis vinculo teneantur: non obstante quocumque privilegio seu prava consuetudine, etiam immemoriali. »

28 The punishments of proscription of all goods and perpetual infamy, which can now nowise be applied, have grown obsolete. The penalty of excommunication latae sententiae is numbered among the censures simply reserved to the Roman Pontiff in the constitutio *Apostolicae Sedis*, Oct. 12, 1869. There is mentioned «those perpetrating duels, or simply challenging to it, or accepting it; and any accomplices whatever or offering any aid or favor, as well as spectators of deliberate purpose, permitting it, or not prohibiting it as far as lies in them, of whatsoever dignity they be, even royal or imperial.» Thus were confirmed, besides the decree of Trent, the constitutions of Gregory XIII, *Ad tollendam*; Clement VIII, *Illius vices*; Benedict XIV, *Detestabilem*.

Poenae proscriptionis omnium bonorum et perpetuae infamiae, qua iam applicari nequeunt, obsoleverunt. Poena excommunicationis latae sententiae inter censuras Romano Pontifici simpliciter reservatas adnumeratur in constit. Apostolicae Sedis*, 12 oct. 1869. Fertur in « duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes; et quoslibet complices vel qualemcumque operam aut favorem praebentes, necnon de industria spectantes, illudque permittentes, vel quantum in illis est non prohibentes, cuiuscumque dignitatis sint, etiam regalis vel imperialis. » Ita confirmata fuerunt, praeter decretum Trident., constitutiones Gregorii XIII,* Ad tollendam*; Clementis VIII,* Illius vices*; Benedicti XIV,* Detestabilem.

29 This text, sufficiently perspicuous, will be explained below, on Censures. It need only be noted here that the excommunication extends wider than in the Tridentine decree, namely to challengers

with mind of fighting, and to accepters, although from any cause whatever the duel does not follow. This fully accords with the aforesaid bull of Clement VIII.

> *Hic textus, satis perspicuus, explicabitur infra, de Censuris. Advertendum est tantum hic, excommunicationem latius quam in decreto Tridentino se extendere, nempe ad provocantes cum animo pugnandi, et ad acceptantes, etsi quacumque ex causa duellum non sequatur. Hoc plene concordat cum bulla praefata Clementis VIII.*

30 Privation of ecclesiastical burial, which is a penalty distinct from excommunication, was decreed by Trent against those alone who «died in the conflict itself.» That the abuse of duels might be more efficaciously extirpated, Benedict XIV, in the constitutio *Detestabilem*, Nov. 10, 1752, decreed that severer measures be taken : «We decree and declare, he says, privation of sacred burial inflicted by the most holy Tridentine synod upon those dying in the place of the duel and combat to be incurred forever, even before sentence of the judge, upon him dying also outside the place of combat from wound accepted therein, whether the duel be publicly or privately declared, and even if the wounded man before death gave not uncertain signs of penance and obtained absolution from sins and censures : taken away the faculty of interpreting and dispensing concerning this penalty from bishops and Ordinaries of places; whereby to others there be offered a document of fleeing the crime and rendering due obedience to the laws of the Church.

> *Privatio sepulturae ecclesiasticae, quae est poena distincta ab excommunicatione, fuit decreta a Trident. contra eos tantum qui « in ipso conflictu decesserint. » Ut efficacius duellorum abusus extirparetur, Benedictus XIV, in constitut.* Detestabilem*, 10 nov. 1752, severius agendum statuit: « Decernimus ac declaramus, inquit, sepulturae sacrae privationem a sacrosancta Tridentina synodo inflictam morientibus in loco duelli et conflictus incurrendam perpetuo fore, etiam ante sententiam iudicis, a decedente quoque extra locum conflictus ex vulnere ibidem accepto, sive duellum publice sive privatim indictum fuerit, ac etiamsi vulneratus ante mortem non incerta poenitentiae signa dederit, atque a peccatis et censuris absolutionem obtinuerit: sublata episcopis et Ordinariis locorum super hac poena interpretandi ac dispensandi facultate; quo caeteris documentum praebeatur fugiendi sceleris ac debitam Ecclesiae legibus obedientiam praestandi.*

31 Perhaps someone will object that this penalty is prescribed less strictly in the Roman Ritual increased and corrected at the command of the same Benedict XIV, where is read, tit. On Funerals : «Ecclesiastical burial is denied... to those dying in a duel, even if before death they gave signs of penance;» whereby the penalty seems restricted to duellists dying «in the conflict itself,» as had been enacted by Trent.

> *Aliquis forsan obiiciet, hanc poenam minus stricte praescribi in Rituali Romano iussu eiusdem Benedicti XIV aucto et castigato, ubi legitur, tit. de Exequiis: « Negatur ecclesiastica sepultura... morientibus in duello, etiamsi ante obitum dederint poenitentiae signa; » per quod poena restringi videtur ad duellantes morientes « in ipso conflictu, » ut a Trident. fuerat statutum.*

32 I answer that the constitution *Detestabilem* was published after the Brief *Quam ardenti*, whereby Benedict XIV, March 25, 1752, approved the new edition of the Ritual.]

> Resp. *constitutionem* Detestabilem *editam fuisse post Breve* Quam ardenti*, quo Benedictus XIV, 25 martii 1752, novam Ritualis editionem approbavit.]*

33 *You will ask* 4° if one or both provoke themselves to a duel for preserving honor, not with mind of fighting, certainly knowing it will be impeded by friends, or otherwise not come about, or even with

mind of fighting and inflicting some blows, but morally certain that no damage will follow thence, rather peace to be reconciled — do they incur excommunication.

> Petes *4° si unus vel ambo ad servandum honorem se provocent ad duellum, non animo pugnandi, certo scientes impediendum ab amicis, aut aliter non futurum, vel etiam animo pugnandi et aliquos ictus inferendi, sed certi moraliter quod nullum inde damnum sit secuturum, verum potius pax concilianda, incurrant excommunicationem.*

34 *I answer.* probably negatively, because they provoke not truly, but apparently only, to a duel; for a duel is a dangerous fight. Yet in the external forum, where nothing is judged of internal things, it will be reckoned a duel, and therefore cannot be excused from fault.

> Resp. *probabiliter negative, quia non provocant vere, sed apparenter tantum ad duellum; est enim duellum pugna periculosa. In foro tamen externo, ubi non iudicatur de internis, reputabitur duellum, et ideo non est excusandum a culpa.*

35 *You will ask* 5° who can absolve from a duel.

> Petes *5° quis possit absolvere a duello.*

36 *I answer.* That Clement VIII, by the cited bull, reserved this case to the Pope alone, derogating from the faculties and indults granted to any persons whatsoever of whatsoever order, state, rank or condition.

> Resp. *Clementem VIII, bulla citata, soli Papae hunc casum reservasse, derogando facultatibus et indultis concessis quibusvis personis cuiuscumque ordinis, status, gradus aut conditionis.*

37 [In the constitutio *Apostolicae Sedis*, as was said above, this censure is inscribed among the cases simply reserved to the Roman Pontiff, and therefore cap. Liceat of the council of Trent can be applied to it, of which below.]

> *[In constit.* Apostolicae Sedis*, ut supra dictum est, haec censura inscribitur inter casus simpliciter Romano Pontifici reservatos, ideoque illi applicari potest cap. Liceat, concilii Trident., de quo infra.]*

38 Nevertheless weighty authors judge that, when the case is occult, bishops can absolve from it, on account of the privilege granted to them by the council of Trent, sess. XXIV, cap. 6, Liceat, which was not derogated from by this constitution of Clement VIII, since no mention of it is made, as ought to have been done, that it be judged derogated. So Lezana, after Bonacina and Sanchez. And I judge this to be the common practice.

> *Nihilominus graves authores censent quod, quando casus est occultus, episcopi possint ab illo absolvere, propter privilegium illis concessum a concilio Trid., sess. XXIV, cap. 6, Liceat, cui non est derogatum per hanc constitutionem Clementis VIII, cum de illa nulla fit mentio, prout debebat fieri, ut censeretur derogatum. Ita Lezana, post Bonacinam et Sanchez. Et talem puto esse praxim communem.*

39 **ARTICLE IV**

> ***ARTICULUS IV***

40 **On scandal.**

> ***De scandalo.***

41 *You will ask* 1° what scandal is.

Petes *1° quid sit scandalum.*

42 *I answer.* Scandal is rightly defined «a saying or deed less right, affording another occasion of spiritual ruin.»[224]

224 Here q. 43, a. 1, o.

Resp. *Scandalum recte definitur « dictum vel factum minus rectum, praebens alteri occasionem ruinae spiritualis. »*[224]

224 *Hic q. 43, a. 1, o.*

43 *It is called* 1st «less right»,[225] not in this sense that it is right and surpassed by some other in rightness, but that it have some defect of rightness : that is, not right, either because it is in itself evil and sin; or because, although ex genere good, it has the appearance of evil from circumstances, or from the fact that it is wont to be done badly, and easily presumed so done, even when done well : as when someone reclines before an idol; for although this in itself be not sin, if anyone do it with intention not corrupt, yet because it has a certain appearance of evil, or likeness of veneration of the idol, it can afford another occasion of ruin. And therefore the Apostle warns, *I Thess.*, V, 22: From all appearance of evil refrain yourselves.

225 Ibid., ad 2.

Dicitur *1° « minus rectum »,*[225] *non hoc sensu quod sit rectum et ab aliquo alio superetur in rectitudine, sed quod habeat aliquem defectum rectitudinis: id est, non rectum, sive quia est secundum se malum et peccatum; sive quia, licet ex genere bonorum, habet speciem mali ex circumstantiis, aut ex eo quod soleat male fieri, et facile praesumatur sic fieri, etiam quando bene fit: sicut cum aliquis recumbit in idolo; quamvis enim hoc secundum se non sit peccatum, si aliquis non corrupta intentione faciat, tamen quia habet quamdam speciem mali, vel similitudinem venerationis idoli, potest alteri praebere occasionem ruinae. Et ideo Apostolus monet,* I Thess.*, V, 22: Ab omni specie mala abstinete vos.*

225 *Ibid., ad 2.*

44 *It is called* 2nd «affording another occasion of spiritual ruin,» as when someone by persuasion, counsel, example, etc., induces another to sin. Nor is it necessary that he expressly intend the sin of the other, but it suffices that he say or do that from which, circumstances attended, the sin of the other is apt to follow. Not therefore does every sin committed in the presence of others always carry malice of scandal, but when the peril is foreseen or can and ought to be foreseen that others before whom it is committed be induced thereby to sin.

Dicitur 2° *« praebens alteri occasionem ruinae spiritualis, » ut cum quis suasione, consilio, exemplo, etc., inducit alium ad peccandum. Neque est necesse quod expresse intendat peccatum alterius, sed sufficit quod dicat vel faciat id ex quo, attentis circumstantiis, natum est sequi peccatum alterius. Non ergo omne peccatum coram aliis commissum semper habet malitiam scandali, sed quando praevidetur aut praevideri potest ac debet periculum ne alii coram quibus committitur, per illud inducantur ad peccandum.*

45 *You will ask* 2° how manifold scandal is.

Petes *2° quotuplex sit scandalum.*

46 *I answer.* Scandal is twofold[226] , one active, which we defined; another passive, which is the spiritual ruin of the neighbor on occasion of the word or deed of another.

226 Ibid., a. 4, c.

> Resp. *Duplex est scandalum*[226] *, unum activum, quod definivimus; aliud passivum, quod est ruina spiritualis proximi occasione dicti vel facti alterius.*
>
> [226] *Ibid., a. 4, c.*

47 Active is twofold : one per se, another per accidens.

> *Activum duplex: unum per se, aliud per accidens.*

48 Active per se is, when someone expressly intends by his deed or word to induce another to sin; or, if he intend it not expressly, the deed or word is such that of itself it is inducive to sin. Active per accidens, is a word or deed from which, beside the intention of the sinner and the condition of the work, someone ill-disposed is induced to sin, say when someone envies the goods of another. And this scandal, if nowise intended, nor even implicitly, is improperly called scandal.

> *Activum per se est, quando quis expresse intendit suo facto vel dicto inducere alterum ad peccatum; vel, si non intendat expresse, tale est factum aut dictum, ut ex se sit inductivum ad peccatum. Activum per accidens, est dictum vel factum ex quo, praeter intentionem peccantis et conditionem operis, aliquis male dispositus inducitur ad peccandum, puta cum aliquis invidet bonis alterius. Et hoc scandalum, si nullo modo, nec etiam implicite sit intentum, est improprie scandalum.*

49 Passive scandal is also twofold, given and taken. Given is that which truly arises from the word or deed of another which is truly evil, or has the appearance of evil. Taken is that whereby someone from the word or deed of another, beside all his intention and the condition of the work, takes occasion of sinning from his own sinister interpretation alone : and that either from weakness or ignorance, and it is called scandal of the little ones; or from mere malice, and it is called Pharisaic scandal, because the Pharisees from malice took scandal at the holiest words and deeds of Christ, *Matth.*, XV, 1 seqg.

> *Scandalum passivum est etiam duplex, datum et acceptum. Datum est quod vere oritur ex alterius dicto vel facto quod revera malum est, aut speciem mali habet. Acceptum est quo quis ex dicto vel facto alterius, praeter omnem eius intentionem et conditionem operis, ex sola sua sinistra interpretatione sumit occasionem peccandi: idque vel ex infirmitate aut ex ignorantia, et dicitur scandalum pusillorum; vel ex sola malitia, et dicitur scandalum pharisaicum, quia Pharisaei ex malitia scandalizabantur ex sanctissimis dictis et factis Christi,* Matth.*, XV, 1 seqg.*

50 Sometimes therefore passive scandal is without active, as the Pharisaic; sometimes active without passive, as when someone induces another by word or deed to sin, and he consents not. Sometimes active together with passive, as when at the induction of one, another sins.

> *Quandoque ergo est scandalum passivum sine activo, ut pharisaicum; quandoque est activum sine passivo, ut cum aliquis inducit verbo vel facto alium ad peccandum, et ille non consentit. Quandoque est activum cum passivo, ut cum ad inductionem unius, alius peccat.*

51 *You will ask* 3° whether active scandal is sin.

> Petes *3° utrum scandalum activum sit peccatum.*

52 *I answer.* Every active scandal properly said is sin ex genere suo mortal; because either the scandalizing work is evil in itself, or has the appearance of evil, and therefore to be omitted for charity of neighbor, by which we are bound to provide for the salvation of neighbor. Whence scandal

is opposed to charity and mercy, insofar as this inclines to fraternal correction; consequently mortal sin ex genere.

> Resp. *Omne scandalum activum proprie dictum, est peccatum ex genere suo mortale; quia vel opus scandalizans est secundum se malum, vel habet speciem mali, et ideo omittendum propter proximi charitatem, qua tenemur saluti proximi providere. Unde scandalum opponitur charitati et misericordiae, quatenus haec inclinat ad correptionem fraternam; consequenter peccatum mortale ex genere.*

53 [The gravity of scandal taken in itself appears from the words of the Lord. For he says, *Matth.*, XVII, 6 et 7: Whoever shall scandalize one of these little ones who believe in me, it is expedient for him that a millstone be hanged about his neck, and that he be drowned in the depths of the sea. Woe to the world because of scandals! For it must needs be that scandals come : but nevertheless woe to that man by whom the scandal comes! If active scandal be a greater evil than corporal death, if Christ against it redouble malediction and woe, it is certainly something grave per se.]

> *[Gravitas scandali in se sumpti ex verbis Domini apparet. Dicit enim,* Matth.*, XVII, 6 et 7: Qui scandalizaverit unum de pusillis istis qui in me credunt, expedit ei ut suspendatur mola asinaria in collo eius, et demergatur in profundum maris. Voe mundo a scandalis! Necesse est enim ut veniant scandala: verumtamen voe homini illi per quem scandalum venit! Si scandalum activum sit maius malum quam mors corporalis, si Christus contra illud maledictionem voe ingeminet, est certe quid per se grave.]*

54 Yet it can become venial[227] , not only from indeliberateness, but also from lightness of matter : as if someone from slight and venial indiscretion says or does what has some appearance of evil, whence another, beside the intention of the agent, is induced to sin mortally; or if anyone through venial sin intend to induce another into venial sin only.

227 Ibid.

> *Potest tamen fieri veniale[227] , non solum ex indelibera- tione, sed etiam ex levitate materie: ut si quis ex levi et veniali indiscretionis dicit aut facit id quod habet aliquam speciem mali, unde alter praeter intentionem agentis inducitur ad peccandum mortaliter; vel si quis per peccatum veniale intendat alium inducere in peccatum veniale tantum.*
>
> *227 Ibid.*

55 *You will ask* 4° whether active scandal is special sin.

> Petes *4° utrum scandalum activum sit speciale peccatum.*

56 *I answer.* Scandal per se and with express intention is special sin[228] , because it has special repugnance to charity, by which we are bound to will the spiritual good of neighbor.

228 Ibid., a. 3, c.

> Resp. *Scandalum per se et ex intentione expressa est speciale peccatum[228] , quia specialem habet repugnantiam ad charitatem, qua tenemur velle bonum spirituale proximi.*
>
> *228 Ibid., a. 3, c.*

57 2° Scandal without express intention, which the Author calls here scandal per accidens, if it be given through a work good or indifferent in itself, but having the appearance of evil, is special sin; because it is sin, and it has no other reason of sin than scandal.

> *2° Scandalum sine intentione expressa, quod Author vocat hic scandalum per accidens, si detur per opus secundum se bonum vel indifferens, sed habens speciem mali, est speciale peccatum; quia est peccatum, et non habet aliam rationem*

peccati quam scandali.

58 3° Scandal without express intention, and per accidens in this sense, which is given through a work already evil of itself, is not special sin, yet it is a special circumstance of act changing species[229] ; because when there are several malices in one act, the first essential and specific is drawn from the object primary and directly willed, while the circumstance, which is a certain accident of the morally taken act, is taken from the object secondary and indirectly willed. Ergo.

229 Ibid.

3° Scandalum sine expressa intentione, et hoc sensu per accidens, quod datur per opus iam ex se malum, non est speciale peccatum, est tamen specialis circumstantia actus mutans speciem[229] ; quia quando sunt plures malitiae in uno actu, prima essentialis et specifica desumitur ex obiecto primario et directe volito, circumstantia autem, quae est quoddam accidens actus moraliter sumpti, sumitur ab obiecto secundario et indirecte volito. Ergo.

229 Ibid.

59 *You will ask* 5° whether goods both spiritual and temporal are to be relinquished for avoiding passive scandal.

Petes *5° utrum bona tam spiritualia quam temporalia sint dimittenda pro vitando scandalo passivo.*

60 *I answer.* 1° Spiritual goods which cannot be omitted without sin are not to be relinquished for avoiding passive scandal[230] : because it implies that some sin, though venial only, be licit; for by that very thing it would cease to be sin. Whence the Apostle, *Rom.*, III, 8, says: Let us not do evil that good may come.

230 Ibid., a. 7, c. et ad 5.

Resp. *1°. Bona spiritualia quae praetermitti non possunt absque peccato, non sunt dimittenda pro scandalo passivo vitando[230] : quia implicat aliquod peccatum, etsi tantum veniale, esse licitum; hoc ipso enim desineret esse peccatum. Unde Apostolus,* Rom.*, III, 8, dicit: Non faciamus mala ut veniant bona.*

230 Ibid., a. 7, c. et ad 5.

61 *I answer.* 2° Spiritual goods which can be omitted without sin are not to be relinquished on account of Pharisaic scandal, if some cause subsist why they be not deferred : because, since those scandalized so sin from malice, they are not in necessity from which they cannot easily liberate themselves without aid of another; and otherwise opportunity would be given to the wicked of impeding good works whenever they wished. Whence Christ taught that this scandal is not to be cared for, *Matth.* XV, 14, when the disciples reported that the Pharisees were taking scandal at his words and deeds, he answered: Let them alone; they are blind and leaders of the blind.

Resp. *2°. Bona spiritualia quae praetermitti possunt absque peccato, non sunt dimittenda propter scandalum pharisaicum, si subsit aliqua causa ea non differendis: quia, cum huiusmodi scandalizati peccent ex malitia, non sunt in necessitate a qua non possunt se facile liberare sine ope alterius; et alioquin daretur locus iniquis impediendi bona opera cum vellent. Unde hoc scandalum non esse curandum docuit Christus,* Matth. *xv, 14, quando discipulis referentibus quod Pharisaei scandalizabantur ex eius dictis et factis, respondit: Sinite illos; coeci sunt et duces coecorum.*

62 *I answer.* 3° Such spiritual goods as can be omitted without sin, if no peril impend, are on account of scandal of the little ones to be concealed or deferred[231] , until reason rendered, such scandal cease; because we are bound to succor the neighbor placed in spiritual necessity, when we can conveniently.

But one who is going to sin from ignorance or weakness on account of my deed is in spiritual necessity. Ergo, since I can conveniently conceal or defer it until he be instructed, I am held to that.

231 Ibid., c.

> Resp. *3°. Huiusmodi bona spiritualia quae praetermitti possunt absque peccato, si non immineat periculum, sunt propter scandalum pusillorum occultanda aut differenda*[231] *, donec reddita ratione, huiusmodi scandalum cesset; quia proximo in necessitate spirituali constituto tenemur subvenire, quando commode possumus. Atqui qui ex ignorantia vel infirmitate peccaturus est ex meo facto, est in necessitate spirituali. Ergo, cum possum commode illud occultare vel differre donec instruatur, ad id teneor.*
>
> *231 Ibid., c.*

63 *I answer.* 4° When there occurs some affirmative precept, whether natural, or positive divine or human, or even negative divine or human, forbidding not intrinsically evil things, incompossible with the natural precept of avoiding scandal of neighbor, there must be weighed which, all things considered, is greater and more binding, and that must be observed; because, when two precepts concur which cannot be observed together, the greater binds, and the others cease to bind for that time. Moreover the precept of avoiding scandal of the little ones binds sometimes more, sometimes less than others, as appears in frequent cases which are commonly admitted.

> Resp. *4°. Quando occurrit aliquod praeceptum affirmativum, sive naturale, sive positivum divinum vel humanum, aut etiam negativum divinum vel humanum, non prohibens res intrinsece malas, incompossibile cum praecepto naturali de vitando scandalo proximi, perpendendum est quodnam, omnibus attentis, sit maius et magis obligans, et illud est servandum; quia, quando concurrunt duo praecepta quae non possunt simul observari, maius obligat, et alia desinunt obligare pro tunc. Porro praeceptum de vitando scandalo pusillorum, quandoque magis, quandoque minus obligat quam alia, ut patet in casibus frequentibus, qui communiter admittuntur.*

64 1° Fraternal correction is of natural right, and yet it is to be omitted, if the one to be corrected take scandal thence and become worse. Likewise the punishment of sinners is of natural right, and yet, according to Augustine, lib. III contra Epist. Parmen., c. 2, it is to be relinquished, where schism is feared from it[232] .

232 Ibid., ad 1 et 3.

> *1° Correptio fraterna est iuris naturalis, et tamen est omittenda, si corripiendus inde scandalizetur et fiat deterior. Similiter punitio peccatorum est iuris naturalis, et tamen, iuxta Augustinum, lib. III contra Epist. Parmen., c. 2, est dimittenda, ubi ex illa periculum schismatis timetur*[232] *.*
>
> *232 Ibid., ad 1 et 3.*

65 2° Preaching of the Gospel is of positive divine right, and yet one must cease from it on account of scandal[233] , *Matth.*, VII, 5 et 6. Likewise integrity of confession is of divine precept, and yet a woman in confession can and ought to omit a sin from which she understands the confessor, whom she necessarily must confess to, will suffer grave scandal from weakness.

233 Ibid., ad 2.

> *2° Praedicatio Evangelii est iuris divini positivi, et tamen ab ea cessandum est propter scandalum*[233] *,* Matth.*, VII, 5 et 6. Item integritas confessionis est praecepti divini, et tamen mulier in confessione potest et debet omittere peccatum ex quo intelligit confessarium, cui necessario confiteri debet, grave scandalum ex infirmitate passurum.*
>
> *233 Ibid., ad 2.*

66 3° Conversely, if you know that from entering the house of a certain woman, in which there is an infant to be baptized, whom none other wishes to baptize, scandal will arise, nevertheless you must enter, admonition premised, if possible; because the precept of succoring the salvation of the infant outweighs the precept of avoiding scandal. The same for the same reason must be said if from the conferral of necessary baptism you foresee some to be gravely stirred and to blaspheme.

> *3° E contra, si scias ex ingressu in domum cuiusdam mulieris, in qua est infans baptizandus, quem nemo alius vult baptizare, oriri scandalum, nihilominus debes ingredi, praemissa, si possibile sit, monitione; quia praeceptum subveniendi saluti infantis praeponderat praecepto scandali vitandi. Idem propter idem est dicendum, si ex baptismi necessarii collatione praevideas aliquos graviter commovendos et blasphematuros.*

67 *I answer.* 5° Temporal goods of which we are masters, on account of scandal of the little ones, are either wholly to be relinquished, by bestowing them, if we hold them, or by not reclaiming them, if they be in the hands of others (understand, if they be not of grave moment), or scandal must be quieted by admonition or instruction[234] ; because we are bound to succor spiritual necessity of neighbor, though not extreme, at some small temporal damage of ours, as appears from what was said on the order of charity and fraternal correction. But if after instruction scandal still endure, ordinarily then it is from malice. If however scandal be from malice and Pharisaic, temporal goods are not to be relinquished on account of those who stir up such scandals[235] : because this would harm the common good; for occasion would be given to the wicked of seizing, and it would harm the seizers themselves, who, retaining others' goods, would remain in sin.

234 Ibid., a. 8, c.

235 Ibid.

> Resp. *5°. Temporalia bona quorum nos sumus domini, propter scandalum pusillorum, vel sunt totaliter dimittenda, ea tribuendo, si penes nos habeamus, aut ea non repetendo, si penes alios sunt (intellige, si non sint gravis momenti), vel scandalum est sedandum per monitionem aut instructionem[234] ; quia tenemur subvenire necessitati spirituali proximi, licet non extremae, cum aliquali nostro damno temporali, ut patet ex dictis de ordine charitatis et de correptione fraterna. Quod si post instructionem adhuc scandalum duret, ordinarie tunc est ex malitia. Si vero scandalum sit ex malitia et pharisaicum, propter eos qui sic scandala concitant non sunt dimittenda temporalia[235] : quia hoc noceret bono communi; daretur enim malis rapiendi occasio, et noceret ipsis rapientibus, qui, retinendo aliena, in peccato remanerent.*
>
> *234 Ibid., a. 8, c.*
>
> *235 Ibid.*

68 [*You will ask* 6° whether it is licit to permit occasion of sinning, that the culprit be corrected.

> *[*Petes *6° utrum liceat occasionem peccandi permittere, ut reus corrigatur.*

69 *I answer.* affirmatively, because to permit is not to induce, and sufficient reason of permitting the sin is present. Whence St. Thomas lays down this rule, IIa IIae, q. 78, a. 4, c: «To induce man to sin is nowise licit; but to use the sin of another unto good is licit : for God uses all sins unto some good; for from any evil whatever he elicits some good.» Hence are excused per se from sin 1° parents and heirs who allow sons or servants to sin, that they may find opportune occasion of correcting them; 2° guards of fields who hide themselves, that they catch the damagers and exact punishment from them[236] .

236 S. Ligor., lib. III, n. 58.

Resp. *affirmative, quia permittere non est inducere, et adest ratio sufficiens peccatum permittendi. Unde S. Thomas hanc regulam ponit, IIa IIae, q. 78, a. 4, c: « Inducere hominem ad peccandum nullo modo licet; uti tamen peccato alterius ad bonum, licitum est: quia et Deus utitur omnibus peccatis ad aliquod bonum; ex quolibet enim malo elicit aliquod bonum. » Hinc a peccato excusantur per se 1° parentes et heri qui filios aut famulos peccare sinunt, ut opportunam eos corrigendi occasionem inveniant; 2° custodes agrorum qui se abscondunt, ut damnificantes capiant et ab eis poenam exigant*[236] .

[236] *S. Ligor., lib. III, n. 58.*

70 *You will ask* 7° whether it is licit, with just cause, even to apply occasion of sin.

Petes *7° utrum liceat iusta ex causa etiam occasionem peccati apponere.*

71 *I answer.* affirmatively more probable, because the sinner is not thus induced into sin, as the usurer is not induced from whom a loan is sought. Hence does not seem to sin the master who deliberately leaves a key applied to the chest in which money is stored up, that he test the doubtful fidelity of the servant[237] ; for he puts an act licit per se, and with sufficient reason.

[237] Ibid., ibid.

Resp. *affirmative probabilius, quia peccans sic non inducitur in peccatum, sicut non inducitur usurarius a quo mutuum petitur. Hinc non videtur peccare herus qui de industria clavem relinquit appositam arca in qua pecunia reconditur, ut dubiam famuli fidelitatem experiatur*[237] *; ponit enim actum per se licitum, et cum sufficienti ratione.*

[237] *Ibid., ibid.*

72 *You will ask* 8° whether it is ever sin of scandal to seek from another what he will not do without sin.

Petes *8° utrum sit semper peccatum scandali, petere ab alio quod non est facturus sine peccato.*

73 *I answer.* 1° To seek or counsel absolutely a work which cannot be done without sin is always sin of scandal; because this is directly to induce another to sin. I said, «absolutely,» because, if someone were determined upon grave sin, it would be licit to persuade him to the lesser. For the sense is not that he do absolutely the lesser, but conditionally : «If you have resolved to do evil, do rather the lesser.»

Resp. *1°. Petere aut consulere absolute opus quod fieri non potest absque peccato, est semper peccatum scandali; quia hoc est directe inducere alterum ad peccandum. Dixi, « absolute, » quia, si quis esset determinatus ad grave peccatum, liceret ei suadere minus. Sensus enim non est quod absolute faciat minus, sed conditionaliter: « Si decrevisti facere malum, fac potius minus. »*

74 *I answer.* 2° If the thing sought can be done without sin, although it be foreseen that the other will not do it without sin, there is no sin, a just cause subsisting, in seeking it from him. Thus in necessity it is licit to seek a loan from a usurer, sacraments from bad ministers; because whoever seeks thus from just cause seeks what is just and reasonable, and what the other can well do, if he wills.

Resp. *2°. Si res quae petitur fieri possit absque peccato, quamvis praevideatur alterum eam non facturum absque peccato, non est peccatum, iusta subsistente causa, illam ab eo petere. Sic in necessitate licet petere mutuum ab usurario, sacramenta a malis ministris; quia qui sic petit ex iusta causa, petit quod iustum est et rationabile, et quod alter potest bene facere, si velit.*

75 *You will ask* 9° what is to be thought of the adornment of women.

> Petes *9° quid sentiendum sit de ornatu mulierum.*

76 *I answer.* 1° Moderate adornment, according to decency of station, is licit per se. If a woman use it from levity or vanity, she sins venially, on account of disorder of will[238] .

238 Ibid., ibid., n. 54.

> Resp. *1° Ornatus moderatus, pro decentia status, est per se licitus. Si eo utatur mulier ex levitate aut vanitate, peccat venialiter, propter inordinationem voluntatis*[238] .
>
> *238 Ibid., ibid., n. 54.*

77 2° Excessive adornment, that is, exceeding her condition, is venial per se. It becomes mortal, however, if it be made to provoke the wantonness of men, or with prevision that it ought to be provoked. 3° Immodest adornment, such as today is used in certain conventicles, is culpable, according to degree of immodesty. Sin is always grave, even if indecency be not grave, if such adornment be employed to incite lust. Certainly women sin mortally who introduce such manner of dressing in places where it did not yet prevail, on account of the peril which thence arises for many [239]

239 Id., ibid., n. 55.

> *2° Ornatus excessivus, id est conditionem excedens, est per se venialis. Fit vero mortalis, si fiat ad provocandam virorum lasciviam, vel cum praevisione quod provocari debeat. 3° Ornatus immodestus, qualis hodie in quibusdam conventiculis usitatur, est culpabilis, pro gradu immodestiae. Peccatum est semper grave, etiamsi indecentia non sit gravis, si talis ornatus adhibeatur ad luxuriam incitandam. Peccant certe mortaliter mulieres quae talem modum se componendi introducunt in loca ubi nondum vigebat, propter periculum quod inde pluribus nascitur*[239]
>
> *239 Id., ibid., n. 55.*

On Right and Justice

1 (*D. Thomas, IIae IIae, a q. 57 ad q. 76.*)

> *(*D. Thomas, IIae IIae, a q. 57 ad q. 76.*)*

On Right and Ownership

What is right, and of how many kinds?

1 The name of right is taken in various ways: first, for that which is just. But the just is taken in two ways: generally, for everything that is consonant with law; strictly, for the equality owed to another; for those things that are equalized are vulgarly said to be justified. And right so taken is the object of justice, as we shall say below.

> *Varie accipitur nomen iuris: 1° pro eo quod iustum est. Iustum autem dupliciter sumitur: generaliter, pro omni eo quod est legi consonum; stricte, pro aequalitate alteri debita; dicuntur enim vulgariter ea quae adaequantur iustari. Et ius sic sumptum est obiectum iustitiae, ut infra dicemus.*

2 Secondly, right is taken for the legitimate faculty of doing something, acquiring, possessing, alienating, etc.: in which sense one is said to use his right. But right taken in this second way is the foundation of right taken in the first way. For nothing is owed to another by way of equality without a right in the other, because what is owed is owed to a right; right and debt are correlatives.

> *2° Ius accipitur pro legitima facultate aliquid faciendi, acquirendi, possidendi, alienandi, etc.: quo sensu quis dicitur uti iure suo. Ius autem hoc secundo modo sumptum est fundamentum iuris primo modo sumpti. Nihil enim est alteri debitum ad aequalitatem, sine iure in altero, quia quod est debitum, est iuri debitum; sunt enim correlativa ius et debitum.*

3 Thirdly, right is taken for law, which is the rule of the just in general. Hence right taken in the second way depends on this right; for that anyone have a right to something is attributed to him either by the law of nature, or by positive law, or at least by free concession of God or men. Wherefore

> *3° Sumitur ius pro lege, quae est regula iusti in genere. Unde ab hoc iure pendet ius secundo modo sumptum; quod enim aliquis habeat ius ad aliquid, id ipsi tribuitur vel a lege naturae, vel a lege positiva, vel saltem ex concessione libera Dei vel hominum. Quapropter*

4 **I say secondly:** Right taken in these three ways can be divided, by the same division, into natural and positive right.

> ***Dico 2°:** Ius hoc triplici modo sumptum potest eadem divisione dividi in ius naturale et positivum.*

5 And as to right taken for law, it is evident; because law is one thing natural, another positive. Eternal law is not included, because this division is made into members entirely diverse; but natural law is not a thing entirely diverse from eternal law, rather it is its participation in a rational creature, as is taught in Ia IIae, q. 91, a. 2, ad 1.

Et quantum ad ius sumptum pro lege, patet; quia lex alia naturalis, alia positiva. Non ponitur lex aeterna, quia haec divisio fit in membra omnino diversa; lex autem naturalis non est quid omnino diversum a lege aeterna, sed est eius participatio in rationali creatura, ut docetur Ia IIae, q. 91, a. 2, ad 1.

6 Positive right is divided into divine and human. Divine is one thing of the Old Testament, another of the New. Human positive right is divided into the law of nations, canon law, and civil law. Canon law, which especially concerns us, is compounded from the canons of councils, the decrees of Pontiffs, and the judgments of the Fathers.

Ius positivum dividitur in divinum et humanum. Divinum aliud veteris, aliud novi Testamenti. Ius positivum humanum dividitur in ius gentium, ius canonicum et ius civile. Ius canonicum, quod nos specialiter spectat, conflatur ex canonibus conciliorum, decretis Pontificum et sententiis Patrum.

7 Right taken for the just is likewise adequately divided into natural right and positive right[240] ; because right so taken is the just, or what is adequate to another. Now something can be adequate to another in two ways. In one way, from the nature of the thing, as when someone gives as much that he receive the same amount, and this is called natural right. In another way something is adequate or commensurate to another from the good pleasure of those who establish it, as when two private persons so covenant between themselves, or the community consents that such a thing be held as just, or the prince ordains by law that it be so; and this is called positive right. The other subdivisions are as in the division of law.

240 Ibid., a q. 57, a. 2, c.

Ius sumptum pro iusto, similiter dividitur adaquate in ius naturale et ius positivum[240] ; quia ius sic sumptum est iustum, seu alteri adaequatum. Atqui dupliciter potest aliquid esse alteri adaequatum. Uno modo, ex natura rei, puta cum aliquis tantum dat ut tantumdem recipiat, et hoc vocatur ius naturale. Alio modo aliquid est alteri adaequatum seu commensuratum, ex beneplacito ponentium, ut dum duae personae privatae sic inter se paciscuntur, vel communitas consentit tale quid esse habendum pro iusto, vel princeps lege statuit ita esse; et hoc dicitur ius positivum. Caetera subdivisiones ut in divisione legis.

240 Ibid., a q. 57, a. 2, c.

8 Right taken for "the legitimate faculty, etc.," is also divided, on the part of the principle, into natural, which belongs by law or by the consent of nature, and positive, which belongs by positive law or by the free concession of God or men. The other subdivisions are as in the division of law. Likewise this right, on the part of the term it regards, is divided into right in a thing and right to a thing.

Ius sumptum pro « facultate legitima, etc., » dividitur etiam, ex parte principii, in naturale, quod lege seu concessu naturae competit, et in positivum, quod lege positiva vel libera Dei aut hominum concessione competit. Caeterae subdivisiones ut in divisione legis. Item hoc ius ex parte termini quem respicit, dividitur in ius in re et ius ad rem.

9 Right in a thing is what one has in a thing already his and obtained. Hence it gives a real action upon the very thing. Three conditions are required for it: the existence of the thing, a legitimate title, such as purchase, donation, etc., and delivery of the thing. So has right disposed, except in certain cases.

Ius in re est quod quis habet in re iam sua et obtenta. Unde dat actionem realem in ipsam rem. Ad hoc requiruntur tres condiciones: existentia rei, legitimus titulus, ut emptio, donatio, etc., et traditio rei. Ita, exceptis quibusdam casibus, ius disposuit.

10 Right to a thing is what one has in order that some thing become his. For this no other condition is required than a legitimate title. It does not give an action upon the very thing, but upon the person only. Such right[1] is acquired by donation, purchase, etc., before delivery. Also by election, presentation to an office, by collation of a benefice before acceptance, etc.

1 1

> *Ius ad rem est quod quis habet ut res aliqua fiat sua. Ad hoc nulla alia requiritur conditio, quam legitimus titulus. Non dat actionem in ipsam rem, sed in personam tantum. Tale ius[1] acquiritur per donationem, emptionem, etc., ante traditionem. Item per electionem, praesentationem ad officium, per collationem beneficii ante acceptationem, etc.*
>
> *1 1*

What is ownership, and of how many kinds? What are usufruct and use?

1 Since right taken in the second way, for the faculty of doing something, acquiring, etc., is the foundation of right or of the just, which is the object of justice, many necessary points concerning it occur to be examined, especially concerning dominion, which is its principal species.

> *Cum ius secundo modo sumptum, pro facultate aliquid faciendi, acquirendi, etc., sit fundamentum iuris seu iusti, quod est obiectum iustitiae, multa de illo seitu necessaria occurrunt discutienda, maxime de dominio, quod est praecipua eius species.*

2 Dominion is twofold: one of jurisdiction, which is the power of governing one's subjects; the other of property, which is the faculty of disposing of some thing as one's own for one's own advantage, and it is chiefly of this that we treat here.

> *Duplex est dominium: unum iurisdictionis, quod est potestas gubernandi suos subditos; alterum proprietatis, quod est facultas disponendi de aliqua re ut sua in proprium commodum, et de illo hic potissimum agitur.*

3 Dominion of property again is twofold: one full and perfect, the other not full and imperfect.

> *Dominium proprietatis iterum est duplex: unum plenum et perfectum, aliud non plenum et imperfectum.*

4 Full dominion is the right to the property of a thing and its emoluments. Not full is the right to the property of a thing without the emoluments, and it is called direct dominion, such, e. g., as belongs to the prince with respect to a fief; or the right to the emoluments without the property, and it is called useful dominion, and such belongs to usufructuaries, feudatories, emphyteutae, etc.

> *Dominium plenum est ius ad rei proprietatem et eius emolumenta. Non plenum est ius ad proprietatem rei absque emolumentis, et dicitur dominium directum, quale, v. g., competit principi respectu feudi; vel ius ad emolumenta absque proprietate, et dicitur dominium utile, et tale competit usufructuariis, feudatariis, emphiteutis, etc.*

5 Therefore

> *Itaque*

6 **I say first:** Full and perfect dominion of property, as it embraces direct and useful dominion, is rightly defined: "A right in a thing, or the legitimate faculty of disposing of a thing as one's own, for any use not prohibited by law, for one's own advantage." It is gathered from D. Thomas, here q. 66, a. 1, c.

> ***Dico 1° :*** *Dominium proprietatis plenum et perfectum, prout directum et utile complectitur, recte definitur: « Ius in re, seu facultas legitima disponendi de re, tamquam sua, ad quemlibet usum lege non prohibitum, in proprium commodum. »*

Colligitur ex D. Thoma, hic q. 66, a. 1, c.

7 It is said, "for any use not prohibited by law;" because, although dominion by its nature bestows power for any use whatever, this power can nevertheless be impeded by law so that it does not pass into act: as happens with a minor, who before the legitimate age cannot alienate his goods, although he is their true owner; hence, if he were to alienate them, he would not sin against justice.

Dicitur, « ad quemlibet usum lege non prohibitum; » quia, licet dominium ex natura sua tribuat potestatem ad qualemcumque usum, potest tamen haec potestas impediri per legem ne exeat in actum: ut fit in pupillo, qui ante legitimam aetatem non potest bona sua alienare, licet sit verus illorum dominus; unde, si alienaret, non peccaret contra iustitiam.

8 But the same conditions are required for perfect dominion that are required for right in a thing, namely: the existence of the thing, a legitimate title, and delivery of the thing.

Eaedem autem conditiones requiruntur ad perfectum dominium, quae requiruntur ad ius in re, scilicet: existentia rei, legitimus titulus et traditio rei.

9 **I say secondly:** *Usufruct* is defined: "The right of using and enjoying the things of another, saving their substance." So in the law.

Dico 2°: Usufructus *definitur: « Ius utendi fruendique rebus alienis, salva earum substantia. » Ita in iure.*

10 It is said, "of enjoying," that it may be distinguished from simple use.

Dicitur, « fruendi, » ut distinguatur a simplici usu.

11 For he who has simple use can only use the thing, e. g., a horse, a house, a garden, a field, a wood, etc., for his own daily necessity, so that he can neither let, sell, nor gratuitously cede to another either the superfluous fruits or the right he has; whereas he who has usufruct can do all these things, so L. 12, ff. de Usu.

Qui enim habet simplicem usum, potest tantum uti re, v. g., equo, domo, horto, agro, silva, etc., ad necessitatem propriam et quotidianam, ita ut nec superfluos fructus nec ius quod habet possit alteri locare, vendere, aut gratis cedere; cum is qui usumfructum habet, possit haec omnia facere, ita L. 12, ff. de Usu.

12 But fruits are reckoned not only in immovables, as hay, crops, shoots, timber trees, bois taillis in an estate (for fruit-bearing trees are not reckoned fruits), but also in movables, as wool, milk, offspring, etc., in a flock. Where note that timber wood, even if cut out of season, is in fruit, just as an olive picked unripe, likewise hay cut unripe. L. 48, ff. de Usufructu. As to harvest and vintage, however, the usufructuary must wait for ripeness.

Fructus autem reputantur non solum in immobilibus, ut in fundo foenum, segetes, virgulta, arbores caeduae, bois taillis (fructiferae enim non reputantur fructus), sed etiam in mobilibus, ut in grege lana, lac, foetus, etc. Ubi nota, silvam caeduam, etiamsi intempestive caesa sit, esse in fructu, sicut olea immatura lecta, item foenum immaturum caesum. L. 48, ff. de Usufructu. Quoad messem vero et vindemiam, expectanda est maturitas usufructuario.

13 Note further that, if the usufructuary die before he has gathered the fruits, even if ripe, these are acquired by the owner of the property, and not by the heirs of the usufructuary. So in Instit. de Rerum divisione, § Is vero. The reason is, because as long as they adhere to the estate they are held to be one with it. Hence they belong to the owner of the estate until the usufructuary by gathering them has made them his own.

Nota insuper quod, si usufructuarius moriatur antequam collegerit fructus, etiamsi maturos, hi acquirantur domino proprietatis, et non haeredibus fructuarii. Ita in Instit. de Rerum divisione, § Is vero. Ratio est, quia quamdiu adhaerent fundo, censentur unum cum ipso. Unde pertinent ad dominum fundi, donec fructuarius eos colligendo fecerit suos.

14 It is said, "the things of another;" because usufruct is a servitude, which can be constituted only over the things of another. "For no one's own thing serves him, but profits him by right of dominion," as is said in L. 26, ff. de servitute praedior. rustic.

Dicitur, « rebus alienis; » quia usufructus est servitus, qua nonnisi in rebus alienis constitui potest. « Nemini enim res sua servit, sed prodest iure dominii, » ut dicitur L. 26, ff. de servitute praedior. rustic.

15 It is said, "saving their substance;" because the usufructuary must reserve the thing intact for the proprietor. Hence usufruct cannot properly be constituted over things that are consumed by a single use, as wine, oil, etc.

Dicitur, « salva rerum substantia; » quia usufructuarius debet rem integram proprietario reservare. Unde ususfructus non potest proprie constitui in rebus quae unico usu consumuntur, ut in vino, oleo, etc.

16 **I say thirdly:** *Use* is defined by the jurists: "The right of only using the things of another, saving their substance."

Dico 3° : Usus *definitur a iuristis: « Ius utendi tantum rebus alienis, salva earum substantia. »*

17 It is said the right of only using, and not of enjoying; because, as I have already said, the simple user can only take the fruits of a thing, as vegetables, apples, hay, for his own daily necessity, but he cannot sell or give them away, nor let the thing itself; which the usufructuary can do.

Dicitur ius utendi tantum, et non fruendi; quia, ut iam dixi, simplex usuarius potest tantum fructus rei, ut olera, poma, foenum, in propriam et quotidianam necessitatem percipere, sed eos non potest vendere seu donare, nec rem ipsam locare; quod potest usufructuarius.

18 It is said, "saving their substance," because in use, as in usufruct, the thing must be preserved intact for the owner.

Dicitur, « salva rerum substantia, » quia in usu, sicut in usufructu, debet res integra conservari domino.

19 From this you have that this definition of use does not belong to things consumable by a single act, as wine, oil, bread, etc.; because by such use the substance of the thing does not remain safe. Hence, if use be taken more generally, as it befits both things consumable by a single act and non-consumable things, it is "the right of using a thing of another."

Ex quo habes hanc usus definitionem non competere rebus unico actu consumptibilibus, ut vino, oleo, pani, etc.; quia per talem usum non manet salva rei substantia. Unde, si generalius sumatur usus, prout convenit rebus tam unico actu consumptibilibus, quam non consumptibilibus, est « ius utendi re aliena. »

20 Concerning this use of things consumable by a single act there was once great controversy, not only among theologians, but also among Pontiffs: whether it should be distinguished from dominion? For whose resolution let there be

Circa hunc usum rerum unico actu consumptibilium magna fuit olim concertatio, non solum inter theologos, sed etiam inter Pontifices: utrum distingueretur a dominio? Pro cuius resolutione sit

Whether, in things consumed in a single act, use is distinguished from ownership?

1 Use is distinguished in two ways: one independent and irrevocable at the nod of the grantor, as in a loan; the other dependent and revocable at the nod of the grantor, such as guests have at a banquet laid out, or individual religious at food or drink granted to them by the superior; for these things, whether the banquet, or the food and drink, can be taken away by the owner or superior without injustice as long as they exist.

> *Duplex distinguitur usus: unus independens et irrevocabiliis ad nutum concedentis, ut in mutuo; alter dependens et revocabilis ad nutum concedentis, qualem habent convivae ad dapes appositas, religiosi particulares ad cibum aut potum sibi a superiore concessum; haec enim, sive dapes, sive cibi et potus, quamdiu existunt, a domino vel superiore auferri possunt absque iniustitia.*

2 Irrevocable use is called by Nicholas III, cap. Exiit, de verborum signific. in 6°, and by some theologians "use of right," because it is an absolute and solid right. Revocable use is called use of fact; because the right it imports or supposes is very weak, being dependent on the will of another.

> *Usus irrevocabilis vocatur a Nicolao III, cap. Exiit, de verborum signific. in 6°, et a quibusdam theologis, « usus iuris, » quia est ius absolutum et solidum. Usus revocabilis vocatur usus facti; quia ius quod importat aut supponit, est valde debile, utpote dependens a voluntate alterius.*

3 **I say:** Revocable use in things consumable by one act is distinguished from dominion.

> ***Dico:*** *Usus revocabilis in rebus uno actu consumptibilibus, distinguitur a dominio.*

4 *Proof.* First. Separation is a manifest proof of real distinction. But revocable use, as in the conclusion, is separable from dominion. Therefore. — *Proof of the minor.* He who grants to another the faculty of using his thing, while retaining the power of revoking this faculty at his nod and of disposing of his thing to whatever use he wishes, grants the use and retains dominion. Therefore. — *Proof of the antecedent.* That he grants the use is evident in itself. That he retains dominion is proved. He is truly lord who can recall his thing to himself at his pleasure, no contract intervening, and dispose of it for any use whatever. Therefore.

> Prob. *1°. Separatio est manifesta realis distinctionis probatio. Atqui usus revocabilis, ut in conclusione, est separabilis a dominio. Ergo.* — Prob. min. *Qui concedit alteri facultatem utendi re sua, retinendo potestatem revocandi pro nutu hanc facultatem et disponendi de re sua ad quem voluerit usum, is concedit usum et retinet dominium. Ergo.* — Prob. ant. *Quod concedat usum, per se patet. Quod retineat dominium, probatur. Ille est vere dominus, qui rem suam ad se pro libitu revocare potest, nullo contractu interveniente, et de ea ad quemlibet usum disponere. Ergo.*

5 *Proof.* Second. Individual religious have the use of those things that are granted to them for sustenance, revocable by the superior. But they do not have dominion over them, since by vow of poverty they have abdicated the dominion and property of all things[241] . Therefore.

241 This is understood of religious orders that are perfect, in which solemn vows are pronounced.

> Prob. *2°. Religiosi particulares habent usum eorum quae ipsis conceduntur ad victum, revocabilem a superiore. Atqui non habent eorum dominium, cum per votum paupertatis abdicaverint omnium rerum dominium et proprietatem*[241] *. Ergo.*
>
> [241] *Hoc intelligitur de ordinibus religiosis perfectis, in quibus pronuntiantur vota solemnia.*

6 *It is confirmed* by the example Nicholas III uses. A father of a family giving a banquet to guests gives them the use of foods revocable at his nod. Yet he does not transfer dominion to them. Therefore. — *Proof of the minor.* Guests are not lords of what is set on the table, nor can they use it for any use whatever, but only for eating, and that so dependently on the will of the father of the family that he would commit no injustice if he took away what he had set out. Therefore.

> Confirmatur *exemplo quo utitur Nicolaus III. Paterfamilias praebens hospitibus convivium, dat eis ciborum usum ad nutum suum revocabilem. Atqui tamen non transfert eis dominium. Ergo.* — Prob. min. *Convivae non sunt domini eorum quae mensae apponuntur, nec illis uti possunt ad quemlibet usum, sed tantum ad comedendum, idque sic dependenter a voluntate patrisfamilias, ut nullam iniustitiam committeret, si quae exposuit tolleret. Ergo.*

7 So with us think Nicholas III, Clement V, and before them Alexander III and Gregory IX, Soto, Navarrus, Sylvius, Lessius, and many others together with the entire school of the Scotists.

> *Ita nobiscum sentiunt Nicolaus III, Clemens V, et ante illos Alexander III et Gregorius IX, Soto, Navarrus, Sylvius, Lessius, et alii plures cum integra Scotistarum schola.*

8 You will object: John XXII, *Extravag. Ad conditorem*, asserts the contrary of our opinion, and says that to say that in such things use can be constituted separately from dominion repugns to right and runs counter to reason. Therefore either he, or the Pontiffs praised above, erred.

> *Obi. : Ioannes XXII,* Extravag. Ad conditorem*, asserit contrarium nostrae sententiae, et ait, quod dicere in talibus rebus usum separatim posse constitui a dominio, repugnet iuri et obviet rationi. Ergo, vel ille, vel prius laudati Pontifices erravere.*

9 I answer. First: suppose we admit that John XXII erred in this part, nothing absurd follows, since it is not a matter of faith or morals, but partly natural, partly civil; and besides he said this not defining as Pontiff, but reasoning as a particular doctor.

> *Resp. 1° esto admittamus Ioannem XXII in hac parte errasse, nihil sequitur absurdi, cum non sit materia fidei aut morum, sed partim naturalis, partim civilis : et aliunde id dixerit non definiendo ut Pontifex, sed ratiocinando ut doctor particularis.*

10 It can be answered secondly that John XXII did not err even in this; because he does not take dominion strictly and properly, but broadly and improperly for right however tenuous, or rather for the license of using a thing by consuming it, which since in things consumable by the use itself it is equivalent as to effect to dominion (for the Friars Minor consume food as freely as if they were owners), therefore the Pontiff called this right, though most tenuous and revocable, dominion, namely equivalently and analogically. This solution is intimated by the gloss *in Clement., Exivi de Paradiso*, § Proinde.

> *Responderi potest 2° nec in hoc errasse Ioannem XXII; quia non sumit dominium stricte et proprie, sed late et improprie pro iure etsi tenuissimo, seu potius pro licentia utendi re eam consumendo, quae cum in rebus usu ipso consumptibilibus quoad effectum aequivaleat dominio (Fratres enim Minores aeque libere cibos consumunt, ac si essent domini), ideo Pontifex hoc ius licet tenuissimum et revocabile vocavit dominium, aequivalenter scilicet et similitudinarie. Hanc solutionem innuit glossa* in Clement., Exivi de Paradiso*, § Proinde.*

On possession

1 *You will ask* first what possession is.

> Petes *1° quid sit possessio.*

2 I answer. Possession is said from the position of the feet, because over immovables it is usually acquired by the position of feet. It is commonly defined: "Detention of a thing with the aid of body, mind, and right."

> *Resp. Possessio dicitur a pedum positione, quia per pedum positionem super immobilia solet acquiri. Defini tur communiter : « Detentio rei adminiculo corporis, animi et iuris. »*

3 It is explained. It is said, "detention:" under which name is understood also the first apprehension, which is the beginning and acquisition of possession.

> *Explicatur. Dicitur, « detentio : » quo nomine intelligitur etiam prima apprehensio, qua est possessionis inceptio et acquisitio.*

4 It is said, "of a thing," not only corporeal, as a field, a house, or movables, but also incorporeal, as an annuity, a benefice, a servitude, and similar rights, which are said to be possessed in a manner.

> *Dicitur, « rei, » non solum corporeae, ut agri, domus, aut mobilium, sed etiam incorporeae, ut census, beneficii, servitutis, et similium iurium, quae dicuntur quasi possideri.*

5 It is said, "with the aid of the body;" because it does not begin, nor is it possession, unless there comes an external or corporeal act by which the thing is apprehended by foot, hand, eyes, or some similar way, in itself or in another in which it is held to be contained, as I shall say presently.

> *Dicitur, « adminiculo corporis; » quia non incipit, nec est possessio, nisi adveniat actus externus seu corporeus, quo vel pede, vel manu, vel oculis, vel alio simili modo apprehendatur res in se vel in alio in quo contineri censeatur, ut dicam modo.*

6 It is said, "with the aid of the mind;" because the intention of possessing and holding the thing for oneself and not for another is required. Hence a depositary does not properly possess the deposit, nor a tutor the goods of a minor.

> *Dicitur, « adminiculo animi; » quia requiritur intentio rem sibi et non alteri possidendi et detinendi. Unde depositarius non proprie possidet depositum, nec tutor bona pupilli.*

7 It is said, "with the aid of right," not that it is necessary that right approve it, otherwise every possession would be just, but because for possession it is required that right not impede the detention of a thing from being held its possession. For this reason, detention of a sacred thing by a layman is not possession, not even of fact, since right prohibits it; but detention of a stolen profane thing, though unjust, is nevertheless true possession of fact, because right does not impede the detention of such a thing from sufficing for possession.

> *Dicitur, « adminiculo iuris, » non quod necesse sit ut ius eam approbet, alias omnis possessio foret iusta, sed quia ad possessionem requiritur ut ius non impediat quin rei detentio censeatur eius possessio. Qua de causa, detentio rei sacrae a laico non est possessio, nequidem facti, iure id prohibente; detentio vero rei furtiva profanae, licet iniusta, est tamen vera possessio facti, quia ius non impedit quin talis rei detentio sufficiat ad possessionem.*

8 *You will ask* secondly in how many ways possession is twofold.

> Petes *2° quotuplex sit possessio.*

9 I answer. Among the various divisions of possession (for one is just, another unjust, one in one's own name, another in another's name), the principal is into civil, natural, and most civil.

> *Resp. Inter varias possessionis divisiones (alia enim est iusta, alia iniusta, alia proprio nomine, alia alterius nomine), praecipua est in civilem, naturalem et civilissimam.*

10 Civil is that which, begun with the aid of the body, is retained and continued by the aid of the mind alone. Thus he possesses civilly who is absent from his things, but holds and occupies them as his own in mind and faculty, so long as he is not cast out of possession by another. It is called civil, because it rests more on civil than on natural law, since the natural mode of possessing is by bodily insistence, and also because it produces a civil effect, namely prescription.

> *Civilis est quae corporis adminiculo inchoata, solius animi adminiculo retinetur et continuatur. Sic civiliter possidet, qui abest a rebus suis, sed animo et facultate eas retinet et occupat ut suas, quamdiu per alium a possessione non deiicitur. Dicitur civilis, quia magis constat iure civili quam naturali, cum modus naturalis possidendi sit per corporalem insistentiam, et etiam quia parit effectum civilem, scilicet praescriptionem.*

11 Natural is that by which a thing is occupied by body and mind together. But one is held to occupy corporally when he is so near the thing that he can be present to it immediately. This natural possession can be separated from civil: for a thief, e. g., possesses my thing naturally, I civilly, until by abstraction of it from place to place it is put outside my custody; for then I am cast out of civil possession.

> *Naturalis est qua res corpore simul et animo occupatur. Censetur autem quis corporaliter occupare, quando ita rei vicinus est, ut illi possit continuo adesse. Haec naturalis possessio potest separari a civili : nam fur, v. g., rem meam possidet naturaliter, ego civiliter, donec per abstractionem eius de loco in locum ponatur extra meam custodiam ; tunc enim a civili possessione deiicior.*

12 Most civil is that which is acquired by the sole disposition of law, even by one who knows nothing of it, and therefore without the aid of body and mind. Thus the infant heir possesses the inheritance of the deceased, especially in France and the country of Liege, where the dead clothes the living: *Le mort saisit le vif.* The reason is, because the mode of acquiring possession is subject to human law, which can establish diverse modes according as it seems more expedient for the commonwealth.

> *Civilissima est qua sola legis dispositione acquiritur, etiam ab inscio, adeoque sine corporis et animi adminiculo. Sic haeres parvulus defuncti haereditatem possidet, praesertim in Gallia et patria Leodiensi, ubi mortuus induit vivum :* Le mort saisit le vif. *Ratio est, quia modus acquirendae possessionis humano iuri subiacet, quod potest diversos modos statuere, prout magis videtur expedire reipublicae.*

13 *You will ask* thirdly whether, possession lost, dominion is always lost.

> Petes *3° utrum, amissa possessione, semper amittatur dominium.*

14 I answer negatively. For of a thing lost or taken by theft I lose possession, yet not dominion.

> *Resp. negative. Etenim rei amissae vel furto ablatae amitto possessionem, non tamen dominium.*

15 *You will ask* fourthly what are the privileges of possession.

> Petes *4° qua sint privilegia possessionis.*

16 I answer. The chief privileges of possession are: first, that it produces prescription; second, that in doubt the condition of the possessor is better; third, that it is not for the possessor to prove that the thing is his, but for the assailant to prove that it is not. Concerning possession see more among the interpreters of the laws.

Resp. Praecipua privilegia possessionis sunt : primum, quod pariat praescriptionem; secundum, quod in dubio sit melior conditio possidentis; tertium, quod non sit possessoris probare quod res sit sua, sed oppugnantis probare quod non sit. De possessione vide plura apud legum interpretes.

On the Subject and Object of Ownership

On the subject and object of ownership in general

1 : To every and only intellectual nature, namely God, angel, and man, dominion belongs [242] ; because to every and only intellectual nature belongs the foundation of dominion, namely intellect and will, by which it has the power of disposing of its own acts, and by acts over external things. Hence *Genesis*, I, 26, God said: *Let us make man to our image and likeness, that he may rule over the fishes of the sea and the beasts of the earth*: where he attributes to man dominion over beasts and fishes because he is the image of God. Now he is the image of God through intellect and will.

242 Here q. 66, a. 1.

: Omni et soli naturae intellectuali, nempe Deo, angelo et homini competit dominium [242] ; quia omni et soli naturae intellectuali competit fundamentum dominii, scilicet intellectus et voluntas, per quae habet potestatem disponendi de suis actibus, et per actus de rebus externis. Unde Genes., *I, 26, dixit Deus :* Faciamus hominem ad imaginem et similitudinem nostram, ut praesit piscibus maris et bestiis terrae *: ubi tribuit homini dominium in bestias et pisces, eo quod sit imago Dei. Est autem imago Dei per intellectum et voluntatem.*

242 Hic q. 66, a. 1.

2 **I say secondly**: All sublunary things can fall under the dominion of man, inasmuch as he can acquire them for himself and dispose of what is acquired at his nod; but of those things of which he has legitimate title he is de facto lord.

***Dico 2°** : Omnes res sublunares cadere possunt sub dominio hominis, in quantum potest eas sibi comparare et de comparatis pro nutu disponere; earum vero de facto est dominus quas legitimo titulo possidet.*

3 He is also absolutely lord of operations freely exercised through intellect and will, through the external senses and through the locomotive power [243] ; because such are subject to his free choice. Not so perfectly is he lord of actions naturally exercised through the interior senses and the sensitive appetite; because these sometimes depend on the disposition of a bodily organ, which is not in man's power. But of the actions of the vegetative faculty he is in no way lord, because they are in no wise subject to the command of reason.

243 Iª 2ae, q. 17, a. 5-9.

Est etiam absolute dominus operationum quae libere exercentur per intellectum et voluntatem, per sensus exteriores et per potentiam locomotivam [243] ; quia eiusmodi subduntur libero eius arbitrio. Non ita perfecte est dominus actionum quae naturaliter exercentur per sensus interiores et appetitum sensitivum; quia hae quandoque pendent ex dispositione organi corporalis, quod non est in potestate hominis. Actionum vero facultatis vegetativae nullo modo est dominus, quia nullatenus subduntur imperio rationis.

[243] *Iª 2ae, q. 17, a. 5-9.*

4 **I say thirdly**: Man is not absolutely and directly lord of his own life and members, but only custodian and user [244] ; God alone is Lord. So doctors everywhere.

[244] Here q. 64, a. 5, ad 3.

***Dico 3°** : Homo non est absolute et directe dominus vitae suae et membrorum, sed custos tantum et usuarius [244] ; solus vero Deus est Dominus. Ita passim doctores.*

[244] *Hic q. 64, a. 5, ad 3.*

5 *It is proved.* First from Scripture. *Deut.*, XXXII, 39, God says: *See ye that I alone am, and there is no other God besides me. I will kill, and I will make to live.* And *Wisdom*, XVI, 13: *Thou, Lord, hast power of life and death*; that is, thou alone.

Prob. 1° ex Scriptura. Deut.*, XXXII, 39, dicit Deus :* Videte quod ego sim solus, et non sit alius Deus praeter me. Ego occidam, et ego vivere faciam. *Et* Sap.*, XVI, 13 :* Tu es, Domine, qui vitae et mortis habes potestatem *; id est, solus.*

6 Proof by reason. First. Life and body are presupposed to dominion as its foundations. Therefore they are not subject to dominion. — If you say that liberty also is a foundation of dominion, and yet man is its lord, seeing that he can sell it into servitude; I answer that what is sold into servitude is not liberty itself or the power of free choice, which is the foundation of dominion, but only the use; just as man can also sell the use of his own body. — Secondly. By the precept Thou shalt not kill, killing is prohibited, not only of another, but also of oneself, and likewise mutilation. Therefore man cannot dispose at pleasure of life or members, and consequently has no dominion over them. — Thirdly. Dominion is only over those things which we can acquire by our industry; for just as we can acquire them, so we can relinquish them. But we cannot acquire life or members by our own industry. Therefore. — Fourthly. Dominion is only over distinct things. But life and members are not a thing distinct from us. Therefore.

Prob. ratione. 1° Vita et corpus presupponuntur ad dominium tamquam eius fundamenta. Ergo non subiacent dominio. — Si dicas, libertatem etiam esse fundamentum dominii, et tamen hominem esse eius dominum, siquidem possit illam vendere per servitutem; resp., per servitutem non vendi ipsam libertatem seu potentiam liberi arbitrii, quae est fundamentum dominii, sed tantum usum ; sicut etiam potest homo vendere usum sui corporis. — 2° Precepto : Non occides, prohibetur occisio, non solum alterius, sed etiam sui ipsius et mutilatio. Ergo homo non potest pro libitu disponere de vita aut membris, et consequenter non habet in ea dominium. — 3° Dominium non est nisi in eas res quas nostra industria possumus acquirere; has enim sicut possumus acquirere, ita et relinquere. Atqui vitam aut membra non possumus propria industria acquirere. Ergo. — 4° Dominium non est nisi in res distinctas. Atqui vita et membra non sunt quid distinctum a nobis. Ergo.

7 **I say thirdly**: Neither princes nor the commonwealth have direct dominion over the life and members of citizens, as if they could kill or mutilate citizens at pleasure, but only indirect, inasmuch as the life of certain men is harmful to the public good.

***Dico 3°** : Nec principes, nec respublica habent dominium directum in vitam et membra civium, quasi pro libitu cives possint occidere aut mutilare, sed indirectum tantum, in quantum quorumdam vita est bono publico noxia.*

8 It is evident both from the praised precept: Thou shalt not kill; and because every private person stands to the commonwealth as a member to the body; no one however is lord of his own members,

as was said. Therefore.

> *Patet, tum ex praecepto laudato : Non occides ; tum quia quisque privatus se habet ad rempublicam sicut membrum ad corpus; nemo autem est dominus membrorum suorum, ut dictum est. Ergo.*

9 **I say fourthly**: Man is lord of his own reputation and honor [245] . It is common against Cajetan, q. 73, a. 2. This dominion however is at times bound up.

[245] Here q. 73, a. 4, ad 1.

> ***Dico 4°** : Homo est dominus propriae famae et honoris [245] . Est communis contra Caietanum, q. 73, a. 2. Istud dominium tamen est aliquando ligatum.*
>
> *[245] Hic q. 73, a. 4, ad 1.*

10 *Proof* of the first part. Man acquires reputation by his own labor, or at least the right to it; having once acquired it, by the faculty of choice he governs it, preserves it, or loses it without wrong to anyone, as Augustine did by making his falls manifest. Therefore he is its lord. — The corollary is evident; because all these acts are the principal acts of dominion.

> *Prob. prima pars. Homo proprio labore acquirit famam, aut saltem ius ad illam; semel acquisitam per facultatem arbitrii regit, conservat, aut amittit citra cuiusque iniuriam, ut fecit Augustinus lapsus suos manifestando. Ergo est eius dominus. — Patet consectarium ; quia hi omnes actus sunt praecipui actus dominii.*

11 *It is confirmed.* If man were not lord of his own reputation, he could not forgive or remit its restitution; for no one can remit what is not his own. Yet this is often done, and laudably done. Therefore.

> *Confirm. Si homo non esset dominus suae famae, non posset eius restitutionem condonare seu remittere; nemo enim potest remittere quod suum non est. Atqui tamen id saepe fit, et laudabiliter fit. Ergo.*

12 Nor does it stand in the way that man can forgive the mutilation of a member, of which nevertheless he is not lord. For, if the member could be restored as reputation can, he could not forgive its restitution. What therefore he forgives is not the restitution of the member, but satisfaction for the injury inflicted and pecuniary restitution for the damage followed.

> *Nec obstat quod homo possit condonare mutilationem membri, cuius tamen non est dominus. Nam, si membrum posset restitui sicut fama, non posset eius restitutionem condonare. Quod ergo condonat, non est restitutio membri, sed satisfactio pro iniuria illata et restitutio pecuniaria pro damno secuto.*

13 *Proof* of the second part. Our reputation is sometimes necessary to our neighbor. Therefore then we cannot dispose of it at will, either neglecting or squandering it.

> *Prob. secunda pars. Fama nostra est aliquando necessaria proximo. Ergo tunc non possumus de ea disponere ad libitum, eam vel negligendo vel prodigendo.*

14 [But our reputation can be necessary to our neighbor in three ways: first, so that the reputation of our neighbor hangs on our reputation, and from our infamy follows his infamy: as from the infamy of a monk follows the infamy of the community, and from the infamy of a father follows the infamy of his household. Secondly, so that our reputation is necessary to our neighbor for rendering to him an office owed him by strict right: thus the reputation of a prelate or parish priest is necessary that he may well govern his subjects. Thirdly, so that our reputation is necessary to our neighbor in order

that an office be rendered him which is owed him only out of charity. Whoever in this last case neglects or squanders his reputation sins only against charity. But whoever in the two prior cases does not care for his reputation probably sins against justice, not precisely because he defames himself, but because he harms his neighbor.

> *[Fama autem nostra tripliciter potest esse proximo necessaria : 1° Sic ut ex fama nostra pendeat fama proximi, et ex infamia nostra sequatur eius infamia : ut ex infamia monachi sequitur infamia communitatis, et ex infamia patris sequitur infamia eius familiae. 2° Sic ut fama nostra sit necessaria proximo ad praestandum ipsi officium quod stricto iure debetur : ut fama praelati aut parochi est necessaria ut bene regat subditos. 3° Sic ut fama nostra sit necessaria proximo, ut ei praestetur officium ex charitate tantum ei debitum. Qui in hoc ultimo casu famam negligit aut prodigit, peccat tantum contra charitatem. Qui vero in duobus prioribus casibus famam non curat, probabiliter peccat contra iustitiam, non praecise quia seipsum infamat, sed quia proximo nocet.*

15 **I say fourthly**: Man can fall under the dominion of the property of another man.

> ***Dico 4°** : Homo potest cadere sub dominium proprietatis alterius hominis.*

16 *It is proved.* Servitude is prohibited by no law: first, not by natural law; because, as was said, man has useful dominion of his own body. Therefore he can transfer it to another. Secondly, not by divine law, as is evident from the Old Testament, *Exod.*, XXI, 2 seqq.; *Levit.*, XXV, 39 seqq., and from the New, *Philem.*, 10 seqq.; *I Petr.*, II, 18. Thirdly, not by human law, as is evident from various places of both laws, where many things are discussed about slaves. But servitude was introduced by the law of nations; now however, the new law disposing, servitude is no longer admitted among Christians, few places excepted: whence this question has become almost speculative.]

> *Prob. Servitus nullo iure prohibetur : 1° Non naturali; quia, ut dictum est, homo habet dominium utile sui corporis. Ergo potest illud in alium transferre. 2° Non divino, ut patet ex veteri Testamento,* Exod.*, XXI, 2 seqq.;* Levit.*, XXV, 39 seqq., et ex novo, ad* Philem.*, 10 seqq.;* I Petr.*, II, 18. 3° Non humano, ut patet ex variis utriusque iuris locis, ubi multa de servis disseruntur. Fuit autem introducta servitus iure gentium; sed nunc, iure novo disponente, nulla amplius admittitur servitus inter christianos, paucis locis exceptis : unde haec quaestio fere speculativa facta est.]*

On the ownership of wives and of sons under family power

1 Goods of the wife are distinguished of three kinds, namely *paraphernalia* [παρά, beside, φερνή, dowry] are those which the wife has or acquires beyond the dowry handed over to the husband. — *Dotal goods* are those which the wife hands over to her husband for the relief of marriage. — *Common goods*, which are acquired by the labor of either spouse during marriage.

> *Triplicis generis distinguuntur bona uxoris, nempe* paraphernalia *[παρά, iuxta, φερνή, dos] sunt ea quae uxor, ultra dotem marito traditam, habet vel acquirit.* — Dotalia *sunt ea quae uxor tradit marito in sublevamen matrimonii.* — Communia*, quae utriusque coniugis labore tempore matrimonii acquiruntur.*

2 **I say first**: The wife has full dominion, namely direct and useful, and the administration of paraphernal goods. So it is disposed in the law *L. Hac lege, e. de pactis convent.*, l. 5, tit. 14. And reason urges this; because the wife, as to such goods that are her own, does not stand as a wife, but as a man distinct from her husband.

> ***Dico 1°** : Uxor habet dominium plenum, scilicet directum et utile, et administrationem bonorum paraphernalium. Ita disponitur in iure* L. Hac lege, e. de pactis convent.*, l. 5, tit. 14. Idque suadet ratio; quia uxor, quoad huiusmodi bona sibi propria, non se habet ut uxor, sed ut homo distinctus a marito.*

3 **I say secondly**: Of dotal goods the wife has direct dominion, but the husband useful dominion and administration. So in the law *L. dotis* 7, *de iure dotium*, l. 23, tit. 3, where it is said: "Equity suggests that the fruit of the dowry ought to belong to the husband; since he himself undertakes the burdens of marriage, it is fair that he also receive the fruits." By this law the second part of the conclusion is established, and the first is openly intimated. For if only the fruits of the dowry are granted to the husband, it follows that direct dominion remains with the wife. It is also evident from this: on the death of the husband, the dowry comes back to the wife without any contract, although she is not a necessary heir, at least where there are children. Therefore it is a sign that she previously had dominion over that dowry.

> ***Dico 2°** : Bonorum dotalium uxor habet dominium directum, maritus autem utile et administrationem. Ita in iure* L. dotis *7,* de iure dotium*, l. 23, tit. 3, ubi dicitur : « Dotis fructum ad maritum pertinere debere aequitas suggerit ; cum enim ipse onera matrimonii subeat, aequum est eum etiam fructus percipere. » Qua lege statuitur secunda pars conclusionis, et prima aperte insinuatur. Si enim marito fructus dotis dumtaxat conceditur, consequens est quod dominium directum penes uxorem remaneat. Patet etiam ex hoc quod, mortuo marito, dos absque omni contractu obveniat uxori, licet non sit haeres necessaria, saltem ubi sunt liberi. Ergo signum est eam ante in illam dotem habere dominium.*

4 **I say thirdly**: Of the half of common goods the wife has direct dominion; because, as we were saying just now about the dowry, on the death of the husband this half comes to the wife. But useful dominion and administration belong to the husband; because, since he is the head and moderator of the family, to him pertain the fruits and administration of goods, not only dotal but also common.

> ***Dico 3°** : Medietatis bonorum communium uxor habet dominium directum ; quia, ut dicebamus modo de dote, marito defuncto, haec medietas obvenit uxori. Dominium autem utile et administratio competunt marito ; quia, cum sit caput et moderator familiae, ad ipsum pertinent bonorum, non solum dotalium, sed et communium fructus et administratio.*

5 All these things are of the common law; for there are various customs of places, which dispose otherwise. Thus, according to the first article of the custom of Liege, there are no paraphernal goods left to the free disposal of the wife unless a pact or convention intervenes to the contrary, but all present and future goods are subject to the dominion of the husband.

> *Haec omnia de iure communi ; sunt enim variae locorum consuetudines, quae aliter disponunt. Sic, iuxta articulum primum consuetudinis Leodiensis, nulla sunt bona paraphernalia liberae uxoris dispositioni relicta, nisi pactum aut conventio in contrarium interveniat, sed omnia praesentia et futura mariti dominio subsunt.*

6 [From diverse European laws this matter is regulated as follows.

> *[Ex diversis iuribus Europaeanis ut sequitur haec materia regitur.*

7 *Principle*. By natural law, each spouse remains lord of his own goods, with the obligation of bearing for his proportional part the burdens of marriage; but by positive law and by pact the rights of spouses over goods can be very diverse.

> Principium. *Ex lege naturali, uterque coniux remanet bonorum suorum dominus, cum obligatione sustinendi pro rata parte matrimonii onera; sed ex lege positiva et ex pacto iura coniugum in bona possunt esse valde diversa.*

8 These are the principal dispositions which the various codes or laws of various peoples contain on this matter.

> *Hae sunt praecipuae dispositiones quas continent hae de re varii variorum populorum codices seu iura.*

9 *Roman law.* First it adjudges the usufruct and administration of dotal goods to the man, however the property to the woman; and therefore, on the death of the man, she is preferred to all his personal creditors for reclaiming the dowry. She can also, during marriage, reclaim the dowry if it be feared that the man become unable to restore it. But if the dowry consist in money or in consumable goods, or even in stable goods, which are valued and handed over to the man with the mind of selling them, then the man acquires full dominion, with the obligation of restoring the value upon dissolution of the marriage: whence, if goods of this kind perish, they perish for the man. — Secondly. Of paraphernal goods the wife has full dominion and use. — Thirdly. Of common goods, if they exist by special pact, property and use belong to each spouse, administration truly to the husband alone.

> Ius Romanum. *1° Adiudicat bonorum dotalium usumfructum et administrationem viro, proprietatem autem uxori; ideoque, mortuo viro, ipsa pro repetenda dote omnibus eius personalibus creditoribus praefertur. Potest etiam, durante matrimonio, repetere dotem, si timeatur ne vir fiat impotens ad illam restituendam. Si vero dos consistat in pecunia aut in bonis consumptibilibus, vel etiam in bonis stabilibus, quae viro aestimata et animo venditionis traduntur, tunc vir plenum acquirit dominium, cum obligatione valorem restituendi, matrimonio soluto : unde, si bona huiusmodi pereunt, viro pereunt. — 2° Bonorum paraphernalium uxor habet plenum dominium et usum. — 3° Bonorum communium, si adsint ex pacto speciali, proprietas et usus pertinet ad utrumque coniugem, administratio vero ad solum maritum.*

10 *Gallic law* [246] grants to spouses, before marriage, the faculty of making concerning their goods whatever pacts they wish, provided these be made before a public notary, and be not against good morals, or the laws, or paternal or marital authority. But if the making of such a pact be omitted, the spouses are held to enter into legal community. — Now indeed:

246 Codex civ., art. 1387-1581.

> Ius Gallicum [246] *concedit sponsis, ante matrimonium, facultatem faciendi, quoad bona sua, omnes quas voluerint pactiones, dummodo hae fiant coram publico notario, nec bonis moribus, aut legibus, aut paternae maritalive authoritati adversentur. Quod si huiusmodi pactio fieri praetermittatur, sponsi censentur inire communitatem legalem. — Iam vero :*
>
> [246] *Codex civ., art. 1387-1581.*

11 First. Legal community is thus constituted: first. Immovable goods acquired before the nuptials, or afterwards coming by donation or succession, remain proper to each spouse. But the proper goods of the wife become quasi-dotal, and the husband alone has their usufruct and administration; yet so that he cannot alienate them without the consent of the wife. — Secondly. Common goods become both movable goods possessed before marriage, and the fruits of immovables and other revenues, and also immovables acquired in marriage from the goods or on account of the community. The husband can alienate, pawn, etc. these goods without the consent of the wife.

> *1° Communitas legalis sic constituitur : 1° Propria cuique coniugi manent bona immobilia acquisita ante nuptias, vel postea ex donatione aut successione obvenientia. Propria vero uxoris bona fiunt quasi-dotalia, et solus maritus habet eorum usumfructum et administrationem ; ita tamen ut sine consensu uxoris ea alienare non possit. — 2° Communia evadunt tum bona mobilia ante matrimonium possessa, tum fructus immobilium aliique reditus, tum etiam immobilia in matrimonio ex bonis vel ratione communitatis acquisita. Potest maritus haec bona absque uxoris consensu alienare, oppignerare, etc.*

12 But he cannot dispose gratuitously of immovables, or of the universality or totality of movables. — The community being dissolved, goods and burdens are divided into two parts, unless the wife or her heirs prefer to renounce the goods, and so exempt themselves from the burdens.

De immobilibus tamen, vel de mobilium universalitate aut quotitate non potest disponere titulo gratuito. — Dissoluta communitate, bona et onera dividuntur in duas partes, nisi uxor huiusve haeredes maluerint bonis renuntiare, atque ita ab oneribus se eximere.

13 Secondly. By conjugal pact can be constituted: first. The regime of conventional community, whereby legal community is extended or restricted with respect to goods. — Secondly. A regime excluding community, but without separation, whereby namely all the goods of the wife become quasi-dotal, and are handed over to the husband for use and administration, without faculty of alienating. — Thirdly. The regime of separation, whereby all the goods of the wife become quasi-paraphernal; for the wife retains the use and administration of all her goods, nor does she contribute to the burdens of marriage except a third part of her revenues, according to the norm of law, or another sum, this determined, whose full dominion is transferred to the husband. — Fourthly. The dotal regime, whereby a dowry strictly such is constituted, almost as in Roman law.

2° Per pactum coniugale constitui potest : 1° Regimen communitatis conventionalis, quo extenditur vel restringitur, respectu bonorum, communitas legalis. — 2° Regimen excludens communitatem, at sine separatione, quo scilicet omnia bona uxoris fiunt quasi dotalia, et traduntur marito in usum et in administrationem, absque alienandi facultate. — 3° Regimen separationis, quo omnia uxoris bona fiunt quasi paraphernalia; uxor enim retinet usum et administrationem omnium suorum bonorum, nec confert ad onera matrimonii nisi tertiam partem suorum redituum, ad normam iuris, vel aliam summam, hancque determinatam, cuius plenum dominium in maritum transfertur. — 4° Regimen dotale, quo dos stricte talis constituitur, fere ut in iure Romano.

14 Let it be noted: first. There cannot be constituted a regime in which the wife is entirely independent of the husband, namely one in which she could alienate her immovable goods, or appear in civil court without the authority of the husband or judge. Nevertheless, even against the will of her husband, she can make a testament. Secondly. In the antenuptial contract, the spouses can mutually receive from each other or from others certain donations, which after the nuptials are prohibited by law.

Notetur : 1° Non potest constitui regimen in quo uxor sit penitus independens a marito, scilicet in quo possit alienare sua bona immobilia, aut se sistere in iudicio civili sine mariti vel iudicis authoritate. Potest tamen, marito etiam invito, testamentum condere. 2° In contractu antenuptiali, possunt sponsi mutuo a se invicem vel ab aliis quasdam accipere donationes, quae post nuptias lege prohibentur.

15 *Italian law* [247] has these things proper to itself: first. A dowry is constituted generally according to the rules of Roman law. It can also embrace the future goods of the bride; but after the marriage begun it can no longer be constituted or increased by the spouses. — Secondly. The spouses can before the nuptials enter into a community, not indeed of goods, but of the fruits arising from those goods whether movable or immovable, whether present or future. But that society cannot comprehend debts and credits existing before the conjugal union. In other respects Italian law accords quite well with French.

247 Cod. civ., art. 1378-1446.

Ius Italicum [247] *haec habet sibi propria : 1° Dos generatim constituitur iuxta regulas iuris Romani. Etiam futura sponsae bona complecti potest; sed post initum matrimonium non potest amplius a coniugibus nec constitui, nec augeri. — 2° Possunt sponsi ante nuptias inire communitatem, non quidem bonorum, sed fructuum ex ipsis bonis sive mobilibus*

sive immobilibus, sive praesentibus sive futuris provenientium. Sed non potest illa societas comprehendere debita et credita existentia ante coniugium. In caeteris ius Italicum cum Gallico satis concordat.

[247] *Cod. civ., art. 1378-1446.*

16 *Spanish law.* A dowry can be constituted as in Roman law: likewise paraphernal goods. But with the antenuptial pact set aside, legal community prevails, as in Gallic law.

Ius Hispanicum. *Dos constitui potest sicut in iure Romano : item bona paraphernalia. Seclusa autem pactione antenuptiali, viget communitas legalis, sicut in iure Gallico.*

17 *Austrian law* [248] . Goods of wives are subjected to nearly the same rules as in Roman law. Only these things are to be noted: first. Community of goods can be stipulated either before or after the marriage begun, yet under conditions and in the form prescribed by law. Regularly community entered is held to be only for the case of death; therefore, during the conjugal union, the property of common goods is of both spouses, the usufruct of him to whom it belonged before the pact, and the administration of the man alone. The conjugal union dissolved, the goods are divided. — Secondly. With the special pact set aside, each spouse retains the right of property over his own goods, and likewise the exclusive right to all those things which he himself acquires during the union, or which come to him. Yet the use and administration of the goods of the wife are held to be handed over to the husband, as long as she herself has not contradicted.

[248] Cod., art. 1217-1266.

Ius Austriacum [248] *. Bona uxorum iisdem fere regulis subiiciuntur ac in iure Romano. Haec solum notanda sunt : 1° Communitas bonorum stipulari potest, sive ante sive post initum matrimonium, sub conditionibus tamen et in forma a lege praescriptis. Regulariter communitas pro casu mortis tantum inita censetur; ideoque, durante coniugio, proprietas bonorum communium est utriusque coniugis, ususfructus illius ad quem pertinebat ante pactum, et administratio solius viri. Soluto coniugio, bona dividuntur. — 2° Secluso speciali pacto, uterque coniux retinet ius proprietatis suorum bonorum, necnon ius exclusivum ad ea omnia quae ipse sibi durante coniugio acquirit, vel quae sibi obveniunt. Uxoris tamen bonorum usus atque administratio marito tradita censentur, quamdiu ipsa non contradixerit.*

[248] *Cod., art. 1217-1266.*

18 *Prussian law* [249] . First. It establishes, as a general norm, separation of the goods of each spouse, and separate dominion of them; in which respect it imitates the dotal law of Roman law. The administration and usufruct of dotal goods belong to the husband; but the husband cannot alienate or pawn those goods without the consent of the wife. That however they may be placed in safety, there belongs to the wife a right of hypothec over the immovable goods of the husband. But the dominion of paraphernal goods and their free administration are in her own hands. — Secondly. In most provinces of Prussia, community of goods is determined by particular laws, by force of which (more or less, according to the custom of the place), the spouses, as long as the marriage endures, exercise dominion of their goods in common. Community can be excluded in whole or in part, but by force of a pact entered before marriage. Likewise, in provinces where community of goods does not prevail, it can be, but only before marriage, constituted by pact, under the conditions and solemnities which the laws prescribe. However, if the spouses change domicile, they can follow the laws prevailing in the province of the new domicile.

[249] Cod. Boruss., II, 1, §§ 205-433.

Ius Borussicum [249] . *1° Statuit, tamquam normam generalem, bonorum utriusque coniugis separationem, separatumque eorum dominium ; qua in re imitatur ius dotale iuris Romani. Bonorum dotalium administratio et usufructus competit marito; sed maritus non potest ea bona alienare vel oppignerare sine consensu uxoris. Ut autem in tuto collocentur, competit uxori ius hypothecae in bona immobilia mariti. Bonorum vero paraphernalium dominium eorumque libera administratio penes ipsam est. — 2° In pluribus Borussiae provinciis, communitas bonorum determinatur legibus particularibus, vi quarum (plus minusve, pro loci consuetudine), coniuges, quamdiu coniugium perdurat, dominium suorum bonorum in communi exercent. Communitas potest excludi in toto vel in parte, sed vi pacti initi ante matrimonium. Similiter, in provinciis ubi communitas bonorum non viget, potest, sed solum ante matrimonium, constitui pacto, sub conditionibus ac solemnitatibus quas leges praescribunt. Attamen, si coniuges mutant domicilium, possunt leges in novi domicilii provincia vigentes sectari.*

[249] *Cod. Boruss., II, 1, §§ 205-433.*

19 *English law* [250] . First. From recent law, it is permitted to the wife to possess her own goods in no way subject to the power of the husband. Such a status in immovable or movable goods, or in revenues, is constituted by antenuptial pact, by the father of the wife, or by the husband himself, or even by a stranger. It is moreover usually committed to trustees, that she may enjoy greater security. In the same manner is usually constituted the jointure, that is, the revenue to be received by the wife during her life, if she survive the husband. — Secondly. If the pact fail, all the goods of the wife acquired before or after the nuptials pass into the dominion and power of the man. Fields indeed cannot be alienated by him, but they can be occupied by his creditors; indeed they pertain to him absolutely, if he survive the wife. — Thirdly. The man by testament can leave not only children destitute, but even the wife entirely; but if he die intestate, the wife by right obtains all the immovable goods which were common, that is, which during marriage had been given to either spouse or bought jointly by them. Finally from the personal goods of the man she receives a third part, if the deceased leave descendants; otherwise, a half [251] .

[250] Cfr. Grolly, n. 486-497.

[251] Marc. Instit. morales Alphons., n. 864-870.

Ius Anglicum [250] . *1° Ex iure recentiori, licet uxori possidere bona propria mariti potestati nullatenus obnoxia. Talis status in bonis immobilibus aut mobilibus, vel in reditibus, constituitur pacto antenuptiali, ab uxoris patre, vel ab ipso marito, vel etiam ab extraneo. Committitur autem plerumque, quo maiori securitate fruatur, fiduciariis. Eodem modo constitui solet doarium, id est reditus ab uxore vita sua durante percipiendus, si marito superstes fuerit. — 2° Deficiente pacto, omnia uxoris bona ante vel post nuptias acquisita transeunt in viri dominium ac potestatem. Agri quidem non possunt ab eo alienari, sed possunt ab ipsius creditoribus occupari ; imo pertinent ad eum absolute, si uxori supervixerit. — 3° Vir per testamentum, non solum liberos, sed etiam uxorem omnino destitutos relinquere potest; si vero intestatus moriatur, uxor iure obtinet omnia bona immobilia quae erant communia, id est quae durante matrimonio utrique coniugi vel data vel coniuncte ab eis empta fuerant. Ex personalibus demum mariti bonis accipit tertiam partem, si defunctus relinquat descendentes ; secus, dimidiam* [251] .

[250] *Cfr. Grolly, n. 486-497.*

[251] *Marc. Instit. morales Alphons., n. 864-870.*

20 *You will ask* first whether it is lawful for the wife to make alms from common goods or from the fruits of her dowry.

Petes *1° utrum uxori ex bonis communibus vel ex fructibus suae dotis liceat eleemosynas facere.*

21 I answer affirmatively, even if otherwise she have her own goods, provided she follow the custom prevailing among women of the same condition. The reason is, because the wife is not a servant, but a companion and mistress, and as such she ought to share in the dispensation of common goods. Besides, the husband ought to consent, and if he deny consent, he is irrationally unwilling. So commonly, with St. Liguori [252] .

252 Lib. IV, n. 340.

> *Resp. affirmative, etiamsi alioquin bona propria habeat, modo consuetudinem inter mulieres eiusdem conditionis vigentem sequatur. Ratio est, quia uxor non est serva, sed socia et domina, et ut talis dispensationi bonorum communium participare debet. Aliunde maritus consentire debet, et si consensum deneget, est irrationabiliter invitus. Ita communiter, cum S. Ligorio [252] .*
>
> *252 Lib. IV, n. 340.*

22 *You will ask* secondly whether the husband be bound to restitution, if he have spent a notable part of the common goods prodigally or imprudently.

> Petes 2° *utrum maritus ad restitutionem teneatur, si notabilem partem bonorum communium prodige vel imprudenter impenderit.*

23 I answer. It is disputed. The first opinion, probable, affirms, because the wife has dominion of half the common goods, and her right was violated. The other opinion, likewise probable, denies generally, that is, unless the husband exceed the limits prefixed by law, within which he is constituted as it were lord of these goods, which he can alienate without the consent of the wife, without being bound to render her an account: besides, the wife can guard against such dissipation by demanding juridical separation of goods. Whence it is concluded that the husband acting so sins indeed gravely against charity, but not against justice[253]. But by Gallic law the husband exceeds the prescribed limits if he give away gratuitously any immovables, or the totality or totality-number of movables, or if he appropriate common goods to himself alone [254].

253 So Carrière, *de Iure et Iustit.*, n. 276.

254 Cod. civ., art. 1422 et 1437.

> *Resp. Disputatur. Prima sententia probabilis affirmat, quia uxor habet dominium dimidiae partis bonorum communium, et ius eius fuit violatum. Altera sententia, etiam probabilis, negat generatim, id est nisi maritus excesserit limites a iure praefixos, intra quos constituitur quasi dominus horumce bonorum, quae potest alienare sine consensu uxoris, quin teneatur ei rationem reddere : aliunde huiusmodi dissipationem precavere potest uxor, separationem bonorum iuridicam postulando. Unde conconcluditur maritum sic agentem peccare quidem graviter contra charitatem, non vero contra iustitiam[253]. Ex iure Gallico autem maritus limites praescriptos excedit, si det titulo gratuito aliqua immobilia, vel totalitatem aut quotitatem mobilium, aut si bona communia sibi soli appropriet[254].*
>
> *253 Ita Carrière,* de Iure et Iustit.*, n. 276.*
>
> *254 Cod. civ., art. 1422 et 1437.*

24 *You will ask* thirdly whether the wife sin, relieving her parents or children born from a prior marriage out of common goods, or out of the fruits of her dowry.

> Petes 3° *utrum peccet uxor, sublevando ex bonis communibus, vel ex fructibus suae dotis, parentes suos aut filios ex antecedente matrimonio natos.*

25 *I answer* negatively, if she have no paraphernalia, nor the man wish to furnish what is necessary for this; because by natural law this obligation falls upon the wife, and the husband is bound to consent to it, since such a burden ought to be held common. But if the wife survive her husband, she will have to compute these expenses in her part of the community, unless the sum of goods so distributed be of small moment, having regard to the condition of the spouses. So St. Liguori [255], with others.]

255 Lib. IV, n. 542.

> Resp. *negative, si paraphernalia non habeat, nec vir necessaria ad hoc praestare velit; quia iure naturae haec obligatio uxori incumbit, et maritus in id consentire tenetur, cum tale onus commune censeri debeat. Si vero uxor marito supervixerit, has expensas in sua parte communitatis computare debebit, nisi summa bonorum sic distributorum sit parvi momenti, habita ratione conditionis sponsarum. Ita S. Ligorius[255], cum aliis.]*
>
> *255 Lib. IV, n. 542.*

26 **On the dominion of sons under paternal authority.**

> ***De dominio filiorumfamilias.***

27 Note that the goods of sons living under paternal power, which are called *peculium*, are of four kinds: *castrensia*, quasi castrensia, adventitia, and profectitia.

> *Nota, bona filiorumfamilias sub patria potestate degentium, qua dicuntur* peculium*, esse quadruplicis generis:* castrensia*, quasi castrensia, adventitia et profectitia.*

28 *Castrensia* are those which are acquired in just military service, or on occasion of military service.

> Castrensia *sunt, quae in militia iusta, seu occasione militiae, acquiruntur.*

29 Quasi castrensia, so called because, although they are not castrensia, they nevertheless enjoy the privilege of castrensia. They are: first. Those which are acquired in sacred military service, namely the clerical state, whether from ecclesiastical benefice or from elsewhere; so that whatever arrives after the clerical state, which would otherwise be adventitious, is held quasi-castrensian. *Authent. Presbyteros*, c. *de episcopis et clericis*. Yet goods possessed before the clerical state remain of the same condition as before. Secondly. Those which are acquired on account of some public non-mechanical office, such as judge, advocate, notary, or by profession of some liberal art, as theology, law, medicine. So l. *cum multo*, c. *de bonis quae liberis*.

> *Quasi castrensia sic dicta, quia, licet non sint castrensia, castrensium tamen privilegio gaudent. Sunt: 1° Quae in militia sacra, scilicet clericatu, sive ex beneficio ecclesiastico, sive aliunde acquiruntur; ita ut quidquid post clericatum advenit, quod alias foret adventitium, quasi castrense censeatur.* Authent. Presbyteros*, c.* de episcopis et clericis. *Bona tamen ante clericatum possessa remanent eiusdem conditionis ac ante. 2° Quae acquiruntur ratione alicuius officii publici non mechanici, puta iudicis, advocati, notarii, aut professione alicuius artis liberalis, ut theologia, iuris, medicinae. Ita l.* cum multo*, c.* de bonis quae liberis.

30 *Adventitia* are those which do not come from the father, nor formally from his goods, nor are given to the son or daughter for his sake or principally on his account, but come to this one by succession or by donation made on some other principal account than the father's, or by his own industry, or by chance. These goods are called adventitious with respect to the father, because they do not come from him.

> Adventitia *sunt ea quae non proveniunt a patre, neque ex eius bonis formaliter, neque eius causa aut intuitu principaliter dantur filio seu filiae, sed huic obveniunt successione vel donatione alio intuitu principali quam patris facta, vel industriâ propriâ, vel fortuito. Haec bona dicuntur adventitia respectu patris, quia ab eo non proveniunt.*

31 *Profectitia* finally are those which the son acquires from the goods of the father, e. g., by trading with them, or administering them, or those which were given to him, bequeathed principally on account of the father.

> Profectitia *tandem sunt, quae filius acquirit ex bonis patris, v. g., ex eis negotiando, seu eâ administrando, vel quae sunt ipsi data, legata intuitu patris principaliter.*

32 **I say:** A son under paternal power has full dominion of castrensian and quasi-castrensian goods. Of adventitious goods he has only direct dominion or property, the father useful dominion, or usufruct. Of profectitian goods finally the son has neither direct nor useful dominion, but the whole is the father's.

> ***Dico:*** *Filiusfamilias, sub patria potestate, habet dominium plenum bonorum castrensium et quasi castrensium. Adventitiorum habet tantum dominium directum seu proprietatem, pater dominium utile, seu usumfructum. Profectitiorum tandem nec directum, nec utile dominium habet filius, sed totum est patris.*

33 The first part is established in the law *ff* and c. *De castrensi peculio*. The second and third parts in lib. 2 *Instit.*, tit. *Per quas personas*, 9, where Justinian, correcting the old law, which did not distinguish between adventitious and profectitian, but assigned both to the father, establishes and says: "It is holy with us that, if anything come to him from the patrimony of the father, namely to the son, this according to the ancient observance be acquired wholly by the parent; for what envy is it that what came forth on occasion of the father return to him? But what the son under paternal power has acquired for himself from another cause, let him acquire its usufruct indeed for the father, but the dominion remain with him, nor that which came to him from his own labors or prosperous fortune, passing into another, should turn out grievous to him."

> *Prima pars statuitur in iure* ff *et c.* De castrensi peculio. *Secunda et tertia pars lib. 2* Instit., *tit.* Per quas personas, *9, ubi Iustinianus corrigens antiquum ius, quod inter adventitium et profectitium non distinguebat, sed utrumque patri addicebat, statuit et dicit: « Sanctum a nobis est ut, si quid ex re patris ei, scilicet filio, obveniat, hoc secundum antiquam observationem totum parenti acquiretur; quae enim invidia est, quod ex patris occasione profectum est, hoc ad eum reverti? Quod autem ex alia causa sibi filiusfamilias acquisivit, huius usumfructum patri quidem acquirat, dominium autem apud eum remaneat, nec quod ei suis laboribus vel prospera fortuna accesserit, hoc in alium perveniens, luctuosum ei procedat. »*

34 But mark that, just as "children owe piety to parents, not services," as is said in l. penult. II *de obseq.* parent. praeb., so parents are not bound to provide from their own goods for children who have their own, that is castrensian, or quasi-castrensian, or adventitious goods; whence the expenses which parents make from their own goods for the food and clothing of sons ought to be deducted from these.

> *Verum adverte quod, sicut « pietatem liberi parentibus, non operas debent, » sicut dicitur l. penult. II* de obseq. *parent. praeb., ita parentes non tenentur procurare ex propriis, filiis habentibus propria, id est castrensia, vel quasi castrensia, vel adventitia; unde ex his deduci debent expensae quas faciunt parentes ex propriis, in victu et amictu filiorum.*

35 [Goods and rights of sons under paternal power, and of other minors, vary much among various peoples. We shall relate here the principal laws existing on this matter.

> *[Bona et iura filiorumfamilias, aliorumque minorennium, multum apud varias gentes variant. Praecipuas quae hac de re existunt leges hic referemus.*

36 **I. — FROM ROMAN LAW.**

> ***I. — EX IURE ROMANO.***

37 *Distinction of persons.* It is distinguished: first. The infant (non fans), who has not yet completed the first septennium; secondly. The impubescent, who has not yet arrived at puberty, that is at fourteen years, if a boy; twelve if a girl; thirdly. The minor or minor-aged, who is pubescent but has not yet completed twenty-five years; fourthly. The major or major-aged, who has completed these years.

> Distinctio personarum. *Distinguitur: 1° infans (non fans), qui nondum primum septennium complevit; 2° impuber, qui nondum pervenit ad pubertatem, id est ad quatuordecim annos, si sit puer; ad duodecim, si sit puella; 3° minor seu minorennis, qui puber est, sed nondum viginti quinque annos complevit; 4° maior seu maiorennis, qui hos complevit.*

38 A son under paternal power is a legitimate or legitimated son who, of whatever age he be, is not yet of his own right, but still stands under the authority of the father (that is, of the father or paternal ascendants). Opposed to him are then the emancipated son, whether major or minor; then the illegitimate son, of whom below. — Pupillus is called he who, impubescent, has gone out from paternal power: to him also against his will is given a tutor over person and goods. — Minor, in the strict sense, is called he who has gone out from paternal power, already pubescent: to the minor is given a curator, willingly indeed for the administration of goods, and even against his will for litigation and for certain more solemn acts.

> *Filiusfamilias est filius legitimus vel legitimatus, qui, cuiuscumque sit aetatis, nondum est sui iuris, sed versatur adhuc sub patria (id est patris aut paternorum ascendentium) authoritate. Ei opponitur tum filius emancipatus, sive maior sive minor; tum filius illegitimus, de quo infra. — Pupillus dicitur qui, impuber, a patria potestate exiit: huic etiam invito datur tutor ad personam et bona. — Minor, in stricto sensu, ille vocatur, qui exiit a patria potestate, iam puber: minori datur curator, volenti quidem ad bonorum administrationem, et etiam invito ad litem et ad quosdam solemniores actus.*

39 Illegitimate sons are never, in the civil sense, under paternal power, but are of their own right. They are either spurious (incestuous, adulterine, sacrilegious), that is begotten of parents between whom, at the time when they were conceived and born, matrimony could not be contracted, and hence it is why they can never be legitimated; or natural, that is born of parents who at the time of conception were indeed not joined in matrimony, but capable of contracting it. These can be legitimated either by subsequent marriage, or even by rescript of the prince; and the Church itself admits legitimation of this kind.

> *Filii illegitimi nunquam sunt, in sensu civili, sub patria potestate, sed sunt sui iuris. Hi sunt vel spurii (incestuosi, adulterini, sacrilegi), id est procreati ex parentibus inter quos, tempore quo concepti et nati sunt, non poterat contrahi matrimonium, atque hinc est cur nunquam legitimari possint; vel naturales, id est nati ex parentibus qui tempore conceptionis non erant quidem iuncti matrimonio, sed ad illud contrahendum habiles. Hi legitimari possunt, vel per subsequens matrimonium, vel etiam per rescriptum principis; et ipsa Ecclesia huiusmodi legitimationem admittit.*

40 *Distinction of goods.* At first all the goods of sons obtained on whatever account pertained to the father, as profectitian; indeed the sons themselves were things of the father. — Afterwards truly by

the institutions of the Roman emperors goods were distinguished into castrensian, quasi castrensian, adventitious, and profectitian, as was said above.

> Distinctio bonorum. *Primitus omnia filiorum bona quacumque ratione obtenta, pertinebant ad patrem, ceu profectitia; imo ipsi filii erant res patris. — Postea vero ex imperatorum Romanorum institutionibus bona distincta sunt in castrensia, quasi castrensia, adventitia et profectitia, ut supra dictum est.*

41 As to the goods of pupils and minors, all these, from the time of their emancipation, are either castrensian and quasi castrensian or adventitious, as is sufficiently evident. — These things premised, the following are to be established:

> *Ad pupillorum autem et minorum bona quod attinet, haec omnia, a tempore eorum emancipationis, sunt vel castrensia et quasi castrensia vel adventitia, ut satis patet. — His praemissis, sequentia statuenda sunt:*

42 **PRINCIPLES:** First. Of castrensian and quasi-castrensian goods the son under paternal power has full dominion. For it conduces to the common good that the son not be withheld from public war service, etc. He can therefore dispose of them, whether by contracts, or by last will; nor is the consent of the father required, provided he be pubescent. But if he be not yet pubescent, he can dispose of them with the authority of the judge. And this very thing a pupil can do without the consent of the tutor, and a minor without the consent of the curator.

> ***PRINCIPIA:*** *1° Bonorum castrensium et quasi castrensium filiusfamilias habet plenum dominium. Expedit enim bono communi, ut filius non retrahatur a bello publico officio, etc. Potest igitur de illis disponere, sive per contractus, sive per ultimam voluntatem; nec requiritur consensus patris, dummodo sit pubes. Quod si nondum pubes sit, potest cum authoritate iudicis de iis disponere. Atque hoc ipsum possunt pupillus sine consensu tutoris, et minor sine consensu curatoris.*

43 Secondly. Of adventitious goods the son under paternal power has the property; but the father the administration and usufruct, unless a special condition or the nature of the thing stand in the way, as if there were donated expressly to the son a usufruct for life, etc.: in which case the adventitious peculium of the son is said to be irregular and full. — But if the father have spontaneously emancipated the son, he himself retains, as long as he lives, as it were in remuneration, half the usufruct previously held; otherwise, if the son have been emancipated on account of dignity, e. g. a bishopric, etc.

> *2° Bonorum adventitiorum filiusfamilias habet proprietatem; pater vero administrationem et usumfructum, nisi conditio specialis vel rei natura obstet, ut si filio expresse donaretur usustructus, etc.: quo casu, peculium adventitium filii dicitur irregulare et plenum. — Quod si pater filium sponte emancipaverit, ipse retinet, quamdiu vivit, quasi in remunerationem, dimidiam partem prius habitae usufructus; secus, si filius emancipatus fuerit ratione dignitatis, v. g. episcopatus, etc.*

44 Thirdly. Of profectitian goods the son under paternal power has neither property nor usufruct (for they are the father's), but only the administration. — Nevertheless he obtains these goods: first, if the goods of the father have been occupied by the fisc; secondly, if the father have emancipated him without reclaiming the said goods.

> *3° Bonorum profectitiorum filiusfamilias habet nec proprietatem nec usumfructum (sunt enim patris), at solam administrationem. — Obtinet tamen haec bona: 1° si patris bona fuerint a fisco occupata; 2° si pater eum emancipaverit, quin dicta bona repetierit.*

45 **II. — FROM THE NEW CODES.**

II. — EX NOVIS CODICIBUS.

46 Of the distinction of persons we have said enough. — As to goods is distinguished: direct dominion, administration, and usufruct. — Direct dominion of all goods which come to the sons by just title belongs to them, although they be minors and not emancipated, since they are capable of such dominion. Just title is donation, inheritance, industry separated, etc. — Administration of all goods is in the hands of the father or tutor, who must supply the incapacity or inexperience of the sons, until they themselves be majors or emancipated. Majors obtain full administration of their goods, but the emancipated restricted administration. — Usufruct belongs either to the sons or to the parents, as positive law establishes. Now indeed

De distinctione personarum sat diximus. — Quoad bona distinguitur: dominium directum, administratio et ususfructus. — Dominium directum omnium bonorum quae iusto titulo filiis obveniunt, pertinet ad eos, licet minores sint nec emancipati, cum talis dominii sint capaces. Iustus titulus est donatio, haereditas, industriâ separatâ, etc. — Administratio omnium bonorum est penes patrem vel tutorem, qui filiorum incapacitatem vel imperitiam supplere debet, donec ipsi maiorennes vel emancipati sint. Maiorennes obtinent plenam, emancipati autem restrictam bonorum suorum administrationem. — Ususfructus competit vel filiis vel genitoribus, prout ius positivum statuit. Iam vero

47 In France [256]: Usufruct generally pertains to the father, or, he being deceased, to the mother remaining in widowhood, until the emancipation of the sons or the completed eighteenth year. Yet from the proceeds the offspring must, according to its condition, be fed and educated. — We have said "generally," because are excepted: first. Goods which the sons acquire for themselves by their own labor with separated industry; secondly. Goods which are donated to them under the express condition that their usufruct not accrue to the parents.

256 Cod. civ., art. 384-387.

In Gallia[256]: Ususfructus generatim pertinet ad patrem, vel, eo defuncto, ad matrem in viduitate permanentem, usque ad filiorum emancipationem vel annum decimum octavum completum. Ex proventibus tamen debet proles, pro conditione sua, ali et educari. — Diximus, « generatim, » quia excipiuntur: 1° bona quae filii proprio labore separatâ industriâ sibi comparant; 2° bona quae ipsis donantur sub expressa conditione ut eorum ususfructus non obveniat parentibus.

256 Cod. civ., art. 384-387.

48 In Italy [257]: Usufruct is granted to the father or mother holding paternal authority, until the sons be majors or emancipated. It is lost by either parent who, after the death of the spouse, flies to new nuptials. Parent usufructuaries are bound to provide for the offspring such education as is consonant with its fortune and condition. — Excepted are: first. Goods which the sons acquire by their own labor and separated industry; secondly. Goods which are given to them with an annexed condition that the parents not receive the usufruct; thirdly. Goods which come to them according to the disposition of the law, the father dissenting.

257 Cod. civ., art. 224-239.

In Italia[257]: Ususfructus conceditur patri vel matri habenti patriam authoritatem, donec filii sint maiorennes vel emancipati. Amittitur ab alterutro parente, qui, post mortem coniugis, ad novas nuptias convolat. Parentes fructuarii tenentur procurare proli talem educationem quae eius fortunae et conditioni sit consentanea. — Excipiuntur: 1° bona

quae filii proprio labore et separata industria sibi acquirunt; 2° bona quae ipsis donantur cum adnexa conditione ut parentes usufructum non percipiant; 3° bona quae ipsis iuxta legis dispositionem, dissentiente patre, obveniunt.

[257] *Cod. civ., art. 224-239.*

49 In Austria [258]: Usufruct belongs even to minor and non-emancipated sons, however with the expenses of education deducted. And although the son not yet emancipated does not have the administration of his own goods, nevertheless he can freely (and therefore validly too, if nothing else stand in the way) dispose: first. Of goods acquired by his own industry, provided he himself do not receive aliment from his parents; secondly. Of goods which are assigned to his use, provided he be pubescent.

[258] Cod. civ., art. 149-195.

In Austria[258]: Usufructus competit filiis etiam minorennibus et non emancipatis, deductis tamen educationis expensis. Et licet suorum bonorum administrationem filius nondum emancipatus non habeat, libere tamen (adeoque et valide, si aliunde nil obstet), disponere potest: 1° de bonis propriâ industriâ acquisitis, modo ipse a parentibus non accipiat alimenta; 2° de bonis quae eius usui tribuuntur, modo sit puber.

[258] *Cod. civ., art. 149-195.*

50 In Germany [259]: The new law distinguishes the goods of sons under paternal power into free and non-free. — Free are called: first. Those which the sons have procured for themselves by their own labor and separated industry; secondly. Those which they received by gift, parents excluded from the usufruct; thirdly. Those which, living sparingly, they set aside from the goods which were granted to them, living outside the paternal house, for sustenance into full power. — Non-free are called all the rest. Their usufruct the father has, until the emancipation or majority of the son. — Usufruct of free goods belongs to the son, however with the expenses of education deducted.

[259] Cod. Boruss., II, 2, §§ 147-209.

In Germania[259]: Ius novum distinguit bona filiorumfamilias in libera et non libera. — Libera dicuntur: 1° Quae filii proprio labore et separata industriâ sibi compararunt; 2° quae dono acceperunt, exclusis parentibus ab usufructu; 3° quae, parce vivendo, seposuerunt ex bonis quae erant ipsis, extra paternam domum viventibus, ad victum in plenam potestatem concessa. — Non libera dicuntur caetera omnia. Horum usumfructum habet pater, usque ad filii emancipationem vel maiorennitatem. — Usufructus bonorum liberorum competit filio, deductis tamen expensis educationis.

[259] *Cod. Boruss., II, 2, §§ 147-209.*

51 In England [260]: Usufruct pertains to the sons. But whether the expenses of education ought to be refunded from the goods of the father or from the goods of the sons, tribunals are accustomed to decree according to the circumstances of cases.

[260] Cfr. Crolly, *de Iustit.*, n. 456-465.

In Anglia[260]: Usufructus pertinet ad filios. Utrum vero educationis expensae ex bonis patris, aut ex bonis filiorum refundi debeant, solent tribunalia, pro casuum adiunctis, decernere.

[260] *Cfr. Crolly,* de Iustit.*, n. 456-465.*

52 *You will ask* first whether the son under paternal power can sometimes retain profits which arise from his own industry.

Petes *1° utrum possit quandoque filiusfamilias retinere lucra quae ex propriâ industriâ proveniunt.*

53 I answer. First. He can retain (unless perhaps the debt of piety forbid it): first, if he live outside the paternal house at his own or others' expense, and labor with separated industry, e. g., serving someone, exercising his own art, trading with the goods of others, etc.; secondly, if he bestow extraordinary labor in the paternal house, or labor otherwise anyhow undue, e. g., if from his condition he is not bound to labor; for he can ask from the father what he would give a stranger for such labor, or even retain it secretly, if reverence or shame do not allow him to ask, as St. Liguori admits [261] with Lugo, etc., against Molina and others, who do not permit secret compensation to the son.

261 Lib. IV, n. 488, 3°; 544 et 910, mutatis mutandis ex mutato iure.

Resp. 1°. Potest retinere (nisi forte debitum pietatis id vetet): 1° si extra domum paternam suis vel alienis expensis vivat, et industriâ separatâ laboret, v. g., famulando alicui, artem propriam exercendo, cum bonis alienis negotiando, etc.; 2° si in domo paterna laborem extraordinarium, seu alias quomodocumque indebitum impendat, v. g., si ex conditione sua non tenetur laborare; potest enim petere a patre id quod daret extraneo pro tali labore, vel etiam illud occulte retinere, si reverentia vel rubor petere non sinat, ut admittit S. Ligorius[261] cum Lugo, etc., contra Molina et alios, qui filio occultam compensationem non permittunt.

261 Lib. IV, n. 488, 3°; 544 et 910, mutatis mutandis ex mutato iure.

54 *I answer.* Secondly. He cannot retain, apart from the express consent of the father: first, if he bestow ordinary labor, or services not exceeding what the father can exact by paternal right. For the father has the right that, according to the condition of his status, he be aided by his sons; therefore, if the services are already owed from piety, the son can demand or retain nothing from justice. So commonly. Secondly. If he have a right somehow doubtful, e. g., because doctors dispute much about it, or because it is not established that the labor is undue, etc.; for in doubt it is not licit secretly to compensate oneself.

Resp. *2°. Non potest, extra consensum expressum patris: 1° si impendat laborem ordinarium, vel obsequia non excedentia id quod pater iure paterno exigere valet. Pater enim habet ius ut iuxta conditionem sui status a filiis adiuvetur: ideoque, si obsequia iam ex pietate debentur, filius nihil potest ex iustitia exigere vel retinere. Ita communiter. 2° Si ius habeat quomodocumque dubium, v. g., quia doctores valde de eo disputant, vel quia non constat de labore indebito, etc.; in dubio enim non licet se occulte compensare.*

55 *You will ask* secondly whether the son under paternal power has perfect dominion over small and movable goods given to him by parents or relatives?

Petes *2° utrum filiusfamilias habeat dominium perfectum in bona minuta ac mobilia sibi a parentibus vel cognatis data?*

56 I answer. First. If these goods are not immediately consumable by use, as clothes, books, etc., the son of the family has only useful dominion in them; for, by common sense, the son as to these receives not property but only use. Therefore he cannot, without the consent of parents or relatives, at least reasonably presumed, sell, give away, alienate the same.

Resp. 1°. Si haec bona non sunt illico usu consumptibilia, uti vestes, libri, etc., filius familiae utile tantum habet in eis dominium; nam, ex communi sensu, filius quoad haec non accipit proprietatem, sed tantum usum. Ideo nequit absque parentum vel cognatorum consensu, saltem rationabiliter praesumpto, eadem vendere, donare, alienare.

57 I answer. Secondly. If those goods are consumable at first use, as food or money, and were given without any condition, he can dispose of them at his nod; because they are held given into property. But if they were given under some condition, e. g., buying books, paying a pension, etc., he sins against justice by expending them for other uses [262]

[262] Marc, *Institut.* morales Alphonsianae, n. 858-862.

> *Resp. 2°. Si ea bona sunt primo usu consumptibilia, ut cibaria vel pecunia, et data sint sine ulla conditione, potest de iis pro suo nutu disponere; quia censentur data in proprietatem. Si autem data sint sub conditione aliquâ, v. g., emendi libros, solvendi pensionem, etc., peccat contra iustitiam, ea ad alios usus impendendo*[262]
>
> [262] *Marc,* Institut. *morales Alphonsianae, n. 858-862.*

On the ownership of clerics

1 Note 1° that the goods of clerics are of three kinds, namely patrimonial, quasi-patrimonial and ecclesiastical. — *Patrimonial* are those which come to them independently of all ministry as well as ecclesiastical benefice, and are common to them and to laymen. — *Quasi-patrimonial* are those which come to clerics not by reason of an ecclesiastical benefice, or from goods offered and appropriated to the Church itself, but by reason of personal ecclesiastical ministry, as it were its wage and stipend; or, what is the same, those which are offered by the faithful, to be appropriated not to the Church itself, but to particular ministers of it for the stipend of the work, e.g., for the celebration of Mass, funeral offices, sermon, singing, etc. — *Ecclesiastical* are those received by clerics by reason and title of benefice, say canonries, deaneries, etc. As to distributions called among those present, more probably they are to be referred to ecclesiastical goods, if, as ordinarily happens, they be given out of the goods of the Church.

> *Nota 1° triplicis esse generis bona clericorum, patrimonialia scilicet, quasi-patrimonialia et ecclesiastica.* — Patrimonialia *sunt quae ipsis obveniunt independenter ab omni tam ministerio quam beneficio ecclesiastico, suntque ipsis et laicis communia.* — Quasi-patrimonialia *sunt quae clericis obveniunt, non ratione beneficii ecclesiastici, seu ex bonis ipsi Ecclesiae oblatis et appropriatis, sed ratione ministerii personalis ecclesiastici, quasi eius mercis et stipendium; sive, quod idem est, quae a fidelibus offeruntur, non ipsi Ecclesiae approprianda, sed particularibus eius ministris in operis stipendium, v. g., ob celebrationem missae, funeralia obsequia, concionem, cantum, etc.* — Ecclesiastica *sunt quae recipiuntur a clericis ratione et titulo beneficii, puta canonicatus, decanatus, etc. Quantum ad distributiones quas vocant inter praesentes, probabilius sunt revocandae ad bona ecclesiastica, si, sicut fit ordinarie, dentur ex bonis Ecclesiae.*

2 [Distinguished also are parcimonial goods, which indeed by their nature pertained to ecclesiastical goods, but which the cleric alienated from his own suitable sustentation, by living more sparingly than he could live honestly. They seem reducible to quasi-patrimonial.

> *[Distinguuntur etiam bona parcimonialia, quae quidem ad bona ecclesiastica ex natura sua pertinebant, sed ea distraxit clericus ex suâ congruâ sustentatione, vivendo parcius quam honeste vivere posset. Ad quasi-patrimonialia reduci videntur.*

3 Note 2° that in the first times of the Church the goods of clerics were common, as now they are in monasteries, dispensation left with the bishop. But truly, as the multitude of faithful and clerics daily grew, and because of the cupidity of some the common manner of living became more difficult, supreme Pontiffs ordered these goods to be divided into four portions : the first assigned to the

bishop; the second to the clergy; the third to the fabric; the fourth to the poor. So it is read in the *Decree*, cause 12, q. 2, cap. *Concesso*; cap. *Quatuor*; cap. *de Reditibus*; cap. *Cognovimus*, etc.

> *Nota 2° primis Ecclesiae temporibus bona clericorum fuisse communia, sicut nunc sunt in monasteriis, dispensatione penes episcopum relicta. At vero, crescente in dies fidelium et clericorum multitudine, cumque ex quorundam cupiditate redderetur difficilior communis vivendi modus, summi Pontifices iusserunt haec bona in quatuor portiones dividi: prima assignata episcopo; secunda clero; tertia fabricae; quarta pauperibus. Ita legitur in* Decreto*, caus. 12, q. 2, cap.* Concesso*; cap.* Quatuor*; cap.* de Reditibus*; cap.* Cognovimus*, etc.*

4 This division first begun under B. Sylvester, about the year 324, as is evident from cap. 4 of the Roman council celebrated by him, did not everywhere straightway prevail, but advanced little by little.

> *Haec divisio primum inchoata sub B. Sylvestro, circa annum 324, ut patet ex cap. 4 concilii Romani per eum celebrati, non ubique statim invaluit, sed paulatim profecit.*

5 With progress of time however it happened that this fourth part of the poor is found no longer in many churches, perhaps because it perished through injury of times, or pillage of enemies, or other calamity; or perhaps because it was not constituted in lands, but in moneys which distributed at last came to an end; or finally because neither by founders nor by prelates of the Church was any portion assigned to the poor, which at least for the most part is true regarding churches erected after the time when the division was made.

> *Progressu vero temporis accidit quod haec quarta pars pauperum in pluribus ecclesiis non reperiatur amplius, forte quia periit iniuria temporum, aut hostium direptione, aliave calamitate; vel forte quia non fuit constituta in fundis, sed in pecuniis quae distributae tandem finem acceperunt; vel denique quia neque a fundatoribus, neque ab Ecclesiae praelatis ulla fuit portio assignata pauperibus, quod saltem plerumque verum est quoad ecclesias post tempora factae divisionis erectas.*

6 Note 3° that the fruits of benefices can be regarded either insofar as they are necessary to honest sustentation, or insofar as they are superfluous to that honest sustentation, which does not consist in an indivisible, as we shall say below.

> *Nota 3° beneficiorum fructus posse spectari, vel quatenus sunt necessarii ad honestam sustentationem, vel quatenus sunt superflui huic honestae sustentationi, quae non consistit in indivisibili, ut dicemus infra.*

7 I suppose 1° as certain that clerics have dominion over patrimonial goods, so that validly they can dispose of them at pleasure; because in their ordination they did not abdicate such dominion, nor does ordination or clerical office bind them to that. Whence, in this respect, they are of like condition before and after received clericate.

> *Suppono 1° ut certum, clericos habere dominium bonorum patrimonialium, sic ut de ipsis pro libitu valide disponere possint; quia in sua ordinatione non abdicaverunt tale dominium, neque ordinatio aut officium clericale ad id eos obligat. Unde, quantum ad hoc, paris sunt conditionis ante et post susceptum clericatum.*

8 I suppose 2° with the more common opinion that clerics have absolute dominion over quasi-patrimonial goods, just as over patrimonial ones; because these goods are given to clerics as a certain stipend of sustentation, not merely gratuitous, but owed them by reason of personal work, and therefore left to their free dispensation. For the faithful conferring do not intend to impose any

burden upon them, but to satisfy their own obligation, nor can any canon of law evince that any burden be imposed by the Church on such goods.

> *Suppono 2° cum communiori sententia, clericos bonorum quasi-patrimonialium habere absolutum dominium, non secus ac patrimonialium; quia haec bona dantur clericis ut stipendium quoddam sustentationis, non mere gratuitum, sed eis debitum ratione operis personalis, ideoque relictum liberae eorum dispensationi. Neque enim fideles conferentes intendunt aliquod onus ipsis imponere, sed suae obligationi satisfacere, neque ullo canone iuris evinci potest aliquod onus ab Ecclesia imponi talibus bonis.*

9 I suppose 3° also with the common opinion that clerics have absolute dominion over the portion of ecclesiastical revenues congruous to necessary sustentation, so that concerning it and patrimonial goods they can dispose at pleasure. The reason is, because this portion is the just stipend of the office which a benefice has annexed; for he who serves the altar has right to live of the altar, according to the Apostle, *I Cor.*, IX, 13. Whence the same must be said as of quasi-patrimonial goods.

> *Suppono 3° etiam cum communi sententia, clericos portionis proventuum ecclesiasticorum necessariae sustentatationi congruae habere absolutum dominium, sic ut de illâ ac de bonis patrimonialibus pro libitu possint disponere. Ratio est, quia haec portio est iustum stipendium officii quod beneficium annexum habet; qui enim altari deservit, ius habet ut de altari vivat, secundum Apostolum,* I Cor.*, IX, 13. Unde idem dicendum est ac de quasi-patrimonialibus.*

10 *It is confirmed.* Every manual laborer, and what touches us more closely, a singer, e.g., organist, sacristan, laymen, become absolutely masters of the portion which is granted to them out of ecclesiastical goods for the stipend of their office, and can dispose of it at pleasure. Why not the cleric too?

> Confirmatur. *Omnis operarius manualis, et quod propius nos tangit, cantor, v. g., organista, sacrista, laici, fiunt absolute domini portionis quae ipsis tribuitur ex bonis ecclesiasticis in stipendium sui officii, et de eâ ad libitum disponere possunt. Quidni et clericus?*

11 The difficulty therefore chiefly concerns the part of ecclesiastical revenues superfluous to congruous sustentation. Indeed all agree that clerics cannot licitly dispose of it at pleasure, as of patrimonial or quasi-patrimonial goods, or the necessary part, but that they are bound, at least by law of charity and ecclesiastical precept, to expend it upon the poor or other pious uses. Whether truly they are also bound by justice, so that they be liable to restitution if they spend it on profane uses, is greatly disputed.

> *Difficultas itaque potissimum est de parte proventuum ecclesiasticorum superfluâ congruae sustentationi. Equidem inter omnes convenit, clericos non posse licite de eâ disponere pro libitu, sicut de patrimonialibus, aut quasi-patrimonialibus, aut parte necessariâ, sed teneri, saltem ex lege charitatis et ex praecepto ecclesiastico, illam impendere pauperibus, aut aliis usibus piis. Utrum vero etiam teneantur ex iustitia, sic ut obnoxii sint restitutioni, si in alios usus profanos expendant, valde controvertitur.*

12 Among those who defend the affirmative part there is not one principle. Some affirm it because they think clerics have nowise dominion of this superfluous part; others, who although they acknowledge true dominion, wish it bound, as, e.g., the dominion of an heir over an inheritance burdened with legacies or debts. This opinion resting on one or other foundation we confess outright to be probable, safer in practice and to be counseled to clerics. However, with the more probable and now more common opinion,

Eorum qui partem affirmativam tuentur, non unum est principium. Quidam id affirmant, quod putent clericos nullatenus habere dominium huius partis superfluae; alii, quod, licet agnoscant verum dominium, velint illud esse vinculatum, sicut, v. g., dominium haeredis in haereditatem legatis vel debitis gravatam. Hanc sententiam alterutro fundamento nixam ultro fatemur esse probabilem, in praxi tutiorem et clericis consulendam. Attamen, cum probabiliori et nunc communiori sententia,

13 **I say** 1° : It is more probable that clerics, at least now after benefices have been created, have absolute dominion of the part of ecclesiastical revenues superfluous to congruous sustentation, so that concerning it they can validly dispose at pleasure (though illicitly, as I shall say below); nor are they bound by justice to bestow it upon the poor or pious uses, and consequently are they not liable to restitution, if they spend it on other uses. So Ostiensis, Barbatus, Adrianus, Dominicus Soto, Bannez, Lorca, Valencia, Lopez, Covarruvias, Lessius, Sarmiento, Banat, Garcias, Wigers, Sylvius, Cabassutius, and more.

Dico 1° : Probabilius est clericos, saltem nunc post creata beneficia, habere absolutum dominium partis proventuum ecclesiasticorum congruae sustentationi superfluae, sic ut de illa possint pro libitu valide disponere (licet illicite, ut dicam infra); nec teneantur ex iustitia illam erogare pauperibus aut in usus pios, adeoque nec sint obnoxii restitutioni, si in alios usus impendant. Ita Ostiensis, Barbatias, Adrianus, Dom. Soto, Bannez, Lorcas, Valentia, Lopez, Covarruvias, Lessius, Sarmiento, Banat, Garcias, Wigers, Sylvius, Cabassulius, et plures.

14 *Proof.* of conclusion 1° by authority of canons. Cap. *Consuetudinem*, on clerics not resident, lib. III, tit. 3, in 6°, it is enacted that those absent from choir do not acquire dominion of daily distributions, nor make them their own. The same is enacted by Trent, sess. XXII, cap. 3 On Reform. Cap. *Commissa*, On election., in 6°, it is said that one accepting a parish without intention of receiving priesthood within the year ought to restitute the fruits of the parish, because he makes them not his own. Pius V, bull 138, declares that a beneficed man not reciting the office does not make the fruits his own. The same Trent declares, sess. XXIV, cap. 12 On Reform., of him who within two months emits not profession of faith. Ergo, a contrario sensu, those who satisfy the imposed obligations acquire dominion of these fruits and make them their own, else otherwise those who satisfy the office and those who do not satisfy would be equal.

Prob. *conclusio 1° authoritate canonum. Cap.* Consuetudinem*, de clericis non residentibus, lib. III, tit. 3, in 6°, statuitur absentes a choro distributionum quotidianarum non acquirere dominium, nec facere suas. Idem statuit Trid., sess. XXII, cap. 3* de Reform. *Cap.* Commissa*, de election., in 6°, dicitur quod suscipiens paroeciam sine animo accipiendi sacerdotium intra annum, debeat restituere fructus paroeciae, eo quod eos non faciat suos. Pius V, bulla 138, declarat beneficiatum non recitantem officium non facere fructus suos. Idem declarat Trid., sess. XXIV, cap. 12* de Reform.*, de eo qui intra duos menses non emittit professionem fidei. Ergo, a contrario sensu, ii qui oneribus impositis satisfaciunt, horum fructuum acquirunt dominium et faciunt suos, ne alioquin pares sint qui officio satisfaciunt et qui non satisfaciunt.*

15 Nor say that this dominion is bound; for nothing of the kind is intimated by the cited authorities, nor can it be proved by other authority or sufficient reason, as will appear from the solution of objections. Nay rather the contrary is evinced from the following reasons : unless perchance you say the bond affects not the things themselves, but persons, insofar as they are bound by law of charity or burden of restitution.

Neque dicas hoc dominium esse vinculatum; nihil enim tale innuitur authoritatibus citatis, neque probari potest alia authoritate aut ratione sufficienti, ut patebit ex solutione obiectionum. Quin imo contrarium evincitur ex rationibus

sequentibus: nisi forte dicas vinculum afficere, non res ipsas, sed personas, quatenus tenentur ex lege charitatis aut onus restitutionis.

16 *Proof.* 2nd by reason. According to the common opinion, which the greater and saner part of adversaries admits, beneficiaries are absolute masters of certain fruits, namely those necessary to their sustentation, and concerning these they can dispose at least validly at pleasure. Ergo also of all. —

Prob. 2° *ratione. Iuxta communem sententiam, quam admittit maior et sanior pars adversariorum, beneficiarii sunt absolute domini quorundam fructuum, scilicet eorum qui suae sustentationi sunt necessarii, de iisque pro libitu saltem valide disponere possunt. Ergo et omnium.* —

17 Proof of the consequence. Beneficiaries receive all revenues of their benefices indistinctly, and can apply these or those to their sustentation, and consequently concerning these or those, validly at least, dispose at pleasure. Ergo on the side of fruits they cannot be said masters of certain determinate ones, and not of others; but, since all are received indistinctly, indistinctly they undergo the same lot regarding reason of dominion. Ergo of all : so that the obligation they have of expending superfluous goods on pious uses is not real, that is, annexed to the thing itself, but personal, that is, imposed on the person itself. Which obligation neither repugns true and absolute dominion, nor impedes valid disposition of things, nor induces burden of restitution, as appears in the obligation of almsgiving.

Prob. consequentiae. Beneficiarii reditus omnes suorum beneficiorum indistincte recipiunt, hos aut illos in sui sustentationem applicare possunt, et consequenter de his aut illis, valide saltem, pro libitu disponere. Ergo ex parte fructuum non possunt dici aliquorum determinate domini, et non aliorum; sed, cum omnes indistincte percipiuntur, indistincte eamdem subeunt sortem quoad rationem dominii. Ergo omnium: ita ut obligatio quam habent superfluos impendendi in usus pios non sit realis, hoc est, ipsi rei annexa, sed personalis, hoc est, ipsi personae imposita. Quae obligatio neque repugnat vero et absoluto dominio, neque impedit validam rerum dispositionem, neque onus restituendi inducit, ut patet in obligatione eleemosynae.

18 Proof 3°. Whoever possesses a thing is judged master of it, nor can he be compelled by justice to abdicate it unless it appear to be another's, according to rule 65 of law in 6°: «In equal fault or case, the condition of the possessor is better.» But clerics possess all the fruits of their benefice, nor can it be proved from any head that they have not dominion of them, or are held to restitution if they expend them ill. Ergo.

Prob. 3°. Qui rem possidet, censetur eius dominus, neque est cogendus eam a se abdicare ex iustitia, nisi constet esse alienam, iuxta hanc regulam 65 iuris in 6°: « In pari delicto vel causâ, potior est conditio possidentis. » Atqui clerici possident omnes fructus sui beneficii, neque probari potest ex ullo capite eos non habere eorum dominium, eosve teneri ad restitutionem, si male impenderint. Ergo.

19 Proof of the minor. That cannot be proved, neither on the part of the donors, nor on the part of the Church receiving.

Prob. min. Id probari non potest, neque ex parte donantium, neque ex parte Ecclesiae recipientis.

20 Not on the part of donors; because the faithful gave these goods simply and absolutely to the Church and ecclesiastics, not truly under a condition at least expressed and reduced into pact of bestowing superfluous goods on pious uses. Although perchance they hoped and intended this, yet

they did not draw this intention into pact as a condition sine qua non; which would be necessary that the donation be judged conditional, and not absolute. For the inner mind of the contractor affects not the contract, nor obligates the other contractor by justice, unless it be expressed and reduced into pact : e.g., Caius bequeaths to Titius his student nephew a thousand florins, likewise to Sempronius, another nephew, head of a family, a thousand aurei, intending and hoping that the latter expend a thousand florins on studies, and the former a thousand aurei for relief of family; if nevertheless he express not this intention, nor apply it as condition, Titius becomes absolute master of the thousand florins, and Sempronius of the thousand aurei, nor are they held to restitution if they spend them on other uses. So again you give alms to a pauper, intending and hoping that he pray for you; the pauper prays not for you, nevertheless he becomes absolute master of the alms, nor is he held to restitute it.

> *Non ex parte donantium; quia fideles donarunt haec bona Ecclesiae et ecclesiasticis simpliciter et absolute, non vero sub conditione saltem expressa et in pactum deducta erogandi superflua in usus pios. Quamvis enim id forte speraverint et intenderint, hanc tamen intentionem non deduxerunt in pactum tamquam conditionem sine qua non; quod foret necessarium ut donatio censeretur conditionata, et non absoluta. Non enim mens interior contrahentis afficit contractum, aut obligat ex iustitia alterum contrahentem, nisi sit expressa et in pactum deducta: v. g., Caius legat Titio nepoti suo studenti mille florenos, item Sempronio, alteri nepoti, patrifamilias, mille aureos, intendens et sperans fore ut et ille impendat mille florenos in studiis, et iste mille aureos in sublevamen familiae; si tamen intentionem hanc non exprimat, nec ut conditionem apponat, Titius fit absolute dominus mille florenorum, et Sempronius mille aureorum, nec ad eorum restitutionem tenentur, si in alios usus expendant. Sic iterum das eleemosynam pauperi, intendens et sperans fore ut pro te oret; non orat pro te pauper, nihilominus fit absolute dominus eleemosynae, nec tenetur eam restituere.*

21 — Proof therefore of the antecedent. 1° This condition expressed and reduced into pact is read nowhere, let the adversaries show. 2° If such donation of the faithful were conditional, it would follow that clerics who bestow not superfluous goods on the poor are masters of no part of their revenues (which the greater part of adversaries denies), since a donation under unfulfilled condition falls. Ergo.

> *— Prob. itaque ant. 1° Haec conditio expressa et in pactum deducta nullibi legitur, seu ostendant adversarii. 2° Si talis fidelium donatio esset conditionata, sequeretur quod clerici qui superflua non erogarent pauperibus, nullius partis suorum proventuum essent domini (quod negat maior pars adversariorum), cum donatio sub conditione non purificata corruat. Ergo.*

22 Not on the part of the Church receiving. If the Church judged or wished clerics held by strict right to restitution of fruits ill spent, doubtless she would have declared it somewhere in clear and express terms. But she declared this nowhere in clear and express terms. Ergo. — The major seems necessarily to be admitted, since this matter is of greatest moment, seeing that it regards the conscience of all beneficiaries, public edification and relief of the poor, and by several is recalled into doubt or denied.

> *Non ex parte Ecclesiae recipientis. Si Ecclesia censeret aut vellet clericos stricto iure teneri ad restitutionem fructuum male expensorum, id procul dubio claris et expressis terminis alicubi declarasset. Atqui id nullibi claris et expressis terminis declaravit. Ergo. — Maior videtur necessario admittenda, cum res haec sit maximi momenti, quippe quae spectat conscientiam omnium beneficiariorum, aedificationem publicam et sublevamen pauperum, et a pluribus in dubium revocetur aut negetur.*

23 — Proof therefore of the minor. No canon whatsoever either of councils or Pontiffs could the adversaries bring forward hitherto which clearly and expressly import or signify this obligation of

restitution. Ergo nowhere does the Church declare it, or let them say where.

> *— Prob. itaque min. Nullum prorsus canonem sive conciliorum sive Pontificum hucusque proferre potuerunt adversarii, qui hanc restitutionis obligationem clare et expresse importet aut significet. Ergo nullibi id declarat Ecclesia, aut dicant ubi.*

24 *You will say* : The Church in many canons enacts that clerics ought to dispense ecclesiastical goods not as proper but as common, that they are not masters but administrators only. Similarly the holy Fathers, Jerome, Aug., Chrysostom, Ambrose, Gregory, say ecclesiastical goods are the poor's, whereby while defrauded there is rapine and sacrilege, and everywhere these goods are called «things of God, goods of the Crucified, patrimonies of the poor.» Ergo.

> Dices: *Ecclesia in multis canonibus sancit clericos debere dispensare bona ecclesiastica, non ut propria, sed ut communia, eos non esse dominos, sed administratores tantum. Similiter SS. Patres, Hieron., Aug., Chrysost., Ambros., Greg., dicunt bona ecclesiastica esse pauperum, quibus dum fraudantur, esse rapinam et sacrilegium, et passim haec bona vocantur « res Dei, bona Crucifixi, patrimonia pauperum. » Ergo.*

25 *I answer.* As to canons and holy Fathers who flourished before the eighth century, they are to be understood of ecclesiastical goods before their division; for although by B. Sylvester this division was begun, yet only in the eighth century did it begin to be received in many places. As to those who follow the eighth century, thus they spoke according to pious exaggeration, or, as it is said, concionatorily, not theologically, on account of the strictest obligation by which clerics are bound to bestow these goods on pious uses, as I shall say below; for in similar fashion they speak of secular rich men, whom nevertheless no one denies absolute masters of their own goods. Thus St. Basil, of secular misers : «It is the bread of the hungry, he says, which thou retainest; the garment of the naked which thou keepest in thy chest, etc.» Aug., *Serm.* 206[263], of seculars says, they invade others' goods who bestow not superfluous goods on the poor.

263 Formerly de Diversis 70.

> Resp. *Quantum ad canones et SS. Patres qui floruerunt ante octavum saeculum, intelligendi sunt de bonis ecclesiasticis ante eorum divisionem; quamvis enim a B. Sylvestro haec divisio fuit inchoata, non tamen nisi saeculo octavo coepit in pluribus locis recipi. Quantum ad eos qui sequuntur octavum saeculum sequuntur octavum saeculum, ita locuti sunt secundum piam exaggerationem, seu, ut dicitur, concionatorie, non theologice, propter strictissimam obligationem qua tenentur clerici haec bona erogare in usus pios, ut dicam infra; simili enim modo loquuntur de saecularibus divitibus, quos tamen nemo negat absolute dominos suorum bonorum. Sic S. Basilius, de saecularibus avaris : « Esurientis est panis, inquit, quem tu retines, nudi est vestis quam in arca custodis, etc. » Aug.,* Serm. *206[263], de saecularibus ait, illos aliena invadere, qui non erogant superflua pauperibus.*
>
> *263 Olim de Diversis 70.*

26 Likewise ecclesiastical goods are called «things of God, goods of the Crucified, etc.,» because for Christ's sake and unto worship of God and sustentation of his ministers were they donated; but not that none besides Christ or God be master of them : unless perchance thou understand it thus, that none be master of them as of patrimonial goods, as though concerning these as licitly as concerning those he could dispose at pleasure.

> *Item bona ecclesiastica vocantur « res Dei, bona Crucifixi, etc., » quia propter Christum et in Dei cultum, eiusque ministrorum sustentationem sunt donata; non autem quod nullus praeter Christum aut Deum sit eorum dominus : nisi*

forte sic intelligas, quod nullus sit eorum dominus sicut patrimonialium, quasi de illis aeque licite ac de istis pro libitu possit disponere.

27 Similarly they are called patrimonies and aliment of the poor, because they are owed to them by rigorous precept of the religion and charity of the Church, though not of justice. Thus by the same holy Fathers sometimes the superfluous goods of laymen are equally called patrimonies of the poor, although most certainly they are not owed them by justice, but by charity only. Moreover these and like manners of speaking can rightly be understood of ecclesiastical goods, insofar as they embrace not only goods of clerics, but fabric and poor.

Similiter dicuntur patrimonia et alimenta pauperum, quia ipsis debentur ex rigoroso praecepto Ecclesiae religionis et charitatis, quamvis non iustitiae. Sic ab iisdem SS. Patribus superflua laicorum pariter dicuntur quandoque patrimonia pauperum, quamvis certo certius sit eis non deberi ex iustitia, sed ex charitate tantum. Insuper hi et similes modi loquendi possunt recte intelligi de bonis ecclesiasticis, prout complectuntur, non solum bona clericorum, sed fabricae et pauperum.

28 The mind of D. Thomas is expounded in proof of the conclusion. The holy Doctor, Quodl. VI, q. 7, a. 12, where he discusses whether clerics are bound under mortal sin to give alms from superfluous goods, when in the body he had spoken generally of ecclesiastical goods as such, that clerics are not masters but dispensers, and had resolved that they can sin twofoldly in administration of their goods : one way, from condition of the thing itself, namely while he usurps to himself as own what belongs to another; another way, from disordered use of those things which fall to his part, as of others, that is of patrimonial goods, he had said at the beginning of the body (which already plainly asserts our opinion), he proposes to himself argument third in order in these words : «Whoever consumes what belongs to another is held to restitution. But goods of clerics are the poor's, as is evident by the gloss of Jerome above that *Isai.*, III, 14 : The spoils of the poor are in your house. Ergo, if clerics uselessly consume ecclesiastical goods, they are held to restitute elsewhere to the poor, if they have wherewith.» Behold the very argument of the adversaries. Let us hear the answer of the holy Doctor : «To the third, he says, it must be said that ecclesiastical goods are to be dispensed not only to the poor, but also to the ministers of the Church. Whence, according to the canons, they ought to be divided in this way, that some part fall to uses of the poor, and some part to uses of the ministers and to the worship of the Church. Otherwise therefore must be said of those ecclesiastical goods which are principally to be attributed to needs of the poor, and consequently to needs of ministers, such as are goods of hospitals and other suchlike; and otherwise of those goods which are principally attributed to uses of ministers, such as are prebends of clerics and other suchlike. For in the former goods sin is committed not only by abuse, but even from the very condition of things, while someone takes to his own uses what belongs to another; and therefore he is held to restitution, as a defrauder of another's property. In the latter goods truly sin is committed only by abuse, as was said of patrimonial goods. Whence one is held not to restitution, but only to performing penance.»

Expenditur mens D. Thomae in probationem conclusionis. Sanctus Doctor, Quodl. vi, q. 7, a. 12, ubi discutit, an clerici teneantur sub mortali dare eleemosynam de superfluis, cum in corp. dixisset generatim de bonis ecclesiasticis ut sic, clericos non esse dominos, sed dispensatores, et resolvisset eos posse dupliciter peccare in eorum bonorum administratione: uno modo, ex rei ipsius conditione, dum scilicet usurpat sibi tamquam rem propriam quod est alterius; alio modo, ex inordinato usu eorum quae in suam partem cedunt, sicut de aliis, id est de patrimonialibus, dixerat initio corporis (quod iam aperte asserit nostram sententiam), proponit sibi argumentum ordine tertium his verbis : «

Quicumque consumit quod est alterius, tenetur ad restitutionem. Sed bona clericorum sunt pauperum, ut patet per glossam Hieronymi supra illud Isaic., *III, 14 : Rapina pauperum in domo vestra. Ergo, si clerici inutiliter bona ecclesiastica consumunt, tenentur restituere pauperibus aliunde, si habuerint. » En ipsissimum adversariorum argumentum. Audiamus responsum S. Doctoris : « Ad tertium, inquit, dicendum quod bona ecclesiastica non solum sunt dispensanda pauperibus, sed etiam Ecclesiae ministris. Unde, secundum canones, debent dividi hoc modo, ut aliqua pars cedat in usus pauperum, et aliqua pars in usus ministrorum et in cultum Ecclesiae. Aliter ergo dicendum est de illis ecclesiasticis bonis quae principaliter sunt attribuenda necessitatibus pauperum, et ex consequenti necessitatibus ministrorum, sicut sunt bona hospitalium et alia huiusmodi; et aliter de illis bonis quae sunt principaliter attributa usibus ministrorum, sicut sunt praebendae clericorum et alia huiusmodi. Nam in primis bonis peccatum committitur, non solum ex abusu, sed etiam ex ipsa rerum conditione, dum aliquis in suos usus assumit quod est alterius; et ideo tenetur ad restitutionem, tamquam defraudator rei alienae. In secundis vero bonis, non committitur peccatum nisi per abusum, sicut et de bonis patrimonialibus dictum est. Unde non tenetur quis ad restitutionem, sed solum ad poenitentiam peragendam. »*

29 The same opinion and for the most part the same manner of speaking the holy Doctor holds constantly in the Summa, 2a 2ae, q. 185, a. 7, c, where he asks : «Whether bishops sin mortally, if they lavish not on the poor ecclesiastical goods which they administer.» Whatever moreover he resolves of bishops in this part, the same must be said of other beneficed men. Therefore, since he had premised that bishops have absolute dominion of their proper goods, and by virtue of such dominion can validly dispose of them at pleasure, nor are they held to restitution if they expend them ill, seeing that they sin not from condition of things, but because of disorder of affection; but of ecclesiastical goods, namely generally and indistinctly, that they are not masters, but administrators and procurators only, because among ecclesiastical goods, besides goods of the bishop, are numbered also goods of other clerics, of fabric and of the poor, of which bishops are not masters but administrators only : these things, I say, premised, the holy Doctor subjoins : «If therefore the goods which ought to fall to the use of the bishop be distinct from those which are to be bestowed on the poor and ministers and worship of the Church, and if the bishop retain something to himself of those which are to be bestowed on the poor, or even to be expended on the use of ministers or divine worship : there is no doubt that he acts against faith of dispensation, sins mortally and is held to restitution. Of these however (note well) which are specially assigned to his own use, there seems to be the same reason as concerning proper goods : namely that on account of immoderate affection and use he sins indeed, if he retain immoderately to himself and aid not others as required debt of charity.» Here this clause is wanting by error of typographer or copyist : «He is held however not to restitution,» notes Sylvius, after Dominicus Soto and the Douai edition, and well; else the sentence will be imperfect, nor will there be any distinction which the holy Doctor intends, between goods assigned to the use of bishop and not assigned, but everywhere will be sin and obligation of restituting.

Eamdem sententiam et plerumque eundem loquendi modum constanter tenet S. Doctor in Summa, 2a 2ae, q. 185, a. 7, c, ubi quaerit : « Utrum episcopi mortaliter peccent, si bona ecclesiastica quae procurant, pauperibus non largiantur. » Quidquid autem resolvit de episcopis in hac parte, idem dicendum de aliis beneficiatis. Igitur, cum praemisisset episcopos bonorum propriorum habere absolutum dominium, et vi talis dominii posse pro libitu valide de illis disponere, nec teneri ad restitutionem, si male impendant, quippe quod non peccent ex rerum conditione, sed propter inordinationem affectus; bonorum vero ecclesiasticorum, generatim scilicet et indistincte, non esse dominos, sed administratores et procuratores tantum, quia inter bona ecclesiastica, praeter bona episcopi, numerantur etiam bona aliorum clericorum, fabricae et pauperum, quorum episcopi non sunt domini, sed administratores tantum : his, inquam, praemissis, subdit S. Doctor : «

Si ergo distincta sint bona quae debent in usum episcopi cedere, ab his quae sunt pauperibus et ministris et cultui Ecclesiae eroganda, et si aliquid sibi retinuerit episcopus de his quae sunt pauperibus eroganda, vel etiam in usum ministrorum aut in cultum divinum expendenda: non est dubium quin contra fidem dispensationis agit, et mortaliter peccat et ad restitutionem tenetur. De his autem (bene nota) quae sunt specialiter suo usui deputata, videtur esse eadem ratio quae est de bonis propriis : ut scilicet propter immoderatum affectum et usum peccet quidem, si immoderata sibi retineat et aliis non subveniat, sicut requirit debitum charitatis. » Hic deesse hanc clausulam errore typographi vel amanuensis : « Non tamen tenetur ad restitutionem, » notat Sylvius, post Dom. Soto et editionem Duacensem, et bene; alias erit imperfecta sententia, nec ulla erit distinctio, quam tamen intendit S. Doctor, inter bona deputata usui episcopi et non deputata, sed utrobique erit peccatum et obligatio restituendi.

30 Truly, although St. Thomas expressed not this clause, that he indicated it more than sufficiently and that it certainly is of his mind the following moments evidently prove. 1° The disparity of which just now, which the holy Doctor intends between both goods, as is evident from text; which otherwise does not subsist. 2° That he says the same reason is of goods assigned to use of bishop as of proper goods. This parity moreover St. Thomas understands doubtless, not indeed as regards everything generally (for it is certain that ecclesiastical goods are more strictly tied to poor and pious uses than patrimonial ones, and this the holy Doctor openly signifies ad 2, where he says those cannot be expended to enrich parents, which nevertheless is licit of patrimonial goods); but this parity, I say, he understands as regards all those things which he previously attributed to patrimonial goods. For of this proposition : «There seems to be the same reason as concerning proper goods,» the natural and plain sense is : There seems to be need to say what I said of proper goods. I said moreover of proper goods, that bishops «have true dominion of them,» and thence are not obligated «from the very condition of things to confer them on others,» but can «at pleasure» validly dispose of them, although sometimes illicitly, on account of «disorder of affection,» either retaining to himself more than behooves, or bestowing less than charity requires on the poor; in which case however, «they are not held to restitution, because such things are assigned to their dominion.» Ergo the same throughout he judges and says of goods assigned to use of bishop, unless you wish to accuse him both of falsehood and of drowsiness. And by these all evasions of adversaries are cut off.

Verum, etsi hanc clausulam non expresserit S. Thomas, plus quam sufficienter eam indicasse et certo esse de eius mente evidenter probant momenta sequentia. 1° Disparitas de qua modo, quam intendit S. Doctor inter utraque bona, ut patet ex textu; quae alioquin non subsistet. 2° Quod dicat eamdem esse rationem de bonis deputatis usui episcopi, quae est de propriis bonis. Hanc porro paritatem indubie intelligit S. Thomas, non quidem quantum ad omnia generatim (certum est enim bona ecclesiastica esse magis abstricta pauperibus et usibus piis quam patrimonialia, idque aperte significat S. Doctor ad 2, ubi dicit illa non posse impendi ad ditandos parentes, quod tamen licet de bonis patrimonialibus) ; sed hanc, inquam, paritatem intelligit quantum ad ea omnia quae prius tribuerat bonis patrimonialibus. Huius enim propositionis : « Videtur esse eadem ratio quae est de bonis propriis, » sensus naturalis et planus est : Videtur dicendum quod dixi de bonis propriis. Dixi autem de bonis propriis, episcopos « habere verum illorum dominium, » et inde non obligari « ex ipsa rerum conditione ea aliis conferre, » sed posse « pro libitu » de eis valide disponere, quamvis quandoque illicite, propter « inordinationem affectus, » vel plus quam oporteat sibi retinendo, vel minus quam exigit charitas pauperibus largiendo; quo tamen casu, « eos non teneri ad restitutionem, quia huiusmodi res sunt eorum dominio deputatae. » Ergo idem per omnia censet et dicit de bonis deputatis usui episcopi, nisi velis ipsum et falsitatis et oscitantiae arguere. Et per haec praecluduntur omnes evasiones adversariorum.

31 *Father Henno answers* that the holy Doctor speaks «manifestly» of the portion necessary to congruous sustentation, not of superfluous. And I say this evasion «manifestly» repugns the text of St. Thomas.

For the holy Doctor speaks, as is evident to the reader, of the whole portion specially assigned to use of bishop, and as it is distinct from the other portions of poor, fabric and other clerics. And besides, if clerics be masters of any part, they are masters of the whole, as we proved above.

> Respondet *P. Henno, S. Doctorem « manifeste » loqui de portione congruae sustentationi necessaria, non de superflua. Et ego dico hanc evasionem « manifeste » repugnare textui S. Thomae. Loquitur enim S. Doctor, ut legenti patet, de integra portione specialiter usui episcopi deputata, et prout est distincta ab aliis portionibus pauperum, fabricae et aliorum clericorum. Et insuper, si clerici sint domini alicuius partis, sunt totius, ut probavimus supra.*

32 Nevertheless the praised author confidently proceeds in these words : «That moreover D. Thomas favors not the adversaries but us most formally, is evident from Quodlibet VI, where he says : «Of ecclesiastical goods clerics are not true masters», but dispensers.» With peace to the religious man I would say : He reads not St. Thomas in the place cited; else he would have seen there the same «most formally» asserting that the cleric unduly spending ecclesiastical goods assigned to his own uses sins only by abuse, as he had said of patrimonial goods, «nor is held to restitution, but only to performing penance.» Let the text cited above be re-read.

> *Pergit nihilominus confidenter laudatus author his verbis : « Quod autem D. Thomas non adversariis, sed nobis formalissime faveat, patet ex Quodlibeto vi, ubi dicit : « Bonorum ecclesiasticorum clerici non sunt veri domini, » sed dispensatores. » Pace viri Religiosi dixerim : Non legit S. Thomam loco citato; alias vidisset ibidem ipsum « formalissime » asserere clericum indebite impendentem bona ecclesiastica suis usibus deputata, peccare tantum per abusum, ut dixerat de patrimonialibus, « nec teneri ad restitutionem, sed tantum ad poenitentiam peragendam. » Relegatur textus supra citatus.*

33 When truly St. Thomas says, not only in the cited Quodlibet but also in the Summa, cited, but also in the Summa, question now often cited 185, that clerics are not masters of ecclesiastical goods but dispensers, he speaks not of ecclesiastical goods which are specially destined to uses of clerics, unless you wish him speaking contradictory things within few lines, but of ecclesiastical goods, either considered before division, or, which is truer, of those indeed after division, but indistinctly and in common, insofar as they comprehend goods of fabric and those which «are principally to be attributed to needs of the poor, and consequently to needs of ministers, such as are goods of hospitals and other suchlike.» These things not gratis nor from us, but «most formally,» as you see, from St. Thomas, the cited Quodlibet. Moreover of such ecclesiastical goods we say not that clerics are masters, but dispensers only. Such ecclesiastical goods moreover are called such, both because, as St. Thomas says, «consequently they are to be attributed to needs of ecclesiastics»; and because they are goods given first to the Church, and by the Church assigned to the aforesaid uses; and finally because their administration is entrusted to ecclesiastics.

> *Quando vero S. Thomas dicit, non solum Quodlibeto citato, sed etiam in Summa, citato, sed etiam in Summa, quaest. iam saepe citata 185, bonorum ecclesiasticorum clericos non esse dominos, sed dispensatores, non loquitur de bonis ecclesiasticis quae sunt specialiter usibus clericorum destinata, nisi velis ipsum intra paucas lineas pugnantia loqui, sed de bonis ecclesiasticis, vel ut ante divisionem consideratis, vel, quod verius est, de iis quidem post divisionem, sed indistincte et in communi, quatenus comprehendunt bona fabricae et ea quae « principaliter sunt attribuenda necessitatibus pauperum, et ex consequenti necessitatibus ministrorum, sicut sunt bona hospitalium et alia huiusmodi. » Haec non gratis nec ex nobis, sed « formalissime, » ut vides, ex S. Thoma, Quodl. citato. Porro de talibus bonis ecclesiasticis non dicimus clericos esse dominos, sed tantum dispensatores. Vocantur autem huiusmodi bona ecclesiastica, tum quia, ut dicit S. Thomas, « ex consequenti sunt attribuenda necessitatibus ecclesiasticorum ; » tum quia sunt bona*

primitus Ecclesiae data, et per Ecclesiam usibus praefatis assignata; tum tandem quia eorum administratio est ecclesiasticis concredita.

34 Let the fair reader judge now by what species of truth the most illustrious Pontas said, word *Beneficier*, case 13, that St. Thomas «persevered even unto death in the opposite opinion, as, he says, is evident in his Summa, where he most clearly and without ambiguity teaches the same opinion.» This Parisian Doctor would need to be far more sharp-sighted than the older and sharpest interpreters of St. Thomas, who saw in him most clearly and without ambiguity what those highest and sharpest men turning over night and day his *Summa Angelica* never saw the shadow of; nay rather whose opposite they acknowledged handed down most clearly and without ambiguity.

Iudicet nunc aequus lector qua vel specie veri dixerit clarissimus Pontas, verbo Beneficier*, casu 13, S. Thomam « usque ad mortem perstitisse in opposita sententia, ut, inquit, patet in sua Summa, ubi clarissime et sine ambiguitate docet eamdem sententiam. » Doctorem hunc Parisiensem antiquioribus et oculatissimis S. Thomae interpretibus longe oculatiorem esse oportet, qui in eo clarissime et sine ambiguitate id viderit, cuius summi illi et oculatissimi viri* Summam Angelicam *diu noctuque versantes nec umbram viderunt; imo cuius oppositum clarissime et sine ambiguitate traditum agnoverunt.*

35 **I say** 2nd : Clerics by stricter right than seculars are bound to bestow ecclesiastical goods superfluous upon the poor or pious uses, so that they sin mortally if they spend them on profane uses. It is common.

***Dico** 2° : Clerici strictiori iure quam saeculares tenentur erogare bona ecclesiastica superflua pauperibus, aut in usus pios, ita ut mortaliter peccent, si in profanos usus impendant. Est communis.*

36 *Proof.* 1° from the strictest precept of the Church which renews from ancient canons Trent, sess. XXV, On Reform. cap. 1, in these words : «He altogether forbids them (bishops) that they strive to enrich kinsmen and household servants from revenues of the Church, since also the Canons of the Apostles prohibit giving ecclesiastical things, which are God's, to kinsmen, but, if they be poor, distribute to them as to the poor; nor sell or dissipate them for their sake.» Which he extends below to all beneficed men.

Prob. *1° ex strictissimo Ecclesiae praecepto quod ex antiquis canonibus innovat* Trid.*, sess. xxv, de Reform. cap. 1, his verbis : « Omnino eis (episcopis) interdicit, ne ex redititibus Ecclesiae consanguineos familiaresve suos augere studeant, cum et Apostolorum Canones prohibeant ne res ecclesiasticas, quae Dei sunt, consanguineis donent, sed, si pauperes sint, iis ut pauperibus distribuant ; eas autem non distrahant nec dissipent illorum causa. » Quod extendit infra ad omnes beneficiatos.*

37 Where this particle is to be noted, «which are God's,» whereby the motive of this precept is signified. Since these goods are offered to God, or rather to the Church, that they may fall to worship of God (for God cannot be visibly approached, nor does he need these things), it is fitting, from their very condition, that they be expended on uses grateful to God, howsoever God himself would spend them, if as man he disposed of them. And therefore the Church commanded that they be expended on such uses.

Ubi notanda est haec particula, « quae Dei sunt, » qua significatur motivum huius praecepti. Cum enim haec bona sint oblata Deo, vel potius Ecclesiae, ut cedant in Dei cultum (Deus enim non potest visibiliter adiri, nec his rebus indiget), conveniens est, ex ipsorum conditione, ut impendantur in usus Deo gratos, qualiter ipse Deus impenderet, si de illis ut homo disponeret. Et ideo praecepit Ecclesia in tales usus ea impendi.

38 Because however the Church commanding or forbidding something from motive of some virtue transfers the matter commanded or forbidden to species of that virtue; thus, e.g., because she forbids theft in sacred place from motive of religion, to steal in sacred place is sin against religion : hence follows that clerics, not only by obedience due to the Church, but even by virtue of religion, are bound to expend superfluous goods on pious uses.

> *Quia vero Ecclesia praecipiens aut prohibens aliquid ex motivo alicuius virtutis transfert materiam praeceptam vel prohibitam ad speciem talis virtutis ; sic, v. g., quia prohibet furtum in loco sacro ex motivo religionis, furari in loco sacro est peccatum contra religionem : hinc sequitur clericos, nedum ex obedientia Ecclesiae debita, sed etiam ex virtute religionis teneri superflua impendere in usus pios.*

39 *Proof.* 2nd. Clerics, by reason of grade obtained in the Church, are as fathers and tutors of the poor. Ergo they are bound by stricter precept of charity than seculars to succor them.

> Prob. 2°. *Clerici, ratione gradus quem obtinent in Ecclesia, sunt veluti patres et tutores pauperum. Ergo strictiori praecepto charitatis quam saeculares tenentur illis subvenire.*

40 Therefore, according to us, beneficiaries are bound threefoldly by title to expend fruits superfluous to themselves of their benefice toward relief of the poor, or other pious uses, 1° from law of the Church; 2° from virtue of religion; 3° from precept of charity[264]

264 Because the doctrine here expounded had been attacked unjustly and violently by Daniel Concina, of the Dominican family, Billuart had defended his opinion and himself most sharply against his Brother, inserting here a Christian Admonition to R. Father Daniel Concina, author of CHRISTIAN THEOLOGY, in defense of the preceding doctrine. Since truly this prolix apology brings forth no new argument, and would occupy place now in vain, we judged it to be done away. Should anyone perhaps please to read it, let him approach the fuller Summa.

> *Itaque, secundum nos, triplici titulo tenentur beneficiarii fructus sibi superfluos sui beneficii impendere in sublevamen pauperum, aut in alios pios usus, 1° ex lege Ecclesiae; 2° ex virtute religionis; 3° ex praecepto charitatis*[264]
>
> *264 Cum inique et violenter doctrina hic exposita fuisset impetita a Daniele Concina, e familia Dominicana, Billuart sententiam suam et seipsum contra Fratrem suum acerrime defenderat, hic inserendo Monitum christianum ad R. Patrem Danielem Concina, authorem THEOLOGIAe CHRISTIANAe, in defensionem praecedentis doctrinae. Quia vero prolixa haec apologia nullum novum argumentum profert, et nunc frustra locum occuparet, eam amandandam esse censuimus. Si cui forte placeat eam legere, fusiorem Summam adeat.*

41 [The contrary opinion St. Liguori calls probable and much more common among recent authors. Yet this seems to him sufficiently probable in practice, especially on account of authority of St. Thomas, whose arguments he admits as valid[265]. Whence it must be concluded that the cleric who canonically bestows not his superfluous goods is held not to restituting from his proper goods, but only to doing penance.

265 Lib. IV, n. 492.

> *[Contrariam sententiam dicit S. Ligorius probabilem et valde communiorem inter recentiores. Haec tamen eidem videtur satis in praxi probabilis, praesertim propter autoritatem S. Thomae, cuius argumenta admittit ut valida*[265]*. Unde concludendum est clericum qui superfluum suum non canonice impendit, non teneri ad restituendum ex bonis propriis, sed tantum ad ponitendum.*
>
> *265 Lib. IV, n. 492.*

42 *You will ask* 1° what is to be understood under name of superfluous.

> Petes *1° quid nomine superflui sit intelligendum.*

43 *I answer.* Superfluous is estimated what exceeds honest or congruous sustentation. Moreover congruous sustentation of cleric is judged that which is necessary to sustaining becomingly his own state and providing for family, according to condition, grade, dignity, quality of the beneficed man and region in which he dwells. So understands St. Liguori[266].

266 Ibid., n. 491, quaer. 2°.

> Resp. *Superfluum aestimatur quod honestam seu congruam sustentationem excedit. Porro congrua sustentatio clerici censetur, quae necessaria est ad statum proprium decenter sustinendum et familiae providendum, secundum conditionem, gradum, dignitatem, qualitatem beneficiati et regionem in qua habitat. Ita intelligit S. Ligorius*[266].
>
> 266 *Ibid., n. 491, quaer. 2°.*

44 *You will ask* 2° how much is required in this matter to constitute mortal sin.

> Petes 2° *quantum requiratur in hac materia ad constituendum peccatum mortale.*

45 *I answer.* Greater quantity is required than in theft. Of the beneficed man says the Angelic Doctor, 2a 2ae, q. 183, a. 7, c : «Of those things which are specially assigned to his own use, there seems to be the same reason as concerning proper goods, namely that, on account of immoderate affection and use, he sins indeed if he retain immoderately to himself and aid not others as required debt of charity. But if the aforesaid goods be not distinct, distribution of them is committed to his good faith. And if he fail or abound but slightly, this can be done without detriment of good faith, because man cannot punctually receive in such matters what ought to be done. But if excess be much, it cannot lie hidden.» Not therefore is matter grave unless excess be much, that is, according to truer opinion, the twentieth part of superfluous goods, provided these reach a notable sum [267].

267 Id., ibid., lib. V, n. 183.

> Resp. *Requiritur maior quantitas quam in furto. De beneficiato dicit Angelicus, 2a 2ae, q. 183, a. 7, c : « De his quae sunt specialiter suo usui deputata, videtur esse eadem ratio quae est de propriis bonis, ut scilicet, propter immoderatum affectum et usum, peccet quidem, si immoderate sibi retineat et aliis non subveniat sicut requirit debitum charitatis. Si vero non sint praedicta bona distincta, eorum distributio fidei eius committitur. Et si quidem in modico deficiat vel superabundet, potest hoc fieri absque bonae fidei detrimento, quia non potest homo in talibus punctualiter accipere illud quod fieri oportet. Si vero sit multus excessus, non potest latere. » Non est ergo materia gravis, nisi sit multus excessus, id est, iuxta veriorem sententiam, vigesima pars superfluorum, si haec ipsa pertingat ad summam notabilem*[267].
>
> 267 *Id., ibid., lib. V, n. 183.*

46 *You will ask* 3° who come under name of poor.

> Petes 3° *qui veniant nomine pauperum.*

47 *I answer.* Under name of poor come not only those begging door to door, but also those who unless they receive alms cannot preserve their own state, even kinsmen, if they be truly poor. It is licit even to prefer these to others even more gravely needy, «because, says St. Liguori, relief of needy kinsmen pertains also to the proper state of the cleric being preserved, since their poverty redounds to his disgrace [268].» This accords with the decree of Trent cited above.

268 Lib. IV, n. 491, quaer. 2°.

> Resp. *Nomine pauperum veniunt non solum ostiatim mendicantes, sed etiam illi qui, nisi eleemosynas accipiant, suum statum nequeunt conservare, etiam consanguinei, si sint vere pauperes. Licet etiam hos caeteris etiam gravius egentibus*

praeferre, « quia, ait S. Ligorius, subventio propinquorum egentium pertinet etiam ad proprium statum clerici servandum, cum illorum paupertas in ipsius dedecus redundet[268]*. » Hoc consonat decreto* Trident. *modo citato.*

[268] *Lib. IV, n. 491, quaer. 2°.*

48 *You will ask* 4° whether beneficiaries may reserve superfluous goods for the future for pious uses.

Petes *4° utrum beneficiatis liceat superflua reservare in futurum ad usus pios.*

49 *I answer.* The Angelic Doctor, ubi supra, ad 4 : «The goods of the Church ought to serve uses of the poor. And therefore, if anyone, no necessity of providing for the poor impending, buy possessions from what superabounds from revenues of the Church, or lay them up in treasure for future utility of the Church and needs of the poor, he does laudably. But if necessity of bestowing on the poor impend, it is superfluous and disordered care that anyone conserve for the future; which the Lord forbids, *Matth.*, VI, 34 : Be not solicitous for tomorrow.»

Resp. *Angelicus, ubi supra, ad 4 : « Bona Ecclesiae usibus pauperum deservire debent. Et ideo, si quis, necessitate non imminente providendi pauperibus, de his quae superfluunt ex proventibus Ecclesiae possessiones emat, vel in thesauro reponat in futurum utilitati Ecclesiae et necessitatibus pauperum, laudabiliter facit. Si vero necessitas immineat pauperibus erogandi, superflua cura est et inordinata, ut aliquis in futurum conservet; quod Dominus prohibet,* Matth., *VI, 34 : Nolite solliciti esse in crastinum. »*

50 It must be noted however that if anything be reserved for the future, sufficient caution must be employed, lest upon death coming such revenues perchance be pillaged by kinsmen [269].

[269] Id., ibid., quaer. 4°.

Advertendum est tamen quod, si quid in futurum reservetur, cautio sufficiens adhibenda est, ne, morte adveniente, tales reditus forte a consanguineis diripiantur[269]*.*

[269] *Id., ibid., quaer. 4°.*

51 *You will ask* 5° whether it is licit for a beneficed man to reserve something for himself for the future.

Petes *5° utrum beneficiato liceat sibi reservare aliquid in futurum.*

52 *I answer.* that he can moderately reserve certain things, so that provision may be made against infirmity and other necessities which can probably occur, provided however actual grave necessity of poor urge not; yet with this condition, that, if afterwards he need these not, they be expended according to prescription of canonical law.

Resp. *posse quaedam moderate reservare, ut obvietur infirmitati et aliis necessitatibus quae probabiliter contingere poterunt, si tamen actu non urgeat gravis pauperum necessitas, ea tamen conditione, ut, si his postea non indigeat, iuxta legis canonicae praescriptionem impendantur.*

53 *You will ask* 6° whether beneficed men validly make testament concerning superfluous revenues.

Petes *6° utrum beneficiati valide testentur de reditibus superfluis.*

54 *I answer.* affirmatively, according to the opinion defended above and from usage received in many places. But this is not licit except for pious causes. For although, where usage has prevailed, they testate validly even unto profane uses, nevertheless they sin mortally unless they do this from indult of the Pope[270].

[270] De Angelis, lib. III, tit. 26.

Resp. *affirmative, secundum sententiam supra propugnatam et ex consuetudine multis in locis recepta. Sed hoc non est licitum nisi ad causas pias. Quamvis enim, ubi consuetudine invaluit, valide testentur etiam in usus profanos peccant tamen mortaliter, nisi hoc faciant ex indulto Papae*[270].

[270] *De Angelis, lib. III, tit. 26.*

55 *You will ask* 7° whether the salary which is paid by government in France to priests takes on the nature of ecclesiastical goods.

Petes *7° utrum pensio quae in Gallia sacerdotibus a gubernio solvitur, boni ecclesiastici naturam induat.*

56 *I answer.* affirmatively, because from the Concordat of the year 1801 the said salary was stipulated in compensation of ecclesiastical goods confiscated and alienated at the time of the Gallican disturbance. Ergo it takes on the same nature as had the goods for which it substitutes.

Resp. *affirmative, quia ex Concordato anni 1801 pensio praedicta fuit stipulata in compensationem bonorum ecclesiasticorum quae tempore perturbationis Gallicae confiscata sunt et alienata. Ergo eamdem naturam induit quam habebant bona quibus substituitur.*

57 It is also established from the following responsions of the holy Penitentiary.

Constat etiam ex sequentibus S. Poenitentiariae responsis.

58 1° «Whether salaries paid in Belgium by government to pastors and canons take on character of benefices or ecclesiastical goods, and have annexed obligation inherent in those goods, namely strict and canonical obligation of expending superfluous goods on the poor, or pious causes, and residence, under penalty of making not their fruits?» The holy Penitentiary, having weighed the exposition, answered : «Already elsewhere answer was given by the Holy See, with counsels of secret Congregation, affirmatively. Given Rome, January 19, 1819.»

1° « An salaria quae in Belgio solvuntur a gubernio pastoribus et canonicis, induant beneficiorum seu bonorum ecclesiasticorum indolem, et annexam habeant obligationem inhaerentem his bonis, scilicet strictam et canonicam obligationem expendendi superflua pauperibus, seu piis causis, et residentia, sub poena non faciendi fructus suos? » Sacra Poenitentiaria, perpensis expositis, respondit : « Iam alias a Sancta Sede, de consiliis secretae Congregationis, responsum fuisse affirmative. Datum Romae, die 19 ianuarii 1819. »

59 2° «The holy Penitentiary consulted : whether that responsion ought to be applied to salaries paid by government to pastors and canons of the kingdom of France, judged that answer must be given affirmatively.»

2° « Sacra Poenitentiaria consulta : an illa responsio applicari debeat salariis quae pastoribus et canonicis regni Galliarum a gubernio solvuntur, respondendum censuit affirmative. »

60 3° «Whether the responsion for Belgium of January 19 ought to be applied only to fixed salaries of 1000 livres for pastors and 750 livres for curates, or extended to offerings of the faithful? The holy Penitentiary judged over the newly exposed things that answer must be given: affirmative as regards first part, negative as regards second. Given Rome, August 9, 1824.»

3° « An responsio pro Belgio diei 19 ianuarii applicari debeat solis salariis fixis 1000 librarum pro parochis et 750 librarum pro deservientibus, vel extendi debeat ad oblationes fidelium? Sacra Poenitentiaria super noviter expositis respondendum censuit: affirmative quoad primam partem, negative quoad secundam. Datum Romae, die 9 augusti 1824. »

61 From this last responsion follows that voluntary offerings made by faithful to pastors, likewise revenues called casual, are reckoned among quasi-patrimonial goods, whose use is free.

> *Ex hoc ultimo responso sequitur, oblationes voluntarias a fidelibus parochis factas, itemque proventus qui casuales dicuntur, recenseri inter bona quasi-patrimonialia, quorum usus liber est.*

62 Conversely, supplements bestowed by municipalities on pastors are commonly held as part of pension, seeing that they are granted only by general decree of government (Organic Art. 67), and by virtue of Concordat entered between supreme Pontiff and government. — Except, unless this supplement was stipulated on account of non-obligatory and laborious functions; in which case it takes nature of quasi-patrimonial good.

> *E contra, supplementa quae a municipiis parochis erogantur, quasi pars pensionis communiter habentur, siquiquidem non tribuuntur nisi ex decreto generali gubernii (Art. org. 67), et vi Concordati inter summum Pontificem et gubernium initi. — Excipe, nisi supplementum hoc propter functiones non obligatorias et laboriosas fuerit stipulatum; quo in casu naturam boni quasi-patrimonialis induit.*

63 *To be noted for practice.* The question of use of ecclesiastical goods in France, as also in several other regions, today has become almost speculative. For pensions paid by government in compensation of revenues which flowed from benefice-goods confiscated and alienated are so small that they suffice not even for honest sustentation of ministers of the Church : whence nothing superfluous from these can remain over. If some, living miserably, reserve something of such revenue, which scarcely seems possible, this belongs to genus of parcimonial goods, and falls outside canonical law.]

> Notandum ad praxim. *Quaestio de usu bonorum ecclesiasticorum, in Galliis, sicut et in pluribus aliis regionibus, hodie fere speculativa facta est. Etenim pensiones a gubernio solutae in compensationem redituum qui ex bonis beneficialibus confiscatis et alienatis proveniebant, sunt ita modicae, ut nequidem honestae ministrorum Ecclesiae sustentationi sufficiant : unde nihil superflui ex his superesse potest. Si qui, misere vivendo, aliquid de tali reditu reservant, quod vix possibile esse videtur, hoc ad genus bonorum parcimonialium pertinet, et extra legem canonicam ponitur.]*

On the Ways of Acquiring Ownership

1 Things, with respect to dominion, are of two kinds. Some are appropriated, that is, they have a proper and determinate dominion. Some are common or quasi-common, namely such as are held to have no lord of themselves, as are wild beasts in the forests, fish in the rivers, etc. And in accordance with this diversity of things, the ways of acquiring their dominions are diverse. Of things that are appropriated to someone, dominion is acquired by the will of the lord or by the authority of the law. Of things that belong to no one, dominion is acquired by first occupation.

> *Res respective ad dominium sunt duplicis generis. Quaedam sunt appropriatae, id est, habent proprium et determinatum dominium. Quaedam sunt communes aut quasi communes, quae scilicet nullum ex se censentur habere dominum, ut sunt ferae in silvis, pisces in fluviis, etc. Et iuxta hanc rerum diversitatem diversi sunt modi earum dominia acquirendi. Harum quae sunt alicui appropriatae acquiritur dominium voluntate domini vel authoritate legis. Illarum quae nullius sunt, acquiritur dominium prima occupatione.*

On the ways of acquiring ownership of things that belong to no one

[1] *Nota.* Animals are usually distinguished as of three kinds. Some are wild by nature, as stags, boars, hares, fish, etc. Some of these grow tame by habit and become domestic, as stags, doves, rabbits, etc. Some finally are by nature and by habit tamed and domestic, as hens, oxen, sheep, etc. This noted, **I say** 1° : Animals wild by nature and by habit, by the law of nations belong to the first taker : « For what before belongs to no one is conceded by natural reason to the occupier. Whatever you take is understood to be yours so long as it is held under your custody, as fish enclosed in a trap or a pond, or a wild beast caught in a snare from which it cannot extricate itself. But when it has escaped your custody and has returned to its natural liberty, it ceases to be yours and again becomes the occupier's. » Thus far Justinian, L. II *Instit.*, tit. *de rerum divis.*, § Ferc.

> Nota. *Triplicis generis animalia solent distingui. Quaedam sunt ex natura sua fera, ut cervi, apri, lepores, pisces, etc. Quaedam ex his consuetudine cicurantur et fiunt domestica, ut cervi, columbae, cuniculi, etc. Quaedam tandem sunt ex natura sua et consuetudine cicurata et domestica, ut gallinae, boves, oves, etc. Hoc notato,* ***Dico*** *1° : Animalia ex natura sua et consuetudine fera, iure gentium sunt primo capientis : « Quod enim ante nullius est, id naturali ratione occupanti conceditur. Quidquid autem ceperis, eo usque tuum intelligitur, donec tua custodia coercetur, ut pisces in nassa vel vivario inclusi, fera capta laqueo a quo extricare non possit. Cum vero evaserit tuam custodiam et in libertatem naturalem sese receperit, tuum esse desinit et rursum occupantis fit. » Huc usque Iustinianus, L. II* Instit., *tit.* de rerum divis., *§ Ferc.*

[2] **I say** 2° : Animals wild by nature, but grown tame and gentle by habit, « are understood to be yours so long as they have the mind to return, or can easily be brought back ; for if they cease to have the mind to return, they also cease to be yours and become the occupier's, because they are then held to have recovered their liberty. But they seem to cease having the mind to return when they have abandoned the habit of returning. » The same, ibid., § Pavonum.

> ***Dico*** *2° : Animalia ex natura sua fera, sed consuetudine cicurata et mansueta « eo usque tua intelliguntur, donec revertendi animum habeant, aut facile possint reduci; nam, si revertendi animum habere desierint, etiam tua esse desinunt et fiunt occupantium, quia tunc censentur recuperasse suam libertatem. Revertendi autem animum videntur desinere habere, tunc cum revertendi consuetudinem deseruerint. » Idem, ibid., § Pavonum.*

[3] **I say** 3° : Animals domestic and tame by nature, « although they have fled from your sight, wherever they may be, are understood to be yours, and he who detains them with the intention of gaining them, or appropriates to himself their wool, feathers, eggs, etc., is understood to commit theft. » Id., ibid., § Gallinarum. Because, since they are domestic by nature, wherever they run about, they are not held to recover their liberty, but remain the prior lord's : so that, even if they are snatched from the jaws of a wolf, what remains must be restored to the owner.

> ***Dico*** *3° : Animalia ex natura sua domestica et mansueta « licet conspectum tuum effugerint, quocumque loco sint, tua esse intelliguntur, et qui lucrandi animo ea detinet, vel eorum lanam, plumas, ova, etc. sibi appropriat, furtum committere intelligitur. » Id. ibid., § Gallinarum. Quia, cum natura sua sint domestica, quocumque excurrant, non censentur recuperare libertatem, sed manent prioris domini : ita quod, si etiam e faucibus lupi eripiantur, quod superest domino sit restituendum.*

[4] **§ II**

> ***§ II***

[5] *Whether and how one sins who hunts or fishes against a just prohibition, and whether he is bound to restitution?*

Utrum et quomodo peccet qui contra iustam prohibitionem venatur aut piscatur, et an teneatur ad restitutionem?

6 Note that hunting and fishing can be prohibited on three grounds : 1° By reason of the state of the person : thus it is prohibited to clerics. 2° By reason of public utility, as when it is prohibited during the months in which crops swell, or animals are gravid and giving birth, or when it is prohibited lest it be done with certain instruments by which minute and excessive numbers of animals would be caught, and thus the offspring extinguished or greatly diminished. 3° By reason of place, as that it not be done on another's land, or on public land, reserved to another.

Nota venationem et piscationem ex triplici capite posse prohiberi : 1° Ratione status personae : sic prohibetur clericis. 2° Ratione publica utilitatis, ut dum prohibetur mensibus quibus segetes intumescunt, aut animalia sunt gravida pariuntve, aut dum prohibetur ne fiat certis instrumentis, quibus minuta et nimia animalia caperentur, sicque soboles extingueretur aut multum minueretur. 3° Ratione loci, ut ne fiat in fundo alieno, vel publico, sed reservato.

7 **I say** 1° : A cleric sins — a fortiori a religious — who frequently devotes himself to noisy hunting ; yet he is not bound to restitution.

***Dico** 1° : Peccat clericus, a fortiori religiosus frequenter vacans venationi clamosae, non tamen tenetur ad restitutionem.*

8 The first part is laid down in the chapter *Episcopum*, Decretals, book V, de clerico venat., tit. 24, and in the Council of Trent, session XXIV, de Reform., chap. 12.

Prima pars statuitur cap. Episcopum, Decretal. lib. V, de clerico venat., tit. 24, et in concil. Trid., sess. XXIV, de Reform. cap. 12.

9 [Item in the Fourth Lateran Council, canon 15, we read : « Hunting and fowling we forbid to all clerics ; wherefore let them not presume to keep dogs or birds. »]

[Item in concilio Lateran. IV, can. 15, legitur : « Venationem et aucupationem universis clericis interdicimus ; unde nec canes nec aves habere praesumant. »]

10 The second part is also evident ; because such a prohibition, made by reason of the condition of the person and on account of the decorum and dignity of his state, does not render the acquisition of the beast unjust or invalid.

Patet etiam secunda pars ; quia talis prohibitio facta ratione conditionis personae et propter decentiam atque dignitatem eius status, non reddit acquisitionem ferae iniustam aut invalidam.

11 **I say** 2° : He who hunts, fowls, or fishes against a prohibition made by reason of public utility sins ; because he acts against a just law, as is supposed. He sins mortally or venially according to the measure of the damage inflicted ; because such a prohibition is made on account of a damage to be avoided, and he is bound to the restitution of it, because whoever causes a damage is bound to repair it. Yet he is not bound to restitution of the prey, because such a prohibition makes neither unjust nor invalid the acquisition of the beast, since, this notwithstanding, the beast still remains in its liberty, and accordingly still becomes the first taker's ; it only makes the taking illicit.

***Dico** 2° : Qui venatur, aucupatur, piscatur contra prohibitionem factam ratione utilitatis publicae, peccat ; quia agit contra iustam legem, ut supponitur. Peccat mortaliter liter vel venialiter pro ratione damni illati ; quia ista prohibitio fit causa damni vitandi, et tenetur ad huius restitutionem, quia qui causat damnum, tenetur illud resarcire. Non tamen*

tenetur ad restitutionem praedae, quia ista prohibitio non facit iniustam neque invalidam acquisitionem ferae, cum, ea non obstante, remaneat adhuc fera in sua libertate, fitque proinde adhuc primo capientis, sed facit tantum illicitam.

12 **I say** 3° : He who hunts, fowls, or fishes on land open to access belonging to another who has the right of hunting, or in a public place, reserved to the prince or to another by grant from him, sins as before against a just law. He sins mortally or venially according to the measure of the damage inflicted, to whose reparation accordingly he is bound ; yet not of the prey captured, on account of the reason adduced in the preceding conclusion, which presses more strongly here still, since beasts are not the fruits of the land, as trees are.

***Dico** 3° : Qui venatur, aucupatur, piscatur in fundo pervio alterius habentis ius venandi, aut in loco publico, sed principi vel alteri de eius concessione reservato, peccat ut ante contra legem iustam. Peccat mortaliter vel venialiter, pro ratione damni illati, ad cuius proinde reparationem tenetur, non tamen praedae captae, propter rationem praecedenti conclusione allatam, quae magis hic adhuc urget, cum ferae non sint fructus fundi, sicut sunt arbores.*

13 Moreover, grave damage in this and the preceding conclusion is held to be not precisely the prey captured, even if it is of grave moment, but that by which the right of hunting, or the faculty of letting such right to others, is notably diminished in the one prohibiting, as if the waters were poisoned, the beasts driven away, their offspring largely destroyed, animals of great moment frequently captured.

Porro grave damnum in hac et praecedenti conclusione censetur non praecise praeda capta, etsi sit gravis momenti, sed id unde notabiliter in prohibente ius venandi, aut facultas tale ius aliis locandi minuitur, ut si aquae inficiantur, fera abigantur, proles earum magna ex parte exstinguantur, animalia magni momenti crebro capiantur.

14 For by these and similar things the right of hunting which the prince or the republic has, and the faculty of letting it to others, is greatly diminished. Likewise grave damage is held to occur if crops are enormously trampled down, hedges torn away, and the like.

Ex his enim et similibus valde imminuitur ius venandi quod habet princeps seu respublica, et facultas illud aliis locandi. Item grave damnum censetur, si segetes enormiter conculcentur, sepes avellantur, et similia.

15 I said in the conclusion, « on land open to access belonging to another. » For if anyone should capture beasts in an enclosed place, or fish in a pond, he would commit theft, and would be bound to restitution of those very animals ; because, since they have lost their liberty, they are under the dominion of him who guards and encloses them — unless perchance, without fraud on the hunter's or fisher's part, they have gone out of the enclosed place or pond and recovered their natural liberty ; then indeed they are again the first taker's.

Dixi in conclusione, « in fundo pervio alterius. » Si enim quis feras in loco circumsepto, aut pisces in vivario caperet, furtum committeret, et teneretur ad restitutionem ipsorum animalium ; quia, cum amiserint libertatem, sunt sub dominio illius qui ea custodit et concludit, nisi forte absque fraude venatoris aut piscatoris, e loco septo vel vivario egressa, naturalem recuperaverint libertatem ; tune enim sunt iterum primo capientis.

16 [As to the obligation of civil laws enacted concerning hunting and fishing, it seems it should be said : 1° Of these laws, some refer to external governance and the good order. They decree, v. g., at what time or with what instruments hunting or fishing is permitted. These laws, according to the common and sufficiently probable opinion, are merely penal[1]. What was said of penal law was stated in the treatise de Legibus, dissertation IV, art. 4.

[Quantum ad obligationem legum civilium circa venationem et piscationem latarum, dicendum videtur : 1° Ex his legibus, aliae se referunt ad externum regimen et ad bonum ordinem. Decernunt, v. g., quo tempore vel quibus instrumentis venatio aut piscatio permittantur. Hae leges, ex sententia communi et satis probabili, sunt mere poenales[1]. De lege poenali dictum est in tract. de Legibus, dissert. IV, art. 4.

17 2° There are other laws which protect another's right, v. g., a law forbidding you to enter an enclosed field to place a snare, lest you inflict damage. These laws bind by the force of the law of nature, and are not violated without injury to commutative justice.

2° Sunt aliae leges quae ius alienum tuentur, v. g., lex prohibens ne fundum clausum ingrediaris ad laqueum ponendum, ut damnum non inferas. Hae leges obligant vi iuris naturae, et non violantur sine laesione iustitiae commutativae.

18 3° Finally there are other laws which protect the right of hunting or fishing granted exclusively to someone by contract ; and he cannot without injustice be deprived of that right, which is a certain species of occupation. He would, however, be unjustly injured if by others, v. g., so great a multitude of fish were taken in the leased river that the income which the lessor hoped from it was notably diminished.

3° Aliae demum leges tuentur ius venandi aut piscandi concessum alicui exclusive per contractum, et ille sine iniustitia privari non potest iure illo, quod est quaedam species occupationis. Iniuste autem laederetur, si ab aliis, v. g., tanta multitudo piscium caperetur in flumine locato, ut proventus quem inde sperabat locator notabiliter minueretur.

19 I said, « granted by contract ; » because, if the right of hunting were a mere privilege, it would not bind others by strict justice, but only by legal justice. Then there would be no place for restitution, especially if a penalty were imposed3.

Dixi, « per contractum concessum ; » quia, si ius venandi esset merum privilegium, alios non obligaret ex stricta iustitia, sed ex iustitia legali tantum. Tune locus non esset restitutioni, maxime si poena iniungeretur3.

20 **§ III. — On treasures.**

§ III. — De thesauris.

21 A treasure, as taken here, is not any heap of money deposited for fear or safekeeping for the future, but is « a certain old deposit of money of which memory does not exist, so that it now has no owner. » So L. 31, ff., book 41, tit. 1.

Thesaurus, prout hic sumitur, non est quicumque pecuniae cumulus metus vel custodiae causa in futurum depositus, sed est « vetus quaedam depositio pecuniae cuius non exstat memoria, ut iam dominum non habeat. » Ita L. 31, ff., lib. 41, tit. 1.

22 [In the newer codes, by treasure is understood anything estimable by price, hidden or buried, which is found by chance, and which no one can prove to be his[4]]

[In novis codicibus, per thesaurum intelligitur quaecumque res pretio aestimabilis abscondita vel infossa, quae casu reperitur, et quam nemo suam esse probare potest[4]]

23 271 272

271 S. Lig., lib. I, n. 145.

272 Id., ibid., lib. IV, n. 605.

271 272

[271] *S. Lig., lib. I, n. 145.*

[272] *Id., ibid., lib. IV, n. 605.*

24 **I say** 1° : By the law of nations, a treasure is wholly the finder's, whoever he may be. He says the same of pebbles, gems, and shells found on the shore of the sea[273] ; because things that belong to no one become, by the law of nations, the first occupant's, as has been often said. By Caesarean law, however, or the municipal law of the provinces, the dispositions are diverse. Hence

[273] S. Thom., 2ae 2ae, q. 66, a. 5, ad 2.

***Dico** 1° : Iure gentium, thesaurus est totus inventoris, quivis sit. Idem dicit de lapillis, gemmis, conchiliis quae inveniuntur in littore maris[273] ; quia quae nullius sunt, iure gentium fiunt primo occupantis, ut saepe dictum est. Iure tamen Caesareo, aut municipali provinciarum, diversa sunt dispositiones. Unde*

[273] *S. Thom., 2ae 2ae, q. 66, a. 5, ad 2.*

25 **I say** 2° : By Caesarean law, a treasure found on one's own land is wholly the finder's. So Justinian, Instit. L. II, tit. 1, § Thesauros 39, and C. L. Nemo, de thesauris.

***Dico** 2° : Iure Caesareo, thesaurus inventus in proprio fundo totus est inventoris. Ita Iustinian. Instit. L. II, tit. 1, § Thesauros 39, et C. L. Nemo, de thesauris.*

26 Found by chance on another's land, it is half the finder's and half the owner of the land's, ibid. That half must be handed over to the owner of the land even before the judge's sentence, because, as authors observe, this disposition of law is not penal, but definitive of the ownership of things.

Inventus fortuito in fundo alieno, dimidium est inventoris et dimidium domini fundi, ibid. Quod dimidium est domino fundi tradendum, etiam ante sententiam iudicis, quia, ut advertunt authores, haec iuris dispositio non est poenalis, sed definitiva proprietatis rerum.

27 Found deliberately on another's land without the owner's consent, it is wholly the owner's, C. loc. cit. Yet since this disposition, as to the half which would otherwise fall to the finder, is penal, on account of the wrong done to the owner of the land, the finder is not bound to give this half to the owner before the judge's sentence. And the law itself indicates this, saying : « Let him be compelled to render the whole to the lord of the place. »

Inventus de industria in fundo alieno sine consensu domini, totus est domini, C. loc. cit. Quia tamen haec dispositio, quoad medietatem quae alias obtingeret inventori, est poenalis, propter iniuriam factam domino fundi, non tenetur inventor hanc medietatem dare domino ante sententiam iudicis. Et id indicat ipsa lex, dicens : « Totum locorum domino reddere compellatur. »

28 [A treasure found in a public place is to be divided between the finder and the fisc, if indeed the place is profane ; but if it is sacred, the treasure is divided between the finder and the church fabric or the prelate.

[Thesaurus inventus in loco publico, dividendus est inter inventorem et fiscum, si nempe locus sit profanus ; si vero sit sacer, thesaurus dividitur inter inventorem et fabricam aut praelatum.

29 So Roman law, with which French, Italian, Austrian, etc. law accords[274] Prussian law, however, adjudicates to the fisc the middle part of a treasure sought on another's land, and the other middle part to the proprietor[3]. English law attributes all treasures to the king or the republic. But, as Crolly testifies[4], that law does not bind before the judge's sentence.]

274 Cfr. Cod., loc. cit.

Ita ius Romanum, cui consonant Gallicum, Italicum, Austriacum, etc.[274] *Ius autem Borussicum adiudicat fisco mediam partem thesauri in fundo alieno quaesiti, et alteram mediam proprietario*[3]*. Ius Anglicum omnes thesauros regi seu reipublicae attribuit. Sed, teste Crolly*[4]*, lex ista non obligat ante sententiam iudicis.]*

274 Cfr. Cod., loc. cit.

30 Found deliberately on another's land with the owner's consent, a pact being excluded, it is wholly the finder's, according to Navarrus, Lessius, and others ; because by this very fact that the owner of the land consents to the digging out of the treasure without contracting about it, or exacting anything from the digger, he is held to remit to him his share.

Inventus de industria in fundo alieno cum consensu domini, secluso pacto, totus est inventoris, iuxta Navarrum, Lessium et alios ; quia hoc ipso quo dominus fundi consentit in effossionem thesauri absque eo quod paciscatur, aut aliquid exigat ab effodiente, censetur ipsi condonare suam partem.

31 Found finally by magical art on one's own land, it is wholly the fisc's. So commonly, and it is gathered from L. Unica, C. de Thesauris. If by the same art it is found on another's land, the half that ought to have been the finder's becomes the fisc's ; the half of the owner remains to him, because he is not held for another's fault unless he cooperated in it. Moreover, the half which would otherwise have accrued to the finder ought not to be handed over before the judge's sentence, because it is a penal disposition, and indeed awaiting sentence. Thus far Roman law. If particular laws dispose otherwise, they are to be stood by.

Inventus tandem arte magica in proprio fundo, totus est fisci. Ita communiter, et colligitur ex L. Unica, C. de Thesauris. Si eadem arte inveniatur in fundo alieno, dimidium quod debuisset esse inventoris, fit fisci, dimidium domini ipsi remanet, quia non tenetur culpa alterius, nisi ipsi cooperatus fuisset. Porro medietas quae aliunde obvenisset inventori, non debet tradi ante sententiam iudicis, quia est dispositio poenalis, et quidem sententiae ferendae. Huc usque ius Romanum. Si aliter disponant iura particularia, illis standum est.

32 It is asked here whether he who knows a treasure lies hidden on another's land may licitly buy that land at the common estimation, before he digs out the treasure, and become owner of the whole treasure after he has dug it out.

Queritur hic utrum qui novit thesaurum latere in alieno fundo, licite emat fundum illum secundum communem aestimationem, antequam thesaurum eruat, et efficiatur totius huius thesauri dominus, postquam eruerit.

33 *I answer.* Affirmatively, with Soto, Navarrus, Bannez, and Sylvius. The reason is, because he buys the field at a just price. A treasure found in one's own field, moreover, is wholly the finder's, as I said.

Resp. *affirmative cum Soto, Navarro, Banne et Sylvio. Ratio est, quia is emit agrum iusto pretio. Thesaurus autem inventus in agro proprio totus est inventoris, ut dixi.*

34 That he buys the field at a just price, *Proof.* 1° Because a treasure does not augment the price of the field, since it is not its fruit, nor of its substance ; nor does it belong to the owner before its discovery or apprehension, but is nullius. 2° Because the price of a thing is not taken from its greater or lesser intrinsic utility or excellence, but from the common estimation of men, at least of experts in such an art or matter ; for this is the just rule and the immediate measure of a just and human price. Now he of whom we speak buys, I suppose, the field according to the common estimation. Therefore.

Quod emat agrum iusto pretio, Prob. *1° quia thesaurus non auget pretium fundi, cum non sit fructus eius, nec de eius substantia ; neque ante inventionem aut apprehensionem pertineat ad dominum, sed sit nullius. 2° Quia alicuius rei pretium non sumitur ex maiori vel minori illius intrinseca utilitate vel praestantia, sed ex communi aestimatione hominum, saltem expertorum in tali arte vel materia ; haec enim est regula iusta et mensura immediata pretii iusti et humani. Atqui is de quo agitur, emit, ut suppono, agrum secundum communem aestimationem. Ergo.*

35 This second reason proves that it is licit even if the question concerned minerals hidden in the ground, which someone knew, whether by chance or by singular perspicacity, to lie hidden there.

Haec secunda ratio probat id etiam licere, si ageretur de mineralibus in fundo reconditis, quae quis vel fortuito, vel singulari perspicacia sciret illic latere.

36 [Note : 1° He is the finder of the treasure who uncovers it, not he who takes hold of it. If therefore a servant in the garden of his master, the latter present, dug a treasure from the earth, the master would injure justice by retaining the whole thing for himself. 2° If the owner of the land, suspecting a treasure lies hidden there, hires a hired hand to seek it, the owner is the true finder, and the whole treasure pertains to him. 3° According to the more recent codes, it matters nothing whether the thing was found on immovable property, or in a movable thing, v. g. in an old chest, provided it be established that it has the character of a treasure, that is, that it does not pertain to such a person or family.]

[Nota : 1° Ille est thesauri inventor qui eum detegit, non autem qui eum apprehendit. Si ergo famulus in horto heri sui, isto praesente, thesaurum e terra eruat, herus laederet iustitiam rem totam sibi retinendo. 2° Si dominus fundi, suspicans thesaurum ibi latere, conducit mercenarium ad eum quaerendum, dominus est verus inventor, et thesaurus totus ad eum pertinet. 3° Iuxta recentiores codices, nihil refert an res fuerit inventa in fundo immobili, vel in re mobili, v. g. in arca veteri, modo constet eam thesauri rationem habere, id est non pertinere ad talem personam vel familiam.]

37 **§ IV. — On things derelict, lost, and vacant.**

§ IV. — De rebus derelictis, amissis et vacantibus.

38 **I say** 1° : By Roman law, « if anyone takes possession of a thing regarded as derelict, he at once becomes its owner. » Instit. book II, § last ; because, as I have now often said, things that belong to no one become the first occupant's[275]. By French law, goods derelict pertain to the magistrate of the place. So Tournely after Ferrier.

275 S. Thom., 2ae 2ae, q. 66, a. 5, ad 2.

***Dico** 1° : Iure Romano, « si rem pro derelicta habitam occupaverit quis, statim eius dominus efficitur. » Instit. lib. II, § ultimo ; quia, ut saepe iam dixi, quae nullius sunt, fiunt primo occupantis[275]. Iure Gallico, bona derelicta pertinent ad dynastam loci. Ita Tournely ex Ferrier.*

275 S. Thom., 2ae 2ae, q. 66, a. 5, ad 2.

39 [The new French law accords with the old. From Cod. civ., art. 539, goods derelict are included under the name of vacant goods and attributed to the republic. This, however, is restricted by custom to immovables alone, and it is admitted that movable things derelict pertain to the first occupant, at least before the judge's sentence[276].]

276 Carrière, de Iure et Iust., n. 285 and 343, after several jurists.

[Ius novum Gallicum veteri concordat. Ex Cod. civ., art. 539, bona derelicta sub nomine bonorum vacantium includuntur et reipublicae attribuuntur. Hoc tamen ex consuetudine ad sola immobilia restringitur, et admittitur res mobiles derelictas ad primum occupantem pertinere, saltem ante sententiam iudicis[276].]

[276] *Carrière, de Iure et Iust., n. 285 et 343, post plures iurisperitos.*

40 « But that is regarded as derelict which the owner has cast away with the mind that he does not wish it to be among the number of his things, and therefore he at once ceases to be its owner. » Instit. cited. When indeed such is the mind of the owner must be hunted out from the circumstances of things and times.

« Pro derelicto autem habetur quod dominus ea mente abiecerit, ut id in numero rerum suarum esse nolit, ideoque statim eius dominus esse desinit. » Instit. cit. Quandonam vero talis sit mens domini, venandum ex rerum et temporum circumstantiis.

41 Hence you will infer that the goods of the shipwrecked, whether projected into the sea by the violence of a tempest causing shipwreck, or cast out for lightening the ship, likewise those carried off by flood, are not goods derelict, because regularly owners do not regard them as derelict, but rather would most gladly recover them ; and therefore they are a case of theft in those who steal them away for themselves, and if they are the goods of shipwrecked Christians, they incur the excommunication of the Bull of the Coena. If, however, the owner, knowing where and how he could recover them, did not care, because he either made little of them, or there were expenses to be incurred which would equal the value of the thing to be recovered, then it would be presumed that he regarded them as derelict.

Hinc inferes bona naufragantium, sive vi tempestatis naufragio facto proiecta in mare, sive causa levandae navis eiecta, item ea quae per eluvionem abripiuntur, non esse bona derelicta, quia regulariter domini ea pro derelictis non habent, quin potius ea libentissime recuperarent ; et ideo furti rei sunt qui illa sibi surripiunt, et si sint bona Christianorum naufragantium, incurrunt excommunicationem bullae Coenae. Si autem dominus sciens ubi et quomodo posset ea recuperare, non curaret, quia vel parvi faceret, vel forent expensae faciendae quae rei recuperandae aequivalerent, praesumeretur tunc habere pro derelictis.

42 Of this kind, I think, in these parts are the small pieces of wood which are swept off as the waves of the Meuse swell, and which the inhabitants of the banks fish out.

Huius generis esse puto in his partibus parva ligna quae intumescente Mosa fluctibus abripiuntur, et quae riparum incolae expiscantur.

43 **I say** 2° : Vacant goods are those which someone leaves behind dying ab intestato, having no heirs who succeed him according to law ab intestato. These are assigned to the royal fisc. *L. Vacantia*, C. de bonis vacantibus.

***Dico** 2° : Bona vacantia sunt quae quis relinquit moriens ab intestato, nec habens haeredes qui ei iuxta legem ab intestato succedunt. Haec addicuntur fisco regio.* L. Vacantia*, C. de bonis vacantibus.*

44 Except the movable goods of foreigners, which, if they die ab intestato without heirs, ought to be expended through the hands of the bishop of the place for pious causes. Authent. Omnes peregrini, C. Communia, de Success.

Excipe bona mobilia peregrinorum, qui si ab intestato decesserint sine haeredibus, debent eorum bona per manus episcopi loci in pias causas erogari. Authent. Omnes peregrini, C. Communia, de Success.

45 In Gaul, the goods of foreigners dying there, who are called *aubains*, as it were born elsewhere, pertain to the king, excepting the goods of legates, merchants, and natives.

> *In Gallia bona extraneorum ibi morientium qui dicuntur* aubains*, quasi alibi nati, pertinent ad regem, exceptis bonis legatorum, mercatorum et regnicolarum.*

46 [Vacant goods are reckoned whatever one leaves behind dying intestate, whether movables or immovables. New laws sanctioned the attribution of these goods made by Roman law. Hence the goods of one who has died intestate and left no blood relatives up to the tenth degree devolve upon the fisc[277]. No place is given to occupation, because the dominion of these goods was not really relinquished or cast away, and the public authority, by force of its higher dominion, decreed that they would accrue to the community, for public utility. It can be said besides that, since the owner, bereft of his natural family, did not dispose of them by an act of last will, he is held to have willed them to accrue to his civil family, that is, the republic.]

277 Cod. Gall., art. 539 and 713 ; Ital., art. 742 and 758.

> *[Bona vacantia reputantur quaecumque relinquit moriens intestatus, sive mobilia sive immobilia. Nova iura horumce bonorum attributionem a iure Romano factam sanxerunt. Unde bona illius qui intestatus mortuus est et non reliquit consanguineos usque ad decimum gradum, ad fisco devolvuntur[277]. Non datur locus occupationi, quia eorum dominium non fuit realiter dimissum seu abiectum, et authoritas publica, vi alti sui dominii statuit ea ad communitatem, in publicam utilitatem, obventura esse. Dici potest insuper quod, cum dominus, familia naturali orbatus, de his non disposuerit per actum ultimae voluntatis, censetur voluisse ea profutura esse familiae suae civili, id est reipublicae.]*
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> *277 Cod. Gall., art. 539 et 713 ; Ital., art. 742 et 758.*

47 **I say** 3° : Goods recently lost are not the finder's, but remain his who lost them, who therefore must necessarily have them restored, if it can be done ; because he who lost them is not despoiled of the dominion of these goods, nor does he who finds acquire it[278]. By what right? Not by authority of the law, for there is none that can be assigned ; not by the will of the owner, who rather wills on the contrary that they be rendered back to him, and therefore he inquires diligently, gives thanks for those restored, even when he has ceased to inquire.

278 S. Thom., 2ae 2ae, q. 66, a. 5, ad 2.

> ***Dico** 3° : Bona recens amissa non sunt inventoris, sed remanent illius qui ea amisit, cui proinde necessario restituenda sunt, si fieri possit ; quia horum bonorum dominio non spoliatur qui amisit, nec illud acquirit qui invenit[278]. Quo enim iure ? Non authoritate legis, nulla est enim quae possit assignari ; non voluntate domini, quin potius vult e contra ea sibi reddi, et ideo diligenter inquirit, pro redditis gratias agit, etiam cum inquirere desierit.*
>
> *278 S. Thom., 2ae 2ae, q. 66, a. 5, ad 2.*

48 **I say** 4° : If, after diligent inquiry — which ought to be greater or lesser according to the condition of the thing — the owner cannot be known, the goods found ought to be expended according to his presumed will : this the natural law indicates. His presumed will, moreover, is regularly held to be that they be expended for uses useful to himself, or to his own, or at least to the republic, and consequently for the relief of the poor, for Masses or other pious uses. And that it is so, I appeal to his conscience as witness : would he not wish his lost goods so expended ?

> ***Dico** 4° : Si, facta diligenti inquisitione, quâ debet esse maior vel minor pro rei conditione, non possit cognosci dominus, bona inventa debent expendi secundum voluntatem eius praesumptam : id lex naturalis indicat. Praesumpta autem eius*

voluntas regulariter censetur esse, ut expendantur in usus sibi, aut suis, aut saltem reipublicae utiles, proindeque in pauperum sublevamen, in missas aut alios pios usus. Quin ita sit, eiusque conscientiam testor, num non ita vellet res suas perditas expendi.

49 This common opinion is expressly handed down by the Council of Milan under Saint Charles, the Roman Catechism, part III, c. VIII, n. 17, and Saint Thomas here q. 62, a. 5, ad 3.

Hanc communem sententiam expresse tradunt conc. Mediol., sub sancto Carolo, Catechismus Romanus, pars III, c. VIII, n. 17, et S. Thomas hic q. 62, a. 5, ad 3.

50 [In the Roman Catechism we read there : « There are thieves, who buy things taken away by theft, or retain in some way things found, occupied, and carried off. For Saint Augustine says : « If you have found and not returned, you have stolen[279]

279 Serm. 178, once 19, c. 8, n. 9.

[In Catechismo Romano legitur, ibi : « Sunt fures, qui furto sublatas res emunt, vel aliquo modo inventas, occupatas et ademptas retinent. Ait enim S. Augustinus : « Si invenisti et non reddidisti, rapuisti[279].

279 Serm. 178, olim 19, c. 8, n. 9.

51 » Note that if the owner of the things can by no means be found, they are goods to be conferred upon the uses of the poor. »]

» Nota quod si rerum dominus nulla ratione inveniri potest, illa sunt bona in usus pauperum conferenda. »]

52 The text of Saint Augustine cited here, and the text of the Angelic Doctor referred to, will be weighed below.

Textus S. Augustini hic citatus et textus Angelici referendus infra expendentur.

53 The other opinion affirms that the finder, in the case proposed, namely with every diligence employed, can hold the thing as his own. *S. Ligorius*[280] cites several authors of good note, among whom the Salmanticenses, to whom it seems probable and highly probable, and Gury holds it as the more probable.

280 Lib. IV, n. 603.

Altera sententia affirmat inventorem, in casu proposito, scilicet omni diligentia adhibita, rem ut suam habere posse. S. Ligorius[280] *citat plures authores bonae notae, inter quos Salmanticenses, quibus videtur probabilis et valde probabilis, et Gury eam tenet ut probabiliorem.*

280 Lib. IV, n. 603.

54 *A third* opinion, says *S. Ligorius*[281], truer and to be followed, distinguishes and says : « When, after diligence, it is still possible to find the owner, then the thing or the price ought to be kept. But if neither can be kept, the thing or the price must altogether be expended on pious uses, according to the presumed will of the owner, who still always retains the dominion of that thing, and the thing can return into his hands. Conversely, when the thing, considering the circumstances of the length of time or the distance of place, or from the fact that the thing cannot any longer be recognized as his by the owner, as happens with ordinary coins, does not seem able to return to the owner, then it becomes nullius, and therefore is acquired by the first occupant, who is not bound to give it according to the will of the former owner, since he has utterly lost the right of dominion through the

impossibility of recovering it[3]. And this opinion Saint Thomas expressly holds, 2a 2ae, q. 66, art. 5, ad 2, where he says : « And likewise, if [things] are regarded as derelict, and the finder believes this, he may retain them without committing theft. » The reason a priori is, because the law of nations grants to private persons dominion over things for no other end than that they use them. Hence, when it is impossible for the thing to come to their use, it, as derelict, becomes nullius and returns to the primitive law of nature, and therefore becomes the first occupant's without any obligation. » — This third opinion is reduced in practice to the second.

[281] N. 578.

> Tertia *sententia, ait* S. Ligorius[281]*, verior et sequenda, distinguit et dicit : « Quando adhuc, post diligentiam, possibile est dominum invenire, tune res vel pretium servari debet. Quod si utrumque servari nequeat, res vel pretium omnino est erogandum in usus pios, iuxta praesumptam voluntatem domini, qui adhuc illius rei dominium retinet semper ac res potest in manus eius redire. E converso, quando res, spectatis circumstantiis longitudinis temporis vel distantiae loci, vel eo quod res non possit amplius a domino pro sua cognosci, ut accidit in nummis ordinariis, non videtur possibile ut ad dominum redeat, tune illa fit nullius, et ideo acquiritur a primo occupante, qui illam non tenetur dare iuxta voluntatem prioris domini, cum ille impossibilitate eam recuperandi ius dominii prorsus amiserit[3]. Et hanc sententiam expresse tenet S. Thomas, 2a 2ae, q. 66, art. 5, ad 2, ubi ait : « Et similiter, si [res] pro derelictis habeantur, et hoc credat inventor, licet sibi eas retineat, non committit furtum. » Ratio a priori est, quia ius gentium tribuit privatis dominium rerum, non ad aliud, quam ut illis utantur. Hinc, quando est impossibile rem pervenire ad ipsorum usum, illa, tamquam derelicta, evadit nullius et redit ad primaevum ius naturae, ac ideo fit primi occupantis sine ulla obligatione. » — Haec tertia sententia ad secundam practice reducitur.*
>
> *[281] N. 578.*

[55] In favor of this opinion is what is customary in our regions, where, when a found thing is deposited with the magistrate, after a year has elapsed it is returned to the finder, that he may use it as his own, although under art. 539 of Cod. civ. things having no owner devolve upon the fisc ; which, as was said, is restricted in practice to immovables.

> *Huic sententiae favet quod in nostris regionibus usitatum est, ubi, cum res inventa apud magistratum deponitur, post annum elapsum inventori redditur, ut ea tamquam sua utatur, quamvis ex art. 539 Cod. civ. res dominum non habentes ad fisco devolvantur ; quod, ut dictum est, ad immobilia practice restringitur.*

[56] Against this later opinion the text of Saint Augustine praised above can be objected. But this authority does not seem decisive ; for it may be so interpreted that he who did not return the thing found, because he did not diligently inquire for the owner, truly stole it, in that he ought to have had it as another's and not his own. But from that it does not follow that he is a robber if he retains a thing which can no longer return into the hands of the former owner.

> *Huic posteriori sententiae obiici potest textus S. Augustini praelaudatus. Sed haec authoritas decisiva non videtur ; nam ita eam interpretari licet, ut qui rem inventam non reddidit, quia dominum diligenter non inquisivit, vere rapuit, eo quod eam ut alienam et non suam habere debebat. At inde non sequitur quod sit raptor, si retineat rem quae iam in manus prioris domini redire non potest.*

[57] The text of Saint Thomas to which Billuart above sent back the reader is as follows : « If he to whom restitution ought to be made is entirely unknown, man ought to make restitution as he can, namely by giving in alms for his salvation, whether he be dead or living ; provided nevertheless diligent inquiry has been premised about the person of him to whom the restitution ought to be

made. » This text does not seem relevant, since here restitution to be made on account of theft is treated of. For the holy Doctor answers the question : « Whether restitution must always be made to him from whom something was taken ? » that is, whether restitution ought to be made to the injured person, or can be made to another, v. g., to the poor ? And he answers in the body that the very injured person must be led back to the equality of commutative justice by restitution. In ad 2m he adds that, if the injured person exists and remains unknown, restitution must be made to him through alms for his salvation ; because otherwise restitution, which must certainly be made by him who received the thing unjustly, cannot be made. Moreover, he who finds a lost thing did not receive it unjustly : whence the solution given by the Angelic Doctor does not regard him. Elsewhere the holy Doctor openly contradicts the conclusion undeservedly attributed to him, in the passage alleged above by S. Ligori.

> *Locus S. Thomae ad quem Billuart supra lectorem remisit ita est : « Si ille cui debet fieri restitutio sit omnino ignotus, debet homo restituere secundum quod potest, scilicet dando in eleemosynas pro salute ipsius, sive sit mortuus, sive sit vivus ; praemissa tamen diligenti inquisitione de persona eius cui est restitutio facienda. » Hic textus non videtur ad rem facere, cum hic agatur de restitutione ob furtum facienda. Respondet enim S. Doctor ad quaestionem : « Utrum oporteat semper restitutionem facere ei a quo acceptum est aliquid ? » id est, utrum restitutio personae laesae fieri debeat, an alicui alteri, v. g., pauperibus, fieri possit ? Et respondet in corpore, ipsam personam laesam reducendam esse ad aequalitatem iustitiae commutativae per restitutionem. Ad 2m addit quod, si persona laesa sit et remaneat ignota, restitutio ei facienda est per eleemosynas pro salute ipsius ; quia aliter fieri non potest restitutio certo facienda ab eo qui rem iniuste accepit. Porro, qui rem amissam invenit, non accepit eam iniuste : unde solutio ab Angelico data eum non respicit. Aliunde S. Doctor conclusioni quae ipsi immerito attribuitur aperte contradicit in loco supra a S. Ligorio allegato.*

58 Whichever opinion the confessor embraces, he ought not disturb the finder who, with every diligence made to find the owner of the thing, retains it in good faith as his own, because he follows an opinion truly and solidly probable, and it is not licit for the confessor to impose his own opinion, which is only probable, as certain and indubitably obliging.

> *Quamcumque sententiam confessarius amplexus fuerit, non debet inquietare inventorem qui, omni diligentia facta ad reperiendum rei dominum, bona fide eam ut suam retinet, quia is sententiam vere et solide probabilem sequitur, et non licet confessario propriam opinionem, qua tantum probabilis est, ut certam et indubie obligantem imponere.*

59 [Veins of this kind are reduced to a triple genus : 1° Mines, which contain originally, whether in the form of a vein or accumulated, gold, silver, lead, iron, coal born in the bosom of the earth, which in French is called houille ; 2° Quasi-mines, in French mineres, in which are found ferriferous earths and combustible earth called in French tourbe ; 3° Quarries, from which marbles and stones of every species destined for buildings are dug out.

> *[Huiusmodi venae ad triplex genus redueuntur : 1° Fodinae, quae originarie continent, sive sub venae forma, sive aggerata, aurum, argentum, plumbum, ferrum, carbonem in sinu terrae natum qui gallice dicitur houille ; 2° Quasi fodinae, gallice mineres, in quibus inveniuntur terra ferriferae et terra combustibilis gallice dicta tourbe ; 3° Lapidicinae, e quibus eruuntur marmora et cuiusvis speciei lapides aedificationibus destinati.*

60 **I say** : Attention being had to the natural law alone, veins or mines of whatever kind belong to him whose the land is, not only as to the right of digging, but also as to dominion and property, because they are a part of the land itself and pertain to its substance. Consequently Sylvius, Lessius, and Soto are not to be approved, who say they are things nullius and by the law of nature become the first occupant's.

> ***Dico** : Attento solo iure naturali, cuiuscumque generis venae vel fodinae sunt illius cuius est fundus, non tantum quoad ius effodiendi, sed etiam quoad dominium et proprietatem, quia sunt pars ipsius fundi et ad eius substantiam pertinent. Proinde non sunt probandi Sylvius, Lessius et Soto, qui dicunt eas esse res nullius et iure naturae fieri primi occupantis.*

61 Yet it must be confessed that it has been legitimately brought about, whether by common law, or by commonly received custom, that princes or republics vindicate them to themselves, the damage inflicted on the owner of the land being compensated : 1° because this suits princes or republics for sustaining the common burdens ; 2° because these veins are of great estimation, and at the same time most difficult of discovery, for the digging of which the resources of private persons are usually unequal : wherefore it interests the republic to excite men by proposing a reward, lest they leave veins of this kind unproductive. Hence

> *Fatendum est tamen legitime effectum esse, sive iure communi, sive consuetudine communiter recepta, ut principes aut respublicae eas sibi vindicent, compensato damno quod domino fundi infertur : 1° quia id convenit principibus aut rebuspublicis ad sustinenda onera communia ; 2° quia hae venae sunt magnae aestimationis, et simul difficillimae inventionis, quibus effodiendis plerumque sunt impares privatorum facultates : quapropter reipublicae interest excitare homines, proposito praemio, ne huiusmodi venas improductivas relinquant. Unde*

62 By French law of 21 April 1810, it is prohibited that mines of the first kind be dug without license of the supreme authority, granted to the owner of the land or to another, the just indemnity being saved. This license is not required in order that mines of the second kind may be dug. It suffices that the owner of the land notify his intention to the prefect of the province. Quarries can be dug without any license, provided the special statutes are observed, which provide chiefly for the safety of the workers.

> *Ex lege Gallica 21 april. 1810, prohibetur ne effodiantur primi generis fodinae sine licentia authoritatis supremae, vel domino fundi vel alteri concessa, salva iusta indemnitate. Haec licentia non requiritur ut effodi possint fodinae secundi generis. Sufficit ut dominus fundi suam intentionem praefecto provinciae notificet. Absque ulla licentia effodi possunt lapidicinae, dummodo serventur statuta specialia, quibus providetur praecipue operariorum securitati.*

On the first way of acquiring ownership of things that belong to another, namely accession

1 [By the name of accession is understood the right by which the owner of the principal thing becomes owner of the accessory thing, that is, of all things produced from some thing, or naturally or artificially united to it.

> *[Accessionis nomine intelligitur ius quo dominus rei principalis fit dominus rei accessoria, id est omnium quae ab aliqua re producuntur, vel ipsi naturaliter aut artificialiter uniuntur.*

2 Accession is either natural, or industrial, or mixed.

> *Accessio est vel naturalis, vel industrialis, vel mixta.*

3 I. — Natural accession occurs : 1° By birth, namely when from your animal another is born, conceived indeed of a male belonging to another. For the axiom holds : « The offspring follows the womb. » — 2° By fructification, that is, the production of fruits from land without human industry. — 3° By alluvion, when by the force of waters an increment gradually accedes to your field. But if a notable part of someone's land suddenly accedes to another's field by avulsion, the former owner of it does not lose dominion if he exercises his right within the useful time[282].

[282] Cod. Gall., art. 546 seqg. ; Ital., art. 444 seqg. ; Austriac., art. 404-422 ; Boruss., I, 9, § 220 et 324 ; Angl. Crolly, n. 639.

> *I. — Accessio naturalis habetur : 1° Nativitate, quando nempe ex animali tuo aliud nascitur, conceptum vero de masculo pertinente ad alium. Fert enim axioma : « Partus sequitur ventrem. » — 2° Fructificatione, id est productione fructuum ex fundo absque industria humana. — 3° Alluvione, quando vi aquarum incrementum tuo praedio sensim accedit. Si vero notabilis pars fundi alicuius repente per avulsionem accedat alteri fundo, huius prior dominus non amittit dominium, si infra tempus utile ius suum exerceat[282].*
>
> *[282] Cod. Gall., art. 546 seqg. ; Ital., art. 444 seqg. ; Austriac., art. 404-422 ; Boruss., I, 9, § 220 et 324 ; Angl. Crolly, n. 639.*

[4] II. — Industrial or artificial accession can occur : 1° By building, when one builds on his own land with another's materials, or on another's land with his own materials. Then in general the building is his whose the land is, due compensation being made to him who built in good faith[283]. Yet on this matter the laws of each region are to be consulted[284]

[283] S. Lig., lib. IV, n. 500.

[284] Cod. Gall., art. 555 ; Ital., art. 449 ; Austriac., art. 417-419 ; Boruss., I, 9, § 327.

> *II. — Accessio industrialis seu artificialis fieri potest : 1° Edificatione, quando quis in fundo suo aedificat ex alienis materiis, vel in fundo alieno ex materiis suis. Tune generatim aedificium est illius cuius est fundus, facta autem debita compensatione ei qui bona fide aedificavit[283]. Consulantur tamen hac super re leges cuiusque regionis[284]*
>
> *[283] S. Lig., lib. IV, n. 500.*
>
> *[284] Cod. Gall., art. 555 ; Ital., art. 449 ; Austriac., art. 417-419 ; Boruss., I, 9, § 327.*

- 2° By specification, when to pre-existing matter a new form or species accedes, v. g., if from wool belonging to another you have made a garment, or from another's wood or gold a vessel. By common law, the new species accrues to the artisan, the price of the material being paid, if it cannot be reduced to its prior form, and in conscience probable good faith is required : otherwise the thing accrues to the owner of the material, v. g., a golden vase[285]. Under the new laws, in either case the thing accrues to the owner of the material, unless the work of the artisan far exceeds the material in price[286].

[285] S. Lig., lib. IV, n. 496.

[286] Cod. Gall., art. 570 and 571 ; Ital., art. 468 ; Austriac., art. 415 ; Boruss., I, 9, § 298.

> - *2° Specificatione, quando materia praeexistenti nova forma seu species accedit, v. g., si ex lana ad alterum pertinente vestem, ex ligno vel auro alieno vas confeceris. Ex iure communi, species nova artifici cedit, soluto pretio materia, si haec ad priorem formam reduci non possit, et in conscientia requiritur probabilius bona fides : secus res cedit domino materiae, v. g., vas aureum[285]. Ex novis legibus, in utroque casu res cedit domino materiae, nisi opus artificis materiam pretio longe superet[286].*
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> *[285] S. Lig., lib. IV, n. 496.*
>
> *[286] Cod. Gall., art. 570 et 571 ; Ital., art. 468 ; Austriac., art. 415 ; Boruss., I, 9, § 298.*

[6] — 3° By adjunction, when someone's thing is so joined to another's thing that together they make one whole ; in which case the whole composite pertains to him whose thing is considered as something principal, who however must make the owner of the accessory part whole. So a

usufructuary who has painted the walls of a house cannot erase the painting with damage to the walls. Conversely, a painter who has expressed an outstanding image on another's canvas can keep the painted canvas, its price being paid ; for, as Justinian says, *Instit.* book II, tit. 1, n. 34, « it is ridiculous that the painting of Apelles should pass as an accession to the cheapest board. » So by the law of almost all peoples[287]

287 Cod. Gall., art. 566 ; Ital., art. 484 ; Boruss., loco cit.

> *— 3° Adiunctione, quando res alicuius ita rei alterius iungitur, ut unum totum simul efficiant; quo in casu totum compositum pertinet ad eum cuius res ut quid principale consideratur, qui tamen dominum partis accessoriae debet facere indemnem. Sic usufructuarius qui domus parietes depinxit, non potest cum parietum detrimento picturam delere. E contra, pictor qui in tela aliena imaginem insignem expressit, potest telam pictam retinere, soluto eius pretio; nam, ut ait Iustinianus,* Instit. *lib. II, tit. 1, n. 34, « ridiculum est picturam Apellis in accessionem vilissimae tabulae cedere. » Ita ex iure omnium fere populorum*[287]
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> *287 Cod. Gall., art. 566 ; Ital., art. 484 ; Boruss., loco cit.*

7 — 4° By commixture, when solid things, and by confusion, when liquid things belonging to different persons are joined. By Roman law, if commixture or confusion has been made of several things of different genus, from them a new species arises, which falls under the principle of specification expounded above. But if no new species has been made, and the commixed or confused things can be separated without becoming worse, each must be separated for its own owner. Otherwise, each will have a right in the whole mass, according to each one's portion or price[288]. According to the new laws, the thing becomes common, and must be sold under the hammer, and the price divided, unless it has been otherwise stipulated among the owners.

288 S. Lig., lib. IV, n. 498.

> *— 4° Commixtione, quando res solidae, et confusione, quando res liquida ad diversos pertinentes iunguntur. Ex iure Romano, si commixtio vel confusio facta sit ex pluribus rebus diversi generis, ex illis fit nova species, quae principio specificationis supra exposito subest. Quod si nulla species nova facta fuerit, et res commixtae vel confusae separari possint, quin deteriores fiant, unaquaeque domino suo separanda est. Secus, cuique in totam massam ius erit, pro cuiusque portione aut pretio*[288]*. Iuxta novas leges, res fit communis, et sub hasta vendi debet, pretiumque dividi, nisi inter dominos aliter stipulatum fuerit.*
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> *288 S. Lig., lib. IV, n. 498.*

8 But if one part is principal, and much exceeds the others in price or quantity, it is licit for its owner to vindicate the whole to himself, a just price being refunded to the others[289].

289 Cod. Gall., art. 573 and 574 ; Ital., art. 472 and 473 ; Austriac., art. 414 ; Boruss., I, 9, § 298-323.

> *Si vero una pars sit principalis, aliasque pretio aut quantitate multum superet, licitum est eius domino totum sibi vindicare, refuso aliis iusto pretio*[289]*.*
>
> *289 Cod. Gall., art. 573 et 574 ; Ital., art. 472 et 473 ; Austriac., art. 414 ; Boruss., I, 9, § 298-323.*

9 III. — Mixed accession occurs especially by planting and sowing. It is called « mixed, » because nature and industry concur in this. It is subjected to the same rules[290] as building[291].

290 S. Lig., lib. IV, n. 501, ex iure Rom. ; Cod. Gall., art. 553-555.

291 Marc. Instit. morales Alphons., n. 887-889.

III. — Accessio mixta fit presertim plantatione et satione. Dicitur « mixta, » quia natura et industria in hac conveniunt. Subiicitur iisdem regulis[290] *quibus aedificatio*[291].

[290] *S. Lig., lib. IV, n. 501, ex iure Rom. ; Cod. Gall., art. 553-555.*

[291] *Marc. Instit. morales Alphons., n. 887-889.*

On the other way of acquiring ownership of things that belong to another, namely prescription

1 Note. Dominions of things that belong to someone are acquired in two ways, with the owner willing and with him unwilling. With the owner willing, as by donation, testament, sale, and other contracts, of which specially and at large in their place. With him unwilling, and this in three ways : 1° by the law of nations, as things captured in a just war become the captor's ; 2° by the sentence of a judge, as when a thief is condemned to fourfold restitution ; 3° by authority of the law, as by prescription, and about this the question is now concerned.

Nota. Dominia rerum quae sunt alicuius, duplici modo acquiruntur, volente et nolente domino. Volente domino, ut donatione, testamento, venditione et aliis contractibus, de quibus specialiter et late suo loco. Nolente domino, et hoc tripliciter : 1° iure gentium, ut res captae in bello iusto fiunt capientis ; 2° sententia iudicis, ut dum fur damnatur ad quadruplum ; 3° authoritate legis, ut praescriptione, et de hac nunc versatur quaestio.

2 **I say** 1° : Prescription or usucaption (for they are taken here as the same), is « the acquisition of dominion by continued possession, for a definite time fixed by law. »

***Dico** 1° : Praescriptio seu usucapio (pro eodem enim hic sumuntur), est « acquisitio dominii per continuatam possessionem, certo tempore a lege definito. »*

3 **I say** 2° : For legitimate prescription four conditions are required : first, true possession ; second, presumed title ; third, good faith ; fourth, legitimate time. So commonly. The aforesaid conditions are examined.

***Dico** 2° : Ad legitimam praescriptionem requiruntur quatuor conditiones : prima, possessio vera ; secunda, titulus praesumptus ; tertia, bona fides ; quarta, tempus legitimum. Ita communiter. Expenduntur praefatae conditiones.*

4 *True possession.*

Vera possessio.

5 So Rule of law 3a in 6° : « Without possession prescription does not proceed. » And it is clear, because this whole right arises from possession. And therefore one prescribes or can prescribe insofar as he possesses truly and properly, that is, in his own name, and indeed civilly at least ; for natural possession does not suffice, as appears in the tenant farmer who possesses naturally, and yet cannot prescribe. Natural and civil together is best. Civil alone, however, suffices, by which someone absent insists upon the thing with the mind and the faculty of its being his ; for it is called partly civil because it produces this civil effect. See what I said above on possession.

Ita Regula iuris 3a in 6° : « Sine possessione praescriptio non procedit. » Et patet, quia totum hoc ius oritur ex possessione. Et ideo in tantum aliquis praescribit aut praescribere potest, in quantum vere et proprie, hoc est, suo nomine possidet, et quidem civiliter saltem ; nam possessio naturalis non sufficit, ut patet in colono qui possidet naturaliter, et tamen praescribere non potest. Naturalis et civilis simul optima est. Sufficit tamen sola civilis, qua quis absens rei suae animo et facultate insistit ; ideo enim partim civilis dicitur, quia hunc civilem effectum parit. Vide quae dixi supra de possessione.

6 *Presumed title.*

> Titulus praesumptus.

7 Such as, v. g., purchase, donation, or any other mode by which dominion is transferred. I say, « presumed, » because if it were true it would transfer dominion without prescription. It suffices therefore that it be rationally and in good faith believed true, as if you buy, or accept as gift, from him who is reputed the owner of the thing, and is not.

> *Qualis est, v. g., emptio, donatio, aut quivis alius modus quo transfertur dominium. Dico, « praesumptus, » quia si esset verus, absque praescriptione transferret dominium. Sufficit ergo quod rationabiliter et bona fide credatur verus, ut si emas vel dono accipias ab eo qui reputatur rei dominus, et non est.*

8 Moreover, although for beginning every prescription a title is required, otherwise good faith would fail ; and likewise although for perfecting prescription which is called of short and long term, namely of ten or twenty years, allegation and proof of title are required : nevertheless doctors agree commonly that for perfecting that which is called of longest term, that is, of thirty or forty years, regularly no proof of title is required, since in so long a space of time it could have perished in various ways.

> *Caeterum, quamvis ad omnem praescriptionem inchoandam requiratur titulus, alioquin deficeret bona fides ; item quamvis ad perficiendam praescriptionem quae dicitur brevis et longi temporis, nimirum decem vel viginti annorum, requiratur allegatio et probatio tituli : conveniunt tamen communiter doctores, ad perficiendam eam quae dicitur longissimi temporis, id est, triginta vel quadraginta annorum, regulariter non requiri probationem tituli, quippe qui tanto temporis spatio variis modis perire potuit.*

9 *Good faith.*

> Bona fides.

10 So Rule of law 2, in 6° : « A possessor in bad faith at no time prescribes[292]. » Item e. Vigilanti, c. *Quoniam*, final chapter *de Praescriptionibus*, *Decretal.*, book II, tit. 26, from the Lateran Council under Innocent III, where the civil laws are corrected which seem to admit prescription of thirty or forty years as legitimate without good faith. Although however the civil laws do not admit prescription of bad faith in the internal forum as conferring dominion, they admit it nevertheless in the external forum, inasmuch as they reject the action against a possessor of thirty or forty years, lest under pretext of bad faith legitimate possessors in good faith be harassed, and thus public tranquility be disturbed by continual lawsuits.

292 Quodlib. XIII, a. 24, q.

> *Ita Regula iuris 2, in 6° : « Possessor malae fidei ullo tempore non prescribit[292]. » Item e. Vigilanti, c.* Quoniam, *Cap. fin.* de Praescriptionibus, Decretal., *lib. II, tit. 26, ex concil. Later. sub Innoc. III, ubi corriguntur leges civiles, quae videntur admittere praescriptionem triginta vel quadraginta annorum ut legitimam absque bona fide. Quamvis autem leges civiles non admittant praescriptionem malae fidei in foro interiori quasi conferrent dominium, admittunt tamen in foro exteriori, in quantum reiiciunt actionem contra possessorem triginta vel quadraginta annorum, ne praetextu mala fidei, legitimi et bonae fidei possessores vexentur, sicque turbetur tranquillitas publica continuis litibus.*
>
> 292 *Quodlib. XIII, a. 24, q.*

11 So civil law, L. *Si quis emptionis*, c. *de Praescript*. l. 7, tit. 39, and Innocent III, in cap. *Adversus consules*, *Decretal*. book III, *de Immunitate Ecclesiae*.

> *Ita ius civile, L.* Si quis emptionis, *c.* de Praescript. *1. 7, tit. 39, et Innocentius III, in cap.* Adversus consules, Decretal. *lib. III,* de Immunitate Ecclesiae.

12 *You will ask* 1° whether one who doubts whether the thing is his or another's is a possessor in good faith, and can prescribe.

> Petes *1° utrum dubitans sitne res sua vel aliena, sit possessor bonae fidei, possitque praescribere.*

13 *I answer* 1°. He who, before possession has begun, doubts whether the thing is his or another's, is not a possessor in good faith, nor can he prescribe. So commonly ; because there is no reason why he rather than another should possess the thing, and accordingly, vindicating it to himself, he does an injury to the other and exposes himself to the danger of usurping what belongs to another.

> Resp. *1°. Qui ante inchoatam possessionem dubitat sitne res sua an aliena, non est possessor bonae fidei, nec potest praescribere. Ita communiter ; quia non est ratio cur ille potius rem possideat quam alter, proindeque sibi vindicans, facit iniuriam alteri et se exponit periculo usurpandi alienum.*

14 *I answer* 2°. He who, after possession begun in good faith, doubts whether the thing is his or another's, if, diligent inquiry having been made, he does not discover it to be another's, more probably remains a possessor in good faith, and can continue the prescription. So Sylvester, Navarrus, Covarruvias, Sylvius, Pontas, V. Prescription, cas. 8, and more commonly, against Soto and some more recent authors.

> Resp. *2°. Qui post initam bona fide possessionem dubitat sitne res sua an aliena, si, facta diligenti inquisitione, non deprehendat esse alienam, probabilius remanet possessor bonae fidei, potestque praescriptionem continuare. Ita Sylvester, Navarrus, Covarruvias, Sylvius, Pontas, V. Prescription, cas. 8, et communius contra Soto et aliquos recentiores.*

15 *Proof.* 1°. According to the Rule of law, « in case of doubt the condition of the possessor is better[293] » Now all tribunals, both civil and ecclesiastical, understand this better condition such that they adjudge the whole to the possessor : and such is the sense of all men, that they believe they retain with a safe conscience what has been adjudged to them by reason of possession. Therefore.

293 Regula iuris 65 in 6° : « In pari delicto vel causa, potior est conditio possidentis. » From which was derived the rule cited : « In dubio, etc., » because the possessor is « in pari causa, » as regards the doubt, with the other to whom perhaps the property pertains, and possession supports him, because it is presumed to accord with the right as done.

> Prob. *1°. Iuxta Regulam iuris, « in dubio melior est conditio possidentis*[293] *» Atqui hanc meliorem conditionem sic intelligunt omnia tribunalia tum civilia cum ecclesiastica, ut totum adiudicent possessori : isque est omnium hominum sensus, ut credant se tuta conscientia retinere quod sibi ratione possessionis adiudicatum est. Ergo.*
>
> *293 Regula iuris 65 in 6° : « In pari delicto vel causa, potior est conditio possidentis. » Ex qua fuit eruta regula citata : « In dubio, etc., » quia possidens est « in pari causa, » quantum ad dubium, cum alio ad quem forsan pertinet proprietas, et possessio ei suffragatur, quia praesumitur ius facto concordare.*

16 — 2° Since men, on the one hand greedy for things, are not accustomed to leave their own with others, but guard them diligently, and on the other hand an upright man is not accustomed to acquire possession of a thing without a just title : hence, when a doubt concerning goods of fortune arises

independently of possession, equal on both sides, possession itself carries a great presumption that the possessor is the owner of the thing he possesses.

> *— 2° Cum homines, ex una parte, rerum avidi, non soleant suas apud alios relinquere, sed diligenter eas custodiant, et ex alia, vir probus non soleat acquirere possessionem alicuius rei absque iusto titulo : hinc, quando in bonis fortunae dubium independenter a possessione oritur utrinque aequale, ipsa possessio magnam infert praesumptionem possessorem esse dominum rei quam possidet.*

17 Therefore, although the possessor, in our case, doubts speculatively whether the thing is his or another's, and whether he can retain it ; nevertheless from the twofold principle laid down he can reflectively form for himself a practically certain judgment thus : 1° According to the laws, possession begun in good faith is a sufficient reason, on a doubt supervening, for retaining the thing to himself. Now I possess by a possession begun with good faith. Therefore. 2° In equal doubt it is more probable, from possession itself, that the possessor is owner in goods of fortune of the thing he possesses. But it is licit to follow what is more probable. Therefore.

> *Igitur, quamvis possessor, in nostro casu, dubitet speculative sitne res sua an aliena, et an possit eam retinere ; altamen ex duplici principio posito potest reflexe sibi formare iudicium practice certum sic : 1° Secundum iura, possessio bona fide inchoata est sufficiens ratio in dubio superveniente, ad rem sibi retinendam. Atqui possideo possessione cum bona fide inchoata. Ergo. 2° In pari dubio probabilius est, ex ipsa possessione, possessorem in bonis fortunae esse dominum rei quam possidet. Sed licitum est sequi id quod est probabilius. Ergo.*

18 [You will ask 2° whether theological good faith suffices for prescribing.

> *[Petes 2° utrum bona fides theologica sufficiat ad praescribendum.*

19 I answer 1°. Theological good faith does not suffice in prescriptions of ten and twenty years. The reason is, because the whole force of prescription depends on the civil law. Now theological good faith does not suffice before the civil law in prescriptions of this kind. For, both in the ancient law and in the new law of different peoples[294], it is required together, in such cases, that faith be not only theological, but also juridical. Therefore.

294 Cod. civ. Gall., art. 2265.

> *Resp. 1°. Bona fides theologica non sufficit in praescriptionibus decem et viginti annorum. Ratio est, quia tota vis praescriptionis pendet a lege civili. Atqui bona fides theologica non sufficit coram lege civili in huiusmodi praescriptionibus. Etenim, tam in iure antiquo quam in iure novo diversarum gentium[294], requiruntur simul, in talibus fides debeat esse non tantum theologica, sed etiam iuridica. Ergo.*
>
> *294 Cod. civ. Gall., art. 2265.*

20 I answer 2°. Theological good faith suffices in prescriptions of thirty years. The reason is, because where theological good faith is found, whatever law and conscience require for the validity of the prescription is present. 1° What is required by the law is present ; for the law exacts neither juridical good faith nor title[295] in prescriptions of thirty years. 2° What is exacted by conscience is present also ; for, in this case, conscience requires nothing beyond what is required by the civil law, namely good faith, which evidently must be theological. Therefore.]

295 Ibid., art. 2262.

> *Resp. 2°. Bona fides theologica sufficit in praescriptionibus triginta annorum. Ratio est, quia ubi invenitur bona fides theologica, adest quidquid lex et conscientia requirunt ut praescriptio sit valida. 1° Adest quod a lege requiritur ; lex*

> *enim neque bonam fidem iuridicam neque titulum*[295] *exigit in praescriptionibus triginta annorum. 2° Adest etiam quod a conscientia exigitur ; nam, in casu, conscientia nihil requirit praeter quod a lege civili requiritur, scilicet bona fides, quae evidenter debet esse theologica. Ergo.]*
>
> [295] *Ibid., art. 2262.*

21 *Legitimate time.*

> Tempus legitimum.

22 Note that, respectively as to prescription, time is distinguished as manifold in law : short, long, longest, and immemorial. Short is of three years. Long is of ten or twenty years. Longest is of thirty or forty years. Immemorial, of which memory does not exist among the older men.

> *Nota, respective ad praescriptionem multiplex tempus distingui in iure, breve, longum, longissimum et immemoriale. Breve est trium annorum. Longum est decem aut viginti annorum. Longissimum est triginta vel quadraginta annorum. Immemoriale, cuius non exstat memoria apud seniores.*

23 **I say** 1° : Movable things, whether of private persons or of churches (excepting the Roman Church), with title are prescribed by a space of three years, whether between the absent, or between the present.

> ***Dico** 1° : Res mobiles, sive privatorum, sive ecclesiarum (excepta Ecclesia Romana), cum titulo praescribuntur spatio trium annorum, sive inter absentes, sive inter praesentes.*

24 As to the things of private persons, we have *Inst. de usucap.*, § 1 and c. *de usucap. transformanda*, L. unica.

> *Quantum ad res privatorum, habetur* Inst. de usucap., *§ 1 et c.* de usucap. transformanda, *L. unica.*

25 As to ecclesiastical things, we have *Authent. Quas actiones*, c. *de Sacrosanctis ecclesiis*, where also causa 16, q. 3, cap. *Nemo*, the things of the Roman Church are excepted generally, for whose prescription a hundred years are required.

> *Quantum ad res ecclesiasticas, habetur* Authent. Quas actiones, *c.* de Sacrosanctis ecclesiis, *ubi et causa 16, q. 3, cap.* Nemo, *excipiuntur generaliter res Ecclesiae Romanae, ad quarum praescriptionem requiruntur centum anni.*

26 Things stolen are excepted also, which into whatever hands they come cannot be prescribed except by a space of thirty years. Instit. *de usucap.*, § *Furtivae*.

> *Excipiuntur etiam res furtivae, quae in euiuscumque manus perveniant, praescribi non possunt nisi spatio triginta annorum. Instit.* de usucap., *§* Furtivae.

27 **I say** 2° : Without title, movable things, whether of private persons or of the Church (excepting, as above, the Roman), are not prescribed except by thirty years.

> ***Dico** 2° : Absque titulo res mobiles, sive privatorum, sive Ecclesiae (excepta, ut supra, Romana), non praescribuntur nisi triginta annis.*

28 As to the movables of private persons, it is gathered from L. *Sicut*, c. *de Praescrip.* thirty or forty years, book 7, tit. 39, where thirty years are decreed for the prescription of immovables without title, and since nothing else is sanctioned by law for movables without title, authors gather that the same must be held of both.

Quantum ad mobilia privatorum, colligitur ex L. Sicut, *c.* de Praescrip. *triginta vel quadraginta ann., lib. 7, tit. 39, ubi decernuntur triginta anni ad prescriptionem immobilium absque titulo, et cum nihil aliud sit iure sancitum pro mobilibus absque titulo, colligunt auctores idem de utrisque censendum.*

29 As to the movables of churches, the reason is, because, since churches (except perhaps the Roman, as before) have no privilege for movables, the same must be said of them as of the movables of private persons.

Quantum ad mobilia ecclesiarum, ratio est, quia, cum ecclesiae (excepta forte Romana, ut ante), non habeant privilegium pro mobilibus, eodem modo loquendum est de illis ac de mobilibus privatorum.

30 **I say** 3° : Immovables of private persons with title are prescribed by ten years between the present, by twenty years between the absent. So Instit. *de usucap.*, § 1, and L. *Cum longi*, c. de

***Dico** 3° : Res immobiles privatorum cum titulo praescribuntur decem annis inter praesentes, viginti annis inter absentes. Ita Instit.* de usucap., *§ 1, et L.* Cum longi, *c. de*

31 Prescription of long time. Without title, however, whether between the present or between the absent, thirty years are required, L. *Sicut in rem* and L. *Si quis*, c. *de Praescript.* of thirty or forty years.

Praescrip. longi temporis. Absque titulo autem, sive inter praesentes, sive inter absentes, requiruntur triginta anni, L. Sicut in rem *et L.* Si quis, *c.* de Praescript. *triginta vel quadraginta ann.*

32 Those are held present, by Roman law, who dwell in the same territory, v. g., the diocese of Liege, even if the things be situated elsewhere. Absent, on the contrary, those who dwell in different territories. In Gaul those are called present who are under the jurisdiction of one bailiwick or seneschalship. But, because he against whom prescription runs may be, respectively to the one prescribing, partly present, partly absent, authors commonly note that two years of absence are to be computed as one of presence ; so that one who has possessed for five years between the present, if the owner of the thing be absent thereafter, the prescriber ought to possess again for ten years before he perfects the prescription.

Praesentes censentur, iure Romano, qui habitant in eodem territorio, v. g., Leodiensi, etiamsi res alibi sint sitae. Absentes, e contra, qui habitant in diversis territoriis. In Gallia praesentes dicuntur qui sunt sub unius ballivii vel senescalli iurisdictione. Sed, quia is contra quem praescribitur respective ad praescribentem potest esse partim praesens, partim absens, notant communiter authores duos annos absentiae computandos esse pro uno praesentiae ; ita ut qui possedit quinquennio inter praesentes, si rei dominus absit in posterum, praescribens debeat iterum possidere decennio, antequam praescriptionem perficiat.

33 **I say** 4° : For prescribing immovables against the Roman Church, whether with title or without title, whether between the present or between the absent, a hundred years are required, L. cited *Quas actiones* ; against other churches, monasteries, hospitals, pious causes, forty years. In the same place ; against monasteries of the Order of Saint Benedict and of other Orders sharing privileges of this kind, sixty years, by privilege of Eugene IV.

***Dico** 4° : Ad praescribenda immobilia contra Ecclesiam Romanam, sive cum titulo, sive sine titulo, sive inter praesentes, sive inter absentes, requiruntur centum anni, L. cit.* Quas actiones *; contra alias ecclesias, monasteria, hospitalia, causas pias, quadraginta anni. Ibidem, contra monasteria Ordinis S. Benedicti et aliorum Ordinum qui huiusmodi privilegiis communicant, sexaginta anni, ex privilegio Eugenii IV.*

34 These are the common rules, from which however several exceptions are made. I put forward the principal ones. Excepted is 1° the ward, against whom, as long as he is of wardly age, no prescription proceeds, whether of movables or of immovables, L. *Sicut in rem*, c. *de Praescript.* of thirty years. If he is a minor, however, thirty years are required, L. *ultima*, c. *In quibus causis*.

> *Hae sunt regulae communes, a quibus tamen fiunt plures exceptiones. Praecipuas pono. Excipitur 1° pupillus, contra quem, quamdiu est in aetate pupillari, nulla procedit praescriptio, sive mobilium, sive immobilium, L.* Sicut in rem, *c.* de Praescript. *triginta ann. Si vero sit minor, requiruntur triginta anni, L.* ultima, *c.* In quibus causis.

35 2° He who peacefully, without simoniacal entry, possesses a benefice for three years prescribes against the action of any challenger. Reg. 33a of the Chancery.

> *2° Qui pacifice absque simoniaco ingressu possidet triennio beneficium, praescribit contra actionem cuiusvis impetitoris. Reg. 33a Cancellariae.*

36 3° The action of injuries expires with the lapse of one year, L. *Si non convicii*, c. *de Iniuris*. Look for several other exceptions in our larger Work.

> *3° Actio iniuriarum expirat lapsu unius anni, L.* Si non convicii, *c.* de Iniuris. *Plures alias exceptiones require in maiori nostro Opere.*

37 *You will ask* 1° whether, and for how long a time, one prescribes who received a thing in good faith from a possessor in bad faith.

> Petes *1° an et quanto tempore praescribat qui rem bona fide accepit a possessore malae fidei.*

38 *I answer* 1°. The immediate heir of a possessor in bad faith cannot prescribe at any time. So Sylvester and commonly. It is plain from § *Diutina*, Instit. *de usucap.*, where it is said : « If he [the deceased] had not a just beginning, possession profits neither the heir nor the possessor in good faith, though ignorant. » The same L. *ultima*, c. *Communia*. The reason is, because the immediate heir is held, by fiction of law, to be one and the same person with the deceased, and their possession is one and the same continued possession ; and thus by that fiction the immediate heir is held to possess in bad faith, like the deceased himself.

> Resp. *1°. Haeres immediatus possessoris malae fidei non potest ullo tempore praescribere. Ita Sylvester et communiter. Patet ex §* Diutina, *Instit.* de usucap., *ubi dicitur : « Si ille [defunctus] initium iustum non habuit, haeredi et bonae fidei possessori, licet ignoranti, possessio non prodest. » Idem L.* ultima, *c.* Communia. *Ratio est, quia haeres immediatus ex fictione iuris censetur una eademque persona cum defuncto, et eorum possessio una eademque continuata possessio ; sicque ex ista fictione haeres immediatus censetur mala fide possidere, sicut ipse defunctus.*

39 *I answer* 2°. The mediate heir, likewise he who received from a possessor in bad faith immediately indeed, but under another title than inheritance, say by legacy, purchase, donation inter vivos, even if the movable thing is stolen, and the immovable possessed by violence, can prescribe.

> Resp. *2°. Haeres mediatus, item qui a possessore malae fidei immediate quidem accepit, sed alio titulo quam haereditatis, puta legato, emptione, donatione inter vivos, etiamsi res mobilis sit furtiva, et immobilis vi possessa, potest praescribere.*

40 The reason is, because laws do not admit two fictions from the same cause, and therefore that fiction of law concerning the bad faith of the immediate heir does not pass to the second heir, nor is he held the same person with the deceased. Which must be said a fortiori of the legatee, buyer,

donee, etc., who in no way represent the person of the deceased, and to whom therefore the defect of the author does no harm, as the laws expressly decree, L. *An vitium*. ff *De diversis temporalibus Praescript*.

> *Ratio est, quia iura duas fictiones ex eadem causa non admittunt, et ideo fictio illa iuris de mala fide haeredis immediati non transit ad secundum haeredem, nec censetur eadem cum defuncto persona. Quod a fortiori est dicendum de legatario, emptore, donatario, etc., qui defuncti personam nullatenus repraesentant, et quibus ideo non nocet vitium authoris, ut iura expresse statuunt, L.* An vitium. *ff* De diversis temporalibus Praescript.

41 *I answer* 3°. Things received in good faith from a possessor in bad faith, insofar as they can be prescribed, are regularly prescribed in ordinary time. So commonly, from the L. cited *An vitium*. I said, « regularly », because there is exception 1° if the thing is immovable, and he against whom prescription runs is ignorant that it is possessed by another ; 2° if the thing is stolen or possessed by violence ; for in either case thirty years are required. As to the first case, it is plain from the Authentica *Malae fidei*, c. *de longi temporis Praescriptione*. As to the second, it is plain from § *Furtiva*, Instit. *de usucap*. But what is said in law, that stolen things cannot be prescribed, is understood of prescription of ordinary time, not of prescription of extraordinary time, L. *An vitium*, c. *de diversis temporalibus Praescript*. ; likewise expressly L. *Super*, c. *de annali exceptione*, § *Ad haec* book 7, tit. 40.

> Resp. *3°. Res bona fide acceptae a possessore malae fidei, quatenus praescribi possunt, regulariter praescribuntur tempore ordinario. Ita communiter ex L. cit*. An vitium. *Dixi, « regulariter », quia excipitur 1° si res sit immobilis, et is contra quem praescribitur ignoret eam ab alio possideri ; 2° si res sit furtiva aut vi possessa ; in utroque enim casu requiruntur triginta anni. Quoad primum casum, patet ex Authentica* Malae fidei, *c.* de longi temporis Praescriptione. *Quoad secundum, patet ex §* Furtiva, *Instit*. de usucap. *Quod autem in iure dicitur res furtivas non posse praescribi, intelligitur de praescriptione temporis ordinarii, non de praescriptione temporis extraordinarii, L.* An vitium, *c.* de diversis temporalibus Praescript. *; item expresse L.* Super, *c.* de annali exceptione, *§* Ad haec *1. 7, tit. 40.*

42 *You will ask* 2° what things cannot be prescribed.

> Petes *2° quae non possunt praescribi.*

43 *I answer* 1° Those things cannot be prescribed which cannot be possessed in one's own name and legitimately, as ecclesiastical rights by a layman, a fief by a feudatary, etc. See on possession.

> Resp. *1° Ea praescribi non possunt, quae non possunt proprio nomine et legitime possideri, ut iura ecclesiastica a laico, feudum a feudatario, etc. Vide de possessione.*

44 2° Prescription does not proceed against natural or divine law, because in it human power avails nothing, on which prescription depends.

> *2° Contra ius naturale aut divinum non procedit praescriptio, quia in ea nihil valet potestas humana, a qua pendet praescriptio.*

45 3° Those things cannot be prescribed which are assigned to public uses, as public roads, squares, bridges, L. *Usucapionem*, ff *De usucap*.

> *3° Praescribi non possunt quae sunt usibus publicis deputata, ut viae publicae, plateae, pontes, L.* Usucapionem, *ff* De usucap.

46 4° A free man cannot be prescribed so as to become a slave, L. *ultima*, c. *De longi temporis praescript*.

> *4° Non potest praescribi homo liber, ut fiat servus, L.* ultima, *c.* De longi temporis praescript.

47 5° Certain boundaries of provinces, bishoprics, and parishes cannot be prescribed ; otherwise, if they are uncertain, from cap. *Dilectio*, causa 16, q. 3.

> *5° Limites certi provinciarum, episcopatuum et paroeciarum non possunt praescribi ; secus, si sint incerti, ex cap.* Dilectio, *causa 16, q. 3.*

48 Tournely, the Perfector, notes here that by French law predial servitudes are not prescribed by any possession of time without title, nor the rights of the public oven and mill, nor fiscal things, or those once incorporated into the fisc ; otherwise, if not yet incorporated.

> *Notat hic Perfector Tournely, iure Gallico nulla temporis possessione praescribi servitutes praediales sine titulo, iura publici furni et molae, et res fiscales, seu quae semel sunt incorporata fisco ; secus, si nondum sint incorporata.*

49 It must be noted besides that many things are said by Roman law not capable of being prescribed, because they are not prescribed in ordinary time, although they can be prescribed in extraordinary time of thirty years and above. Such are stolen things, as I already noted ; likewise things of the fisc, fideicommissa, legacies, the dotal fund, the majorate, adventitious goods, etc., L. *Sicut*, c. *De annali except.*, book 7, tit. 4 ; L. *Sicut in rem* ; L. *Omnes*, c. *de Proescript.* of thirty or forty years, book 7, tit. 39, on the proscription of custom against human law. See de Legibus.

> *Notandum insuper quod plura iure Romano dicantur non posse praescribi, quia non praescribuntur tempore ordinario, licet possint praescribi tempore extraordinario triginta annorum et supra. Sic sunt res furtivae, ut iam notavi ; item res fisci, fidei-commissa, legata, fundus dotalis, maioratus, bona adventitia, etc., L.* Sicut, *c.* De annali except., *lib. 7, tit. 4 ; L.* Sicut in rem *; L.* Omnes, *c.* de Proescript. *triginta vel quadraginta ann., lib. 7, tit. 39, de proscriptione consuetudinis contra legem humanam. Vide de Legibus.*

50 [Note : 1° Time required for prescription must be computed not from hour to hour, but from day to day, nor does a prescription become valid before the last day has wholly flowed by[296]. - 2° To complete possession, the actual possessor can join to his own possession the possession of his author or predecessor, under whatever title he has succeeded to him[297]].

296 Cod. civ. Gall., art. 2260 and 2261.

297 Ibid., 2235.

> *[Nota : 1° Tempus ad praescriptionem requisitum non ab hora ad horam, sed a die ad diem computandum est, nec prius fit valida praescriptio, quam ultimus dies totaliter effluxerit[296]. - 2° Ad complendam possessionem, potest possessor actualis propriae suae possessioni adiungere possessionem sui authoris seu antecessoris, quocumque titulo huic succederit[297]].*
>
> *296 Cod. civ. Gall., art. 2260 et 2261.*
>
> *297 Ibid., 2235.*

51 By Roman law the time required for any prescription whatever had been determined almost everywhere. Since however particular laws have grown old, it will help here to insert the legal dispositions today in force among the various European peoples.

> *Secundum ius Romanum determinatum fuerat fere ubique tempus ad quamcumque praescriptionem requisitam. Cum vero iura particularia fuerint antiquata, iuvabit hic interserere dispositiones legales hodie vigentes apud diversas Europaeanas gentes.*

52 I. From French law[298] the following prescriptions are given :

[298] Ibid., art. 2260 seqq.

> *I. Ex iure Gallico[298] dantur praescriptiones sequentes :*
>
> *[298] Ibid., art. 2260 seqq.*

53 1° Prescription of thirty years, longer than which none is admitted. It is the most universal ; for all actions, whether real or personal, even of moral persons, are extinguished after thirty years, without the defect of title or of good faith being able to be opposed. Possession however must be legitimate in the forum of conscience, in the sense said above. — 2° Prescription of ten or twenty years, by which immovable goods are prescribed, yet with title and good faith. Ten years are required and suffice if he against whom prescription runs is present, that is, if he dwells in the territory of the Court of appeal in which the immovable good is situated. Twenty years are required, however, if he is absent, or pro rata, if he was partly present and partly absent. — 3° Prescription of three years, which with good faith suffices, in every case, for acquiring a movable good.

> *1° Praescriptio triginta annorum, qua longior non admittitur. Est universalissima ; omnes enim actiones, sive reales sive personales, etiam personarum moralium, post triginta annos exstinguuntur, quin defectus tituli vel bonae fidei opponi possit. Possessio tamen debet esse legitima in foro conscientiae, sensu quo supra diximus. — 2° Praescriptio decem vel viginti annorum, qua praescribuntur bona immobilia, cum titulo tamen et bona fide. Decem anni requiruntur et sufficiunt, si ille contra quem praescribitur sit praesens, id est, si habitet in territorio Curiae appellationis in quo situm est bonum immobile. Requiruntur autem viginti anni, si sit absens, vel pro rata, si fuerit partim praesens et partim absens. — 3° Praescriptio trium annorum, quae cum bona fide sufficit, in omni casu, ad bonum mobile acquirendum.*

54 Some add instantaneous prescription, whereby movable things, neither stolen nor lost, are immediately after delivery possessed and acquired by a possessor in good faith ; because for movables possession stands in the place of title, and because the law does not grant a space of three years except for reclaiming a stolen or lost thing. Whether these hold in conscience is disputed probabilistically on both sides, though it is more commonly affirmed. Wherefore, in this case, a possessor in good faith cannot be bound to restitution.

> *Addunt aliqui, praescriptionem instantaneam, quâ scilicet res mobiles, non furtivae, nec amissae, statim post traditionem legitime a possessore bonae fidei possidentur et acquiruntur ; quia pro mobilibus possessio est instar tituli, et quia lex non concedit spatium trium annorum, nisi ad repetendam rem furtivam vel amissam. An haec in conscientia valeant, disputatur utrinque probabiliter, etsi communius affirmetur. Quare, in hoc casu, non potest possessor bonae fidei ad restitutionem adstringi.*

55 II. From Italian law[299]. Prescription of ten years avails even between the absent. Two years, in place of three, are granted for reclaiming a stolen or lost thing. — The rest accords with French law.

[299] Cod. Ital., art. 133 seqq.

> *II. Ex iure Italico[299]. Praescriptio decem annorum valet etiam inter absentes. Biennium, loco triennii, conceditur ad repetendam rem furatam vel amissam. — Caetera iuri Gallico concordant.*
>
> *[299] Cod. Ital., art. 133 seqq.*

56 III. From Austrian law[300]. Ordinary time : 1° As to movable things to be usucapted, it is three years. 2° As to immovable things and predial servitudes, likewise three years, if they are inscribed in the public tables in the name of the usucapient possessor ; otherwise, thirty years. — Extraordinary time : 1° Against the fisc, churches, and other communities enjoying rights of corporation, in place of

three years six years are required, and in place of thirty years, a space of forty years ; 2° against one voluntarily absent (but without fault) from the province where the thing is situated, a year of absence is computed as half a year ; 3° for one acquiring immediately to himself a movable thing from a vitious possessor, or one in bad faith, or one unable to point out his author, the space of ordinary time is doubled.

300 Cod. Austriac., art. 1465-1478.

> *III. Ex iure Austriaco[300]. Tempus ordinarium : 1° Quoad res mobiles usucapiendas, est triennium. 2° Quoad res immobiles et servitutes praediales, item triennium, si sint in publicis tabulis nomine possessoris usucapientis inscripta ; secus, triginta anni. — Tempus extraordinarium : 1° Contra fiscum, ecclesias et alias communitates quae iure corporationis gaudent, loco triennii requiritur sexennium, et loco triginta annorum, spatium quadraginta annorum ; 2° contra absentem voluntarie (at sine culpa), a provincia ubi res sita est, annus absentiae computatur pro semestri ; 3° immediate sibi comparanti rem mobilem a possessore vitioso aut malae fidei, aut non valenti indicare suum authorem, duplicatur spatium temporis ordinarii.*
>
> *300 Cod. Austriac., art. 1465-1478.*

57 IV. From Prussian law[301]. Ordinary time : 1° As to the goods of private persons, whether immovable or movable, possessed with title, it is of ten years between the present. Between the absent, each year of absence is doubled. 2° As to things without title, yet possessed in good faith, it is of thirty years. Nor is the space of time doubled in favor of the absent. — Extraordinary time : 1° against moral persons enjoying rights of corporation, twenty years are required in place of a decade, and forty-four years in place of thirty. 2° Things stolen or snatched away are not prescribed by the first possessor in good faith except after forty years. — Moreover, that a right may be acquired by ordinary prescription, it is necessary that it be exercised at least once a year ; otherwise forty years are required, and the right exercised at least three times in this space.

301 Cod. Boruss., I, 9, § 620-656.

> *IV. Ex iure Borussico[301]. Tempus ordinarium : 1° Quoad bona privatorum, sive immobilia sive mobilia, cum titulo possessa, est decem annorum inter praesentes. Inter absentes, unusquisque annus absentiae duplicatur. 2° Quoad res sine titulo, bona tamen fide possessas, est triginta annorum. Nec duplicatur spatium temporis in favorem absentium. — Tempus extraordinarium : 1° contra personas morales iure corporationis gaudentes, requiruntur, loco decennii, viginti anni, et loco triginta annorum, quadraginta quatuor anni. 2° Res furtivae vel raptae non praescribuntur a primo possessore bonae fidei, nisi post quadraginta annos. — Porro, ut ius per praescriptionem ordinariam acquiratur, necesse est ut exerceatur semel saltem in anno ; secus, requiruntur quadraginta anni, et ius saltem ter in hoc spatio exercitum.*
>
> *301 Cod. Boruss., I, 9, § 620-656.*

58 *You will ask* how prescription is interrupted or suspended.

> Petes *quomodo interrumpatur vel suspendatur praescriptio.*

59 *I answer* 1° It is interrupted, so that it must be begun anew, either naturally, if the one prescribing loses possession, namely natural, or if bad faith supervene upon him ; or civilly, if a lawsuit be moved concerning the thing, unless the mover do this unjustly to interrupt the prescription[302]. It is not interrupted, however, if the thing possessed is transferred from one to another, v. g., by purchase, donation, etc.

302 S. Lig., lib. IV, n° 511.

Resp. *1° Interrumpitur, ita ut de novo inchoari debeat, vel naturaliter, si praescribens amittat possessionem, seilicet naturalem, aut si ipsi mala fides superveniat ; vel civiliter, si lis circa rem moveatur, nisi movens id faciat iniuste ad praescriptionem interrumpendam*[302]*. Non interrumpitur autem, si res possessa ab uno in alium transferatur, v. g., emptione, donatione, etc.*

[302] *S. Lig., lib. IV, n° 511.*

60 2° Prescription is suspended or sleeps when an impediment is cast before it that it proceed no further, yet so that, the impediment removed, it goes on without other detriment than the sleep of the time. This happens in a twofold way : 1° When judgments cannot be exercised, v. g., in time of war or pestilence, in certain kingdoms[303]. 2° When he against whom prescription runs cannot pursue his right. Thus against interdicted persons, against a church lacking a rector, prescription does not run. So by Roman law ; otherwise however by modern laws[304]

[303] Cod. Austriac., art. 1496.

[304] Cod. Gall., art. 2251-2259 ; Ital., art. 2145 ; Boruss., I, 9, § 529.

2° Suspenditur seu dormit praescriptio, quando impedimentum ei obiicitur ne procedat ulterius, ita tamen ut, remoto impedimento, pergat sine alio detrimento quam temporis dormitionis. Quod accidit duplici modo : 1° Quando iudicia exerceri nequeunt, v. g., tempore belli aut pestis, in certis regnis[303]*. 2° Quando is contra quem praescribitur, ius suum prosequi non valet. Sic contra interdictos, contra ecclesiam carentem rectore non currit praescriptio. Ita ex iure Romano ; aliter tamen ex legibus modernis*[304]

[303] *Cod. Austriac., art. 1496.*

[304] *Cod. Gall., art. 2251-2259 ; Ital., art. 2145 ; Boruss., I, 9, § 529.*

61 Note. Notwithstanding legitimate prescription, the benefit of restitution in integrum, that is, rescission of the prescription to be pronounced by the judge, is sometimes granted, v. g. to minors for four years after majority[305]

[305] Cod. Gall., art. 2252.

Nota. Non obstante legitima praescriptione, conceditur quandoque, v. g. minoribus per quatuor annos post maiorennitatem, beneficium restitutionis in integrum, id est rescissio praescriptionis a iudice pronuntianda[305]

[305] *Cod. Gall., art. 2252.*

62 **On liberative prescription.**

De praescriptione liberativa.

63 Among authors, especially modern ones, a distinction is made, respective to liberation : 1° Prescription of longest time, or of thirty years, to which generally all actions are subjected, whether real or personal[306]. Thus usufruct is extinguished when he who had the right does not use it for thirty years. Thus also censuses can be extinguished, not only as to the annual returns, but also as to the very right or capital. In Austria however forty years, and in Prussia forty-four years are required against the fisc and corporations[307].

[306] Ibid., art. 2262.

[307] Cod. Austriac., art. 1472 ; Boruss., I, 9, § 632.

Apud authores, praesertim modernos, distinguitur, respective liberationis : 1° Praescriptio longissimi temporis, seu triginta annorum, cui generatim subiiciuntur omnes actiones, sive reales sive personales[306]. Sic exstinguitur ususfructus, quando ille qui ius habebat, eo non utitur per triginta annos. Sic etiam exstingui possunt census, non solum quoad reditus annuos, sed etiam quoad ipsum ius seu capitale. In Austria tamen quadraginta anni, et in Borussia quadraginta quatuor anni requiruntur contra fiscum et corporationes[307].

306 Ibid., art. 2262.

307 Cod. Austriac., art. 1472 ; Boruss., I, 9, § 632.

64 — 2° Prescription of long time, or of ten years, by which actions for nullity or rescission of contract are extinguished, when the law has not constituted a shorter term[308] — 3° Prescriptions of short time, or of five years, which regard sums payable periodically by way of civil fruits[309] — 4° Prescriptions of very shortest time, v. g. of two years for the stipends of procurators, the case finished ; of one year for the stipends of physicians, servants, merchants, etc. ; of six months for the stipends of workers, guests[310], etc. — Now then

308 Cod. Gall., art. 1304, 1676, 2270.

309 Cod. Gall., art. 2276, 2277 ; Ital., art. 2144.

310 Cod. Gall., art. 2271 seqq.

— 2° Praescriptio longi temporis, seu decem annorum, qua exstinguuntur actiones in nullitatem vel recissionem contractus, quando lex terminum breviorem non constituit[308] — 3° Praescriptiones brevis temporis, seu quinque annorum, quae respiciunt summas solvendas periodice per modum fructuum civilium[309] — 4° Praescriptiones brevissimi temporis, v. g. duorum annorum pro stipendiis procuratorum, causa finita; unius anni pro stipendiis medicorum, famulorum, mercatorum, etc.; sex mensium pro stipendiis operariorum, hospitum[310], etc. — Iam vero

308 Cod. Gall., art. 1304, 1676, 2270.

309 Cod. Gall., art. 2276, 2277; Ital., art. 2144.

310 Cod. Gall., art. 2271 seqq.

65 1° Prescriptions of longest and of long time avail in conscience, provided good faith has persevered through the whole time. So commonly, from the reasons adduced for prescription in general[311]

311 S. Lig., lib. IV, n. 517.

1° Praescriptiones longissimi et longi temporis valent in conscientia, dummodo bona fides toto tempore perseveraverit. Ita communiter, ex rationibus pro praescriptione in genere allatis[311]

311 S. Lig., lib. IV, n. 517.

66 Hence : 1° If your creditor, or your father's creditor, after thirty years demands from you an obligation of which within that time you were unaware, or which you supposed extinguished, you are held to nothing. 2° In Gaul, if you have accepted a donation, and if after a decade the donor wishes to rescind it, v. g., on account of a defect of form in the instrument of donation, it will avail nothing against you.

Hinc : 1° Si tuus vel tui patris creditor, post annos triginta, obligationem qua te intra illud tempus latebat, aut quam exstinctam esse opinabaris, a te repetit, ad nihil teneris. 2° In Gallia, si donationem accepisti, et si post decennium donator eam vult rescindere, v. g., ob vitium formae in instrumento donationis, nihil in te valebit.

67 2° Prescriptions of very shortest time do not avail in conscience, and constitute only a presumption of payment made, as all confess. The reason is because from the laws themselves it is clear that the legislators had no intention of transferring dominion, but only of denying an action in the external forum, lest the administration of justice be rendered too difficult. In these cases therefore « the debtor who is certain that payment has not been made is by no means freed from the obligation of payment[312] ». Otherwise, if, the time assigned by law having passed, he begins to doubt, v. g., whether his author paid ; because then he can make use of the prescription of law, unless the omission of payment be proved.

312 Ibid., n. 516 ; Homo Ap., X, 12.

> *2° Praescriptiones brevissimi temporis non valent in conscientia, nec constituunt nisi presumptionem factae solutionis, ut omnes fatentur. Ratio est quia ex ipsis legibus constat, legislatores non habuisse intentionem transferendi dominium, sed solum negandi actionem in foro externo, ne iustitiae administratio nimis difficilis redderetur. In his igitur casibus « debitor qui certus est solutionem non esse factam, minime ab obligatione solutionis eximitur[312] ». Secus, si transacto tempore a lege assignato incipit dubitare, v. g., an author suus solverit; quia tunc uti potest praescriptione iuris, nisi omissio solutionis probetur.*
>
> *312 Ibid., n. 516; Homo Ap., X, 12.*

68 As to prescriptions of short time, it is doubted whether these avail in conscience ; for among authors some

> *Ad praescriptiones brevis temporis quod attinet, dubitatur an hae in conscientia valeant; nam inter authores alii*

69 313 affirm them to avail and others deny it. In this doubt therefore the saying holds : « In doubtful things blessed is he who possesses », unless the debt not to have been paid be duly proved ; for presumption yields to truth.

313 Ibid.

> *313 eas valere affirmant et alii negant. In hoc igitur dubio valet effatum : « In ambiguis beatus qui possidet », nisi debitum non solutum fuisse rite probetur; praesumptio enim cedit veritati.*
>
> *313 Ibid.*

70 *Nota.* The burdens of Masses, pious legacies, dowries or alms to be distributed, etc., are not prescribed, not even by contrary immemorial custom, as the S. Congregation of the Council declared, 13 Aug. 1843.

> Nota. *Missarum onera, legata pia, dotes vel eleemosynae distribuendae, etc., non praescribuntur ne immemorabili quidem consuetudine contraria, ut declaravit S. Cong. Concilii, 13 aug. 1843.*

71 Moreover, for conscience, prescription of the goods of the Church is not subject to civil laws, but to the rules of canon law, as all know.[314]]

314 Marc. Instit. mor. Aliphons., n. 897-901.

> *Ceterum, pro conscientia, praescriptio bonorum Ecclesiae non legibus civilibus subiacet, sed regulis iuris canonici, ut sciunt omnes.[314]]*
>
> *314 Marc. Instit. mor. Aliphons., n. 897-901.*

72 **ARTICLE III Whether prescription avails in the forum of conscience?**

ARTICULUS III Utrum praescriptio valeat in foro conscientiae?

73 **I say:** Every prescription legitimately made avails in the forum of conscience, so that he who has legitimately prescribed, if after completed prescription he discovers the thing to have been another's, can retain it as his own, nor is he bound in conscience to return it to the former owner appearing, whether his negligence intervened or not ; whether the thing was acquired by gratuitous or by onerous title.

Dico: *Omnis praescriptio legitime facta valet in foro conscientiae, sic ut qui legitime praescripsit, si post praescriptionem completam deprehendat rem fuisse alienam, possit eam retinere ut suam, neque teneatur reddere in conscientia priori domino comparenti, sive huius negligentia intercesserit, sive non ; sive res sit comparata titulo gratuito, vel oneroso.*

74 This is now the common opinion of almost all theologians and jurists, confirmed by the constant practice of both civil and canonical law.

Est nunc communis omnium ferme theologorum et iuristarum, constanti iuris tam civilis quam canonici praxi firmata.

75 *Proof.* 1°. Every legitimate prescription transfers in conscience the dominion of the thing prescribed to the one prescribing, whether the negligence of the former owner intervened or not ; whether the thing was acquired by onerous or by gratuitous title. Therefore it avails in the forum of conscience, so, etc. — *Proof.* of the antecedent. Prescription is defined indistinctly and indefinitely in law : « Acquisition of dominion by continuation of possession for a time defined by law. » *Authent.* Quas actiones, c. de sacrosanctis ecclesiis, book I, tit. 2. *Instit.* book 2, tit. 6, *De usucapionibus*, init. L. 1, ff *De usucapionibus*, and elsewhere. Which disposition of civil law canonical law not only does not disapprove, but positively approves, both by its practice and by its sanctions, cap. *Sanctorum*, Decretal., *De Praescriptionibus*, book II, tit. 26 ; cap. *De quarta*, ibid. ; cap. *Ad aures*, ibid. ; cap. *Quoniam finali*, ibid. and elsewhere. Therefore every legitimate prescription transfers dominion, etc.

Prob. *1°. Omnis praescriptio legitima transfert in conscientia praescribenti dominium rei praescriptae, sive intercesserit negligentia prioris domini, sive non; sive res fuerit comparata titulo oneroso, vel gratuito. Ergo valet in foro conscientiae, sic, etc.* — Prob. *ant. Praescriptio indistincte et indefinite definitur in iure : « Acquisitio dominii per continuationem possessionis tempore lege definito. »* Authent. *Quas actiones, c. de sacrosanctis ecclesiis, ecclesiis, lib. I, tit. 2.* Instit. *lib. 2, tit. 6,* De usucapionibus *init. L. 1, ff* De usucapionibus*, et alibi. Quam iuris civilis dispositionem non solum non reprobat, sed positive approbat ius canonicum, tum sua praxi, tum suis sanctionibus, cap.* Sanctorum*, Decretal.,* De Praescriptionibus*, lib. II, tit. 26; cap.* De quarta*, ibid.; cap.* Ad aures*, ibid.; cap.* Quoniam finali*, ibid. et alibi. Ergo omnis praescriptio legitima transfert dominium, etc.*

76 *Proof.* 2°. It cannot be denied that the prince or the republic can, if it will, on account of the common good, transfer dominions of private persons from one to another independently of the negligence of the owner. Now it willed this in prescription, the common good so requiring. Therefore. — *Proof.* of the minor. And indeed that it willed it is clear from the laws cited and several others. That it willed it for just causes for the common good is shown by the exposition of those causes. The first is : « Lest the dominions of certain things be long and nearly always uncertain », L. 1, ff *de usurpatione et usucapione*, book 41, tit. 3. « And that there might be some end of lawsuits », L. ultima, ff *pro suo*, book eod., tit. 10. And finally, « lest possessors be held by an almost immortal fear », L. *Cum notissimi*, c. *de praescriptione triginta vel quadraginta annorum*, book 7, tit. 39. The second cause is, that the negligence of owners neglecting to look after their things may be whetted, L. *Ut perfectius*, c. *De annali exceptione*, and cap. *Vigilanti*, Decretal., *de Praescriptionibus*.

Prob. 2°. *Negari non potest quin princeps aut respublica possit, si velit, ob bonum commune, transferre dominia privatorum ab uno ad alium independenter a negligentia domini. Atqui id voluit in praescriptione, ita exigente bono commune. Ergo.* — Prob. *min. Et quidem quod voluerit, patet ex iuribus citatis et pluribus aliis. Quod voluerit iustis de causis in bonum commune, ostenditur istarum causarum expositione. Prima est : « Ne diu et fere semper quarumdam rerum dominia incerta essent », L. 1, ff* de usurpatione et usucapione*, lib. 41, tit. 3. « Et ut aliquis litium finis esset », L. ultima, ff* pro suo*, lib. eod., tit. 10. Ac denique, « ne possessores prope immortali timore teneantur », L.* Cum notissimi*, c.* de praescriptione triginta vel quadraginta annorum*, lib. 7, tit. 39. Secunda causa est, ut acuatur negligentia dominorum res suas posequi praetermittentium, L.* Ut perfectius*, c.* De annali exceptione*, et cap.* Vigilanti*, Decretal.,* de Praescriptionibus.

77 Where you see the first and principal cause to be independent of the negligence of owners, and that it proceeds in the forum of conscience. For if prescription did not avail in it, dominions would remain always uncertain, and the more so the longer things were possessed, since with length of time true titles are more easily lost and false ones fabricated. There will be no end of lawsuits and quarrels, at least private ones, in families, while one strives to seize his thing secretly or by force, another to defend it, and possessors will be held by immortal fear and perpetual scruples of conscience. Therefore.

Ubi vides, primam et praecipuam causam esse independentem a negligentia dominorum, et quod procedat in foro conscientiae. Si enim in eo non valeret praescriptio, remanerent semper incerta dominia, et eo magis quo diutius possiderentur, cum diuturnitate temporis veri tituli facilius amittantur et falsi fabricentur. Non erit finis litium et rixarum saltem privatarum in familiis, dum unus clam aut vi rem suam rapere, alter defendere contendet, et possessores immortali timore ac perpetuis conscientiae scrupulis tenebuntur. Ergo.

78 *It is confirmed.* 1° By authority. In the cap. *Sanctorum* cited, Decretal., *de Praescriptionibus*, it is said : « The sanctions of the holy Fathers established » that goods once prescribed « be held quietly and sincerely forever. » Now, if prescription did not avail in the forum of conscience, but the obligation of restoring remained, possessors would not remain « quiet and forever », but anxious always. Therefore.

Confirm. *1° authoritate. Cap.* Sanctorum *cit. Decretal.,* de Praescriptionibus *dicitur : « Sanctorum Patrum sanctiones statuisse » ut bona praescripta « quiete et sincere perpetuo teneantur. » Atqui, si praescriptio non valeret in foro conscientiae, sed remaneret obligatio restituendi, possessores non « quieti et perpetuo », sed anxii semper remanebunt. Ergo.*

79 [Confirmed 2° by this other reason. Prescription acquired according to the laws avails in the forum of conscience, if it does not repugn to equity. Now such a prescription does not repugn to equity. Therefore. — Proof of the minor. That a judgment may be formed of the equity of the law, the law must be considered not as regards private persons, but in itself, before any event whatever. Now the law establishing prescription, thus considered, in no way injures equity ; because then the hope of gain and of loss is equal for any private person : whence private persons could certainly have justly decreed among themselves that dominion be acquired or obligations extinguished by long possession. But what private persons could have done in this matter, public authority could do justly a fortiori on account of the common good. Therefore.]

[Confirm. 2° hac altera ratione. Praescriptio secundum leges acquisita valet in foro conscientiae, si non repugnet aequitati. Atqui talis praescriptio aequitati non repugnat. Ergo. — Prob. min. Ut iudicetur de legis aequitate, consideranda est lex, non quoad privatos, sed in se, ante quemlibet eventum. Atqui lex praescriptionem statuens sic

considerata, nullimodo laedit aequitatem; quia tunc par est pro quolibet privato spes lucri et damni : unde sane potuissent privati inter se iuste decernere quod dominium acquireretur vel obligationes exstinguerentur per diuturnam possessionem. Quod autem potuissent privati in hac materia, authoritas publica a fortiori potuit id iuste facere propter bonum commune. Ergo.]

80 *You will say* 2° the Rule of law, in 6°, has thus: « Without his own fault no one is to be deprived of his thing. »

Dices 2° *Regula iuris, in 6°, sic habet: « Sine sua culpa nemo re sua privandus est. »*

81 *I answer.* The law is not quoted integrally ; for it has thus : « Without his own fault, unless a cause subsist, one is not to be deprived of his thing. » Beneath lies the manifold cause of prescription, as has been proved.

Resp. *legem non referri integre; sic enim habet : « Sine sua culpa, nisi subsit causa, non est aliquis res sua privandus. » Subest multiplex causa praescriptionis, ut probatum est.*

On Justice

1 (*D. Thomas, IIae IIae, q. 58.*)

*(*D. Thomas, IIae IIae, q. 58.*)*

2 Justice is taken in two ways : 1° generally for Christian holiness or for the collection of all the virtues, in which sense Christ said, *Matt.*, V, 20 : Unless your justice abound more than that of the Scribes and Pharisees, etc. 2° It is taken specially for the particular virtue which is second among the Cardinal virtues, by which one is inclined to render to everyone what is his, and of that we treat here.

Iustitia sumitur dupliciter : 1° generaliter pro sanctitate christiana seu pro collectione omnium virtutum, quo sensu dicebat Christus, Matth.*, V, 20 : Nisi abundaverit iustitia vestra plus quam Scribarum et Pharisaeorum, etc. 2° Sumitur specialiter pro virtute particulari, quae est secunda inter Cardinales, qua quis inclinatur ad reddendum unicuique quod suum est, et de illa hic agitur.*

On the definition, object, and subject of justice

1 Justice is defined in law, from Ulpian : « The constant and perpetual will to render to each his right. »

Iustitia definitur in iure, ex Ulpiano : « Constans et perpetua voluntas ius suum cuique tribuens. »

2 By will is not understood the very power of willing, but the act[315] ; whence a habit is defined through the act : which is not unusual. It is called « perpetual », not on the part of the act, which endures perpetually, but on the part of the object, insofar as the just man wills to render to everyone his right perpetually and in all things : whence, if anyone wishes to reduce this definition to due form, let him say that justice is « the virtue inclining the will constantly to render forever to everyone his right ». Hence you have that it belongs to the reason of justice properly so called that it be toward another.

315 Hic q. 58, a. 1, ad 1, 3 and 4.

Per voluntatem non intelligitur ipsa potentia volendi, sed actus[315]; unde definitur habitus per actum : quod non est insolitum. Dicitur « perpetua », non ex parte actus qui perpetuo duret, sed ex parte obiecti, quatenus iustus vult reddere

perpetuo et in omnibus cuique ius suum : unde, si quis velit hanc definitionem ad debitam formam reducere, dicat quod iustitia sit « virtus inclinans constanter voluntatem ad perpetuo reddendum unicuique ius suum ». Hinc habes, esse de ratione iustitiae proprie dictae quod sit ad alterum.

315 Hic q. 58, a. 1, ad 1, 3 et 4.

3 **I say 2°:** The remote material object of justice are external things which are commuted or distributed. The proximate material object are the actions by which these things are commuted and distributed. Because justice differs in this from the other moral virtues, that these rectify primarily and per se man in himself, but justice in order to another[316]. Now the ordination of one man to another is not attended to according to interior affections or passions, but according to exterior actions and things by which men can communicate with one another, such as, as to things, goods of fortune, money, houses, fields, grains, etc. ; as to actions, those by which these things are commuted, namely sale, payment, loan for consumption, loan for use, lease, etc. ; likewise also those actions in which no exterior thing intervenes, as honor, praise, detraction, etc. Therefore.

316 Ibid., a. 9 and 10, c.

***Dico 2°:** Obiectum materiale remotum iustitiae sunt res exteriores quae commutantur aut distribuuntur. Materiale proximum sunt actiones quibus hae res commutantur et distribuuntur. Quia iustitia in hoc differt ab aliis virtutibus moralibus, quod hae rectificent primario et per se hominem in seipso, iustitia vero in ordine ad alium[316]. Atqui ordinatio unius hominis ad alium non attenditur secundum interiores affectiones seu passiones, sed secundum exteriores actiones et res quibus homines sibi invicem communicare possunt, ut sunt, quoad res, bona fortunae, pecuniae, domus, agri, frumenta, etc.; quoad actiones, eae quibus istae res commutantur, nimirum venditio, solutio, mutuum, commodatum, locatio, etc.; item etiam eae actiones in quibus nulla intervenit res exterior, ut honoratio, laudatio, detractio, etc. Ergo.*

316 Ibid., a. 9 et 10, c.

4 The formal object quod of justice is right taken for the just, or the equal owed to another[317] ; because this justice principally intends and effects, as appears from its definition, and thereby it is distinguished from the other virtues. Whence he is called just who makes or preserves this equality, unjust who does not preserve it.

317 Hic q. 57, a. 1, o.

Obiectum formale quod iustitiae est ius acceptum pro iusto, seu aequali alteri debito[317]; quia id principaliter intendit et facit iustitia, ut patet ex eius definitione, et per hoc ab aliis virtutibus distinguitur. Unde dicitur iustus qui hanc aequalitatem facit aut servat, iniustus qui non servat.

317 Hic q. 57, a. 1, o.

5 The formal object quo is the ratio of debt, or right in another, taken for the legitimate faculty of possessing, alienating, etc. For the reason why I render the equal to another is because I owe it to him ; I owe it however because that other has a right to it : for debt and right are correlatives.

Obiectum formale quo est ratio debiti, seu ius in altero, sumptum pro legitima facultate possidendi, alienandi, etc. Ratio enim cur aequale alteri reddam, est quia ipsi debeo; debeo autem quia ille alter habet ius ad illud : debitum enim et ius sunt correlativa.

6 **I say 3°:** The subject of justice is the will[318]. For it is not the intellect, because justice is not ordered per se and primarily to direct any cognitive act ; nor is it the sensitive appetite, because the sensitive

appetite follows sensitive apprehension, but sensitive apprehension does not consider the proportion of one thing to another, which pertains to justice ; for this is proper to reason. Therefore.

[318] Hic q. 58, a. 4, o.

> ***Dico 3°:*** *Subiectum iustitiae est voluntas[318]. Non enim est intellectus, quia iustitia non ordinatur per se primario ad dirigendum aliquem actum cognoscitivum; neque est appetitus sensitivus, quia appetitus sensitivus sequitur apprehensionem sensitivam, apprehensio autem sensitiva non considerat proportionem unius ad alterum, quod spectat ad iustitiam ; hoc enim est proprium rationis. Ergo.*
>
> [318] *Hic q. 58, a. 4, o.*

On the division of justice

[1] Justice, as such, is divided into general or legal, by which it orders citizens to the general or common good, as parts to the whole, and particular, which orders citizen to citizen[319].

[319] Ibid., a. 5, o.

> *Iustitia, ut sic, dividitur in generalem seu legalem, qua ordinat cives ad bonum generale seu commune, ut partes ad totum, et particularem, quae ordinat civem ad civem[319].*
>
> [319] *Ibid., a. 5, o.*

[2] **I say 2°:** Particular justice is adequately subdivided into commutative and distributive, as into essentially distinct species[320]

[320] Hic q. 61, a. 1, c. and ad 5.

> ***Dico 2°:*** *Iustitia particularis subdividitur adaequate in commutativam et distributivam, tamquam in species essentialiter distinctas[320]*
>
> [320] *Hic q. 61, a. 1, c. et ad 5.*

[3] *Proof.* first part[321]. Particular justice is the virtue by which one is ordered to some particular person. Now the order of one to another particular is twofold, namely either of part to part, or of whole to part. The first commutative justice directs, the second distributive. Therefore.

[321] Ibid., o.

> Prob. *prima pars[321]. Iustitia particularis est virtus qua quis ordinatur ad aliquam personam particularem. Atqui duplex est ordo unius ad alterum particularem, nempe vel partis ad partem, vel totius ad partem. Primum dirigit iustitia commutativa, secundum distributiva. Ergo.*
>
> [321] *Ibid., o.*

[4] *Proof.* second part[322]. 1° Since it pertains to the reason of justice that one render what is owed to another, where there is found a special reason of debt to some person, there is a special virtue. Now in commutative and distributive justice a special reason of debt is found. Therefore. — *Proof.* of the minor. In commutative justice there is rendered to each what is his and simply owed, namely what is proper and appropriated to him and within his dominion, although held by another. In distributive justice truly there is rendered to each what is his and owed, not simply, but secundum quid, by the right namely of condignity and of the community of which he is a part ; for the things of the whole are, in a certain way, the things of the parts. Now this reason of debt is diverse, as is plain. For in one way is owed the thing which is the creditor's own and already committed to his dominion ; in another

because it belongs to the whole community of which he is a member, and for that reason, his condignity being considered, he has the right that it become his own. Therefore.

322 Ibid., ad 5.

> Prob. *secunda pars*[322]. *1° Cum ad rationem iustitiae pertineat quod debitum alteri reddat, ubi invenitur specialis ratio debiti alicui personae, ibi est specialis virtus. Atqui in iustitia commutativa et distributiva invenitur specialis ratio debiti. Ergo.* — Prob. *min. In commutativa redditur cuique quod suum est et debitum simpliciter, scilicet quod est ipsi proprium et appropriatum atque in eius dominio, licet ab altero detineatur. In distributiva vero redditur cuique quod suum est et debitum, non simpliciter, sed secundum quid, iure scilicet condignitatis et communitatis cuius est pars; quae enim sunt totius, quodam modo sunt partium. Atqui haec ratio debiti est diversa, ut patet. Alia enim ratione debetur res quae est propria creditoris et iam in eius dominium immissa; alia quia est totius communitatis cuius est membrum, et ea ratione, attenta eius condignitate, habet ius ut fiat propria. Ergo.*
>
> 322 *Ibid., ad 5.*

5 *Nota.* And this is the reason why violation of commutative justice induces the obligation of restitution, not violation of distributive justice precisely qua such.

> Nota. *Et haec est ratio cur violatio iustitiae commutativae inducat obligationem restituendi, non violatio iustitiae praecise qua distributivae.*

6 *Proof.* 2°. The general form of justice is equality[323]. Now a diverse equality is found in commutative and distributive justice. Therefore. — *Proof.* of the minor. In commutative justice there is an absolute equality of thing to thing, which is called arithmetical proportion, as if you owe a hundred, you render a hundred ; in distributive there is an equality not absolute, but of proportion, which is called geometrical, as if, v. g., in the distribution of the common good ten coins be given to him who has six degrees of merit, five be given to him who has three degrees. Therefore.

323 Ibid., a. 2, c. and ad 2.

> Prob. 2°. *Generalis forma iustitiae est aequalitas*[323]. *Atqui reperitur diversa aequalitas in iustitia commutativa et distributiva. Ergo.* — Prob. *min. In commutativa est aequalitas absoluta rei ad rem, qua dicitur proportio arithmetica, ut si debeas centum, reddas centum; in distributiva est aequalitas non absoluta, sed proportionis, qua dicitur geometrica, ut si, v. g., in distributione boni communis dentur decem nummi ei qui habet sex gradus meriti, dentur quinque ei qui habet tres gradus. Ergo.*
>
> 323 *Ibid., a. 2, c. et ad 2.*

7 *You will ask* whether between father and son not emancipated, between master and slave, between husband and wife there is justice properly so called.

> Petes *utrum inter patrem et filium non emancipatum, inter dominum et mancipium, inter virum et uxorem sit iustitia proprie dicta.*

8 *I answer.* There is justice properly so called, yet not altogether perfect[324] ; because, although the son, as son, is something of the father, as a part of him, the slave something of the master, as his instrument, the wife something of the husband, who is her head and to whom she is subject, from which aspect there is not between them perfect justice toward another : nevertheless, insofar as these men are distinct supposita, the son from the father, the slave from the master, the wife from the husband ; justice under that aspect is toward another, and thus the reason of justice properly so called is saved, though not altogether perfect.

[324] Hic q. 57, a. 4, o.

> Resp. *esse iustitiam proprie dictam, non tamen omnino perfectam*[324]*; quia, licet filius, ut filius, sit aliquid patris, tamquam pars eius, mancipium aliquid domini, ut eius instrumentum, uxor aliquid viri, qui est eius caput et cui subiecta est, ex quo capite non est inter illos perfecta iustitia ad alterum : attamen, quatenus homines isti sunt supposita distincta, filius a patre, mancipium a domino, uxor a viro; iustitia sub ista ratione est ad alterum, sicque salvatur ratio iustitiae proprie dictae, licet non omnino perfecta.*
>
> [324] *Hic q. 57, a. 4, o.*

On the Act of Justice as Such, namely Judgment

[1] (*D. Thomas, IIae IIae, q. 60.*)

> (D. Thomas, IIae IIae, q. 60.)

Whether judgment is lawful?

[1] Judgment, as taken here, is the definition or determination of right or of the just ; but the just, as appears from what has been said, is the equal owed to another, which is the object of justice[325]. From which it is clear that it is an act of justice, because it belongs to justice to define and determine what is just and the equal owed to another.

[325] Hic q. 60, a. 1, o.

> *Iudicium, prout hic sumitur, est definitio seu determinatio iuris seu iusti; iustum autem, ut patet ex dictis, est aequale alteri debitum, quod est obiectum iustitiae*[325]*. Ex quo patet quod sit actus iustitiae, quia iustitiae est definire et determinare id quod est iustum et aequale alteri debitum.*
>
> [325] *Hic q. 60, a. 1, o.*

[2] We treat therefore of judgment taken in this sense, not only as it is exercised outwardly by a judge between litigating parties, but also as it is exercised, whether outwardly or inwardly, by private persons concerning the life, goods, and morals of others.

> *Agimus itaque de iudicio hoc sensu sumpto, non solum prout exercetur exterius a iudice inter partes litigantes, sed etiam prout exercetur, sive exterius sive interius, a privatis circa vitam, res et mores aliorum.*

[3] **I say:** Judgment clothed with due circumstances is licit[326]. It is against the Waldenses and Anabaptists.

[326] Ibid., a. 2, o.

> ***Dico:*** *Iudicium debitis circumstantiis vestitum, est licitum*[326]*. Est contra Waldenses et Anabaptistas.*
>
> [326] *Ibid., a. 2, o.*

[4] *Proof.* 1° from the Scriptures. *Deut.*, XVI, 18, God says to Moses : Thou shalt appoint judges and magistrates in all thy gates,... that they may judge the people with just judgment[327].

[327] Ibid., in arg. Sed contra

> Prob. *1° ex Scripturis.* Deuter.*, XVI, 18, dicit Deus Moysi : Iudices et magistros constitues in omnibus portis tuis,... ut iudicent populum iusto iudicio*[327].
>
> [327] *Ibid., in arg. Sed contra*

5 And chap. 1, 16 : Judge that which is just. Which Christ repeats, *John*, VII, 24. The *Apostle*, to the *Romans*, XIII, 4, asserts that not without cause does the judge carry the sword ; for he is God's minister, an avenger in wrath upon him who does evil. Peter judged Ananias and Saphira, *Acts*, V, 3 ; Paul the incestuous Corinthian, *1 Cor.*, V, 3.

Et cap. 1, 16 : Quod iustum est iudicate. Quod repetit Christus, Ioann., *VII, 24.* Apost., *ad* Rom., *XIII, 4, asserit quod non sine causa iudex gladium portat; Dei enim minister est, vindex in iram ei qui malum agit. Petrus,* Act., *V, 3, iudicavit Ananiam et Saphiram; Paulus,* I Cor., *V, 3, incestuosum Corinthium.*

6 *Proof.* by reason. Every act of virtue is licit. Now judgment clothed with due circumstances is an act of virtue, namely of justice, as was said[328]. Therefore.

328 Ibid., o.

Prob. *ratione. Omnis actus virtutis est licitus. Atqui iudicium debitis circumstantiis vestitum est actus virtutis, scilicet iustitiae, ut dictum est*[328]*. Ergo.*

328 Ibid., o.

7 I said, « clothed with due circumstances », which are three[329] : first, that it proceed from the inclination of justice ; second, that it proceed from the authority of the one presiding ; third, that it be uttered according to right reason and prudence. The first condition can be understood in a twofold sense : first, that judgment not be against justice ; second, that it be from love of justice, and not from some human motive, say hatred, anger, avarice, vain glory, etc. Through defect of the first condition understood in the first sense, judgment is perverse and unjust. Through defect of the same condition understood in the second sense, it is not properly an unjust judgment, yet evil and illicit gravely or lightly according to the quality of the motive. Through defect of the second condition, it is usurped judgment. But this regards public judgment ; since justice is found in private persons, there can be in them also true and right judgment without authority. Through defect of the third condition, it is rash judgment, namely when someone for light reasons judges doubtful and hidden things.

329 Ibid.

Dixi, « vestitum debitis circumstantiis », quae sunt tres[329] *: prima, ut procedat ex inclinatione iustitiae; secunda, quod procedat ex authoritate praesidentis; tertia, quod proferatur secundum rectam rationem prudentiae. Prima conditio potest intelligi duplici sensu : primo, quod iudicium non sit contra iustitiam; secundo, quod sit ex amore iustitiae, et non ex aliquo motivo humano, puta odio, ira, avaritia, inani gloria, etc. Defectu primae conditionis primo sensu intellectae, iudicium est perversum et iniustum. Defectu eiusdem conditionis secundo sensu intellectae, non est proprie iniustum iudicium, malum tamen et illicitum graviter vel leviter pro qualitate motivi. Defectu secundae conditionis, est iudicium usurpatum. Sed id spectat iudicium publicum; cum enim iustitia sit in privatis, potest etiam in eis esse verum et rectum iudicium absque authoritate. Defectu tertiae conditionis, est iudicium temerarium, quando nempe quis ob leves rationes iudicat dubia et occulta.*

329 Ibid.

On suspicion and rash judgment

1 *Nota* that suspicion, doubt, opinion, and judgment, where the evil of one's neighbor is in question, are often taken as one and the same by the learned and the unlearned. The reason of this confusion is, because all these acts are about the evil of one's neighbor and from insufficient indications, insofar as they are rash, as they are taken here.

> Nota *suspicionem, dubitationem, opinionem et iudicium, ubi agitur de malo proximi, saepe pro uno et eodem sumi apud doctos et indoctos. Huius confusionis ratio est, quia hi omnes actus sunt de malo proximi et ex insufficientibus indiciis, quatenus sunt temerarii, prout hic sumuntur.*

2 However, if we speak strictly, all these acts are distinguished from one another. For doubt is, when the mind is moved toward either side, but assents to neither, and remains suspended between both. Suspicion is, when the intellect, receding from the doubt or mean, is more inclined to the assent of one side, yet so that it does not yet assent. Some do not distinguish it from opinion except by more and less, and will it to be a weak opinion or one with great misgiving ; opinion however is assent to one side with fear of the opposite side. Judgment is certain and firm assent to one side, without fear of the opposite side.

> *Attamen, si stricte loquamur, hi omnes actus inter se distinguuntur. Etenim dubitatio est, cum animus in utramque partem movetur, sed neutri assentitur, manetque pendulus inter utramque. Suspicio est, cum intellectus a dubio seu medio recedens, magis inclinatur in assensum unius partis, sic tamen ut nondum assentiatur. Quidam eam non distinguunt ab opinione, nisi secundum plus et minus, voluntque eam esse opinionem debilem seu cum magna formidine; opinio autem est assensus in unam partem, cum formidine partis oppositae. Iudicium est assensus certus et firmus in unam partem, sine formidine partis oppositae.*

3 We treat here of rash suspicion insofar as it comprehends doubt and opinion, and the principal question is whether it is of its genus mortal sin, so that in the individual it is always mortal when it is fully deliberate concerning the grave evil of one's neighbor. There is difficulty also about the mind of Saint Thomas. That we may begin from the more certain,

> *Nos hic agimus de suspicione temeraria prout comprehendit dubitationem et opinionem, et quaestio praecipua est, utrum sit ex genere suo peccatum mortale, ita quod in individuo sit semper mortalis, quando est plene deliberata de gravi malo proximi. Et est etiam difficultas de mente S. Thomae. Ut a certioribus incipiamus,*

4 **I say 1°:** Rash judgment is of its genus mortal sin. This is certain and common with the Author[330]

330 Hic q. 60, a. 3, o.

> ***Dico 1°:*** *Iudicium temerarium est ex genere suo peccatum mortale. Est certa et communis cum Authore[330]*
>
> *330 Hic q. 60, a. 3, o.*

5 *Proof.* 1° from Scripture. *Matt.*, VII, 1, it is said : Judge not, that ye be not judged. *Luke*, VI, 37 : Judge not, and ye shall not be judged. To the *Romans*, XIV, 4 : Who art thou that judgest another man's servant?

> Prob. *1° ex Scriptura.* Matth.*, VII, 1, dicitur : Nolite iudicare, ut non iudicemini.* Luc.*, VI, 37 : Nolite iudicare, et non iudicabimini. Ad* Rom.*, XIV, 4 : Tu quis es, qui iudicas alienum servum?*

6 *Proof.* 2°. Rash judgment is not without injury and contempt of one's neighbor, and therefore is against justice and charity[331]. Therefore it is of its genus mortal sin.

331 Ibid.

> Prob. 2°. *Iudicium temerarium non est sine iniuria et contemptu proximi, proindeque est contra iustitiam et charitatem[331]. Ergo ex genere suo est peccatum mortale.*
>
> *331 Ibid.*

7 *It is confirmed.* Everyone has the right that a good estimate be had of him by others, so long as he is not proved wicked. Now he who judges rashly of the evil of his neighbor acts against this right. Therefore he is against justice. Also against charity : 1° because against that principle of charity and right reason :

> Confirm. *Unusquisque habet ius ut bona aestimatio de eo habeatur ab aliis, quamdiu non probatur malus. Atqui qui iudicat temerarie de proximi malo, contra istud ius agit. Ergo est contra iustitiam. Etiam contra charitatem : 1° quia contra illud charitatis et rectae rationis principium :*

8 « What you would not have done to yourself, do not to another ; » 2° because it cannot be that he who thus judges of his neighbor be well disposed toward him.

> *« Quod tibi non vis fieri, alteri ne feceris; » 2° quia fieri non potest ut qui sic de proximo iudicat, illi sit bene affectus.*

9 **I say 2°:** It is more probable that rash suspicion concerning the evil of one's neighbor, insofar as it comprehends doubt and opinion, is of its genus mortal sin, and accordingly in the individual always mortal sin, when it is fully deliberate concerning the grave evil of one's neighbor.

> ***Dico 2°:*** *Probabilius est suspicionem temerariam de malo proximi, prout comprehendit dubitationem et opinionem, esse ex genere suo peccatum mortale, proindeque in individuo esse semper peccatum mortale, quando est plene deliberata de gravi malo proximi.*

10 *Proof.* That is mortal sin of its genus which is contrary to justice and charity. Now such is rash suspicion. Therefore. — *Proof.* of the minor. 1° Because, as Saint Thomas says[332], it is not without contempt of one's neighbor, and therefore does him an injury. 2° Everyone has the right to be esteemed upright by others, so long as his malice does not sufficiently appear. Now he acts against this right who rashly suspects evil of him, or doubts of his uprightness. Therefore against justice. Also against charity : 1° because he acts against this first principle of all social life : « What you would not have done to yourself, do not to another ; » 2° because it can scarcely be that he who rashly suspects evil of his neighbor be well affected toward him. Therefore.

332 Ibid., ad 2 and a. 4, o.

> Prob. *Illud est peccatum ex genere suo mortale, quod contrariatur iustitiae et charitati. Atqui talis est suspicio temeraria. Ergo.* — Prob. *min. 1° Quia, ut dicit S. Thomas[332], non est sine contemptu proximi, et ideo iniuriatur ei. 2° Unusquisque habet ius ut aestimetur ab aliis probus, quamdiu non apparet sufficienter eius malitia. Atqui contra istud ius agit qui de eo temerarie malum suspicatur, aut de eius probitate dubitat. Ergo contra iustitiam. Etiam contra charitatem : 1° quia agit contra hoc primum totius vitae socialis principium : « Quod tibi non vis fieri, alteri ne feceris; » 2° quia vix fieri potest ut qui temerarie suspicatur malum de proximo, illi bene afficiatur. Ergo.*
>
> 332 *Ibid., ad 2 et a. 4, o.*

11 The adversaries answer, and it is their chief foundation, that there is indeed injury and contempt, but incomplete ; because suspicion is something incomplete in the genus of judgment.

> *Respondent adversarii, et est praecipuum eorum fundamentum, esse quidem iniuriam et contemptum, sed incompletum; quia suspicio est quid incompletum in genere iudicii.*

12 *On the contrary.* Grant that contempt is incomplete in the genus of judgment, thence it is not proved that this incomplete contempt is not mortal of its genus ; because, although it is incomplete in the genus of judgment, it is nevertheless complete in the genus of a perfectly deliberate act. So, v. g., fully

voluntary doubt in matters of faith is an incomplete judgment and incomplete contempt in the genus of judgment ; but, because it is complete in the genus of a perfectly deliberate act, it is sufficient for mortal sin. So again detraction concerning one's neighbor before a single upright man only is incomplete contempt, and yet, according to the highly probable opinion, it is mortal sin of its genus. Or, if you will, detraction before ten is less complete contempt than detraction before twenty, and yet in both cases it is mortal sin of its genus.

> Sed contra. *Esto contemptus sit incompletus in genere iudicii, inde non probatur istum contemptum incompletum non esse mortalem ex genere suo; quia, licet sit incompletus in genere iudicii, est tamen completus in genere actus perfecte deliberati. Sic, v. g., dubitatio plene voluntaria in materia fidei est iudicium incompletum et contemptus incompletum in genere iudicii; sed, quia est completus in genere actus perfecte deliberati, est sufficiens ad peccatum mortale. Sic iterum detractio de proximo apud unum solum virum probum, est contemptus incompletus, et tamen, iuxta valde probabilem sententiam, est peccatum mortale ex genere. Aut, si vis, detractio apud decem est contemptus minus completus quam detractio apud viginti, et tamen utrobique est peccatum mortale ex genere.*

13 *Proof.* 2°, and this chief refuge of the adversaries is more strongly shaken. Rash suspicion of the gravest evils of one's neighbor is in the individual mortal sin. Therefore rash suspicion of its genus is mortal sin. — The consequence is plain ; because what is venial of its genus, however much it be increased within its species, remains venial, nor becomes mortal unless by some circumstance it be drawn to another species, as theologians commonly teach after D. Thomas, Ia 2ae, q. 88, a. 5. — *Proof.* of the antecedent. Rash suspicion gravely contemns one's neighbor in the grave case and inflicts on him a grave injury. Therefore. — *Proof.* of the antecedent. No one exists who does not think himself gravely contemned and suffering grave injury, if someone without cause suspects of him, or even doubts, that he is a sodomite, incestuous with his mother, a heretic, a magician, a sorcerer, etc., so that he would rather lose a notable sum of money than have such a suspicion held of him. I appeal to the very adversaries as witnesses.

> Prob. *2° et magis concutitur hoc praecipuum adversariorum effugium. Suspicio temeraria de gravissimis malis proximi est in individuo peccatum mortale. Ergo suspicio temeraria ex genere suo est peccatum mortale. — Patet consequentia; quia quod est veniale ex genere suo, quantumvis augeatur intra suam speciem, remanet veniale, nec fit mortale, nisi per aliquam circumstantiam trahatur ad aliam speciem, ut docent communiter theologi post D. Thomam, Ia 2ae, q. 88, a. 5.* — Prob. *ant. Suspicio temeraria in casu graviter contemnit proximum et gravem ei infert iniuriam. Ergo.* — Prob. *ant. Nemo est qui non existimet se graviter contemni et gravem pati iniuriam, si quis de illo sine causa suspicetur, aut etiam dubitet, quod sit sodomita, incestuosus cum matre, haereticus, magus, sortiarius, etc., ita quod mallet notabilem pecuniae summam perdere, quam talem de se haberi suspicionem. Testes ipsos adversarios appello.*

14 There remains the difficulty about the mind of D. Thomas.

> *Restat difficultas de mente D. Thomae.*

15 The conclusion is therefore proved from D. Thomas, or rather the argument already made from him in the prior proofs is renewed. For, according to Saint Thomas here a. 3, c, rash judgment is mortal sin of its genus, because it is with contempt of one's neighbor. Now, according to the same holy Doctor in the reply to the second objection and in the body of the next article, suspicion also is with contempt of one's neighbor : « From this very fact, he says, that anyone holds an evil opinion of another without sufficient cause, he unduly contemns him, and therefore does him an injury » ; so that the holy Doctor speaks in exactly the same way of both. Therefore.

Probatur ergo conclusio ex D. Thoma, aut potius instauratur argumentum ex eo iam factum in probationibus prioribus. Ideo, iuxta S. Thomam hic a. 3, c, iudicium temerarium est peccatum mortale ex genere suo, quia est cum contemptu proximi. Atqui, iuxta eumdem S. Doctorem in resp. ad 2 et in c articuli seq., suspicio est etiam cum contemptu proximi : « Ex hoc ipso, inquit, quod aliquis malam opinionem habet de alio sine causa sufficienti, indebite contemnit ipsum, et ideo iniuriatur ei; » ita ut eodem prorsus modo loquatur de utroque S. Doctor. Ergo.

16 Serra answers that Saint Thomas speaks of suspicion in the second degree, in which it is taken for certain judgment.

Respondet Serra, S. Thomam loqui de suspicione in secundo gradu, in quo pro iudicio certo accipitur.

17 *On the contrary.* Saint Thomas speaks of that suspicion of which he speaks in the argument to which he responds. But in the argument to which he responds, he speaks of suspicion as distinguished from certain judgment. It is plain to one reading the argument, which is thus : « By illicit judgment some injury is done to one's neighbor. But evil suspicion consists in the mere opinion of a man, and thus does not seem to pertain to the injury of another. Therefore the judgment of suspicion is not illicit. »

Sed contra. *S. Thomas loquitur de ea suspicione de qua loquitur in argumento cui respondet. Sed in argumento cui respondet, loquitur de suspicione prout distinguitur a iudicio certo. Patet legenti argumentum, quod est sic : « Per iudicium illicitum fit aliqua iniuria proximo. Sed suspicio mala in sola opinione hominis consistit, et sic non videtur ad iniuriam alterius pertinere. Ergo suspicionis iudicium non est illicitum. »*

18 *You will object* : Saint Thomas here a. 3, c., distinguishing three degrees of suspicion, says : « The first degree indeed is, that a man from light indications begin to doubt of the goodness of someone, and this is venial and light sin ; it pertains, says Augustine, to human temptation, without which this life is not led!...[333] »

333 Aug., in Ps. LXX enarr., n. 3.

Obiicies *: S. Thomas hic a. 3, c., distinguens tres gradus suspicionis, dicit : « Primus quidem gradus est, ut homo ex levibus indiciis de bonitate alicuius dubitare incipiat, et hoc est veniale et leve peccatum; pertinet enim, inquit Augustinus, ad tentationem humanam, sine qua vita ista non ducitur!...[333] »*

333 Aug., in Ps. LXX enarr., n. 3.

19 *I answer.* Saint Thomas, like Saint Augustine on whom he is founded, is speaking of sudden suspicion not fully deliberate. Which is plain first from his very words : « That, he says, a man begin to doubt » ; for no one is said to begin to doubt who after full advertence deliberately doubts and continues to doubt, especially of the grave evil of his neighbor. Second it is plain from the reason he adduces from Augustine, namely that such suspicion « pertains to human temptation, without which this life is not led. » Moreover, rash suspicion fully deliberate of the grave evil of one's neighbor pertains not to human but to diabolical temptation, as Bannez well notes ; and it is false that the life of many is not led without such suspicions.

Resp. *S. Thomam, sicut et S. Augustinum in quo fundatur, loqui de suspicione repentina et non plene deliberata. Quod patet primo ex ipsis eius verbis : « Ut, inquit, homo dubitare incipiat; » nemo enim dicitur incipere dubitare, qui post plenam advertentiam deliberate dubitat et dubitare pergit, maxime de gravi malo proximi. Secundo patet ex ratione quam affert ex Augustino, scilicet quod talis suspicio « pertineat ad tentationem humanam, sine qua haec vita non ducitur. » Porro suspicio temeraria plene deliberata de gravi malo proximi, non ad humanam, sed ad diabolicam tentationem pertinet, ut bene notat Bannez; et falsum est plurium vitam sine talibus suspicionibus non duci.*

20 *To be noted for practice.*

> Notanda pro praxi.

21 That suspicion or rash judgment be mortal sin in the individual, three things are required : First, that it be perfectly deliberate ; second, that it be fully rash ; third, that it be concerning the grave evil of one's neighbor : if any one of these is wanting, there will be only venial sin.

> *Ut sive suspicio sive iudicium temerarium sit peccatum mortale in individuo, tria requiruntur : Primum, quod sit perfecte deliberatum; secundum, quod sit plene temerarium; tertium, quod sit de gravi malo proximi : quorum si unum desit, erit tantum peccatum veniale.*

22 As to the first, Sylvius notes, after Lessius and others, that for mortal sin in suspicious or rash judgment it does not suffice to suspect or judge howsoever deliberately ; but that you must advert to and know, or at least doubt that you judge or suspect, from insufficient signs and concerning a grave matter ; otherwise, he says, the judgment will not be voluntary, at least as regards its being rash or concerning a grave matter. This indeed I admit as regards the condition of the grave matter, not only on account of the said reason, but because then you do not gravely contemn your neighbor. As to the insufficiency of the indications truly, it must, I think, be restricted thus : unless, blinded voluntarily by malevolence, envy, hatred, or similar passion, regarding the insufficiency of the indications you neglect to examine them and precipitate your judgment ; for then you virtually advert to it, since you ought and can advert. And besides, otherwise there would scarcely ever be any rash judgment, since a man ill-disposed toward another easily persuades himself that the indications he has of the evil of an enemy are sufficient.

> Circa primum, *notat Sylvius, post Lessium et alios, ad peccatum mortale in suspicionis seu iudicio temerario non sufficere qualitercumque deliberate suspicari aut iudicare; sed quod debeas advertere et scire, aut saltem dubitare te et ex signis insufficientibus et de re gravi iudicare aut suspicari; alias, inquit, iudicium non erit voluntarium, saltem ex parte qua est temerarium aut de re gravi. Id quidem admitto quoad conditionem rei gravis, non solum propter dictam rationem, sed quia tunc non contemnis graviter proximum. Quoad vero insufficientiam indiciorum, restringendum puto sic : nisi ex malevolentia, invidia, odio, similive passione voluntarie excaecatus circa insufficientiam indiciorum, ea discutere negligas et iudicium praecipites; tunc enim virtualiter illam advertis, cum debeas et possis advertere. Et insuper alioquin vix ullum foret iudicium temerarium, cum homo male affectus erga alterum, facile sibi persuadeat indicia quae habet de malo inimici esse sufficientia.*

23 As to the second, rightly did I say that rash judgment is not mortal sin unless it be fully rash, since its whole malice arises from rashness : so that, if it were in no way rash, that is, if altogether sufficient indications were present, it would by no means be sin ; for then it would be prudent and reasonable judgment, nor through it would injury be inflicted on one's neighbor. For the neighbor has lost his right of reputation and good estimation with respect to him whose guilt is proved by sufficient indications.

> *Circa secundum, merito dixi iudicium temerarium non esse peccatum mortale, nisi sit plene temerarium, cum tota eius malitia ex temeritate oriatur : ita ut, si nullo modo esset temerarium, hoc est, si adessent omnino sufficientia indicia, nullatenus foret peccatum; quia tunc esset iudicium prudens et rationabile, neque per illud inferretur iniuria proximo. Proximus enim amisit ius suae famae et bonae existimationis respectu illius cui eius erimen sufficientibus indiciis probatur.*

24 But if the indications are not indeed altogether sufficient, yet approach near sufficiency, neither will it be mortal sin ; because great probability does not much differ from moral certitude : whence there will not be grave rashness, nor consequently grave injury.

> *Quod si indicia non sint quidem omnino sufficientia, proxime tamen accedant ad sufficientiam, non erit etiam peccatum mortale; quia magna probabilitas non multum distat a morali certitudine : unde non erit gravis temeritas, nec proinde gravis iniuria.*

25 And because to judge with certainty is somewhat more than simply to opine, to opine than to suspect, and to suspect than to doubt, therefore greater indications are required for judging than for suspecting, and for suspecting than for doubting.

> *Et quia iudicare certo, est quid plus quam simpliciter opinari, opinari quam suspicari, et suspicari quam dubitare, ideo maiora indicia requiruntur ad iudicandum quam ad suspicandum, et ad suspicandum quam ad dubitandum.*

26 As to the third, note that grave evil in this matter, as in the matter of detraction, is that whole and only thing which, the quality of persons and fact being considered, is highly disgraceful and gravely harmful to the honor, reputation, and good estimation of one's neighbor, whether sin or not ; because the malice of this sin consists in contempt of one's neighbor.

> *Circa tertium nota, malum grave in hac materia, sicut in materia detractionis, esse id omne et solum quod, attenta personarum et facti qualitate, est valde probrosum ac graviter nocivum honori, famae ac bonae existimationi proximi, sive peccatum sit sive non; quia malitia huius peccati consistit in contemptu proximi.*

27 Although therefore mortal sin per se is grave matter, and venial sin light matter, nevertheless per accidens, from the quality of persons or of fact, the contrary often happens. For there are some who are not defamed among men even for certain mortal sins, nor are they ashamed themselves, but sometimes are counted to their praise, v. g., dueling or fornication with respect to a soldier, drunkenness with respect to a commoner in these parts, concerning which if you judge rashly you do not sin mortally, because with respect to them it is not grave matter. On the contrary there are some who are much contemned for venial sins, or even for things that are not sins : as if you judge rashly of a bishop or the supreme Pontiff that he is habitually a liar.

> *Quamvis ergo peccatum mortale secundum se sit materia gravis, et peccatum veniale materia levis, per accidens tamen, ex personarum aut facti qualitate, contrarium saepe contingit. Quidam enim sunt qui ex certis peccatis etiam mortalibus non diffamantur apud homines, nec ipsi verecundantur, sed quandoque laudi ducunt, v. g., duellum aut fornicatio respectu militis, ebrietas respectu plebeii in his partibus, de quibus si haec temerarie iudices, non peccas mortaliter, quia respectu illorum non est materia gravis. E contra quidam sunt qui ex peccatis venialibus, aut etiam ex his quae peccata non sunt, multum contemnuntur : ut si de episcopo vel summo Pontifice temerarie iudices esse mendacem habitualiter.*

28 [On the contrary, S. Ligorius[334] holds suspicion to be only venial sin of its genus. « Suspicion, he says, and rash doubt seem of their genus to be sins only venial, especially if they proceed from error of the intellect, whereby the indications are apprehended as sufficient. So Layman[335], from Saint Thomas..., against many who think it mortal. The reason is, because commonly suspicion is only a kind of incitement to assent ; for there remains in the mind of the one suspecting in some way a good estimation of his neighbor. Therefore no grave injury is done him, since he is not wholly cast down from possession of a good name ; yet some injury is done, because he is rashly doubted. » I said, « especially if from error », because such, since it is not per se voluntary, nor pertinacious, merits

excuse ; if truly from malevolence you persist in grave suspicion, it will be mortal, as Lessius etc. teach, on account of the gravity of the injury. However the same holds of positive doubting arising from malevolence, without cause ; for it proceeds from contempt of the other, and consequently is reckoned grave injury. »]

334 Lib. IV, n. 963.

335 N. 466, 3°.

[E contra, S. Ligorius[334] censet suspicionem esse tantum ex genere suo peccatum veniale. « Suspicio, inquit, et dubitatio temeraria ex genere suo videntur esse peccata tantum venialia, maxime si procedant ex errore intellectus, quo indicia ut sufficientia apprehenduntur. Ita Layman[335], ex S. Thoma..., contra multos qui putant esse mortale. Ratio est, quia communiter suspicio tantum est concitatio quaedam ad assensum; manet enim in mente suspicantis aliquo modo bona existimatio proximi. Ergo non fit illi gravis iniuria, cum non totaliter deturbetur de possessione bona famae; fit tamen aliqua, quia temere dubitatur. » Dixi, « maxime si ex errore », quia talis, cum non sit per se voluntaria, nec pertinax, meretur excusationem; si vero ex malevolentia in suspicione gravi persistas, erit mortale, ut docent Lessius, etc., ob iniuriae gravitatem. Attamen idem est de dubitatione positiva orta ex malevolentia, absque causa; procedit enim ex contemptu alterius, proindeque gravis iniuria reputatur. »]

334 Lib. IV, n. 963.

335 N. 466, 3°.

29 With S. Ligori Gury agrees in this[336].

336 Ubi supra, n. 964.

S. Ligorio in hoc consentit Gury[336].

336 Ubi supra, n. 964.

30 The same Doctor[337] against Cajetan, Navarrus, and several others saying that suspicion howsoever rash can never reach mortal sin, holds as more probable the opposite opinion, « if suspicion or doubt were made without indications concerning most grave sins, as to suspect a pious religious that he is a heretic..., or a man commonly held as Catholic that he is a Jew or atheist. The reason, because perchance greater injury is inflicted on them by suspecting such things, than if a certain judgment were had of them concerning ordinary grave delicts ». And this accords with what Billuart said above concerning the third.

337

Idem Doctor[337] contra Caietanum, Navarrum et plures alios dicentes suspicionem quantumvis temerariam nunquam pertingere posse ad mortale, ut probabiliorem tenet sententiam oppositam, « si suspicio sive dubitatio sine indiciis fieret de peccatis gravissimis, ut esset de pio religioso suspicari quod sit haereticus..., vel de viro communiter habito ut catholico quod sit Iudaeus vel atheus. Ratio, quia forte maior iniuria iis irrogatur talia suspicando, quam si certum iudicium haberetur illorum de delictis gravibus ordinariis ». Et hoc consonat cum eo quod supra dixit Billuart circa tertium.

337

31 Thence it appears that disputants among themselves, whether evil suspicion be mortal or venial sin of its genus, agree in deciding that it can reach mortal sin, for diverse reasons, namely either from its nature, when grave matter occurs, or from aggravating circumstances. This must be retained, as

regards practice, whatever be judged of the speculative question, about which it is licit for each to abound in his own sense.

> *Inde apparet disputantes inter se, an mala suspicio sit ex genere suo peccatum mortale aut veniale, convenire in decernendo quod pertingere possit ad mortale, propter rationes diversas, scilicet vel ex natura sua, cum materia gravis fit, vel ex circumstantiis aggravantibus. Hoc retinendum est, quantum ad praxim, quidquid sit de quaestione speculativa, circa quam cuique licet in sensu suo abundare.*

32 [Note what S. Ligorius warns[338] : « In this matter let the confessor observe that many simple persons accuse themselves that they judged rashly. He must bring it about that they know : 1° when sufficient grounds are present for judging thus of some action, the judgment is not rash, but just, and therefore not sin ; 2° very often, such judgments are those they are bound to hold, lest some sin be impeded, v. g. lest servants steal, lest daughters sin by consorting with men, and other things of this kind. Only let care be taken lest suspicions of this kind be communicated to others without necessity. »]

338 *Homo apost.*, XI, 2.

> *[Nota quod monet S. Ligorius[338] : « In hac materia advertat confessor multos rudes se accusare quod temere iudicarint. Oportet efficere ut ipsi sciant : 1° cum adsunt sufficientia momenta ita iudicandi de aliqua actione, iudicium non esse temerarium, sed iustum, adeoque non peccatum; 2° interdum plurimum, tales esse iudicia quae tenentur habere, ut aliquod peccatum impediant, v. g. ne servi furentur, ne filiae peccent cum hominibus versando, et alia id genus. Tantum advertatur ne huiusmodi suspiciones aliis communicent sine necessitate. »]*
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> *338* Homo apost., *XI, 2.*

Whether doubts about the evil of a neighbor are to be interpreted in the better part?

1 A doubt can be interpreted in the better part in two ways: one way, negatively, by not declining into the worse; the other way, positively, by declining into the better.

> *Dubium potest dupliciter interpretari in meliorem partem : uno modo, negative, non declinando in peiorem; altero modo, positive, declinando in meliorem.*

2 **I say** 1°: Doubts about the evil of one's neighbor must be interpreted in the better part negatively. It follows from the preceding article and from the same principle.

> ***Dico** 1° : Dubia de malo proximi sunt in meliorem partem interpretanda negative. Sequitur ex praecedenti articulo et ex eodem principio.*

3 *Proof.* By this very fact that someone has an evil opinion of another without sufficient cause, he despises him and injures him, as was said; which is illicit. Now he who does not interpret a doubt about the evil of his neighbor in the better part at least negatively, but declines into the worse, has an evil opinion of his neighbor without sufficient cause, since the reasons for doubting lie on both sides, and are therefore insufficient for suspecting or opining in the worse direction. Therefore.

> Prob. *Hoc ipso quod aliquis habet malam opinionem de alio absque sufficienti causa, contemnit ipsum et iniuriatur ei, ut dictum est; quod est illicitum. Atqui qui dubium de malo proximi non interpretatur in meliorem partem saltem negative, sed declinat in peiorem, habet malam opinionem de proximo absque sufficienti causa, cum rationes dubitandi sint in utramque partem, et ideo insufficientes ad suspicandum aut opinandum in peiorem. Ergo.*

4 The same is proved by all that we have said against suspicion and rash judgment.

Idem probant omnia quae diximus contra suspicionem et iudicium temerarium.

5 **I say** 2°: Doubts about the evil of one's neighbor are not always to be interpreted positively in the better part, but only in certain cases.

***Dico** 2° : Dubia de malo proximi non sunt semper in meliorem partem interpretanda positive, sed in certis tantum casibus.*

6 *Proof.* 1° because the precept of judging one's neighbor well in doubt is affirmative, like the precept of honoring or loving him, which does not bind always.

Prob. *1° quia praeceptum bene iudicandi de proximo in dubio est affirmativum, sicut praeceptum illum honorandi vel diligendi, quod non obligat pro semper.*

7 *Proof.* 2°. Either there are sufficient reasons for doubting, or there are not. If the first, we can remain in doubt, suspending judgment and not declining to either side; because the doubt is not rash, but reasonable. If the second, the doubt must be rejected at once, because it is rash. But that is not our case; for we are dealing with a founded and reasonable doubt.

Prob. 2°. *Vel sunt sufficientes rationes dubitandi, vel non. Si primum, possumus manere dubii, suspendentes iudicium, nec declinantes in alterutram partem; quia dubium non est temerarium, sed rationabile. Si secundum, debet statim exigi dubium, quia est temerarium. Sed non est noster casus; agimus enim de dubio fundato et rationabili.*

8 Nevertheless — and this is the second part of the conclusion — supposing that, with the matter doubtful on both sides, some act must be elicited concerning the goodness or malice of one's neighbor, that act must be done in the better part, and consequently the doubt must be interpreted positively in the better part; and the reasons of the first conclusion prove this directly.

Attamen, et est secunda pars conclusionis, supposito quod, re utrinque dubia, aliquis actus sit eliciendus de bonitate vel malitia proximi, ille debet fieri in meliorem partem, adeoque dubium positive interpretari in meliorem partem, et id directe probant rationes primae conclusionis.

9 Likewise, if a grave temptation pressed upon one to have an evil opinion or judgment of one's neighbor, which one could not conquer except by judging positively on the good side, one would also be bound to that, for the same reason.

Item, si gravis urgeret tentatio male opinandi vel iudicandi de proximo, quam quis vincere non posset nisi positive iudicando in bonam partem, ad id etiam teneretur, propter eamdem rationem.

10 Wherefore it is also licit, concerning the business undertaken, or on another day at that time, with caution intact, to doubt toward the worse parts by supposing, not that things appear to be worse there, or even by judging that they could be such. For thus it is expedient that the remedy or precaution be applied more securely, because a remedy which is efficacious against a greater evil is much more efficacious against a lesser evil; nor do you injure anyone; for you do not judge, nor suspect or doubt that your neighbor is in fact vicious, but you merely suppose him to be such, or judge that he could be such, which is indeed true and not injurious to him, and from that supposition you provide for yourself and yours as if he were truly such.

Quare licite etiam de proposito negotio vel altera die isto tempore salva cautione dubita in peiores partes supponendo, non quod ibi videatur peius esse, aut etiam iudicando quod possit esse tale. Sic enim expedit, ut securius remedium seu cautela adhibeatur, quia remedium quod est efficax contra maius malum, multo magis est efficax contra minus malum,

nec ulli facis iniuriam; quia non iudicas, neque suspicaris aut dubitas tuum proximum esse de facto vitiosum, sed supponis cumtaxat esse talem, aut iudicas posse esse talem, quod utique verum est nec illi iniuriosum, et ex ea suppositione tibi tuisque caves, ac si revera talis esset.

11 We use this kind of supposition everywhere without sin. Thus a father prudently forbids his daughter the company of some young man, because she may be seduced by him. A master closes the chest more attentively and guards his money, because servants or unknown guests may be thieves. A traveler takes up arms on meeting an unknown man, because he may be a robber; he avoids meeting a deformed old woman, because she may be a witch. And so many other cases. Take care, however, always to keep in mind a right judgment about your neighbor, nor doubt, suspect, or judge beyond the sufficiency of the indications. Provide for your own likewise, so that through excessive caution you do not defame or sadden your neighbor.

Hoc genere suppositionis passim utimur absque peccato. Sic pater prohibet prudenter filiae consortium alicuius adolescentis, quia potest ab illo seduci. Dominus attentius claudit arcam, custodit pecunias, quia domestici vel hospites ignoti possunt esse fures. Viator expedit arma in occursum hominis ignoti, quia potest esse latro; vitat occursum vetulae deformis, quia potest esse saga. Et sic plura alia. Cave tamen ut semper rectum de proximo iudicium in mente teneas, nec ultra sufficientiam indiciorum dubites, suspiceris aut iudices. Sic etiam tuis cave, ut per nimiam cautelam proximum non diffames aut contristeris.

12 [Whether public judgment is to be rendered according to the laws, and whether through usurpation it becomes perverse, which St. Thomas discusses here in art. 5 and 6[339] , will be said below, when we treat of the injustice of the judge.]

339 Here q. 60, a. 4, ad 3.

[Utrum iudicium publicum sit secundum leges ferendum, et per usurpationem fiat perversum, quod hic art. 5 et 6 discutit S. Thomas[339] , dicetur infra, dum de iniustitia iudicis.]

339 Hic q. 60, a. 4, ad 3.

On the Act of Commutative Justice, namely Restitution

1 (*D. Thomas, q. 62.*)

*(*D. Thomas, q. 62.*)*

On the quality and necessity of restitution

1 Restitution is the giving back of a thing received, or compensation for damage inflicted.

Restitutio est rei acceptae redditio, vel damni illati compensatio.

2 Restitution differs from payment and satisfaction. From payment: because payment requires that the thing paid be different from the thing for which it is paid, and that it has not yet been in the possession of him to whom it is paid. Restitution, however, does not require that the thing restored be different from the thing for which it is restored; rather it requires that it be the same, as far as possible, or at least equivalent, and consequently it requires, of itself, that it has already been in the possession of him to whom it is restored. Hence he who gives back a deposit truly restitutes, yet does not pay; on the contrary, he who gives money for wheat bought properly pays, yet does not restitute.

Differt restitutio a solutione et satisfactione. A solutione : quia solutio postulat ut res quae solvitur sit diversa a re pro qua solvitur, et quod nondum fuerit in possessione illius cui solvitur. Restitutio autem non postulat ut res quae restituitur sit diversa a re pro qua restituitur, quin potius postulat ut sit eadem, quantum fieri potest, aut saltem aequivalens, et consequenter postulat, quantum est ex se, ut iam fuerit in possessione illius cui restituitur. Unde qui depositum reddit, vere restituit, non tamen solvit; e contra, qui dat pecuniam pro tritico empto, proprie solvit, non tamen restituit.

3 From satisfaction restitution is distinguished[340] : 1° because satisfaction properly regards the person to whom satisfaction is made, although it does not exhibit the equivalent of the debt; restitution, however, regards the thing, which must be given back the same or the equivalent. 2° Satisfaction regards the injury inflicted or the honor violated, even if no other damage has been inflicted; restitution, however, regards the damage inflicted.

340 In IV Sentent., dist. 5, q. 1, a. 5, quaestiunc. 1.

A satisfactione distinguitur restitutio[340] : 1° quia satisfactio proprie respicit personam cui fit satis, quamvis non exhibeat aequivalens debito; restitutio autem respicit rem quae debet eadem reddi vel aequivalens. 2° Satisfactio respicit iniuriam illatam seu honorem violatum, etsi nullum aliud damnum sit illatum; restitutio autem respicit damnum illatum.

340 In IV Sentent., dist. 5, q. 1, a. 5, quaestiunc. 1.

4 **I say** 1°: Restitution is an act of commutative justice[341] : because it belongs to commutative justice to establish equality of thing to thing between what is given and what is received, between loss and compensation. Now this is done through restitution. Therefore.

341 Here q. 62, a. 1, c.

***Dico** 1° : Restitutio est actus iustitiae commutativae[341] : quia ad iustitiam commutativam pertinet constituere aequalitatem rei ad rem inter datum et acceptum, inter damnum et compensationem. Atqui hoc fit per restitutionem. Ergo.*

341 Hic q. 62, a. 1, c.

5 *You will say* : The violation of distributive justice obliges to restitution. Therefore restitution is an act of distributive justice. — The consequence is evident. An act destroying a virtue is repaired by the opposite act, as the act of intemperance by temperance. — *It is proved* of the antecedent. He who distributes common goods badly sins against distributive justice. Now he is bound to restitution. Therefore.

Dices *: Laesio iustitiae distributivae obligat ad restitutionem. Ergo restitutio est actus iustitiae distributivae. — Patet consequentia. Actus destruens virtutem, per oppositum actum resarcitur, ut actus intemperantiae per temperantiam. —* Prob. *ant. Qui bona communia male distribuit, peccat contra iustitiam distributivam. Atqui tenetur ad restitutionem. Ergo.*

6 *I answer.* I deny the antecedent. — To the proof, I distinguish the major. He who distributes common goods badly sins against distributive justice alone, I deny; at the same time also against commutative justice, at least regularly, I concede. — In this sense, I distinguish the minor. He is bound to restitution, insofar as he violates commutative justice, I concede the minor; insofar as he violates distributive justice, I deny the minor. For things owed to particular persons from distributive justice alone are not owed to them simply, as proper and their own, but only in a certain respect, by reason of condignity and of the community of which they are parts, as I said above, dissert. IV, a. 2. Whence

they have no right in re to those things, nor to the thing itself, such that they could reclaim them in court as their own. Wherefore, if they are defrauded of them, from this heading they ought not to be restored to them more than those things ought to be restored which are owed from religion, or gratitude, or other potential parts of justice.

> Resp. *Nego ant. — Ad prob., dist. mai. Qui bona communia male distribuit, peccat contra iustitiam distributivam tantum, nego; simul et contra commutativam saltem regulariter, conc. — Ad hunc sensum, dist. min. Atqui tenetur ad restitutionem, qua parte laedit iustitiam commutativam, conc. min.; qua parte laedit iustitiam distributivam, nego min. Quae enim debentur particularibus ex iustitia distributiva tantum, non sunt ipsis simpliciter debita sicut propria et sua, sed secundum quid tantum ratione condignitatis et communitatis cuius sunt partes, ut iam dixi supra dissert. IV, a. 2. Unde ad ea non habent ius in re, neque ad rem, sic ut possint ea in iudicio repetere ut sua. Quapropter, si eis fraudentur, non debent, quantum est ex hoc capite, magis illis restitui, quam debeant restitui ea quae debentur ex religione, vel gratitudine, aliisve partibus potentialibus iustitiae.*

7 Yet it rarely happens that distributive justice has no commutative justice annexed to it. For he who distributes common goods to particular persons either is hired for a stipend for just distribution, or designated by office or pact, for which therefore he is bound from commutative justice. Whence, if he distributes badly, he sins first against distributive justice, inasmuch as he does not distribute the common goods to particular persons according to the proportion of merits; second he sins against commutative justice, not indeed by damaging particular persons in what is their own proper, or by retaining what is strictly theirs, but by omitting the appropriation or the just distribution according to merits, to which from his office, and consequently from commutative justice, he was bound.

> *Verum raro contingit quod iustitia distributiva non habeat annexam commutativam. Qui enim bona communia particularibus distribuit, vel est ad iustam distributionem stipendio conductus, vel ex officio aut pacto designatus, ad quam proinde tenetur ex iustitia commutativa. Unde, si male distribuat, peccat primo contra iustitiam distributivam, in quantum non distribuit communia particularibus secundum proportionem meritorum; secundo peccat contra iustitiam commutativam, non quidem damnificando particulares in eo quod est ipsorum proprium, seu retinendo quod est stricte suum, sed omitendo appropriationem seu iustam secundum merita distributionem, ad quam ex officio, subindeque ex iustitia commutativa tenebatur.*

8 **I say** 2°: The restitution of a thing unjustly taken away, or of damage unjustly inflicted, in the thing where possible, otherwise in vow, is necessary for salvation[342] .

342 Ibid., a. 2, c.

> ***Dico** 2° : Rei iniuste ablatae aut damni iniuste illati restitutio in re, ubi possibilis est, sin minus in voto, est necessaria ad salutem*[342] .
>
> *342 Ibid., a. 2, c.*

9 *It is proved*,[343] 1° from Scripture. *Matt.*, XXII, 21 : Render therefore to Caesar the things that are Caesar's. *Rom.*, XII, 7 : Render therefore to all men their debts.

343 Ibid., in arg. Sed contra.

> Prob.[343] *1° ex Scriptura.* Matth., *XXII, 21 : Reddite ergo quae sunt Caesaris, Caesari. Ad* Rom., *XII, 7 : Reddite ergo omnibus debita.*
>
> *343 Ibid., in arg. Sed contra.*

10 *It is proved* 2° from Augustine, Epist. 153[344], which is to Macedonius and is cited, c. Si res aliena, causa 14, q. 6 : « If the thing of another on account of which sin was committed is not restored when it can be restored, penance is not practiced, but feigned; but if it is practiced truthfully, sin is not forgiven unless what was taken away is restored; but, as I said, when it can be restored. »

344 Formerly 34.

> Prob. 2° *ex Aug., Epist. 153[344], quae est ad Macedonium et refertur, c. Si res aliena, causa 14, q. 6 : « Si res aliena propter quam peccatum est, cum reddi possit, non redditur, non agitur poenitentia, sed fingitur : si autem veraciter agitur, non remittetur peccatum, nisi restituatur ablatum; sed, ut dixi, cum restitui potest. »*
>
> *344 Olim 34.*

11 *It is proved* 3° by reason[345] : To preserve or not violate justice is necessary for salvation. Now he who does not restitute, when he can, what was unjustly taken away or damage unjustly inflicted does not preserve justice, but rather violates it, because he does not preserve equality. Therefore.

345 Here q. 62, a. 2, c.

> Prob. 3° *ratione[345] : Conservare seu non violare iustitiam, est de necessitate salutis. Atqui qui non restituit, cum potest, iniuste ablatum aut damnum iniuste illatum, non conservat, quin imo violat iustitiam, quia non servat aequalitatem. Ergo.*
>
> *345 Hic q. 62, a. 2, c.*

12 *It is confirmed.* Not to steal is necessary for salvation. Now to retain what is owed to another has the same reason of harm as unjust reception[346] . Therefore.

346 Here q. 66, a. 3, ad 2.

> Confirm. *Non furari est de necessitate salutis. Atqui detinere id quod alteri debetur, eamdem rationem nocumenti habet cum acceptione iniusta[346] . Ergo.*
>
> *346 Hic q. 66, a. 3, ad 2.*

13 I said, « otherwise in vow; » because where restitution in the thing is impossible, one must then have the purpose of making it when it will be possible; because it is necessary for salvation that one have the purpose of keeping all the commandments of God, among which is placed the precept of restoring, or of not retaining what belongs to another unjustly, which is reduced to this precept of the Decalogue : Thou shalt not steal. On which account restitution in vow can be said to be necessary with a necessity of means for salvation.

> *Dixi, « sin minus voto; » quia ubi restitutio in re est impossibilis, debet tunc haberi propositum illam faciendi dum erit possibilis; quia est de necessitate salutis quod quis habeat propositum servandi omnia Dei mandata, inter quae reponitur praeceptum restituendi seu non detinendi iniuste alienum, quod reducitur ad hoc Decalogi praeceptum : Non furaberis. Qua ratione restitutio in voto potest dici necessaria necessitate medii ad salutem.*

14 *You will ask* whether the precept of restoring is affirmative or negative.

> Petes *utrum praeceptum restituendi sit affirmativum vel negativum.*

15 *I answer.* That it is affirmative according to its form; that it nevertheless implies within itself a negative, whereby we are forbidden to retain what belongs to another, as the reason of itself[347] .

347 Here q. 62, a. 8, ad 1.

> Resp. *esse affirmativum secundum formam; implicare tamen in se negativum, quo prohibemur rem alienam detinere, tamquam rationem sui*[347] .
>
> [347] *Hic q. 62, a. 8, ad 1.*

16 The first part is evident; because by an affirmative precept an act of virtue is commanded, by a negative one an act of vice is forbidden. Restitution, however, is an act of virtue.

> *Patet prima pars; quia praecepto affirmativo praecipitur actus virtutis, negativo prohibetur actus vitii. Restitutio autem est actus virtutis.*

17 The second part is also evident. For the reason why restitution must be made is that what belongs to another must not be retained; not so with other affirmative precepts, which although they include a negation as opposed to the affirmation, do not include it as the reason of themselves : thus, v. g., God is to be loved, not because he is not to be hated, but because he is supremely good; and so of the rest.

> *Patet etiam secunda pars. Ratio enim cur debeat fieri restitutio est, quia alienum non est detinendum; non sic de aliis praeceptis affirmativis, quae licet includant negationem ut oppositam affirmationi, non tamen ut rationem sui : sic, v. g., Deus est amandus, non quia non est odio habendus, sed quia est summe bonus; et sic de caeteris.*

From how many titles the obligation of restitution arises, affirmative or negative?

1 : Two titles are commonly assigned as inducing the obligation of restitution, namely a thing received and an unjust acquisition[348] .

348 Ibid., a. 6, c.

> *: Communiter assignantur duo tituli inducentes obligationem restituendi, scilicet res accepta et iniusta acceptio*[348] .
>
> [348] *Ibid., a. 6, c.*

2 1° By reason of the thing received he is bound to restore[349] , who has the thing of another in his hands without his fault, as a thing deposited, lent for use, pledged, found, etc.; because, since he has what is not his own but another's, what he has beyond what is his own ought to be withdrawn from him and given to him who lacks it, according to the form of commutative justice, so that equality may come about.

349 Ibid.

> *1° Ratione rei acceptae tenetur restituere*[349] *, qui rem alienam apud se sine sua culpa habet, ut depositum, commodatum, pignus, inventum, etc.; quia, cum habeat quod suum non est, sed alienum, debet ab eo subtrahi quod habet ultra quod suum est, et dari ei cui deest secundum formam commutativae iustitiae, ut fiat aequalitas.*
>
> [349] *Ibid.*

3 Moreover, although in that case there has been no unjust acquisition, nor is there an unjust detention, it would nevertheless be unjust if the thing were not returned in its time.

> *Insuper, quamvis in eo casu non fuerit iniusta acceptio, nec sit iniusta detentio, foret tamen iniusta, si res suo tempore non redderetur.*

4 Under the name of the thing, however, is understood not only the thing existing in itself, but its value; likewise existing fruits, and all that by means of which whoever holds the thing has been made richer by it.

Sub nomine autem rei non solum intelligitur res in se existens, sed eius valor; item fructus existentes et id omne ex quo qui eam habet factus est ditior.

5 2° By reason of an unjust acquisition he is bound to restore[350] , who has taken away the thing of another by theft, robbery, or some other unjust way, even if it does not remain with him. Likewise he who has unjustly damaged another without the reception of any thing; for under unjust acquisition is here understood unjust damaging.

350 Ibid., et a. 4, c.

2° Ratione iniustae acceptionis tenetur restituere[350] , qui furto, rapina, aut alia via iniusta rem alienam abstulit, etsi apud ipsum non remaneat. Item qui alium iniuste damnificavit absque ullius rei acceptione; sub iniusta enim acceptione hic intelligitur iniusta damnificatio.

350 Ibid., et a. 4, c.

6 The reason is that, although this man does not have more than he ought to have, the other nevertheless has less than he ought to have through his unjust action. Hence he violated justice toward him, which he is bound to repair by restitution.

Ratio est, quia licet iste non habeat plus quam debet habere, alter tamen ex eius iniusta actione habet minus quam debet habere. Unde violavit erga ipsum iustitiam, quam tenetur per restitutionem reparare.

7 But if the thing unjustly taken remains with him in itself or in its value, or if he has become richer thereby, then he is bound to restore under a twofold title, namely of the thing received and of the unjust acquisition. Furthermore, these two titles are not rarely joined together, although either one alone suffices.

Quod si res iniuste ablata apud ipsum maneat in se vel in suo valore, aut inde sit factus ditior, tunc tenetur restituere duplici titulo, nempe rei acceptae et iniustae acceptionis. Porro non raro hi duo tituli coniunguntur, licet alteruter sufficiat.

8 *Note* 1°. Between these two titles there intervenes a great difference, to be diligently noted for practice : namely that he who is bound to restore by reason of an unjust acquisition remains under the obligation of restoring even if the thing owed perish without his fault; because the reason or title of the obligation always remains, namely the violation of justice, until it be repaired by restitution. Nor is he bound to restore only the thing or its value, but also all the fruits, even those consumed; likewise all damages ensuing thence and profits ceasing, in favor of him whom he unjustly damaged, because he is culpably the cause of them. But he who is bound to restore only by reason of the thing received is not bound to restore if the thing perish without his fault, as, v. g., in a deposit; because then the reason or title of the obligation ceases, which is to have the thing of another. Nor is he bound either to restore the fruits, if they are consumed and he has not been made richer thereby, nor the damages ensuing or profits ceasing; because he is not their cause. — Of these things more fully again in what follows, while we treat of the possessor in good faith and in bad faith.

Nota *1°. Inter hos duos titulos magnum intercedit discrimen, pro praxi diligenter notandum : scilicet quod illi qui tenetur restituere ratione iniustae acceptionis maneat obligatio restituendi, etiamsi res debita sine eius culpa pereat; quia semper manet ratio seu titulus obligationis, scilicet iustitiae violatio, quousque per restitutionem reparetur. Neque rem solam aut eius valorem tenetur restituere, sed et omnes fructus, etiam consumptos; item omnia damna inde emergentia et luera cessantia ei quem iniuste damnificavit, quia illorum est causa culpabiliter. Is vero qui tenetur restituere ratione rei*

acceptae tantum, non tenetur restituere, si res absque eius culpa pereat, ut in deposito, v. g.; quia tunc cessat ratio seu titulus obligationis, quod est habere rem alienam. Neque etiam tenetur restituere fructus, si sint consumpti et inde non sit factus ditior, neque damna emergentia aut lucra cessantia; quia illorum non est causa. — De his fusius iterum in sequentibus, dum de possessore bonae et malae fidei.

9 *Note* 2°. A third title inducing the obligation of restitution could be assigned, namely contract; for by the force of contract alone one can be obliged to the restitution of a thing which he no longer has, nor received unjustly. But because from a contract there seems to arise rather an obligation of payment than of restitution, and the two former titles alone are commonly assigned as known to all, that we may speak as all speak, and lest confusion be engendered, we too assign only these two titles. Nevertheless we shall speak below of the obligation of paying or restoring from contract.

Nota 2°. *Posset assignari tertius titulus inducens obligationem restituendi, scilicet contractus; aliquis enim potest obligari ad restitutionem rei quam nec amplius habet, nec iniuste accepit, vi solius contractus. Sed quia ex contractu videtur oriri obligatio solutionis potius quam restitutionis, et duo soli priores tituli omnibus noti communiter assignantur, ut loquamur cum omnibus, nec pariatur confusio, solos etiam hos duos titulos assignamus. De obligatione tamen solvendi vel restituendi ex contractu dicemus infra.*

Whether the obligation of restitution is incurred by reason of damage inflicted without theological fault?

1 *Note*. A twofold fault is distinguished : one theological, the other juridical. Theological fault is formal sin before God, whether mortal or venial. Juridical fault is the omission of some diligence from which damage follows to another. Such an omission, I say, jurists call a fault, even if perchance it be not a fault before God, for example because it is either involuntary, or is not of such diligence as one is bound to employ. But if it be a voluntary omission of such diligence as one can and is bound to employ, it will be at once both a theological and a juridical fault.

Nota. *Duplex distinguitur culpa : altera theologica, altera iuridica. Culpa theologica est peccatum formale coram Deo, sive mortale, sive veniale. Culpa iuridica est omissio alicuius diligentiae ex qua alteri sequitur damnum. Talem, inquam, omissionem iurista vocant culpam, etiamsi forte coram Deo non sit culpa, puta quia vel est involuntaria, vel non est talis diligentiae quam quis tenetur adhibere. Quod si sit omissio voluntaria talis diligentiae quam quis potest et tenetur adhibere, erit simul culpa theologica et iuridica.*

2 Juridical fault is divided into gross, light, and lightest. Gross fault is the omission of the diligence which prudent men are accustomed to employ in such a case, in such a business; as if someone go out of the house without having closed the door of the inner room.

Culpa iuridica dividitur in latam, levem et levissimam. Lata est omissio diligentiae quam solent homines prudentes adhibere in tali casu, in tali negotio; ut si quis exeat domo, non clauso ostio cubiculi interioris.

3 Light fault is the omission of the diligence which the more prudent are accustomed to employ; as if someone go out with the door of the room indeed closed, but not bolted.

Levis est omissio diligentiae quam prudentiores adhibere solent; ut si quis exeat, clauso quidem ostio cubiculi, sed non obserato.

4 Lightest fault is the omission of the diligence which the most prudent are accustomed to employ; as if someone did not try with his hand whether a closed and bolted door were well bolted.

Levissima est omissio diligentiae quam prudentissimi adhibere solent; ut si quis clausum et obseratum ostium non tentaverit manu, num bene esset obseratum.

5 It is asked, therefore, whether in simple damaging, in which no gain accrues to the damager, theological fault is required, or that he have sinned before God, in order that he be liable to restitution, or whether juridical fault suffices. Concerning which :

> *Quaeritur itaque an in damnificatione simplici, in qua nullum emolumentum obvenit damnificanti, requiratur culpa theologica, seu quod coram Deo peccaverit, ut sit obnoxius restitutioni, an sufficiat culpa iuridica. Pro quo :*

6 **I say** : No one, contract set aside, is bound to restitution by reason of damage inflicted before the sentence of the judge, unless he have admitted theological fault against commutative justice in inflicting the damage. This is the common teaching against Adrian and certain ancient authors.

> ***Dico** : Nemo, secluso contractu, tenetur ad restitutionem ratione damni illati ante sententiam iudicis, nisi in damno inferendo admiserit culpam theologicam contra iustitiam commutativam. Est communis contra Adrianum et quosdam antiquos.*

7 **Proof.** The damager, in the case proposed, is not bound to restore by reason of a thing received ; because, as is supposed, he received nothing, nor has he been made richer by the damage : nor by reason of an unjust action ; for where there is no fault before God, the damaging action is not formally unjust : nor from positive law ; for none can be assigned outside of contract. Therefore from no heading is he bound to restore,

> ***Prob.** Damnificans, in casu posito, non tenetur restituere ratione rei acceptae ; quia, ut supponitur, nihil accepit, nec ex damno factus est ditior : neque ratione iniustae actionis ; quia ubi nulla est culpa coram Deo, non est formaliter iniusta actio damnificans : neque ex iure positivo ; nullum enim assignari potest extra contractum. Ergo ex nullo capite tenetur restituere,*

8 **It is confirmed.** If damaging merely materially unjust induced the obligation of restoring, it would follow that a madman, or one asleep, or one who damaged his neighbor by a mere chance event, would be held to restitution ; which no one admits.

> ***Confirmatur.** Si damnificatio materialiter tantum iniusta induceret obligationem restituendi, sequeretur quod amens, aut dormiens, aut casu mere fortuito damnificans proximum, teneretur ad restitutionem ; quod nemo admitit.*

9 Therefore, however much damage to another may follow from your act, if you have not truly sinned before God, either because you employed the due diligence, or because you omitted it through natural inadvertence or blameless forgetfulness, although it is called gross fault in law, you are not held to restore in the forum of conscience before the sentence of the judge.

> *Igitur, quantumvis ex facto tuo sequatur damnum alterius, si coram Deo revera non peccaveris, vel quia adhibuisti debitam diligentiam, vel quia illam ex inadvertentia naturali aut oblivione inculpabili omisisti, quamvis dicitur culpa lata in iure, non teneris restituere in foro conscientiae ante sententiam iudicis.*

10 And this is true even though the damager deal with a thing illicitly, provided it be not dangerous and as it were a way leading to damage, such that neither per se nor in the majority of cases does damage follow from it, nor could it have been foreseen in a human way as about to follow; because, although the cause is voluntary, it is nevertheless not voluntary as the cause of such damage, which could not be foreseen in a human way as about to follow from it. Hence, if while hunting in a prohibited place or time you kill a man, thinking invincibly that you are killing a wild beast, you are not held to restore on account of the homicide.

Idque verum est etiam licet damnificans vacet rei illicite, modo non sit periculosa et quasi via ad damnum, sic ut nec per se nec ut in pluribus ex ea sequatur, nec potuerit humano modo praevideri secuturum ; quia, licet causa sit voluntaria, non est tamen voluntaria ut causa talis damni, quod non potuit humano modo praevideri ex ea secuturum. Unde, si venando in loco aut tempore prohibito occidas hominem, putans invincibiliter occidere feram, non teneris restituere causa homicidii.

11 I said, « before the sentence of the judge ; » because the judge, where there is gross juridical fault, though there be no theological fault, through natural inadvertence or some other case, is accustomed to condemn the damager to restitution or rather to payment, or to the surrender of the animal, if the damage was inflicted through an animal, unless it be otherwise certainly evident that he is innocent. And the damager is held, more probably, to obey this sentence as just in the forum of conscience. For this sentence does not rest upon a false presumption, as certain ones think; because the judge condemns you not because he presumes you have sinned internally before God, but because you have sinned externally, that is, because you omitted the diligence which prudent men are accustomed to employ, on account of which juridical fault, though not theological, the laws decree the obligation of restoring, with the sentence of the judge supervening.

Dixi, « ante sententiam iudicis ; » quia iudex, ubi est culpa lata iuridica, licet non sit culpa theologica, ex inadvertentia naturali aut alio casu, solet condemnare damnificantem ad restitutionem seu potius solutionem, aut ad deditionem animalis, si per animal damnum sit illatum, nisi aliunde certo constet de eius innocentia. Atque huic sententiae tamquam iustae probabilius tenetur parere in foro conscientiae damnificans. Non enim haec sententia nititur falsae praesumptioni, ut quidam putant ; quia iudex te condemnat, non quia praesumit te peccasse interne coram Deo, sed quia peccasse externe, hoc est, quia omisisti diligentiam quam prudentes solent adhibere, propter quam culpam iuridicam, etsi non theologicam, iura decernunt obligationem restituendi, accedente sententia iudicis.

12 And indeed justly, both because gross juridical fault usually proceeds from theological fault, although the contrary sometimes occurs per accidens, and laws attend to what happens for the most part; and on account of the common good, namely that men be more attentive in guarding their own goods, and more cautious in avoiding damage to their neighbor.

Et quidem iuste, tum quia culpa lata iuridica solet provenire ex culpa theologica, licet contrarium quandoque per accidents contingat, leges autem attendunt ad id quod plerumque contingit ; tum propter bonum commune, ut nempe homines sint in rebus suis custodiendis attentiores, et in damno proximi vitando cautiores.

13 [You will ask whether he is held to restitution who blamelessly placed the cause of the damage, if afterward he neglect to remove it.

[Petes utrum ad restitutionem teneatur qui causam damni inculpabiliter posuit, si postea eam auferre neglexerit.

14 I answer, affirmative ; because he who placed the efficacious cause of the damage, and does not retract it when he morally can, wills it virtually, and consequently becomes at that moment strictly, effectively and formally the unjust cause of the damage[351].

351 S. Lig., lib. VI, n. 621.

Resp. affirmative ; quia qui posuit causam damni efficacem, nec illam retractat, quando moraliter potest, vult eam virtualiter, et consequenter fit eo momento causa damni strictè, effective ac formaliter iniusta[351].

351 S. Lig., lib. VI, n. 621.

15 I said, « when he morally can, » that is, without great and proportionate inconvenience, as is commonly taught.]

Dixi, « quando moraliter potest, » id est sine magno et proportionato incommodo, ut communiter docetur.]

Whether vehement theological fault induces an obligation of restitution, and what kind?

1 The difficulty concerns venial fault arising from the imperfection of the act together with grave damage inflicted, about which there is a diversity of opinions. For the resolution of which,

Difficultas est de veniali culpa ex imperfectione actus et gravi damno illato, circa quam est sententiarum diversitas. Pro cuius resolutione,

2 **I say** 1° : It is more probable that he who gravely damaged his neighbor through venial fault is held to some restitution. This is against Lessius and certain others. The reason is that, as the imperfection of the act, although it diminishes, does not nevertheless take away every character of injustice; so, although it diminishes, it does not nevertheless take away every obligation of restoring, which arises from justice as from its root.

***Dico** 1° : Probabilius est eum qui ex culpa veniali graviter damnificavit proximum, teneri ad aliquam restitutionem. Est contra Lessium et quosdam alios. Ratio est quia, sicut imperfectio actus, licet minuat, non tamen tollit omnem rationem iniustitiae ; sic, licet minuat, non tamen tollit omnem obligationem restituendi, quae ex iustitia tamquam ex radice oritur.*

3 **I say** 2° : It seems less probable that he who inflicted grave damage through venial fault is held under mortal sin to the reparation of the whole damage. This is the opinion of Sylvester, Soto, Silvius, Steyaert and the more common one, against Henry of St. Ignatius and certain other recent authors.

***Dico** 2° : Minus probabile videtur eum qui ex culpa veniali grave damnum intulit, teneri sub mortali ad reparationem totius damni. Est Sylvestri, Soto, Sylvii, Steyaert et communior, contra Henricum a S. Ignatio et quosdam alios recentiores.*

4 **Proof.** The obligation of restoring is here attended to principally, not on the side of the object or of the damage, but on the side of formal injustice. For we are treating of restitution by reason of unjust acquisition; and if there were no formal injustice, however grave the damage might be, there would be no obligation of restoring, as I said in the preceding article. Yet in our case the injustice is imperfect. Therefore the obligation of restoring ought to be imperfect; for the effect ought to answer to the cause. But it would not be imperfect if it were unto the restoration of the whole under mortal sin.

***Prob.** Obligatio restituendi hic attenditur principaliter, non ex parte obiecti seu damni, sed ex parte iniustitiae formalis. Agimus enim de restitutione ratione iniustae acceptionis ; et si nulla esset formalis iniustitia, quantumvis foret grave damnum, nulla foret obligatio restituendi, ut dixi art. praecedenti. Atqui in nostro casu est iniustitia imperfecta. Ergo debet esse obligatio restituendi imperfecta ; effectus enim debet respondere causae. Non foret autem imperfecta, si esset ad totum restituendum sub mortali.*

5 **I say** 3° : It is probable that he who inflicted grave damage through venial fault is held under venial sin to the reparation of the whole damage. Nevertheless it is equally probable that he is not held

under venial sin except to a part of the damage only, according to the condition of the fault, according to the judgment of a good man.

> ***Dico** 3° : Probabile est eum qui ex culpa veniali damnum grave intulit, teneri sub veniali ad totius damni reparationem. Aeque tamen probabile est ad minus non teneri sub veniali, nisi ad partem damni tantum, pro conditione culpae, secundum arbitrium boni viri.*

6 The reason of the first part is that the whole damage is voluntary, although imperfectly. Therefore it seems that the obligation of repairing the whole is imperfect, namely under venial sin.

> *Ratio primae partis est, quia totum damnum est voluntarium, licet imperfecte. Ergo videtur quod sit obligatio totum reparandi imperfecta, scilicet sub veniali.*

7 The reason of the second part is, on the contrary, that an obligation of repairing the whole under venial sin does not seem imperfect, nor proportionate to the light fault from which it arises. It is indeed imperfect on the side of itself, because it is not so strict; but it is not imperfect on the side of the object, because it is unto the whole, nor therefore proportionate to the fault : just as a grave punishment is not proportionate to a light fault, although the accused would be bound to it only lightly.

> *Ratio secunda partis est, e contra, quod obligatio reparandi totum sub veniali, non videatur imperfecta, nec proportionata culpae levi ex qua oritur. Est quidem imperfecta ex parte sui, quia non est adeo stricta ; sed non est imperfecta ex parte obiecti, quia est ad totum, nec proinde proportionata culpae : sicut poena gravis non est proportionata culpae levi, quamvis reus ad eam tantum leviter adstringeretur.*

8 And indeed it seems hard that one be held under venial sin to pay back twenty or forty thousand pounds and more, and that he cannot be freed from that sin unless he pay back this whole sum. Wherefore it seems more suitable to many to say that he is held only to a part, for example a fiftieth, an eightieth, etc., according to the quantity of the fault, according to the judgment of prudent men.

> *Et sane durum videtur, quod quis sub peccato veniali teneatur refundere viginti vel quadraginta millia librarum et ultra, et quod non possit ab eo peccato liberari, nisi totam hanc summam refundat. Quapropter multis convenientius videtur dicendum, quod teneatur tantum ad partem, puta quinquagesimam, octuagesimam, etc., pro quantitate culpae, secundum iudicium prudentum.*

9 Moreover, whatever may be said of the speculation of this question, authors of every opinion commonly note that it rarely happens in practice that grave damage is caused by venial fault; because, although venial inconsiderateness is frequent in surreptitious thoughts and internal movements of the mind, which often, easily and subtly arise, and indeed concerning objects conformable to natural inclination; yet it rarely occurs in external works of grave moment, because these ordinarily present their danger at once and more strongly arouse the mind to consideration of themselves, or at least to a confused knowledge of the danger. Hence, unless it be certainly established that the inadvertence was venial, it must be held in practice to be mortal, namely proportioned to the damage, and the obligation of restoring under mortal sin must be pressed upon him.

> *Caeterum, quidquid sit de speculatione huius quaestionis, communiter advertunt cuiusvis sententiae authores, raro contingere in praxi quod causetur damnum grave ex culpa veniali ; quia, licet inconsideratio venialis sit frequens in subreptitiis cogitationibus et internis animi motibus, qui saepe, facile et subtiliter oriuntur, et quidem circa obiecta naturali inclinationi conformia ; raro tamen contingit in operibus externis gravis momenti, quia ordinariè statim suum*

periculum ingerunt et fortius mentem excitant ad sui considerationem, aut saltem ad confusam periculi cognitionem. Unde, nisi certo constet inadvertentiam fuisse venialem, habenda est in praxi pro mortali, conformis scilicet damno, et inculcanda est obligatio restituendi sub mortali.

10 [There St. Liguori distinguishes[352] : If the fault is venial by reason of the smallness of the matter, it certainly obliges to restitution under light sin. But if the fault is venial by reason of inadvertence or undeliberation, several say, with Layman and Croix (and to this opinion our Billuart adheres), that the obligation of restoring is according to the measure of the fault. But more commonly, and probably, it is held that no obligation of restitution is induced, neither under grave nor under light sin. Not under grave, because such an obligation has no proportion with a light fault. Not under light, because a light obligation has no proportion with grave matter, all the more since a fault imperfectly deliberated cannot induce perfect deliberation : just as in contracts and vows no obligation arises from a consent not fully deliberate.

352 Lib. IV, n. 552 ; Homo apost., X, 40.

[Ibi S. Ligorius distinguit[352] : Si culpa est venialis ratione parvitatis materiae, certe obligat ad restitutionem sub levi. Si vero culpa est venialis ratione inadvertentiae seu indeliberationis, plures dicunt cum Layman et Croix (et huic sententiae adhaeret noster Billuart), esse obligationem restituendi pro ratione culpae. Sed communius et probabiliter tenetur, non induci obligationem restitutionis, nec sub gravi nec sub levi. Non sub gravi, quia talis obligatio non habet proportionem cum culpa levi. Non sub levi, quia levis obligatio non habet proportionem cum materia gravi, eo magis quod culpa imperfecte deliberata non possit inducere perfectam deliberationem : sicut in contractibus et votis e consensu non plene deliberato non oritur obligatio.

352 Lib. IV, n. 552 ; Homo apost., X, 40.

11 You will ask 1° whether he is held to restitution who culpably placed the cause of the damage, and afterward tried in vain to impede the damage.

Petes 1° utrum teneatur ad restitutionem qui culpabiliter causam damni posuit, et postea damnum frustra impedire conatus est.

12 I answer, affirmative. The reason is that retraction, although before God it takes away the sin, does not nevertheless prevent the culpably placed action from being in itself a positive, efficacious and unjust cause of the damage sprung from it[353].

353 Id., lib. IV, n. 559 ; lib. VII, n. 40.

Resp. affirmative. Ratio est, quia retractatio, quamvis coram Deo tollat peccatum, non impedit tamen quominus actio culpabiliter posita sit in se causa positiva, efficax et iniusta damni ex ea orti[353].

353 Id., lib. IV, n. 559 ; lib. VII, n. 40.

13 You will ask 2° whether a damager who is doubtful is held to some restitution.

Petes 2° utrum damnificator dubius ad aliquam restitutionem teneatur.

14 I answer 1°. If the doubt arose before the damaging action, the question is to be solved from the principles laid down in the treatise on Conscience, where we treat of a doubting law.

Resp. 1°. Si dubium ortum est ante actionem damnificativam, quaestio solvenda est ex principiis positis in tract. de Conscientia, ubi de lege dubia.

15 I answer 2°. If the doubt arose after the action, several things are to be examined : 1° Whether the damage exists. In which doubt, even if positive, according to the common opinion the agent is not held to restitution[354]. And this the Angelic Doctor holds, here q. 62, a. 7, o, where he says : « In other cases, however, that are enumerated, one is not always bound to restitution ; for counsel, or flattery, or anything of this kind is not always an efficacious cause of rapine. Whence then only is the counselor, or the palpo, that is, the flatterer, held to restitution, when it can be probably estimated that from causes of this kind an unjust acquisition followed ». Therefore, according to St. Thomas, it must be proved that the action certainly was the cause of the damage; for the adverb probably is used here in the sense that the thing can be proved, that is, that the persuasion is morally certain. — 2° Whether the damage is to be ascribed precisely to this action. In this doubt a threefold opinion is given. The first, which is probable, teaches that restitution is to be made if the action was apt by its nature for inflicting such damage; because then the presumption stands for its influence. The second opinion holds that restitution is to be made pro rata of the doubt. But, besides that the quantity of the thing to be restored could hardly be determined in this case, this opinion on one side harms the agent, if restitution is not to be made, and on the other the damaged party, if it is to be made. The third opinion, absolutely more probable, affirms that the damager who is in doubt is held to nothing; because an injurious action does not suffice for pressing restitution, but there is required a persuasion morally certain that that action truly was the cause of the damage. Whence this question falls back into the preceding one, namely whether the damage exists on the side of the agent, and likewise it is to be solved[355]. — 3° Whether the action, or omission, of the damager, although damaging, was formally unjust, that is, an invader of another's strict right; because the obligation of restitution is born from the violation of commutative justice alone. In a doubt of this kind the agent cannot be held to restitution before the sentence of the judge. — 4° Whether the action, or omission, of the damager, although truly damaging and in itself unjust, was gravely culpable in conscience. And the same answer must be given; because, as was said above, where grave fault is not morally certain, neither is the obligation of restoring certain on account of the damaging[356]]

354 Id., lib. IV, n. 562, 1ª Sent. in fine.

355 Id., ibid., n. 658.

356 Id., Homo apost., X, 39,.

Resp. 2°. Si dubium ortum est post actionem, plura sunt examinanda : 1° An damnum existat. Quo in dubio, etiam positivo, ex sententia communi agens non tenetur ad restitutionem[354]. Et hoc tenet Angelicus, hic q. 62, a. 7, o, ubi dicit : « In aliis autem casibus enumeratis, non semper obligatur aliquis ad restitutionem ; non enim semper consilium, vel adulatio, vel aliquid huiusmodi est efficax causa rapinae. Unde tunc solum tenetur consiliator, aut palpo, id est adulator, ad restitutionem, quando probabiliter aestimari potest quod ex huiusmodi causis fuerit iniusta acceptio subsecuta ». Ergo, iuxta S. Thomam, probari debet actionem certo fuisse causam damni ; nam adverbium probabiliter usurpatur hic in eo sensu, quod res probari possit, id est quod sit persuasio moraliter certa. — 2° An damnum sit praecisè huic actioni adscribendum. Hoc in dubio datur triplex sententia. Prima, quae est probabilis, docet faciendam esse restitutionem, si actio ex natura sua fuerit apta ad tale damnum inferendum ; quia tunc praesumptio pro influxu stat. Secunda sententia tenet restitutionem esse faciendam pro rata dubii. Sed, praeterquam quod quantitas rei restituenda difficile determinari possit in hoc casu, haec opinio pro parte laedit agentem, si restitutio non sit facienda, et pro parte damnificatum, si sit restituendum. Tertia sententia absolute probabilior affirmat damnificatorem dubium ad nihil teneri ; quia non sufficit ad urgendam restitutionem actio iniuriosa, sed requiritur persuasio moraliter certa quod illa actio vere fuerit causa damni. Unde haec quaestio in praecedentem recidit, scilicet an damnum existat ex parte agentis, et similiter est solvenda[355]. —

3° An damnificatoris actio, vel omissio, etsi damnosa, fuerit formaliter iniusta, id est stricti iuris alieni laesiva ; quia restitutionis obligatio ex solius iustitiae commutativae violatione nascitur. In huiusmodi dubio agens teneri non potest ad restitutionem ante sententiam iudicis. — 4° An damnificatoris actio, vel omissio, etsi vere damnosa et in se iniusta, fuerit in conscientia graviter culpabilis. Et eadem responsio danda est ; quia, ut supra dictum est, ubi de culpa gravi moraliter non constat, nec constat de obligatione restituendi propter damnificationem[356]*]*

[354] *Id., lib. IV, n. 562, 1ª Sent. in fine.*

[355] *Id., ibid., n. 658.*

[356] *Id., Homo apost., X, 39,.*

Whether, and how far, juridical fault induces an obligation of restitution by reason of contract and quasi-contract, or of office?

1 1° : In commodato, the receiver is held for damage arising from light and lightest fault, but not from a fortuitous event. In precario, he is held from gross fault only. But in contracts which are for the utility of giver and receiver together, as in hiring, he is held from light fault.

1° : In commodato, recipiens tenetur de damno ex culpa levi et levissima, non tamen ex casu fortuito. In precario, tenetur ex culpa lata tantum. In contractibus vero qui sunt in utilitatem dantis et recipientis, ut in locato, tenetur ex culpa levi.

2 So it is, not indeed from the nature of the thing, because, standing in the law of nature, no one from strict justice is bound to employ greater diligence in preserving the things of another than the owner himself would employ, but from the disposition of law both canonical and civil in many places.

Ita, non quidem ex natura rei, quia stando in iure naturae, nemo ex stricta iustitia tenetur maiorem diligentiam adhibere in conservandis rebus alienis, quam ipse dominus adhiberet, sed ex dispositione iuris tam canonici quam civilis in pluribus locis.

3 And these laws seem to bind in the forum of conscience before the sentence of the judge ; because that obligation of restoring in these contracts seems not so much a punishment as a condition attached to them by the statutes of the laws. Nor should they be said to be founded upon a false presumption of fraud, but rather upon natural equity and honesty.

Et hae leges videntur obligare in foro conscientiae ante sententiam iudicis ; quia ista obligatio restituendi in his contractibus, non tam videtur poena, quam conditio illis apposita ex legum statutis. Neque dicendae sunt fundatae in falsa praesumptione fraudis, sed potius in aequitate et honestate naturali.

4 You will ask whether he who sends back by a messenger a thing hired, or lent for use, or deposited, is held to restitution or payment if the thing perish through the fault of the messenger.

Petes utrum qui rem vel conductam, vel commodatam, vel depositam remittit per nuntium, teneatur ad restitutionem seu solutionem, si res culpa nuntii pereat.

5 I answer with Silvius, with a distinction. If the messenger was commonly held to be trustworthy, he is not bound, because he is not at fault. If the messenger was not commonly held to be trustworthy, he is bound, because he is at fault.

Resp. cum Sylvio, sub distinctione. Si nuntius habebatur communiter fidelis, non tenetur, quia non est in culpa. Si nuntius non habebatur communiter fidelis, tenetur, quia est in culpa.

6 Nor is it similar concerning him who would send back a thing loaned mutuum ; because the thing loaned mutuum belongs to the borrower so long as it has not reached the lender[357] . Whence,

although it perish without the fault of the borrower, it perishes to himself as owner. But a thing lent for use[358] , hired, or deposited, belongs to the lender for use, the hirer, or the depositor, and not to the bailee for use, the lessee, or the depositary. Whence, if it perish without his fault, he is held to nothing, and the thing perishes to its owner.

[357] Hoc intelligitur de rebus usu consumptibilibus. Cfr. Cod. civ. Gall., art. 1893.

[358] Ibid., art. 1876.

> *Nec est simile de eo qui remitteret rem mutuatam ; quia res mutuata est mutuatarii, quamdiu non pervenit ad mutuatorem[357]. Unde, quamvis sine culpa mutuatarii pereat, ipsi ut domino perit. Res vero commodata[358], locata, deposita, est commodantis, locantis, deponentis, et non commodatarii, locatarii aut depositarii. Unde, si sine huius culpa pereat, ad nihil tenetur, et res perit domino.*
>
> *[357] Hoc intelligitur de rebus usu consumptibilibus. Cfr. Cod. civ. Gall., art. 1893.*
>
> *[358] Ibid., art. 1876.*

[7] **I say** 2° : Those who act from quasi-contract, or from office, such as tutors, judges, advocates, physicians, surgeons, etc., do not seem to be held for damage arising from any juridical fault whatever, unless it be at the same time theological : because either there are no laws which clearly decree this concerning those offices, as we said holds for true and open contracts; or, if there are, they do not seem received in practice with respect to the forum of conscience; for this the common sense of men persuades. For there is no one, or scarcely anyone, who thinks that a physician, surgeon, advocate, tutor, and their like, are held in conscience and before God to restitution, if they have not sinned in conscience and before God. And indeed, if matters stood otherwise, who, though most vigilant and most expert, would wish to discharge these offices, since it often happens that some light or lightest juridical fault creeps in upon the most vigilant and most expert through inadvertence or natural forgetfulness, or some other case, on account of which they would be held to restore, although they were before God without fault?

> ***Dico** 2° : Qui agunt ex quasi-contractu, seu ex officio, ut sunt tutores, iudices, advocati, medici, chirurgi, etc., non videntur teneri de damno ex quavis culpa iuridica, nisi sit simul theologica : quia vel nullae sunt leges quae de his officiis id clare decernant, sicut diximus esse de veris et apertis contractibus ; vel, si sint, non videntur receptae in praxi quoad forum conscientiae ; id enim suadet communis hominum sensus. Nullus est enim aut vix ullus qui existimet medicum, chirurgum, advocatum, tutorem et similes, teneri in conscientia et coram Deo ad restitutionem, si in conscientia et coram Deo non peccaverint. Et sane, si res aliter se haberet, quis vigilantissimus et peritissimus his officiis fungi vellet, cum saepe contingat vigilantissimis et peritissimis ex inadvertentia aut oblivione naturali, aliove casu, obrepere aliquam levem aut levissimam culpam iuridicam, ex qua tenerentur restituere, quamvis essent coram Deo sine culpa ?*

[8] Moreover, I confess that those who render service under office for pay are bound by the strict law of nature to employ greater diligence than those who serve gratuitously out of charity, and if they voluntarily omit it, they sin before God and are held to restitution.

> *Caeterum, fateor eos qui inserviunt ex officio stipendio conducti, teneri stricto iure naturae maiorem adhibere diligentiam quam qui ex charitate gratis inserviunt, et hanc si omittant voluntarie, peccare coram Deo et teneri ad restitutionem.*

How restitution is to be made by a possessor in good faith

1 [The possessor in good faith is he who invincibly does not know that the thing possessed by him belongs to another. In civil law, he is called a possessor in good faith who possesses as if he were owner, under a title translative of ownership, whose defects he does not know. Whence his good faith ceases as soon as the defects of the title are uncovered[359] . — It is evident that such a possessor injures the right of the true owner only by an injustice merely material, but not formal.]

[359] Ibid., art. 550.

> *[Possessor bonae fidei est ille qui invincibiliter ignorat rem a se possessam esse alienam. In iure civili, dicitur possessor bonae fidei ille qui possidet tamquam proprietarius, ex titulo proprietatis translativo, cuius vitia ignorat. Unde eius bona fides cessat statim ac vitia tituli detegit[359]. — Patet talem possessorem ius veri domini non laedere nisi per iniustitiam mere materialem, non autem formalem.]*
>
> *[359] Ibid., art. 550.*

2 Note 1° for the present and following articles that, when we come to the part of restitution, not only the thing received but also the fruits of the thing are distinguished (but a fruit is the utility gathered from a thing, after expenses have been deducted), into fruits of four kinds, namely merely natural, merely industrial, mixed, and civil.

> *Nota 1° pro praesenti et sequentibus articulis, quod, cum in partem restitutionis veniant, non solum res accepta, sed etiam fructus rei (fructus autem est utilitas quae colligitur ex re, deductis expensis), distinguantur fructus quadruplicis generis, scilicet mere naturales, mere industriales, mixti et civiles.*

3 Merely natural fruits are those which nature bears spontaneously, with no human labor cooperating, or at least only light labor, such as the grass of meadows, the fruits of trees, the offspring of animals, etc. Merely industrial fruits are, on the contrary, those which the labor or industry of men alone produces, not the nature of the thing, although the latter can concur as an instrument of the working and industrious man. Such is the gain from trafficking in money, wine, grain and similar things sterile of themselves; likewise a work of art wrought with another's instrument is reckoned the fruit of industry, not of the instrument.

> *Fructus mere naturales sunt quos sponte fert natura, nullo aut saltem levi hominum labore cooperante, ut sunt herbae pratorum, fructus arborum, foetus animalium, etc. Fructus mere industriales sunt, e contra, quos solus hominum labor vel industria profert, non rei natura, licet concurrere possit ut instrumentum hominis laborantis et industrii. Tale est lucrum ex negotiatione pecuniae, vini, frumenti et similium rerum de se sterilium ; similiter opus artificiosum instrumento alieno elaboratum, non instrumenti, sed industriae fructus censetur.*

4 Mixed fruits are those for producing which the nature of the thing and the industry of man concur equally, or nearly equally; for here what differs little seems to differ nothing, such as crops, wine, oil, butter, cheese, etc.

> *Fructus mixti sunt ad quos producendos natura rei et hominis industria concurrunt aequaliter, vel fere aequaliter ; hic enim quod parum distat, nihil distare videtur, ut sunt segetes, vinum, oleum, butyrum, caseus, etc.*

5 Civil fruits are so called not because they are properly fruits, but because in law they are reckoned after the manner of fruits. Such are the prices of things let out, as houses, ships, beasts of burden, fisheries, hunts, etc. They can be reduced to mixed fruits, because to those there concurs not only

industry, but the thing itself, horse, house, etc. Where there is doubt of what kind fruits are, recourse must be had to the judgment of the judge or of a prudent and learned man.

Fructus civiles sic dicuntur, non quod sint proprie fructus, sed quia in iure ad instar fructuum reputantur. Tales sunt pretia rerum elocatarum, ut domorum, navium, iumentorum, piscationis, venationis, etc. Possunt revocari ad fructus mixtos, quia ad illos non solum concurrit industria, sed res ipsa, equus, domus, etc. Ubi dubium est cuius generis sint fructus, standum est arbitrio iudicis vel viri prudentis et docti.

6 Note 2°. But, since in the restitution of fruits the expenses are usually deducted (for fruit, as I already said, is the utility from a thing after expenses deducted), expenses must be distinguished of three kinds. Some are necessary, without which the thing would either have perished or become worse : as the repair of a falling building, food for animals, etc. Certain ones are useful, which although they are not necessary for the conservation of the thing, nevertheless conduce to its betterment and increase its return, as plantings of trees, conduits of water, the addition of a mill, etc. Others are voluptuary or voluntary, which do not increase the fruit, but adorn its appearance only, as fountains, marblings, paintings, statues, etc. On account of these the thing indeed may be valued at more, yet because it does not yield more fruits, therefore they are called voluptuary or voluntary expenses. Under the character of expense, however, must be understood the labor and industry of the possessor.

Nota 2°. Sed, quia in restitutione fructuum solent deduci expensae (fructus enim, ut iam dixi, est utilitas ex re, deductis expensis), distinguendae sunt triplicis generis expensae. Aliae sunt necessariae, sine quibus res aut periisset, aut deterior evasisset : ut reparatio aedificii ruentis, alimenta animalium, etc. Quaedam sunt utiles, quae licet non sint necessariae rei conservationi, conducunt tamen ad eius meliorationem etreditum eius augent, ut plantationes arborum, aquarum adductiones, adiectio pistrini, etc. Aliae sunt voluptuariae seu voluntariae, quae fructum non augent, sed speciem tantum exornant, ut aqua salientes, incrustationes, pictura, statuae, etc. Ex quibus licet res pluris aestimetur, quia tamen non reddit plures fructus, ideo dicuntur expensae voluptuariae seu voluntariae. Sub ratione autem expensae intelligendus est labor et industria possidentis.

7 Note 3°. Finally improvement, like deterioration, is twofold : one intrinsic, as when the thing changed in itself becomes better or worse, v. g., if a colt become a horse, if a lean ox become fat, or on the contrary a fat one become lean; extrinsic, when the thing unchanged in itself is nevertheless valued at more or less, on account of the abundance or scarcity of buyers or goods, or by authority of law, v. g., grain which yesterday was worth three today is worth four, or on the contrary.

Nota 3°. Tandem melioratio, sicut et deterioratio, est duplex : una intrinseca, ut dum res in se mutata fit melior vel deterior, v. g., si pullus evadat equus, bos macer fiat pinguis, aut e contra pinguis fiat macer ; extrinseca, dum res in se immutata pluris tamen vel minoris aestimatur, ob emptorum vel mercium multitudinem aut inopiam, sive ex authoritate legis, v. g., frumentum quod heri valebat tria, hodie valet quatuor, vel e contra.

8 [Principles. 1° A possessor in good faith ought not to grow rich from the thing of another. So all say[360] . — Excepted is the case where the thing has already been legitimately prescribed : in which case he does not grow rich from the thing of another, but from a thing which by force of law has been made his own.

360 S. Lig., lib. IV, n. 607.

[Principia. 1° Possessor bonae fidei non debet ex re aliena ditescere. Ita omnes[360]. — Excipitur si res iam fuerit legitime praescripta : quo in casu non ditescit ex re aliena, sed ex re quâ vi legis facta est sua.

[360] *S. Lig., lib. IV, n. 607.*

9 2° A possessor in good faith ought, per se, to be kept unharmed, that is, as he can acquire nothing from the thing of another, so he ought to lose nothing, because he is not at fault. — I said, « per se, » because, in a case of conflict between possessor and owner, the owner of the existing thing is stronger in right; laws however, on account of the common good, sometimes favor the owner of the thing, sometimes the possessor.]

2° Possessor bonae fidei debet, per se, servari indemnis, id est, sicut ex re aliena nihil potest acquirere, ita nihil debet amittere, quia non est in culpa. — Dixi, « per se, » quia, in casu conflictus inter possessorem et dominum, dominus rei exstantis est potior iure ; leges autem, ob bonum commune, quandoque domino rei, quandoque possessori favent.]

10 These things noted,

His notatis,

11 **I say** 1° : The possessor in good faith is held to restore insofar as he possesses from the thing of another and its fruits or profit : so that the quantity of the thing possessed and of its existing fruits, or of the profit thence arising, be the measure of the restitution to be made; because this is required and suffices for restoring equality according to the form of commutative justice. From this general assertion and rule I deduce the following conclusions, first concerning the thing, then concerning the fruits. Whence

***Dico** 1° : Possessor bonae fidei in tantum tenetur restituere, in quantum possidet de re aliena et eius fructibus seu emolumento : ita quod quantitas rei possessae et eius fructuum exstantium aut emolumenti inde provenientis sit mensura restitutionis faciendae ; quia id requiritur et sufficit ad restaurandam aequalitatem secundum formam iustitiae commutativae. Ex hac generali assertione et regula deduco sequentes conclusiones, primo circa rem, deinde circa fructus. Unde*

12 **I say** 2° : The possessor in good faith, as soon as he understands that the thing he possesses belongs to another, is held to restore it while it still exists, in whole or in part, unless perchance he has prescribed it within legitimate time.

***Dico** 2° : Possessor bonae fidei, statim ac intelligit rem quam possidet esse alienam, tenetur eam adhuc exstantem in toto vel in parte restituere, nisi forte eam legitimo tempore praescripserit.*

13 The reason is plain, because he who has beyond what is his own ought to be deprived of it and it given to him who lacks it; otherwise justice is not saved, and he becomes an unjust detainer[361] .

[361] Here q. 62, a. 6, c.

Ratio patet, quia qui habet ultra quod suum est, debet ei subtrahi et dari cui deest ; alioquin non salvatur iustitia, et fit iniquus detentor[361].

[361] Hic q. 62, a. 6, c.

14 But if he consumed the thing, or it perished by chance or even through his fault, he is held to restore nothing, except that by which he was made richer by it. — The first part is plain, because he is not bound by reason of a thing received, which he no longer has, nor by reason of an unjust acquisition or alienation, because he possessed in good faith. And although perhaps he sinned by squandering it prodigally or otherwise, he did not nevertheless sin against commutative justice, since he disposed of a thing which he invincibly thought was his own. — The second part is also plain;

because that by which he was made richer succeeds in place of the thing, and it is against natural law that anyone grow rich with injury to another, according to this rule of law 48, in 6° : « No one ought to be enriched with the injustice or loss of another. » Hence

> *Quod si rem consumpserit, vel casu aut etiam eius culpa perierit, non tenetur quidquam restituere, nisi id in quo ex ea factus est ditior. — Patet prima pars, quia non tenetur ratione rei acceptae, qua amplius non est, neque ratione iniustae acceptionis aut distractionis, quia bona fide possidebat. Et quamvis forte peccaverit eam prodige aut aliter dissipando, non tamen peccavit contra iustitiam commutativam, cum disposuerit de re quam invincibiliter putabat esse suam. — Patet etiam secunda pars ; quia id in quo factus est ditior succedit loco rei, et contra ius naturale est quod quis ditescat cum alterius iniuria, iuxta hanc regulam iuris 48, in 6° : « Locupletari non debet aliquis cum alterius iniuria vel iactura. » Hinc*

15 **I say** 3° : The possessor in good faith is held to restore all natural, mixed and civil fruits still existing, unless perchance he has prescribed them, however, with the necessary and useful expenses deducted, and with the estimation of the industry and labor.

> ***Dico** 3° : Possessor bonae fidei tenetur restituere omnes fructus naturales, mixtos et civiles adhuc exstantes, nisi forte eos praescripserit, deductis tamen expensis necessariis et utilibus, atque aestimatione industriae et laboris.*

16 The reason is that they are fruits of the thing; but the thing fructifies to its own owner.

> *Ratio est, quia sunt fructus rei ; res autem fructificat domino suo.*

17 Nor does it stand in the way that mixed and civil fruits are not merely fruits of the thing; for by the very fact that the part corresponding to the expenses and the estimation of labor and industry is deducted, the whole that remains over is fruit of the thing. Nor again does it stand in the way that perhaps the thing would not have so fructified with the owner; for that pertains to the good fortune of the owner, because wherever the thing fructifies, it fructifies to its owner.

> *Neque obstat quod fructus mixti et civiles non sint mere fructus rei ; hoc ipso enim quod deducitur pars correspondens expensis et aestimationi laboris et industriae, totum quod superest, est fructus rei. Neque etiam obstat quod res forte non ita fructificasset apud dominum ; id enim pertinet ad bonam fortunam domini, quia, ubicumque res fructificat, domino fructificat.*

18 [Indeed, attending to natural law alone, all fruits of the thing, except industrial ones, ought to be rendered to the owner, because the thing, wherever it may be, fructifies to its owner. Nevertheless, if positive law decree otherwise, it can more probably be stood upon; for it must reasonably be presumed that such is the force of the law, that it transfers the dominion of the fruits to the possessor, on account of the public good, that it may remove from the midst the inextricable difficulties and complaints which would very frequently be raised concerning the nature and quantity of the fruits which the owner would claim[362] . Furthermore Gallican law decrees that the fruits pertain indiscriminately to the possessor in good faith[363] . So likewise Austrian, Italian and Prussian law[364] . Therefore.

362 Carrière, n. 1054 ; Gousset, n. 931 ; Gury, n. 636, 4°, et ali non pauci.

363 Cod. civ., art. 549.

364 Cod. Austriac., art. 330 ; Ital., art. 703 ; Boruss., I, 7, § 189.

> *[Equidem, attento solo iure naturali, omnes fructus rei, exceptis industrialibus, domino reddi debent, quia res, ubicumque sit, fructificat domino. Attamen, si ius positivum aliter decernat, ei probabilius stari potest ; quia*

rationabiliter praesumendum est talem esse vim legis, ut dominium fructuum ad possessorem transferat, propter bonum publicum, ut de medio tollat inextricabiles difficultates et querelas quae frequentissime moverentur circa naturam et quantitatem fructuum quos dominus repeteret[362]*. Porro ius Gallicum statuit fructus indiscriminatim ad possessorem bonae fidei pertinere*[363]*. Ita etiam ius Austriacum, Italicum et Borussicum*[364]*. Ergo.*

[362] *Carrière, n. 1054 ; Gousset, n. 931 ; Gury, n. 636, 4°, et ali non pauci.*

[363] *Cod. civ., art. 549.*

[364] *Cod. Austriac., art. 330 ; Ital., art. 703 ; Boruss., I, 7, § 189.*

19 Except the case where, by some legal disposition, the ceasing profit would have to be compensated to the owner. Thus by Austrian law

Exeipe casum quo, ex aliqua legali dispositione, compensandum esset domino lucrum cessans. Sic ex iure

20 the finder of a lost thing not yet prescribed owes the owner appearing, besides the thing or its price, also to pay back the profit received thence[365] .

[365] Cod. Austriac., art. 392.

Austriaco inventor rei amissae et nondum praescriptae debet domino comparenti, praeter rem vel eius pretium, etiam lucrum inde perceptum refundere[365]*.*

[365] *Cod. Austriac., art. 392.*

21 But if the fruits no longer exist, consumed in any way whatever, he is held only to that by which he was made richer, as is plain from the first conclusion and is found in law, L. Item veniunt, § Propter haec, ff de petitione haereditatis, lib. V, tit. 3.

Quod si fructus non amplius exstent, quovis modo absumpti fuerint, tenetur tantum ad id in quo factus est ditior, ut patet ex prima conclusione et habetur in iure, L. Item veniunt, § Proter haec, ff de petitione haereditatis, lib. V, tit. 3.

22 I said : « With the necessary and useful expenses deducted, and the estimation of labor and industry, » namely necessary and useful. Otherwise the owner would have more than he ought to have, and would grow rich from another's. And it is found in law, L. Fructus, ff Soluto matrimonio, where it is said : « Fruits are not understood, unless the outlays have been deducted. »

Dixi : « Deductis expensis necessariis et utilibus, atque aestimatione laboris et industriae, » necessariae scilicet et utiles. Alioquin dominus haberet plus quam debet habere, et ditesceret ex alieno. Et habetur in iure, L. Fructus, ff Soluto matrimonio, ubi dicitur : « Fructus non intelliguntur, nisi deductis impendiis. »

23 Moreover it is to be noted concerning useful expenses, which plainly make the thing better and more useful, that the owner of the thing is not held to pay back to the possessor in good faith the value of the improvement itself, but only of the expenses, provided however they do not exceed the value of the improvement. So L. In fundo, ff de rei vindic. lib. III, tit. 1.

Caeterum notandum circa expensas utiles, quae nimirum rem meliorem et utiliorem efficiunt, dominum rei non teneri refundere possessori bonae fidei ipsius meliorationis valorem, sed expensarum tantum, si tamen valorem meliorationis non excedant. Ita L. In fundo, ff de rei vindic. lib. III, tit. 1.

24 As to voluptuary expenses or improvements, authors agree that they can be removed by the possessor in good faith, if they can be separated from the thing without its destruction or deterioration, such as clocks, pictures, doors, windows, etc.; or if they have not come onto the

ground by implantation, as trees (and this is also true of the possessor in bad faith). But if they cannot be removed without deterioration of the thing, or have accrued to the ground by implantation, it seems more probable that the owner of the thing is not held to those expenses, at least in the forum of conscience; for it does not seem equitable that he pay expenses which he would not have wished to make and which bring him no utility. And L. Ex duobus 27, ff de negotiis gestis, lib. III, tit. 5 favors this.

> *Quantum ad expensas seu meliorationes voluptuarias, convenit inter authores eas a possessore bona fidei posse auferri, si separari possint a re absque eius destructione aut deterioratione, ut sunt horologia, pictura, porta, fenestra, etc. ; vel si non accesserint fundo per implantationem, ut arbores (et hoc etiam verum est de possessore malae fidei). Quod si auferri non possint absque rei deterioratione, aut per implantationem fundo accreverint, videtur probabilius dominum rei ad eas expensas non teneri, saltem in foro conscientiae ; non enim aequum videtur quod solvat expensas quas noluisset facere et quae ipsi nullam utilitatem afferunt. Favetque L. Ex duobus 27, ff de negotiis gestis, lib. III, tit. 5.*

25 **I say** 4° : As to merely industrial fruits, the possessor in good faith is held to restore nothing whatever of them (which is also true of the possessor in bad faith), even if he was made richer thereby. This is common opinion. The reason is that the fruits belong to him to whom belongs the fruitful cause. Yet the thing of another, being sterile, as is supposed, is not the cause of these fruits, but the industry of the possessor alone. Therefore. — So all say.

> ***Dico** 4° : Quantum ad fructus mere industriales, nihil quidquam ex eis tenetur restituere possessor bonae fidei (quod etiam verum est de possessore malae fidei), etiamsi inde factus sit ditior. Est communis. Ratio est, quia fructus ad eum pertinent ad quem pertinet causa fructifera. Atqui res aliena, utpote sterilis, ut supponitur, non est causa horum fructuum, sed sola possessoris industria. Ergo. — Ita omnes.*

26 [*You will ask* 1° to what the possessor in good faith is bound, if he has given away the thing of another to someone.

> *[*Petes *1° ad quid teneatur possessor bonae fidei, si rem alienam alteri donaverit.*

27 *I answer.* He is bound to nothing, if he was in no way made richer from the thing; otherwise he ought to restore to the owner that by which he was enriched. This twofold solution is drawn from the principles enunciated above. But once the error is detected, the donor of the thing of another is bound, if he can easily do so, either to admonish the donee, that he render the thing to its owner, or the owner, that he may be able to reclaim his thing. This obligation arises from the general precept of charity, and moreover, as it seems, from the law of commutative justice, since the author of an injustice, even merely material, is held to repair it if he can do so without his own notable inconvenience.

> Resp. *Ad nihil tenetur, si ex re minime ditior factus fuerit; secus restituere debet domino id ex quo ditatus fuit. Haec duplex solutio eruitur ex principiis supra enuntiatis. Errore vero detecto, tenetur donator rei alienae admonere, si facile id facere possit, vel donatarium, ut rem domino reddat, vel dominum, ut rem suam repetere possit. Haec obligatio oritur ex generali praecepto charitatis, et insuper, ut videtur, ex lege iustitiae commutativae, cum author iniustitia etiam mere materialis teneatur eam reparare, si possit sine proprio et notabili incommodo.*

28 *You will ask* 2° to what the possessor in good faith is bound, if he has sold gratuitously accepted property belonging to another.

> Petes *2° ad quid teneatur possessor bonae fidei, si rem alienam gratuito acceptam alteri vendiderit.*

29 *I answer* 1° In case of eviction, he is bound to pay back the price to the buyer; otherwise he would grow rich from the thing of another.

> Resp. *1° In casu evictionis, tenetur emptori pretium refundere; alioquin ex re aliena ditesceret.*

30 2° Outside the case of eviction, namely when the thing cannot be recovered by the owner, whether because the last possessor consumed it, or because he no longer appears, the seller, according to the common opinion, owes the whole price received from the buyer back to the owner. The reason is that from the whole of that price he was truly made richer, and the owner unjustly despoiled of his thing suffered an equivalent damage. Furthermore equity does not tolerate that one man, with the loss of another, be enriched from his goods. Whence the owner must be made whole from the profit which the seller received and to which he had no right.

> *2° Extra casum evictionis, quando scilicet res a domino recuperari nequit, sive quia ultimus possessor eam consumpsit, sive quia amplius iste non comparet, venditor, iuxta communem sententiam, totum pretium ab emptore receptum domino refundere debet. Ratio est, quia ex toto illo pretio vere ditior factus est, et dominus re sua iniuste spoliatus damnum aequivalens passus est. Porro aequitas non tolerat quod unus, cum alterius iactura, ex rebus eius locupletetur. Unde dominus indemnis faciendus est ex lucro quod venditor percepit et ad quod nullum ius habebat.*

31 Certain ones nevertheless entirely free the seller, because against him the owner has no recourse. But this does not seem true; for the seller would grow rich from the thing of another. it would not be safe, in this case, to depart from the common opinion [366].

366 Ita Gousset, n. 930. Gury, n. 639.

> *Quidam tamen venditorem omnino liberant, quia in eum nullum recursum habet dominus. Sed hoc non videtur verum; venditor enim ex re aliena ditesceret. non esset tutum, in hoc casu, a sententia communi recedere [366].*
>
> *366 Ita Gousset, n. 930. Gury, n. 639.*

32 *You will ask* 3° to what the possessor in good faith is bound who sold the thing of another, which afterward perished in the hands of the buyer.

> Petes *3° ad quid teneatur possessor bonae fidei qui vendidit rem alienam, quae postea in manibus emptoris periit.*

33 *I answer* 1° If he had the thing under an onerous title, v. g., because he bought it, it is more probable he is bound to nothing. For indeed : 1° he is not bound by reason of the thing, since he no longer has it; 2° nor by reason of the damage, since he is not the cause why the thing perished.

> Resp. *1° Si rem habuerit ex titulo oneroso, v. g., quia eam emit, probabilius ad nihil tenetur. Etenim: 1° non tenetur ratione rei, cum illam iam non habeat; 2° non ratione damni, cum non sit causa cur res perierit.*

34 2° If he had the thing under a gratuitous title, he is held to restore the price by which he was made richer through the sale. This is the common opinion. But, to whom is it to be restored? The theologians disagree. Some probably say it is to be restored to the buyer: both because the thing perishes to its owner; and because the sale, being of the thing of another, was invalid, and therefore the buyer in good faith has a right to recover his money. Others, more probably, because more equitably, as it seems to us, teach that it is to be restored to the owner: both because the thing did not perish absolutely, but exists equivalently in the price received; and because the sale, which was null, the thing perishing, harms the buyer no more than a valid sale. But since the former opinion is not lacking in probability, the seller would not need to be disturbed if he had paid back the price to

the buyer. — It is to be noted that, if positive law determines to whom the restoration is to be made, the law is to be stood upon, because it validly determines the dominion, lest difficulties arise thence [367].

[367] Cfr. Marc., Instit. mor.; Alphons., n. 939; Gury, n. 641.

> *2° Si rem habuerit ex titulo gratuito, tenetur restituere pretium ex quo per venditionem factus est ditior. Est communis sententia. Sed, cuinam est restituendum? Dissident theologi. Alii probabiliter dicunt restituendum esse emptori: tum quia res perit domino; tum quia venditio, utpote rei alienae, fuit invalida, adeoque emptor bonae fidei habet ius ad suam pecuniam recuperandam. Alii probabilius, quia aequius, ut nobis videtur, docent restituendum esse domino: tum quia res non periit absolute, sed existit aequivalenter in pretio accepto; tum quia venditio, quae fuit nulla, re pereunte, non magis nocet emptori quam venditio valida. Cum vero prior sententia probabilitate non destituatur, venditor non inquietandus esset, si pretium emptori refudisset. — Notandum quod, si ius positivum statuat cui restitutio sit facienda, legi standum est, quia valide dominium determinat, ut difficultates inde oriturae tollantur [367].*
>
> *[367] Cfr. Marc., Instit. mor.; Alphons., n. 939; Gury, n. 641.*

35 *You will ask* 4° what is to be done if, after it is recognized that the thing belongs to another, the owner cannot be found.

> Petes *4° quid agendum, si, postquam agnoscitur rem esse alienam, dominus reperiri non possit.*

36 *I answer* this case is to be solved from the principles enunciated above concerning a thing found. You received, v. g., through blameless error, more than was owed, from one you know not. If you could not find the owner, the money given beyond what is owed must be held as a thing abandoned, and its dominion is acquired by the first occupant.

> Resp. *hunc casum solvendum esse ex principiis supra enuntiatis de re inventa. Recepisti, v. g., ex errore inculpabili, maius debito, et a quo nescis. Si dominum reperire nequiveris, pecunia supererogata ut res derelicta habenda est, eiusque dominium a primo occupante acquiritur.*

37 Note that, if the possessor in good faith be culpably in delay of restoring, he is constituted in bad faith, and therefore is held to compensate the damage ensuing from the delay.]

> *Nota quod, si possessor bonae fidei sit in mora culpabili restituendi, in mala fide constituitur, ideoque tenetur compensare damnum ex mora secutum.]*

Whether one who in good faith bought a stolen thing is bound, when he learns it is stolen, to give it back to the true owner?

1 The question concerns a buyer in good faith, who bought a thing for himself, and which if he render it to its owner he will probably lose the price given to the thief; and concerning the thief, who probably will not give back to the owner the thing returned to himself.

> *Quaestio est de emptore bonae fidei, qui rem sibi emit, et quam si domino reddat, pretium furi datum verisimiliter sit amissurus, et de fure qui rem sibi redditam probabiliter domino non reddet.*

2 **I say :** It is more probable that he who buys a stolen thing in good faith, when he knows it is stolen, is held to render it immediately to the true owner, and not to the thief, even though he would not recover his price from the thief.

> ***Dico:*** *Probabilius est quod qui bona fide rem furtivam emit, ubi scit esse furtivam, teneatur eam reddere immediate vero domino, et non furi, etiamsi suum pretium a fure non sit recuperaturus.*

[3] *Proof.* 1° No one can lay hold of the thing of another, or dispose of it, against the reasonable wish of its owner; for this is properly theft. Yet the owner is reasonably unwilling while his thing is rendered to the thief, about to perish to himself. Therefore. — *Proof of the minor.* The owner is not bound to consent to this. Therefore he is reasonably unwilling. — *Proof of the antecedent,* both because the thing cries out to its owner, and because the owner has the right of claiming it back, and the buyer is held to render it to him who claims it, as I shall say presently. Therefore he is not bound to consent.

> Prob. *1° Nemo potest rem alienam contrectare, seu de ea disponere, invito rationabiliter domino; id enim est proprie furtum. Atqui dominus est rationabiliter invitus, dum res sua redditur furi, sibi peritura. Ergo.* — Prob. min. *Dominus non tenetur in id consentire. Ergo est rationabiliter invitus.* — Prob. ant.*, tum quia res clamat ad dominum, tum quia dominus habet ius eam repetendi et ipsi repetenti tenetur emptor reddere, ut modo dicam. Ergo non tenetur consentire.*

[4] 2° If the owner reclaim his thing, whether juridically or privately, the buyer is held to render it to him, and he will certainly be condemned by the judge to do so, as the adversaries themselves confess. Yet the claim does not confer upon the owner the right that his thing be restored immediately to himself, but supposes it, and by omitting to claim because of ignorance he does not lose such a right. Therefore restitution is owed even to one who does not claim.

> *2° Si dominus repetat rem suam, sive iuridice, sive privatim, emptor tenetur ei reddere, et certo ad id a iudice condemnabitur, ut fatentur ipsimet adversarii. Atqui repetitio non confert domino ius ut res sua ipsi immediate restituatur, sed supponit, et ex omissione repetitionis propter ignorantiam non amittit tale ius. Ergo etiam non repetenti debet restitui.*

[5] 3° If the thief does not appear, or the buyer cannot recover his price from him, he cannot sell that thing to another or convert it to his own uses, so as to keep himself whole, by admission of the adversaries themselves. Therefore neither is he to restore it to the thief.

> *3° Si fur non compareat, aut ab eo emptor non possit pretium suum recuperare, non potest rem illam alteri vendere aut in suos usus convertere, ut se servet indemnem, ex ipsis adversariis. Ergo nec furi restituere.*

[6] 4° Therefore, according to the adversaries, the buyer in good faith can render the thing to the thief, because in this he does no injury to the owner, since he puts his thing back into the same state in which he found it before, and from which he is not bound to draw it out with equal loss to himself. This is the principal foundation of the contrary side. But what is assumed is false, namely that in this no injury is done to the owner : 1° because it is false that the thing is put into the same state as before; for the thief, aware that he comes under suspicion of theft, will conceal the thing more carefully or alienate it farther off, and thus it will be in a worse state than before, because more difficult to recover. 2° Given that the thing is not put into a worse state than before, at least it is put into a worse state than it is in fact in with the buyer, where it is secure. Yet this does not happen without injury to the owner. Therefore. — *Proof of the minor.* The improvement of a thing, of whatever sort, belongs to the owner, to whom it always and everywhere cries out. Yet the state of security with the buyer is a certain improvement of the thing. Therefore it cannot be drawn out of that state and put into a worse one without injury to the owner.

> *4° Ideo, secundum adversarios, emptor bonae fidei potest rem furi reddere, quia in hoc nullam facit iniuriam domino, cum rem eius in eodem statu reponat in quo antea invenit, et a quo non tenetur extrahere cum aequali suo damno. Hoc est praecipuum contrariae partis fundamentum. Verum falsum est quod assumitur, nimirum in hoc nullam fieri iniuriam domino: 1° quia falsum est rem poni in eodem statu ac ante; fur enim advertens se in suspicionem furti venire, rem*

diligentius occultabit aut longius distrahet, sicque erit in peiori statu quam ante, quia difficilius recuperabilis. 2° Dato quod res non ponatur in peiori statu quam ante, saltem ponitur in peiori statu quam sit de facto apud emptorem, ubi est secure. Atqui id non fit sine iniuria domini. Ergo. — Prob. min. *Melioratio rei, qualiscumque sit, pertinet ad dominum, ad quem semper et ubique clamat. Atqui status securitatis apud emptorem est quaedam rei melioratio. Ergo non potest ab illo statu extrahi et in peiori reponi absque iniuria domini.*

7 *You will object:* No one is bound to procure another's good or to impede his damage at equal loss to himself, unless he be bound thereto from contract, or quasi-contract, or from debt. Therefore the buyer in good faith is not bound to render to the owner with the loss of his price.

Obi.: *Nemo tenetur procurare bonum alterius aut impedire eius damnum cum aequali suo damno, nisi ad id teneatur ex contractu, seu quasi-contractu, seu ex debito. Ergo emptor bonae fidei non tenetur reddere domino, cum amissione sui pretii.*

8 *I answer. I distinguish the antecedent.* No one is bound to procure another's good at his own loss, if the procuring of the other's good is the cause of the loss; let the antecedent stand; otherwise, I deny the antecedent. But here the rendering of the stolen thing to the owner, wherein lies this procuring of his good, is not the cause of your loss or of the loss of your price; for that was already lost beforehand, when you handed it over to the thief: but the cause was either the malice of the thief, or your imprudence or misfortune. This distinction must be carefully retained for solving arguments from parity, which are the harder ones.

Resp. Dist. ant. *Nemo tenetur procurare bonum alterius cum suo damno, si procuratio alterius boni sit causa damni, transeat ant.; secus, nego ant. Iam autem hic redditio rei furtivae domino, in qua sita est haec eius boni procuratio, non est causa tui damni seu amissionis pretii; iam enim ante amissum est, cum illud tradidisti furi: sed causa fuit, vel furis malitia, vel tua imprudentia aut infortunium. Haec distinctio diligenter retinenda est pro solutione argumentorum a paritate, qua sunt difficiliora.*

9 *You will ask* whether, if someone in good faith buy a stolen thing, and sell the same in good faith to another, that thing ought still to be rendered to its owner.

Petes *utrum, si quis rem furtivam bona fide emit, et eadem bona fide alteri vendidit, res illa debeat adhuc reddi domino.*

10 *I answer,* affirmative; for the same reasons are always at work as before.

Resp. *affirmative; militant enim semper eaedem rationes ac ante.*

11 But at whose loss? Of the first, or of the second buyer?

Sed cuius dispendio? An primi, an secundi emptoris?

12 *I answer.* At the loss of the first buyer, who must rescind the contract with his buyer, rendering to him his price, and render the still existing thing to its true owner. Nor does it suffice if he cede to the second buyer the action he has against the thief, with whom the second buyer had no dealings whatsoever. The reason is that, although perhaps the seller acquires dominion over the price according to the civil laws, of which below, treatise *on Contracts*, dissertation IV, a. 6, § 1; nevertheless that dominion is weak and encumbered, inasmuch as the seller is bound, according to those same laws and the nature of the contract, on account of the eviction of the thing sold, that is, he is held to keep the buyer whole, if the thing bought is to be rendered to its owner, as it must be in this case : consequently he is held to pay back the price to him.

> Resp. *Dispendio primi emptoris, qui debet rescindere contractum cum eius emptore, reddendo illi eius pretium, et rem adhuc exstantem vero domino. Nec sufficit si cedat secundo emptori actionem quam habet in furem, quocum secundus emptor nullum habuit negotium. Ratio est, quia, esto forte venditor secundum leges civiles, de quibus infra tract.* de Contract.*, dissert. IV, a. 6, § 1, acquirat dominium pretii; istud tamen dominium est infirmum et vinculatum, quatenus venditor tenetur, secundum easdem leges et naturam contractus, de evictione rei venditae, hoc est, tenetur emptorem indemnem servare, si rem emptam debeat reddere domino, prout debet in casu: consequenter tenetur ipsi refundere pretium.*

13 But greater is the difficulty in the case where the second buyer does not appear, or the thing is consumed: is the first buyer held to pay back the price to the owner of the thing?

> *Verum maior est difficultas casu quo secundus emptor non compareat, aut res sit consumpta, an teneatur primus emptor refundere pretium domino rei?*

14 *I answer,* more probably, that he ought to render that price to the owner of the thing, by reason of the received thing still existing, not indeed in itself, but in its value. Because the second buyer does not intend to transfer the dominion of his money except to the owner of the thing, and except insofar as the dominion of the thing sold is transferred to himself. Yet the first buyer is not the owner of the thing, nor does he transfer its dominion to the second buyer, nor is it transferred by any law. Therefore the first buyer is held to restore that price; and since he cannot restore it to the second buyer, because the latter does not appear, or consumed the thing to his own use, he is held, by his presumed will, to restore it to the owner of the thing, that equality may thus be compensated and brought about.

> Resp. *probabilius, quod debeat istud pretium reddere domino rei, ratione rei acceptae adhuc existentis, non in se quidem, sed in sui valore. Quia secundus emptor non intendit transferre dominium pecuniae suae nisi in dominum rei, et nisi in quantum sibi transfertur dominium rei venditae. Atqui primus emptor non est dominus rei, neque huius dominium transfert in secundum emptorem, neque aliqua lege transfertur. Ergo primus emptor tenetur istud pretium restituere; et cum non possit restituere secundo emptori, quia non comparet, aut rem in suam utilitatem consumpsit, ex eius voluntate praesumpta tenetur restituere domino rei, ut sic compensetur et fiat aequalitas.*

15 [For solving the present doubt a distinction must be used. Therefore

> *[Ad solvendum dubium praesens, distinctione utendum est. Itaque*

16 1° If the owner appears reclaiming his thing, the possessor owes it to him, even with the loss of the price; because the owner can take possession of his thing wherever he finds it. Nevertheless an action is given to the buyer against the thief [368] .

368 Gury, n. 381.

> *1° Si compareat dominus, rem suam repetens, possessor debet eam ipsi reddere, etiam cum pretii iactura; quia dominus rem suam occupare potest, ubicumque eam reperiat. Datur tamen actio emptori in furem [368].*
>
> *368 Gury, n. 381.*

17 So it is by natural law. But by Gallican, Italian and Austrian law, he who bought the thing in the public market, or from a merchant selling goods of this kind, is not held to render it to its owner, unless his price be refunded to him, which the owner can reclaim from the seller.

> *Ita ex iure naturali. Sed ex iure Gallico, Italico et Austriaco, qui rem in foro publico, vel a mercatore res huiusmodi vendente emit, non tenetur eam domino reddere, nisi refuso sibi pretio, quod dominus a venditore repetere potest.*

18 By English law, if the thing was bought at a fair, except in case of eviction by sentence of the judge, dominion is likewise transferred to the buyer in good faith.

> *Ex iure Anglico, si res empta fuerit in nundinis, excepto casu evictionis per sententiam iudicis, dominium pariter transfertur in emptorem bonae fidei.*

19 By Prussian law, he who acquired the thing of another under an onerous title from a person not suspect is indeed held to render it, but he can reclaim the price from the owner, who himself likewise has an action against the prior possessor in bad faith [369] .

369 Boruss., I, 15, § 25 et 26; I, 11, § 158.

> *Ex iure Borussico, qui rem alienam titulo oneroso a persona non suspecta acquisivit, tenetur quidem eam reddere, sed potest pretium a domino repetere, qui et ipse habet actionem in priorem possessorem malae fidei [369].*
>
> *369 Boruss., I, 15, § 25 et 26; I, 11, § 158.*

20 These were validly enacted on account of the public good, for the security of commerce, and they can be observed in conscience.

> *Haec fuerunt valide statuta, propter bonum publicum, ad securitatem commercii, et in conscientia servari possunt.*

21 2° If the owner does not reclaim his thing, it is very probable, and perhaps more probable, since the buyer can by no other way keep himself whole, that he may send the thing back to the thief, that he may recover his money: both because no one is held to preserve a thing for its owner at equal loss to himself; and because, as St. Liguori says, « Since each one has a right to the recovery of his own goods, no one is forbidden that action which per se is necessary and directly ordered to the repairing of his own loss, although indirectly and per accidens damage may befall another. » [370]]

370 Lib. IV, n. 569.

> *2° Si dominus rem suam non repetat, valde probabiliter, et forte probabilius, cum emptor nulla alia via possit se indemnem servare, potest rem ad furem remittere, ut pecuniam recuperet: tum quia nullus tenetur rem domino servare cum proprio damno aequali; tum quia, ut ait S. Ligorius, « cum quisque ius habeat ad sua bona recuperanda, nemini interdicitur actio illa quae per se est necessaria et directa ad suum damnum reparandum, licet indirecte et per accidens damnum alteri eveniat. » [370]]*
>
> *370 Lib. IV, n. 569.*

On the restitution to be made by a possessor in bad faith

1 *You will ask* 1° what, and how much, the possessor in bad faith is held to restore.

> Petes *1° quid et quantum restituere teneatur possessor malae fidei.*

2 *I answer.* The possessor in bad faith, beyond the fact that he is bound to restore all those things to which we said the possessor in good faith is bound by reason of a thing received, namely the existing thing, all natural, mixed and civil fruits still existing, or that by which he was made richer by these, is moreover bound, by reason of an unjust acquisition, to restore : 1° the value of the thing, in whatever way, even by chance, it perished; 2° all fruits, except industrial ones, which he himself received, even if the owner would not have received them, or which the owner legitimately received, even if he himself did not receive them, whether they exist or not, whether he was made richer by them or not; 3° all ceasing profits or ensuing damages to the owner from the unjust acquisition or detention of his

thing. Because the unjust possessor, through the unjust acquisition and detention of another's thing, is the voluntary cause of all these damages, and is bound to repair the justice and equality which he thus voluntarily violated; but this reparation cannot be made except by the restitution of all the aforementioned things.

> Resp. *Possessor malae fidei, ultra quod tenetur restituere ea omnia ad quae diximus teneri possessorem bonae fidei ratione rei acceptae, nimirum rem exstantem, fructus omnes naturales, mixtos et civiles exstantes, aut id in quo ex his factus est ditior, insuper tenetur, ratione iniustae acceptionis, restituere: 1° valorem rei, quocumque modo, etiam casu, perierit; 2° omnes fructus, exceptis industrialibus, quos ipse percepit, etsi dominus non percepisset, aut quos dominus legitime percepisset, etsi ipse non perceperit, sive exstent, sive non, sive ex his sit factus ditior, sive non; 3° omnia luera cessantia aut damna emergentia domino ex iniusta acceptione aut detentione rei suae. Quia iniquus possessor, per iniustam acceptionem et detentionem rei alienae, horum omnium damnorum est causa voluntaria, et tenetur reparare iustitiam et aequalitatem quam sic voluntarie violavit; haec autem reparatio fieri non potest, nisi per omnium praedictorum restitutionem.*

3 But these things are to be understood so long as the thing exists, whether it remain with the unjust possessor, or pass to anyone else in any way whatever. But when the thing no longer exists, it no longer fructifies to its owner, and then the unjust possessor is not held to restore the fruits which would be received if it still existed, except in the case where it would have remained longer with the owner and he himself would have received further fruits from it; for then the unjust possessor is held to restore even those according to the measure of the hope, because he is also the cause of that damage or ceasing profit.

> *Haec autem intelligenda sunt quamdiu res existit, sive maneant apud iniquum possessorem, sive ad alium quocumque modo transeat. Quando autem res non amplius existit, non amplius fructificat domino, et tune non tenetur iniquus possessor restituere fructus qui perciperentur, si adhuc existeret, nisi casu quo apud dominum diutius perstisset et ex ea fructus ulteriores ipse percepisset; tune enim etiam illos secundum quantitatem spei iniquus possessor tenetur restituere, quia est etiam causa istius damni seu lucri cessantis.*

4 *You will ask* 2° whether the possessor in bad faith is held to render the value of the thing if it perish with him, certain to perish with the owner.

> Petes *2° utrum mala fidei possessor teneatur praestare valorem rei, si apud ipsum pereat, certo peritura apud dominum.*

5 I suppose as certain among all that, if the thing were going to perish with the owner through the injury of a third party, the thief or unjust possessor is held to restore : v. g., you kill the horse of Caius which Titius would certainly have killed, you steal and consume wine which another thief would equally have stolen away had it remained with its owner; you are bound, because, as the other by stealing contracted an obligation of restoring, so you, by stealing earlier, contract the obligation earlier.

> *Suppono ut certum apud omnes quod, si res esset peritura apud dominum per iniuriam tertii, fur seu possessor iniquus teneatur restituere: v. g., occidis equum Caii quem Titius certo occidisset, furatus es et consumpsisti vinum quod fur alter pariter surripuisset, si mansisset apud dominum; teneris, quia, sicut ille alter furando contraxisset obligationem restituendi, ita tu, prius furando, prius contrahis obligationem.*

6 But the difficulty is in the case where the thing perishes with the possessor in bad faith, certain to perish in the same way and at the same time with its owner : v. g., you stole a horse, which dies with you, about to die in the same way with its owner; sailing on a ship, you stole away the goods of

another, and a storm arising, all the goods perish together with your theft. Are you bound to restitution of the value of the horse or of the goods? Some affirm, others deny. Therefore I think a distinction must be made. Whence

> *Sed difficultas est casu quo res pereat apud possessorem malae fidei, certo peritura eodem modo et eodem tempore apud dominum: v. g., furatus es equum, qui moritur apud te, eodem modo moriturus apud dominum; navi vectus, merces alterius surripuisti, et orta tempestate, omnes merces cum tuo furto pereunt. Tenerisne ad restitutionem valoris equi vel mercium? Alii affirmant, alii negant. Ergo puto distinguendum. Unde*

7 *I answer.* Either the thing manifestly appears certainly about to perish within a short time, or it does not appear manifestly. If the first, the possessor in bad faith is not bound to restore; if the second, he is bound.

> Resp. *Vel res manifeste apparet certo brevi peritura, vel non apparet manifeste. Si primum, non tenetur restituere possessor malae fidei; si secundum, tenetur.*

8 The first part I do not think can be denied by anyone; because in that case the thing has no value whatsoever, and it is morally held as lost: whence no damage follows to the owner from the unjust detention.

> *Primam partem non puto a quoquam esse negandam; quia res in illo casu nullius est valoris, et habetur moraliter perdita: unde ex iniusta detentione nullum damnum sequitur domino.*

9 The reason will be made clearer by examples. You stole a horse so manifestly sick that before a day elapsed it would die; you stole away oxen and sheep already on the point of being driven off by invading enemies, furniture from a fire, goods from a shipwreck, and these are driven off or perish with you by the same chance event and at the same morally reckoned time. You are not bound to restore anything; because those things at the time of their taking away were of no value, nor did they begin to be of value to the owner while with you, since they were always in the same danger.

> *Ratio exemplis clarior fiet. Furatus es equum ita manifeste aegrum, ut ante diem elapsum sit moriturus; surripuisti boves, oves ab irruentibus hostibus iamiam abducendos, supellectilem ab incendio, merces a naufragio, et haec apud te eodem casu et eodem moraliter tempore abducuntur aut pereunt. Non teneris quidquam restituere; quia res illae tempore ablationis nullius erant valoris, nec coeperunt apud te valere domino, cum semper fuerint in eodem periculo.*

10 [By Gallican and Italian law, however the stolen thing may have perished or been lost, the thief is not exempted from the obligation of restoring its price[371] . A twofold reason can be brought forward : 1° because from the beginning the thief is at fault and in delay of restoring; 2° because, although by natural law the thief is bound to nothing in this case, restitution is legitimately imposed upon him by public authority, in punishment and vindication of his fault and injury, and on account of the motive of public order. Nevertheless he may await the sentence of the judge.]

371 Cod. Gall., art. 1302; Ital., art. 1298.

> *[Ex iure Gallico et Italico, quocumque modo res furata perierit vel perdita fuerit, fur non eximitur ab obligatione pretium eius restituendi [371]. Duplex ratio afferri potest: 1° quia a principio fur est in culpa et in mora restituendi; 2° quia, etsi ex iure naturali fur ad nihil teneatur in casu, restitutio ipsi imponitur legitime ab authoritate publica, in paenam et vindictam culpae et iniuriae, et ob motivum ordinis publici. Attamen potest expectare sententiam iudicis.]*
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> *371 Cod. Gall., art. 1302; Ital., art. 1298.*

11 *Proof* of the second part, which is more contested. 1° The possessor in bad faith contracts a twofold obligation, one by reason of the thing received, the other by reason of the unjust acquisition or detention; and the owner a twofold action, one in rem, the other against the person of the possessor. The thing perishing, the first obligation and action alike are indeed extinguished, but not the second; for this lasts as long as the thief does not repair the justice and equality which he violated, as is plain both from the nature of the thing and from the common sense of theologians and jurists. Yet this reparation is made only by restitution. Therefore, if restitution is not made, the owner is injured in this right or action of his.

> Prob. *secunda pars, quae magis controvertitur. 1° Pospossessor malae fidei duplicem contrahit obligationem, unam ratione rei acceptae, alteram ratione iniustae acceptionis seu detentionis; et dominus duplicem actionem, unam in rem, alteram in personam possessoris. Re pereunte, exstinguitur quidem prima tam obligatio quam actio, at non secunda; haec enim tamdiu permanet, quamdiu fur non reparat iustitiam et aequalitatem quam violavit, ut patet et ex natura rei et ex communi sensu theologorum ac iurisperitorum. Atqui haec reparatio non fit nisi per restitutionem. Ergo, si non fiat restitutio, dominus laeditur in hoc suo iure seu actione.*

12 *You will say,* an unjust acquisition does not give birth to an obligation of restoring in the thief, nor attribute an action to the owner, except insofar as it is damaging. Yet it is not damaging in the case where the thing would equally have perished with the owner. Therefore.

> Dices, *iniustam acceptionem non parere obligationem restituendi in fure, neque actionem domino tribuere, nisi in quantum est damnificativa. Atqui non est damnificativa in casu quo res aeque periisset apud dominum. Ergo.*

13 *I answer.* I deny the minor. For by the very fact that you despoil the owner, reasonably unwilling, of his thing not manifestly about to perish, although he must be deprived of it by another unknown cause, you efficaciously inflict damage upon him; because in such a case the thing is worth so much, according to the estimation of men, as if it were not about to perish. But that the owner is tomorrow to be deprived of the same thing by an unforeseen cause does not make it so that you, forestalling that cause, inflict no damage upon him, but only makes it so that the damage which tomorrow would be imputed to another cause, for example fire or shipwreck, is now imputed to you : just as your killing Titius today, who was tomorrow to be killed by a wild beast, does not make it so that you are not truly a homicide, a true damager and truly bound to restitution; but only makes it so that this killing is today imputed to you, otherwise tomorrow to be imputed to the beast.

> Resp. *Nego min. Hoc ipso enim quo dominum rationabiliter invitum re sua non manifeste peritura spolias, quamvis sit illa ex alia causa ignota privandus, efficaciter ipsi damnum infers; quia in tali casu res tanti valet, secundum aestimationem hominum, ac si non esset peritura. Quod autem dominus sit cras eadem re ex causa non praevisa privandus, non facit quod tu, illam causam praeveniens, damnum ipsi non inferas, sed solum facit quod damnum quod cras alteri causae, puta igni vel naufragio, foret imputandum, tibi nunc imputetur: sicut quod tu occidas hodie Titium, qui cras esset occidendus a fera, non facit quod non sis vere homicida, verus damnificator et vere obligatus restitutioni; sed solum facit quod haec occisio tibi hodie imputetur, alioquin cras imputanda ferae.*

14 And it seems wonderful that the adversaries concede all these things, even with respect to the obligation of restoring, if Titius were tomorrow to be killed unjustly by a free cause, and deny it concerning a necessary cause, seeing that a future killing by a necessary cause no more prevents your present killing from being damaging than if it were to be by a free cause.

Et mirum videtur quod adversarii haec omnia, etiam quantum ad obligationem restituendi, concedant, si Titius cras foret iniuste occidendus a causa libera, et negent de causa necessaria, siquidem occisio futura per causam necessariam non magis impediat quin tua praesens occisio sit damnificativa, quam si foret a causa libera.

15 *Proof* 2°. He who unjustly steals the thing of another, or unjustly detains it, according to the apprehension of men and every law, takes upon himself all risk of the thing, and therefore it is commonly said that the possessor in bad faith is liable for the fortuitous event; so that in such a case the thing does not perish to its owner, but to the unjust possessor, just as by force of a contract of insurance a thing perishes to the insurer, and not to its owner, in this sense that the insurer ought to pay back the value of the thing to its owner.

Prob. 2°. *Qui inique surripit rem alienam, aut eam iniuste detinet, iuxta hominum apprehensionem et omne ius, suscipit in se omne rei periculum, et ideo dicitur communiter quod possessor mala fidei teneatur de casu fortuito; ita quod in tali casu res non pereat domino, sed iniusto possessori, sicut vi contractus assecurationis res perit assecuratori, et non domino, hoc sensu quod assecurator debeat refundere valorem rei domino.*

16 Whence, in our case, the condition of the owner becomes better to that extent, that he acquires a right that his thing, or its value, be rendered to him, from whatever state it may have arrived. Therefore, if it is not rendered, he is injured in that right, and damaged.

Unde, in nostro casu, eatenus fit melior conditio domini, quo acquirat ius ut res sua, seu eius valor, ipsi reddatur, a quocumque statu pervenerit. Ergo, si non redditur, laeditur in isto iure, et damnificatur.

17 *It is confirmed.* If a thing bought and delivered yesterday, the price not paid, should perish today with the buyer, about to perish in the same way with the seller, the buyer is nevertheless held to pay the price agreed upon yesterday. Therefore likewise the thief is held to render the value of the stolen thing. — The consequence is plain; because the obligation of the thief contracted from a delict is no more extinguished by the destruction of the thing than the obligation of the buyer from contract. And if you say that by purchase and delivery he becomes owner of the thing, but a thing perishes to its owner, I shall answer, as above, that the thief by the unjust detention takes upon himself all risk of the thing, and thus the thing perishes to him, in this sense that he is held to render its value.

Confirm. *Si res heri empta et tradita, non soluto pretio, pereat hodie apud emptorem, eodem modo peritura apud venditorem, tenetur emptor nihilominus solvere pretium de quo fuit heri conventum. Ergo similiter fur tenetur praestare valorem rei furtivae. — Patet conseq.; quia obligatio furis ex delicto parta non magis exstinguitur per interitum rei, quam obligatio emptoris ex contractu. Et si dicas, per emptionem et traditionem fieri dominum rei, rem autem perire domino, dicam ego, ut supra, furem per iniustam detentionem suscipere in se omne rei periculum, et sic illi rem perire, hoc sensu quod eius valorem praestare teneatur.*

18 *You will ask* 3° to what the possessor in bad faith is bound by reason of improvement and deterioration.

Petes *3° ad quid teneatur possessor malae fidei ratione meliorationis et deteriorationis.*

19 *I answer* 1°. The possessor in bad faith is held to restore the thing, or its value, according to the state of improvement, whether intrinsic or extrinsic, which it would have had with its owner if the unjust possessor had not stolen it away or detained it, even if with himself it had not been in that best state. This is the common and certain opinion; because, since through his unjust taking away or

detention he impeded this best improvement of the thing with its owner, it is evident that he is bound to compensate it.

> Resp. *1°. Possessor malae fidei tenetur restituere rem seu eius valorem secundum statum meliorationis, si intrinsecae sive extrinsecae, quem habuisset apud dominum, si possessor iniquus eam non surripuisset aut detinuisset, etiamsi apud ipsum in eo optimo statu non fuisset. Est communis et certa; quia, cum per iniustam suam ablationem aut detentionem impediverit hanc optimam rei meliorationem apud dominum, evidens est quod teneatur eam compensare.*

20 *I answer* 2°. The possessor in bad faith is held to render the value of the thing according to the best state of improvement, intrinsic as well as extrinsic, which it had with himself, although this improvement would not have existed with the owner, or would not have profited him.

> Resp. *2°. Possessor malae fidei tenetur praestare valorem rei secundum optimum statum meliorationis, tam intrinsecae quam extrinsecae, quem apud ipsum habuit, quanvis haec melioratio non fuisset apud dominum, aut ipsi non profuisset.*

21 Consider the case. You stole a colt which grew up with you into a robust horse, and then grew old : behold intrinsic improvement and deterioration. In September you stole a measure of wheat worth three gold pieces, in January kept with you it is worth four gold pieces, in June, harvest near, it is worth only three gold pieces, or less : behold extrinsic improvement and deterioration. You are bound, I say, to render the value of a generous horse, and four gold pieces for the measure of wheat, even if such improvement had not profited the owner, either because he would have sold the horse or the grain before the time of improvement, or because he kept them until the time of deterioration : so that, if, at the time when you restore, the thing still exists with you in a worse state, it does not suffice to restore it as such, but you are bound to add something to compensate the past improvement.

> *Sit casus. Furatus es pullum qui apud te adolevit in equum robustum, et deinde senuit: en melioratio et deterioratio intrinseca. Furatus es mense septembri mensuram tritici valentem tribus aureis, mense ianuario apud te servatum valet quatuor aureis, mense iunio, vicina messe, valet tantum tribus aureis, aut minus: en melioratio et deterioratio extrinseca. Teneris, inquam, reddere valorem equi generosi, et quatuor aureos pro mensura tritici, etiamsi talis melioratio domino non profuisset, sive quia ante tempus meliorationis equum aut frumentum distraxisset, sive quia usque ad tempus deteriorationis servasset: ita quod, si, tempore quo restituis, res adhuc exstet apud te in deteriori statu, non sufficit eam ut talem restituere, sed teneris aliquid addere ad compensandam meliorationem praeteritam.*

22 *Proof* from the preceding principles. 1° A thing, so long as it remains, is improved to its owner, whether intrinsically or extrinsically, and of how much it is worth at any time, of so much is it worth to its owner. Therefore the possessor in bad faith inflicts damage upon the owner while he does not restore it to him according to what it was worth at its highest. Nor say that it also decreases to the owner, for we have shown that to be false; because, as we proved, the possessor in bad faith takes upon himself all risk of the thing, and thence the fortune of the owner becomes better. Whence, just as if the thing perchance perish with the thief himself, even though certain to perish with its owner too, he is held to render it as if existing in its value, as was said; so also, if the thing deteriorates, although it would have been deteriorating with its owner, he is held to render it not deteriorated, but improved as before while with him.

> Prob. *ex praecedentibus principiis. 1° Res, quamdiu permanet, melioratur domino, sive intrinsece sive extrinsece, et quanti valet quovis tempore, tanti domino valet. Ergo malae fidei possessor domino damnum infert, dum eam ipsi non restituit secundum quod pluris valuit. Neque dicas etiam decrescere domino, id enim falsum esse ostendimus; quia, ut*

probavimus, possessor malae fidei suscipit in se omne rei periculum, et inde fit melior fortuna domini. Unde, sicut si res casu apud ipsum furem pereat, etiam certo peritura apud dominum, tenetur eam quasi exstantem in suo valore praestare, ut dictum est; ita etiam, si res deterioretur, quamvis apud dominum esset deterioranda, tenetur reddere non deterioratam, sed ut ante melioratam apud se.

23 When the possessor in bad faith detained the thing of another at the time of greater value, whether intrinsic or extrinsic, he was bound to render it as it was, and from then, by reason of the unjust detention, contracted the obligation of restoring it according to that highest value which it had, no otherwise than if he had received it then for the first time. « As receiving the thing of another, says St. Thomas, is a sin against justice, so also is detaining it; because by the fact that someone detains the thing of another against the wish of its owner, he hinders him from the use of his own thing, and thus does him an injury [372] . » Whence each has the same character of harm. Yet an obligation once contracted by reason of an unjust acquisition or detention, just as it is not extinguished by the fortuitous destruction of the thing, as was said, so neither by a subsequent deterioration, but by restitution alone or the condonation of the owner. Therefore.

372 Here q. 62, a. 8, in c.

Quando possessor malae fidei rem alienam detinuit tempore maioris valoris, sive intrinseci sive extrinseci, tenebatur reddere ut erat, et ex tunc ratione iniustae detentionis contraxit obligationem eam restituendi secundum illum summum valorem quem habebat, non secus ac si tune primo accepisset. « Sicut accipere rem alienam, inquit S. Thomas, est peccatum contra iustitiam, ita etiam detinere eam; quia per hoc quod aliquis detinet rem alienam invito domino, impedit eum ab usu rei suae, et sic ei facit iniuriam [372]. » Unde utrumque habet eandem nocumenti rationem. Atqui obligatio semel contracta ratione iniustae acceptionis seu detentionis, sicut non exstinguitur per fortuitum rei interitum, ut dictum est, ita nec per subsequentem deteriorationem, sed per solam restitutionem aut domini condonationem. Ergo.

372 Hic q. 62, a. 8, in c.

24 [Against the superior conclusion several say that, if the thing was to be kept by the owner until its decrease, the thief is not held to pay more than the value which it would then have had; because the owner truly suffers no loss, and is put back into the same state in which he would have been if no injury had been committed. This opinion is probable enough, so that it can safely be led into practice.]

[Contra superiorem conclusionem dicunt plures quod, si res a domino servanda erat usque ad decrementum, fur non tenetur nisi valorem quem tunc habitura erat solvere; quia dominus damnum revera non patitur, et in eodem statu reponitur in quo versaretur, si iniuria non fuisset commissa. Haec sententia satis est probabilis, ut tuto in praxim deduci possit.]

25 The following things are to be held as certain [373] .

373 Gury, n. 648.

Ut certa habenda sunt quae sequuntur [373].

373 Gury, n. 648.

26 1° If the thing has become worse with the thief, it is to be restored according to the value which it had at the time when it was taken away. Otherwise the owner would not receive all that was his own. — This, however, according to Lessius, lib. II, cap. XII, n. 103, is to be understood in the sense that the thing decreased through the fault of the detainer; for if it is worse by its nature, in the same way

as it would have become with its owner, it is to be restored as it is, since the thing decreases to its owner. But at the same time there must be compensated the damage which the owner perhaps suffered from the privation of his own thing. And this must be observed in every case.

> *1° Si res apud furem deterior facta fuerit, restituenda est secundum valorem quem habebat tempore quo sublata est. Secus enim dominus non reciperet id omne quod suum erat. — Hoc tamen, secundum Lessium, lib. II, cap. XII, n. 103, intelligendum est eo sensu quod res ex culpa detentoris decreverit; nam, si ex natura sua deterior sit eodem modo quo apud dominum facta fuisset, restituenda est uti modo est, cum res decrescat domino. Sed simul compensandum est damnum quod ex privatione rei suae dominus forte passus est. Et hoc in omni casu esse servandum.*

27 2° If the owner would have sold his own thing at the time when it was taken from him, and the thief sold or consumed it at the same time, he is held to restore only the value which it then had. — But if the thief be in delay about paying back the price, he is held to compensate the damage ensuing from the delay to the owner.

> *2° Si dominus rem suam fuisset venditurus tempore quo sibi ablata est, et fur eodem tempore eam vendiderit aut consumpserit, tenetur tantum restituere valorem quem tune habebat. — Si vero fur sit in mora pretium refundendi, tenetur compensare damnum ex dilatione domino secutum.*

28 3° If the thing with the thief first increased and afterward decreased, and it be established that the owner would have sold or consumed it at the time when it was of greater price, the thief is held to render him the greater price.

> *3° Si res apud furem primo creverit et postea decreverit, et constet dominum illam venditurum aut consumpturum fuisse tempore quo maioris erat pretii, fur tenetur maius pretium ei reddere.*

29 4° If the thief sell or consume a thing not to be kept by its owner at the time of greater price, he is held to render the whole price to the owner : 1° because the thing fructifies to its owner ; 2° because no one can grow rich from the thing of another [374] . But if he sold or consumed this thing not to be kept by its owner at the time of lesser price, several contradicting, more commonly and more probably he is held to have only this price refunded ; unless it be established that the owner could not have procured a like thing for himself at the same price [375] .

374 S. Lig., lib. IV, n. 621.

375 Id., ibid.

> *4° Si fur rem a domino non servandam vendiderit vel consumpserit tempore maioris pretii, tenetur totum pretium domino reddere : 1° quia res domino fructificat ; 2° quia nemo ex re aliena ditescere potest [374]. Si vero hanc rem a domino non servandam vendiderit vel consumpserit tempore minoris pretii, contradicentibus pluribus, communius et probabilius tenetur hoc solum pretium esse refundendum ; nisi constet quod dominus non potuisset eodem pretio rem similem sibi comparare [375].*
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> *374 S. Lig., lib. IV, n. 621.*
>
> *375 Id., ibid.*

30 Lugo hands down a general rule for similar cases, disp. 18, n. 133 : « Whenever, he says, the question concerns the restitution of ceasing profit or ensuing damage, the restitution must be made not integrally, but according to the greater or lesser certainty of such profit, or of the avoidance of such damage, namely as much as that uncertain hope could be worth, all the things being weighed by

which the effect could have been impeded. And this, even if the obligation of restoring descend from a delict. »

> *Regulam generalem pro similibus casibus tradit Lugo, disp. 18, n. 133 : « Quoties, inquit, agitur de restitutione lucri cessantis vel damni emergentis, debet restitutio fieri, non integre, sed iuxta maiorem vel minorem certitudinem talis lucri, vel vitandi talis damni, quantum scilicet spes illa incerta valere poterat, attentis iis omnibus quibus effectus impediri poterat. Et hoc, etiamsi obligatio restituendi ex delicto descendat. »*

31 *You will ask* 4° whether he who consumed a stolen thing in extreme necessity is held to restore.

> Petes *4° utrum restituere teneatur qui rem furatam in extrema necessitate consumpsit.*

32 *I answer,* negative. He was indeed bound to restore before he was placed in such necessity, but theft does not destroy the right which he had to the thing in such a case. He must therefore be held in the same way as if he had received and consumed the thing in the very necessity itself [376] .

376 Id., ibid., n. 623.

> Resp. *negative. Tenebatur quidem restituere, antequam in tali necessitate constitueretur, sed furtum non destruit ius quod ad rem habebat in tali casu. Habendus est ergo eodem modo ac si in ipsa necessitate rem accepisset et consumpsisset [376].*
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> *376 Id., ibid., n. 623.*

33 *You will ask* 5° whether he who bought the thing of another from a thief can render it back to him, that he may recover the price paid.

> Petes *3° utrum qui rem alienam emit a fure, possit eam ipsi reddere, ut pretium solutum recuperet.*

34 *I answer.* It is denied more commonly. But St. Liguori holds the affirmative opinion, as absolutely probable and indeed more probable, with many others : « The reason is that, although he sinned by buying the thing in bad faith, nevertheless after the purchase he has the right, just as the buyer in good faith, to rescind the contract by rendering the thing back to the thief ; for the reception of the buyer, once retracted, is not in fact the cause why the owner loses his thing [377] ». But if, on account of longer detention with the buyer, damage should accrue to the owner on this head, it would have to be compensated.

377 Id., ibid., n. 570.

> Resp. *Communius negatur. At vero sententiam affirmativam, ut absolute probabilem et etiam probabiliorem, cum pluribus tenet S. Ligorius : « Ratio, quia, licet iste peccaverit rem mala fide emendo, tamen post emptionem habet ius, aeque ac emptor bonae fidei, ad contractum rescindendum, rem furi reddendo ; nam acceptio emptoris, postquam retractatur, non est de facto causa quod dominus rem suam amittat [377] ». Si vero, propter diuturniorem detentionem apud emptorem, damnum ex hoc capite domino obveniret, compensandum esset.*
>
> *377 Id., ibid., n. 570.*

35 *You will ask* 6° what, if the thing of another has passed through the hands of several possessors in bad faith, by donation or sale?

> Petes *6° quid, si res aliena per manus plurium possessorum mala fidei transierit, ex donatione aut venditione ?*

36 *I answer* 1°. As to the thing, it is to be restored by the last possessor. That one failing, the ravisher is bound for the price of the thing. But if neither satisfy, the rest ought to pay the price of the thing in

equal parts. Finally, the others failing, each is bound to the whole, because the obligation lies upon them in solidum.

> Resp. *1°. Quoad rem, restituenda est ab ultimo possessore. Illo deficiente, tenetur raptor pro pretio rei. Quod si neuter satisfaciat, ceteri per aequas partes debent rei pretium solvere. Tandem, defectu aliorum, unusquisque ad totum tenetur, quia obligatio in solidum eis incumbit.*

37 *I answer* 2°. As to the fruits of the thing or damages ensuing from the detention, each individually is bound to compensation for the part of the time during which he detained the thing. But if the rest do not restore for their own part of the damaging and enjoyment, the reparation of the whole damage falls to each one, pro rata of the time elapsed from the day on which they successively became unjust possessors of the thing of another [378] .

[378] Gury, n. 630.

> Resp. *2°. Quoad rei fructus aut damna ex detentione secuta, singuli ad compensationem tenentur pro parte temporis quo rem detinuerunt. Si vero reliqui pro sua damnificationis et fruitionis parte non restituant, totius damni reparatio unicuique incumbit, pro rata temporis elapsi a die quo successive facti sunt rei alienae iniusti possessores [378].*
>
> *[378] Gury, n. 630.*

38 *You will ask* 7° whether the thief, besides the money taken away, ought to restore also some increment.

> Petes *7° utrum fur, praeter pecuniam ablatam restituere debeat etiam aliquod auctarium.*

39 *I answer,* affirmative, if it be established or legitimately presumed that the owner was going to receive profit from his money; because he has suffered loss, and he ought to be made whole; but otherwise in the opposite case, because the owner, who underwent no loss, would grow rich from the thing of another [379]

[379] Id., n. 649.

> Resp. *affirmative, si constet vel legitime praesumatur quod dominus lucrum ex pecunia sua erat percepturus ; quia damnum passus est, et indemnis fieri debet ; secus vero in casu opposito, quia dominus, qui nullum damnum subiit, ex re aliena ditesceret [379]*
>
> *[379] Id., n. 649.*

40 *You will ask* 8° whether the possessor in bad faith can deduct the expenses incurred in preserving or improving the thing.

> Petes *8° utrum possessor mala fidei possit deducere expensas in re conservanda vel melioranda factas.*

41 *I answer.* It is more probable that necessary and useful expenses can be deducted, in the forum of conscience, by the possessor in bad faith, and that the owner is bound in justice to refund them to him. This is the teaching of D. Thomas here, q. 100, a. 6, ad 3, where, having said that he who simoniacally received a benefice is held to restore, not only the fruits received, but also those which could have been received by a diligent possessor, he adds that this is to be understood « with the expenses made for the sake of the fruits deducted. »

> Resp. *Probabilius est expensas necessarias et utiles posse, in foro conscientiae, deduci a possessore mala fidei, et dominum teneri secundum iustitiam eas ipsi refundere. Est D. Thomae in hac parte, q. 100, a. 6, ad 3, ubi cum dixisset*

quod qui simoniace accepit beneficium, teneatur restituere, non solum fructus perceptos, sed etiam eos qui percipi potuerunt a possessore diligenti, subdit id intelligendum esse « deductis expensis factis causa fructuum. »

42 *Proof* of the answer by reason : between the possessor in bad faith and the owner of the thing there intervenes a virtual and tacit contract, whereby the owner binds the thief that, if he do not restore the thing, he preserve it and, insofar as he can, bring it to completion, and therefore make the expenses necessary for these purposes. Therefore the owner is bound to refund these expenses as made by his will, when the thing is restored to him. — *Proof* of the antecedent.; because by law it is presumed that the owner wishes his thing to remain intact, nay rather, insofar as possible, be increased to his own advantage. Therefore he intends to bind the thief to these ends on supposition that he retain the thing.

Prob. *responsione ratione : inter possessorem malae fidei et dominum rei intercedit virtualis et tacitus contractus, quo dominus adstringit furem ut, si rem non restituat, eam conservet et, in quantum potest, perficiat, faciatque ideo expensas ad hac necessarias. Ergo tenetur dominus has expensas tamquam ex eius voluntate factas refundere, dum res ipsi restituitur.* — Prob. *ant.; quia iure praesumitur dominum velle ut res sua maneat integra, imo et, in quantum possibile est, augeatur in suum commodum. Ergo ad haec intendit obligare furem in suppositione quo rem retineat.*

43 So it is by natural law, and also by positive law [380] , namely lest the owner of the thing grow rich from another's good. Indeed it is permitted the possessor to deduct merely voluptuary expenses, provided however they can be separated intact, unless the owner prefer to refund them.]

380 Cod. Gall., art. 1381.

Ita ex iure naturali, et etiam ex iure positivo [380], nempe scilicet dominus rei ex bono alieno ditescat. Imo possessori licet deducere expensas mere voluptuarias, si tamen intacta substantia separari possint, nisi domino placeat eas refundere.]

380 Cod. Gall., art. 1381.

44 I said, « in the forum of conscience, » because in the external forum the possessor in bad faith will be deprived of expenses of any kind whatever, in punishment of his delict, and he will be bound to obey that sentence as just [381] .

381 S. Lig., Homo apost., X, 78, versus fin.; lib. IV, n. 618.

Dico, « in foro conscientiae, » quia in foro exteriori possessor mala fidei in poenam delicti privabitur expensis qualibuscumque, cui sententiae, utpote iustae, parere tenebitur [381].

381 S. Lig., Homo apost., X, 78, versus fin.; lib. IV, n. 618.

45 *You will ask* 9° whether anything, and what, is to be restored by a possessor of doubtful good faith.

Petes *9° utrum et quid sit restituendum a possessore dubiae fidei.*

46 *I answer* 1°. He who, before possessing the thing, doubts whether it is stolen, or whether he can justly possess it, first sins against justice by possessing it or acquiring it with the mind of retaining it for himself; because he exposes himself to the danger of detaining the thing of another against the reasonable wish of its owner, and by this very fact possesses unjustly.

Resp. *1°. Qui, antequam rem possideat, dubitat an sit furtiva, seu an eam possit iuste possidere, primo peccat contra iustitiam eam possidendo seu acquirendo animo sibi retinendi ; quia se exponit periculo rem alienam, invito rationabiliter domino, detinendi, et hoc ipso iniuste possidet.*

47 But if, after a diligent inquiry, to which he is bound, as was said concerning things found, it be established that it belongs to another, he must restore it entire ; if doubt remains, it seems more conformable to reason and natural equity that he restore, not the whole, as certain ones wish, for perchance it is his own, but a part pro rata of the doubt.

> *Si autem, facta diligenti inquisitione, ad quam tenetur, ut dictum est de rebus inventis, constet esse alienam, debet integram restituere ; si remaneat dubium, rationi et aequitati naturali videtur conformius quod restituat, non totum, ut quidam volunt, forte enim est sua, sed partem pro ratione dubii.*

48 [It is to be noted that he who begins to possess in doubt by despoiling another of his possession must, while the doubt persists, first restore the whole thing to the prior possessor, who unjustly deprived him of it under a certain title.]

> *[Advertendum quod qui in dubio coepit possidere spoliando alium possessione sua, debet primum, dubio perseverante, rem totam priori possessori restituere, qui eum titulo certo iniuste privavit.]*

49 *I answer* 2°. He who, after acquiring the thing in good faith, begins to doubt with founded doubt whether it is not stolen : 1° He is bound to inquire into the truth, employing moral diligence greater or less, according to the quality of the thing, as was said concerning things found ; otherwise he exposes himself to the danger of detaining another's property, and becomes a possessor in bad faith. 2° But if, after sufficient inquiry, an equal doubt remain, according to several he may retain the thing as his own, consume it, sell it, etc., because then this rule of law runs : « In equal doubt, the condition of the possessor is better, » according to which all tribunals, ecclesiastical as well as civil, adjudicate a possessed thing in doubt wholly to the possessor. He must nevertheless be disposed in mind to render to the owner, if he appears, the existing thing, or, if it does not exist, that by which he was made richer, and if he sells, to warn the buyer of such doubt, because it is a defect whereby its value is diminished.

> Resp. *2°. Qui, postquam rem bona fide acquisivit, dubitare incipit dubio fundato, an non sit furtiva : 1° Tenetur inquirere veritatem, adhibita morali diligentia maiori vel minori, pro rei qualitate, ut dictum est de rebus inventis ; alioquin se exponit periculo detinendi alienum, et fit possessor mala fidei. 2° Si autem, post inquisitionem sufficientem, maneat aequale dubium, secundum plures, potest rem ut suam retinere, consumere, vendere, etc., quia tunc currit haec regula iuris : « In pari dubio, melior est conditio possidentis, » iuxta quam omnia tribunalia, tam ecclesiastica quam civilia, rem possessam in dubio totam adiudicant possidenti. Debet tamen esse animo dispositus reddere domino, si compareat, rem exstantem, aut, si non exstet, id in quo factus est ditior, et si vendat, monere emptorem de tali dubio, quia est vitium quo minuitur eius valor.*

50 (It is rightly pronounced that the thing can be adjudicated to the possessor in equal doubt, on account of the title of possession, which doubt does not destroy. St. Liguori proceeds farther, and from the principles we laid down in the treatise on Human Acts, on Probability, admits the same conclusion when the possessor has in his favor a probable opinion, and against himself one more probable; or in his favor possession alone, and against himself an opinion uniquely probable. In this twofold case he can retain the thing as his own, until it be morally established, that is, by proof overcoming the presumption born of possession, that the thing belongs to another. The reason is that, as soon as the possession itself is not doubtful, but certain and legitimate, though alone, it bears per se, according to the cited rule of law, a certain presumption concerning the formal justice of

the possession, which preponderates over all reasons not admitting moral certainty, and yields only to truth [382] .

[382] Lib. I, n. 36.

> *(Recte pronuntiatur rem possessori adiudicari posse in aequali dubio, ob titulum possessionis, quem dubium non destruit. Ulterius procedit S. Ligorius, et ex principiis quos statuimus in tract. de Actib. hum., de Probabilitate, eamdem conclusionem admittit, quando possessor habet pro se opinionem probabilem, et contra se probabiliorem; vel pro se solam possessionem et contra se opinionem unice probabilem. In hoc duplici casu, potest rem suam retinere, donec constet moraliter, id est per probationem superantem praesumptionem ex possessione natam, rem esse alienam. Ratio est, quia statim ac ipsa possessio non est dubia, sed certa et legitima, quamvis sola, parit per se, ex regula iuris citata, praesumptionem certam de iustitia formali possessionis, quae praeponderat omnibus rationibus certitudinem moralem oppositam non patientibus, nec cedit nisi veritati [382].*
>
> *[382] Lib. I, n. 36.*

51 Those who then decree that the thing is to be divided pro rata of the doubt do not attend to the fact that they attribute certain right to him in whose favor the doubt or probability militates without a certain title.)

> *Qui tunc rem dividendam esse pro rata dubii decernunt, non attendunt quod ei in cuius favorem militat dubium seu probabilitas ius certum tribuunt sine titulo certo.*

52 *You will ask* 10° whether a possessor of doubtful good faith can prescribe, if, after due inquiry, the doubt persist.

> Petes *10° utrum possessor dubiae fidei prescribere possit, si, facta debita inquisitione, dubium perseveret.*

53 *I answer* 1° affirmative, more probably, if he began to possess in good faith ; because that persistent doubt, which due diligence could not dissipate, has become invincible, and consequently, even while it remains, a tranquil conscience can be formed, especially from the principle of law : « The condition of the possessor is better. »

> Resp. *1° affirmative probabilius, si bona fide coepit possidere ; quia dubium illud perseverans, quod diligentia debita non potuit dissipare, factum est invincibile, et proinde, etiam illo manente, conscientia efformari potest praesertim ex principio iuris : « Melior est conditio possidentis. »*

54 *I answer* 2° negative, if he began to possess with doubtful good faith, because he is destitute of the good faith required for prescribing [383]

[383] Id., lib. IV, n. 504, 1°.

> Resp. 2° *negative, si dubia fide coepit possidere, quia bona fide ad praescribendum requisita destituitur [383]*
>
> *[383] Id., lib. IV, n. 504, 1°.*

55 *You will ask* 11° whether he owes any restitution who doubts whether he has unjustly damaged someone, v. g., whether his command or counsel effectively influenced someone to damage; whether death followed from a wound inflicted; whether offspring was born of adultery.

> Petes *11° utrum aliquid debeat restituere qui dubitat an aliquem iniuste damnifieaverit, v. g., an mandato vel consilio dato in damnum efficaciter influxerit; an ex vulnere inflicto mors sit secuta; an proles sit nata ex adulterio.*

56 *I answer.* It is more probable that one who doubts whether he has unjustly damaged another is held to restitution, not of the whole, but of a part, pro rata of the doubt.

> Resp. *Probabilius est dubitantem an alium iniuste damnificaverit, teneri ad restitutionem, non totius, sed partis, pro rata dubii.*

57 *Proof* 1°. He who doubts whether he caused a damage doubts consequently whether he is bound to restore, just as he who judges with certainty that he inflicted a damage judges with certainty that he is bound to restore. Yet, by the very fact that he doubts whether he is bound to restore, he is certainly bound ; because, if he do not restore, while perhaps he is bound, he exposes himself to the manifest danger of committing an injustice, and here this rule of law runs : « In doubt the safer part is to be chosen. » Therefore.

> Prob. *1°. Qui dubitat an damnum causaverit, dubitat consequenter an teneatur restituere, sicut qui iudicat certo se damnum intulisse, certo iudicat se teneri restituere. Atqui, hoc ipso quo dubitat se tenere restituere, certo tenetur ; quia, si non restituat, cum forte teneatur, exponitur manifesto periculo committendi iniustitiam, et hic currit haec regula iuris : « In dubio tutior pars est eligenda. » Ergo.*

58 The adversaries answer that he who doubts whether he did a damage doubts only perhaps speculatively whether he is bound to restore, because by a reflex judgment, that « in an equal case the condition of the possessor is better, » he remains practically certain that he is not bound to restore, unless it be certainly evident to him that he is bound; for he possesses his own things, and therefore ought not despoil himself of them, because he is not bound.

> *Respondent adversarii, quod qui dubitat an damnum fecerit, non dubitet nisi forte speculative an teneatur restituere, quia per iudicium reflexum, quod « in pari causa melior sit conditio possidentis, » certus practice manet se non teneri restituere, nisi ipsi certo constet se teneri; possidet enim res suas, quibus ideo se spoliare non debet, quia non tenetur.*

59 *On the contrary.* Possession does not make the condition of the possessor better, nor exempt him from restitution in doubt, except insofar as it founds a presumption that there does not subsist a reason obliging to restitution, as happens in those things which we have possessed in good faith for a long time, inasmuch as it is not likely that men greedy of their own things leave them to be possessed by others, as I said concerning prescription. But, in our case, the possession of your own things does not found a presumption that there does not subsist a reason obliging to restitution, which is the damage of which you doubt.

> Sed contra. *Possessio non reddit meliorem conditionem possidentis, nec ipsum eximit a restitutione in dubio, nisi in quantum fundat praesumptionem quod non subsistat ratio obligans ad restitutionem, sicut contingit in his quae iam diu bona fide possidemus, quatenus non est verisimile quod homines rerum suarum avidi eas aliis possidendas relinquant, ut dixi de praescriptione. At, in nostro casu, possessio rerum tuarum non fundat praesumptionem quod non subsistat ratio obligans ad restitutionem, quae est damnum de quo dubitas.*

60 *Proof* 2°. In the case proposed, the presumption of damage stands against the doubter, so that it falls upon him to prove that he did not cause it. Therefore, if he does not prove it, he is bound to its reparation, at least in part. — *Proof* of the antecedent. Where a delict is established, the presumption stands against the delinquent, so that it falls upon him to prove that no damage came thence from those things which usually come from such a cause; because, according to all laws, in doubtful causes favor is rather to be shown to the innocent than to the guilty. Yet the delict is established, namely that an unjust sufficient cause of the damage has been posited. Therefore.

Prob. 2°. *In casu posito, praesumptio damni stat contra dubitantem, ita ut ipsi incumbat probare se illud non causasse. Ergo, si id non probat, tenetur ad illius reparationem, saltem pro parte.* — Prob. *ant. Ubi constat de delicto, praesumptio stat contra delinquentem, sic ut ipsi incumbat probare nullum exinde provenisse damnum ex eis quae ex tali causa provenire solent ; quia, secundum omnia iura, in dubia causa magis favendum est innocenti quam nocenti. Atqui constat de delicto, nempe positam esse iniuste causam sufficientem damni. Ergo.*

61 *It is confirmed.* When two concur per accidens in the same damage, and it is doubted by whom it was caused ; v. g., two shoot at the same man, and it is doubted from whose stroke he was killed; two commit adultery with the same woman, and it is not known from whose intercourse the offspring was born : each is held to restitution in part, as the theologians commonly teach. Therefore, a fortiori, the guilty one, while he concurs with an innocent one.

Confirm. *Quando duo concurrunt per accidens ad idem damnum, et dubitatur a quo sit causatum ; v. g., duo explodunt in eundem hominem, et dubitatur ex cuius ictu sit occisus ; duo moechantur cum eadem muliere, et nescitur ex cuius concubitu nata sit proles : uterque tenetur ad restitutionem pro parte, ut communiter docent theologi. Ergo, a fortiori, nocens, dum concurrit cum innocente.*

62 *You will say* : The offspring, in doubt, can hold itself legitimate until it be proved spurious. Therefore also the adulterer can hold it legitimate, and thus restore nothing for it.

Dices *: Proles, in dubio, potest se reputare legitimam, donec probetur spuria. Ergo etiam adulter potest eam reputare legitimam, sicque nihil pro ea restituere.*

63 *I answer.* I deny the consequence ; because the laws so dispose in favor of the innocent offspring, not in favor of the guilty adulterer.

Resp. *Nego consequentiam ; quia iura sic disponunt in favorem prolis innocentis, non in favorem adulteri nocentis.*

64 [To us it seems that this question is to be solved otherwise, and let it stand as an example of the case of offspring born of adultery.

[Nobis videtur aliter solvendam esse hanc quaestionem, et sit in exemplum casus prolis ex adulterio natae.

65 This principle must first be laid down, that someone is not bound to repair any damage unless it be established that his action was the positive, efficacious and formally unjust cause of the damage. I say, « unless it be established; » because, if it were pronounced that one who doubts whether he damaged another is bound to restitution, a certain obligation would be drawn out of a doubtful cause, and the effect would exceed the virtue of its cause; which is repugnant. And the same must be said even if the doubtful damager were compelled to repair only a part of the damage, pro rata of the doubt; for, as was said above, certain right would be attributed to the damaged party without a certain title.

Ponendum est primo hoc principium, quod aliquis non tenetur reparare damnum aliquod, nisi constet eius actionem fuisse causam positivam, efficacem et formaliter iniustam damni. Dico, « nisi constet; » quia, si pronuntiaretur dubitantem an alium damnificaverit teneri ad restitutionem, obligatio certa erueretur ex causa dubia, et effectus virtutem causae excederet ; quod repugnat. Et idem dicendum est, etiamsi damnificator dubius ad partem tantum damni reparandam adigeretur, pro ratione dubii ; nam, ut supra dictum est, ius certum sine titulo certo damnificato tribueretur.

66 In the proposed case a distinction must be made. Either it is doubted whether the offspring is of the husband or of the adulterer, or it is doubted whether offspring certainly born of adultery is of this

or that adulterer.

> *In casu proposito distinguendum est. Vel dubitatur an proles sit mariti aut adulteri, vel dubitatur an proles certo ex adulterio nata sit huius vel illius adulteri.*

67 If the former, the adulterer is bound to nothing : 1° because the damage is not established ; 2° because the offspring is presumed legitimate, unless the contrary be proved, all the more since adulterers strive to forestall the natural effect of the crime. St. Liguori adds a third reason [384] , namely that « the condition of the adulterer possessing his own goods is better, which he is not bound to despoil himself of for a doubtful obligation. » So it is commonly held, against certain ones who say restoration is to be made pro rata of the doubt.

384 Lib. IV, n. 657.

> *Si prius, adulter ad nihil tenetur : 1° quia de damno non constat ; 2° quia praesumitur prolem esse legitimam, nisi contrarium probetur, eo magis quo adulteri effectum naturalem criminis praecavere student. Tertiam rationem addit S. Ligorius [384], scilicet quod « melior est conditio adulteri possidentis bona sua, quibus non tenetur se spoliare pro obligatione dubia. » Ita communiter, contra quosdam, qui dicunt esse restituendum pro rata dubii.*
>
> *384 Lib. IV, n. 657.*

68 If the latter, a subdistinction must be made.

> *Si posterius, subdistinguendum est.*

69 1° If perchance two, by common counsel, led another's wife into committing adultery, many say each is bound pro rata of the doubt. We, however, proceeding farther, judge that they are bound in solidum, so that, one failing, the other is bound to the whole, because they acted as one agent.

> *1° Si forte duo ex communi consilio uxorem alienam ad committendum adulterium adduxerint, dicunt multi utrumque teneri pro rata dubii. Nos vero, ulterius progredientes, censemus eos in solidum teneri, ita ut, uno deficiente, alter ad totum teneatur, quia per modum unius egerunt.*

70 2° If two adulterers perpetrated the crime without any counsel, the theologians disagree. St. Liguori [385] exempts each from the obligation of compensating the damage, on account of the reasons brought forward in the case where it is doubted whether the offspring is legitimate or adulterine. But it must be said more truly that each is bound, at least pro rata of the doubt, as Gury affirms [386] , and better in solidum, as it seems to us. The reason is that each was in a different way the positive, efficacious and formally unjust cause of the damage inflicted upon the husband, who has certain right to compensation.

385 Ibid., n. 658.

386 N. 773.

> *2° Si duo adulteri absque omni consilio crimen patraverint, dissentiunt theologi. S. Ligorius [385] utrumque ab obligatione damnum compensandi eximit, ob rationes allatas in casu quo dubitatur an proles sit legitima vel adulterina. Sed verius dicendum est utrumque teneri, saltem pro rata dubii, ut affirmat Gury [386], et melius in solidum, ut nobis videtur. Ratio est, quia uterque fuit diverso modo causa positiva, efficax et formaliter iniusta damni illati marito, qui ius certum habet ad compensationem.*
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> *385 Ibid., n. 658.*
>
> *386 N. 773.*

71 He indeed who was made father of the adulterine offspring inflicted the damage and is bound to repair it ; but if he cannot be recognized as such, this comes about through the act of the other, who by his crime impeded that compensation be demanded determinately from the author of the damage, and from this uncertainty the innocent husband, who was certainly harmed, ought not suffer. Therefore.

> *Ille quidem qui factus est pater prolis adulterinae, damnum intulit et tenetur illud reparare ; si vero ut talis agnosci non possit, hoc evenit ex alterius facto, qui crimine suo impedivit ne ab authore damni compensatio determinate exigatur, et ex hac incertitudine maritus innocens, qui certo fuit laesus, pati non debet. Ergo.*

72 Although St. Liguori seems to dissent in solving that question, nevertheless he favors our conclusion; for, even if he exempt both adulterers from every obligation, he nevertheless makes exception [387] , if the second adulterer perceived, at least implicitly, that he would be the cause of that uncertainty ; which falls back into our opinion.

387 Ubi supra.

> *Quamvis S. Ligorius in solvenda ista quaestione dissentire videatur, nostrae tamen conclusioni favet ; nam, etiamsi utrumque adulterum ab omni obligatione eximat, excipit tamen [387], si adulter secundus adverterit, saltem implicite, se incertitudinis illius causam fore ; quod in nostram sententiam recidit.*
>
> *387 Ubi supra.*

73 What has been said of adultery must be understood of similar cases.]

> *Quae de adulterio dicta sunt, de casibus similibus sunt intelligenda.]*

Whether those who hinder someone from obtaining some good are bound to restitution?

1 Whether he who impedes someone from the attainment of some good is held to restitution.

> *Utrum ille qui impedit aliquem a consecutione alicuius boni, teneatur ad restitutionem.*

2 *Note*. The good that can be impeded either is owed to one's neighbor by commutative justice, inasmuch as he has a perfect right and in re to it, as to a benefice after its collation and confirmation, possession not yet acquired; or a right to the thing whereby he could reclaim it at law and make it his own, as to a benefice after election or presentation, or to a thing promised or bought but not yet delivered. Or it is not owed to him by commutative justice, but he has toward it only a certain moral right, whether from distributive justice, or from gratitude, or from the good will of him on whom it depends.

> Nota. *Bonum impedibile vel est debitum proximo ex iustitia commutativa, quatenus habet ius perfectum et in in re ad illud, ut ad beneficium post collationem et confirmationem, nondum adepta possessione ; aut ius ad rem, quo possit illud in iure repetere et facere suum, ut ad beneficium post electionem aut praesentationem, seu ad rem promissam vel emptam nondum traditam. Vel non est ipsi debitum ex iustitia commutativa, sed habet tantum ad illud ius quoddam morale, sive ex iustitia distributiva, sive ex gratitudine, sive ex bona voluntate illius a quo dependet.*

3 I suppose as certain that he who impedes someone from attaining a good owed to him by commutative justice, in whatever way he impede it, even by prayers or persuasions alone, without force or fraud, is held to restitution; because he violates commutative justice and the strict right of another.

Suppono tamquam certum, quod qui impedit aliquem a consecutione boni ipsi debiti ex iustitia commutativa, quovis modo impediat, etiamsi solis precibus aut suasionibus, sine vi aut dolo, teneatur ad restitutionem; quia violat iustitiam commutativam et ius strictum alterius.

4 I say 1° : He who without force, fraud or guile, but by prayers alone, persuasions, counsels, blandishments and similar means, impedes someone from attaining a good not owed to him by commutative justice, but either from distributive justice alone, or from another's gratuitous will, although already determined upon giving, is not liable to restitution : because he does not sin against commutative justice, nor violate the strict right of another; for that determined will of the giver does not confer strict right. Whence, just as the former could change his will without injury to the donee, so can another induce him to this change of will without injury to him.

Dico 1° : Qui sine vi, fraude aut dolo, sed solis precibus, persuasionibus, consiliis, blanditiis et similibus mediis impedit aliquem a consecutione boni ipsi non debiti ex iustitia commutativa, sed vel ex sola iustitia distributiva, vel ex gratuita alterius voluntate, etsi iam ad dandum determinata, non est obnoxius restitutioni : quia non peccat contra iustitiam commutativam, nec alterius ius strictum violat; non enim illa determinata voluntas collatoris ius strictum confert. Unde, sicut ille absque donatarii iniuria poterat mutare voluntatem, ita alter absque illius iniuria potest inducere ad hanc voluntatis mutationem.

5 I said, « a good owed by distributive justice alone, » such as benefices and public offices, which since they are principally ordered to the common good, and not to the private advantage of the particular persons to whom they are conferred, are not owed to these except by distributive justice. Otherwise of the public good, which is principally instituted for the utility of individuals, such as the public treasury, pious foundations, revenues from common goods ; for these are owed to individuals by commutative justice, inasmuch as each one has some strict right to his own part.

Dixi, « boni debiti ex sola iustitia distributiva, » ut sunt beneficia et officia publica, quae cum principaliter ad bonum commune ordinentur, et non in privatum commodum particularium quibus conferuntur, his non debentur nisi ex iustitia distributiva. Secus de bono publico, quod est principaliter institutum in utilitatem singulorum, cuiusmodi sunt aerarium publicum, piae fundationes, proventus ex bonis communibus ; haec enim debentur singulis ex iustitia commutativa, quatenus unusquisque habet aliquod ius strictum ad suam partem.

6 But greater is the difficulty, whether at least he who does it with the mind of harming is not liable to restitution. Whence

Verum maior est difficultas, utrum saltem qui id facit animo nocendi, non sit obnoxius restitutioni. Unde

7 I say 2° : He who by the aforementioned lawful means, without force or guile, impedes someone from attaining a good not owed to him by justice, even if he do so with the mind of harming, from hatred, vengeance, etc., is not bound to restitution. This is common opinion with Soto, Navarro, Lessius, Laymann, Silvius, Serra [388] , etc., against certain ancients, among whom among recent authors Daelman adheres.

388 Ita etiam S. Lig., lib. IV, n. 584.

Dico 2° : Qui modis praefatis licitis, sine vi aut dolo, impedit aliquem a consecutione boni ipsi ex iustitia non debiti, etiamsi id faciat animo nocendi, ex odio, vindicta, etc., non tenetur ad restitutionem. Est communis cum Soto, Navarro, Lessio, Layman, Sylvio, Serra [388], etc., contra quosdam antiquos, quibus ex recentioribus adhaeret Daelman.

388 Ita etiam S. Lig., lib. IV, n. 584.

[8] The reason is that the mind of harming, through an act which of itself and in these circumstances is not invasive of the strict right of another, is not against justice, but only against charity, nor does it make otherwise that the external act, which of itself and in these circumstances is not unjust, become unjust; for intention does not change the external act. But the obligation of restoring arises from an external violation of justice.

> *Ratio est, quia animus nocendi per opus quod ex se et in his circumstantiis non est laesivum stricti iuris alieni, non est contra iustitiam, sed contra charitatem tantum, nec facit aliunde quod opus exterius quod de se et in his circumstantiis non est iniustum, sit iniustum; haec enim intentio non mutat opus exterius. Obligatio autem restituendi oritur ex violatione exteriori iustitiae.*

[9] *It is confirmed* by the example of a judge who, condemning the accused according to the order of law from hatred and the mind of harming, does not sin against justice, and is not held to restitution.

> Confirm. *ab exemplo iudicis qui, ex odio animoque nocendi condemnans reum secundum ordinem iuris, non peccat contra iustitiam, et non tenetur ad restitutionem.*

[10] *You will say* : According to the laws, if you cut the veins in your field through which water is conveyed to another's well, with the mind of harming, you are bound to restitution ; if with the mind of your own utility, you are not bound. Likewise, if you reveal someone's crime with the intention of defaming him, you sin against justice and are liable to restitution ; otherwise if from the intention that the guilty man be corrected, or that damage to an innocent be avoided. Therefore similarly in our case.

> Dices *: Secundum leges, si praescindis venas in fundo tuo per quas derivatur aqua ad puteum alterius, animo nocendi, teneris ad restitutionem ; si animo utilitatis tuae, non teneris. Item, si reveles crimen alicuius ex intentione eum diffamandi, peccas contra iustitiam et obnoxius es restitutioni ; secus si ex intentione ut reus emendetur, aut ut vitetur damnum innocentis. Ergo similiter in nostro casu.*

[11] *I answer.* I deny the consequence. The disparity is because, in the cases objected, the act is by its nature and in these circumstances invasive of another's right, not in our case. But when the act is by its nature and in these circumstances invasive of another's right, yet so that on account of some reasonable cause we are permitted to do it, having ourselves only permissively toward the other's damage, then, if the intention of harming be present, we sin against justice and are bound to restore ; if absent, we do not sin, nor are we liable for the damage. The reason is that, for anyone to sin against justice and be liable for damage, there is required and suffices that he be the voluntary cause of a damage unjustly inflicted. But when someone through an act invasive of another's right intends his damage, and not some utility to which he has a right, nothing is lacking for him to be reckoned the voluntary cause of this damage inflicted groundlessly and unjustly. But when he does not intend the damage, but some utility to which he has a right, he is not reckoned the voluntary cause of the damage, but holds himself only permissively toward it. And thus stand the examples in the objection.

> Resp. *Nego consequentiam. Disparitas est quia, in casibus obiectis, opus ex natura sua et in his circumstantiis sit laesivum iuris alieni, non in nostro casu. Quando vero opus ex natura sua et in his circumstantiis est laesivum iuris alieni, sic tamen ut propter aliquam rationabilem causam nobis liceat illud agere, nos habendo permissive ad alterius damnum, tunc, si adsit intentio nocendi, peccamus contra iustitiam et tenemur restituere ; si absit, non peccamus, nec tenemur de damno. Ratio est, quia, ut quis peccet contra iustitiam et teneatur de damno, requiritur et sufficit quod sit causa voluntaria damni iniuste illati. Quando vero quis per opus laesivum iuris alieni intendit eius damnum, et non*

aliquam utilitatem ad quam habet ius, nihil deest ut censeatur causa voluntaria huius damni sine causa et iniuste illati. Quando vero non intendit damnum, sed aliquam utilitatem ad quam ius habet, non censetur causa voluntaria damni, sed se habere tantum permissive ad illud. Atque ita se habent exempla in obiectione.

12 I say 3° : He who by force or fear, fraud or guile, detraction, lies and similar unjust means, impedes someone from attaining a good, although not owed by justice, but hanging upon another's free will, sins against justice and is bound to restitution of the damage according to the proportion of hope or certainty of having such a good : so that, if it were not yet settled that it be given to him, he is not bound to equality, but to some compensation, weighing the conditions of the persons and of the business, according to the judgment of a prudent man ; if it were settled that it be given to him, he is bound to equality, full certainty being supposed, otherwise, as was said, according to the proportion of certainty [389]

389 Here q. 62, a. 2, ad 4.

Dico 3° : Qui vi vel metu, fraude vel dolo, detractionibus, mendaciis et similibus modis iniustis, impedit aliquem a consecutione boni, licet ex iustitia non debiti, sed ex libera alterius voluntate pendentis, peccat contra iustitiam et tenetur ad restitutionem damni secundum proportionem spei seu certitudinis tale bonum habendi : ita ut, si nondum esset firmatum quod ei detur, non teneatur ad aequale, sed ad aliquam compensationem, pensatis conditionibus personarum et negotiorum, secundum arbitrium prudentis ; si esset firmatum quod ei detur, tenetur ad aequale, supposita tamen omnimoda certitudine, alias, ut dictum est, secundum proportionem certitudinis [389]

389 Hic q. 62, a. 2, ad 4.

13 The reason of the conclusion is that the impeder thus inflicts damage upon another through true injustice. For although that other does not have strict right to this good, he nevertheless has from nature strict right to seek it, pursue it and obtain it. Likewise he has the right not to be cast down and impeded from that prior right by force, fear, fraud, guile, lies and similar unjust means. Therefore he who by these unjust means impedes him injures his right, and consequently sins against justice and is bound to restitution, according to the said proportion of certainty or hope of obtaining that good.

Ratio conclusionis est, quia sic impediens infert alteri damnum per veram iniuriam. Licet enim iste alter non habeat ius strictum ad istud bonum, habet tamen a natura ius strictum illud petendi, prosequendi et obtinendi. Item habet ius ne ab isto priori iure per vim, metum, fraudem, dolum, mendacia et similia media iniusta deiiciatur et impediatur. Ergo qui his mediis iniustis illum impedit, laedit eius ius, et consequenter peccat contra iustitiam et tenetur ad restitutionem, secundum proportionem dictam certitudinis seu spei ad bonum illud consequendum.

14 But ask why he who impedes by prayers or persuasions is not equally bound to restitution, seeing that he also casts down one pursuing his right of obtaining.

Sed quaere quare qui precibus aut suasionibus impedit, non tenetur pariter ad restitutionem, siquidem etiam prosequentem iure obtinendi deiiciat.

15 *I answer,* the disparity is because, prayers or persuasions alone being posited, the giver remains in liberty of giving, and the recipient in liberty of pursuing; but force or guile being posited, the liberty either of the giver or of the recipient is taken away.

Resp. *disparitatem esse quia, positis precibus aut suasionibus tantum, collator remaneat in libertate donandi, et donatarius in libertate prosequendi ; posita vero vi vel dolo, tollitur libertas vel donantis vel donatarii.*

On the restitution to be made by those who cooperate in unjust damage

1 Certain difficulties are expounded concerning cooperators in general.

> *Expenduntur quaedam difficultates circa cooperantes in communi.*

2 I. Besides him who exercises the unjust action per se and immediately, of whom we have spoken hitherto, there often intervene those who cooperate with the damaging action physically or morally, as he who commands or counsels theft, who lends the thief ladders or keys, and the like.

> *I. Praeter eum qui per se immediate actionem iniustam exercet, de quo hactenus, saepe intersunt qui actioni damnificativae cooperantur physice vel moraliter, ut qui mandat aut consulit furtum, furi scalas vel claves commodet, et similes.*

3 II. Nine modes are commonly enumerated with the Author, by which one can cooperate in an unjust damaging, comprehended in these verses :

> *II. Novem modi communiter cum Authore recensentur, quibus iniustae damnificationi quis potest cooperari, his versibus comprehensi :*

4 « Command, counsel, consent, the flatterer, recourse,

> *« Iussio, consilium, consensus, palpo, recursus,*

5 Partaking, silence, not hindering, not disclosing. »

> *Participans, mutus, non obstans, non manifestans. »*

6 These modes differ in that the six former concur to damage positively and directly, the three latter negatively only and indirectly.

> *Differunt hi modi, quod sex priores concurrunt ad damnum positive et directe, tres ultimi negative tantum et indirecte.*

7 [III. It must be said in general that those who concur directly to damage are held to compensate it. The reason is that they are the positive, efficacious and formally unjust cause of this damage. And this is confirmed by the condemnation of the following proposition, n. 39, made by Innocent XI, March 2, 1679 : « He who moves or induces another to inflict grave damage upon a third party is not bound to restitution of that inflicted damage. »[390]]

390 Ibid., a. 7, o.

> *[III. Generatim dicendum est, eos qui directe concurrunt ad damnum, teneri ad illud compensandum. Ratio est, quia sunt causa positiva, efficax et formaliter iniusta huius damni. Et hoc confirmatur condemnatione propositionis sequentis, n. 39, ab Innocentio XI facta, 2 martii 1679 : « Qui alium movet aut inducit ad inferendum gravem damnum tertio, non tenetur ad restitutionem illius damni illati. »[390]]*
>
> *390 Ibid., a. 7, o.*

8 IV. That it may be known when and how much these modes oblige to restitution, this general rule must be kept : They oblige to restitution insofar as they influence efficaciously into the damage; for the whole obligation of restoring arises from influx into the damage. Wherefore, if they certainly influence efficaciously into the whole, they oblige to restitution of the whole; if into part only, they oblige only to part; if they certainly influence in no way whatever, to nothing; if probably, they oblige

according to the measure of probability; if under doubt, proportionately to the doubt, as was said above.

> *IV. Ut cognoscatur quando et quantum isti modi obligent ad restitutionem, tenenda est haec regula generalis : In tantum obligant ad restitutionem, in quantum influunt efficaciter in damnum; quia tota obligatio restituendi oritur ex influxu in damnum. Quapropter, si certo influant efficaciter in totum, obligant ad restitutionem totius; si in partem tantum, obligant tantum ad partem; si certo nullatenus influant, ad nihil; si probabiliter influant, obligant pro ratione probabilitatis; si sub dubio, proportionate ad dubium, ut dictum est supra.*

9 [It is to be noted here, from the principle laid down and demonstrated in the treatise on Human Acts, dissertation VI, art. 3, that if the influx of some action into damage inflicted on another be only probable, or doubtful, which is the same thing, the agent is not held to compensation until it be certainly established that this action concurred positively, efficaciously and unjustly to the damage. The reason is that a doubtful obligation is no obligation. To this you will recur. So concludes St. Liguori.[391]]

391 Lib. IV, n. 575.

> *[Advertendum hic, ex principio posito et demonstrato in tract. de Actib. hum., dissert. VI, art. 3, quod si influxus actionis alicuius in damnum alteri illatum sit tantum probabilis, vel dubius, quod idem est, agens non tenetur ad compensationem, donec certo constet hanc actionem positive, efficaciter et iniuste ad damnum concurrisse. Ratio est, quia obligatio dubia est obligatio nulla. Huc recurres. Ita concludit S. Ligorius.[391]]*
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> *391 Lib. IV, n. 575.*

10 V. But if they do not influence unto the substance of the damage, but only in its manner, for example so that it be more quickly, more boldly, more atrociously, at such place, at such time, with such increase, it is doubtful. We with St. Antoninus, Paludanus, Navarro, Gabriel, Henry of St. Ignatius, Henno and others believe more probably that one thus influencing is held to restore only as much as that mode or circumstance was damaging to his neighbor; because he is only the efficacious cause of that circumstance and not of the substance of the act according to its damaging species[392] .

392 Id., ibid., n. 376.

> *V. Quod si non ad substantiam damni influant, sed in modum tantum, puta ut citius, animosius, atrocius, tali loco, tali tempore, cum tali augmento, dubium est. Nos cum S. Antonino, Paludano, Navarro, Gabriele, Henrico a S. Ignatio, Henno et aliis probabilius credimus quod sic influens tantum teneatur restituere, quantum iste modus seu circumstantia fuit proximo damnosa; quia est tantum causa efficax istius circumstantiae et non substantiae actus secundum speciem damnosi[392].*
>
> *392 Id., ibid., n. 376.*

11 VI. From what has been said you will infer : 1° If you command, counsel, etc., theft to one already disposed to steal, whether of himself or from another's command or counsel, so that he is moved to steal no more by you, but would steal independently of it : you sin indeed in affect against justice, but you are not held to restore because you do not influence efficaciously into the damage.

> *VI. Ex dictis inferes : 1° Si mandas, consulis, etc., furtum iam parato ad furandum, sive ex se sive ex alterius mandato aut consilio, ita ut tuo non magis moveatur ad furandum, sed independenter ab illo furaretur : peccas quidem affectu contra iustitiam, sed restituere non teneris quia non influis efficaciter in damnum.*

12 2° If one prepared to steal ten, you counsel him to steal twenty, then you are held to ten only and not to twenty; because efficaciously you influence to ten only : unless perhaps by your counsel you have made him firmer toward the whole theft.

> *2° Si parato furari decem, consulas furari viginti, ac decem tantum teneris et non ad viginti; quia ad decem tantum influis efficaciter : nisi forte tuo consilio firmiorem ad totum furtum reddideris.*

13 [Even if the thief had been made firmer by counsel toward the whole theft, the counselor would not be held to repairing the whole unless it were established that he efficaciously concurred to the whole, namely that the thief would have changed his will if he had not been impelled to carry it out. Therefore, in the case proposed, the counselor is held to ten only, because he is the certain efficacious cause of only half of the damage.]

> *[Etiamsi fur consilio firmior ad totum furtum factus fuisset, consulens ad totum reparandum non teneretur nisi constaret eum efficaciter ad totum concurrisse, qui scilicet fur voluntatem mutavisset, si ad eam exsequendam non fuisset impulsus. Ergo, in casu proposito, consulens ad decem tantum tenetur, quia dimidiae parti damni tantum est causa certo efficax.]*

14 3° If to one prepared to steal today you counsel stealing tomorrow, you are bound insofar as this circumstance harms your neighbor, because efficaciously you influence into it alone. But you are bound to nothing if you counseled for the purpose of turning him away from theft, hoping the thief would change his mind or occasion fail, or for some upright purpose.

> *3° Si parato furari hodie consulas cras furari, in tantum teneris, in quantum haec circumstantia nocet proximo quia in illam tantum efficaciter influis. Ad nihil autem teneris, si eo fine consuluisti, ut averteres a furto, sperans fore ut fur mutaret animum aut deesset occasio, vel aliquo recto fine.*

15 4° If to one prepared to steal twenty, you persuade him to steal only ten from the same person, with the mind of turning him away from the greater, you do not sin nor are you held to restore anything; because you rightly persuade, and usefully manage the owner's affair. For the sense of this counsel is not absolute : « Do this lesser evil, » but conditional : « If you have decreed to commit this kind of evil, do rather that wherein there is less than what is greater. » But if you persuade this with a perverse mind, for example because he will steal ten rather than twenty more easily or more safely, you sin and are bound to restore insofar as this circumstance harms your neighbor.

> *4° Si parato furari viginti, suadeas tantum furari decem ab eodem, eo animo ut avertas a maiori, non peccas nec teneris quidquam restituere; quia recte suades, et rem domini utiliter geris. Non enim huius consilii sensus est absolutus : « Fac hoc minus malum, » sed conditionatus : « Si hoc genus mali facere decreveris, fac potius id quo minus est, quam id quod est maius. » Si vero id suadeas pravo animo, puta quia facilius aut tutius decem quam viginti furabitur, peccas et teneris restituere pro quantum haec circumstantia nocet proximo.*

16 I said, « from the same ; » because if to Peter prepared to steal twenty you persuade John to steal ten, you sin and are held to restore ten to John; because you thereby efficaciously cause damage to him, so that without you he would not be damaged; nor do you have a right of keeping Peter whole at John's loss, whence John is reasonably unwilling. Say the same, if to someone prepared indeterminately to steal from anyone, you persuade stealing determinately from such a one; because equally you are the cause of the damage of him whom you designate. Otherwise, if you persuaded only in general that he steal rather from a rich man than from a poor man, designating no one in particular nor indicating any; because then you injure no one, but only persuade a lesser evil, to turn him away from the greater.

Dixi, « ab eodem; » quia si parato furari a Petro viginti, suadeas furari decem a Ioanne, peccas et teneris restituere decem Ioanni; quia illi sic efficaciter causas damnum, ut sine te non damnificaretur; nec habes ius servandi Petrum indemnem cum detrimento Ioannis unde Ioannes est rationabiliter invitus. Idem dic, si pa rato furari ab aliquo indeterminate, suadeas furari a tali determinate; quia pariter es causa damni illius quem designas. Secus, si suaderes tantum in genere ut a divite potius quam a paupere furaretur, neminem in particulari designando nec indicando; quia tunc nulli facis iniuriam, sed tantum suades minus malum, ut avertas a maiori.

17 **§ II**

§ II

18 The individual modes are expounded.

Exponuntur singuli modi.

19 **COMMANDING**

IUBENS

20 I. One commanding is said to be he who by his express or tacit mandate moves another to inflict damage upon someone in the name of the commander himself. He is held not only for the damage which he expressly commanded, but also for that which, the circumstances being weighed, could humanly have been foreseen as about to follow from his command : as if he command a servant to mutilate Peter, but the servant in mutilating kill him.

I. Iubens dicitur qui suo mandato expresso vel tacito movet alium ut suo mandantis nomine damnum alteri inferat. Non solum tenetur de damno quod expresse iussit, sed etiam de illo quod, attentis circumstantiis, potuit humano modo praevidere secuturum ex sua iussione : ut, si iubeat servo mutilare Petrum, servus autem mutilando occidat.

21 II. Where the commander revoked the mandate tacitly or expressly, and that revocation came to the knowledge of the agent, regularly the commander is not bound to restore qua commander, even though the effect follow; for through the revocation made known, the mandate expires, and thus he can no longer be reckoned the cause of the damage, nor does the agent then act in the name and by the will of the commander, but in his own name and by his own motion.

II. Ubi mandans revocavit mandatum tacite vel expresse, et ea revocatio innotuit mandatario, regulariter non tenetur restituere mandans ut mandans, etiam effectu secuto; quia per revocationem intimatam mandati, expirat mandatum, sicque non potest amplius censeri causa damni, neque mandatarius agit tunc nomine et ex voluntate mandantis, sed nomine et motu proprio.

22 I said that he is not bound to restore « as commander, » because he can, even after revocation of the mandate, be bound under other titles : 1° As counseling, if by commanding he imbued the agent's mind with perverse arts and counsels, whose force and impression he did not sufficiently wear away. 2° As not hindering, if, notwithstanding the revocation of the mandate, he does not impede, insofar as he can, the agent obstinate in perpetrating the crime, because he is the cause why his neighbor is in such danger, which therefore he is bound by justice to avert if he can. At least this is probable.

Dixi quod non teneatur restituere « ut mandans, » quia potest, etiam revocato mandato, aliis titulis teneri : 1° Ut consulens, si mandando mentem mandatarii pravis artibus et consiliis imbuerit, quorum vim et impressionem non sufficienter elisit. 2° Ut non obstans, si mandatarium, non obstante mandati revocatione, facinori perpetrando

obstinatum in quantum potest non impediat, quia in causa est per suum mandatum cur proximus sit in tali periculo, quod ideo ex iustitia tenetur avertere, si potest. Id saltem est probabile.

23 [If it be established to the commander that the revocation of his mandate was not heard or understood by the agent, v. g., on account of deafness, or because letters were intercepted, he is bound to reparation of the damage; for in fact he efficaciously flowed into the damaging action. The sin indeed was retracted, but the freely posited cause was not removed.]

[Si mandanti constet mandati revocationem non fuisse auditam vel intellectam a mandatario, v. g., ob surditatem, aut quia intercepta fuerunt litterae, tenetur ad reparationem damni; quia reipsa efficaciter influxit in actionem damnificativam. Peccatum quidem fuit retractatum, sed causa libere posita non fuit sublata.]

24 III. When the commander cannot revoke the mandate efficaciously, he is bound to warn the one about to be damaged that he provide for himself[393] , even at equal loss to himself, if there be hope of impeding this evil, yet not at a loss to himself far greater and of higher order.

393 S. Lig., lib. IV, n. 559, 2ª sent.

III. Quando mandans non potest revocare efficaciter mandatum, tenetur monere damnificandum ut sibi consulat[393], etiam cum suo damno aequali, si sit spes hoc mali impediendi, non tamen cum damno suo longe maiori et altioris ordinis.

393 S. Lig., lib. IV, n. 559, 2ª sent.

25 [IV. The commander is bound to repair the damages which accrue to the agent from execution of the command, if he impelled him through fraud, force or grave fear, and foresaw the ensuing damages at least confusedly. The reason, because he is the positive, morally efficacious and unjust cause of the damage. Otherwise, probably, if the agent wished spontaneously, or hired for pay, to take upon himself the whole burden and consequences of his action.

[IV. Mandans tenetur reparare damna quae mandatario ex mandati executione obveniunt, si illum per fraudem, vi aut metum gravem impulit, et damna secutura saltem confuse previdit. Ratio, quia est causa positiva, moraliter efficax et iniusta damni. Secus probabiliter, si mandatarius sponte vel mercede conductus totum onus et consectaria actionis suae in se suscipere voluerit.

26 V. If the agent damage another through avoidable error, v. g., if commanded to kill Peter, he kill Paul, or if damage befall someone because the agent spontaneously exceeded the limits of the command, the commander is bound to nothing : because he is not the positive and morally efficacious cause of an effect which he could not foresee.

V. Si mandatarius ex errore evitabili alium damnificaverit, v. g., si iussus Petrum occidere, Paulum occiderit, vel si damnum alicui evenerit ex eo quod mandatarius limites mandati sponte excesserit, mandans ad nihil tenetur : quia non est causa positiva et moraliter efficax effectus quem praevidere non poterat.

27 VI. A superior who ratifies the simple proposal of inflicting damage upon someone is held to restitution; for by his approbation, converting the proposal into firm will, he becomes in a manner a commander relative to the inferior, and has flowed positively, efficaciously and unjustly into the damage.]

VI. Superior qui ratum habet simplex propositum inferendi damnum alicui, tenetur ad restitutionem; quia approbatione sua, convertendo propositum in voluntatem firmam, fit aliqualiter mandans relative ad inferiorem, positive, efficaciter et iniuste in damnum influxit.]

28 **COUNSELING**

CONSULENS

29 [I. One counseling is said to be he who by counsel, prayers, promises, suggestion of a motive, or showing a way of doing harm, induces another to inflict damage upon a third person. He differs from the commander; because the executor of the command acts in the name and for the advantage of the commander, but the executor of the counsel in his own name, although at the impulse of another's counsel.]

[I. Consulens dicitur qui consilio, precibus, promissis, suggestione motivi, vel ostensione viae nocendi, inducit alium ad damnum tertiae personae inferendum. Differt a mandante; quia executor mandati agit nomine et in commodum mandantis, executor autem consilii proprio nomine, etsi ex alterius consilii impulsu.]

30 II. Counseling is taken in a twofold way : 1° For him who pronounces judgment upon the goodness or malice of an action, as he who says a contract is licit when it is illicit. 2° For him who, the injustice of the action supposed and known, urges it, either by proposing the utility, pleasure, honors which will come from it, or exciting to it by prayers, blandishments, promises, or finally furnishing the means and ways by which it can be done efficaciously and safely.

II. Consulens sumitur dupliciter : 1° Pro eo qui decernit de bonitate vel malitia actionis, ut qui dicit contractum esse licitum, cum sit illicitus. 2° Pro eo qui, supposita et cognita actionis iniustitia, illam suadet, sive proponendo utilitatem, voluptatem, honorem quae ex illa obvenient, sive ad eam precibus, blanditiis, pollicitationibus excitando, sive tandem suppeditando media et modos quibus efficaciter et tuto fieri possit.

31 [Counsel is otherwise distinguished. 1° It is doctrinal, when the counselor pronounces judgment upon the justice or injustice of someone's act; or impulsive, if he move the executor to the act. 2° It is naked, when the counselor merely opens his opinion concerning the justice or injustice of the act, or simply pushes toward it, adding no reason and no motive; but clothed, if reasons and motives are brought forward by the counselor whereby the counsel, whether doctrinal or impulsive, is confirmed.

[Aliter distinguitur consilium. 1° Est doctrinale, cum consulens de alicuius actus iustitia aut iniustitia pronuntiat; vel impulsivum, si moveat executorem ad actum. 2° Est nudum, quando consulens aperit tantummodo sententiam suam de iustitia vel iniustitia actus, vel ad illum simpliciter impellit, nullam rationem et nullum motivum addendo; est vero vestitum, si afferantur a consulente rationes et motiva quibus consilium sive doctrinale sive impulsivum confirmetur.

32 This distinction is reduced to the superior one. Counsel of the first kind above expounded is doctrinal, and can be either naked or clothed. Counsel of the second kind is at once impulsive and clothed.

Haec distinctio ad superiorem reducitur. Consilium primi generis supra expositum est doctrinale, et potest esse vel nudum vel vestitum. Consilium secundi generis est simul impulsivum et vestitum.

33 III. In general it must be said, as above, that he is held to reparation who by the counsel he gave was made the positive, efficacious and formally unjust cause of damage inflicted upon someone. This evident principle is confirmed by the condemnation of the following proposition by Innocent XI : « He who moves or induces another to inflict grave damage upon a third party is not bound to restitution of that inflicted damage. » Whence]

III. Generatim dicendum est, ut supra, eum teneri ad reparationem, qui consilio quod dedit factus est causa positiva, efficax et formaliter iniusta damni alicui illati. Hoc principium evidens confirmatur ex condemnatione propositionis sequentis ab Innocentio XI : « Qui alium movet aut inducit ad inferendum grave damnum tertio, non tenetur ad restitutionem illius damni illati. » Unde]

34 Counselors of the first mode, to whom it belongs by reason of office or profession to give counsel, such as parish priests, confessors, preachers, theologians, advocates, physicians, etc.; likewise those who conduct themselves as competent counselors and profess themselves experts in such matters, are held, from theological fault and according to the measure of the fault, to restitution of the damage which follows from their false counsel, both to him who asks the counsel and to him against whom it is asked. Because, since they are bound and reputed to have the requisite expertise, they deceive others who follow their counsel in good faith, and thus through fault and deception are the cause of the damage. By opposite reason, counselors who do not profess expertise by reason of office, nor conduct themselves as experts, are not held for the damage to him who asks counsel; for there is no injury to the knowing and willing. They are nevertheless held to him against whom the counsel is asked, because the latter is neither knowing nor willing.

Consulentes primo modo, ad quos spectat ratione officii seu professionis consilium dare, quales sunt parochi, confessarii, concionatores, theologi, advocati, medici, etc.; item ii qui pro idoneis consiliariis se gerunt ac se in tali re peritos profitentur, tenentur ex culpa theologica et pro quantitate culpae ad restitutionem damni quod ex falso suo consilio sequitur, tam illi qui consilium petit, quam illi contra quem petitur. Quia, cum teneantur et reputentur habere peritiam requisitam, alios decipiunt qui bona fide eorum consilium sequuntur, sicque per culpam et deceptionem sunt causa damni. Opposita ratione, consulentes qui ratione officii peritiam non profitentur, nec se pro peritis gerunt, non tenentur de damno illi qui petit consilium; scienti enim et volenti non fit iniuria. Tenentur tamen illi contra quem petitur consilium, quia ille non est sciens et volens.

35 [It is here to be observed that the counselor is not held toward him who suffered the loss unless the counsel was unjust, efficacious and formally unjust or culpable. Furthermore, in this latter case, namely if the counselor, neither expert nor presenting himself as expert, being asked, opens his opinion simply and without the mind of harming, his counsel lacks none of the three conditions required for the obligation of repairing damage to exist. Therefore. Otherwise, however, it must be said if, conscious of his inexpertise, he volunteers counsel from whose execution he foresees, at least confusedly, that damage may befall a third person. So commonly[394] .]

394 S. Lig., lib. IV, n. 564.

[Observandum est hic consulentem non teneri erga eum qui damnum passus est, nisi consilium fuerit iniustum, efficax et formaliter iniustum seu culpabile. Porro, in hoc posteriori casu, nempe si consulens nec peritus nec ut peritus se exhibens, et interrogatus, sententiam suam simpliciter et sine animo nocendi aperiat, eius consilium non induit tres conditiones requisitas ut adsit obligatio damnum reparandi. Ergo. Secus tamen dicendum, si, imperitiae suae conscius, ultro det consilium ex cuius executione praevidet, saltem confuse, damnum tertiae personae obvenire posse. Ita communiter[394].]

394 S. Lig., lib. IV, n. 564.

36 But it must be observed, with Silvius, Lessius and others, that no one is held to any restitution whatsoever with respect to anyone who indicates while giving counsel that he doubts, or who simply opens his mind, saying that it seems so to him, yet not persuading the other to follow; because, since he determines nothing with certainty, affirms nothing, persuades nothing, if nevertheless he acts who

asked counsel, caring not to have greater certainty, and thence damage follow to himself or another, it must be attributed to his own will alone and rashness.

> *Sed observandum est, cum Sylvio, Lessio et aliis, neminem ad ullam restitutionem respectu euiuscumque teneri, qui in consilio dando indicat se dubitare, aut qui simpliciter aperit suam mentem, dicens ita sibi videri, non tamen suadens ut alter sequatur; quia, cum nihil certo statuat, aut affirmet, aut suadeat, si nihilominus agat qui petit consilium, non curans habere maiorem certitudinem, et inde damnum sibi aut alteri sequatur, soli eius voluntati atque temeritati tribuendum est.*

37 Say the same of him who answers according to the more probable opinion; for then he does not sin, even if perchance he is deceived.

> *Idem dic de eo qui respondet secundum sententiam probabiliorem; non enim tunc peccat, etsi forte decipiatur.*

38 [The same must also be said of him who, when some obligation toward a third party is in question, answers according to an opinion truly and solidly probable, even if the opposite seem somewhat more probable. This conclusion is drawn from the principle laid down by us in dissertation VII on Human Acts, on Probability.]

> *[Idem etiam dicendum de eo qui, cum de aliqua obligatione erga tertium agitur, respondet secundum sententiam vere et solide probabilem, etiamsi opposita videatur paulo probabilior. Haec conclusio elicitur ex principio a nobis statuto in dissert. VII de Actib. hum., de Probabilitate.]*

39 IV. Counselors of the second mode, namely those who urge the crime either by prayers, blandishments, praises, etc., or by proposing the advantages resulting from it, or by indicating the ways by which it can be done more safely and efficaciously, are held to nothing with respect to him who asks counsel, because there is no injury to the knowing and willing; but they are held with respect to him against whom the counsel is asked, if damage ensue to him from it, which is beyond doubt from what was said above. But to what he is bound, if to one already prepared for the substance of the crime he counsel only place, time, increase, decrease, and similar accidents, I also said in the cited place.

> *IV. Consulentes secundo modo, hi scilicet qui maleficium suadent sive precibus, blanditiis, laudibus, etc., sive propositis quae ex eo resultant commodis, sive indicatis modis quibus effici potest tutius et efficacius, ad nihil tenentur respectu illius qui petit consilium, quia scienti et volenti non fit iniuria; teneri autem respectu illius contra quem petitur consilium, si ex eo illi sequatur damnum indubium est ex dictis superius. Ad quid autem teneatur, si iam parato ad maleficii substantiam consulat tantum locum, tempus, incrementum, decrementum, et similia accidentia, etiam dixi loco citato.*

40 [That is, he is bound insofar as the quantity of the damage was increased by the counsel : whence to nothing, if nevertheless the whole damage would have been inflicted.]

> *[Id est, in tantum tenetur, in quantum ex consilio quantitas damni fuerit aucta : unde ad nihil, si totum damnum nihilominus fuisset illatum.]*

41 V. There remains, therefore, the difficulty whether, the counsel having been timely recalled before the damage is inflicted, the counselor remains absolved from the burden of restoring, if nevertheless the damage be done. The question is commonly resolved with a distinction, according to the diverse mode of counseling.

V. Restat itaque difficultas, utrum, revocato tempestive consilio antequam damnum inferatur, maneat consulens absolutus ab onere restituendi, si nihilominus damnum fiat. Quaestio sub distinctione communiter resolvitur, iuxta diversum modum consulendi.

42 A counselor of the first mode, the counsel timely recalled, is ordinarily not bound to restitution, as if you had said and urged that a contract is licit which is illicit, if before the deed you declare that you were deceived, you are not bound; because then the whole reason of acting ceases.

Consulens primo modo, revocato tempestive consilio, ordinarie ad restitutionem non tenetur, ut si dixeris et suaseris contractum esse licitum qui est illicitus, si ante factum declares te fuisse deceptum, non teneris; quia tunc tota ratio agendi cessat.

43 Among counselors of the second mode also a distinction must be made. He who urged the crime leaning on prayers alone, promises, or a false supposition, the counsel timely recalled, does not seem held for the damage; because then the reason of acting arising from counsel ceases too. But he who counsels crime by proposing its utility, pleasure, honor, etc., or by indicating means and ways by which it may be done more securely and efficaciously, is not regularly absolved from the burden of restoring by the simple recall of such counsel; for notwithstanding this recall, there remains regularly the whole force of the counsel, that is, the weight of the reasons and the impression made by them in the other's mind. For however much you say to him : « Do not do it, I repent having indicated or urged it to you, » you do not prevent the crime from appearing useful, pleasurable, etc., to him, nor from knowing the ways and means of perpetrating it which you furnished to him.

Inter consulentes secundo modo etiam est distinguendum. Qui solis precibus, promissis aut falso supposito innixus, maleficium suasit, revocato tempestive consilio, non videtur teneri de damno; quia tunc etiam cessat ratio agendi ex consilio proveniens. Qui vero maleficium consulit proponendo eius utilitatem, voluptatem, honorem, etc., aut indicando media et modos quibus securius et efficacius fiat, non absolvitur regulariter ab onere restituendi per talis consilii simplicem revocationem; quia non obstante hac revocatione, remanet regulariter tota vis consilii, seu pondus rationum atque earum impressio facta in mente alterius. Quantumvis enim dicas illi : « Noli facere, poenitet me tibi id indicasse aut suasisse, » non impedis quin maleficium appareat ipsi utile, delectabile, etc., nec quin sciat modos et media illud perpetrandi quae ipsi suppeditasti.

44 Wherefore, if moved by these he execute the crime, he is his cause, and liable to restitution.

Quapropter, si iis motus maleficium exsequatur, causa illius est, et restitutioni obnoxius.

45 VI. What then shall the counselor do, that he be freed from the obligation of restoring? He ought, as far as lies in him, destroy by more efficacious reasons and motives the reasons and motives of the prior counsel. If he cannot do that, he ought to warn him against whom he gives counsel, if he can without far greater loss to himself, that he watch over himself and his affairs, as was said concerning the commander. Finally, if, notwithstanding this, damage be done from the given counsel, the counselor, however repentant, nay even justified, remains liable to restitution, because he remains the true cause of the damage; and if he be dead and perhaps blessed in heaven, this obligation passes to his heirs. And hence you will conclude a fortiori that he is not exempted from the burden of restoring who urges the wrongdoer to restore, and he does not restore.

VI. Quid faciet ergo consulens, ut eximatur ab obligatione restituendi ? Debet, quantum in se est, prioris consilii rationes et motiva efficacioribus rationibus et motivis destruere. Si id nequeat, debet eum contra quem dat consilium monere, si possit absque suo longe maiori detrimento, ut sibi et rebus suis invigilet, ut dictum est de mandante. Tandem, si, hoc non

obstante, fiat damnum ex dato consilio, consulens, quantumvis poenitens, imo et iustificatus, manet obnoxius restitutioni, quia manet vera causa damni, et si sit mortuus et forte in coelo beatus, haec obligatio transit ad eius haeredes. Et hinc colliges fortiori, non eximi ab onere restituendi qui suadet malefactori ut restituat, et non restituit.

46 [Thus a distinction must be made, to solve this doubt. 1° If the counselor gave simple or naked counsel, and recalled it, especially if he showed its falsity, he is excused from restitution; because he is no longer the efficacious cause of damage proceeding from the malice of the executor. So commonly.

[Sic distinguendum est, ad solvendum hoc dubium. 1° Si consulens dederit simplex seu nudum consilium, et illud revocaverit, praesertim si eius falsitatem ostenderit, a restitutione excusatur; quia iam non est causa efficax damni, quod ex malitia executoris procedit. Ita communiter.

47 2° But if the counsel was clothed, that is, leaning on urgent motives, it is contested. Several hold the counselor not exempted from the obligation of reparation even if he recall the counsel; for, they say, the motives proposed continue always to move. Many indeed excuse from compensation, provided other motives of equal efficacy be opposed; because the previously posited cause is elided, and the author of the damage acts from his own malice, especially if the counselor tried to stir his conscience. St. Liguori calls this opinion, which seems probable to the theologians embracing it, very probable, and indeed most probable, sufficiently probable, although he holds the opposite more probable[395] . We judge, however, that it can be held as absolutely probable and indeed more probable, if truly the counselor tried in the best way he could to avert the damage.

395 Lib. IV, n. 559.

2° Si vero consilium fuerit vestitum, id est motivis urgentibus innixum, controvertitur. Plures tenent consulentem ab obligatione reparationis non eximi, etiamsi con silium revocaverit; nam, aiunt, motiva proposita pergent semper movere. Multi vero excusant a compensatione, modo alia motiva saltem aquae efficacia opponantur; quia causa prius posita eliditur, et author damni ex propria malitia agit, presertim si consulens eius conscientiam commovere conatus fuerit. Hanc sententiam, quae theologis eam amplectentibus videtur probabilis, valde probabilis, et etiam probabilissima, S. Ligorius vocat satis probabilem, quamvis oppositam probabiliorem habeat[395]. Nos vero eam ut absolute probabilem et etiam probabiliorem teneri posse censemus, si revera consulens meliori quo potuit modo tentaverit damnum avertere.

395 Lib. IV, n. 559.

48 It is objected by patrons of the prior opinion : He who cast fire into a house to burn it, and afterward grieving vainly tried to extinguish it, is certainly held to compensation of the damage. Therefore, by parity.

Obiicitur a prioris sententiae patronis : Qui ignem in domum iniecit ad eam incendendam, et postea dolens frustra conatus est illum exstinguere, ad damnum compensandum certe tenetur. Ergo, a pari.

49 *I answer.* I deny the parity. In the case of fire, fire is the material and physical cause, which acts necessarily, and not of itself. Therefore the effect must be attributed to the first and voluntary cause, from whose action it truly proceeds. In the case of counsel, however, both causes are moral and free, and if the first ceased to act in the second and even to withdraw it from the effect, the latter acts of itself, and the damaging action is to be attributed to it alone. Therefore.

Resp. *Nego paritatem. In casu incendii, ignis est causa materialis et physica, qua necessario agit, et non ex se. Ergo effectus tribuendus est causae primae et voluntariae, ex cuius actione vere procedit. In casu vero consilii, ambae causae*

sunt morales et liberae, et si prima in secundam cessavit agere et etiam eam ab effectu retrahere, haec a seipsa agit, et actio damnosa ei soli est tribuenda. Ergo.

50 Except however the case where the counselor supplied to the actor a means of inflicting damage which the latter would not have found, v. g., a wholly hidden way of entering the house; because the cooperation was truly efficacious, especially if it had been foreseen that the thief's will would not change. Then one must reason as concerning fire cast into a house.

Excipe tamen, si consulens agenti subministraverit medium damni inferendi quod iste non invenisset, v. g., modum omnino occultum domum ingrediendi; quia cooperatio fuit vere efficax, praesertim si fuit praevisum furem voluntatem suam non esse mutaturum. Tunc sicut de igne in domum immisso est ratiocinandum.

51 But if the counselor cannot turn the executor away from inflicting the damage, he is bound by justice to admonish the owner, that he may provide for himself[396] , as was said above.]

396 Id., ibid.

Si autem consulens nequeat executorem a damno inferendo avertere, tenetur ex iustitia dominum admonere, ut sibi cavere possit[396], sicut supra dictum est.]

396 Id., ibid.

52 **CONSENTING**

CONSENTIENS

53 [I. One consenting is here understood to be he who by unjust suffrage, vote or sentence is the cause of damage inflicted on another. Hither come all who by common counsel decree or do something; likewise counselors, deputies, senators, judges, etc., who concur to enacting or promulgating laws, to issuing sentences, to distributing offices, etc.

[I. Consentiens hic intelligitur qui iniusto suffragio, voto vel sententia est causa damni alteri illati. Huc veniunt omnes qui communi consilio aliquid decernunt vel faciunt; item consiliarii, deputati, senatores, iudices, etc., qui ad leges condendas aut promulgandas, ad sententias edendas, ad officia distribuenda, etc., concurrunt.

54 II. The suffrage of the consenter is either consultative or decretory, as it is given by way of counsel only, or by way of sentence by virtue of which execution must be done. There can be added a purely approbative suffrage.

II. Suffragium consentientis est vel consultativum, vel decretorium, prout datur per modum consilii tantum, aut per modum sententiae vi cuius executio fieri debet. Addi potest suffragium mere approbativum.

55 One consenting by consultative vote is bound to reparation as the counselor, that is, insofar as he certainly and efficaciously induced the superior or another to inflict unjust damage. He can discern, moreover, from circumstances whether the superior was moved by his vote wholly or in part.

Consentiens voto consultativo ad reparationem tenetur sicut consulens, id est quatenus superiorem vel alium certo et efficaciter induxit ad damnum iniustum inferendum. Dignoscere autem potest ex circumstantiis, an suo voto superior vel omnino vel partim motus fuerit.

56 One consenting by decretory vote is bound to reparation as the commander, that is, whenever and insofar as knowingly and freely he gave efficacious consent to the unjust damage of his neighbor. The

reason is that he concurs positively and efficaciously to the validity of the decree by virtue of which the damage was inflicted. Whence he is bound, like the rest, pro rata and in solidum[397] .

[397] Cfr. Marc. Instit. moral. Alphons., n. 983 et 984.

> *Consentiens voto decretorio tenetur ad reparationem sicut mandans, id est quotiescumque et quatenus sciens ac libere dedit consensum efficacem in damnum iniustum proximi. Ratio est, quia concurrit positive et efficaciter ad validitatem decreti vi cuius damnum fuit illatum. Unde tenetur, sicut et caeteri, pro rata et in solidum[397].*
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> *[397] Cfr. Marc. Instit. moral. Alphons., n. 983 et 984.*

57 One consenting by purely approbative suffrage, since the resolution is already definitive, is not the positive nor efficacious cause of the damage, and therefore is bound to nothing by justice. Of him below.

> *Consentiens suffragio mere approbativo, cum resolutio iam est definitiva, non est causa positiva nec efficax damni, ideoque ad nihil tenetur ex iustitia. De eo infra.*

58 III. Distinguish with Cajetan, in Summula, vo. Restitutione, § 8, between consent which is cause, and consent which is only consent, and not cause. V. g., an unjust war is in question; the counselors, or those to whom it belongs, are convened, they consent : their consent is not only consent but also cause of the unjust war, because the business hung upon their consent, and that they are held to restitution is beyond doubt. Say the same of senators voting for an unjust sentence, of voters casting votes in election of an unworthy man to prelacy or benefice. Many others hear that the unjust war has been decreed, the unjust sentence passed, the unworthy man promoted, they approve, consent, say : « Let it be done, so be it. » Their consent is only consent, and not cause of the unjust war, the iniquitous sentence, the promotion of the unworthy, since the will of the unjust voters does not hang upon them, is not changed by them, etc., and although they gravely sin by consenting to iniquity, they are nevertheless not bound to restitution of damages. So, with some things added, Card. Lugo praises it.

> *III. Distingue cum Caietano, in Summula, vo. Restitutione, § 8, inter consensum qui est causa et inter consensum qui solummodo est consensus, et non causa. V. g., agitur de bello iniusto; convocantur consiliarii seu ii ad quos spectat, consentiunt : horum consensus non solum est consensus, sed etiam causa belli iniusti, quia ex eorum consensu pendebat negotium, et hos teneri ad restitutionem indubium est. Idem dic de senatoribus suffragantibus iniustae sententiae, de vocalibus conferentibus vota in electione indigni ad prelaturam aut beneficium. Audiunt plerique alii bellum iniustum esse decretum, iniustam sententiam esse latam, indignum esse promotum, approbant, con sentiunt, dicunt : « Fiat, ita sit. » Horum consensus est solummodo consensus, et non causa belli iniusti, iniquae sententiae, promotionis indigni, cum ex ipsis voluntas inique suffragantium non pendeat, non mutetur, etc., et quamvis peccent graviter consentiendo iniquitati, non tamen tenentur ad restitutionem damnorum. Ita, quibusdam additis, laud. Card.*

59 [In the former case the consenter is the positive, efficacious and formally unjust cause of the damage; in the latter he is cause under no title.

> *[In priori casu, consentiens est causa positiva, efficax et formaliter iniusta damni; in posteriori nullo titulo est causa.*

60 IV. Since now the number of suffrages sufficient for decreeing the damaging action is completed, is he bound to reparation pro rata and in solidum who adds his suffrage?

> *IV. Cum iam completus est numerus suffragiorum sufficientis ad decernendam actionem damnosam, teneturne ad reparationem pro rata et in solidum, qui suum suffragium addit?*

61 It must be said : 1° It is certain that all consenting are equally bound to reparation, if they gave their suffrages by agreement; because, a conspiracy entered, they acted as one agent, and theirs is one moral action.

> *Dicendum : 1° Certum est, consentientes omnes aeque ad reparationem teneri, si de condicto suffragia dederint; quia, inita conspiratione, per modum unius egerunt, et omnium est unica actio moralis.*

62 2° It is also certain that all contract the obligation of repairing, if they gave their suffrages at the same time; because, since none was then prior or posterior, the sentence or decree is attributed to all by right.

> *2° Certum est etiam, omnes obligationem reparandi contrahere, si eodem tempore suffragia dederint; quia, cum nullus tunc fuerit prior neque posterior, sententia seu decretum omnibus iure tribuitur.*

63 3° It is certain likewise that those are not to be excused from reparation who cast their suffrage first, before the required number was completed, even if they were certain others would act similarly; because they flowed positively and efficaciously into the damage. So commonly.

> *3° Certum est quoque non excusandos esse a reparatione eos qui primi suffragium emiserunt, antequam numerus requisitus fuerit completus, etiamsi certi fuerint alios similiter acturos; quia positive et efficaciter in damnum influxerunt. Ita communiter.*

64 4° Is the same to be decreed concerning those who voted, conspiracy and simultaneous emission of suffrages set aside, when the required number of votes had already been completed? It is contested. Several weighty theologians deny, because suffrages of this kind were in no way the cause of the damage, which had been sufficiently prepared and determined by others. Others affirm, because he who thus emitted his suffrage willed to concur positively in inflicting the damage, and indeed concurred efficaciously, seeing that the sentence or resolution was not definitive except, as is supposed, after all the suf frages had been collected; whence all acted as one agent, and the damage must be attributed to all in solidum[398] . This latter opinion seems to us more probable and truer.

398 Cfr. Gury, n. 682.

> *4° Estne idem decernendum de iis qui, seclusa conspiratione et simultanea suffragiorum emissione, suffragaverunt cum numerus votorum requisitus iam fuerat expletus? Controvertitur. Plures graves theologi negant, quia eiusmodi suffragia nullo modo fuerunt causa damni, quod ab aliis fuerat sufficienter praeparatum et determinatum. Affirmant alii, quia qui ita suffragium emisit, voluit positive concurrere damno inferendo, et quidem efficaciter concurrit, siquidem sententia vel resolutio non fuit definitiva, nisi, ut supponitur, postquam cuncta suf fragia fuerunt collata; unde omnes per modum unius egerunt, et damnum omnibus in solidum tribuendum est[398]. Haec posterior sententia probabilior et verior nobis videtur.*
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> *398 Cfr. Gury, n. 682.*

65 But if anyone doubt whether his suffrage was among the prior ones and necessary to the damage, besides the reason brought forward to establish the obligation of reparation, another must be added, namely that he at least impaired the right which the damaged party had to exact reparation from another voter, namely by rendering the matter uncertain[399] . Whence, like the rest, he is bound pro rata and in solidum.

399 S. Lig., lib. IV, n. 366.

Si vero aliquis dubitet an suffragium suum fuerit ex prioribus et necessariis ad damnum, praeter rationem allatam ad statuendam obligationem reparationis, addenda est alia, scilicet quod ille saltem deterioravit ius quod damnificatus habebat ad exigendam reparationem ab alio suffragante, rem nempe incertam reddendo[399]*. Unde sicut et caeteri, pro rata et in solidum tenetur.*

399 S. Lig., lib. IV, n. 366.

66 Some exempt voters thus from the obligation of repairing damage when the sanction of king or president is required for the validity of the sentence or law, as happens in constitutional governments; because, so long as this sanction is lacking, nothing is definitive, and the harmful decision must be ascribed to the executive power. But that reason is not peremptory; for the sentence or law pertains conjointly to the voters and to the sanctioner, who act as one agent and are together the positive, efficacious and formally unjust cause of the damage. Whence, as all concurred to the damage, all are bound to concur to reparation.

Quidam eximunt sic suffragantes ab obligatione damni reparandi, cum requiritur ad validitatem sententiae vel legis sanctio regis aut praesidis, ut fit in guberniis constitutionalibus; quia, quamdiu deficit haec sanctio, nihil est definitivum, et decisio nociva potestati executrici est adscribenda. Ast ratio ista non est peremptoria; nam sententia vel lex coniunctim pertinet ad suffragantes et ad sancientem, qui per modum unius agunt et sunt simul causa positiva, efficax et formaliter iniusta damni. Unde sicut omnes concurrerunt ad damnum, omnes ad reparationem concurrere tenentur.

67 V. But is he bound to repair the damage who does not cast his vote, when he could?

V. Utrum vero damnum reparare teneatur ille qui non fert suffragium, cum ferre posset?

68 A distinction must be made. Either the vote was to be given from mere benevolence, but not from office, and concerning another's thing not owed, as concerning conferring some favor, and the omission generates no obligation of repairing damage, because no injustice was inflicted. Or the vote was to be given from office, and the omission was the efficacious cause of the damage, and this damage must be compensated.

Distinguendum est. Vel suffragium dandum erat ex mera benevolentia, non autem ex officio, et de re aliena indebita, ut de favore aliquo conferendo, et omissio non generat obligationem damnum reparandi, quia nulla iniuria fuit illata. Vel suffragium ex officio dandum erat, et omissio fuit causa efficax damni, et hoc damnum est compensandum.

69 VI. It can happen that a gravely harmful vote be cast in good faith and concur efficaciously to damage. V. g., the question of proclaiming a war just from elsewhere is agitated; the minister of arms falsely affirms that everything is ready and victory is most probably to be hoped for. War is proclaimed, everything goes to ruin and citizens suffer gravest detriments. If the affirmative vote can no longer be opportunely recalled, he who gave it is not bound to repair the damage pro rata sua ; because, if he was the positive and efficacious cause of the damage, he was not its formally unjust cause, that is, culpable theologically.]

VI. Accidere potest ut suffragium graviter nocivum bona fide emittatur et ad damnum efficaciter concurrat. V. g., agitatur quaestio de bello aliunde iusto indicendo, armorum minister falso affirmat omnia esse parata et victriam probabilissime sperandam esse. Indicitur bellum, cuncta in pessum eunt et cives gravissima detrimenta patiuntur. Si suffragium affirmativum iam non possit opportune revocari, qui illud dedit non tenetur pro parte sua damnum reparare ; quia, si fuit causa positiva et efficax damni, non fuit causa formaliter iniusta, id est theologice culpabilis.]

70 **FLATTERER**

PALPO

71 The flatterer or adulator is said to be he who by praises, flatteries, or even reproaches moves someone to inflict damage, exaggerating or reproaching an injury inflicted upon another, declaring it not to be borne by a noble man, extolling vengeance, mocking patience, vituperating poverty, preaching the utility of theft. Those therefore who by these and similar modes move morally to unjust damaging sin gravely and are held to restitution. Nor is it necessary that they intend damage directly; it suffices that they intend it indirectly, inasmuch as they foresee or can foresee it about to follow from their flattery. This mode of cooperating differs little from the counselor. For what else is it to reproach another with his cowardice, or praise vengeance, than to counsel it to him ? What therefore I said at greater length concerning the counselor, hold here for what is said.

Palpo seu adulator dicitur qui laudibus, adulationibus, aut etiam exprobrationibus, movet aliquem ad inferendum damnum, ut iniuriam alteri illatam exaggerando aut exprobrando, a viro nobili non ferendam dicitando, vindictam extollendo, patientiam irridendo, paupertatem vituperando, furti utilitatem praedicando. Qui ergo his et similibus modis movent moraliter ad iniustam damnificationem, peccant graviter et tenentur ad restitutionem. Neque necesse est quod intendant directe damnum; sufficit quod illud intendant indirecte, quatenus praevideant aut praeveridere possunt secuturum ex sua palpatione. Hic cooperandi modus parum differt a consulente. Quid est enim aliud exprobrare alteri eius ignaviam, aut laudare vindictam, nisi eam illi consulere ? Qua igitur fusius de consulente dixi, pro dictis hic habeto.

72 [He is not bound, however, to reparation of damage who approves or ratifies a crime already perpetrated, unless his approval be the cause why reparation is not made, or new damages be inflicted which he could have foreseen at least confusedly.]

[Non tenetur autem ad reparationem damni, qui facinus iam patratum approbat vel ratum habet, nisi eius approbatio causa sit cur reparatio non fiat, aut inferantur nova damna quae saltem confuse praeveridere potuerit.]

73 **RECEIVER**

RECURSUS

74 Receiver, that is, one granting recourse, or harborer, vulgarly *receleur*, is called whoever offers security, convenience, protection, custody to the wrongdoer, whence it comes that he either inflicts damage, or does not restore damage inflicted. And that this one too is held to restitution is manifest, since he is the cause of unjust acquisition or detention. Whence the common adage : « S'il n'y avait point de recéleur, il n'y aurait point de voleur »[400]

400 Si nullus esset receptor, fur nullus esset.

Recursus, hoc est praestans recursum, seu receptator, vulgo receleur*, dicitur quicumque securitatem, commoditatem, protectionem, custodiam malefactori praebet, ex quo fit quod vel damnum inferat, vel illatum non restituat. Et hunc quoque teneri ad restitutionem manifestum est, cum sit causa iniustae vel acceptionis aut detentionis. Unde vulgare adagium : « S'il n'y avait point de recéleur, il n'y aurait point de voleur »*[400]

400 *Si nullus esset receptor, fur nullus esset.*

75 [Likewise held to restitution are merchants, and especially innkeepers, who receive thefts from sons of families, servants, hired workmen, and either conceal them in favor of such persons, or retain them for themselves as the price of goods and drinking bouts handed over by them.

[Pariter ad restitutionem tenentur mercatores, et praesertim caupones, qui accipiunt furta filiorumfamilias, servorum, operariorum conductorum, et vel ea occultant in gratiam talium, vel etiam ea sibi retinent in pretium mercium, compotationum ab ipsis traditarum.

76 He is not bound, however, who, after the theft is accomplished, aids the thief to flee, or receives him safely with his theft from friendship or from duty of office, as an innkeeper; provided he not thus flow into new thefts, offering thieves indiscriminately hope of refuge for the future. Nor likewise he who receives the thief from fear of grave damage[401] , for at his own grave loss he is not bound to avert another's damage.]

401 S. Lig., Lib. IV, n. 568.

Non tenetur autem qui, post patratum furtum coadiuvat furem ad fugiendum, aut eum cum furto suo in tutum recipit ex amicitia vel ex officio, ut stabularius; modo ita in nova furta non influat, praebendo furibus indiscriminatim spem refugii in futurum. Nec similiter qui furem recipit ex metu gravis damni[401], quia cum proprio gravi detrimento non tenetur alterius damnum avertere.]

401 S. Lig., Lib. IV, n. 568.

77 **PARTAKER**

PARTICIPANS

78 [I. He who formally cooperates with another in a damaging action, concurring to the execution of his evil will, is always held to restitution. The reason is that the action of such a cooperator is positive, efficaciously and formally unjust, and therefore vested with all the conditions imposing restitution.

[I. Qui formaliter cooperatur cum alio in actione damnosa, concurrendo ad executionem malae voluntatis eius, tenetur semper ad restitutionem. Ratio est, quia talis cooperatoris actio est positive, efficaciter et formaliter iniusta, adeoque vestitur omnibus conditionibus restitutionem imponentibus.

79 He who concurs only materially with another to inflicting damage can be excused from sin and from restitution, if namely he act from necessity or from a just and proportionate cause, without the mind of harming. The reason is that under such conditions cooperation is neither illicit nor unjust. 1° It is not illicit, although it be an aid to the damager, because for a just cause one can cooperate materially in another's sin; for, as was already said with the Angelic Doctor, when of one act there are two equally immediate effects, one good, the other evil, a just reason standing, the good effect can be intended and the evil permitted. 2° It is not unjust, although it inflict loss upon the owner of the thing; because, in a conflict

Qui materialiter tantum cum alio ad damnum inferendum concurrit, potest excusari a peccato et a restitutione, si nempe agat ex necessitate vel ex causa iusta et proportionata, absque nocendi animo. Ratio est, quia in huiusmodi conditionibus cooperatio non est illicita neque iniusta. 1° Non est illicita, etsi damnificanti adiumento sit, quia licet ex iusta causa materialiter cooperari ad peccatum alterius; nam, ut iam dictum est cum Angelico, quando unius actus sunt duo effectus aeque immediati, unus bonus, alter malus, potest, subsistente iusta ratione, intendi bonus effectus et malus permitti. 2° Non est iniusta, etsi domino rei nocumentum inferat; quia, in iurium

80 [402] of rights, the lesser must yield to the greater, as is plain from what was said concerning him who is in extreme necessity. Moreover, since each one has a right to preserve his own goods, no one

can be forbidden that action which per se is necessary for averting his own damage, although indirectly and per accidens damage befall another from it.]

402 Here q. 64, a. 7, c.

> *402 conflictu, minus debet cedere maiori, ut patet ex dictis de eo qui versatur in extrema necessitate. Insuper, cum quisque ius habeat sua bona conservandi, nemini prohiberi potest actio qua per se necessaria est ad proprium damnum avertendum, licet indirecte et per accidens ex ea damnum alteri eveniat.]*
>
> *402 Hic q. 64, a. 7, c.*

81 II. A partaker is twofold, *in plunder* and *in crime*. *A partaker in plunder* only is he who, after the damage is inflicted, receives part of the plunder or theft; and this one, if while receiving his part he did not know it was stolen, is held to restore only that part if it exists; or, if it no longer exists, only that by which he was made richer, because he is bound only by reason of a thing received. If he knew it was stolen, he is bound, if it exists, to give it back ; if it does not exist, an equivalent, even if he was not made richer thereby : because he is bound by reason of unjust acquisition. Whence he who in good faith drinks wine, not knowing it is stolen, is held only insofar as he spared his own wine or beer ; if knowingly, to its value, even if he spared nothing of his own wine or beer.

> *II. Participans est duplex,* in praeda *et* in crimine. Participans in praeda *tantum, est ille qui, post damnum illatum, partem praedae seu furti accipit, et hic, si dum partem accipit, nesciebat esse furtivam, tenetur tantum illam partem restituere, si exstet; aut, si amplius non exstet, id solum in quo factus est ditior, quia tenetur solum ratione rei acceptae. Si sciebat esse furtivam, tenetur, si exstet, eam reddere ; si non exstet, aequivalens, etiamsi inde non sit factus ditior: quia tenetur ratione iniustae acceptionis. Unde qui bona fide bibit, nesciens vinum furtivum, tenetur tantum in quantum suo vino vel cerevisiae pepercit ; si sciens, ad eius valorem, etsi nihil suo vino vel cerevisiae pepercerit.*

82 *A partaker in crime* is not only he who immediately per se exercises with another a damaging action, as if two together kill a man, despoil a house, etc.; for these are rather to be called co-executors than cooperators : but also those who offer help or instruments for inflicting damage, as they who lend ladders to the thief, apply them, hold them, support the climber, accompany him that they may hearten him, make false keys, keep watch, supply poison or arms to the thief against an enemy, carry off plunder already made farther away, etc. That these, while they do these things spontaneously and without urgent necessity, are held to restitution of the whole damage in solidum is established, even if without their aid the damage would have been inflicted, because in fact they efficaciously flow into the whole.

> Participans in crimine*, non solum est is qui immediate per se cum alio actionem damnificativam exercet, ut si duo simul occidant hominem, spolient domum, etc.; hi enim potius dicendi sunt coexsequentes, quam cooperantes : sed etiam illi qui ad damnum inferendum praebent auxilium seu instrumenta, ut qui furi scalas commodant, applicant, tenent, ascendentem sustinent, comitantur ut animum addant, claves adulterinas efficiunt, excubias agunt, venenum, arma furenti in hostem subministrant, praedas factas longius avehunt, etc. Hos porro, dum haec sponte et nulla urgente necessitate agunt, teneri ad totius damni restitutionem in solidum constat, etiamsi sine eorum ope damnum fuisset illatum, quia de facto in totum efficaciter influunt.*

83 III. But the question is very entangled and torments theologians not a little : whether those who do these things through fear of death or of some other grave evil, as happens, v. g., among captives rowing for the Turks against Christians, among peasants carrying away the stolen plunder of soldiers, etc., sin and are bound to restitution ?

III. Sed quaestio valde implexa est et quae non parum torquet theologos : utrum qui haec agunt metu mortis aut alterius gravis mali, ut contingit, v. g., in captivis apud Turcas remigantibus adversus Christianos, in rusticis avehentibus praedas furtivas militum, etc., peccent et teneantur ad restitutionem ?

84 **I say 1°:** To execute through fear of death an immediate damaging action, such as throwing down walls, boring through a wall, seizing moneys and other movables, casting them out the window, driving cattle from stables, casting fire into a heap, etc., is illicit and begets the obligation of restoring; because such actions are intrinsically evil. For what else is this than stealing ? But what is intrinsically evil cannot be adorned by any good end, and evils must not be done that goods may come.

***Dico 1°:** Exsequi metu mortis actionem immediatam damnificativam, ut evertere muros, perfodere parietem, pecunias, mobilia alia arripere, eiicere per fenestram, pecora stabulis abigere, ignem in acervum iniicere, etc., est illicitum et parit obligationem restituendi; quia tales actiones sunt intrinsece malae. Quid est enim hoc aliud quam furari ? Quod autem est intrinsece malum, nullo bono fine cohonestari potest, et non sunt facienda mala ut eveniant bona.*

85 [This conclusion is indeed true and certain in itself. Nevertheless three cases are commonly admitted in which, on account of grave fear, immediate cooperation in inflicting damage on one's neighbor is licit, because then the owner is not reckoned reasonably unwilling : 1° if the cooperator can and will repair the damage; 2° if, the cooperation failing, the damage would nevertheless certainly and equally have been inflicted by the principal agent ; 3° if the damage be light with respect to the owner; for then he ought to bear it with equanimity out of charity [403] . Except however damage to life, because it is never licit directly to kill an innocent man, and damage to limbs, or mutilation, to which it is not licit to concur except to forestall the mutilated person's death.]

403 Gury, n. 687.

[Haec conclusio est quidem in se vera et certa. Attamen tres communiter admittuntur casus in quibus ob metum gravem licita est cooperatio immediata ad damnum proximo inferendum, quia tunc dominus non censetur rationabiliter invitus : 1° si cooperans possit ac velit damnum reparare; 2° si, deliciente cooperatione, damnum nihilominus certo et aequaliter fuisset a principali agente illatum ; 3° si damnum sit leve respectu domini; tunc enim ex charitate illud aequo animo ferre debet [403]. Excipe tamen damnum vitae, quia nunquam licet directe occidere innocentem, et damnum membrorum, seu mutilationem, ad quam non licet concurrere, nisi ad praecavendam mortem mutilati.]

403 Gury, n. 687.

86 But whether it be licit to cooperate immediately, out of gravest fear, in inflicting grave damage upon goods of fortune, if the cooperator cannot or will not repair it? Many deny, because the cooperation is intrinsically evil, and the owner is bound neither by justice nor by charity to preserve another's life at so great a burden to himself. St. Liguori, considering the matter with respect to the owner and the thief [404] , distinguishes under the former. Either the cooperator fears only damage of his own of the same kind : he would act unjustly by cooperating to keep himself whole, unless he did so with the mind of compensating ; because the owner is not bound to impede a like loss of another at the sacrifice of his own means. Or damage of a higher order is feared, for example death, or mutilation, or grave injury, and the cooperation becomes licit; for otherwise the owner would be unreasonably unwilling. As to cooperation in the damager's sin, since it is merely material, it becomes licit from a just cause.]

404 Lib. IV, n. 571.

An vero liceat cooperari immediate, ex gravissimo metu, ad damnum grave in bonis fortunae inferendum, si cooperans illud non possit aut nolit reparare? Negant multi, quia cooperatio est intrinsece mala, et dominus neque vitam alterius vel ex iustitia vel ex charitate tenetur eo tanto gravamine servare. S. Ligorius rem respectu domini et furis considerans [404]*, sub priori distinguit. Vel cooperans timet tantum damnum proprium eiusdem generis: iniuste ageret cooperando ut se servet indemnem, nisi hoc faciat animo compensandi ; quia dominus non tenetur per iacturam suarum facultatum simile detrimentum alterius impedire. Vel timetur damnum superioris ordinis, puta mors, aut mutilatio, aut gravis iniuria, et cooperatio fit licita; nam alias dominus irrationabiliter esset invitus. Quantum ad cooperationem ad peccatum damnificantis, cum sit mere materialis, ex iusta causa fit licita.]*

[404] *Lib. IV, n. 571.*

87 **I say 2°:** It seems to us more probable that actions which are not immediately per se damaging, but which precede or follow upon the damaging, such as lending ladders, keys, etc., opening the door, supporting the climber, rowing for the Turks against Christians, constructing embankments, carrying off farther the plunder already made, etc., if done through fear of death or of another evil far graver than the damage to be inflicted, are not illicit nor liable to restitution; because those actions are indifferent in themselves, and are done for a good end, namely for saving life. But it is not illicit to posit an action indifferent in itself for a good end, although evil follow from another's malice, especially when the good effect is of greater moment than the damage which follows from it per accidens.

Dico 2°: *Probabilius nobis videtur actiones quae non sunt immediate per se damnificativae, sed quae praecedunt aut subsequuntur damnificationem, ut commodare scalas, claves, etc., aperire ianuam, sustentare ascendentem, remigare apud Turcas contra Christianos, aggeres construere, longius avehere praedas iam factas, etc., si fiant metu mortis aut mali alterius longe gravioris quam sit damnum inferendum, non esse illicitas nec restitutioni obnoxias; quia istae actiones sunt secundum se indifferentes, et propter bonum finem fiunt, nempe ad salvandam vitam. Non est autem illicitum ponere actionem secundum se indifferentem ad bonum finem, licet ex alterius malitia sequatur malum, maxime quando bonus effectus est maioris momenti quam damnum quod ex illa sequitur per accidens.*

88 If you say with the adversaries that these actions, although indifferent in themselves, nevertheless as done here and now are not indifferent, but truly concur to damage, *I answer* that they do not concur to damage as they come from the agent, but from the perverse use and evil will of the thief abusing them.

Si dicas cum adversariis, has actiones, quamvis secundum se sint indifferentes, tamen prout hic et nunc fiunt non esse indifferentes, sed revera concurrere ad damnum, Resp. *quod non concurrant ad damnum prout sunt ab agente, sed ex perverso usu et mala voluntate furis eis abutentis.*

89 *It is confirmed,* the conclusion from an inconvenience. If the aforementioned actions were to be condemned, I do not see how nearly infinite actions which everywhere are admitted as licit could be excused. Thus he will sin and be liable to restitution who, driven by fear of death, returns a deposit of a sword to one demanding it for the slaughter of an enemy, or deposits money to one about to abuse it for usury, drunkenness, whoring, etc. Similarly the innkeeper will sin who supplies drink through fear of death to those about to make themselves drunk. Likewise the girl will sin who from an honest or even useful and necessary cause presents herself to the sight of a youth whom she knows will thence sin. Likewise guilty will be he who from hearing confessions, or from another honest action which he performs, foresees pollution ensuing, and six hundred other things, which no less than the aforementioned actions, as done here and now, concur to the evil effect. Nay more,

actions which influence remotely will also be illicit. Thus he will sin and be liable to restitution who sells arms or poisons indiscriminately, knowing that some use them for others' ruin; similarly he who sells bird-limes, dice, playing cards, which he knows many abuse, and thus running through almost innumerable actions which occur continually : for these also are actions which influence in their own way into the evil effect, and although less proximately than the preceding ones, they nevertheless influence.

> Confirm. *conclusio ab inconvenienti. Si praefatae actiones sint damnandae, non video quomodo excusari possint infinitae prope actiones quae passim ut licitae admittuntur. Sic peccabit, et erit obnoxius restitutioni, qui metu mortis adactus reddet depositum gladium repetenti in internecionem inimici, aut pecunias depositas abusuro ad usuras, ebrietates, scortationes, etc. Similiter peccabit caupo qui metu mortis subministrat potum se inebriaturis. Item peccabit puella quae ex honesta aut etiam utili et necessaria causa se offert conspectui adolescentis quem novit inde peccaturum. Item reus erit qui ex audientia confessionum aut ex alia honesta actione quam ponit, praevidet secuturam pollutionem, et sexcenta alia, quae non minus quam praefatae actiones, ut hic et nunc fiunt, concurrunt ad malum effectum. Imo magis et quae remote influunt, etiam erunt illicitae. Sic peccabit et erit obnoxius restitutioni, qui arma aut venena vendunt promiscue, cum sciant aliquos uti iis in aliorum perniciem; similiter qui fucos, taxillos, cartifolia vendunt, quibus sciunt plures abuti, et sic discurrendo per innumeras prope actiones quae continue occurrunt : quia haec etiam actiones suo modo influunt in malum effectum, et licet minus proxime quam praecedentes, influunt tamen.*

90 IV. *You will ask* whether, when several concur immediately to damage, v. g., despoil a vineyard, house, treasury, etc., they are bound to restitution of the whole in solidum.

> *IV.* Petes *utrum, quando plures immediate concurrunt ad damnum, v. g., spoliant vineam, domum, aerarium, etc., teneantur ad restitutionem totius in solidum.*

91 *I answer,* with a distinction. 1° If they concur by mutual consent and counsel exciting one another, all are bound in solidum ; because then each is the cause not only of the partial damage which he does per se, but also of the damage which another does, and thus all as one cause flow into the whole damage. So more probably Soto, Bannez, Cajetan and others, whom Silvius cites and follows, against Paludanus, Sylvester, Navarro, etc.

> Resp. *sub distinctione. 1° Si mutuo consensu et consilio se invicem excitantes concurrant, tenentur omnes in solidum ; quia tunc unusquisque est causa non solum partialis damni quod per se facit, sed etiam damni quod alter facit, sicque omnes per modum unius causae influunt in totum damnum. Ita probabilius Soto, Bannez, Caietanus et alii, quos citat et sequitur Sylvius, contra Paludanum, Sylvestrum, Navarrum, etc.*

92 2° If several concur to damage, not by common consent mutually exciting one another, but per accidens, each is bound only to his own part. As if, several laying waste a vineyard or despoiling a treasury, you arriving take your part, you are bound only to your part, and not to the parts of the others ; because you do not flow into theirs.

> *2° Si plures concurrant ad damnum, non communi consensu se mutuo excitantes, sed per accidens, tenetur quisque tantum ad suam partem. Ut si, pluribus vastantibus vineam aut spoliantibus aerarium, tu superveniens tuam partem accipias, teneris tantum ad tuam partem, et non ad partes aliorum ; quia non influis in illas.*

93 V. But there is a further question : whether by stealing a light part you sin mortally and are bound under mortal sin to restore this light part, if you know grave damage is being inflicted elsewhere by others or has been inflicted; nay, even if you know it not then, or learn afterward, are you likewise bound to restore your light part under mortal sin? V. g., traveling you enter a vineyard, see it already

largely despoiled, or know it is soon to be despoiled, meanwhile gather one cluster and another : do you sin mortally and are you bound under mortal sin to restore these few clusters? Likewise you steal one cluster and another from an intact vineyard, not knowing what is thereafter to happen, afterward learn it was totally despoiled by thieves : are you again bound under mortal sin to restore your few clusters?

> *V. Sed ulterior quaestio est : an furando partem levem pecces mortaliter et tenearis sub mortali hanc levem partem restituere, si scias damnum grave aliunde ab aliis esse inferendum aut illatum; imo, etsi tum nescias, seu postea rescias, tenearis similiter tuam partem levem restituere sub mortali? V. g., itinerando ingrederis vineam, vides eam iam magna ex parte spoliatam, aut scis brevi spoliandam, interim unum et alterum botrum colligis: peccasne mortaliter et tenerisne sub peccato mortali istos paucos botros restituere? Item furaris unum et alterum botrum ex vinea integra, nesciens quid sit deinde futurum, postea rescis a furibus esse totaliter spoliatam : tenerisne iterum sub peccato mortali restituere tuos paucos botros?*

94 *I answer,* negative with Soto, Malderus, the Salmanticenses, Lessius and others; because no one sins mortally unless he has inflicted grave damage, or been the cause of grave damage inflicted by others. Yet in both proposed cases you inflicted no grave damage, nor were you the cause of grave damage inflicted by others. Therefore.

> Resp. *negative cum Soto, Maldero, Salmantieensibus, Lessio et aliis; quia nemo peccat mortaliter nisi grave damnum intulerit, vel fuerit causa gravis damni ab aliis illati. Atqui in utroque casu posito grave damnum non intulisti, nec fuisti causa gravis damni ab aliis illati. Ergo.*

95 **SILENT, NOT HINDERING, NOT DISCLOSING**

> ***MUTUS, NON OBSTANS, NON MANIFESTANS***

96 I. These three concur to damage negatively only, inasmuch as they do not impede it when they can and ought to impede it; whence it comes that the damage is imputed to them.

> *I. Hi tres concurrunt ad damnum negative tantum, in quantum illud non impediunt cum possunt et debent impedire; ex quo fit quod damnum ipsis imputetur.*

97 *The silent one* is he who holds his peace when he could and ought to speak, forbidding the thief, dissuading him, reproaching him, crying out, etc., lest he do damage, or that damage inflicted be repaired.

> Mutus *est ille qui tacet cum posset et deberet loqui, furem prohibendo, dissuadendo, reprehendendo, clamando, etc., ne damnum faciat, aut ut illatum resarciat.*

98 *The non-hindering one* is he who, when he could and ought to impede the damage by bodily aid, or procure its restitution, omits to do so.

> Non obstans *est ille qui, cum posset et deberet ope corporali impedire damnum, aut eius restitutionem procurare, omittit.*

99 *The non-disclosing one* is he who, when he could and ought, does not denounce, does not uncover the wrongdoer, whether before the deed, that he may be impeded, or after, that reparation be made.

> Non manifestans *est ille qui, cum posset et deberet, non denuntiat, non detegit malefactorem, sive ante factum, ut impediatur, sive post, ut restituatur.*

100 Therefore the silent one omits verbal effort toward the damager ; the non-hindering one, bodily effort toward the same; the non-disclosing one, verbal effort toward the magistrates or owners damaged or about to be damaged.

> *Itaque mutus omittit operam verbalem erga damnificantem ; non obstans, operam corporalem erga eundem; non manifestans, operam verbalem erga magistratus aut dominos damnificatos vel damnificandos.*

101 II. That these three, while they do not impede damage, be held to its restitution, three things are required : first, that they have culpably omitted to impede it; second, that they could have impeded it without grave loss to themselves; third, that they be bound to impede it from justice [405] .

405 Here q. 62, a. 7, c et ad 3.

> *II. Ut hi tres, dum damnum non impediunt, teneantur ad illius restitutionem, tria requiruntur : primum, quod impedire culpabiliter omiserint; secundum, quod sine suo gravi damno potuerint impedire; tertium, quod impedire teneantur ex iustitia [405].*
>
> *405 Hic q. 62, a. 7, c et ad 3.*

102 III. Those indeed are bound to impede from justice who are bound from contract or quasi-contract, that is, from office : for he who takes up an office implicitly obliges himself to render the things which belong to that office.

> *III. Hi vero tenentur impedire ex iustitia, qui tenentur ex contractu aut quasi-contractu, hoc est ex officio: quia qui suscipit officium, implicite se obligat ad praestanda ea quae sunt illius officii.*

103 Hence you will infer that guards of cities, fields, vineyards, forests, rivers, tolls, customs dues, are held to restitution of the dues or of damage inflicted in fields, forests, etc., while they do not impede thieves, plunderers, defrauders, etc.

> *Hinc inferes, custodes urbium, agrorum, vinearum, sylvarum, fluminum, gabellarum, vectigalium, teneri ad restitutionem vectigalium aut damni illati in agris, sylvis, etc., dum fures, depraedatores, defraudatores, etc., non impediunt.*

104 As to payment of the fine which the damagers would pay if denounced or caught, it is probable the guards are not bound to it while they do not denounce or apprehend the damagers; because guards are not bound from justice to accuse for this end, that the state or owner grow rich from fines, but that the thief pay the dues and damages be impeded. Therefore. — *Proof* of the antecedent. Their office is not, nor are they constituted for this, that they procure fines, but that they receive the dues and that the things committed to them be kept whole. Therefore.

> *Quantum ad solutionem mulctae quam damnificantes solverent, si essent denuntiati aut deprehensi, probabile est ad eam non teneri custodes, dum damnificantes non denuntiant aut non apprehendunt; quia custodes non tenentur ex iustitia accusare in hunc finem, ut respublica vel dominus ditescat ex mulctis, sed ut vectigalia solvat fur et damna impediantur. Ergo.* — Prob. *ant. Officium illorum non est, neque ad hoc constituuntur, ut procurent mulctas, sed ut recipiant vectigalia et res sibi commissae serventur indemnes. Ergo.*

105 *It is confirmed.* Fines are not imposed that the state or owner grow rich from them, but that laws be kept and subjects held to duty. For pecuniary fines are imposed for no other reason than corporal ones, for example imprisonment, exile, the galleys. In these, however, only the reason of the law to be kept is attended to. Therefore also in those. Therefore guards are not constituted that the state or

owner derive advantage from fines. If however through their silence or negligence the defrauding of dues or the damaging of things committed to them is increased, they are bound to some restitution, according to the judgment of a prudent man.

> Confirm. *Mulctae non imponuntur ut ex eis respublica aut dominus ditescat, sed ut leges serventur et subditi in officio contineantur. Non enim alia ratione mulcta pecuniaria imponuntur, quam corporales, puta carceris, exilii, triremium. In his autem attenditur solum ratio legis servandae. Ergo et in illis. Ergo custodes non constituuntur ut ex mulctis commodum reportet respublica vel dominus. Si tamen ex suo silentio aut negligentia augetur fraudatio vectigalium aut damnificatio rerum sibi commissarum, tenentur ad aliquam restitutionem, secundum arbitrium viri prudentis.*

106 *You will ask* whether a witness who, legitimately interrogated by a judge, holds his peace and refuses to bear testimony, is held for the damage which follows from his silence.

> Petes *utrum testis qui, a iudice legitime interrogatus tacet et recusat ferre testimonium, teneatur de damno quod ex eius silentio sequitur.*

107 *I answer,* more probably negative, with Bannez, Silvius, Lessius, etc.; because the command of a judge or superior does not impose an obligation of commutative justice, but only of legal obedience. Whence the witness by holding his peace does not sin against commutative justice, but only against legal obedience. Nor does it stand in the way that judge or superior intends to impose on him the office of testifying, because such a one does not accept it.

> Resp. *probabilius negative cum Bannez, Sylvio, Lessio, etc.; quia mandatum iudicis aut superioris non imponit obligationem iustitiae commutativae, sed legalis tantum obedientiae. Unde testis tacendo non peccat contra iustitiam commutativam, sed contra legalem tantum seu obdientiam. Nec obstat quod iudex seu superior tendet illi imponere officium testificandi, quia talis illud non acceptat.*

108 But the obligation of commutative justice, especially in our free acts, arises rather from the acceptance of the obligated party than from imposition by a superior, inasmuch as by accepting he promises and binds himself; otherwise, if he does not accept.

> *Obligatio autem iustitiae commutativae, maxime in actibus nostris liberis, magis oritur ex acceptatione obligati quam ex impositione superioris, quatenus acceptando promittit et se obligat; secus, si non acceptet.*

109 The same, for the same reason, seems to be said of him who, a monitory having been promulgated to reveal a crime, does not reveal it. But again of this below, while we treat of the injustice of a witness.

> *Idem, propter eamdem rationem, videtur dicendum de illo qui, promulgato monitorio ad revelandum crimen, non revelat. Sed iterum de hoc infra, dum de iniustitia testis.*

110 IV. It is asked 1° specially whether a confessor who through ignorance or gravely culpable negligence does not enjoin restitution upon a penitent who is bound thereto makes himself liable to this restitution.

> *IV. Quaeritur 1° specialiter utrum confessarius qui ignorantia aut negligentia graviter culpabili non iniungit poenitenti restitutionem ad quam tenetur, fiat ipse obnoxius huic restitutioni.*

111 I suppose that, if the penitent asking whether he ought to restore, the confessor answered nothing, he himself would certainly be held to restore, because one silent in these circumstances holds himself not merely negatively toward non-restitution, but is reckoned to concur positively to it,

as persuading or consenting; for then the common saying is verified : « He who is silent seems to consent. » The question therefore concerns the confessor who holds himself merely negatively by silence.

> *Suppono quod, si poenitenti interroganti, an debeat restituere, nihil responderet confessarius, certo teneretur ipse restituere, quia silens in his circumstantiis non se habet tantum negative ad non restitutionem, sed censetur ad illam concurrere positive, ut suadens aut consentiens; verificatur enim tunc commune effatum : « Qui tacet, consentire videtur. » Quaestio itaque est de confessario qui mere negative se habet tacendo.*

112 *I answer.* It is more probable that the confessor, qua such, whether he have care of souls from office or not, is not bound in the case proposed to restitution. So of our authors Ledesma, Serra ; among foreigners, Valencia, Sa, Laymann, Sporer, Daelman, etc., against Navarro, Silvius, the author of the Supplement of Tournely, etc.

> Resp. *Probabilius est confessarium, qua talem, sive ex officio habeat curam animarum, sive non, non teneri in casu proposito ad restitutionem. Ita ex nostris Ledesma, Serra ; ex extraneis, Valentia, Sa, Layman, Sporer, Daelman, etc., contra Navarrum, Sylvium, authorem Suppl. Tournely, etc.*

113 *Proof* 1°. The confessor is bound first from office to admonish the penitent concerning the obligation of restoring with respect to spiritual things only, not with respect to temporal things, whether of the penitent himself or of another third party ; for that office is wholly spiritual. Therefore, while he omits to admonish, he violates justice with respect to temporal things not at all, but with respect to spiritual things only. But violation of justice alone induces the obligation of restoring, and consequently the confessor is bound to repair spiritual damages, if they follow from his silence, not temporal ones.

> Prob. *1°. Confessarius tenetur primo ex officio monere poenitentem obligationis restituendi in ordine ad spiritualia tantum, non in ordine ad temporalia sive ipsius poenitentis, sive alterius tertii ; officium enim istud totum est spirituale. Ergo, dum omittit monere, non violat iustitiam in ordine ad temporalia, sed in ordine ad spiritualia tantum. Sola autem violatio iustitiae inducit obligationem restituendi, proindeque confessarius tenetur reparare damna spiritualia, si sequantur ex suo silentio, non temporalia.*

114 *Proof* 2°. Given that the confessor, by virtue of administration of the sacrament of Penance, is bound from justice with respect to the temporal good too of the penitent; nevertheless this obligation is not extended to the temporal good of another third party, with whom by virtue of this very administration precisely he entered into no pact nor any convention, even tacit [406] . Therefore, omitting to admonish, he will indeed sin against the justice owed his penitent, but not against this third party. — *I subsume.* But restitution is owed to him toward whom justice is owed and with respect to whom it is violated. Therefore.

406 S. Lig., lib. IV, n. 578.

> Prob. 2°. *Dato confessarium vi administrationis sacramenti Poenitentiae obligari ex iustitia in ordine ad bonum poenitentis etiam temporale; haec tamen obligatio non extenditur ad bonum temporale alterius tertii, quocum neque pactum neque conventionem ullam etiam tacitam inivit vi administrationis huiusmodi praecise [406]. Ergo omittendo peccabit quidem contra iustitiam debitam suo poenitenti, sed non isti tertio.* — Subsumo. *Atqui illi solvenda est restitutio, cui iustitia est debita et respectu cuius violatur. Ergo.*
>
> *406 S. Lig., lib. IV, n. 578.*

115 That third party has indeed a right that the penitent restore to him, but he has no strict right that the confessor, qua such, admonish the penitent in this matter, since by virtue of his office he did not bind himself thereto ; as though the confessor by reason of administering the sacrament of Penance were ex officio procurator of the temporal goods of anyone whatever.

> *Habet quidem ius ille tertius ut poenitens ipsi restituat, sed non habet ius strictum ut confessarius, qua talis, in hac de re poenitentem moneat, cum vi officii sui ad id se non obligaverit ; quasi vero confessarius ratione administrationis sacramenti Poenitentiae foret ex officio procurator bonorum temporalium cuiuscumque.*

116 [It is asked 2° whether a superior is held to repair damage inflicted by his subjects.

> *[Quaeritur 2° utrum superior teneatur reparare damnum a suis subditis illatum.*

117 *I answer* 1°. He is bound in the external forum, unless he prove he could not have forestalled the damage. So by Roman law and commonly by present civil law [407] . In Gallican law express mention is made : 1° of the father, and after his decease, of the mother, relative to minor children dwelling with them ; 2° of the master or commander, relative to servants and agents ; 3° of the teacher and craftsman, relative to disciples and apprentices. If no theological fault has been committed by the superior, he is not bound to reparation until after sentence of the judge, if recourse is given him against the damager, who in conscience ought to make him whole if he can.

407 Cod. civ., art. 1384.

> Resp. *1°. Tenetur in foro externo, nisi probet se damnum non potuisse praecavere. Ita ex iure Romano et communiter ex iure civili hodierno [407]. In iure Gallico fit expressa mentio : 1° de patre, et eo defuncto, de matre, relatis ad filios minorennes cum ipsis habitantes ; 2° de hero vel mandante, relative ad famulos et mandatarios ; 3° de institutore et artifice, relative ad discipulos et tyrones. Si nulla culpa theologica fuerit a superiore commissa, reparationem non tenetur nisi post sententiam iudicis, si ei datur recursus contra damnificantem, qui in conscientia debet eum indemnem facere, si possit.*
>
> *407 Cod. civ., art. 1384.*

118 *I answer* 2°. In the internal forum he is not bound for the damage of the superior unless he commit theological fault against justice with respect to the injured person, that is, unless his silence or tolerance was morally equivalent to positive impulse.

> Resp. 2°. *In foro interno, non tenetur de damno superioris, nisi culpam theologicam contra iustitiam commisserit erga personam laesam, id est nisi eius silentium aut tolerantia moraliter positivo impulsui fuerit aequivalens.*

119 The reason is that the superior, although he ought rightly govern his subjects, is not bound from justice to watch over the temporal goods of others [408] .]

408 Goiset, n. 963 et 964 ; Gury, n. 692.

> *Ratio est, quia superior, etsi subditos suos recte gubernare debeat, non tenetur ex iustitia bonis temporalibus aliorum invigilare [408].]*
>
> *408 Goiset, n. 963 et 964 ; Gury, n. 692.*

120 [It is asked 3° whether servants are held to restitution for not impeding damages inflicted upon their masters.

> *[Quaeritur 3° utrum ad restitutionem teneantur famuli non impedientes damna dominis suis illata.*

121 *I answer* 1° affirmative, if the matter concerns goods specially committed to them; for they are bound by contract.

> Resp. *1° affirmative, si agatur de bonis specialiter ipsis commissis; nam obligantur ex contractu.*

122 *I answer* 2° probably affirmative, when the damage is inflicted by strangers, even upon goods not specially committed to them [409] . This seems to arise from quasi-contract; for masters reasonably hold their servants as set against such plundering of their goods. Several also say servants are then bound in solidum if several were similarly negligent herein [410] .

409 S. Lig., lib. IV, n. 344.

410 Id., ibid.

> Resp. *2° probabiliter affirmative, cum damnum infertur ab extraneis, etiam in bonis non sibi specialiter commissis [409]. Hoc ex quasi-contractu videtur oriri; nam domini rationabiliter famulos suos habent ut tali suorum bonorum direptioni oppositos. Plures etiam dicunt, famulos tunc in solidum teneri, si plures similiter in hoc fuerint negligentes [410].*
>
> *409 S. Lig., lib. IV, n. 344.*
>
> *410 Id., ibid.*

123 *I answer* 3° negative, more probably, against certain ones, if the damages be inflicted by fellow-servants ; because servants are not hired that they watch over one another.]

> Resp. *3° negative probabilius, contra aliquos, si damna a confamulis inferantur; quia famuli non conducuntur ut sibi invicem invigilent.]*

124 **§ III. — In what order are cooperators in damage bound to restore ?**

> ***§ III. — Quo ordine cooperatores damni teneantur restituere ?***

125 I. I suppose 1° that he who still has the thing existing with himself is bound before all to restore it : because he is bound by reason of the thing received, and this obligation is the greatest of all; for so long as the thing exists it cries out to its owner, as is commonly said, and is owed to him. But if in good faith he consumed it, he is bound insofar as he was made richer, because that succeeds in place of the thing ; if in bad faith, he is bound to the whole equivalent, otherwise he would reap profit from his new iniquity. Whence rule of law 36 in 6° : « He is had as possessor who ceased to possess through guile. » Moreover, since knowingly and willingly he received advantage from that thing beyond the rest, it is equitable that beyond the rest also he undergo the burden of restoring.

> *I. Suppono 1° eum qui rem adhuc exstantem apud se habet, ante omnes teneri eam restituere : quia tenetur ratione rei acceptae, et haec obligatio est omnium maxima; quamdiu enim res exstat, clamat ad dominum, ut communiter dicitur, et ei debetur. Quod si bona fide eam absumpsit, tenetur in quantum factus est ditior, quia id succedit loco rei ; si mala fide, tenetur ad totum aequivalens, alioquin commodum reportaret ex nova sua iniquitate. Unde regula iuris 36 in 6° : « Pro possessore habetur, qui dolo desiit possidere. » Insuper, cum sciens et volens commodum ex ea re prae caeteris perceperit, aequum est etiam ut prae caeteris subeat onus restituendi.*

126 Therefore, while he restores, the other cooperators are not bound to restore; not to the owner, because he has what is his own; not to him who restored, because he has no less than he ought to have. Except however first, if the commander concede to the executor the thing taken away or part of it as wages; second, if the master order the stolen thing, for example a sheep, to be consumed by his

servants. For in these and similar cases the commander and master seem to take upon themselves before others the burden of restoring.

> *Eo itaque restituente, caeteri cooperatores non tenentur restituere; non domino, quia habet quod suum est; non illi qui restituit, quia non habet minus quam debeat habere. Excipe tamen primo, si mandans concedat executori rem ablatam aut eius partem ut mercedem; secundo, si herus rem furtivam, puta ovem, a suis famulis consumi iubeat. In his enim et similibus casibus mandans et herus videntur in se suscipere onus restituendi prae caeteris.*

127 I suppose 2° that, when several concur equally to damage, they are bound equally to restitution, each for his own part : as, if ten by common counsel burn down a house worth a thousand gold pieces, each is bound to render one hundred; if two counsel theft of a hundred gold pieces, each is bound to refund fifty; because the obligation of restoring arises from influx into the damage. Therefore, where the influx is equal, the obligation is equal. From which it also follows that, if among those concurring in the same mode, v. g., among several counselors, one flow more than another, he is bound also to restore more. But if the others fail, each is bound in solidum ; because each flows into the whole damage, if not by totality of cause, at least by totality of effect.

> *Suppono 2° quod, quando plures aequaliter concurrunt ad damnum, teneantur aequaliter ad restitutionem, unusquisque pro sua parte : ut, si decem communi consilio incendant domum valentem mille aureis, unusquisque tenetur reddere centum; si duo consulant furtum centum aureorum, unusquisque tenetur refundere quinquaginta; quia obligatio restituendi oritur ex influxu in damnum. Ergo, ubi aequalis est influxus, aequalis est obligatio. Ex quo etiam sequitur quod, si inter eodem modo concurrentes, v. g., inter plures consulentes, unus magis influat quam alter, teneatur etiam plus restituere. Quod si alii deficiant, tenetur quisque in solidum ; quia quisque influit in totum damnum, si non totalitate causae, saltem totalitate effectus.*

128 [And because they acted as one agent.]

> *[Et quia per modum unius egerunt.]*

129 But while one restores, the others owe to refund to him each his own part [411] : because the owner who received integral restitution from him is reckoned to have transferred to him the whole right he previously had; and otherwise his diligence would put him in a worse condition, since the fault and slowness of the others would plead their cause. Add that the non-restorers are the cause why he must restore the whole, when otherwise it would have sufficed to restore part, and therefore they are the cause of his damage.

411 Here q. 62, a. 6, ad 3.

> *Uno autem restituente, alii debent ipsi refundere quique suam partem [411] : quia dominus qui accepit eius integram restitutionem, censetur ei transmisisse totum ius quod prius habebat; et alioquin eius diligentia faceret eum peioris conditionis, cum culpa et tarditas aliorum ipsis patrocinaretur. Adde quod non restituentes sint causa cur is debeat restituere totum, cum alioquin sufficeret restituere partem, adeoque sint illi causa damni.*
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> *411 Hic q. 62, a. 6, ad 3.*

130 II. There remains therefore the question of those who concur in diverse modes : v. g., commander, executor and counselor concur to the same damaging; it is asked whether among them there be some order, such that certain ones are bound first to restore the whole, and these failing, others.

> *II. Quaestio itaque restat de iis qui diverso modo concurrunt : v. g., concurrunt ad eamdem damnificationem mandans, exsequens et consulens; quaeritur utrum inter eos sit aliquis ordo, ita ut quidam prius totum restituere teneantur, et iis*

deficientibus alii.

131 **I say :** Primarily and principally the commander is bound; secondarily the executor, and consequently the others by orders, so that, the commander restoring, the rest are free from restitution; but the executor restoring, the commander is bound to restore to him, while the subsequent others remain free [412] .

412 Ibid., a. 7, ad 2.

Dico : *Primario et principaliter tenetur mandans; secundario exsequens, et consequenter alii per ordines, ita ut, restituente mandante, caeteri sint liberi a restitione; restituente vero exsequente, mandans tenetur illi restituere, caeteri autem subsequentes sint liberi* [412].

412 *Ibid., a. 7, ad 2.*

132 Of the commander it is plain; because he is the principal cause by whose authority, name and grace the deed is done, wherefore all are subordinated to him and serve as instruments. Whence by the common sense of all he is reckoned to take primarily upon himself the burden of restitution of the whole. Indeed it would be iniquitous, nay ridiculous, that he who ordered others to do the crime in his name and for his advantage should exact from others part of the restitution.

De mandante patet; quia est principalis causa cuius authoritate, nomine et gratia fit, cuique propterea omnes subordinantur et serviunt ut instrumenta. Unde communi omnium sensu censetur in se suscipere primario totius restitutionis onus. Sane iniquum, quin et ridiculum foret, quod qui aliis iussit maleficium fieri suo nomine et in sui gratiam, exigeret ab aliis partem restitutionis.

133 To the commander here must be reckoned he who by force, fear, threats compels another to the crime. Likewise he who, whether by fraud or by prayers alone or counsels, induced another to inflict damage for his advantage; for these are equivalent to the commander, and are, just as he, principals in the deed, so that they too are reckoned to take upon themselves the burden of restitution. Indeed he who by these modes would induce a commander to command would be bound before the latter himself, because he would be more principal than he in the damage.

Mandanti hic accensendus est qui vi, metu, minis, alterum cogit ad maleficium. Item qui, sive fraude, sive solis precibus, aut consiliis induxit alium ut in sui gratiam damnum inferret; hi enim aequivalent mandanti, et sunt, sicut ipse, principales in facto, ita ut etiam censeantur in se suscipere onus restitutionis. Imo qui his modis mandantem induceret ad mandandum, prius ipso teneretur, quia foret ipso magis principalis in damno.

134 Of the executor acting without a commander it is also plain, because he himself is principal in the deed and damages in his own name. Of the executor truly acting by authority and name of the commander, certain ones doubt, because then he is only a secondary agent, like the other cooperators, and consequently seems bound only for his own part, like the others.

De executore qui absque mandante agit, etiam patet, quia ipse est principalis in facto et proprio nomine damnificat. De executore vero qui authoritate et nomine mandantis agit, quidam dubitant, quia tunc est tantum agens secundarius, sicut alii cooperatores, proindeque videtur tantum teneri pro sua parte, sicut alii.

135 Nevertheless it is more probable that even such a one after the commander is bound to the whole, and while he restores, the other cooperators are bound to nothing; because, although he acts not for himself but for the commander, he is nevertheless after the commander principal among the rest who serve him and are subordinated to him, just as he is to the commander, namely by instructing,

encouraging, heartening, arming him, etc., and that for his advantage. Whence it follows that he takes upon himself before the rest the burden of restoring.

> *Nihilominus probabilius est etiam talem post mandantem teneri ad totum, et eo restituente, caeteros cooperatores ad nihil teneri; quia, licet non pro se, sed pro mandante agat, est tamen post mandantem principalis inter caeteros qui ipsi serviunt et sunt subordinati, sicut ipse est mandanti, ipsum scilicet instruendo, fovendo, animos addendo, armando, etc., idque in eius gratiam. Ex quo sequitur ipsum prae caeteris in se suscipere onus restituendi.*

136 Moreover understand this of the executor who conducts the affair in his own or the commander's name; for if he acted in the name of other cooperators, he would be bound neither before nor more than they : as if five enter common counsel for burning a house and one cast fire for all and in their name, they are held equally with him, for he is not more the principal cause than they. Whence, while he restores, the others are bound to restore to him their part.

> *Caeterum id intellige de exsequente qui suo vel mandantis nomine rem agit; si enim aliorum cooperatorum nomine ageret, non prius nec plus quam illi teneretur : ut si quinque commune consilium ineant incendendi domus et unus pro omnibus et eorum nomine ignem iniiciat, a quatuor aeque tenentur ac ille, qui non est magis causa principalis, quam illi. Unde, illo restituente, alii tenentur ipsi suam partem restituere.*

137 Among the other cooperators positively, however, no order seems probable, but each is bound to his own part greater or lesser according to the measure of influx; yet so that, the others failing, each is bound to the whole, and they who restore the whole, the rest owe their parts. The reason is that none is the principal cause of another, nor is anyone subordinated to or serving another as his instrument, but each acts per se in his own line. If the flatterer is not the instrument of the counselor, nor the counselor of the flatterer.

> *Inter caeteros vero cooperantes positive videtur probabilis nullum esse ordinem, sed unumquemque teneri ad suam partem maiorem vel minorem pro modo influxus; ita tamen ut, aliis deficientibus, quilibet teneatur ad totum, et restituenti totum caeteri suas partes restituere debeant. Ratio est, quia nullus alteri est causa principalis, nee ullus alteri subordinatur aut deservit tamquam eius instrumentum, sed quisque per se in suo ordine agit. Si palpans non est instrumentum consulentis, nec consulens palpantis.*

138 [When damage followed from counsel, the counselor or consenter is not held per se before the executor, because the latter is posteriorly the principal cause of the damage. This however is understood, supposing that the counsel, as often happens, is useful to the executor alone. But if it be useful to the counselor alone, the latter is bound first. But if to both, both are bound pro rata. Even if the damage inflicted profited neither materially, the same order must be kept, considering whether the damaging action was posited for the pleasure or vengeance of this one or that one, or of both. One failing, however, the obligation of reparation falls solidly upon the other [413] .]

413 S. Lig., lib. IV, n. 560.

> *[Quando damnum secutum est ex consilio, consulens vel consentiens non tenetur per se ante executorem, quia hic posterior est causa principalis damni. Id tamen intelligitur, supposito quod consilium, ut saepe evenit, soli executori est utile. Si autem sit utile soli consulenti, hic primus tenetur. Si autem utrique, uterque pro rata tenetur. Etiamsi damnum illatum neutri materialiter profecerit, idem ordo est servandus, considerando an ad huius vel illius, vel utriusque oblectamentum aut vindictam actio damnosa fuit posita. Deficiente autem uno, alteri solidum incumbit reparationis obligatio [413].]*
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> *413 S. Lig., lib. IV, n. 560.*

139 Nevertheless between cooperators positively on one side and cooperators negatively on the other there is an order, such that cooperators positively are bound to restore first, and while they restore, cooperators negatively remain free : not because these are subordinated to those, as I said of cooperators positively with respect to the commander and executor, but because cooperators positively properly concur to damage, cooperators negatively improperly only, namely insofar as they do not impede, as they are bound from office; and thus accepting office, they are not reckoned by common estimation of men to take upon themselves the burden of restitution except after others. And indeed it would be ridiculous for one concurring positively, when he had restored the whole, to say to one concurring negatively : « Render me part of the restitution, because you did not impede me willing or counseling theft. »

> *Attamen inter cooperatores positive ex una parte et cooperantes negative ex altera est ordo, ita ut prius restituere teneantur cooperantes positive, et illis restituentibus, sint liberi cooperantes negative : non quia isti sint illis subordinati, ut dixi de cooperantibus positive respectu mandantis et exsequentis, sed quia cooperantes positive proprie concurrunt ad damnum, cooperantes autem negative, improprie tantum, quatenus nempe non impediunt, ut tenentur ex officio; sicque accipiendo officium, non censentur communi hominum aestimatione suscipere onus restitutionis, nisi post alios. Et sane ridiculum foret positive concurrens, qui, cum totum restituisset, diceret concurrenti negative : « Redde mihi partem restitutionis, quia me volentem aut consulentem furari non impedivisti. »*

When is restitution to be made?

1 Goods of twofold kind must be distinguished here. Some are certain, others uncertain. Certain are called those whose owner is certain and known, uncertain those whose owner is unknown or uncertain.

> *Distinguenda sunt hic bona duplicis generis. Alia sunt certa, alia incerta. Certa dicuntur quorum dominus est certus et notus, incerta quorum dominus est ignotus aut incertus.*

2 § I

> *§ I*

3 To whom are certain goods to be restored?

> *Cui bona certa sint restituenda?*

4 *I say* : Certain goods are ordinarily to be restored to him from whom they were received, whether he be their owner, or only legitimate possessor [414] .

414 Here q. 62, a. 5, co.

> Dico *: Bona certa ordinarie sunt restituenda ei a quo fuerint accepta, sive sit eorum dominus, sive tantum legitimus possessor* [414].
>
> *414 Hic q. 62, a. 5, co.*

5 Proof of the first part[415] . Restitution is employed that equality may come about, which consists in the equalization of things. Yet this cannot be had unless restitution be made to him who through the taking away has less than he ought to have. Therefore.

415 Ibid.

Prob. prima pars[415]*. Restitutio adhibetur ut fiat aequalitas, quae consistit in rerum adaequatione. Atqui haec haberi non potest, nisi restituatur illi qui per ablationem habet minus quam debet habere. Ergo.*

[415] *Ibid.*

6 Proof of the second part; because while someone possesses a thing under legitimate title, although he is not its true owner, as the bailee for use, depositary, etc., he nevertheless has a right either of using it, or of guarding it, preserving it, etc.; which right is injured by taking away the thing, nor is it repaired except by restitution made to him, and not immediately to the owner.

Prob. secunda pars; quia, dum quis legitimo titulo rem possidet, quamvis non sit verus illius dominus, ut est commodatarius, depositarius, etc., habet tamen ius vel illa utendi, vel illam custodiendi, servandi, etc.; quod ius laeditur per rei ablationem, nec reparatur nisi per restitutionem ipsi factam, et non immediate domino.

7 I said, « ordinarily, » because there are several exceptions. First[416] . When a thing to be restored appears gravely harmful to him to whom restoration is to be made, it ought not then be restored to him, but either kept back, that it be restored at a suitable time, or handed elsewhere for safer keeping; because restitution is ordered to the utility of him to whom it is restored. I say the same if he reclaim it to another's damage : both because he has no right of reclaiming for this end; and because by the law of charity, according to which God commanded everyone concerning his neighbor, we are bound to impede evil, whether spiritual or bodily, of our neighbor when we can conveniently do so.

[416] Ibid., ad 1.

Dixi, « ordinarie, » quia sunt plures exceptiones. Prima[416]*. Quando res restituenda apparet graviter nociva ei cui restitutio facienda est, non ei debet tunc restitui, sed vel reservari, ut congruo tempore restituatur, vel alibi tradi tutius conservanda; quia restitutio ordinatur ad utilitatem illius cui restituitur. Idem dico, si repetat in damnum alterius : tum quia non habet ius repetendi in hunc finem; tum quia ex lege charitatis, secundum quam Deus mandavit unicuique de proximo suo, tenemur impedire malum sive spirituale sive corporale proximi, quando commode possumus.*

[416] *Ibid., ad 1.*

8 Second exception. When nothing concerns the interest of him from whom the thing was received that it be rendered immediately to the owner, it can be given to one or the other.

Secunda exceptio. Quando nihil interest illius a qua res fuit accepta quod reddatur immediate domino, potest uni vel alteri reddi.

9 Third exception. When he from whom the thing was received is not capable of dominion or administration, as is a minor ward, a son of family with respect to adventitious goods, a wife with respect to common goods, a Religious, etc., the thing must be rendered to tutor, father, prelate, husband, etc. : otherwise in the external forum, according to L. Pupillus, ff de Actionibus, you will be held to pay again, unless you prove that the thing rendered was applied to the utility of the father, ward, family, monastery, etc. Nevertheless in the forum of conscience such proof does not seem required, but it seems sufficient for your release from second restitution if you prudently believe that those to whom you restore will discharge their office. From this exception except things conceded to Religious for use; for these can be restored to themselves, not to prelates.

Tertia exceptio. Quando is a quo res est accepta non est capax dominii vel administrationis, ut est pupillus, filiusfamilias respectu bonorum adventitiorum, uxor respectu bonorum communium, Religiosus, etc., res reddenda est tutori, patri,

praelato, marito, etc. : alioquin in foro externo, iuxta L. Pupillus, *ff de Actionibus, teneberis iterato solvere, nisi probes rem redditam applicatam fuisse in utilitatem patris, pupilli, familiae, monasterii, etc. Attamen in foro conscientiae non videtur requiri probationem, sed videtur sufficere, ut a secunda restitutione libereris, si prudenter credas eos quibus restituis satisfacturos esse suo officio. Ab hac exceptione excipe res concessas Religiosis ad usum; hae enim ipsis, et non praelatis, possunt restitui.*

10 § II

§ II

11 To whom are uncertain goods to be restored?

Cui bona incerta sint restituenda?

12 Goods are said to be uncertain in a twofold way : 1° simply, when their owner is absolutely unknown; 2° secundum quid, when the owner is known secundum quid and in general, but who he is in particular is unknown, as if you know you owe something to one of several, but know not to whom.

Bona dicuntur incerta dupliciter : 1° simpliciter, quando eorum dominus est absolute incognitus; 2° secundum quid, quando dominus cognoscitur secundum quid et in communi, ignoratur autem quis sit in particulari, ut si scias te debere uni ex pluribus, nescias vero cui.

13 I say 1° : All goods simply uncertain, whether gotten from delict or not, or found, are to be expended on pious uses if, diligent inquiry having been made, the owner does not appear [417] ; for they cannot, as others wish, be said abandoned, since their owner certainly exists, though he be unknown; therefore they are to be expended according to his presumed will, that they be expended for his, or his kin's, or the state's utility, as we proved at greater length dissertation III, on Dominion, a. 1, § 4.

417 Here a. 5, ad 3.

Dico 1° : Omnia bona simpliciter incerta, sive parta ex delicto, sive non, sive inventa, sunt expendenda in usus pios, si facta diligenti inquisitione, non compareat dominus [417]; non enim, ut alii volunt, dici possunt derelieta, cum certo exstet eorum dominus, licet ignoretur; ideoque sunt expendenda secundum eius praesumptam voluntatem, ut expendantur in suam, vel suorum, aut reipublicae utilitatem, ut fusius probavimus dissert. III, de Dominio, a. 1, § 4.

417 Hic a. 5, ad 3.

14 [In the same place was expounded and proved our opinion concerning goods of another possessed without delict. The locus of St. Thomas to which the reader is here referred must be restricted to goods unjustly acquired, seeing that the question is thus posed : « Whether restitution must always be made to him from whom something was taken? » namely by theft.]

[In eodem loco fuit exposita et probata nostra sententia de bonis alienis absque delicto possessis. Locus S. Thomae ad quem lector hic remittitur restringendus est ad bona iniuste accepta, siquidem ita ponitur quaestio : « Utrum oporteat semper restitutionem facere ei a quo acceptum est aliquid? » nempe per furtum.]

15 I say 2° : Goods uncertain secundum quid are to be restored to their owner in the best way possible. This general dictum is plain of itself. And hence in particular,

Dico 2° : Bona incerta secundum quid, sunt restituenda domino meliori modo quo fieri potest. Hoc generale dictum patet ex se. Et hinc in particulari,

16 If you know you owe something to one of two or more, but know not determinately to whom, and doubt persist after diligent inquiry, the thing is to be given to them in common, that either they divide it among themselves in kind or in price, or draw lots, or otherwise agree among themselves; these not agreeing, the matter be committed to the judge's arbitration.

> *Si scias te debere aliquid uni ex duobus vel pluribus, nescias vero cui determinate, et facta diligenti inquisitione dubium perseveret, res est ipsis reddenda in communi, ut vel eam inter se dividant in re vel in pretio, vel sortiantur, vel aliter inter se conveniant, iis autem non convenientibus, res iudicis arbitrio committatur.*

17 If damage have been inflicted upon the community itself or the city, restoration must be made not to particulars but to the city itself or the community; because the community itself was harmed, not the individuals.

> *Si damnum sit illatum ipsi communitati vel civitati, restitutio facienda est, non particularibus, sed ipsi civitati vel communitati; quia ipsa communitas in se fuit laesa, non particulares.*

18 But if damage have been inflicted immediately upon individuals of some community or city, as happens in unjust war or plundering of towns, fields, in sales, namely when merchants, innkeepers, bakers and the like defraud indiscriminately buyers with adulterated wares, unjust measures or weights; and yet it is unknown in particular to whom damage was inflicted : restitution ought to be made not to the poor, but insofar as possible to the very persons harmed. If therefore you have plundered inhabitants of another district, restore the sum to be divided among them by the parish priest or an honest man, according to the proportion and probability of each one's loss. If you defrauded by selling, attend to who used to approach your shop more or less, and render to them more or less, namely by selling better wares, or at lower price, or with better weight or measure, or otherwise.

> *Si vero damnum sit illatum immediate particularibus alicuius communitatis aut civitatis, ut fit in bello iniusto aut depraedatione oppidorum, agrorum, in venditionibus, quando nempe mercatores, caupones, pistores et similes defraudant promiscue ementes mercibus adulteratis, mensuris vel ponderibus iniustis; et tamen ignoratur in particulari quibus damnum sit illatum : restitutio fieri debet, non pauperibus, sed in quantum possibile est ipsis personis laesis. Si ergo depraedatus fueris incolas alterius pagi, restitue summam per parochum vel virum probum inter ipsos dividendam, secundum proportionem et probabilitatem laesionis cuiusque. Si vendendo defraudaveris, attende quinam plus vel minus accedere solebant ad tuam officinam, eisque plus vel minus redde, scilicet vendendo vel meliores merces, vel viliori pretio, vel meliori pondere aut mensura, vel aliter.*

19 Finally, if you inflicted damage upon one or very few of some city, and to whom or to which ones remains absolutely unknown, but the city is known, restoration must be made to the poor of this city, because thus the owner's will is presumed, provided the thing be of some moment; for if it be of light moment, it can be restored to any poor man [418] .

[418] S. Lig., Homo apost., X, 64.

> *Si tandem uni vel admodum paucis alicuius civitatis damnum intuleris, et absolute ignoretur cui aut quibus, scitur autem civitas, restitutio facienda est pauperibus huius civitatis, quia sic praesumitur esse voluntatem domini, si tamen res sit alterius momenti; quia, si sit levis momenti, potest restitui cuivis pauperi [418].*
>
> *[418] S. Lig., Homo apost., X, 64.*

20 [*You will ask* whether, when a creditor was compelled to make cession of his goods, restitution ought to be made to himself or to his creditors.

> *[*Petes *utrum, quando creditor coactus fuit bonorum suorum cessionem facere, ipsi vel eius creditoribus restitutio fieri debeat.*

21 *I answer.* Generally speaking, restitution ought not be made to the creditor, but either to the commissioner constituted by the judge for collecting the goods remaining, before distribution, or, it is posited, because the thing or money to be restored belongs to the highest creditor, and his creditors have strict right that from the goods he possessed, or which accrue to him, they be made whole [419] . — Except unless the creditors of the assignor, after cession, have absolutely condoned to him the part of the debt unpaid [420] .

419 Cod. Gall., art. 1269.

420 Ibid., art. 1267.

> Resp. *Generatim loquendo, restitutio non debet fieri creditori, sed vel commissario a iudice constituto ad colligenda bona quae supersunt, ante distributionem, vel, positum est, quia res vel pecunia restituenda summo creditori non pertinet, et eius creditores ius strictum habent ut ex bonis quae possidebat, vel illi obveniunt, indemnes fiant*[419]*. — Excipe, nisi creditores cedentis, post cessionem, illi partem debiti non solutam absolute condonaverint* [420]*.*
>
> [419] *Cod. Gall., art. 1269.*
>
> [420] *Ibid., art. 1267.*

22 Nevertheless sometimes it is licit to restore to the creditor himself, namely if he be honest and owe himself to hand over the thing or money to his creditors, if the debt be of small moment; likewise if he be in grave necessity and greatly need the thing owed him; for, as the theologians commonly teach, it is lawful for the assignor to withdraw those goods which are altogether necessary for living [421] .]

421 S. Lig., n. 699; Gousset, n. 772; Gury, n. 700.

> *Attamen quandoque licet ipsi creditori restituere, nempe si probus sit et suis creditoribus debeat ipse rem vel pecuniam tradere, si debitum sit parvi momenti; item, si versetur in gravi necessitate et re sibi debita valde indigeat; quia, ut communiter docent theologi, bona cedenti fas est subducere ea quae ad vivendum omnino sunt necessaria* [421]*.]*
>
> [421] *S. Lig., n. 699; Gousset, n. 772; Gury, n. 700.*

How is restitution to be made?

1 *I say* : Everyone is bound to restore at once, if he can [422] .

422 Here q. 62, a. 8, co.

> Dico *: Quilibet tenetur statim restituere, si potest* [422]*.*
>
> [422] *Hic q. 62, a. 8, co.*

2 Proof 1°. He who detains another's property against the reasonable wish of its owner sins in act [423] . Yet it is not licit, no, not for the least time, to delay in sin, namely as to act and affect. Therefore. — Proof of the major. He who detains another's property against the reasonable wish of its owner deprives him of the use of his own thing, and thus does him an injury; for unjust detention of another's thing has the same character of harm as unjust acquisition. Therefore.

[423] Ibid.

> *Prob. 1°. Qui detinet alienum invito rationabiliter domino, actu peccat [423]. Atqui non licet, nee per minimum tempus, morari in peccato, scilicet quoad actum et affectum. Ergo. — Prob. mai. Qui detinet alienum invito rationabiliter domino, privat cum usu rei suae, et sic facit ipsi iniuriam; habet enim detentio iniusta rei alienae eamdem rationem nocumenti cum acceptione iniusta. Ergo.*
>
> [423] *Ibid.*

[3] Proof 2°. Although the precept of making restitution according to its form is affirmative, it nevertheless implies within itself a negative, as the reason of its obligation, namely not to detain another's property [424] ; for therefore you are bound to restore because it is not licit to detain another's property. But negative precepts bind always and forever. Therefore.

[424] Ibid., ad 1.

> *Prob. 2°. Quamvis praeceptum de restitutione facienda secundum formam sit affirmativum, implicat tamen in se negativum, tamquam rationem suae obligationis, scilicet non detinere alienum [424]; ideo enim teneris restituere, quia non licet detinere alienum. Atqui praecepta negativa obligant semper et pro semper. Ergo.*
>
> [424] *Ibid., ad 1.*

[4] *You will ask* 1° how that « at once » is to be understood.

> Petes *1° quomodo illud statim sit intelligendum.*

[5] *I answer.* If the speech concerns the purpose of restoring, it is understood at once mathematically, that is, at the very instant when you reflect that you are unjustly detaining another's property, you are bound not to will to detain it any longer, or to will to restore it, otherwise you sin against the negative precept by which detaining another's property is forbidden; just as he who conceived the purpose of stealing is bound at once mathematically to abandon it and not to will to steal, otherwise he sins against the precept : Thou shalt not steal.

> Resp. *Si sermo sit de proposito restituendi, intelligitur statim mathematicè, hoc est, eo instanti quo reflectis te detinere iniuste alienum, teneris nolle amplius detinere seu velle restituere, alioquin peccas contra praeceptum negativum quo prohibetur detinere alienum; sicut qui concepit propositum furandi, tenetur statim mathematicè illud deserere et nolle furari, alioquin peccat contra praeceptum : Non furaberis.*

[6] But if the speech concerns external restitution, « at once » is understood morally, that is, at the first opportunity; because, since it is an external act, it necessarily requires an interval of time for its execution, which can be impeded by various obstacles or inconveniences, so that the owner can neither reasonably be unwilling nor ought he to be, if his thing is detained until it can be restored at a suitable place or time.

> *Si vero sermo sit de restitutione exteriori, statim intelligitur moraliter, id est prima opportunitate; quia, cum sit actus exterior, necessario requirit moram temporis ad sui executionem, quae variis obstaculis seu incommodis impediri potest, ita ut dominus non possit nee debeat esse rationabiliter invitus, si res sua detineatur quousque opportuno loco vel tempore restitui possit.*

[7] [Note that a creditor, unless this be imposed on him by pact or sentence of judge, is not bound to receive the debt in parts; because the debtor contracted the obligation of such a determined thing, not indeed of handing over or paying parts of this thing. So from natural and civil law [425] .

[425] Cod. Gall., art. 1244; Ital., 1246; Austriac., 1415; Boruss., I, 16, § 56-58.

> *[Nota quod creditor, nisi id ex pacto vel sententia iudicis ei imponatur, non tenetur debitum per partes accipere; quia debitor obligationem contraxit talem rem determinatam, non vero partes huius rei tradendi vel solvendi. Ita ex iure naturali et civili* [425].
>
> [425] *Cod. Gall., art. 1244; Ital., 1246; Austriac., 1415; Boruss., I, 16, § 56-58.*

[8] *You will ask* 2° whether damages ensuing from delay of restitution must be compensated.

> Petes *2° utrum compensanda sint damna ex dilatione restitutionis secuta.*

[9] *I answer.* A distinction must be made whether the obligation of restitution was born from contract or quasi-contract, or arisen from injury. If the former, either the cause of the delay is just, and damages are not to be compensated; because the delay is only their material cause, not formal. Or the cause is unjust, that is, the debtor is constituted culpably in delay, and damages are to be compensated, because they follow formally from the delay.

> Resp. *Distinguendum est, an obligatio restitutionis nata sit ex contractu aut quasi-contractu, vel orta ex iniuria. Si prius, vel causa dilationis est iusta, et damna non sunt compensenda; quia dilatio est eorum causa materialis tantum, non vero formalis. Vel causa est iniusta, id est debitor constituitur in mora culpabili, et damna compensanda sunt, quia ex dilatione formaliter sequuntur.*

[10] If the latter, all damages are to be compensated, even if the debtor be not culpably in delay, that is, though he be excused for just reason; because the delay follows from unjust acquisition or damaging, and therefore has become the formally unjust cause of the damage [426] .

[426] S. Lig., Homo apost., X, 104 et 105.

> *Si posterius, compensanda sunt damna omnia, etiamsi debitor non sit in mora culpabili, id est, iusta ratione excusetur; quia dilatio sequitur ex iniusta acceptione aut damnificatione, et ideo facta est causa formaliter iniusta damni* [426].
>
> [426] *S. Lig., Homo apost., X, 104 et 105.*

[11] This is certain concerning ordinary damages; but it is contested whether extraordinary damages also ought to be compensated, that is, those which follow from delay of restitution not necessarily but occasionally only.

> *Hoc certum est de damnis ordinariis; sed controversitur utrum compensari debeant etiam damna extraordinaria, id est quae non necessario, sed occasionaliter tantum sequuntur ex dilatione restitutionis.*

[12] It must beyond doubt be denied concerning those damages which do not follow necessarily, in the sense that they could easily have been forestalled by the owner of the thing [427] ; for these must be imputed to himself. It is also denied probably concerning damages which could not have been forestalled by the owner; for neither must they be imputed to the damager who, since he could not foresee them, nor consequently will them implicitly, was not their formally unjust cause.]

[427] Lugo, disp. 18, q. 32.

> *Indubie negandum est quoad ea damna quae non necessario sequuntur, eo sensu quod facile a domino rei praeeveniri potuerint* [427]*; quia ipsi imputanda sunt. Negatur etiam probabiliter quoad damna quae a domino non potuerunt praeveniri; quia nec imputanda sunt damnificanti, qui, cum non potuerit ea praevidere, nec consequenter ea implicite velle, non fuit eorum causa formaliter iniusta.]*

[427] *Lugo, disp. 18, q. 32.*

13 *You will ask* 3° whether he who unjustly detains another's property sins continually and at each moment.

> Petes *3° utrum qui alienum iniuste detinet, continuo et singulis momentis peccet.*

14 *I answer,* more probably affirmative : because as long as he who unjustly detains another's property continually transgresses the implicitly negative precept of restoring, he continually injures his neighbor, impeding him from possession and use of his own thing or what is owed him; and this freely, because that transgression or injury continually hangs upon the free will not to restore. Therefore he sins continually.

> Resp. *probabilius affirmative : quia quamdiu qui detinet iniuste alienum, continuo transgreditur praeceptum restituendi implicite negativum, continuo laedit proximum, ipsum impediens a possessione et usu rei suae vel sui debiti; et hoc libere, quia ista transgressio seu laesio continuo pendet a libera non restituendi voluntate. Ergo continuo peccat.*

15 *You will ask* 4° whether it be one sin alone continued, or several distinct in number.

> Petes *4° utrum sit unum tantum peccatum continuatum, an sint plura numero distincta.*

16 *I answer,* that it is one sin alone continued, unless the first purpose be morally interrupted; because the first purpose virtually perseveres in voluntary continued detention, so that, while it is repeated, even a hundred times, it is reckoned the first being continued, and therefore one sin morally.

> Resp. *esse unum tantum peccatum continuatum, nisi primum propositum fuerit moraliter interruptum; quia primum propositum in detentione voluntarie continuata virtualiter perseverat, ita ut, dum iteratur, etsi centies, censeatur primum continuari, et ideo unum moraliter peccatum.*

17 But the first purpose is reckoned morally interrupted when it is recalled, either formally through an opposite purpose, or virtually, when someone thinking about detaining further the other's property does not assent, but distracts his mind elsewhere, as if recalling the prior purpose.

> *Censetur autem moraliter interruptum primum propositum, dum revocatur, vel formaliter per contrarium propositum, vel virtualiter, quando quis cogitans de detinendo ulterius alienum, non assentitur, sed alio mentem distrahit, quasi revocans prius propositum.*

In what place, at whose expense, and at whose risk is restitution to be made?

1 *Dico* 1° : For debts arising from unjust acquisition, detention, or damage, restitution must be made at the expense of the debtor, in the place where the owner would have possessed the thing if it had not been taken away. This is the common opinion.

> Dico *1° : Debita ratione iniustae acceptionis, detentionis aut damnificationis, restituenda sunt expensis debitoris, in loco in quo ea possedisset dominus, si ablata non fuissent. Est communis.*

2 Proof., because the owner ought not to suffer loss through the fault of the debtor. Yet he would suffer it, if he had to recover his property at his own expense. Therefore.

> *Prob. quia dominus ex culpa debitoris non debet pati damnum. Atqui pateretur, si propriis expensis rem suam recuperare deberet. Ergo.*

3 It is confirmed. He who is bound to an end is bound to the means necessary and proportionate for attaining that end. Now the debtor is bound to such a restitution as keeps the owner indemnified; and this cannot come about without expense. Therefore he is bound to those expenses.

> *Confirm. Qui tenetur ad finem, tenetur ad media fini consequendo necessaria et proportionata. Atqui debitor tenetur ad talem restitutionem qua dominus servetur indemnis; quod fieri non potest sine expensis. Ergo ad eas tenetur.*

4 Understand this, however, of expenses that do not much exceed the value of the thing; and therefore I said, « proportionate means; » because otherwise the restitution would be judged more burdensome, and therefore morally impossible, as I shall say below. Make an exception when from the omission of restitution there follows for the owner some other damage greatly exceeding the expenses [428].

428 S. Lig., lib. IV, n. 697.

> *Intellige tamen de expensis quae non multum superant valorem rei, et ideo dixi, « media proportionalia; » quia alioquin restitutio censeretur difficilior, et ideo moraliter impossibilis, ut dicam infra. Excipe, nisi ex omissione restitutionis sequatur domino damnum aliud aequale expensis multum superexcedentibus [428].*
>
> *428 S. Lig., lib. IV, n. 697.*

5 [Yet there must be deducted the expenses which the owner would have had to make to preserve the thing, or to bring it to the place where it must now be given back; because otherwise the owner would grow rich from another's property.

> *[Deducendae sunt tamen expensae quas dominus debuisset facere ad rem servandam, vel ad eam deducendam in locum ubi nunc reddenda est; quia aliter dominus ex re aliena ditesceret.*

6 If, moreover, the restitution ought to be judged morally impossible on account of the extraordinary expenses necessary for sending the thing back, the bad-faith detainer cannot turn it to his own use, unless he is himself in grave necessity, since he may not grow rich from another's property; but from the presumed will of the owner he must distribute it to the poor, or spend it on other pious causes — unless he can sell the thing and send the price to the owner [429].

429 Id., ibid., n. 598.

> *Si vero restitutio moraliter impossibilis reputari debeat propter expensas extraordinarias ad eam remittendam necessarias, detentor malae fidei non potest eam ad proprium usum convertere, nisi sit ipse in gravi necessitate, quia non licet ei ex re aliena ditescere; sed ex praesumptâ domini voluntate debet eam pauperibus distribuere, vel in alias pias causas impendere : nisi possit rem vendere et pretium ad dominum mittere [429].*
>
> *429 Id., ibid., n. 598.*

7 How great, then, the expenses are that the unjust detainer is bound to make in order to restore the thing itself is not easily determined. Some bind him to expenses of any amount whatever; others only to those that equal the value of the thing; others to expenses twice as great as the debt. Since the general rule stands fixed, judgment must be made in each individual case, taking account both of the value of the thing and of the respective condition of debtor and creditor; and if the expenses appear evidently disproportionate, then either the restitution must be deferred until it can be made less burdensomely, or, if the thing is of great importance, it must be sold, so that the price may be sent to the owner, or, if its value is slight, the thing itself or its price must be spent on pious works.]

Quantas autem expensas detentor iniustus teneatur facere, ut rem ipsam restituat, non facile determinatur. Alii eum obligant ad quascumque expensas; alii ad illas tantum quae valori rei aequivalent; alii ad expensas duplo maiores quam debitum. Cum regula generalis certa stet, non possit, in singulari casu pronuntiandum est habita ratione tum valoris rei, tum conditionis respectivae debitoris et creditoris, et si expensae evidenter improportionales appareant, tunc vel differenda est restitutio donec minus onerose fieri possit; vel si res sit magni momenti, vendenda est, ut pretium ad dominum mittatur; vel si eius valor sit exiguus, res ipsa vel eius pretium impendendum est in pia opera.]

8 *I say* 2° : For debts arising from a thing received, restitution must be made in the place where the things are held; and if they must be transferred to the owner, this must be done at his expense; because no one without his own fault ought to suffer loss.

Dico 2° : Debita ratione rei acceptae, sunt restituenda in loco ubi habentur, et si ad dominum sint transferenda, id fieri debet eius expensis; quia nemo sine sua culpa debet pati damnum.

9 As regards debts from contract, it is certain that one must stand by the agreement expressly made in the contract, as to place and expenses; but if no agreement was expressly made, the tacit agreement must be gathered from the nature of the contract, the custom of the place, and other circumstances.

Quantum ad debita ex contractu, certum est esse standum conventioni expresse inita per contractum, quoad locum et expensas; quod si nulla conventio sit expresse inita, colligenda est tacita ex natura contractus, consuetudine loci et aliis circumstantiis.

10 *I say* 3° : When the owner himself designated the messenger through whom he wished his property restored to him, he incurs the loss if the thing perishes by accident or through the fault of the messenger, under whatever title the thing is owed to him, and whether the same thing is to be given back or another; because in such a case the messenger bears the person of the owner, and what is handed over to him is reckoned as handed over to the owner. Similarly, if he left the debtor the freedom to choose whichever messenger he wished, provided he choose one who is regarded as trustworthy; because then the debtor has performed all that the owner required, and consequently all that the debtor himself owed.

Dico 3° : Quando dominus ipse designavit nuntium per quem vellet rem suam sibi restitui, damnum incurrit, si res casu vel culpa nuntii pereat, quovis titulo res ipsi debeatur, et sive sit eadem res reddenda, sive alia; quia in tali casu nuntius gerit personam domini, et quod ipsi traditur, censetur domino tradi. Similiter, si reliquerit debitori libertatem eligendi quem vellet nuntium, modo eligat qui fidelis habetur; quia tunc debitor praestitit omne quod exegit dominus, et consequenter omne quod ipse debitor debebat.

11 *I say* 4° : If a thing owed solely by the title of a thing received perishes — even though sufficient diligence was used on the part of the debtor, that is, if he chose a messenger who is regarded as trustworthy, and sent it back by ways not regarded as dangerous — whether it perish by accident or through the fault of the messenger, it does not perish to the debtor, but to the owner, and consequently the debtor is exempted from further restitution; because this thing is the owner's, and a thing perishes to its owner, especially since no fault intervened on the part of the debtor. From this you will gather, conversely, that if the debtor is at fault, because he either chose a messenger who was not regarded as trustworthy, or sent the thing back by dangerous ways, it perishes to him, and he is held to further restitution.

Dico 4° : Res debita solo titulo rei acceptae, si, adhibita sufficienti diligentia ex parte debitoris, scilicet si elegerit nuntium qui habetur fidelis, si remiserit per vias quae non reputantur periculosae, attamen pereat sive casu, sive culpa nuntii, non perit debitori, sed domino, proindeque debitor ab ulteriori restitutione eximitur; quia res haec est domini, res autem domino suo perit, praesertim cum nulla culpa ex parte debitoris intercesserit. Ex quo colliges, a contrario, quod si debitor sit in culpa, quia vel elegit nuntium qui non habebatur fidelis, vel per vias periculosas remisit, ipsi pereat et ad ulteriorem restitutionem teneatur.

12 *I say* 5° : A thing owed by reason of unjust acquisition, detention, or damage, however it may perish — outside the case of the third conclusion, whether the same thing is to be given back or not — perishes to the debtor himself, who in consequence is bound to further restitution. This is the more common and more probable opinion; because, if that thing were to perish by accident in the hands of the debtor, it would perish to him, as we said above according to the common opinion, since the unjust detainer is bound even for fortuitous chance, having taken upon himself every peril of the thing. Hence the common axiom does not avail here: « Res perit domino, » the thing perishes to the owner. Therefore it also perishes to the debtor himself, if it perish in the hands of a messenger whom he chose.

Dico 5° : Res debita ratione iniusta acceptionis, detentionis aut damnificationis, quocumque modo pereat, extra casum tertiae conclusionis, sive sit eadem reddenda, sive non, ipsi debitori perit, qui proinde ad ulteriorem restitutionem adstringitur. Est communior et probabilior; quia, si res illa inter manus debitoris casu periret, illi periret, ut diximus supra ex communi sententia, quia iniustus detentor tenetur etiam de casu fortuito, cum in se susceperit omne rei periculum. Unde non valet hic commune axioma : « Res perit domino. » Ergo etiam ipsi debitori perit, si pereat inter manus nuntii quem elegit.

13 *I say* 6° : A thing owed from contract, if the same thing in number is to be given back, as in commodatum, hire, or deposit, perishes to the owner, provided sufficient diligence was used on the part of the debtor. If another thing in number is to be given back, as in a mutuum loan, in the price of goods, etc., it perishes to the debtor, even if he used sufficient diligence: because, in the first case, the thing is the owner's and remains under his dominion; in the second case, however, it is the debtor's. Moreover, as the thing cries out for its owner, so also it perishes to the owner. Hence, if you send back a horse given in commodatum together with money given in mutuum, and both perish on the way, the horse perishes to the owner, and the money to you.

Dico 6° : Res debita ex contractu, si sit eadem numero reddenda, ut in commodato, locato, deposito, adhibita sufficienti diligentia ex parte debitoris, perit domino. Si sit alia numero reddenda, ut in mutuo, in pretio mercium, etc., perit debitori, etiamsi adhibuerit sufficientem diligentiam : quia, in primo casu, res est domini et sub eius dominio manet; in secundo autem casu, est debitoris. Porro, sicut res clamat ad dominum, ita et domino perit. Unde, si remittas equum commodatum cum pecunia mutuala, et utrumque pereat in via, equus perit domino, et pecunia tibi.

To which of several creditors must restitution be made first?

1 The question arises when the debtor cannot satisfy all his creditors; for if he could satisfy all, it would matter nothing whether he restituted to one rather than to another, provided he restituted to all.

Quaestio procedit, quando debitor non potest omnibus suis creditoribus satisfacere; si enim posset omnibus satisfacere, nihil interesset utrum uni potius quam alteri restituat, modo omnibus restituat.

2 *I say*: In the first place, a thing existing in its own species, whose dominion the debtor has not acquired, however he may hold it — whether justly, as a pledge, a thing given in commodatum, hired, deposited, found, bought in good faith; or unjustly, by theft or rapine — must be given back to its owner, all other creditors being set aside, so that, even if the owner is unknown, it must be spent according to his presumed will on pious uses; because the thing cries out for its owner, and the debtor cannot restitute to his creditors from the goods of others, but from his own.

> Dico *: Primo loco res existens in sua specie, cuius dominium non acquisivit debitor, quovis modo eam habeat, sive iuste, ut pignus, commodatum, locatum, depositum, inventum, bona fide emptum; sive iniuste, furto vel rapina : debet reddi domino, posthabitae omnibus aliis creditoribus, ita ut, etiamsi sit ignotus dominus, debeat expendi secundum praesumptam eius voluntatem, in usus pios; quia res clamat ad dominum, nec debitor potest restituere suis creditoribus de bonis alienis, sed propriis.*

3 In the second place, privileged debts must be paid before all the others, even before mortgaged debts. Privileged debts are: 1° necessary and moderate funeral expenses for a husband, wife, child, or another person whom the debtor was bound to bury, L. penult. de Relig. sumpti. fun. 2° Expenses for drawing up and opening the will, for making the inventory, for physicians, surgeons, and apothecaries, l. ultima, c. de iure deliberandi.

> *Secundo loco debita privilegiata sunt solvenda ante omnia alia, etiam hypothecata. Sunt autem debita privilegiata : 1° Expensae necessariae et moderatae funerum pro marito, uxore, libero, aut alio quem sepelire tenebatur debitor, L. penult. de Relig. sumpti. fun. 2° Expensae pro conficiendo et aperiendo testamento, pro conficiend inventario, promedicis, chirurgis, pharmacopolis, l. ultima, c. de iure deliberandi.*

4 3° Necessary expenses for preserving the debtor's goods or the house of the deceased. The reason of these, besides the laws cited, is partly that most of them are for the benefit of the creditors, partly that they are necessary and not to be omitted, so that satisfaction may be given to the creditors. Now no one is found who would be willing to provide them unless he were certain of repayment. And for this reason, in certain provinces, debts incurred for necessary food enjoy the privilege of priority, likewise the wages of servants and maids [430]

[430] Ita Cod. Gall., art. 2101.

> *3° Expensae necessariae in conservandis bonis debitoris seu domus mortuaria. Horum ratio, praeter iura citata, est partim quia pleraque sunt in utilitatem creditorum, partim quia sunt necessaria, nec omittenda, ut satisfiat creditoribus. Nullus autem reperitur qui ea praestare vellet, nisi de solutione certus esset. Et propter hanc rationem, in certis provinciis privilegio praelationis gaudent debita facta ob victum necessarium, item salaria famulorum et ancillarum*[430]
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> [430] *Ita Cod. Gall., art. 2101.*

5 Roman law, as regards the expenses mentioned above, passed into the modern laws, in which among privileged credits are ranked judicial expenses, funeral expenses, medical expenses for the last illness, the wages of servants, debts for maintenance, and the fees of architects and workmen for the construction of buildings.

> *Ius Romanum, quoad supra dictas expensas, in iura hodierna transiit, in quibus inter credita privilegiata veniunt impensae iudiciales, funerales, medicinales pro ultimo morbo, stipendia famulorum, debita pro alimentis, mercedes architectorum et operariorum pro constructione aedificiorum.*

6 Privileges affect either movables, or immovables, or both at once, according as the creditor has the right that what is owed to him be paid out of these before all others. Moreover, privileges are general or special, according as they extend to all movables or immovables, or only to certain of them.

> *Privilegia afficiunt vel mobilia, vel immobilia, vel utraque simul, prout creditor ius habet ut ex his ante omnes alios quod est ipsi debitum solvatur. Insuper privilegia sunt generalia vel specialia, prout se extendunt ad omnia mobilia aut immobilia, vel ad quaedam eorum tantum.*

7 The order among privileged creditors is fixed not by priority of time, but by the quality of each credit, to which the law assigns its place or degree of precedence. Regard must be had to the law of each region. [431]

431 Cod. Gall., art. 2095-2113; Ital., 1952-1963. In Austria viget lex 15 dec. 1868; in Germania, lex 10 febr. 1871.

> *Ordo inter privilegiatos statuitur, non ex prioritate temporis, sed ex qualitate cuiusque crediti, cui lex suum locum seu praelationis gradum assignat. Est habenda ratio iuris cuiusque regionis.[431]]*
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> *431 Cod. Gall., art. 2095-2113; Ital., 1952-1963. In Austria viget lex 15 dec. 1868; in Germania, lex 10 febr. 1871.*

8 In the third place follow mortgaged debts.

> *Tertio loco sequuntur debita hypothecata.*

9 *Note.* — A hypothec exists when a thing is given or assigned in security of a debt. If the thing is movable, it is called a pledge; if immovable, a hypothec. It is twofold: general, when all the debtor's goods, both present and future, are assigned or bound in security of the debt; particular, when a definite part of the goods is assigned, for example, this house or this estate. Again, one kind is express, when the stipulation concerning it is made expressly in the contract and before a magistrate; another tacit, which by force of the laws is inherent in certain contracts even though it is not expressed in the contract. Thus, if someone lends money for building, preserving, or repairing a house, a ship, etc., the house, ship, etc. remain bound to the lender by disposition of the law, l. Qui potiores, and l. Licet, c. eod. tit.

> Nota. — *Hypotheca est, cum res datur aut assignatur in assecurationem debiti. Si sit res mobilis, dicitur pignus; si immobilis, dicitur hypotheca. Est duplex: generalis, cum assignantur seu obligantur omnia debitoris bona, tam praesentia quam futura, in assecurationem debiti; particularis, cum assignatur certa pars bonorum, haec domus, v. g., hoc praedium. Item alia est expressa, cum de illa in contractu et coram magistratu sit expresse stipulatio; alia tacita, quae vi legum inest quibusdam contractibus, etsi in contractu non exprimatur. Sic qui pecuniam mutuo dedit ad construendam, conservandam aut reparandam domum, navim, etc., domus, navis, etc. remanent obligata mutuanti, ex dispositione iuris, l. Qui potiores, et l. Licet, c. eod. tit.*

10 [A judicial hypothec is further distinguished, established by the judge's sentence in favor of those who have won their suit, by which all the immovable goods of the condemned party are burdened with the charge of repairing the damage.]

> *[Distinguitur insuper hypotheca iudiciaria, quae iudicis sententia statuitur in gratiam eorum qui causa obtinuerunt, et qua cuncta bona immobilia damnati pro damno reparando onere gravantur.]*

11 Mortgaged debts, therefore, whether express or tacit, general or particular, are to be preferred only to simple or chirographary debts, privileged debts excepted, of which we spoke in the preceding number: both because the hypothec or pledging was introduced by law so that the creditor might

have priority or security for his debt; since the mortgage creditor has bound not only the person of the debtor but also his very property, while non-mortgage creditors have only the person of the debtor bound.

> *Igitur debita hypothecata sive expresse sive tacite, si generaliter sive particulariter, praeferenda sunt debitis simplicibus seu chirographariis tantum, exceptis privilegiatis, de quibus numero praecedenti: tum quia hypotheca seu impignoratio a iure est introducta ut creditor haberet praelationem seu securitatem sui debiti; cum qui creditor hypothecarius non solum personam debitoris habet obligatam, sed etiam rem ipsius, creditores autem non hypothecarii solam personam debitoris habent obligatam.*

12 When, however, there are several mortgage creditors, regard being had to the nature of the thing, such is the order among them. Those holding an express hypothec are preferred to those holding a tacit one, and those holding a general one to those holding only a particular one.

> *Quando vero sunt plures creditores hypothecarii, attenta natura rei, talis est inter eos ordo. Habentes hypothecam expressam praeferuntur habentibus tacitam, habentes generalem habentibus particulariter tantum.*

13 Among several holding a similar hypothec, the earlier is preferred to the later; for in this case that rule of law above all prevails, 54ª in 6°: « Qui prior est tempore, potior est iure, » he who is first in time is stronger in right. And the reason is that a later hypothec cannot take away a right previously acquired by another.

> *Inter plures habentes similem hypothecam praefertur prior posteriori; in hoc enim casu maxime valet illa regula iuris 54ª in 6°: « Qui prior est tempore, potior est iure. » Et ratio est, quia posterior hypotheca non potest tollere ius alteri prius acquisitum.*

14 I said, « regard being had to the nature of the thing; » because by disposition of positive law several cases are excepted, in which a tacit hypothec is preferred to an express one, and a later to a prior. Consult our greater Work, or the jurists, about these cases.

> *Dixi, « attenta natura rei; » quia ex dispositione iuris positivi plures casus excipiuntur, in quibus hypotheca tacita praefertur expressae, posterior priori. De quibus consule maius nostrum Opus vel iurisconsultos.*

15 [Under the new laws: 1° the mortgage privilege avails only from the day of inscription in the registry of the conservator of mortgages. 2° No order is observed among those who inscribe on the same day, or under the same number, but they come in together, each for a proportional part of his credit. For the others, however, who inscribe on different days, or under different numbers, the rule of law cited above holds [432]]

[432] Cfr. Cod. Gall., art. 2114-2203; Ital., art. 1964-2075.

> *[Ex novis legibus: 1° privilegium hypothecarium non valet nisi a die inscriptionis in registro conservatoris hypothecarum. 2° Nullus ordo servatur inter eos qui eodem die, aut sub eodem numero inscribuntur, sed singuli simul veniunt, pro rata parte crediti. Pro aliis vero qui diversis diebus, aut sub diversis numeris inscribuntur, valet regula iuris supra citata[432]]*
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> *[432] Cfr. Cod. Gall., art. 2114-2203; Ital., art. 1964-2075.*

16 *You will ask* 1° whether debts from delict and from onerous contract ought not to be restituted before debts from gratuitous contract, for example, promise, donation, etc.

Petes *1° utrum debita ex delicto et ex contractu oneroso, non sint prius restituenda quam debita ex contractu gratuito, v. g., promissione, donatione, etc.*

17 *I answer* affirmatively; because no one reasonably intends to bind himself by a gratuitous contract to the detriment of those to whom he is bound in justice. Hence every gratuitous contract includes this tacit condition, unless something stands in the way of the promised thing being handed over.

Resp. *affirmative; quia nemo rationabiliter intendit se obligare contractu gratuito in gravamen illorum quibus ex iustitia adstringitur. Unde omnis contractus gratuitus hanc tacitam conditionem includit, nisi aliquid obstet quominus res promissa tradi possit.*

18 *You will ask* 2° whether there is any order between debts from onerous contract on one side and debts from delict on the other.

Petes *2° utrum sit aliquis ordo inter debita ex contractu oneroso ex una parte, et debita ex delicto ex altera.*

19 *I answer*, more probably in the negative; because positive law nowhere establishes any order between these debts, nor does any reason show that an order must be established by the natural law. Since on both sides there is an equal unjust detention of another's property, the obligation is equal on both sides, for the obligation arises from the unjust detention. [433]

[433] S. Lig., lib. IV, n. 688.

Resp. *probabilius negative; quia ius positivum nullum ordinem ullibi statuit inter haec debita, neque ulla ratio evincit iure naturae esse statuendum. Cum enim utrimque sit aequalis detentio iniusta rei alienae, aequalis est utrimque obligatio, obligatio enim oritur ex iniusta detentione.*[433]

[433] *S. Lig., lib. IV, n. 688.*

20 *You will ask* 3° whether the creditor who, among creditors neither privileged nor holding a mortgage, is the first to press his claim is to be preferred?

Petes *3° utrum qui inter creditores non privilegiatos nec hypothecarios primus petit, sit praeferendus?*

21 *I answer* affirmatively; because, according to the laws, l. Pupillus, l. Quae in fraudem creditorum, lib. 42, tit. 8, « diligence made his condition better, » and it acquired for him the right of preference; for « the civil law was written for the vigilant. »

Resp. *affirmative; quia, secundum iura, l. Pupillus, l. Quae in fraudem creditorum, lib. 42, tit. 8, « diligentia meliorem eius conditionem fecit, » et acquisivit illi ius praelationis; nam « ius civile vigilantibus scriptum est. »*

22 [If that creditor presses his claim juridically, there is no doubt; because the sentence of the judge confers the privilege. Outside of court, he exercises a personal action against the debtor, and by demanding the whole debt he pursues his right; and if the debtor is in default toward the other creditors, this must be imputed to their negligence. This solution, which St. Alphonsus [434] calls the more probable, seems to us certain.

[434] Lib. IV, n. 692.

[Si ille creditor iuridice petat, nullum est dubium; quia sententia iudicis privilegium confert. Extra iudicium, actionem personalem contra debitorem exercet, et totum debitum exigendo, ius suum prosequitur, et si debitor erga alios creditores sit in mora, hoc eorum negligentiae imputandum est. Haec solutio, quam S. Ligorius[434] *probabilior dicit, nobis certa videtur.*

[434] *Lib. IV, n. 692.*

23 *You will ask* 4° whether a poor creditor can be given precedence over a rich one.

> Petes *4° utrum creditor pauper diviti anteponi possit.*

24 *I answer* with St. Thomas, Opusc. LXXII, c. 18: « If one man is rich and the other poor and more in need of those things of which restitution must be made, and it is equally clear in both cases, restitution can justly be made to the poor man sooner than to the rich man, because he was more injured by the taking away of his goods, and because he stands more in need. » For the rich man would without reason object. What is said of restitution for damage inflicted must be said a fortiori of the payment of a debt arisen from a just cause. This, however, is understood on the supposition that by this payment the debtor does not become unable to pay the other debts integrally.

> Resp. *cum S. Thoma, Opusc. LXXII, c. 18: « Si unus sit dives et alter pauper et plus indigens his de quibus restitutio facienda est, et aequaliter sit clarum in utroque, prius pauperi potest restitutio iuste fieri, quam diviti, eo quod plus laesus est in ablatione suorum, et quia plus indiget. » Dives enim irrationabiliter esset invitus. Quod dicitur de restitutione ob damnum illatum, a fortiori dicendum est de solutione debiti ex causa iusta nati. Hoc tamen intelligitur, supposito quod hac solutione debitor non fiat impar aliis debitis integre solvendis.*

25 *You will ask* 5° whether a debtor who knows that he is already unable to pay all his debts can fully satisfy even a creditor who is not pressing his claim.

> Petes *5° utrum debitor sciens se iam imparem esse omnibus debitis suis solvendis, etiam creditori non petenti integre satisfacere possit.*

26 *I answer* in the negative; because since all creditors are equal in right, and none of them pursues his right, and consequently none of them has been made the stronger claimant by his diligence, natural equity demands that integral payment not be made to anyone to the prejudice of the others. [435]

[435] Id., ibid., 3°.

> Resp. *negative; quia cum omnes creditores iure sint aequales, nec ullus inter eos ius suum prosequatur, proindeque nullus eorum per diligentiam suam potior in petendo factus sit, postulat aequitas naturalis ne alicui integra solutio fiat, cum aliorum praeiudicio.*[435]
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> [435] *Id., ibid., 3°.*

27 *You will ask* 6° whether a creditor who in this case received integral payment is held to restitution toward the others.

> Petes *6° utrum creditor qui, in hoc casu, integram solutionem accepit, ad restitutionem erga alios teneatur.*

28 *I answer*. It is disputed. Some deny it; because a creditor holding a personal right, since he can juridically press for payment, does not sin the more by accepting it when freely offered. Others affirm absolutely; because no creditor has the right to be paid integrally to the detriment of the others. Others distinguish. If the creditor accepted in good faith, he may keep it; for he is not held to restitute, neither on account of an unjust acquisition, because the acceptance was not formally unjust; nor on account of an unjust detention, because he acquired dominion over the thing paid. On the natural law the affirmative opinion seems truer, because all the creditors had an equal right to payment pro rata of the means remaining in the debtor's hands. [436]

[436] Id., ibid., n. 693.

> Resp. *Controvertitur. Alii negant; quia creditor ius personale habens, cum possit iuridice solutionem urgere, non magis peccat eam ultro oblatam acceptando. Alii absolute affirmant; quia nullus creditor ius habet ut sibi integre solvatur cum aliorum detrimento. Alii distinguunt. Si creditor bona fide acceperit, potest retinere; nam non tenetur restituere, neque ex iniusta acceptione, quia acceptio non fuit formaliter iniusta; neque ex iniusta retentione, quia dominium rei solutae acquisivit. Ex iure naturali verior videtur sententia affirmans, quia omnes creditores ius aequale habebant ad solutionem pro rata facultatum quae apud debitorem supersunt.*[436]
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> [436] *Id., ibid., n. 693.*

[29] There is no doubt if such payment is declared invalid by positive law. Thus in France, by the law of 28 May 1838, payment made within, or after, the ten days elapsed before the cession of goods declared by the commercial tribunal is altogether invalid.

> *Non est dubium, si talis solutio lege positiva declaretur invalida. Sic in Gallia, ex lege 28 maii 1838, prorsus invalida est solutio facta intra vel post decem dies elapsos ante declaratam a tribunali commercii bonorum cessionem.*

[30] *In practice*, since it would be difficult to persuade a creditor who in good faith received integral payment before the legally fixed time that he is held to restitution, he is commonly left in his good faith: both because positive law does not constrain him to restitution, and because an opinion not lacking probability supports him. But to the one who received after the time fixed by law, restitution is to be imposed absolutely, even if he was in good faith; because the payment was invalid.]

> Practice*, cum creditori qui bona fide integram solutionem accepit ante tempus iuridice determinatum difficile persuaderi possit se ad restitutionem teneri, communiter relinquendus est in sua bona fide: tum quia ad restitutionem iure positivo non constringitur; tum quia opinio probabilitate non destituta ei suffragatur. Ei vero qui post tempus a lege praefixum accepit, restitutio est absolute imponenda, etiamsi in bona fide fuerit; quia solutio fuit invalida.]*

In what manner is the thing to be restored?

[1] [In general it is required and suffices that restitution be made in such a way that the violated justice is fully repaired, or restored to equality. This follows from the notion of restitution, which, as has been said, is the giving back of a thing received, or the compensation for damage inflicted. Therefore, in whatever way the injured party is restored to the state in which he was before the injury, the obligation of commutative justice arising from theft or damage done is satisfied. Hence

> *[Generatim requiritur et sufficit ut restitutio eo modo fiat, quo iustitia violata plene seu ad aequalitatem reparetur. Hoc constat ex notione restitutionis, quae, ut dictum est, est rei acceptae redditio, vel damni illati compensatio. Quocumque ergo modo laesus restituatur in statu in quo erat ante laesionem, satisfit obligationi iustitiae commutativa ex furto aut damno dato. Unde*

[2] 1° It is not necessary, of itself, that restitution be made openly; indeed often it cannot be done in that way, nor even ought it to be, so that regard be had for the reputation and honor of the one restituting.

> *1° Non est necessarium, per se, ut restitutio palam fiat; imo saepe eo modo fieri nequit, nec etiam debet, ut fama et honori restituentis consulatur.*

[3] 2° It is not necessary that restitution be made by the debtor himself, but it can be made by anyone else, provided the thing be given back to its owner. Thus at times, and for grave cause, it is entrusted

to a confessor. But then great caution is needed: both that the seal of confession remain inviolate, and that there be no doubt for the penitent that the creditor has received the thing owed to him, lest any suspicion against the probity of the confessor ever arise.

> *2° Non est necessarium quod restitutio fiat per ipsum debitorem, sed fieri potest per quemlibet alium, modo res suo domino reddatur. Sic aliquando, et ex gravi causa, confessario committitur. Sed tunc magna cautela opus est: tum ut sigillum confessionis illesum maneat; tum ut poenitenti indubium sit creditorem rem sibi debitam accepisse, ne unquam ulla suspicio contra probitatem confessarii suboriri queat.*

4 3° It is not necessary that restitution be made with the owner being aware; because it is only required that the injured party be made whole. Hence the debtor can restitute, for example, by increasing the weight or measure in selling, or the owed work in laboring, and in six hundred other ways. [437]

[437] Gury, n. 708.

> *3° Non est necessarium restitutionem fieri advertente domino; quia requiritur tantum ut laesus fiat indemnis. Unde debitor restituere potest, v. g., augendo pondus vel mensuram in vendendo, aut debitum opus in laborando, et sexcentis aliis modis.*[437]
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> [437] *Gury, n. 708.*

5 4° It is commonly taught that restitution made by means of a simulated donation is valid. If, however, the creditor, moved by gratitude, were to give back another gift, this again would have to be restituted to him, at least in equivalent value, if the thing itself could not prudently be given back; because an antidotal donation, in this case, would proceed from error, and consequently would not be valid. [438]

[438] Carrière, n. 1265; Marc, Instit. moral. Alphons., n. 1014.

> *4° Communiter docetur valere restitutionem factam per simulatam donationem. Si tamen creditor, gratitudine motus, aliud donum rependeret, hoc iterum ei restituendum esset, saltem in aequivalenti, si res ipsa prudenter reddi non posset; quia donatio antidotalis, in hoc casu, ex errore procederet, proindeque non valeret.*[438]
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> [438] *Carrière, n. 1265; Marc, Instit. moral. Alphons., n. 1014.*

6 *You will ask* 1° how damages inflicted on associations are to be repaired, for example, on an insurance society against fire.

> Petes *1° quomodo reparanda sint damna consociationibus illata, v. g., societati assecurationis contra incendium.*

7 Some have said it impossible to repair such damages toward all who suffered them; because ordinarily, at the time of restitution, very many, who are unknown, would have left the society. But this reasoning does not hold, for when members depart others succeed them, to whom their rights are transferred. Therefore the difficulty exists only in the case of dissolution, since very few could be found, and the share to be given to each would be most minute. And so

> *Quidam dixerunt impossibile esse talia damna reparare erga omnes qui damna passi sunt; quia ordinarie tempore restitutionis plurimi, qui sunt ignoti, societati renuntiassent. Sed haec ratio non valet, nam sociis egressis alii succedunt, quibus eorum iura transferuntur. Ideo difficultas non existit, nisi in casu dissolutionis, quia paucissimi reperiri possent, et pars unicuique tribuenda esset minutissima. Itaque*

8 *I answer*: Restitution must be made to the administrators of the society, taking care that it benefit the society itself. If, however, the society has ceased to exist by dissolution or in some other way, the money must be restituted or refunded either to the poor or to pious causes; because it is not lawful to grow rich from a thing unjustly acquired.

> Resp. *Restitutio administratoribus societatis est facienda, curando ut societati ipsi proficiat. Si vero societas per dissolutionem aut alio modo existere desierit, pecunia restituenda vel pauperibus vel piis causis refundi debet; quia non licet ex re iniuste acquisita ditescere.*

9 *You will ask* 2° how damage inflicted on the state is to be repaired.

> Petes 2° *quomodo reparandum sit damnum reipublicae illatum.*

10 *I answer*: It must be repaired by using the means established by law, if any exist. Now such a law exists in Austria. Where no such means have been legally established, however, restitution must be made through the officials in charge of taxes, if it is certain that the money is to be laid up in the public treasury. In France, where such a law is lacking, restitutions are entered in the public records. If, however, there is danger that the officials will turn this money to their own uses, it must be distributed to the poor, or expended for the benefit of pious causes. [439]]

439 Gury, n. 712.

> Resp. *Reparandum est utendo mediis a lege statutis, si existant. Porro lex huiusmodi existit in Austria. Ubi vero nulla media legaliter fuerint constituta, restitutio fieri debet per tributorum praepositos, si certum sit pecunias in aerario publico recondendas esse. In Gallia, ubi lex talis deficit, restitutiones in tabulis publicis inseribuntur. Si vero periculum sit ut praepositi has pecunias in proprios usus convertant, distribuendae sunt pauperibus, vel in gratiam piarum causarum impendendae.[439]]*
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> *439 Gury, n. 712.*

On the causes that suspend the obligation of restitution

1 The general rule on which all causes excusing from restitution to be made at once or absolutely are founded is this: « Whenever the owner ought reasonably to consent that restitution be deferred or omitted, it may be deferred or omitted, even though in fact he be unwilling; » because the detention of another's property is not unjust unless the owner is unreasonably unwilling.

> *Regula generalis in qua fundantur omnes causae excusantes a restitutione statim vel absolute facienda, haec est: « Quotiescumque dominus rationabiliter consentire debet quod restitutio differatur vel omittatur, potest differri vel omitti, licet de facto sit invitus; » quia detentio rei alienae non est iniusta, nisi sit rationabiliter invitus dominus.*

2 From this general principle, known by the light of nature, the following causes are assigned which excuse from restitution made at once or absolutely.

> *Ex hoc generali principio lumine naturali noto assignantur sequentes causae excusantes a restitutione statim vel absolute facienda.*

3 **First cause. Inability.**

> ***Prima causa. Impotentia.***

4 There is the inability of the debtor, whether physical, as if he has nothing at all with which to restitute (for no one is bound to the impossible); or moral, that is, great difficulty in restituting. For

in moral matters that is called impossible which is very difficult and cannot be done decently and honorably; namely because then the creditor would unreasonably wish restitution to be made to him.

> *Est impotentia debitoris, sive physica, ut si nihil omnino habeat ad restituendum, ad impossibile enim nemo tenetur; sive moralis, hoc est magna restituendi difficultas. In moralibus enim illud dicitur impossibile, quod est valde difficile, quodque decenter ac honeste fieri non potest; quia scilicet tunc creditor irrationabiliter vellet sibi fieri restitutionem.*

5 This cause, however, excuses from restitution as long as it lasts, so that the obligation is as it were lulled to sleep while the inability lasts, and revives when it ceases.

> *Haec autem causa tamdiu excusat a restitutione, quamdiu durat, sic ut quasi sopiatur durante impotentia, et ea cessante reviviscat.*

6 Furthermore, moral inability, or great difficulty in restituting, extends very widely. Hence

> *Porro impotentia moralis, seu magna difficultas restituendi, admodum late extenditur. Unde*

7 First. There is moral inability, speaking of itself and regularly, when one cannot restitute without grave detriment to the goods of the higher order: such are the goods of the soul, of the body, and of reputation or honor, compared with the lower goods.

> *Primo. Est impotentia moralis per se et regulariter loquendo, quando quis restituere non potest absque gravi detrimento bonorum superioris ordinis: qualia sunt bona animae, corporis et famae seu honoris, ad bona inferiora.*

8 The reason is that the owner would demand this unreasonably, since it is against the order of charity, nor would he wish himself to be so treated. Moreover, equality would not be preserved, since the debtor would suffer far greater detriment than is the detriment of the creditor.

> *Ratio est, quia id dominus irrationabiliter exigeret, cum sit contra ordinem charitatis, nec ita secum agi velit. Insuper non servaretur aequalitas, cum debitor longe maioris detrimenti pateretur, quam sit creditoris detrimentum.*

9 I said, « of itself and regularly speaking; » because it can happen that the good of the higher order is so diminished and the good of the lower order so increased that, according to the prudent judgment of men, the latter is worth more than the former with respect to civil life. Thus many gold coins are esteemed more, by human judgment, than a slight illness, or the reputation of a most lowly person. And then restitution of the good of the lower order must be made even at the expense of the good of the higher order; otherwise the creditor would be unreasonably unwilling.

> *Dixi, « per se et regulariter loquendo; » quia potest contingere quod bonum superioris ordinis ita attenuetur, et bonum inferioris ordinis ita augeatur, ut secundum prudentem hominum aestimationem istud pluris valeat quam illud in ordine ad vitam civilem. Sic plura minuta aureorum pluris aestimantur, hominum iudicio, quam levis infirmitas, aut fama vilissimae personae. Et tunc restitutio boni inferioris ordinis facienda est cum dispendio boni superioris ordinis, alioquin foret rationabiliter invitus creditor.*

10 Secondly. There is moral inability to restitute not only in extreme but also in grave necessity of the debtor or of his own people; because the owner would act unreasonably who wished restitution made to him in such a case.

> *Secundo. Impotentia moralis restituendi est, non solum extrema, sed etiam gravis necessitas debitoris vel suorum; quia irrationabilis esset dominus qui vellet in tali casu sibi restitui.*

11 But there is difficulty whether, if the creditor is in equal necessity, the debtor is then held to restitute.

> *Sed difficultas est utrum, si creditor sit in pari necessitate, debitor tunc teneatur restituere.*

12 *I answer*: If extreme necessity is in question, the debtor is not held to restitute, unless by the very taking away of the other's property he cast the creditor into this extreme necessity; because in extreme necessity all things are common. Thus one who is placed in it possesses what he possesses as necessary for him as his own, and not as another's, and consequently is not held to give it up.

> Resp. *Si agatur de extrema necessitate, debitor non tenetur restituere, nisi per ipsam rei alienae ablationem creditorem in hanc extremam necessitatem coniiceretur; quia in extrema necessitate omnia sunt communia. Sic qui in ea constituitur, quod possidet sibi necessarium possidet ut suum, et non ut alienum, et consequenter non tenetur abdicare.*

13 [Make an exception when the owner is cast into extreme necessity precisely because of the subtraction of the thing taken; for to take from someone a thing necessary for the preservation of life is the same as killing him. Therefore, in this case, the condition of the owner who first possessed must be judged the better. [440]]

440 S. Lig., lib. IV, n. 701.

> *[Excipe, nisi dominus praecise ob subtractionem rei ablatae in extremam necessitatem coniiciatur; quia auferre alicui rem ad conservationem vitae necessariam, est idem ac eum occidere. Unde, in casu, melior haberi debet conditio domini prius possidentis.[440]]*
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> *440 S. Lig., lib. IV, n. 701.*

14 If, however, only grave necessity is in question, the debtor is held to restitute; because only in extreme necessity, not in grave necessity, are all things common. Hence then the condition of the creditor is better than that of the debtor. Natural equity also demands that, if anyone must suffer damage from the absence of the thing, that damage rather be borne by the one to whom the thing does not belong than by the one whose it is.

> *Si vero agatur de gravi tantum necessitate, debitor tenetur restituere; quia in sola extrema necessitate, et non in gravi, omnia sunt communia. Unde tunc melior est conditio creditoris quam debitoris. Exigit etiam aequitas naturalis ut, si ex rei absentia aliquis debeat pati damnum, illud potius subeat is ad quem res non pertinet, quam ille cuius est.*

15 [It can happen that, both being in grave necessity, the restitution casts the debtor into extreme necessity. It is commonly held that restitution can then be deferred, if the restitution is owed for a just cause. But if the obligation arose from delict, it is probable that even then restitution need not be pressed; because the owner is bound by charity to consent to delay. The case is excepted, however, in which the thing still exists in its species and individually; because by giving back the thing, the thief is simply placed in the same state in which he was before the theft, and then it cannot be said that extreme necessity arises from the restitution.]

> *[Fieri potest ut, utroque in gravi necessitate existente, restitutio debitorem coniiciat in necessitatem extremam. Communiter tenetur tunc restitutionem differri posse, si restitutio ex causa iusta debeatur. Si vero obligatio ex delicto sit orta, probabile est etiam restitutionem non esse urgendam; quia dominus tenetur ex charitate dilationi consentire. Excipitur tamen casus quo res adhuc in specie et in individuo existit; quia rem reddendo, fur simpliciter constituitur in eodem statu in quo erat ante furtum, et tunc dici non potest extremam necessitatem nasci ex restitutione.]*

16 Thirdly. There is moral inability to restitute when the restitution cannot be made without the debtor falling from a legitimately acquired state; because then there is grave necessity, and moreover such a change cannot come about without grave disgrace to the debtor and his family.

> *Tertio. Est impotentia moralis restituendi, quando restitutio fieri non potest absque eo quod debitor cadat a statu legitime acquisito; quia tunc est gravis necessitas, et insuper fieri non potest talis mutatio absque gravi debitori et familiae dedecore.*

17 [If, however, the debtor has fallen into such straits through his own fault, he must impute to himself that he can now no longer make satisfaction without losing his state; and if an equal loss threatens the creditor from the delay, since his condition is the better, the debtor ought to bear it. [441]]

441 Id., ibid., n. 698.

> *[Si tamen propria culpa debitor in talem angustiam delapsus sit, sibi ipsi imputare debet quod iam sine sui status amissione non possit satisfacere, et si creditori ex dilatione aequale damnum immineat, cum eius conditio melior sit, debitor illud subire debet.[441]]*
>
> *441 Id., ibid., n. 698.*

18 Fourthly. There is moral inability to restitute when, by restituting, the debtor would suffer damage far greater in goods of the same order than the creditor suffers from the lack of his property or of his debt: as if, to pay a money debt, he were forced to sell a house or estate for far less than it is worth; or, as I said above, if to send back the thing he would have to incur expenses far greater than the thing itself is worth.

> *Quarto. Est impotentia moralis restituendi, quando debitor restituendo pateretur damnum longe maius in suis bonis eiusdem ordinis, quam creditor ex carentia rei suae vel sui debiti: ut si ad restituendum debitum pecuniarium cogeretur vendere domum, praedium, longe minori pretio quam valeat; si ad rem remittendam expensas longe maiores quam ipsa valeat, debeat facere ut iam dixi supra.*

19 **Second cause. Cession of goods.**

> ***Secunda causa. Gessio bonorum.***

20 The second cause suspending restitution is the cession of goods, or, as others call it, cessio fori, namely when the debtor, unable to pay all his debts, gives up to the creditors what goods remain to him.

> *Secunda causa suspendens restitutionem, est cessio bonorum, seu, ut alii dicunt, cessio fori, cum nempe debitor omnibus suis debitis solvendis impar, quae ipsi supersunt, bona creditoribus dimittit.*

21 Now the privilege of this cession, if it was made without malice, deceit, fraud, etc., but solely through adverse fortune by which the debtor became unable to pay, avails only in the external forum, so that the debtor can no longer be summoned before a judge for his debts, nor be handed over to prison, and if he has been handed over he must be released. But if after the cession he has acquired some modest amount necessary for the decency of his state, he cannot again be sued by his earlier creditors so that these few goods may be sold; otherwise if he has acquired much.

> *Huius autem cessionis privilegium, si facta sit sine malitia, dolo, fraude, etc., sed solum ex adversa fortuna qua debitor factus est solvendo impotens, valet dumtaxat in foro externo, ut debitor non possit amplius propter debita conveniri*

coram iudice, nec carceri tradi, et si sit traditus debeat liberari. Quod si post cessionem aliquid modicum ad decentiam status necessarium acquisiverit, non poterit iterum a prioribus creditoribus conveniri, ut haec ea pauca bona vendantur; secus, si multa acquisiverit.

22 *L. Is qui. L. Qui bonis. L. Si debitoris,* ff. *de Cess. bon.,* lib. 42.

L. Is qui. L. Qui bonis. L. Si debitoris, *ff.* de Cess. bon., *lib. 42.*

23 As regards the forum of conscience, however, a cession of this kind no more excuses from restitution than necessity without cession would excuse it. Hence, if the debtor who ceded his goods later returns to better fortune, he is held to pay what he owes, even if perhaps he settled with them; because ordinarily creditors settle thus unwillingly, from the fact that they cannot now have more, and therefore they are not understood to yield their right to the remainder, should the debtor ever be able to pay.

Quantum vero ad conscientiae forum, non magis excusat a restitutione huiusmodi cessio, quam excusaret necessitas sine cessione. Unde, si debitor cedens bonis postea ad pinguiorem fortunam redeat, tenetur quod debet solvere, etiamsi forte cum ipsis composuerit; quia ordinarie creditores sic componunt inviti, ex eo quia non possunt nunc plus habere, et ideo non sunt censenti cedere iuri quod habent ad residuum, si debitor possit aliquando solvere.

24 [Since this case occurs most frequently today, it must be explained more fully.

[Cum hic casus frequentissime hodie occurrat, fusius est exponendus.

25 Cession of goods is either 1° voluntary, that is, freely accepted by all the creditors — and then it has those effects on which the debtor and the creditors agree; or 2° judicial, declared by the sentence of a legitimate judge. This latter kind is a certain benefit granted by the law itself to the unfortunate debtor of good faith, so that, notwithstanding any other stipulation to the contrary, he may be delivered from the molestations of his creditors. [442]

442 Cod. Gall., art. 1268; Ital., art. 2090; lex Austriacae 25 dec. 1868; lex Boruss. 10 febr. 1877.

Cessio bonorum est, 1° voluntaria, seu libere ab omnibus creditoribus acceptata, et tunc habet eos effectus de quibus debitor et creditores conveniunt; vel 2° iudiciaria seu per sententiam iudicis legitimi declarata. Haec posterior est quoddam beneficium ab ipsa lege infortunato et bonae fidei debitori concessum, ut, non obstante qualibet alia in contrarium stipulatione, a creditorum molestiis liberetur.[442]

442 *Cod. Gall., art. 1268; Ital., art. 2090; lex Austriacae 25 dec. 1868; lex Boruss. 10 febr. 1877.*

26 Under modern law: 1° Insolvency, that is, the state of a debtor unable to pay integrally, from which the cession follows, is either culpable or blameless. In the former case, if the insolvent person carries on some commerce, the matter is handled before the commercial tribunal where one exists, and it is called in French faillite; otherwise it is called déconfiture, and the matter is handled before the ordinary tribunal. In the latter case, insolvency is adjudged either as a delict, banqueroute simple, or as a crime, banqueroute frauduleuse, and is punished by the correctional or criminal tribunal with proportionate penalties.

Ex iure moderno: 1° Decoctio, seu status debitoris integre solvere non valentis, ex quo sequitur cessio, est vel inculpabilis, vel culpabilis. In priori casu, si decoctus mercaturam aliquam exerceat, res agitur apud tribunal commercii, ubi existit, et dicitur gallice faillite; secus vocatur déconfiture, et apud tribunal ordinarium agitur. In posteriori casu, decoctio iudicatur vel ut delictum, banqueroute simple, vel ut crimen, banqueroute frauduleuse, et a tribunali vel correctionali vel criminali proportionatis poenis plectitur.

27 Furthermore, by a cession of goods effected without fraud the obligation to restitute is indeed suspended, but not taken away. 1° It is suspended, both in the internal forum, on account of inability, and in the external forum, by concession of the creditors or by benefit of the law. 2° It is not taken away; because, unless it be elsewhere established otherwise, neither the law [443] nor the creditors intend to remit to the debtor what has not yet been paid. Hence, if better fortune later comes to the debtor, he is held to pay the remainder of the debt [444]; indeed he ought, as far as he can, to labor so that he may be able to satisfy the payment integrally.

443 Cod. civ. Gall., art. 1270; Cod. Comm. Ital., art. 548; lex Austriaca anni 1868, § 5.

444 S. Lig., lib. IV, n. 699; Homo apost., X., 117.

> *Porro per cessionem bonorum sine fraude peractam suspenditur quidem, sed non tollitur restituendi obligatio. 1° Suspenditur, tum in foro interno, ob impotentiam, tum in foro externo, ex concessione creditorum vel ex beneficio legis. 2° Non tollitur; quia, nisi aliter esse alicubi constet, nec lex[443], nec creditores intendunt remittere debitori quod nondum fuit solutum. Unde, si postea debitori pinguior fortuna obveniat, tenetur reliquum debiti solvere[444]; imo debet, in quantum potest, laborare, ut integra solutioni satisfacere possit.*
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> *443 Cod. civ. Gall., art. 1270; Cod. Comm. Ital., art. 548; lex Austriaca anni 1868, § 5.*
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> *444 S. Lig., lib. IV, n. 699; Homo apost., X., 117.*

28 It must be noted that this obligation can be extinguished by prescription, like the others, through thirty years, if the creditors have neglected during this lapse of time to demand payment. Indeed it could be extinguished in a shorter time, by the common interpretation of the law which, in view of the public good, can transfer dominion, just as legal prescription does; which is asserted, not improbably, to be admitted in England [445] and in North America [446].

445 Grolly, n. 1201.

446 Konings, n. 861.

> *Notandum est hanc obligationem praescribi posse, sicut et caeteras, per triginta annos, si creditores per hunc lapsus temporis solutionem petere neglexerint. Imo posset exstingui per tempus minus longum, ex communi legis interpretatione, quae intuitu boni publici, potest, sicut et prescriptio legalis, dominium transferre; quod in Anglia[445] et in America septentrionali[446] admitti non improbabiliter asseritur.*
>
> *445 Grolly, n. 1201.*
>
> *446 Konings, n. 861.*

29 By the cession of goods the right of the debtor to suitable support for himself and his household is not destroyed. For he is not in a worse condition than the other debtors, for whom the need of their family is a just cause for deferring restitution. [447]]

447 Marc, Instit. moral. Alphons., n. 1021-1023.

> *Per cessionem bonorum non perimitur ius debitoris ad congruam sui suorumque sustentationem. Non est enim peioris conditionis quam caeteri debitores, quibus familiae necessitas gravis est iusta causa restitutionem differendi.[447]]*
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> *447 Marc, Instit. moral. Alphons., n. 1021-1023.*

On the causes that take away the obligation of restitution

1 [Three causes are counted which take away the obligation of restitution altogether: namely, legitimate compensation, remission by the creditor, and public authority.

[Tres causae numerantur quae obligationem restitutionis omnino tollunt, scilicet compensatio legitima, condonatio creditoris et authoritas publica.

2 **First cause. Legitimate compensation.**

Prima causa. Compensatio legitima.

3 Compensation is twofold: legal and extra-legal. The former takes place when two persons who are debtors to each other each set off against payment the thing owed to the other. Thus, for example, I owe you one hundred for wheat, and you owe me one hundred for wine: both debts are extinguished by compensation. This compensation, which is manifestly licit, is called legal, because it is confirmed by law. [448] The latter takes place secretly, outside the conditions established by law, and is the recovery of one's own property through occupation of another's property. Of this alone we have to treat.

448 Cod. Gall., art. 1289; Ital., art. 1285.

Duplex est compensatio, legalis et extra-legalis. Prior fit, quando duo qui sunt ad invicem debitores, singuli in solutionem computant rem alteri debitam. Sic, v. g., tibi debeo centum pro tritico, et mihi centum debes pro vino: utrumque debitum per compensationem exstinguitur. Haec compensatio, quae manifeste licita est, dicitur legalis, quia lege confirmatur.[448] Posterior fit occulte, extra conditiones a lege statutas, et est proprii boni recuperatio per rei alienae occupationem. De hac sola nobis est agendum.

448 Cod. Gall., art. 1289; Ital., art. 1285.

4 **I say:** Secret compensation can sometimes be just and licit, if it lacks none of the required conditions.

***Dico:** Occulta compensatio aliquando iusta et licita esse potest, si debitis conditionibus non careat.*

5 *It is proved*, because, these conditions being posited, no injury is done to the debtor, nor does any disturbance of the order established by law follow, nor is any damage inflicted on the state. 1° No injury is done to the debtor; for it is supposed that you take only what is certainly yours, or what is owed to you by strict justice. — 2° No disturbance of the order established by law follows, since it is supposed either that the judge cannot be approached, at least without notable inconvenience, or that he cannot restore the right of the injured party, because juridical proofs are lacking. For what would be sought in vain is rightly said to be passed over. — 3° No damage is inflicted on the state; for it is sufficiently provided for by the safeguards which are enumerated among the required conditions. [449]

449 Gury, n. 621 ; S. Lig., lib. IV, n. 521.

Prob., *quia, his conditionibus positis, nulla fit iniuria debitori, neque ulla sequitur perturbatio ordinis a iure statuti, neque ullum reipublicae infertur damnum. 1° Nulla fit iniuria debitori; nam supponitur te id tantum accipere quod certo tuum est, seu quod ex stricta iustitia tibi debetur. — 2° Nulla sequitur perturbatio ordinis a iure statuti, tuti, siquidem supponitur, vel iudicem adiri non posse, saltem sine notabili incommodo, vel eum ius partis laesae restituere non posse, quia deficiunt probationes iuridicae. Recte enim praetermitti dicitur id quod incassum quaereretur. — 3° Nullum reipublicae infertur damnum; satis enim ei consulitur per cautiones quae inter conditiones requisitas recensentur.[449]*

449 Gury, n. 621 ; S. Lig., lib. IV, n. 521.

6 Furthermore, the required conditions are: 1° That the debt be certain, at least morally; « for in doubt the condition of the possessor is better. » If the doubt concerns only the manner of

compensation, and no more is taken than is owed, the compensation is not unjust — indeed not even illicit, if it proceeds from a truly probable reason. 2° That the debt cannot otherwise be recovered, at least without grave inconvenience; for if the common ways were open, grave injury would be inflicted on the debtor and on the public order. 3° That the compensation be made in the same species, as far as possible. Otherwise the debtor's property would be unjustly exchanged while he was unreasonably unwilling. 4° That it not be made to the damage of the debtor, that is, taking care that he do not pay twice, should he happen to be going to restitute. [450]

[450] Gury, n. 622 ; S. Lig., Homo apost., X, 21.

> *Porro conditiones requisitae sunt : 1° Ut debitum sit certum, saltem moraliter; « In dubio enim melior est conditio possidentis. » Si dubium versetur tantum circa modum compensationis, et non plus accipiatur quam debetur, compensatio non est iniusta, imo neque illicita, si ex ratione vere probabili agatur. 2° Ut debitum non possit aliter recuperari saltem sine gravi incommodo; nam, si viae communes pateant, gravis iniuria debitori et ordini publico irrogaretur. 3° Ut compensatio fiat in eadem specie, in quantum est possibile. Secus, res debitoris, illo rationabiliter invito, iniuste permutaretur. 4° Ut non fiat cum damno debitoris, scilicet praecavendo ne bis solvat, si forte sit restituturus.*[450]
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> [450] *Gury, n. 622 ; S. Lig., Homo apost., X, 21.*

7 *You will ask* 1° whether he who, forgetful of his debt, gave something gratuitously to the creditor has satisfied the obligation of restituting.

> Petes *1° utrum satisfecerit obligationi restituendi qui, debiti immemor, aliquid gratuito creditori donavit.*

8 *I answer*. Although many deny it, we judge it must be affirmed as probable: « It is always, and certainly, presumed that the debtor, had he been mindful of his debt, would never have given it. The reason is that everyone, when giving his goods, is always understood to wish rather to satisfy an obligation of justice than his own will to give, or the obligation of a donation once made; which, since it was made through error or through oblivion of the debt — which error was the cause of the donation — remains rescindable by the same donor, who in conscience is not held to fulfill it [451] » And this seems beyond doubt, if, the debt having first been paid in justice, the donation made had been notably burdensome; for few would wish to burden themselves so.

[451] S. Lig., Homo apost., X, 120 ; lib. IV, n. 700.

> Resp. *Quamvis plures negent, probabiliter affirmandum esse censemus, « Semper ac certe praesumitur quod debitor, si debiti sui fuisset memor, nequaquam donasset. Ratio est, quia semper censetur quisque, cum dat bona sua, velle potius satisfacere obligationi iustitiae, quam voluntati donandi, sive obligationi factae donationis; quae cum facta fuerit per errorem sive per debiti oblivionem, qua dedit causam donationi, manet rescindibilis ab eodem donante, qui in conscientia non tenetur ad eam implendam*[451] *» Et hoc indubium videtur, si, prius soluto debito ex iustitia, donatio facta fuisset notabiliter onerosa; nam pauci vellent se ita gravare.*
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> [451] *S. Lig., Homo apost., X, 120 ; lib. IV, n. 700.*

9 *You will ask* 2° whether servants, who consider their salary insufficient, may make use of secret compensation.

> Petes *2° utrum famuli, quibus videtur salarium suum insufficiens esse, uti possint occulta compensatione.*

10 *I answer*: In the negative, generally speaking. It is certain 1° from the condemnation of the following proposition, n. 37, by Innocent XI: « Male and female domestic servants can steal secretly from their

masters, to compensate their labor, which they judge greater than the salary they receive. » This proposition was reproved on account of its generality. 2° From reason. One must stand by the pacts and agreements entered into in good faith on both sides. Therefore servants can attribute to themselves nothing beyond the stipulated salary; or, if they were deceived by error or fraud, they may rescind the contract. 3° From the inconveniences. If such compensation were held licit in itself, the way would lie open to innumerable thefts; for servants could most easily persuade themselves that their wages are less than just, and thus no security would remain to masters. — Say the same of day laborers hired for a time and of all artisans or merchants. [452]

[452] Gury, n. 623.

> Resp. *Negative, generaliter loquendo. Constat 1° ex condemnatione sequentis propositionis, n. 37, ab Innocentio XI : « Famuli et famulae domesticae possunt occulte dominis suis surripere, ad compensandam operam suam quam maiorem iudicant salario quod recipiunt. » Quae propositio fuit reprobata ob generalitatem suam. 2° Ex ratione. Standum est pactis et conventionibus ex ultraqua parte bona fide initis. Ergo famuli nihil praeter salarium stipulatum sibi attribuere possunt; vel, si errore aut fraude fuerint decepti, licet illis contractum rescindere. 3° Ab inconvenientibus. Si talis compensatio ut in se licita haberetur, innumeris furtis via esset aperta; nam famuli facillime sibi persuaderent sua stipendia esse iusto minora, et sic nulla securitas dominis superesset. — Idem dic de operariis ad tempus conductis et omnibus artificibus vel mercatoribus.*[452]
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> [452] *Gury, n. 623.*

11 I said, « generally speaking », because, if the servant has been deceived, if extraordinary and undue labors were imposed upon him, and the master denies him every corresponding recompense, it will be lawful for him to compensate himself, taking care not to exceed the just limits. [453] And this does not contradict the condemnation of the proposition related above, for it is evident that the Pontiff did not intend to bind the servant against justice. [454] But if the servant of his own accord increases the labors owed, he can steal nothing in compensation; because then he is understood to bestow his labor gratuitously, to win the favor of his master.

[453] S. Lig., lib. IV, n. 522.

[454] Id., ibid., n. 323.

> *Dixi, « generaliter loquendo », quia, si famulus fuerit deceptus, si extraordinaria et indebita opera ei imponerentur, et dominus ei omnem retributionem correspondentem deneget, fas erit illi se compensare, cavendo ne iuste limites excedat.*[453] *Et hoc non contradicit condemnationi propositionis supra relatae, nam evidens est Pontificem non intendisse obligare famulum contra iustitiam.*[454] *Si vero famulus sponte sua augeat operas debitas, nihil potest surripere in compensationem; quia tunc censetur operam suam condonare, ad conciliandam sibi domini gratiam.*
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> [453] *S. Lig., lib. IV, n. 522.*
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> [454] *Id., ibid., n. 323.*

12 *You will ask* 3° whether one condemned by a judge to pay a debt which he certainly did not contract, or certainly has already paid, may compensate himself secretly.

> Petes *3° utrum damnatus a iudice ad solvendum debitum quod certo non contraxit, vel certo iam solvit, possit se compensare occulte.*

13 *I answer*: Affirmatively; because the sentence of the judge, even if juridically just, is formally unjust, being grounded on a false presumption of fact, and consequently does not bind the conscience. One

must indeed always stand by the sentence of the judge if there is a presumption of law supported by proof, unless the injustice of the law be evident; but otherwise, if it is a simple and false presumption of fact, which being detected, the one who obtained the sentence ought to restitute the thing adjudged to him, because dominion was not validly transferred to him. So it is commonly held.

> Resp. *Affirmative; quia sententia iudicis, etsi iuridice iusta, est formaliter iniusta, utpote innixa falsa praesumptione facti, proindeque conscientiam non ligat. Standum est quidem semper sententiae iudicis, si adsit probatio praesumptio iuris, nisi de iniustitia legis constet; secus autem, si sit simplex et falsa praesumptio facti, qua detecta, ille qui sententiam obtinuit, rem sibi adiudicatam restituere deberet, quia dominium ad eum non fuit valide translatum. Ita communiter.*

14 **Second cause. Remission.**

> ***Secunda causa. Condonatio.***

15 Remission, which takes away the obligation of restituting, is the free forgiveness of a debt made by a creditor able to forgive, that is, who holds dominion and administration of the thing owed to him. Many say that the remission must also be spontaneous. But it seems to us that it certainly suffices for it to be free; for, if the creditor is brought to forgive the debt by prayers and solicitations which leave his liberty intact, there is no doubt that he validly transfers the dominion of the thing to the debtor.

> *Condonatio quae tollit obligationem restituendi, est remissio debiti libere facta a creditore habili ad condonandum, id est, qui habet dominium et administrationem rei sibi debita. Plures dicunt quod condonatio debet esse etiam spontanea. Sed videtur nobis certo sufficere ut sit libera; nam, si creditor adducatur ad debitum remittendum precibus et sollicitationibus quae libertatem eius integram relinquunt, non est dubitandum quin dominium rei valide ad debitorem transferat.*

16 Express remission is not always required, but tacit suffices, or even presumed, provided it be morally certain. So it is commonly held. The reason is that, for accepting and keeping another's property without injustice, a positive will of the owner is not required, but it suffices that he not be positively unwilling. [455] If, however, the owner must be judged unwilling only as to the manner of acquiring, since his right is violated in some way, the fault cannot be excused from venial.

455 Id., ibid., quaer. 1°.

> *Non requiritur semper condonatio expressa, sed sufficit tacita, aut etiam praesumpta, modo sit moraliter certa. Ita communiter. Ratio est, quia ad rem alienam absque iniustitia accipiendam et retinendam, non requiritur positiva domini voluntas, sed sufficit ut ipse non sit positive invitus.[455] Si vero dominus aestimandus sit invitus tantummodo quoad modum acquirendi, cum ius eius aliquo modo violetur, culpa non potest excusari a veniali.*
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> *455 Id., ibid., quaer. 1°.*

17 How remission is made in the external forum must be seen in the various Codes. [456]

456 Cod. Gall., art. 1282-1284 ; Ital., art. 1280.

> *Quomodo fiat condonatio in foro externo, videndum est in variis Codicibus.[456]*
>
> *456 Cod. Gall., art. 1282-1284 ; Ital., art. 1280.*

18 **Third cause. The authority of public power.**

> ***Tertia causa. Authoritas publicae potestatis.***

19 The faculty of transferring dominion belongs both to the civil prince, with respect to the temporal public good, and to the supreme Pontiff, with respect to the spiritual public good. Hence it follows that the burden of restitution can, a just cause intervening, be taken away by either power.

> *Facultas transferendi dominium competit tum principi civili, in ordine ad bonum publicum temporale, tum summo Pontifici, in ordine ad bonum publicum spirituale. Inde sequitur restitutionis onus posse, iusta intercedente causa, tolli ab utraque potestate.*

20 To this head are referred what we said above more fully concerning the finding of a treasure, liberative prescription, and the fruits of another's property received in good faith. To these it helps to add some things here: 1° on the sentence of a judge; 2° on composition with the supreme Pontiff; 3° on the sanation of goods of the Church unjustly alienated.

> *Huc referuntur quae supra de inventione thesauri, de praescriptione liberativa, de fructibus rei alienae bona fide perceptis fuse diximus. Quibus nonnulla hoc loco addere iuvat : 1° de sententia iudicis; 2° de compositione cum summo Pontifice; 3° de sanatione super Ecclesiae bonis iniuste alienatis.*

21 I. The sentence of a judge, not grounded on a false presumption, but resting on truth, takes away the obligation of restituting. The reason is that such a sentence is upheld by the authority of laws, which, by reason of the common good, legitimately transfer dominion over things.

> *I. Sententia iudicis, non falsa praesumptione innixa, sed freta veritate, tollit restituendi obligationem. Ratio est quia talis sententia fulcitur authoritate legum, quae, ratione boni communis, rerum dominium legitime transferunt.*

22 Hence you are not held to restitute: 1° if the judge, as punishment for some delict committed by your creditor, imposes this penalty, that you not restitute to him what you owe him; 2° if out of equity he adjudges to you something which otherwise, in the rigor of justice, would not be owed to you.

> *Hinc, non teneris restituere : 1° si iudex, in poenam alicuius delicti a creditore tuo patrati, imponit hanc mulctam, ne tu ei restituas quod ipsi debes; 2° si ex aequitate adiudicat tibi aliquid quod alias in rigore iustitiae tibi non deberetur.*

23 II. Composition with the supreme Pontiff is then had when the Roman Pontiff, by his supreme power, so treats that one part of the debt indeed is expended on pious causes, but the other is forgiven to the debtor, supplying out of the treasury of the Church the spiritual benefit which would accrue to the owner if the whole debt had been spent on alms. [457]

457 S. Lig., Homo apost., X, 117, 2°.

> *II. Compositio cum summo Pontifice tunc habetur, cum Romanus Pontifex, ex suprema sua potestate, ita transigit, ut una quidem pars debiti in pias causas impendatur, altera vero debitori condonetur, supplendo de thesauro Ecclesiae utilitatem spiritualem quae domino obveniret, si totum debitum in eleemosynas impensum fuisset.*[457]
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> *457 S. Lig., Homo apost., X, 117, 2°.*

24 For the composition to be legitimate, and to free the debtor in the forum of conscience, it is required: 1° That the owners be altogether uncertain; for if they are known in some degree, as in petty thefts, or merchants cheating in weight and measure, they cannot without injustice be directly despoiled without their consent. 2° That a just cause be present; for otherwise the composition would indeed be valid, but illicit, in ecclesiastical matters; in other matters, however, the cause failing, it would also be invalid, because in the first case the supreme Pontiff dispenses in his own

law, but not so in the second. — If, however, the cause has been just, the composition once made is not revoked, although the owner appears, because dominion has already been legitimately transferred. So Lugo, against others, who wish the debtor in that case to be held to restitute to the owner that by which he has been enriched. [458]

[458] Id., lib. IV, n. 592 et 593 ; Homo apost., X, 68.

> *Ut compositio sit legitima, et debitorem in foro conscientiae liberet, requiritur : 1° Ut bona sint omnino incerta; si enim domini aliqualiter cognoscantur, ut in furtis minutis mercatorum fraudantium in pondere et mensura, non possunt sine iniuria directe et absque eorum consensu spoliari. 2° Ut adsit iusta causa; secus enim valida quidem esset compositio, sed illicita, in rebus ecclesiasticis; in caeteris vero, deficiente causa, etiam invalida foret, quia, in primo casu, summus Pontifex dispensat in lege propria, non item in secundo. — Si tamen causa iusta fuerit, compositio semel facta non revocatur, quamvis compareat dominus, quia dominium iam legitime translatum est. Ita Lugo, contra alios, qui volunt debitorem in eo casu teneri restituere domino illud in quo factus est ditior.*[458]
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> [458] *Id., lib. IV, n. 592 et 593 ; Homo apost., X, 68.*

[25] This composition is made through the bull of the Crusade, for those to whom it has been granted, for example, in Spain, in Sicily, etc. It can also be obtained from the Holy Penitentiary, to which, by the bull *Pastor bonus*, was granted the faculty of remitting part of what has been wickedly taken or retained, if the owner is uncertain, the case occult, and the offender poor. But the part which is not remitted must be given to the poor, or expended on pious works, and indeed, if possible, in those very places where the unjust acquisition of those goods was made.

> *Haec compositio fit per bullam Cruciatae, pro illis quibus illa concessa est, v. g., in Hispania, in Sicilia, etc. Potest etiam obtineri a S. Poenitentiaria, cui concessa fuit, ex bulla* Pastor bonus, *facultas remittendi partem de male ablatis vel retentis, si dominus sit incertus, casus occultus et delinquens pauper. Pars vero quae non remittitur, eroganda est pauperibus, vel in pia opera impendenda, et quidem, si fieri possit, in ipsis locis ubi facta est iniusta illorum bonorum comparatio.*

[26] As regards the bishops, the truer opinion holds that the faculty of composition does not belong to them, since it is an act of supreme power. [459]

[459] Id., lib. IV, n. 696.

> *Ad episcopos quod attinet, verior sententia tenet, compositionis facultatem ipsis non competere, cum sit actus supremae potestatis.*[459]
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> [459] *Id., lib. IV, n. 696.*

[27] III. Sanation concerning the goods of the Church unjustly alienated is then said to take place when the supreme Pontiff, as supreme administrator of the goods of the Church, validates alienations of this kind on account of a just and most grave cause. — Thus he validated the alienations made at the time of the French upheaval. — The following things can be set down here concerning it.

> *III. Sanatio super bonis Ecclesiae iniuste alienatis tunc fieri dicitur, cum summus Pontifex, qua supremus bonorum Ecclesiae administrator, ob iustam ac gravissimam causam istiusmodi alienationes convalidat. — Sic convalidavit alienationes quae tempore perturbationis Gallicae factae fuerunt. — Quae super re poni possunt sequentia.*

[28] *You will ask* 1° what usurped goods of the Church can now be retained.

> Petes *1° quaenam Ecclesiae bona usurpata nunc retineri possint.*

29 *I answer*: 1° Regard must be had, in the various regions, to when the sanation was made by the Holy See. Now it was made: 1° For England, after Henry VIII, by the faculty granted by Julius III to Cardinal Pole. — 2° For France and Belgium, on 15 Aug. 1801, by the bull *Ecclesiam*. — 3° For Piedmont and the duchy of Genoa, on 20 Dec. 1816, by the Brief *Datis ad nos demum*. — 4° For the kingdom of the Two Sicilies, on 7 March 1819, by the constitution *In supremo*. — 5° For Prussia, on 16 July 1821, by the constitution *De salute animarum*. — 6° For the whole kingdom of Sardinia, on 14 May 1828, by the bull *Gravissime* of Leo XII.

> Resp. *1° Attendendum est, in variis regionibus, quando sanatio a Sancta Sede facta fuerit. Iam vero facta est : 1° Pro Anglia, post Henricum VIII, ex facultate a Iulio III Cardinali Polo concessa. — 2° Pro Gallia et Belgio, die 15 aug. 1801, per bullam* Ecclesiam. *— 3° Pro Pedemontio et Genuensi ducatu, die 20 dec. 1816, per Breve* Datis ad nos demum. *— 4° Pro regno utriusque Siciliae, die 7 martii 1819, per constit.* In supremo. *— 5° Pro Borussia, die 16 Iulii 1821, per constit.* De salute animarum. *— 6° Pro toto Sardiniae regno, die 14 maii 1828, per bullam* Gravissime*, Leonis XII.*

30 Moreover: 1° For France, Pius VII, on 20 Oct. 1821, addressed a Brief to the bishop of Poitiers, in which it is declared that the concession made can be applied to all ecclesiastical goods previously occupied by the government, that is, before the convention of the year 1801, whether or not it had already alienated them. — 2° For Belgium a similar declaration was made on 16 Sept. 1833, by the Brief *Epistolam* of Gregory XVI, so that anyone might buy the goods which at that time were still held by the government.

> *Insuper : 1° Pro Gallia, Pius VII, die 20 oct. 1821, Breve ad episcopum Pictaviensem direxit, in quo declaratur factam concessionem applicari posse omnibus bonis ecclesiasticis a gubernio prius occupatis, id est, ante conventionem anni 1801, sive iam, sive nondum ea alienaverit. — 2° Pro Belgio similis facta est declaratio die 16 sept. 1833, per Breve* Epistolam *Gregorii XVI, ita ut quisque emere posset bona quae eo adhuc tempore a gubernio detinebantur.*

31 2° Regard must be had to the conditions attached. Indeed: 1° The Holy Penitentiary replied thus to the most illustrious Mr. Bouvier, 10 March 1818: « The Holy Penitentiary, by express Apostolic authority, declares to the asking orator that the ecclesiastical goods (occupied by the French government before the convention entered into in the year 1801)... are in the full ownership of the acquirers, so that they can retain them, enjoy them, and even alienate them safely and freely, in the forum both external and internal, provided nevertheless that the acquisition was made according to the laws then in force. It exhorts, however, these acquirers, out of their piety and religion, to satisfy the pious burdens of Masses, alms, and other similar things, which perhaps were once attached to those goods. [460] » 2° Similar rescripts appeared for Upper Italy, in the years 1845 and 1847.

460 Bouvier, de Contract., p. II, c. 2, art. 1, § 3, sect. 1.

> *2° Attendendum est ad appositas conditiones. Iamvero : 1° S. Poenitentiaria ita ad illustriss. D. Bouvier, 10 martii 1818, rescripsit : « S. Poenitentiaria, de expressa Apostolica authoritate consulenti oratori declarat, bona ecclesiastica (a gubernio Gallico occupata ante conventionem initam anno 1801)... in plena acquirentium proprietate esse, adeo ut ea retinere, iis gaudere atque alienare etiam illa tuto ac libere possint in foro tum externo tum interno, dummodo tamen acquisitio facta fuerit secundum leges tunc vigentes. Hortatur tamen acquirentes istos, ut pro sua pietate ac religione satisfacere velint piis missarum, eleemosynarum, aliarumque rerum similium, oneribus quae bonis illis olim forsan infixa erant.*[460] *» 2° Prodierunt similia rescripta pro Italia superiori, annis 1845 et 1847.*
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> *460 Bouvier, de Contract., p. II, c. 2, art. 1, § 3, sect. 1.*

32 *You will ask* 2° what ecclesiastical goods are still subject to restitution, and how.

> Petes *2° quaenam bona ecclesiastica sint adhuc restituzioni obnoxia, et quomodo.*

33 *I answer*: 1° Subject to restitution are all those things which the Pontiff has not forgiven, namely: 1° goods which were never occupied by the government, but escaped its hands, because either they remained with private persons, for example, the tenants of those goods, or were usurped by those private persons themselves; 2° goods which were occupied by the government after the conventions with the Holy See had been entered into; 3° goods which, while the conventions were being entered into, the government promised it would hand over to the Church, yet afterwards were not handed over. All these things are evident of themselves.

> Resp. *1° Restitutioni obnoxia sunt ea omnia quae non condonavit Pontifex, nimirum : 1° bona quae non fuerunt a gubernio unquam occupata, sed eius manus effugerunt, quia vel apud privatos, v. g., eorum bonorum colonos, remanserunt, vel a privatis ipsis vi usurpata fuerunt; 2° bona quae fuerunt, initis iam cum Sancta Sede conventionibus, a gubernio occupata; 3° bona quae, dum inirentur conventiones, gubernium se traditurum esse Ecclesiae promisit, nec tamen postea tradita sunt. Haec omnia per se patent.*

34 2° The restitution of these goods must be made according to the rules [461] to which possessors of good or bad faith are subject, namely according as the usurpers, or their heirs, act in good or bad faith.

461 Cfr. Analecta iuris pont., series V, col. 122.

> *2° Horum bonorum restitutio facienda est iuxta regulas[461] quibus subiacent possessores bonae vel malae fidei, prout nempe usurpatores, eorumve haeredes, in bona vel in mala fide versantur.*
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> *[461] Cfr. Analecta iuris pont., series V, col. 122.*

35 Note. The remission made by the supreme Pontiff does not of itself free from the ecclesiastical censures which the usurpers incurred. Nevertheless Leo XII, by the bull *Gravissime*, absolved all of the kingdom of Piedmont, whether laymen or ecclesiastics, from whatever censures and penalties incurred on this account.

> *Nota. Condonatio a summo Pontifice facta non liberat per se a censuris ecclesiasticis quas usurpatores incurrerunt. Attamen Leo XII, bulla* Gravissime*, omnes regni Pedemontani sive laicos sive ecclesiasticos absolvit a quibuscumque censuris et poenis hac de causa incursis.*

36 *You will ask* 3° whether the faculty of buying usurped and not yet forgiven goods of the Church can be obtained, for example, goods usurped in Italy since the year 1860?

> Petes *3° an possit obtineri facultas emendi bona Ecclesiae usurpata et nondum condonata, v. g., bona in Italia ab anno 1860 usurpata ?*

37 *I answer*: « Today this faculty is not so easily granted by the Church, unless extraordinary circumstances are present, or the matter concerns persons conspicuous for probity of morals and zeal for religion, who are judged, by prudent judgment, to have been moved toward the said purchase chiefly by the greater utility of the Church and of the persons to whom those goods belong of right; who moreover must provide, either by testament or in some other way, that those goods after death pass to those who will keep the prescription of the Church. [462] »

462 Del Vecchio, I, n. 587.

Resp. *« Hodie ab Ecclesia non ita facile conceditur haec facultas, nisi extraordinariae adsint circumstantiae, vel agatur de personis quae morum probitate et zelo religionis conspicuae sint, quaeque ad praedictam emptionem praecipue maiori Ecclesiae et personarum ad quas eadem bona de iure pertinent utilitate, prudenti iudicio, motae censeantur, quae insuper providere debent vel testamento, vel alio modo, ut illa bona post mortem ad eos proveniant, qui sint servaturi Ecclesiae praescriptionem.*[462] »

[462] *Del Vecchio, I, n. 587.*

38 Furthermore, that such a faculty may be obtained, recourse must be had to the Holy Penitentiary, with the name and surname of the petitioner withheld, and the commendation of his proper bishop obtained. The faculty, once granted, is usually sent to the Ordinary of the diocese, who uses it under the following conditions, to be accepted and subscribed by the same persons, and carefully kept in the episcopal chancery, namely: « 1° To retain the same goods at the nod of the Church, and to obey its commands forthwith. — 2° To preserve the same goods, and to conduct a profitable administration in them. — 3° To satisfy the pious burdens, if any be attached to the said goods, and out of their fruits to aid the persons and churches to which the same goods respectively belong of right. » (In other Rescripts is read: « And to expend the revenues of those goods, which, proportion being made, exceed the price paid, either in favor of the persons or places pious to which the said goods belong of right, or in satisfaction of the price paid in the purchase, insofar as the buyer wishes to restore it, and with the counsel of the Ordinary. ») 4° To inform the heirs and successors of obligations of this kind by written instrument, so that they too may know to what they are bound. »

Porro, ut talis facultas obtineatur, recurrendum est ad S. Poenitentiariam, declinato nomine et cognomine petentis, et obtenta proprii episcopi commendatione. Facultas pro concessione mitti solet ad Ordinarium dioecesis, qui ea utitur sub sequentibus conditionibus ab iisdem personis acceptandis et subscribendis, atque in cancellaria episcopali caute servandis, videlicet : « 1° Retinendi eadem bona ad nutum Ecclesiae, eiusque mandatis subinde parendi. — 2° Conservandi eadem bona, ac in eis rem utilem gerendi. — 3° Satisfaciendi piis oneribus, si quae dictis bonis adnexa sint, et ex fructibus eorumdem subveniendi personis et ecclesiis ad quas respective eadem bona de iure pertinent. » (In aliis Rescriptis legitur : « Et erogandi reditus eorum bonorum, qui, facta proportione, excedant solutum pretium, vel in favorem personarum aut locorum piorum ad quas dicta bona de iure pertinent, vel in satisfactionem pretii in emptione soluti, quatenus emptori reddere velit, et de consilio Ordinarii. ») 4° Certiorandi haeredes et successores de huiusmodi obligationibus per syngrapham, ad hoc ut et ipsi sciant ad quid teneantur. »

39 These likewise are accustomed to be the conditions when the faculty is granted to the Ordinary, either of himself or through well-approved confessors, to indulge buyers so that they may retain the goods; the license of purchase coming after absolution from the ecclesiastical censures and penalties, with a salutary penance.

Haec pariter esse solent conditiones, quando Ordinario conceditur facultas, sive per se, sive per confessarios bene visos, indulgendi emptoribus ut retineant bona; licentia empti, praevia absolutione a censuris et poenis ecclesiasticis, cum paenitentia salutari.

40 « As regards fulfilling the burdens attached to the goods, and aiding out of the fruits, etc., what is already paid by the government to the despoiled persons and churches can be computed. » Holy Penitentiary, 23 March 1873.

« Quoad vero adimplenda onera bonis adnexa, et subveniendi ex fructibus, etc., potest computari illud quod a gubernio iam solvitur personis et ecclesiis spoliatis. » S. Poenitentiaria, 23 martii 1873.

On the Vice Opposed to Distributive Justice, which is Respect of Persons

1 (*D. Thomas, q. 63.*)

*(*D. Thomas, q. 63.*)*

What is respect of persons?

1 1°: Acceptance of persons is the injustice by which, in common matters to be distributed by justice, no regard is had to the proportion of merits or the suitability of those who are candidates, but to some cause irrelevant to the matter. [463]

463 Merc., Instit. moral. Alphons., n. 1027-1030.

1°: Acceptio personarum est iniustitia qua, in rebus communibus ex iustitia distribuendis, non attenditur proportio meritorum vel idoneitas eorum qui candidant, sed aliqua causa huic rei impertinens.[463]

463 Merc., Instit. moral. Alphons., n. 1027-1030.

2 I said, « in common matters », whether goods, such as public offices, benefices, honors, judgments, etc.; or evils, that is burdensome things, such as taxes, tolls, public works, contributions, penalties, etc.

Dixi, « in rebus communibus », sive bona, ut sunt officia publica, beneficia, honores, iudicia, etc.; sive mala, hoc est onerosa, ut sunt tributa, vectigalia, opera publica, contributiones, poenae, etc.

3 It must be observed, however, that common goods are of two kinds. Some are ordered primarily and immediately to the public good, and through it only mediately and secondarily to the benefit of the particular persons who occupy them, such as benefices, public offices, dignities, etc. Others are ordered primarily to the benefit of particular persons, such as the public treasury, common revenues, a legacy to be distributed to the poor, a sum of money handed over by the king to be distributed, stipends for well-deserving soldiers, etc.

Observandum est autem, bona communia esse duplicis generis. Quedam sunt primario et immediate ordinata ad bonum publicum, et eo mediante tantum ac secundario in utilitatem particularium qui ea occupant, ut sunt beneficia, officia publica, dignitates, etc. Alia sunt primario ordinata ad utilitatem particularium, ut sunt thesaurus publicus, proventus communes, legatum pauperibus distribuendum, summa pecuniae a rege tradita distribuenda, stipendia militibus bene meritis, etc.

4 In both kinds of goods, bad distribution is an acceptance of persons opposed to distributive justice, insofar as no regard is had to the proportion of merits; but moreover in both is found a violation of commutative justice, though in different ways. In the bad distribution of goods of the first kind, commutative justice is violated toward the state or the Church; because this or that has strict right that provision be made for it from the best ministers, and this devolves upon the providers by their office. Hence, strictly speaking, restitution must be made to it, not indeed to the particular persons, for whose benefit these goods are not primarily ordered, and who therefore have not strict right to them, but only a right of aptitude. But in the bad distribution of goods of the second kind there is found a violation of commutative justice even toward private persons; because from the fact that these goods are destined primarily to them, they have strict right to them, that is, a right to the thing itself, and the bad distributor is held to restitute to them.

> *In utroque genere bonorum mala distributio est acceptio personarum opposita iustitiae distributivae, in quantum non attenditur proportio meritorum; sed insuper utrobique reperitur violatio iustitiae commutativa, diversimode tamen. In mala distributione bonorum primi generis violatur iustitia commutativa erga rempublicam vel Ecclesiam; quia haec vel illa habet strictum ius ut de optimis ministris ipsi provideatur, et provisoribus id incumbit ex officio. Unde, stricte loquendo, illi restitutio facienda est, non vero particularibus, in quorum utilitatem haec bona non sunt primario ordinata, qui ideo non habent ius strictum ad illa, sed tantum ius aptitudinis. At vero in mala distributione bonorum secundi generis reperitur violatio iustitiae commutativa etiam erga particulares; quia ex hoc quod haec bona sint ipsis primario destinata, habent ad illa ius strictum, hoc est ius ad rem, et illis restituere tenetur malus distributor.*

5 **I say** 2°: Acceptance of persons is, by its genus, mortal sin. [464] Because every injustice is, by its genus, mortal sin. Now acceptance of persons is an injustice opposed to distributive justice, which is a virtue more excellent than commutative justice, and from which follow damages no less than from commutative justice. Therefore.

464 Hic q. 63, a. 1, c.

> ***Dico** 2°: Acceptio personarum est ex genere suo peccatum mortale.[464] Quia omnis iniustitia est ex genere suo peccatum mortale. Atqui acceptio personarum est iniustitia opposita iustitiae distributivae, quae est virtus praestantior commutativa, et ex qua non minora damna sequuntur quam ex commutativa. Ergo.*
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> *464 Hic q. 63, a. 1, c.*

On respect of persons in the distribution of spiritual things

1 By spiritualities we here understand ecclesiastical power, whether of order or of jurisdiction, and its exercise, especially ecclesiastical benefices and offices.

> *Per spiritualia hic intelligimus potestatem ecclesiasticam sive ordinis sive iurisdictionis, et eius usum, praesertim beneficia et officia ecclesiastica.*

2 I suppose as certain that the conferral of spiritualities on an unworthy person, if worthy ones are found, is mortal sin, because it is an acceptance of persons in a matter of grave moment. [465]

465 Ibid., ad 2 et 3.

> *Suppono ut certum, collationem spiritualium fieri indigno, si reperiantur digni, esse peccatum mortale, quia est acceptio personarum in re gravis momenti.[465]*
>
> *465 Ibid., ad 2 et 3.*

3 The difficulty, therefore, is whether it is lawful to confer a benefice on a less worthy person, passing over one more worthy. Hence:

> *Difficultas est itaque utrum liceat conferre beneficium minus digno, praetermisso digniore. Unde :*

4 **I say**: The conferral of any benefice or ecclesiastical office made on a less worthy person, one more worthy being passed over, regularly speaking, is illicit, but valid. Say the same of presentation and election. It is the common opinion of the authors. [466]

466 Ibid., a. 2, c.

> ***Dico**: Collatio cuiuscumque beneficii aut officii ecclesiastici facta minus digno, praetermisso digniore, regulariter loquendo, est illicita, sed valida. Idem dic de presentatione et electione. Est communis post Authores.[466]*
>
> *466 Ibid., a. 2, c.*

5 Furthermore, understand the conclusion thus: not that the collator or patron must inquire through the whole kingdom or province who is the most worthy; for that would be a burden too heavy, and liable to deception; but that from those who are at hand, or whose merits he knows or can come to know, using moral diligence, he choose him whom he judges the more worthy.

> *Porro conclusionem sic intellige, non quod collator aut patronus debeat inquirere in toto regno vel provincia quis sit dignior; id enim foret onus nimis grave, nec non deceptioni obnoxium : sed quod ex his qui in promptu sunt, aut quorum notitiam habet vel habere potest, adhibita morali diligentia, eligat illum quem digniorem iudicaverit.*

6 The first part of the conclusion is proved 1° from canon law, cap. unico: « Ut ecclesiastica beneficia », Decretal. lib. III, tit. XII. Innocent III says: « Not out of carnal affection, but with judgment weighed, ought you to have dispensed the ecclesiastical office and benefice to the more suitable person. » The Council of Trent, sess. XXIII, cap. 1, on the promotion of bishops, declares that those promoted and those lending their efforts sin mortally, « unless they have most diligently taken care that they judge them the worthier and more useful to the Church. » And cap. 18, on the presentation of pastors, says: « From these the bishop shall choose him whom he judges the more suitable than the others. »

> *Prob. prima pars conclusionis 1° ex iure canonico, cap. unico : « Ut ecclesiastica beneficia », Decretal. lib. III, tit. XII. Innoc. III dicit : « Non ex affectu carnali, sed discusso iudicio debuisti ecclesiasticum officium et beneficium personae magis idoneae dispensare. » Conc. Trid., sess. XXIII, cap. 1, de promotione episcoporum, declarat promotos et operam praestantes peccare mortaliter, « nisi eos digniores et Ecclesiae magis utiles iudicaverint... praediligenter curaverint. » Et cap. 18, de parochorum presentatione dicit : « Ex his episcopus eum eligat, quem caeteris magis idoneum iudicaverit. »*

7 It is proved 2° by reason. [467] As long as, in promotion to a benefice or ecclesiastical office, a less worthy person is preferred to a more worthy one, there is manifestly an acceptance of person injurious to the Church, for whose benefit ecclesiastical benefices and offices were instituted. Therefore.

467 Ibid., ad 3.

> *Prob. 2° ratione.[467] Dum in promotione ad beneficium vel officium ecclesiasticum praefertur minus dignus digniori, est manifeste acceptio personae iniuriosa Ecclesiae, in cuius utilitatem instituta sunt beneficia et officia ecclesiastica. Ergo.*
>
> *467 Ibid., ad 3.*

8 But note that the worthiness of someone can be regarded in two ways. [468] In one way, simply and in itself; and thus he is of greater worthiness who more abounds in the gifts of grace in spiritual things. In another way, by comparison with the common good; for it sometimes happens that he who is less holy or less learned can contribute more to the common good because of power, or industry, or something of this kind. But greater worthiness must be regarded not simply, but comparatively, with respect to the common good.

468 Ibid., a. 2, c.; Quodlib. cit.

> *Verum nota quod dignitas alicuius possit attendi dupliciter.[468] Uno modo, simpliciter et secundum se; et sic maioris dignitatis est ille qui magis abundat in spiritualibus gratiae donis. Alio modo, per comparationem ad bonum commune; contingit enim quandoque quod ille qui est minus sanctus aut minus sciens, possit magis conferre ad bonum commune propter potentiam, vel industriam, vel propter aliquid huiusmodi. Debet autem attendi maior dignitas, non simpliciter, sed comparative ad bonum commune.*

[468] *Ibid., a. 2, c.; Quodlib. cit.*

9 The second part of the conclusion is clear from various places in the law which require only a worthy person. [469] This the interpreters understand with St. Thomas to mean that the conferral or election be valid and cannot be challenged in a judicial forum; because otherwise every election could give rise to calumny, and there would be no end of lawsuits.

[469] Ibid., ad 3.

Secunda pars conclusionis patet ex variis locis iuris qui requirunt dignum dumtaxat.[469] Quod intelligunt interpretes cum S. Thoma, ut collatio seu electio sit valida et impugnari non possit in foro iudiciali; quia alioquin omnis electio posset habere calumniam, et non esset litium finis.

[469] *Ibid., ad 3.*

10 From what has been said it follows that he sins mortally who promotes, or takes care to have promoted, presents, or elects to a benefice or ecclesiastical office having annexed the care of souls or ecclesiastical governance a less worthy person, one more worthy being passed over — or even to simple benefices, but otherwise of grave moment, for instance one having a vote in elections to dignities or to offices having the care of souls; because it is an acceptance of persons in a matter of grave moment, with great detriment to the Church, or at least from which such detriment can follow. See proposition 47 condemned by Innocent XI.

Ex dictis sequitur, cum peccare mortaliter qui minus dignum, praetermisso digniore, promovet aut promoveri curat, presentat aut eligit ad beneficium seu officium ecclesiasticum habens annexam curam animarum aut ecclesiasticam gubernationem, aut etiam ad beneficia simplicia, sed aliunde gravis momenti, puta quod habeat suffragium in electionibus ad dignitates aut ad officia curam animarum habentia; quia est acceptio personarum in re gravis momenti, cum magno Ecclesiae detrimento, aut ex qua saltem potest sequi. Vide propositionem 47 damnatam ab Innoc. XI.

11 [Such is this proposition: « When the Council of Trent said that those communicating in the sins of others sin mortally who promote to churches none other than those whom they judge worthier and more useful to the Church itself: first the council seems by this to have meant by worthier nothing else than the worthiness of those to be chosen, taking the comparative for the positive; or, secondly, in less proper language it understood the worthier so as to exclude the unworthy, not indeed the worthy; finally, thirdly, it follows when the concursus takes place. »]

[Talis est haec propositio : « Cum dixit concilium Tridentinum, eos alienis peccatis communicantes mortaliter peccare, qui, nisi quos digniores et Ecclesiae magis ipsi iudicaverint, ad ecclesias promovent : concilium primo videtur per hoc, digniores, non aliud significasse velle, nisi dignitatem eligendorum, sumpto comparativo pro positivo; vel, secundo, locutione minus propria intellexit digniores, ut excludat indignos, non vero dignos; tandem sequitur, tertio, quando fit concursus. »]

12 But it will be venial only, more probably, if simple benefices of lesser moment are in question, such as chaplaincies, modest canonries, provided they are not conferred by concursus; because, since such benefices are ordered to humble and very limited offices, such as reciting the office, celebrating Mass, singing the Epistle or Gospel, etc., it does not seem that grave damage is inflicted on the Church if sometimes a less unworthy man is placed over a worthier one.

Probabilius autem erit veniale dumtaxat, si agatur de beneficiis simplicibus minoris momenti, ut sunt capellaniae, canonicatus modici, modo tamen non conferantur per concursum; quia, cum talia beneficia ordinentur ad officia humilia

et valde limitata, ut ad recitandum officium, ad missam celebrandam, ad Epistolam seu Evangelium cantandum, etc., non videtur grave damnum inferri Ecclesiae, si quandoque dignus praefeatur indigniori.

13 I said in the conclusion, « regularly speaking, » because there are certain cases in which it is lawful to promote worthy men to benefices even with the cure of souls, worthier men being passed over.

Dixi in conclusione, « regulariter loquendo », quia sunt quidam casus in quibus licet promovere dignos ad beneficia etiam curata, praetermissis dignioribus.

14 1° If from the institution of the benefice it has been settled by the Church that the one to be promoted must be from the bosom of the Church, e.g., from a certain family. 2° If the founder of the benefice himself fixed beforehand who is worthy; for this privilege is granted to him by law, cap. *Monasterium*, causa 16, q. 7. 3° If in the election [...] it would not benefit the more worthy one.

1° Si ex institutione beneficii per Ecclesiam firmatum sit quod promovendus debeat esse de gremio Ecclesiae, v. g. de certa familia. 2° Si ipse fundator beneficii praefixerit dignum; hoc enim ipsi privilegium a iure concessum est, cap. Monasterium*, causa 16, q. 7. 3° Si in electione [...] non prodesset digniori.*

15 *You will ask* 1° whether he who promotes an unworthy or less worthy person to benefices or ecclesiastical offices, one more worthy being passed over, is held to any restitution.

Petes *1° utrum qui ad beneficia seu officia ecclesiastica promoveat indignum seu minus dignum, praetermisso digniore, teneatur ad aliquam restitutionem.*

16 *I answer*. 1° He who promotes an unworthy person — both the promoter and the one promoted are held to restitute to the Church all the damages that come to it from this: the promoter, because he sins against commutative justice toward the Church, to which he is bound by his office to set over it worthy ministers; the one promoted, because he cooperated in the unjust action of the promoter, and from him immediately flow the evils of the Church.

Resp. *1° Qui promovet indignum, tam promovens quam promotus tenetur restituere Ecclesiae omnia damna quae inde ipsi obveniunt : promovens, quia peccat contra iustitiam commutativam erga Ecclesiam, cui ex officio praeficere dignos ministros; promotus, quia cooperatus est iniustae promoventis actioni, et ab ipso immediate fluunt mala Ecclesiae.*

17 *I answer*. 2° He who promotes a less worthy one, the more worthy being passed over, is also held, speaking of itself, by force of such promotion, to restitute to the Church; because toward it he violates commutative justice, since he is bound by his office, as was said, to set over it the best ministers. But it seems that the Church neither demands this restitution nor binds to it, in order to avoid perplexities: and thus the common sense [of theologians] apprehends it.

Resp. *2° Qui promovet minus dignum, praetermisso digniore, tenetur etiam, per se loquendo, vi talis promotionis, restituere Ecclesiae ; quia erga illam violat iustitiam commutativam, cum ipsi ex officio, ut dictum est, teneatur praeficere optimos ministros. Sed videtur quod Ecclesia neque exigat hanc restitutionem, neque ad eam obliget, ad obviandum perplexitatibus : et ita apprehendit sensus communis.*

18 [The other opinion, no less probable, holds that the promoter is held to no restitution in this case. The reason is that ecclesiastical offices to which benefices are annexed were instituted primarily, indeed even solely, that the Church may be served by good ministers. Now, as is supposed, if the worthier are passed over, those chosen are worthy or good. Hence, if the good of the Church is not provided for in a better way, it is at least done sufficiently, and the intended end is essentially

attained. Therefore [470] Moreover this question becomes purely speculative from what was said above, namely that the Church in the aforesaid case does not demand restitution.]

[470] S. Lig., lib. V, n. 107.

> *[Altera sententia non minus probabilis tenet, promoventem ad nullam restitutionem teneri in casu. Ratio est, quia officia ecclesiastica quibus beneficia sunt annexa fuerunt instituta primario, imo etiam unice, ut Ecclesiae inserviatur a bonis ministris. Atqui, ut supponitur, si praetermittantur digniores, qui eliguntur sunt digni seu boni. Unde, si non meliori modo provideatur bono Ecclesiae, hoc saltem fit sufficienter, et essentialiter allingitur finis intentus. Ergo[470] Caeterum haec quaestio mere speculativa evadit ex eo quod supra dictum est, scilicet Ecclesiam in casu praefato restitutionem non exigere.]*
>
> *[470] S. Lig., lib. V, n. 107.*

19 *I answer*. 3° He who promotes an unworthy or less worthy person, one more worthy being passed over, outside the concursus, is held to restitute nothing to the more worthy one who was passed over; because with respect to him he does not violate commutative justice, but only distributive justice. For the more worthy one has not strict right to the benefice, but only a right of aptitude and proportion.

> Resp. *3°. Promovens indignum seu minus dignum, praetermisso digniore, extra concursum, nihil tenetur restituere digniori praetermisso ; quia respectu illius non violat iustitiam commutativam, sed tantum distributivam. Non enim dignior habet ius strictum ad beneficium, sed ius aptitudinis et proportionis tantum.*

20 I said, « outside the concursus; » because, by force of the announcement of the concursus, anyone capable acquires the right to compete, and he who is judged the worthier has, from an implicit pact, strict right to the benefice. Hence, if it is conferred on a less worthy one, injury is manifestly done to the worthier one; just as, when many fight in a public contest, injury would be done to the victor if the proposed prize were denied to him.

> *Dixi, « extra concursum ; » quia, vi indictionis concursus, quilibet capax habet ius concurrendi, et qui dignior probatus fuerit, habet ex pacto implicito ius strictum ad beneficium. Unde, si minus digno conferatur, fit iniuria manifeste digniori ; sicut, pluribus in publico certamine pugnantibus, fieret iniuria victori, si ipsi denegaretur praemium propositum.*

21 [*You will ask* 2° whether a worthy man, clearly knowing another to be worthier, sins by accepting the benefice, and is held to repair the loss to him.

> *[*Petes *2° an dignus, manifeste sciens alterum esse digniorem, peccet acceptando beneficium, et teneatur damnum illi resarcire.*

22 *I answer*. The first opinion affirms it, because he himself, by accepting the benefice, cooperates in the unjust election to the damage of the other. The other opinion, which seems truer, says that he neither sins nor consequently is held to restitution.

> Resp. *Prima sententia affirmat, quia ipse, acceptando beneficium, concurrit ad iniustam electionem in damnum alterius. Altera sententia, quae verior videtur, dicit eum nec peccare, nec consequenter ad restitutionem teneri.*

23 The reason why he does not sin is given by D. Thomas, IIae IIae, q. 185, a. 3, c, namely that, on the part of the one choosing, « he who must choose someone as bishop... is not held to take the better one simply,... but the better one for the governance of the Church... On the part of him who is taken up, it is not required that he consider himself better than others; for that would be proud and

presumptuous: but it suffices that he find nothing in himself by which it becomes illicit for him to take up the office of prelacy. » Furthermore, what is said of the episcopate must be said a fortiori of inferior benefices [471]]

[471] Id., ibid., n. 110, dub. 2.

> *Ratio cur non peccet datur a D. Thoma, IIae IIae, q. 185, a. 3, c, scilicet quod, ex parte eligentis, « ille qui debet aliquem eligere in episcopum... non tenetur assumere meliorem simpliciter,... sed meliorem quoad regimen Ecclesiae... Ex parte autem eius qui assumitur, non requiritur quod reputet se aliis meliorem ; hoc enim esset superbum et praesumptuosum : sed sufficit quod nihil in se inveniat per quod illicitum ei reddatur assumere praelationis officium. » Porro quod de episcopatu dicitur, a fortiori de beneficiis inferioribus est dicendum[471]]*
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> [471] *Id., ibid., n. 110, dub. 2.*

[24] *You will ask* 3° whether what has been said thus far in the present article is to be extended to secular offices.

> Petes *3° utrum hucusque dicta in praesenti articulo extendenda sint ad officia saecularia.*

[25] *I answer*, more commonly and more probably affirmatively; because these offices are likewise ordered primarily and principally to the common good of the state. Hence he who distributes them to the unworthy, or to the less worthy, sins against commutative justice toward the state, and against distributive justice, by acceptance of persons, toward the worthier.

> Resp. *communius et probabilius affirmative ; quia haec officia sunt pariter primario et principaliter ordinata ad bonum commune reipublicae. Unde qui illa distribuit indignis, aut minus dignis, peccat contra iustitiam commutativam erga rempublicam, et contra distributivam, acceptione personarum, erga digniores.*

[26] *You will say*: He who holds dominion over some thing, and can sell it, is not an acceptor of persons if he hands it over or sells it to whom he wills. Now the prince or the state holds dominion over secular offices, and can sell them. Therefore.

> Dices *: Qui habet dominium alicuius rei, et ipsam vendere potest, non est acceptor personarum, si illam tradat aut vendat cui vult. Atqui princeps seu respublica habet dominium officiorum saecularium, et ipsa vendere potest. Ergo.*

[27] *I answer*: *I distinguish* the major. If that thing is so much its own property that it is not to be appropriated to the common utility of the state, *I concede*; if it is to be appropriated to the common utility of the state, as public offices are, *I deny*. — To the minor [472] Indeed, speaking absolutely and from the nature of the thing, secular offices can be sold; because the dignity, the ample stipend, the occasion of gain, and similar things annexed to these offices are assessable in price. But they must be sold to the worthier and for a moderate price, lest poor but more suitable men be shut out from them, and lest those who buy at an immoderate price practice rapine and extortion to keep themselves whole. And because they are accustomed to be sold indiscriminately to the higher bidders and at an immoderate price, without regard to greater or lesser unworthiness or worthiness, therefore it is not expedient that they be sold.

[472] D. Thom., Opusc. XXI, 1, 5°.

> Resp. *Dist. mai. Si res illa sit ita propria, ut non sit communi reipublicae utilitati approprianda, conc. ; si sit communi reipublicae utilitati approprianda, ut sunt officia publica, nego. — Ad minorem[472] Equidem, absolute loquendo et ex natura rei, officia saecularia possunt vendi ; quia dignitas, pingue stipendium, lucri occasio, et similia his officiis annexa,*

sunt pretio aestimabilia. Verum vendenda sunt dignioribus et modico pretio, ne pauperes magis idonei ab iis arceantur, et qui emunt immodico pretio, rapinas et concussiones exerceant, ut se servent indemnes. Et quia solent vendi indifferenter plus offerentibus et immodico pretio, non attendendo ad indignitatem vel dignitatem maiorem vel minorem, ideo non expedit ea vendi.

[472] *D. Thom., Opusc. XXI, 1, 5°.*

28 *You will ask* 4° what qualities are necessary for duly obtaining benefices.

Petes *4° quae sint qualitates ad beneficia rite obtinenda necessariae.*

29 *I answer*. The first is probity of life. The second is learning, which must be such as the office annexed to the benefice requires. The third is legitimate age, namely for the episcopate, the completed thirtieth year; for benefices having the care of souls, the completed twenty-fourth year; for a canonry of a cathedral church that age is required that the one receiving the benefice may be able within a year to receive the order annexed to that benefice; for other canonries and any simple benefices, the begun fourteenth year. The fourth, legitimate title, without which, or without a dispensation, the conferral is void. The fifth, clerical tonsure. The sixth, celibacy, so that a conferral made to a married man is null. The seventh is immunity from major excommunication, suspension, interdict, and irregularity. The eighth is immunity from heresy in oneself and in one's parents up to the second generation according to the paternal line, and up to the first according to the maternal line. The ninth is a determined intention of taking up the office annexed to the benefice, or, if none be annexed, of persevering in the clerical state. Hence he sins mortally who accepts a benefice with the mind of enjoying its fruits until, for example, he has finished his studies, or found a suitable wife, intending afterwards to resign it; and if it be a parochial benefice, he is held to restitute the fruits received. The last condition is that another benefice not be conferred on one who already has one without cause. Hence

Resp. *Prima est probitas vitae. Secunda est scientia, quae talis esse debet, qualem requirit officium beneficio annexum. Tertia est aetas legitima, nempe ad episcopatum, annus trigesimus completus ; ad beneficia curam animarum habentia, vigesimus quartus completus ; ad canonicatus ecclesiae cathedralis requiritur illa aetas, ut qui accepit beneficium, possit intra annum suscipere ordinem qui huic beneficio est annexus ; ad alios canonicatus et quaevis beneficia simplicia, annus decimus quartus inchoatus. Quarta, titus legitimus, sine quo, aut sine dispensatione, collatio est irrita. Quinta, tonsura clericalis. Sexta, caelibatus, ita quod collatio facta coniugato sit nulla. Septima est immunitas ab excommunicatione maiori, suspensione, interdicto et irregularitate. Octava est immunitas ab haeresi in se et in parentibus usque ad secundam generationem secundum lineam paternam, et usque ad primam secundum lineam maternam. Nona est determinata intentio suscipiendi officium beneficio annexum, seu, si nullum sit annexum, perseverandi in statu clericali. Unde peccat mortaliter, qui accipit beneficium eo animo ut eius fructibus potiatur donec, v. g., absolverit studia, vel uxorem convenientem repererit, postea dimissurus, et si sit beneficium parochiale, tenetur restituere fructus perceptos. Ultima conditio est ut habenti unum beneficium non conferatur aliud sine causa. Hinc*

30 *You will ask* 5° whether it is lawful to possess several benefices at once.

Petes *5° utrum liceat plura simul beneficia possidere.*

31 *I answer*: that it is illicit by natural and positive law [473], except in certain cases to be assigned below.

[473] Quodlib. IX, a. 15, c.

Resp. *esse illicitum iure naturali et positivo[473], nisi in certis casibus infra assignandis.*

[473] *Quodlib. IX, a. 15, c.*

32 By natural law; because for one man to hold several benefices at once contains in itself several disorders. First, the Church is deprived of a number of ministers and their service, since it is not possible for one man to serve several churches, and then prebends were established as it were stipends for those ministering there. Secondly, there follows a diminution of divine worship, while one man is instituted in place of many; for he who holds several prebends does not recite the hours, sing, or celebrate Mass more often, etc. Thirdly, there follows the frustration of the will of the founders, who contributed something to this church precisely so that, according to the number of benefices, there would be a number of beneficiaries ministering to God there. Fourthly, there follows inequality, while one man abounds in several benefices, and others equally or perhaps more suitable cannot obtain even one. Add that plurality of benefices is a foment of ambition, avarice, gluttony, lust, and many other vices.

Iure naturali ; quia unum habere plura simul beneficia, continet in se plures inordinationes. Primo destituitur Ecclesia numero et obsequio ministrorum, cum non sit possibile unum in pluribus ecclesiis deservire, et tunc praebendae sunt ordinatae quasi quaedam stipendia ibidem ministrantium. Secundo, sequitur diminutio cultus divini, dum unus loco plurium instituitur ; non enim qui habet plures praebendas, pluries vel horas recitat, psallit, vel celebrat missam, etc. Tertio, sequitur frustratio voluntatis fundatorum, qui ad hoc aliqua huic ecclesiae contulerunt, ut secundum numerum beneficiorum esset numerus beneficiatorum ibidem Deo ministrantium. Quarto, sequitur inaequalitas, dum unus pluribus beneficiis abundat, et alii aeque aut forte magis idonei nec unum habere possunt. Adde, pluralitatem beneficiorum esse fomentum ambitionis, avaritiae, crapulae, luxuriae et plurium aliorum vitiorum.

33 By positive law. Cap. *Sanctorum*, dist. 70; cap. *Clericis* and cap. *Clericum*, causa 21, q. 1. Which ancient law the Tridentine confirms and renews, sess. xxiv, cap. 17 de Reform., in these words: « The holy synod... commands by the present decree that hereafter only one ecclesiastical benefice be conferred on each man, which indeed should suffice for his honorable support for life; nevertheless another simple one sufficient may be conferred on the same man, provided neither requires personal residence. »

Iure positivo. Cap. Sanctorum*, dist. 70 ; cap.* Clericis *et cap.* Clericum*, causa 21, q. 1. Quod ius antiquum confirmat et innovat Trid., sess. xxiv, cap. 17 de Reform. his verbis : « Sancta synodus... praesenti decreto mandat observari, ut in posterum unum tantum beneficium ecclesiasticum singulis conferatur, quod quidem ad vitam eius cui confertur honeste sustentandam sufficiat, liceat nihilominus aliud simplex sufficiens dummodo utrumque personalem residentiam non requirat, eidem conferri. »*

34 I said, « except in certain cases. » The first is the one assigned by the Tridentine: if one benefice does not suffice for the honorable support of the beneficiary and his dependents in need.

Dixi, « nisi in certis casibus. » Primus est quem assignat Trid., si unum beneficium non sufficiat ad honestam beneficiarii et suorum egentium sustentationem.

35 The second. A dignity, for example a deanship or provostship, can be held together with a canonry in the same church. Thus declared the Congregation of the Council of Trent, 13 January 1594, as Gallemart testifies, on cap. 17 cited. And rightly; for these dignities

Secundus. Dignitas, v. g., decanatus aut praepositura, potest possideri cum canonicatu in eadem Ecclesia. Ita declaravit Congregatio concilii Trid., 13 ianuarii 1594, teste Gallemart, in cap. 17 cit. Et bene ; istae enim dignitates

36 [474] are more fittingly, and perhaps according to the intention of the founders, conferred on one man from the bosom [of the chapter].

474 Ibid.

> *[474] convenientius, et forte ex intentione fundatorum, conferuntur uni ex gremio.*
>
> *474 Ibid.*

37 The third is, if a parish church is legitimately annexed to a canonry, because a benefice perpetually annexed to another is reckoned as one with it.

> *Tertius est, si ecclesia parochialis sit legitime annexa canonicatui, quia beneficium alteri perpetuo annexum censetur unum cum alio.*

38 The fourth is the greater utility or necessity of the Church [475], as if someone on account of eminent learning or virtue could profit the Church more absent than another present, or by reason of power and authority could more effectively defend the Church against heretics or others; for this reason the supreme Pontiffs often dispense with the princes of Germany, that they may hold several bishoprics at once. In this last case the dispensation of the Pontiff is required, who alone can dispense in the law of the universal Church. More on plural benefices, when we treat of Religious.

475 Ibid.

> *Quartus est maior Ecclesiae utilitas aut necessitas[475], ut si quis propter eminentem scientiam vel virtutem possit plus proficere absens, quam alius praesens, vel ratione potentiae et authoritatis posset efficacius Ecclesiam tueri contra haereticos aut alios ; qua ratione SS. Pontifices saepe dispensant cum principibus Germaniae, ut plures episcopatus simul possideant. In hoc ultimo casu requiritur dispensatio Pontificis, qui solus potest dispensare in lege Ecclesiae universalis. De beneficiis plura, dum de Religione.*
>
> *475 Ibid.*

On taxes

1 Under the name of tax we here understand everything that is customarily paid to the prince or the state by private persons, whether it be a tax properly so called, a toll, a road-duty, a tallage, and similar burdens, in which an acceptance of persons is not infrequently committed.

> *Nomine tributi hic intelligimus omne id quod principi vel reipublicae a privatis solvi solet, sive sit tributum proprie dictum, sive vectigal, sive pedagium, sive tallia et similia onera, in quibus non raro committitur acceptio personarum.*

2 *You will ask* 1° what conditions are required for taxes to be imposed licitly.

> Petes *1° quae conditiones requiruntur ut tributa licite imponantur.*

3 *I answer*: three are commonly required. The first is legitimate authority. The second is a just cause, which ordinarily is the public good; yet sometimes it can also be vengeance upon rebellious subjects or defeated enemies, by reason of just punishment or reparation of damages. The third is due proportion, such that, as far as possible, each one be burdened according to his means — not the poor more than, nor equally with, the rich, nor one merchant more than another of the same condition. For common burdens must be distributed so that they are borne by each according to his rate, and those who can more should be burdened more; otherwise distributive justice is not preserved, but there is an acceptance of persons.

> Resp. *tres communiter requiri. Prima est authoritas legitima. Secunda est iusta causa, quae ordinarie est bonum publicum ; potest tamen etiam aliquando esse vindicta in subditos rebelles vel hostes victos, ratione iustae punitionis aut reparationis damnorum. Tertia est debita proportio, sic ut, quantum fieri potest, unusquisque secundum suas facultates gravetur, non magis, nec aeque pauperes ac divites, non magis unus mercator quam alter eiusdem conditionis. Onera enim communia sic distribuenda sunt, ut secundum ratam a quovis tolerentur, et qui plus possunt plus graventur ; alioquin non servatur iustitia distributiva, sed est acceptio personarum.*

4 These three conditions therefore concurring, princes licitly impose and exact taxes; because, since it devolves on the prince by his office and by the will of the people to administer the state, care for the common good, provide for common necessities, etc., and he cannot have the necessary equipment for these except through taxes, the prince can by right impose and exact them, as regards his own decent state and that of his officials and public necessities, as necessary and sufficient.

> *His itaque tribus conditionibus concurrentibus, principes licite tributa imponunt et exigunt ; quia, cum principi ex officio et voluntate populi incumbat administrare rempublicam, curare bonum commune, necessitatibus communibus prospicere, etc., nec ad haec suppellectilem necessariam, nisi mediantibus tributis, iure potest princeps illa imponere et exigere quantum ad suum et suorum officialium decentem statum et necessitates publicas, necessarium est et sufficiens.*

5 *You will ask* 2° whether it is lawful to defraud taxes.

> Petes 2° *utrum sit licitum defraudare tributa.*

6 *I answer*: To defraud just taxes, whether they are demanded or not, is, by its genus, mortal sin against justice — not only legal but also commutative justice — and consequently obliging to restitution.

> Resp. *Defraudare iusta tributa, sive petantur, sive non, est ex genere suo peccatum mortale contra iustitiam, non solum legalem, sed etiam commutativam, proindeque obligans ad restitutionem.*

7 *It is proved* 1° from the Apostle, *Rom.*, XIII, 5-7, who says: Be subject of necessity, not only for wrath, but also for conscience' sake. For for this reason also you pay tribute; for they are the ministers of God, serving unto this very thing. Render therefore to all their dues: tribute to whom tribute is due, toll to whom toll.

> Prob. *1° ex Apostolo,* Rom.*, XIII, 5-7, dicente : Necessitate subditi estote, non solum propter iram, sed etiam propter conscientiam. Ideo enim et tributa praestatis ; ministri enim Dei sunt in hoc ipsum servientes. Reddite ergo omnibus debita : cui tributum, tributum ; cui vectigal, vectigal.*

8 *It is proved* 2° by reason. Taxes are debts owed to the prince by the people, not only by legal justice, by which the parts are bound to contribute to the good of the whole, but also by commutative justice. Therefore defrauding, etc. — *It is proved* beforehand: by the very fact that the people transferred authority and the administration of the state to the prince, it tacitly promised him a just stipend for his function and the subsidies necessary for right administration, as has already been said. Therefore, once the law of taxation is posited — by which this obligation of the whole people is distributed among individuals, each one's share assigned, and the things in which payment is to be made determined — individuals are bound in justice to their own quota. — The consequence is clear; because by whatever obligation the whole people is bound in general to the necessary expenses, by that obligation individuals are bound in particular to their quota legitimately assessed.

Prob. 2° *ratione. Tributa sunt debita principi a populo, non solum ex iustitia legali, qua partes tenentur concurrere ad bonum totius, sed etiam ex iustitia commutativa. Ergo defraudare, etc.* — Prob. *ant. Hoc ipso quo populus transtulit in principem authoritatem et reipublicae administrationem, tacite promisit illi iustum functionis stipendium et subsidia rectae administrationi necessaria, ut iam dictum est. Ergo, posita lege tributi quae haec totius populi obligatio in singulos distribuitur, assignata cuique sua portione, et determinatis rebus in quibus est solvendum, singuli tenentur ex iustitia ad illam suam quotam. — Patet consequentia ; quia qua obligatione tenetur totus populus in genere ad sumptus necessarios, ea tenentur singuli in particulari ad suam quotam legitime taxatam.*

9 I said in the conclusion, « whether they are demanded or not, » regard being had namely to the nature of the debt; because it can be otherwise, regard being had to custom. For in certain places a custom has prevailed that taxes are not paid unless demanded. In these places, therefore, a passing merchant is not held to pay the toll if no one is present to demand it, provided however fraud be absent, as would happen if he hid his merchandise, fled, turned aside from the public road lest he be seen by the collectors, or otherwise deceived them.

Dixi in conclusione, « sive petantur, sive non, » attenta scilicet natura debiti ; quia aliter esse potest attenta consuetudine. In certis enim locis consuetudo obtinuit ut tributa non solvantur nisi petita. In his ergo locis mercator transiens non tenetur solvere vectigal, si nemo adsit qui petat, modo tamen absit fraus, ut accideret, si merces absconderet, fugeret, diverteret a via publica ne videretur ab exactoribus, aut aliter deciperet.

10 *Note well.* With the tax laws must not be confused the laws which, without imposition of a duty, simply prohibit certain goods commonly called *contraband* from being carried out of a province or brought into it. Those who transgress these laws are not held to restitution of the duty, because there is none, nor to the penalty before the sentence of the judge, because it is a punishment.

Nota bene. *Cum legibus tributalibus non sunt confundendae leges quae, absque impositione vectigalis, simpliciter prohibent evehi e provincia, aut in eam invehi certas merces vulgo* contrebandes. *Qui enim has leges transgrediuntur, non tenentur ad restitutionem vectigalis, quia non est, neque ad mulctam ante sententiam iudicis, quia est poena.*

11 Whether, however, such laws oblige in conscience, and whether transgressors are held for the damage that thence accrues to the state or to the farmers of the revenue, let others say. I know indeed that many assert these laws to be merely penal, and to bind only to the penalty after the sentence of the judge, and that thus princes have declared more than once in France and in Belgium. But that does not stand established for me. I confess, however, that men even of probity usually apprehend them thus; for you would scarcely find anyone who makes a scruple to himself if he transfers money, Indian cloths, tobacco, or other things of this kind from kingdom to kingdom, or at least buys them and uses them, although not only the bringing in but even the use is prohibited. As regards damages, it seems these are sufficiently compensated by the penalties which transgressors caught are forced to pay, which not rarely happens. Moreover the farmers of the revenue presuppose these defraudations when they contract with the prince, and therefore contract at a lower price. But in all this I would not wish to give assurance. This one thing I affirm: that those gravely sin who carry on this traffic when it is prohibited under pain of death; because it is not lawful to expose oneself to the danger of so great a penalty for temporal gain. Likewise when they intend to defend themselves with offensive weapons against the guards.

Utrum vero tales leges obligent in conscientia, et utrum transgressores teneantur de damno quod inde reipublicae vel redemptoribus obvenit, dicant alii. Scio quidem plures asserere has leges esse mere ponales, nec obligare nisi ad mulctam post sententiam iudicis, et sic non semel declarasse principes in Gallia et in Belgio. At id mihi non constat. Fateor tamen

sic plerumque homines etiam probos apprehendere ; vix enim ullum reperias qui sibi faciat scrupulum, si vel pecunias, vel telas indicas, vel tabacum, vel alias huiusmodi res de regno in regnum transferat, aut saltem eas emat et eis utatur, cum tamen non solum invectio, sed et usus prohibeatur. Quantum ad damna, videtur haec sufficienter compensari per mulctas quas solvere coguntur transgressores deprehensi, quod non raro accidit. Insuper redemptores has defraudationes supponunt, dum contrahunt cum principe, et ideo viliori pretio contrahunt. Caeterum in his omnibus securitatem dare nolim. Id unum affirmo, eos graviter peccare qui hanc negotiationem exercent, quando prohibetur sub poena mortis ; quia non licet se tantae poenae periculo exponere pro lucro temporali. Item quando intendunt se armis offensivis contra custodes defendere.

12 [The other opinion denies that sin is committed by the defrauders, and that they are bound to restitution, holding universally that tax laws are merely penal. The reason is, 1° because such laws are enacted generally under pain, and indeed under grave pain: hence it is rightly presumed that the legislator does not will to bind without fault. 2° If all taxes were paid integrally, they would exceed the public necessity. 3° Moreover, the penalty, the mulct imposed on those whose frauds are detected, amply compensates other frauds, and thus the intended end is attained. « But whether, » says St. Alphonsus [476], « on account of these reasons, which moreover do not seem contemptible, this opinion itself is sufficiently probable, I remit to the wiser. » Here it must be noted that, since the reasons by which this opinion is supported seem non-contemptible to the holy Doctor, that opinion itself ought to have appeared truly probable to him. Elsewhere he says [477]: « I do not fail to recommend the first opinion (thus expounded). » He would not merely recommend it but would even impose it, if he held the opposite opinion as improbable.

476 Lib. IV, n. 616.

477 Homo apost., X, 81.

[Altera sententia negat peccatum a fraudantibus committi, et eos ad restitutionem adstringi, tenens universim leges tributarias esse mere poenales. Ratio est, 1° quia tales leges generatim sub poena, et quidem sub gravi poena feruntur : unde recte praesumitur legislatorem nolle sine culpa obligare. 2° Si omnia tributa integre solverentur, necessitatem publicam excederent. 3° Insuper mulctam, poenam iis quorum fraudes deprehenduntur impositam alias fraudes large compensant, et sic finis intentus attingitur. « An autem, inquit S. Ligorius[476], propter has rationes, quae caeterum non videntur contemnendae, ipsa (haec) sententia sit sufficienter probabilis, sapientioribus remitto. » Ubi advertendum quod, cum rationes quibus fulcitur haec sententia S. Doctori videantur non contemnendae, ipsa sententia vere probabilis ei debuerit apparuisse. Alibi dicit[477] : « Ego non omitto primam sententiam (sic expositam) suadere. » Eam non tantum suaderet, sed etiam imponeret, si opinionem oppositam ut improbabilem haberet.

476 Lib. IV, n. 616.

477 Homo apost., X, 81.

13 A third opinion takes the middle way and says: Those defrauding taxes sin, since the edicts of the prince are not easily to be reprehended; but they are not held to restitution. The reason is that subjects must indeed keep the laws and pay the taxes, but no otherwise than the prince himself is bound to govern them, namely by legal justice alone, from whose violation no obligation of restitution arises. Otherwise, this question is commonly apprehended in our times, both because many excessive taxes have been made; and because certain taxes, and perhaps many, must be reckoned unjust; and finally because defraudations are compensated by the penalties applied, which for this end have been enacted heavy and most heavy. So several recent authors.

Tertia sententia viam mediam tenet et dicit : Peccant fraudantes tributa, quia edita principis non sunt facile reprehendenda ; sed non tenentur ad restitutionem. Ratio est, quia subditi debent quidem leges servare et tributa solvere, sed non secus ac ipse princeps tenetur illas gubernare, videlicet ex sola iustitia legali, a cuius laesione non oritur restitutionis obligatio. Aliunde, ita communiter apprehenditur haec quaestio hodiernis temporibus, tum quia multa tributa excessiva facta sunt ; tum quia tributa quaedam, et forte plura, reputanda sunt iniusta ; tum denique quia fraudationes compensantur mulctis applicatis, quae in hunc finem graves et gravissimae sunt edicta. Ita plures recentiores.

14 Moreover, the question does not seem to be solved by a general rule. For it depends on the mind of the legislator and on the usual interpretation, which can vary for different times and places, indeed even for different taxes. Thus, for example, in England the tax laws are thought, probably, to bind in no other way than after the manner of penal laws [478]. In France, the laws concerning indirect taxes are rather commonly reckoned penal, especially as regards the law of succession in the direct line, but by no means the laws concerning direct taxes [479].

478 Crolly, de Restit., n. 1032.

479 Marc., Instit. moral. Alphons., n. 967.

Caeterum, quaestio non videtur regula generali solvenda. Pendet enim ex mente legislatoris et ex interpretatione usuali, qua pro variis temporibus ac locis, imo et variis tributis, variari possunt. Sic, v. g., in Anglia, verisimiliter leges tributariae non aliter quam ad modum legum paenalium obligare existimantur[478]. In Gallia, poenales satis communiter reputantur leges de tributis indirectis, praesertim pro iure successionis in linea recta, minime vero leges de tributis directis[479].

478 Crolly, de Restit., n. 1032.

479 Marc., Instit. moral. Alphons., n. 967.

15 In this conflict of opinions, recourse seems to be had to the practical rule proposed by Cardinal De Lugo [480]: « To me, » he says, « the counsel of Fr. Molina has always been most pleasing...: before the act, that care be taken that taxes not be defrauded; after the act, if the penitent certainly or probably persuades himself that in so great a multitude of taxes there is some unjust one..., he is not to be compelled by the confessor to restitution; yet this doctrine is to be used prudently, both lest they make the sacrament of Penance too burdensome, and lest they shut out the way of salvation from many who, if bound by the confessor, would not restitute and would incur eternal damnation. » So also Bonacina [481], Vogler [482], Scavini [483], Rousselot [484].

480 Dist. 36, n. 43.

481 Disput. 2, de Restit., q. 9, punct. 1, prop. 2.

482 N. 332.

483 De Restit., cap. 1,

484 Not. ad theol. mor. Saettler, de Legib., part. 2, c. 2, a. 3.

In hoc sententiarum conflictu, standum esse videtur regulae practicae a card. De Lugo propositae[480] : « Mihi, inquit, semper maxime placuit consilium P. Molinae... : ante factum consulendum esse ne tributa defraudentur ; post factum, si poenitens sibi certo aut probabiliter persuadeat in tanta tributorum multitudine esse aliquid iniustum..., non esse cogendum a confessario ad restitutionem ; hac tamen doctrina prudenter utendum esse, tum ne sacramentum

Poenitentiae reddant nimis grave, et ne viam salutis praecludant multis, qui, si a confessario obligentur, non restituent et aeternam damnationem incurrent. » Ita etiam Bonacina[481]*, Vogler*[482]*, Scavini*[483]*, Rousselot*[484]*.*

[480] *Dist. 36, n. 43.*

[481] *Disput. 2, de Restit., q. 9, punct. 1, prop. 2.*

[482] *N. 332.*

[483] *De Restit., cap. 1,*

[484] *Not. ad theol. mor. Saettler, de Legib., part. 2, c. 2, a. 3.*

16 Cardinal Gousset, although he generally stands for the obligation, recommends the same prudence toward penitents [485].

[485] N. 999.

Card. Gousset, quamvis generaliter stet pro obligatione, eamdem prudentiam erga poenitentes commendat[485]*.*

[485] *N. 999.*

17 St. Alphonsus relates this rule and seems to approve it [486]]

[486] Lib. IV, n. 616, in fine.

Hanc regulam refert et approbare videtur S. Ligorius[486]*]*

[486] *Lib. IV, n. 616, in fine.*

18 *You will ask* 3° whether taxes whose justice is doubted must be paid in conscience.

Petes *3° utrum tributa de quorum iustitia dubitatur solvi debeant in conscientia.*

19 Now the reason for doubting the justice of a tax, say weighty authors, is when new taxes are imposed or old ones increased; likewise when there is a common persuasion among the people, especially among the upright and learned, that those things which are imposed or increased under pretext of necessity are expended on unnecessary uses, or exacted in greater quantity than the necessity requires. For so many conditions, they say, are required for the justice of imposing or increasing a tax, that amid so great a multitude of taxes with which peoples are burdened in these times, it may deservedly be presumed that some are unjust, and many uncertain and doubtful. In confirmation of this they adduce cap. *Quanquam*, de Censibus, in 6°, lib. III, tit. 20, where Boniface VIII says that exactions of road-duties « regularly » merited condemnation both against canon and civil law, because « regularly » some condition of regulated [exaction] is lacking. The question, I say, is very perplexed: are taxes in such a case necessarily to be paid in conscience?

Est autem ratio dubitandi de iustitia tributi, inquiunt graves authores, quando nova tributa imponuntur aut antiqua augentur ; item quando est communis persuasio in populo, maxime in probis et doctis, ea quae praetextu necessitatis imponuntur aut augentur, in non necessarios usus expendi, aut in maiori quantitate exigi quam necessitas requirat. Tot enim, inquiunt, conditiones requiruntur ad iustitiam tributi imponendi vel augendi, ut in tanta tributorum multitudine qua his temporibus gravantur populi, merito praesumatur quaedam esse iniusta, plura incerta et dubia. In cuius rei confirmationem producunt cap. Quanquam, *de Censibus, in 6°, lib. III, tit. 20, ubi Bonifacius VIII dicit, « pedagiorum exactiones tam contra canonica quam civilia regulariter merito esse damnata, quia « regulariter » deest aliqua conditio regulatae ». Quaestio, inquam, valde perplexa est : an in tali casu tributa sint necessario in conscientia solvenda ?*

20 Some affirm; because in doubt whether a law is just or unjust, presumption must be in favor of the superior, that he commands justly rather than unjustly; nor is it for subjects to recall their precepts to examination. So Sylvius, Carasutius, and others.

> *Quidam affirmant ; quia in dubio an lex sit iusta vel iniusta, praesumendum est in favorem superioris, ut iuste praecipiat, potius quam iniuste ; nec subditorum est eorum praecepta ad examen revocare. Ita Sylvius, Carasutius et alii.*

21 Some deny; because in doubt the condition of the possessor is better. Now the subject possesses his goods and immunity from tax. For this opinion Sylvester, St. Antoninus, Cajetan, Peter Navarre, Fumus, Arrigon, Medina, Gabriel, and many others are cited.

> *Quidam negant ; quia in dubio est melior conditio possidentis. Subditus autem possidet res suas et immunitatem a tributo. Pro hac sententia citantur Sylvester, S. Antoninus, Caietanus, Petrus Navarrus, Fumus, Arrigon, Medina, Gabriel et alii plures.*

22 If I may open my own opinion among so great men, I will say that neither foundation seems to me firm enough.

> *Si inter tantos viros sententiam nostram aperire licet, dicam neutrum fundamentum mihi videri satis firmum.*

23 Not the first; because it must not, at least totally, be presumed in favor of the superior, when his own interest is in question and the damage is the subject's: his own interest, because it cannot be feared without reason that he may be partial and favor himself; the subject's damage, because then it seems equitable that the subject, before he be despoiled of his property, inquire whether he truly owes. Hence in cap. *Pervenit*, de Censibus, Decretal. lib. III, tit. 39, it is said: « It behooves that every census be known beforehand as to what and when it must be paid. » This will be elucidated presently.

> *Non primum ; quia non est, totaliter saltem, praesumendum in favorem superioris, quando agitur de interesse ipsius et de damno subditi : de interesse ipsius, quia non sine iure timeri potest ne sit partialis et sibi faveat ; de damno subditi, quia tunc aequum videtur ut subditus, antequam a re sua spolietur, inquirat an vere debeat. Unde cap.* Pervenit*, de Censibus, Decretal. lib. III, tit. 39, dicitur : « Oportet ut omnis census ad quid et quando persolvi debeat praesciatur. » Id modo magis elucidabitur.*

24 Not the second; because possession does not render the condition of the possessor better except insofar as it imports a presumption of truth in his favor, as I said elsewhere. Which does not run here. For from the fact that the subject possesses his goods and immunity, no presumption thence arises that the tax is rather unjust than just. Moreover, if the subject possesses his goods, the superior possesses the authority of commanding; and thus one possession is compensated by the other.

> *Non secundum ; quia possessio non reddit meliorem conditionem possidentis, nisi in quantum importat praesumptionem veritatis in favorem illius, ut dixi alibi. Quod hic non currit. Ex eo enim quod subditus res suas et immunitatem possideat, non habetur inde praesumptio quod tributum sit potius iniustum quam iustum. Insuper, si subditus possideat res suas, superior possidet authoritatem praecipiendi ; sicque una possessio compensatur per alteram.*

25 Therefore, saving better judgment, I judge it must be said of doubtful taxes what I said elsewhere of other doubtful debts, namely that they must be paid pro rata of the doubt, so that subjects are neither altogether free from paying them nor compelled to pay them integrally: lest, on the one hand, if you exempt subjects from paying doubtful taxes, you harm the prince, to whom they are perhaps owed, and unjustly withdraw subjects from the obedience owed him; and, on the other, lest, if you

compel integral payment, you inflict damage on subjects who perhaps do not owe it. Therefore the doubtful tax must be paid, lest the danger of committing injustice be incurred; yet it is not to be paid entirely, because a doubtful debt is not of such value as a certain debt. See Dissert. de Restit., art. 3, *You will ask* 13°. Yet I would not wish in this matter to make the subject a judge in his own cause; but let him consult upright and learned men who, regard being had on the one side to the reason of the doubt, and on the other to the quantity of his goods or business, may say in equity how much he ought to pay, and let him stand by their judgment. And what I say of the very payment of the doubtful tax, the same must be said of the restitution of what was not paid.

> *Itaque, salvo meliori iudicio, arbitror dicendum de tributis dubiis quod alias dixi de caeteris debitis dubiis, nempe esse solvenda pro rata dubii, ita quod ab iis solvendis non sint omnino liberi subditi, neque ad haec integre solvenda cogantur : ne, ex una parte, si a solutione tributorum dubiorum subditos eximas, noceas principi, cui forte debentur, et ab obedientia ipsi debita subditos iniuste subtrahas ; et ex altera, ne, si ad integram solutionem cogas, damnum inferas subditis, qui ea forte non debent. Igitur solvendum est tributum dubium, ne incurritur periculum committendi iniustitiam ; neque tamen est totum solvendum, quia debitum dubium non est tanti valoris, quanti est debitum certum. Vide Dissert. de Restit., art. 3,* Petes *13°. Nolim tamen in hac parte constituere subditum iudicem in propria causa ; sed consulat viros probos et doctos qui, attenta, ex una parte, ratione dubii, et ex altera, quantitate bonorum aut negotiationis, dicant ex aequo et bono quantum solvere debeat, et eorum stet iudicio. Quod autem dico de ipsa solutione tributi dubii, idem est dicendum de restitutione non soluti.*

26 Nor does the most learned Sylvius seem alien to this opinion — otherwise standing in doubt for the party of the prince — when he says q. 66, a. 8, concl. 7: « If anyone defrauds of those duties as much as he in good faith judges himself burdened more than fairly, he neither sins nor is held to restitution. Which the confessors ought to remember, when the restitution of defrauded duties is to be enjoined. »

> *Neque ab hac sententia videtur alienus doctissimus Sylvius, alioquin stans in dubio pro parte principis, dum dicit q. 66, a. 8, concl. 7 : « Si quis fraudet de illis vectigalibus quantum bona fide existimat se plus aequo gravari, neque peccat, neque tenetur ad restitutionem. Quod meminisse oportet confessarios, quando agitur de fraudatorum vectigalium restitutione iniungenda. »*

27 [It has already been said elsewhere that this solution, namely that in doubt about the justice of a tax payment must be made pro rata of the doubt, cannot be admitted: 1° because it would be difficult, indeed impossible, to determine the comparative weight of the arguments which fight for and against the legislator; 2° because, when a doubtful obligation is in question, it must be examined and decided whether it exists or not, and as long as it does not clearly appear to exist, one must practically hold it as none. Hence either it must be fulfilled entirely, or it can be left entirely. This results from the principle laid down and proved in the question on Probability, in the treatise on Human Acts.

> *[Iam dictum est alibi hanc solutionem, nempe in dubio de iustitia tributi solvendum esse pro rata dubii, admitti non posse, 1° quia difficile, imo impossibile esset determinare comparative pondus rationum quae pro legislatore et contra eum militant ; 2° quia, cum de obligatione dubia agitur, examinandum et decernendum est an existat, vel non, et quamdiu non clare apparet eam existere, licet practice eam ut nullam habere. Unde vel tota adimplenda est, vel tota relinqui potest. Hoc resultat ex principio posito et probato in quaestione de Probabilitate, in tractatu de Actibus humanis.*

28 The difficulty, therefore, must be solved otherwise.

> *Aliter ergo solvenda est haec difficultas.*

29 Lessius [487], and with him several others, say the tax must be paid when the doubt is merely negative, that is, when it is simply unknown whether the tax is just; because then nothing positive can be invoked in favor of the taxpayer, and on the contrary the presumption stands for the prince, whose authority is in possession of commanding. But if the doubt is positive, and there is a true presumption about the injustice of the tax, Cardinal De Lugo [488], with Molina, denies that the tax must be paid in conscience: because the obligation is not certain; the subject possesses at once his liberty and his money, of which he ought not be deprived except by a certain title; besides, the burden of proving his law just falls on the prince, the asker of money. This opinion, however, the aforesaid authors limit: new taxes, whose cause does not appear sufficiently just; for taxes which for a long time have been paid peacefully by all are presumed just, unless their cause has wholly ceased.

487 Lib. II, cap. 33, dub. 8, n. 64.

488 De iustit., dist., n. 89.

> *Lessius[487], et cum eo plures, dicunt tributum solvi debere, cum dubium est mere negativum, id est cum simpliciter nescitur an tributum sit iustum ; quia tum nihil positive invocari potest in favorem tributarii, et contra praesumptio stat pro principe, cuius authoritas est in possessione praecipiendi. Si vero dubium sit positivum, et adsit vera presumptio de iniustitia tributi, negat card. De Lugo[488], cum Molina, tributum in conscientia esse solvendum : quia obligatio non est certa ; subditus possidet simul suam libertatem et suam pecuniam, quibus privari non debet nisi ex titulo certo ; aliunde principi, aës petenti, incumbit onus probandi suam legem esse iustam. Hanc vero sententiam limitant praefati authores : tributa nova, quorum causa non satis apparet ut iusta ; tributa enim quae a longo tempore ab omnibus pacifice fuerunt soluta praesumuntur iusta, nisi eorum causa penitus cessaverit.*
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> *487 Lib. II, cap. 33, dub. 8, n. 64.*
>
> *488 De iustit., dist., n. 89.*

30 *You will say*: There is a rule of law that « in doubt the law is presumed just. » Therefore equally also the tax.

> Dices *: Est regula iuris quod « in dubio lex praesumitur iusta. » Ergo pariter et tributum.*

31 *I answer*: I deny the parity. Indeed the presumption stands for the legislator in ordinary laws, because his authority is in possession of commanding, and obedience cannot be denied or suspended unless it be proved or must be presumed from grave reasons that the law is unjust; which burden falls on the subject. On the contrary, in tax laws, the burden of proving the justice of the law falls on the prince. For laws of this kind are odious, and rule 15a of law in 6° applies to them: « Odious things must be restricted, and favors amplified. » Moreover, it is commonly taught that the subject is not held in doubt to obey when the command is too difficult, or inflicts grave damage on him, by this other rule of law: « In doubt favor must be shown to him whose damage is in question. » Furthermore, the payment of an unjust tax is a most damaging thing (?).

> Resp. *Nego paritatem. Stat quidem praesumptio pro legislatore in legibus ordinariis, quia eius authoritas est in possessione praecipiendi, et obedientia denegari aut suspendi non potest, nisi probetur vel ex gravibus rationibus praesumi debeat legem esse iniustam ; quod onus subdito incumbit. E contra, in legibus tributariis, onus probandi iustitiam legis, incumbit principi. Etenim huius modi leges sunt odiosae, et his applicatur regula 15a iuris in 6° : « Odia restringi et favores convenit ampliare. » Insuper, communiter docetur subditum non teneri in dubio ad obediendum, quando praeceptum est nimis difficile, vel grave damnum illi infert, ex hac altera regula iuris : « In dubio favendum est ei de cuius damno agitur. » Porro solutio tributi non iusti est res damnosissima(?).*

32 Besides, many most weighty doctors say that there are few [tri]butes in which, in establishing them, all the required conditions for their being just are found to have been observed: whence, since the justice of a new tax does not clearly appear, it has against itself a presumption [1]

[1] 1

> *Praeterea, multi et gravissimi doctores dicunt, pauca [tri]buta esse in quibus statuendis constet omnes conditiones requisitas ut sint iusta fuisse observatas : unde, cum iustitia novi tributi clare non apparet, habet contra se praesumptionem*[1]
>
> [1] *1*

33 *You will ask* 4° whether he who buys merchandise from someone whom he knows has unjustly defrauded the duties is held to pay them.

> Petes 4° *utrum qui merces emit ab eo quem scit iniuste defraudasse vectigalia, teneatur illa solvere.*

34 *I answer*: in the negative; because the duty is not a real burden, fixed to the thing, which passes with the merchandise, but a personal burden of the seller, though contracted by the transportation of the thing.

> Resp. *negative; quia vectigal non est onus reale, seu rei affixum, quod transeat cum merce, sed onus personale venditoris, quamvis ex rei transportatione contractum.*

35 Moreover, it must be noted that, although he does not sin precisely from this, that he buys such merchandise, nor is held to restitute the duty, yet if by buying thus he moves another to defraud again, he could sin and be held to restitution, as a cooperator in the damage.

> *Caeterum, notandum quod, quamvis non peccet praecise ex hoc quod emat talem mercem, nec teneatur restituere vectigal, si tamen sic emendo moveat alium ad iterum fraudandum, possit peccare et teneri ad restitutionem, ut cooperator damni.*

36 [It is certain 1° from natural law. For the Church is a society perfect in itself, and insofar as it is spiritual and instituted immediately by God, it is superior to civil society: whence by a double title it is independent of this latter. Hence: 1° as a perfect society, it must be furnished with all the means necessary for attaining its end. Now, since man consists of a twofold substance, namely body and soul, the spiritual good of the faithful cannot suitably and completely be provided for without earthly goods. Therefore there belongs to the Church the right of obtaining earthly goods and possessing them as her own. 2° If civil society had the power of imposing its tax laws on the Church, the Church would not be superior to that society, nor independent of it; for taxes cannot be exacted except from inferiors and subjects. Therefore.]

> *[Constat 1° ex iure naturali. Ecclesia enim est societas in se perfecta, et quatenus est spiritualis et immediate a Deo instituta, societati civili est superior : ex quo duplici titulo est ab hac posteriori independens. Unde : 1° ut societas perfecta, debet instrui omnibus mediis necessariis ad suum finem obtinendum. Atqui, cum homo duplici substantia constet, corpore scilicet et anima, sine bonis terrestribus bonum spirituale fidelium convenienter et complete procurari nequit. Ergo Ecclesia competit ius bona terrestria obtinendi et ut propria possidendi. 2° Si societas civilis potestatem haberet leges suas tributarias Ecclesiae imponendi, Ecclesia non esset huic societati superior, nec ab ea independens; nam tributa exigi non possunt nisi ab inferioribus et subditis. Ergo.]*

37 It is certain 2° from civil law, L. Sancimus. c. de sacrosanctis Ecclesiis, L. I, tit. 2, which is of the emperor Justinian. Novella 1. S. Lig., lib. IV, n. 617.

> *Constat 2° ex iure civili, L. Sancimus. c. de sacrosanctis Ecclesiis, L. I, tit. 2, qua est Iustiniani imperatoris. Novella 1. S. Lig., lib. IV, n. 617.*

38 Likewise many laws, c. de Episcopis et Clericis, ibid., tit. 3, which are of the emperor Frederick. Also cap. In qualibet, causa 23, q. 5, which is of the emperors Constantius and Constans.

> *Item multa, c. de Episcopis et Clericis, ibid., tit. 3, quae Frederici imperat. Item cap. In qualibet, causa 23, q. 5, quod est Constantii et Constantis imperatorum.*

39 It is certain 3° from canon law, cap. Quanguam, de Censibus, in 6°, lib. III, tit. 20, which is of Boniface VIII; cap. Clericis laicis, tit. 23, de Immunit.

> *Constat 3° ex iure canonico, cap. Quanguam, de Censibus, in 6°, lib. III, tit. 20, quod est Bonifacii VIII; cap. Clericis laicis, tit. 23, de Immunit.*

40 The great Fourth Lateran Council, to which besides four hundred and more Bishops there were present eight hundred Abbates as well as Priores, the legates of the Emperor of Constantinople, and of the Kings of the Romans, of the French, the English, the Hungarians, the Aragonese, and of many other princes, under Innocent III, prohibits under anathema that laymen exact taxes from ecclesiastics.

> *Magnum concilium Lateran. IV, cui praeter quadringentos et ultra Episcopos, octingentos tam Abbates quam Priores, aderant legati Imperatoris Constantinopol., Regum Romanorum, Gallorum, Anglorum, Hungarorum, Aragonum, et plurium aliorum principum, sub Innocentio III, prohibet sub anathemate ne saeculares exigant ab ecclesiasticis tributa.*

41 The Council of Vienne, under Clement V, at which with three hundred Bishops the King of France was present, orders the Ordinaries of places to publish the sentences of excommunication and interdict pronounced against those who exact taxes from ecclesiastical persons, for those things which they have not carried, or caused to be carried, for the purpose of trade.

> *Concilium Viennense, sub Clemente V, cui cum trecentis Episcopis aderat Rex Galliae, iubet Ordinariis locorum ut publicent sententias excommunicationis et interdicti latas contra eos qui tributa exigunt a personis ecclesiasticis, pro earum rebus quas non negotiandi causa detulerunt, aut deferri faciunt.*

42 In the bull *In Coena Domini*: « All are excommunicated who, without the special and express license of the supreme Pontiff, impose collections, tithes, tallages, prestations, or other burdens on ecclesiastical persons, or on their goods, whether of churches or monasteries, or exact what is imposed, or receive from those giving spontaneously, or cooperate in these acts in any way whatsoever. » What is said of those giving spontaneously is understood when the collector receives from one who gives before being asked, because it has been imposed.

> *In bulla* In Coena Domini, *« excommunicantur omnes qui absque speciali et expressa licentia summi Pontificis imponunt collectas, decimas, tallias, prestantias aut alia onera personis ecclesiasticis, aut earum bonis, sive ecclesiarum monasteriorum ipsorum, aut imposita exigunt, aut a sponte dantibus recipiunt, aut his actibus quoquo modo cooperantur. » Quod dicitur a sponte dantibus, intelligitur quando exactor recipit ab eo qui dat ante quam petatur, quia impositum est.*

43 The Council of Trent, sess. XXV, cap. 20 de Reform., commands that all the canons and decretes in favor of ecclesiastical persons be observed exactly by all, and it renews them by the present decree.

> *Concilium Trid., sess. XXV, cap. 20 de Reform., praecipit omnes canones et decreta in favorem ecclesiasticarum personarum exacte ab omnibus observari, eaque ore presenti decreto innovat.*

44 [Thus the Council of Trent, at the place cited: « Since the holy Synod desires that ecclesiastical discipline be not only restored in the Christian people, but also preserved perpetually safe and sound against every impediment, besides those things which it has decreed concerning ecclesiastical persons, it judged that secular princes also should be admonished of their office, trusting that they, as Catholics, whom God willed to be protectors of the holy faith and of the Church, will not only grant that their right be restored to the Church, but... will not permit officials or inferior magistrates by any greed or any thoughtlessness to violate the immunity of the Church and of ecclesiastical persons established by God's ordinance and canonical sanctions... It therefore decrees and commands that the sacred canons and general councils, as well as the other apostolic sanctions published in favor of ecclesiastical persons, of ecclesiastical liberty, and against the violators thereof, all of which it also renews by the present decree, must be observed exactly by all. »]

> *[Ita concilium Trident., loco citato : « Cupiens sancta Synodus ecclesiasticam disciplinam in Christiano populo non solum restitui, sed etiam perpetuo sartam tectamque quibuscumque impedimentis conservari, praeter eaque que de ecclesiasticis personis constituit, saeculares quoque principes officii sui admonendos esse censuit, confidens eos, ut catholicos, quos Deus sanctae fidei Ecclesiaeque protectores esse voluit, ius suum Ecclesiae restitui non tantum esse concessuros, sed... nec permissuros ut officiales aut inferiores magistratus Ecclesia et personarum ecclesiasticarum immunitatem Dei ordinatione et canonicis sanctionibus constitutum aliquo cupiditatis studio seu inconsideratione aliqua violent... Decernit itaque et praecipit sacros canones et concilia generalia, necnon alias apostolicas sanctiones in favorem ecclesiasticarum personarum, libertatis ecclesiasticae et contra eius violatores editas, quae omnia praesenti etiam decreto innovat, exacte ab omnibus observari debere. »]*

45 Among the canonical sanctions here alluded to, the constitutions of Alexander IV and Boniface VIII hold the principal place, related in 6° Decretal., lib. III, tit. 23, de Immunit., cap. 1° Quia nonnulli, and 3° Clericis, where are reproved and punished with excommunication « the excesses of laymen who imposed collections, tallages, and burdens on clerics, and the excesses of clerics who consented to such things. »

> *Inter sanctiones canonicas quibus hic alluditur, praecipuum locum obtinent constitutiones Alexandri IV et Bonifacii VIII in 6° Decretal. relatas, lib. III, tit. 23, de Immunit., cap. 1° Quia nonnulli, et 3° Clericis, ubi reprobantur et excommunicatione plectuntur « excessus laicorum qui clericis collectas, tallias et onera imponebant, et excessus clericorum qui talibus consentiebant. »*

46 To this point belongs *Rom.*, XIII, 7: Render to all their dues: tribute to whom tribute, etc. D. Thomas, lect. 2, says: « From this debt, however, clerics are free, by privilege of princes, which indeed has a natural equity. Hence even among the gentiles those were free from taxes who were occupied with divine things. For it is read, *Gen.*, XLVII, 20-22, that Joseph subjected to Pharaoh the whole land of Egypt, except the land of the priests, which had been given to them by the king, to whom also prescribed rations were supplied from the public storehouses. And further on it is said that throughout the whole land of Egypt a fifth part is paid, except the priestly land, which was free from this condition. This, however, is equitable for this reason, that, as kings have care for the public good

in temporal goods, so the ministers of God in spiritual things, and thus by ministering to God in spiritual things they recompense the king for laboring for their peace. »

> *In hunc locum* Rom., *XIII, 7 : Reddite omnibus debita : cui tributum, tributum, etc. D. Thomas, lect. 2, dicit : « Ab hoc tamen debito liberi sunt clerici, ex privilegio principum, quod quidem aequitatem naturalem habet. Unde etiam apud gentiles liberi erant a tributis illi qui vacabant rebus divinis. Legitur enim,* Gen., *XLVII, 20-22, quod Ioseph subiecit Pharaoni totam terram Aegypti, praeter terram sacerdotum, quam a rege tradita fuerat eis, quibus et statuta cibaria ex horreis publicis praebebantur. Et infra dicitur quod in universa terra Aegypti quinta pars solvitur, absque terra sacerdotali, quae libera erat ab hac conditione. Hoc autem ideo aequum est, quia, sicut reges sollicitudinem habent de bono publico in bonis temporalibus, ita ministri Dei in spiritualibus, et sic per hoc quod Deo in spiritualibus ministrant, recompensant regi quod pro eorum pace laborat. »*

47 [It must be concluded, therefore, that the precept of the Apostle, *Rom.*,

> *[Concludendum est ergo praeceptum Apostoli,* Rom.,

48 XIII, 5 et 6: Be subject, not only for wrath, but also for conscience' sake; for therefore also tribute is paid — is not to be understood of the tax laws which affect ecclesiastical goods, because, according to the declaration of the Council of Trent related above, « they resist God's ordinance and the canonical sanctions. » Hence taxes of every kind, whether direct or indirect, with which ecclesiastical possessions are now burdened by force of civil law, must not be paid for conscience' sake, but only for fear or necessity.]

> *XIII, 5 et 6 : Subditi estote, non solum propter iram, sed etiam propter conscientiam ; ideo enim et tributa praestantur, non intelligendum esse de legibus tributariis quae bona ecclesiastica afficiunt, quia, secundum declarationem concilii Trident. supra relatam, « Dei ordinationi et canonicis sanctionibus refragantur. Unde cuiusvis generis tributa, sive directa sive indirecta, quibus nunc possessiones ecclesiastica vi legis civilis onerantur, non sunt solvenda propter conscientiam, sed tantum propter iram seu necessitatem.]*

49 I said, « regularly speaking, » because there are certain excepted cases.

> *Dixi, « regulariter loquendo, » quia sunt quidam casus excepti.*

50 The first is, if clerics engage in trade, as the same Boniface decrees, cap. Quanguam cited.

> *Primus est, si clerici negotiationem exerceant, ut decernit idem Bonifacius, cap. Quanguam cit.*

51 The second is, when the resources of laymen do not suffice for succoring the public necessity. But that a tax be exacted from clerics in this case, the consent of Parliament is required, as is clear from the cited cap. Adversus, Decretal., lib. III, tit. 23, de Immunit., and from the Bull of the Cenae. But if the matter brook no delay, the consent of the bishop and clergy seems sufficient for secular clerics and non-exempt regulars: for exempt ones, however, the consent of their prelates is required.

> *Secundus est, quando facultates laicorum non sufficient ad succurrendum necessitati publicae. Ut autem in hoc casu exigatur tributum a clericis, requiritur consensus Parliamenti, ut patet ex cit. cap. Adversus, Decretal., lib. III, tit. 23, de Immunit. et ex Bulla Coenae. Quod si res non ferat moram, videtur sufficere consensus episcopi et cleri clericis saecularibus et regularibus non exemptis : exemptis vero requiritur consensus suorum praelatorum.*

52 The third case is, according to the canonists and theologians, when the tax is equally primarily and equally immediately for the utility of clerics and laymen, as for repairing an embankment lest the river flood the fields of clerics and laymen, or for expelling robbers who ravage the territory in which

clerics have many possessions; for this seems altogether consonant with natural equity. Otherwise, if the contribution pertains immediately and primarily to the community, and only secondarily and consequently to clerics, inasmuch as they are members of the community, as taxes pertaining to the stipends of the prince, the waging of war, the repair of castles and walls of the city, etc. So Sylvester, v° Immunitas, n. 2, with Panormitanus and others, and after him Lessius, lib. II, c. 33, dub. 3.

> *Tertius casus est, secundum canonistas et theologos, quando tributum est aeque primario et aeque immediate in utilitatem clericorum et laicorum, ut pro aggere reparando, ne flumen inundet agros clericorum et laicorum, aut expellendis praedonibus qui vastant territorium in quo clerici habent multas possessiones; id enim aequitati naturali videtur omnino consentaneum. Secus, si contributio spectet immediate et primario communitatem, et secundario tantum ac per consequentiam clericos, quatenus sunt membra communitatis, ut tributa quae spectant ad stipendia principis, bellum gerendum, reparationem arcium et moeniorum civitatis, etc. Ita Sylvester, v° Immunitas, n. 2, cum Panormitano et aliis, et post ipsum Lessius, lib. II, c. 33, dub. 3.*

53 The fourth case is, if some possession had some burden annexed to it perpetual and unalterable before it came to the church; the church is held to it, because the thing passes with its burden. C. Cum non sit, Decretal., lib. III, tit. 30, de Decimis, and c. Pastoralis, ibid., tit. 31, de Regul. See the same Sylvester, ibid. It cannot, however, be burdened with new burdens.

> *Quartus casus est, si possessio aliqua habebat aliquod onus annexum perpetuum et invariabile, antequam veniret ad ecclesiam, ecclesia tenetur ad illud, quia res transit cum onere suo. C. Cum non sit, Decretal., lib. III, tit. 30, de Decimis et c. Pastoralis, ibid., tit. 31, de Regul. Vide eumdem Sylvestrum, ibid. Non potest tamen novis oneribus gravari.*

54 [*You will ask* 6° whether the patrimonial goods of clerics are also immune from taxes.

> *[*Petes 6° *utrum bona patrimonialia clericorum sint etiam a tributis immunia.*

55 *I answer*: that there is a twofold opinion. The first affirms: 1° because Boniface VIII, cap. Quanguam, de Censibus, in 6°, lib. III, tit. 20, renews the constitution of Alexander IV, « by which he decreed that churches and ecclesiastical persons are not at all held to road-dues and passage-dues, nor to exhibiting or paying such for their own goods, which they do not carry or cause to be carried or send for the purpose of trade, » notwithstanding contrary custom of whomsoever, which should rather be called corruption. Where the proper goods of ecclesiastics, that is, their patrimonial goods, are declared exempt from taxes. 2° Because in the bull Coenae those are excommunicated who impose collections, etc., « on ecclesiastical persons or on their goods, whether of churches or monasteries. » Where the goods of them or of clerics are distinguished from the goods of churches, and the same immunity is attributed to goods of this kind.

> Resp. *duplicem esse sententiam. Prima affirmat : 1° quia Bonifacius VIII, cap. Quanguam, de Censibus, in 6°, lib. III, tit. 20, renovat constitutionem Alexandri IV, « qua statuit ecclesias et personas ecclesiasticas ad pedagia et passagia penitus non teneri, nec ad exhibendum vel solvendum talia pro rebus suis propriis, quas non causa negotiandi deferunt vel deferri faciunt seu transmittunt, » contraria consuetudine quorumcunque, quae dicenda est corruptela verius, non obstante. Ubi res propria ecclesiasticorum, id est eorum bona patrimonialia a tributis exempta declarantur. 2° Quia in bulla Coenae excommunicantur qui imponunt collectas, etc., « personis ecclesiasticis aut eorum bonis sive ecclesiarum aut monasteriorum. » Ubi distinguuntur eorum seu clericorum bona a bonis ecclesiarum, et eadem immunitas huiusmodi bonis attribuitur.*

56 — The other opinion denies: 1° because the patrimonial goods of clerics do not pertain to the dominion of the church, and therefore are subject to the higher dominion of civil society. 2° Because

usage, the Church not contradicting it in these later times, prevailed, so that these goods were regarded as secular and burdened with the same burdens. This latter opinion seems sufficiently grounded, so that it can now be held as true.]

> *— Altera sententia negat : 1° quia bona patrimonialia clericorum non pertinent ad dominium ecclesiae, et ideo alto dominio societatis civilis subduntur. 2° Quia usus, non contradicente Ecclesia in his posterioribus temporibus, praevaleuit, ut haec bona tamquam saecularia haberentur et iisdem oneribus gravarentur. Haec posterior sententia satis fundata videtur, ut nunc pro vera teneri possit.]*

57 Lest this volume grow beyond measure, the continuation of the present treatise is deferred to the following.

> *Ne hoc volumen ultra modum excrescat, ad sequens amandatur praesentis tractatus continuatio.*