CASES OF CONSCIENCE, PROPOSED BY CARDINAL DE LUGO, BY FR. BENIAMINO ELBEL, BY FR. IOANNES PETRUS GURY AND BY OTHER AUTHORS, AND RESOLVED (CASUS CONSCIENTIAE)

Gennaro Bucceroni, S.J.

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by Fr. Beniamino Elbel, by Fr. Ioannes Petrus Gury,

and by other authors,

Resolved

by Fr. Ianuarius Bucceroni, S.I.

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Abbreviations

G. 5. = Gury, *Cases of Conscience*, in the same treatise, number 5.

I. M. 5. = *Moral Institutions*, in the same treatise, number 5.

E. M. 2. = *Moral Handbook*, number 2.

A. S. S. v. 1. p. 100. = *Acta Sanctae Sedis*, volume 1, page 100.

M. E. v. 1. p. 100. = *Monitore Ecclesiastico*, Conversano, Rome, volume 1, page 100.

Cf. 10. = Compare, in this same work, number 10.

On Human Acts

1. On the Voluntary and the Free

1. Arnulfus, an upright man, but of a petulant disposition, when, first, he had met his enemy, and had been provoked and attacked by him not only with words but also with blows, burns with the desire of killing him, and, having seized a dagger, rushes upon him. But, the impulse of anger having been restrained, he flees from the enemy. Afterwards, however, having become master of himself, he fears lest he has committed a mortal fault, and therefore, no delay having intervened, he throws himself at the feet of the confessor, about to accuse the sin.

2. The same man, although he had made serious efforts to destroy the evil habit of blaspheming, in a quarrel had with a certain adversary breaks out into blasphemies, and therefore again seeks a confessor to wash away this stain of conscience.

3. On another occasion, knowing that he was accustomed to quarrel in drunkenness, he carefully attends lest in drinking he exceed the limits of sobriety. But behold, urged by his companions to drink beyond custom, he is overtaken by drunkenness before he has adverted to its danger, and, being furious, mixes in quarrels with others. But having returned to himself he strives to do penance, and again has recourse to the confessor.

Q. 1. What is the voluntary? 2. Has Arnulfus sinned in that threefold case?

R. To the first, cf. I. M. 6-8. To the second, Arnulfus does not seem to have sinned, at least gravely, in any of the three proposed cases. For the perfectly voluntary was lacking. Not in the first, for he is said, and appears, truly to be an upright man, and an upright man does not so easily resolve deliberately to kill a man. He is said, moreover, to be prone to anger, and that his enemy met him; whence, from his presence, he could at once be moved to anger. Likewise it is said that he was provoked and attacked with words and blows, and so he could be much moved to anger, so that he lacked at least full and perfect knowledge of the malice and deliberation of mind. Finally it is said that, the impulse of anger having been restrained, having become master of himself, he feared lest perhaps he had sinned, and at once went to the confessor to expiate the guilt of soul, if perhaps he had incurred it; and this indeed shows that Arnulfus acted at least without full deliberation of mind.

Not in the second; for, if he had sinned gravely, in the case this would have been only on account of the neglected habit of blaspheming. But he had made serious efforts to root it out. For since he is prone to anger, he is easily to be judged to have acted from a first-first movement.

Not in the third, since he carefully attended lest in drinking he exceed the limits of sobriety, and then, not adverting to the danger of drunkenness, he was seized by drunkenness. - G. 1.

2. Elpidius, habitually given to drinking and of a quarrelsome disposition, furious in drunkenness, after having had a dispute with Titius, resolved to seek vengeance from him; yet he put off the purpose to another time. Afterwards he went to a nearby tavern, that he might calm his anger in wine; but behold, when at night he was leaving the tavern perfectly drunk, by

an unfortunate chance he came upon Titius himself, and beat him so gravely that for many weeks he was forced to abstain from his accustomed work and suffered great damage.

Q. 1. What is the free? 2. Are the damages inflicted by Titius in drunkenness imputable to him, and therefore is he held to repair them?

R. To the first, cf. I. M. 10-12. To the second: "Affirmatively. The reason is that the damages are truly voluntary and sufficiently foreseen in the cause itself, at least confusedly. For Elpidius willed to inflict damage on Titius, and drank with the danger of drunkenness, since he was habitually given to drinking. Moreover he is judged to have foreseen, at least implicitly, that in the state of drunkenness he would inflict damages; since he could not be ignorant that in wine he became furious and could harm someone. Therefore Elpidius is excused neither from grave sin against justice, nor from the obligation of repairing the damages." Thus G. 3.

But that resolution is not without difficulty. For Elpidius entered the nearby tavern, not in order then to carry out his evil purpose, but, on the contrary, to calm his anger; and so it does not appear that even confusedly Elpidius then foresaw damage to be inflicted on Titius. Nor is it valid to say that he is judged to have foreseen, at least implicitly, that in the state of drunkenness he would inflict damages. For if in fact, in the case, he did not foresee it, this general presumption must yield to the truth. And the presumption in the case is rather the contrary; since, stirred by anger, he entered the tavern to calm his anger; whence Elpidius rather seems, for that time, to have willed to abstain from every vengeance and from inflicting damage. But when Elpidius gravely beat Titius, Elpidius was already perfectly drunk, and so then the voluntary, the free, and sin were entirely lacking. - I. M. 288.

2. On the Not-Voluntary and the Involuntary

1. Blasius, wishing to harm Caius his enemy, intended to pierce his ass with lead. But alas! a double misfortune befell him. For the ass is not struck by the bullet, but leaps and springs away unharmed, while the cow of Titius his friend, which after a dense hedge was lying quietly, and could not be seen by him, is unhappily killed.

Q. 1. What is the not-voluntary and the involuntary? 2. Is Blasius held to restitution for the ass not harmed, or for the cow killed?

R. To the first, cf. I. M. 8, 18. To the second, negatively to both. He is certainly not held to restitution for the ass, since it escaped unharmed. For to sin the mere will of causing damage suffices; but for restitution from damage caused, the mere damaging will does not suffice. There is also required a truly damaging action, and damage truly inflicted.

Nor is he held to restitution for the cow, since he neither intended that damage nor could foresee it, and so it was not voluntary; indeed it was altogether involuntary to him. For, for restitution from damage caused, an action actually damaging and damage actually inflicted do not suffice; it is required also that damage of this sort proceed from the will and be voluntary, so that it may be imputed to him and an obligation of reparation arise for him. Therefore in the forum of conscience, or before the sentence of a judge, he cannot be urged to any reparation of the damage. But what if the ass and the cow had belonged to the same Caius? In the rigor of principles, not even then would

Blasius be held for the damage. For although it would not then have been involuntary, nevertheless it would still have been not-voluntary, because that damage would always have been unforeseen. For he had not seen the cow. - G. 3; I. M. 1358, 1370.

2. Faustinus, wishing to affect Nicolinus his enemy with injury, resolved to kill a pair of horses, which Nicolinus held very dear to himself. But amid the darkness of night, not discerning well, he kills another pair, namely asses of the same Nicolinus, which Nicolinus also held very dear to himself.

Q. Is Faustinus held to restitution; and, if affirmatively, what ought he to restore?

R. Faustinus is held to restitution from unjust damaging. For in the case there was a culpable, efficacious, and unjust cause of damage. Therefore no necessary condition for restitution is lacking. And indeed, knowingly and willingly, Faustinus killed the pair of asses, although he thought it was a pair of horses. Whence it cannot here be said that that killing was not-voluntary to him. The difficulty can only be in the estimation of the damage, because this cannot be taken from the horses, which he did not kill, nor from the asses, which he did not wish to kill. But certainly it cannot be taken from the horses, because their damage does not exist; and, on the contrary, it must be taken from the asses, because their damage does exist. In the present matter, error of person excuses from restitution, because then there is no injury of the person; but error of thing, since it does not remove injury of the person, does not excuse from restitution; for this always remains, whether by damage of horses or of asses; for in that damaging, the injury of the person, not of the horses nor of the asses, is considered. Therefore the damage unjustly inflicted must be repaired: the damage inflicted, by no means that which was not inflicted. If Caius, in order to inflict injury on Sempronius, were to snatch from him a golden necklace, judging it silver, and throw it into the sea, would he not certainly be held for the estimated value of a silver necklace? And if the necklace were silver, and he judged it golden, would he not again be held for the real value of the silver necklace? - Cf. 5. 1.

3. On Intention

1. Titius, a priest, determines to celebrate Mass on the following day for Sempronius, who asked that it be celebrated according to his intention, an alms having been given, but with no determined time. But on the following day Titius is asked in the sacristy by Caius that he be willing soon to celebrate Mass, and to sing it for his father, who died that very night. Forgetful of the prior intention, Titius celebrates and sings the Mass for Caius's father. Still forgetful of the Mass to be celebrated for Sempronius, he celebrates on the third day for himself, since he thinks he has no other obligation which he must satisfy. But behold, after some days the same Sempronius asked several other Masses from Titius, and then Titius remembered that prior Mass to be celebrated according to the intention of Sempronius.

Q. 1. What is intention; and can several things be intended? 2. Which intention of Titius prevailed in the case?

R. To the first, cf. I. M. 17-19. To the second: the Mass which Titius celebrated and sang on the following day was celebrated for Caius's deceased father. For this was the predominant intention,

which prevails over the other, which was incompatible with it. This can be confirmed even from that circumstance, that he sang the Mass.

The Mass which Titius celebrated on the third day was celebrated according to the intention of Sempronius. For this intention, although habitual, was evidently predominant over the intention of celebrating for himself, although this latter was actual. For the predominant intention is that which would actually be chosen, once its incompatibility with the other were known. But, once each intention was known, the intention which would have been chosen by Titius would have been the intention of celebrating for Sempronius, because he celebrated for himself only insofar as he was persuaded that he had no obligation which he had to satisfy. Therefore. And this must be asserted a fortiori if Titius had had no intention specially on that day. "If it is applied to no one, or to one incapable, the fruit remains in the treasury of the Church, or yields to the priest himself, or to those for whom he is specially held to offer, since he is thus judged implicitly to have intended." St. Alph. l. 6, n. 336. Cf. n. 335, q. 1. Moreover, in practice, when a doubt stands, it would be safer to celebrate the Mass another time for the one for whom the application did not avail. - G. 5, 6; v. 2, 335; Elbel 403.

2. Franciscus, administering the sacrament of baptism, is distracted by a sudden noise made in the church, and pronounces the form of baptism without attending to it in any way. A little later, he hears confession, and, finding the penitent little disposed, resolves not to absolve him. But again he is distracted, thinking of the cause of that noise, and, distracted, pronounces the form of absolution.

Q. 1. What is actual and virtual intention? 2. Do baptism and absolution avail in the case?

R. To the first, cf. I. M. 17, 18, 41, 42. To the second: Franciscus administers baptism validly and licitly. Validly, because, although there is no actual intention and voluntary; nevertheless there is virtual intention and voluntary, which suffices in the administration of the sacraments. Licitly, because that distraction, since it was voluntary neither in itself nor in its cause, can be attributed to Franciscus as no fault. S. Th. 3 p., q. 64, a. 8, ad 3.

The absolution given by Franciscus was invalid, nor in giving it did Franciscus sin in any way. It was invalid because, of two intentions simultaneously incompatible, the predominant intention always prevails, and this in the case is the intention of not absolving. Indeed, it was the only one, since he absolved while distracted. But Franciscus sinned in no way, because that wandering of mind was altogether natural and involuntary. - G. 5.

4. On the Indirectly Voluntary

1. Ricardus, an innkeeper, lest his tavern be deprived of the great concourse of guests, supplies abundant wine to drunkards asking for it, although he foresees that many of them will become drunk and quarrel. He is moved by reason of customary profit, and sometimes by reason of preventing blasphemies; nor does he think that he offends in this. He also easily admits into his inn men uttering impious or obscene conversations, nor does he rebuke them, because, he says, he is not held by reason of his office to be solicitous about their manner of acting.

2. Nemesius on a certain day offers 20 asses by way of payment to Caius, a porter carrying a certain bundle to his inn. The porter asks 25 asses. Nemesius denies that he will give him anything more, although that man, furious, breaks out into imprecations and blasphemies.

Q. 1. What is the indirectly voluntary? 2. Does Ricardus sin gravely by serving wine to those who will become drunk, for the sole reason of customary profit? 3. Does he sin gravely by doing this to prevent the blasphemies of the drunkards? 4. Does he sin gravely by not preventing the impious and obscene conversations of the guests? 5. In the second case, ought Nemesius to have given the aforesaid five asses, although not owed, in order to prevent the blasphemies of the porter?

R. To the first, cf. I. M. 32, 33, 34. To the second, negatively, generally and speaking in itself. The reason is that the innkeeper is not held to prevent, with grave damage to himself, the sins of drunkenness and quarrels which guests are accustomed to admit; for charity does not urge with so great an inconvenience. But hardly any tavern is found in which some guests are not accustomed to become drunk, and afterwards to mix in some quarrels. Therefore, if the innkeeper denies wine, the guests will go to other drinking shops, in which abundant drink is served to them; and therefore he himself will undergo great damage, and uselessly. Generally and in itself: for if it is not a question of sins of this sort foreseen confusedly, but is a question of some particular case, namely of a certain drinker already near drunkenness, who asks for more drink, it cannot here be served. The reason is that in a particular, determined, and certain case, only slight damage would have to be undergone by him in order actually to prevent a determined and certain sin. Except if, from other extrinsic circumstances, grave damage would still have to be undergone by him, or graver sins would follow. Elbel 17; L. 1, 2, n. 69.

To the third, negatively. The reason is that, of two evils, the greater must be prevented when both cannot be prevented.

To the fourth, affirmatively, if there is grave scandal of others and he could easily prevent it. The reason is that he is held only by the general reason of charity, which does not oblige with grave damage. But a grave inconvenience in practice is not lacking, as was just said in the response to the first for the case of the drunkenness of guests.

To the fifth, negatively, if he has paid the customary and just price. The reason is that, since similar cases often occur, an occasion would be given to wicked men to blaspheme more and more, and grave damage would have to be undergone by pious men. G. 7, 8, 9; I. M. 35, 36, 337, 434.

5. The Involuntary from Ignorance

1. Adalbertus confesses thus: 1. wishing to kill Titius, my enemy, I killed Caius, my friend. 2. By shooting a bullet at a deer, I at the same time pierced my enemy, sought on another occasion for death, standing hidden in a thicket. 3. Ignorant that it was a vigil, I ate meat; but out of laziness on Sunday I had not been present at Mass, in which the obligations occurring in the week are customarily announced.

Q. 1. Does ignorance cause the involuntary? 2. What is to be judged concerning Adalbertus?

R. To the first, cf. I. M. 48. To the second: in the first case Adalbertus is not excused from the sin of homicide, since knowingly and willingly he killed a man. But if he used due diligence to guard against the homicide of another besides Titius the enemy, since his external act is not formally injurious to Caius, whom he killed altogether involuntarily, he is not to be bound to any restitution toward his heirs. But otherwise, if he omitted due diligence, or foresaw confusedly the danger of killing Caius. - I. M. 1370, 1372, 1373.

In the second case, either he used due diligence to guard against the damage of another, or he did not. If the former, the act is not voluntary, and consequently not a sin. If the latter, he is guilty of homicide. But since the enemy was standing hidden in a thicket, and Adalbertus thought he was killing nothing except a deer, he seems to be excused from homicide. - Elbel 46.

In the third case, either a thought occurred to him about an obligation perhaps to happen within the week, or no thought occurred. If the former, the ignorance was vincible, and he sinned against the precept of the Church by neglecting to inquire. If the latter, although he sinned by omitting Mass, nevertheless he did not sin by the omission of fasting. I. M. 8, 207, 288. - G. 12, 13, 14, 646 seqq.

2. Abundius, a priest approved for receiving the confessions of the faithful, experiences that his knowledge is slight and insufficient for duly carrying out that office; nevertheless he continues to hear confessions, because he has authentic testimony of the bishop concerning his suitability. Hence, through defect of knowledge and study, he commits various errors concerning the species of sins to be inquired into, and especially concerning the obligation of restoring. Having been rebuked by a confessor and bound to make restitution on behalf of the penitents, he had resolved seriously to apply himself to the studies of Moral Theology, and meanwhile to interrupt the sacred ministry, when behold, suddenly he is called to Titius, who is dying, and, as report has it, liable to various restitutions. He goes on uncertain, absolves the poor man while doubtful, not being able to discern the entangled conscience, and returns sad, muttering that he would again be liable to restitution on behalf of the penitent.

Q. 1. Is there sin in the case from ignorance, or are the aforesaid errors imputable to Abundius? 2. Did he sin gravely in each instance? 3. Is he liable to restitution?

R. To the first: the prior errors are indeed imputable to Abundius in themselves, because he labors under vincible and crass ignorance, and by persisting in it he was sinning gravely. But the errors committed in the confession of the dying Titius are by no means imputable to him; because, with such necessity standing, he could and ought to hear his confession, notwithstanding the defect of the required knowledge; and therefore the errors, not willed but only permitted, are judged in the case. I. M. 35.

To the second, affirmatively, in itself, namely if at least confusedly he adverted to his defect of knowledge, with the case of Titius excepted, however. But if he ever acted entirely inadvertently, then there was indeed sin in the cause, but actual sin was lacking. I. M. 288.

To the third: he is held to nothing if by keeping silent he behaved merely negatively, omitting to urge restitution. But he is held to restitution if he positively imposed the obligation of restitution on the penitent, or positively denied it, against justice, whether toward the penitent or toward others damaged. I. M. 1405 and V. 2, 828, 829. - G. 15, 16; I. M. 50, 51.

3. Antonius, by very often blaspheming, swearing, and detracting from the reputation of his neighbor, has contracted a habit of these sins. He often confesses them; and the confessor, with great care and solicitude, asks about the number of the aforesaid sins, and adds salutary admonitions. But since Antonius has confessed the same sins always throughout an entire year, although always with lesser frequency, his confessor resolved to deny him absolution.

Q. 1. Are sins from a contracted habit and custom truly voluntary and imputable? 2. What as to the case?

R. To the first, affirmatively, if one adverts to them in himself, as regularly happens. But if in reality due advertence and deliberation are lacking, when someone, for example, blasphemes, swears, etc., from a contracted habit, then there is no sin when someone blasphemes, or swears, etc.; but only in the cause, namely when he posits the cause. Therefore it is then useless in confession to ask the number of these material acts; because, since the whole guilt is in the cause, this is neither increased nor diminished from the greater number of subsequent acts, but depends on prudent foresight. But that cause is, first, the very frequency of acts, from which habit or custom is begotten. Nevertheless in practice it is often not adverted that, through that repetition of acts, a custom is acquired; indeed, often one hopes that he will not relapse again in the future. The cause, secondly, is negligence in removing that custom already acquired; whence the acts are indirectly voluntary. And thus, by adverting to this contracted custom, and nevertheless neglecting to root it out, the following acts are indirectly voluntary, even if actually guilt is lacking by defect of advertence, and by the same defect of advertence guilt was also lacking in the very contracting of the custom. But if one tries to root out the contracted custom, then guilt is no longer in the cause, although perhaps it had been present, since the cause has been retracted. Nor indeed is there voluntary, at least indirectly, if someone really seriously, as is supposed, tries to resist the custom. - If, actual guilt being set aside, sin is had only in the cause or indirectly, then, since the custom must therefore be removed so that the following evil acts may be prevented, if these are gravely evil, the obligation of removing the custom will be grave; if they are lightly evil, the aforesaid obligation will be light. Likewise, if the following acts are gravely evil, and are voluntary only in the cause or indirectly, then there will indeed be grave sin if there is grave negligence in rooting out the custom; but there will be only light sin if the negligence is light. - L. 1, 3, n. 127; l. 5, n. 14; I. M. 35-39.

To the second: whether Antonius, by blaspheming, swearing, detracting, always at least sinned gravely actually, in grave matter, depends on his actual advertence, and then the confessor rightly asks about the number of these sins. But if actual advertence was lacking, which in practice is difficult, then nothing remains except sin from the voluntary in the cause and from the indirectly voluntary. But such voluntary seems to be removed in the case from the fact that Antonius often confesses, and in fact also tries to diminish the frequency of those sins. For this shows that Antonius has retracted the contracted custom of sinning, and effectively strives to root it out. And then there is no reason why the confessor should be painstaking and scrupulous in asking about the exact number of sins. But the confessor acts badly in resolving to deny absolution to Antonius; for Antonius does not lack sufficient sorrow and purpose. - G. 2; I. M. 53 and V. 2, 809.

6. On Concupiscence and Anger

Titius, a fervent Catholic, having received a grave injury from Sempronius, blazing up in anger, considers in his mind killing Sempronius. But, adverting to the grave sin in such a deed, he removes such a thought from himself. But behold, seeing Sempronius again, he again forms the purpose of killing him, and now in his mind devises means for accomplishing the matter, and remains for a long time in this thought. Meanwhile a funeral meets him, and the thought of death, judgment, and hell preoccupies his mind; and thus, as if spontaneously, he dismisses every memory of the injury received and of vengeance.

Q. 1. Do concupiscence and anger render an act involuntary? 2. What as to the case?

R. To the first: concupiscence and anger can render an act involuntary only when they are so vehement that they entirely snatch away the use of reason. For then, and then only, can it be verified that the act is against the will, that is, against the rational and deliberate will. Indeed, if the use of reason is not totally snatched away, then, when concupiscence and anger incline to the act, the voluntary is necessarily present, although in that act the voluntary is diminished according to the intensity of concupiscence and anger, if it is antecedent; for if it is consequent, then, on the contrary, it is increased. But this difference intervenes between concupiscence and anger, that anger is accustomed far more easily to snatch away the use of reason, while concupiscence brings this about far more with difficulty. I. M. 54-57.

To the second: a fervent Catholic does not so easily consent to grave sin, and to a sin so grave as homicide. But the thought of homicide arises in Titius from the grave injury received and from the blazing up of anger. Therefore the aforesaid thought can easily be judged involuntary by that defect of advertence and deliberation. And indeed, as is said in the case, Titius, soon adverting to the grave sin, repelled that thought from himself. Therefore before that he had not adverted, or at least had not adverted sufficiently, to the grave sin. But as to the fact that he again conceived the will of killing the enemy, this thought indeed naturally entered his mind from the presence of the enemy; struck by that presence, the purpose formed easily lacked due deliberation. Whence, looking upon the funeral, he spontaneously dismissed every memory of the injury received and of vengeance. Nor indeed is there difficulty from the fact that he remained for a long time in that purpose. For this perhaps happened either from the continued presence and sight of the enemy in the middle of the road until the funeral met him, or from the very passion of anger vehemently stirred up. Elbel 228.

7. On the Voluntary from Fear

1. Sempronius, a priest dressed in lay clothing, passing through places of heretics most hostile to Catholics and especially to priests, omits the recitation of the breviary and eats meat on prohibited days lest he be recognized. But when afterwards he had been recognized, and was driven by fear of death to eat meat on Friday, he obeys, saying repeatedly that the Church, as a pious mother, does not urge the obligation of her law with so great an inconvenience.

2. Liborius, a servant, guarding the house while the master is absent, is attacked at night by a thief, who with drawn dagger demands money from him. But since Liborius has no money of his own, he takes 100 lire belonging to the master and hands them over to the thief, that he

may preserve his life unharmed. But the poor man is not yet freed from extreme straits. For the money handed over is not enough for the thief, who threatens death to the servant unless he opens to him the place where the money chest of the master is hidden. Liborius again obeys, that he may escape death.

Q. 1. Does fear cause the involuntary and excuse from sin? 2. Can Sempronius be excused in each case? 3. Can Liborius likewise be excused in each case from sin and from restitution?

R. To the first, cf. I. M. 59-62. To the second, affirmatively in the first case, because positive law does not urge with very grave inconvenience. Negatively in the other case, because negative law does not cease, even when very grave inconvenience stands. Moreover, in the case it is a matter of avoiding scandal and of contempt of Religion.

To the third, affirmatively in the first case, because the master is reasonably presumed to consent in so great a danger of life. Affirmatively also in the second case, because the cooperation of the servant in the damage of the master is merely material, which, although it is rather proximate, is nevertheless sufficiently excused when very grave necessity stands. - G. 17, 18; I. M. 59, 62, 1414.

8. On the End of the Agent

1. Caius, an ingenuous youth, indeed confesses rather often, because he knows that this is very pleasing to his directors. Likewise he is accustomed to hear Mass daily, moved by the example of his companions, lest he seem less devout than they. Moreover, he not rarely distributes among the poor money received from his father, but almost always experiences in himself a desire for vain glory. Hence, after spiritual exercises have been completed, he greatly fears lest his confessions were invalid and sacrilegious, and lest he acquired no merit from his pious works, but, on the contrary, incurred demerit and sin.

Q. 1. Do human actions take their species from the end? 2. Has Caius received the sacrament of penance invalidly, and has he lost all merit of pious works?

R. To the first, cf. I. M. 79. To the second: the confessions of Caius were neither sacrilegious nor invalid. For for the validity of confession there is required, and there suffices, sincere sorrow and purpose. But Caius could well have sincere sorrow and purpose, even if he approached confession because he knew that this was pleasing to his directors. Nor indeed, since Caius is an ingenuous youth, can it be supposed that he principally intended this end, or that he confessed without due sorrow and purpose. Therefore the confessions of Caius were neither invalid nor sacrilegious, but substantially good and meritorious, although perhaps he was moved in some way by the impulse of vain glory; because such an impulse does not intrinsically affect the very substance of confession, but is related to it merely concomitantly and extrinsically. Therefore granted that such an impulse was venially evil, confession nevertheless, as having been made from a good intrinsic end, namely of reconciling himself to God and obtaining grace remissive of sins, could well remain morally good and sufficient for validity and for merit. And thus also it remains substantially good and sufficient for validity, although in confession perhaps you lie lightly, or without cause lightly defame your neighbor. For although such a lie and such defamation are morally evil, nevertheless, because they are related accidentally in order to confession, and since venial sins from elsewhere do not obstruct divine grace

and reconciliation, they leave confession good in itself, and sufficient for validity and for merit. Hence the same must be said of Masses heard and of alms bestowed. - Elbel 78, 79; G. 33, 34; I. M. 77, 78, 81.

2. Sebastianus, being scrupulous, in order to abstract himself from every creature, resolved to deprive himself of every pleasure not necessary for the sustaining of life. He thought that pleasure not necessary to life could be sought only from the satisfaction of natural inclination, since pleasure is not referred to the glory of God. But in order that he might live wholly for God and seek the glory of God in all things, he resolved actually to offer all his actions to God before he did anything. Hence in a short time it happened that, gravely ill in the head, he died in an asylum of the insane.

Q. 1. Is it licit to act for the sake of pleasure? 2. Must all actions be referred to God? 3. What as to the case?

R. To the first and to the second, cf. I. M. 75, 82. To the third: Sebastianus is deceived, with grave detriment to his body and soul. In order that one may live wholly for God and seek the glory of God in all things, he does not therefore necessarily have to be deprived of every honest pleasure, not altogether necessary for the sustaining of life. Pleasure also, even only useful for restoring the bodily powers by moderate delight and recreation, is honest, and by its own nature is implicitly and mediately ordered also to the ultimate end, or to God. Hence it is altogether licit to act for the sake of pleasure and delight, and to intend it, provided that another honest end, to which by its very nature it is referred, is not excluded, namely that man may act better and may be able to persevere longer in honest operation; by which intermediate end as mediator, it is referred to God himself. Therefore, whenever one does not exclude that honest end, the pleasure or delight sought is virtually referred to God, nor is it necessary that one actually offer it to God, since a virtual offering suffices.

Indeed, honest recreations and amusements have been created by God himself for the use of men. Therefore they are naturally good in themselves and honest. Therefore, as one who intends another honest thing acts honestly, and the action is virtually referred to God without his explicitly and actually offering that action to God, so also someone acts honestly by accepting an honest recreation of mind and an honest amusement, without actually and formally offering it to God. Hence the same must consequently be said of pain and inconvenience, to be avoided and repelled by honest means. Whence it is also clear that, in order that an action be honest and be referred to the glory of God, it is not necessary actually and explicitly to offer it to God. It suffices that one intend an honest action and act honestly. It suffices that each day in the morning one offer to God all his actions to be done during the course of the day. "In this way every act, even one indifferent in species, becomes good and virtuous in the individual." L. tr. De Act. hum. XLIV. - G. 29, 30, 35, 36.

9. On the Object of Morality

1. Marianna is accustomed to tell slight lies to prevent quarrels, oaths, and blasphemies of her husband, which have the best success in constantly preserving the peace of the family.

2. Monica confesses that she has sometimes spoken badly about her neighbors, because, she says, they are truly evil and do evil to all.

3. Aurelius confesses that he, pressed by grave necessity, stole a grave sum of money. But when the confessor declares to him the obligation of restoring, Aurelius replies: it is impossible, because I have nothing. Indeed, since that necessity perseveres, I still ought to continue in the same theft, and afterwards I shall restore everything.

Q. 1. Do human acts derive morality from the object? 2. What must be thought concerning the various cases?

R. To the first, cf. I. M. 84. To the second: Marianna, speaking in itself, sinned; but only venially, and this as many times as she lied. The reason is that a lie, as intrinsically evil, cannot be rendered honorable by any extrinsic end, however good, unless perhaps it is done from an invincibly erroneous conscience. For evils are not to be done that goods may come, Rom. 3:8. Therefore Marianna must be advised to abstain altogether from lies; and, when grave necessity urges, rather to use some tergiversation and equivocation, since she is not held always to manifest the truth openly. Elbel 74; G. 27. Cf. I. M. 86, 1523 seqq.

Monica, speaking in itself, must furthermore declare whether she spoke badly about her neighbors in a light matter or in a grave matter; and if in a grave matter, how many times this happened, and whether any other damage happened besides damage to reputation. Speaking in itself; for it is otherwise if from the confession itself it is understood that it is a matter of a thing known and public, whence no damaging of reputation has come; just as already seems sufficiently to be drawn from her words, because they are truly evil and do evil to all. - Elbel 11, 102; G. 31.

Aurelius indeed sinned gravely; for grave necessity does not excuse from theft. Therefore neither can he continue in theft. And if in the present he cannot restore, how will he be able to restore an always greater quantity in the future? Whence neither does his excuse avail. But he sufficiently explained his sin; for the various degrees of grave theft do not change the species. L. 1, 6, n. 47; G. 31; I. M. 1313.

10. On the Circumstances of Human Acts

1. Henricus confesses thus: 1. I committed carnal sins. 2. I performed gravely immodest acts. 3. I had evil thoughts. 4. I injured the reputation of my neighbor. 5. Besides homicide, I committed all other sins.

2. Paschalis, a priest, confesses thus: I am a priest and once sinned with a woman; omitting that he has care of souls, and that he had previously solicited his own parishioner in confession.

Q. 1. Is the morality of human acts derived from circumstances? 2. Do Henricus and Paschalis confess rightly?

R. To the first, cf. I. M. 88. To the second: Henricus by no means confesses rightly. For first, besides the number, he ought to declare the various species of carnal sins, for example whether he sinned by himself alone, or with another person; and if with this person, whether unmarried, or bound in marriage, etc. But, speaking in itself, it is not necessary that he say whether he committed fornication twice, three times, etc., with the same person or with different persons. - Elbel 103; La-Croix l. c. p. 2, n. 1040; I. M. V. 2, n. 708.

In the second case, acts even gravely immodest, unless they are acts consummated, must be declared by their proper number and proper species. For acts of this sort also differ in species, as for example if someone mixes in filthy conversations, or looks upon himself; or touches a woman or himself shamefully, etc. I. M. 307, 310, 783.

In the third case it is also necessary to declare, besides the number of internal acts, the objects of desires or of delights, varying in species. For desires and morose delights take their species from their objects, Elbel 80, 102; and those evil thoughts, voluntary and deliberate, appear from the context of the case. For Henricus does not seem to be a man who is accustomed to resist temptations of this sort.

In the fourth case he ought to explain whether he gravely injured the reputation of his neighbor; and, if gravely, how many times he injured the reputation of his neighbor, and whether any other damage followed thence for the neighbor. But, speaking in itself, he is not held to declare whether he injured the reputation of his neighbor by simple detraction or by calumny. I. M. 1486.

Finally, in the fifth case it is clear that the confession of Henricus is very imperfect; and so he must be directly questioned by the confessor concerning other special sins against the precepts of the Decalogue and of the Church, and against the obligations of his proper state, which Henricus could probably have committed. Cf. Elbel 96.

Nor has Paschalis confessed rightly. For he ought to have explained the circumstance of solicitation in confession, which adds the malice of real sacrilege, and the circumstance of the care of souls, which made the sin specially repugnant to the virtue of justice. Elbel 97, 98. - G. 31, 32.

On Conscience

11. On Erroneous Conscience

Florus, making a general confession, accuses himself that, while still a boy, he once or twice had had pollution, and had never confessed it, because at that time he did not think it a sin. He adds besides that, now as an adolescent, he shamefully looked at and touched his cousin, and that he confessed this only generally, omitting the circumstance of the cousin, which he did not think necessary. Moreover he says that he often nourished evil thoughts in his mind, but he did not confess them either, thinking for a long time that sin existed only in the work. Likewise he confesses that, having been called into court, although he had given an oath to tell the truth, he told a lie, yet he judged this altogether necessary for saving a friend from a long and hard imprisonment. Lastly, he confesses that, laboring under a grave illness for a year and more, he omitted Mass and did not observe abstinence and fasting.

Q. 1. What is erroneous conscience, and can one follow it? 2. Whether and how did Florus sin?

R. To the first, cf. I. M. 98 seqq. To the second: Florus could absolutely, in boyhood, have been ignorant at first of the malice of pollution. Therefore, if in good faith he did not confess that sin because he had no consciousness of sin, he does not seem to be disturbed. I. M. 110.

Likewise he does not seem to be disturbed on account of the omitted circumstance of the cousin, whose special malice of incest he could more easily have been invincibly ignorant of. But this circumstance changes the species in itself with respect to touches, by no means with respect to looks. I. M. 784.

With respect to evil thoughts, good faith and invincible ignorance are admitted with more difficulty. Nevertheless, if Florus affirms that he was ignorant of this sin of thoughts, the confessor must indeed attend and investigate what kind those thoughts were, and whether Florus believed that from a culpably or inculpably erroneous conscience. For if, after prudent investigation has been made, from the rudeness of Florus his good faith appears, he does not seem to be disturbed in this either with respect to past confessions; but he is only to be instructed if he is still in error. For this must besides be attended to here, that good faith and ignorance can also be rather in fact than in law, that is, it can rather be concerning the consent given to the thoughts than concerning the very malice of evil thoughts, if consent accedes to them. I. M. 108.

From the fact that Florus judged a lie necessary for saving his friend, it does not truly follow that he erred in good faith and by invincible ignorance. Therefore Florus is to be questioned further, since it is a matter of grave perjury because of the added oath: whether in fact he thought that he could then lie, indeed perhaps even that he ought to because of the enormous danger in which his friend was placed.

Lastly, Florus did not sin by omitting Mass while held back by grave illness, since a necessity of sinning is not given. The same must be said of abstinence and fasting not observed for the same reason of infirmity; and although perhaps he omitted Mass and abstinence and fasting when he was already beginning to recover, it indeed seems difficult that he truly persuaded himself that he sinned

gravely in this matter, if he had still not in fact recovered sufficiently. - Elbel 124-133; G. 37-42; I. M. 98 seqq.

12. On Probable Conscience

1. Clemens, a learned theologian, thinks that the Probabilists favor liberty too much. Therefore he says that, when there is a concurrence of an opinion certainly more probable for the law, it is not licit to follow a less probable opinion for liberty. For this is clear, first, from the authority of Clement III, c. *Capellanus*, *De Feriis*, where he declares that the opinion is to be followed "which rests upon the better and more subtle reason." But where the probability is certainly greater, there without doubt the reason is better and more subtle. Therefore. Rule 45 of Law in the Sixth agrees: "In obscure matters we look to what is more likely." The same is clear, secondly, from the authority of the Probabiliorists, and of all the Probabilists of better note, who defend equiprobabilism in substantial matters. Before the rest let Suarez be heard, *De Legibus*, l. 8, c. 3, n. 19: "Greater probability is a certain moral certitude, if the excess of probability is certain." Muzzarelli says the same, *Opusc. de Regul. moral. opin.*, in Migne, *Cursus Theologicus* XI, 1309: "Some excess of reasons for one side against the other, unless it is notable, does not remove doubt. But when it has been notable, the weight already preponderates for one side, we are already determined to one, and in it we stand." The same is clear, thirdly, from the authority of St. Alphonsus, l. 1, n. 56: "Whenever," he says, "it certainly appears to the intellect that truth stands much more for the law than for liberty, then the will cannot prudently and without fault adhere to the less safe part; since in that case the man would not act relying on his own judgment, or on his own belief, but rather by a certain effort which by his will he would bring upon the intellect, so that he might be removed from the part which appears to him far more likely, and be bent toward the part which does not appear true to him, indeed which seems not even to have a certain foundation by which it could be true. And to this pertains that saying of the Apostle to Rom. 14:23: Everything that is not from faith is sin." Ioannes-Petrus and Antonius, themselves also learned theologians but probabilists, hear these things incredulously. Cf. Marc. *Instit. Moral. Alphons.*, n. 100, 101, second ed. 1886.

Q. 1. What is Probabilism? 2. What as to the case?

R. To the first: the whole doctrine of Probabilism can be reduced in few words to two assertions.

The first is the certain principle, admitted by all, especially by St. Alphonsus: an uncertain law cannot beget a certain obligation; a doubtful law does not oblige. It is a certain principle, because law does not bind the will except through knowledge of itself. The other is that when against the law there is a truly probable opinion, the law becomes uncertain and doubtful. Likewise a certain principle, because certitude is incompatible with opposite probability. Therefore it matters little for the true doctrine of Probabilism whether the opinion for the law is equally probable, or a little more probable, or much more probable, or simply more probable. For the question is this and no other: namely, whether the opinion against the law is truly probable; for then, whatever may be the case concerning the opinion for the law, it is impossible that the law be certain and evident, binding the will through knowledge. I. M. 111 seqq.

To the second: the reasons brought forward for holding Probabiliorism prove nothing indeed. For first, in c. *Capellanus* 4, *De Fer.*, Clement III defines by his authority a particular question in which there were two opinions, choosing one among them. The matter is of the three weeks during which the canon forbids marriages to be made before the feast of St. John the Baptist; and "some," says the Pontiff, "understand those weeks without interruption. But others, wishing to make an interval between the feast and the weeks themselves, understand that it was established out of reverence for the festivity of Pentecost, which is sometimes accustomed to intervene in those weeks; and thus, beginning from the three days of Rogations before the Ascension of the Lord up to the eighth day after Pentecost, those weeks being counted, they do not permit marriages to be celebrated in that space of time alone, in no way forbidding their celebration from that point." The question having been so proposed, the Holy Pontiff, thus interpreting the canon authentically, resolved it by his own authority: "Therefore, since we were consulted as to which of these opinions might seem stronger, it appeared to us and to our brothers that, although it is the custom of the Roman Church that, at whatever time marriage may be contracted, legitimate consent intervening in the present; yet because marriages are not permitted to be celebrated from Septuagesima until the seventh day after Pentecost, and afterwards they are also celebrated for three weeks or more before the festivity of St. John without distinction, the latter opinion rests upon the better and more subtle reason; and whether according to the canons marriages are suspended from Septuagesima until after the octaves of Easter, or according to the custom of the Roman Church until after seven days of the feast of Pentecost, which lacks octaves, on the Sunday which follows, and thereafter, they can be licitly celebrated." Therefore Clement III by no means defines that where there are two probable opinions, of which one is probable and the other more probable, or certainly much more probable, the latter is altogether and always to be held; but he says only that of the two proposed opinions the second is better and more subtle. Whence certainly nothing is drawn out for Probabiliorism. Indeed, what is the chief point, Clement III defines the matter not relying on a certainly much more probable opinion, but relying on a certain canon and a certain custom.

2. Rule 45 of Law in the Sixth does not properly regard probability, but doubt, which is quite different. Cf. I. M. 137, 138. Whence probability is almost excluded by that Rule, since it is said that we look to what is more likely, which properly bears before itself not probability but presumption. Indeed, the whole Rule is of the following tenor: We look in obscure matters to what is more likely; or to what for the most part is accustomed to happen. Namely, in obscure matters, that is, in those in which the truth does not even probably appear, which certainly is not the same as in probable matters. What is more likely, that is to say, what, with all the circumstances of the matter itself having been attended to, has a presumption founded in likelihood. Or what for the most part is accustomed to happen, that is, when the aforesaid presumption is lacking, that must be held which commonly and ordinarily is accustomed to happen, for then presumption stands for that. It is moreover useless to advert that this Rule, like other similar Rules, pertains rather to forensic judgments and to judicial sentences. Cf. Reiffenst. in Reg. cit. But now, from the fact that in those matters in which probability is even lacking, that is to be held, and indeed in judgments and in matters of justice, for it is a question of a Rule of Law, which, all the circumstances of the matter weighed, appears more likely; or which, this presumption lacking, is rather presumed from things commonly and ordinarily occurring; or finally, if not even this can be had, the least is to be followed and held,

as Rule 30 in the Sixth has it; from this it certainly does not follow that, probable and more probable opinions standing against the law and for the law, the law certainly obliges. And indeed Canon Law does not contradict itself. Moreover, the remaining things now being passed over, in c. *Cum iure* 31, *De Off. et Pot. Iud. Deleg.*, it is said: "Unless you have become certain of the mandate, you are not compelled to execute what is commanded." The same is had in c. *Sicut quaedam*, d. 14, where St. Leo writes these things: "In those matters which have been doubtful or obscure, let us know that this is to be followed, which is found neither contrary to the evangelical precepts, nor opposed to the decrees of the holy Fathers." And St. Alphonsus, l. 3, after n. 130, *Epist. Resp.*, part *Adversarius in Dissertat.*, adds this commentary: "This has place insofar as it can be asserted that some action is not gravely illicit. But, in order that it be affirmed absolutely that some action is a mortal sin, a probable opinion does not suffice; nor even a more probable one."

3. Suarez certainly was not a probabiliorist, nor is it necessary to demonstrate this, since it is conceded by the adversaries themselves. Cf. Marc. l. c. 92. Therefore his saying only has to be explained, and it is easily explained. It certainly happens sometimes that for some truth a greater absolute probability is had, and the excess of probability is so certain that the opposite opinion is scarcely probable, or enjoys only a certain slender probability, so that the probability of that opposite opinion is uncertain and doubtful. In such a case that greater probability, with such a certain excess of probability, is equivalent to a certain moral certitude. But in such a case, as is clear, it is no longer a matter of two truly probable opinions, although one is more probable than the other. Therefore nothing is drawn from the saying of Suarez for Probabiliorism.

4. The same must be said of Muzzarelli's affirmation. For he is treating of such a notable excess of probability that the doubt of the opposite side is removed, we are determined to one, and in it we stand. But in such a case we are already outside the limits of true probability, and we are found at least in moral certitude. Muzzarelli has these words in the cited *Opusc.*, Roman edition, 1807, page 19: "If the excess is of great or notable moment, then I say that in practice ordinarily there does not subsist before the intellect a persuasion of reasons for the contrary opinion; and therefore that case has always seemed to me very rare in practice. For a great or notable preponderance of reasons for one opinion removes before the intellect the weight for the other, and makes it before the intellect not only less weighty, but even LIGHT and IMPROBABLE." But that Muzzarelli is not a probabiliorist but in reality simply a probabilist is clear from the Rule of acting which, after Benedict XIV, he established in the aforesaid little work. For this generally is it, namely that in obscure and more difficult matters we embrace that opinion which reason advises and authority confirms. "Which reason advises," that is, which reason proposes as true or likely in such a way that it induces a prudent man to give assent to it. For in this stands the force of reasonable persuasion; whence an opinion in which the reason of a prudent man cannot rest, although sometimes it bears before itself some apparent truth or likelihood, is nevertheless altogether to be refuted. It follows: "and authority confirms." For the authority of learned men is the greatest hinge by which the weakness of the human intellect is ruled, so that for the ignorant and unlearned authority of this sort almost always stands in place of reason.... God does not require from us that we always act with

metaphysical or physical evidence concerning the material honesty of our action: for this is above the powers of human nature for this state of life; but he requires from us only that we never act without a firm and prudent persuasion that our action here and now to be posited is not sinful, but licit.... But he who in obscure and disputable matters finally executes that which, all things having been seriously weighed, reason advises him and authority confirms, follows that which prudently appears to him true and honest.... As soon as in controversial matters, after diligent examination and all things seriously weighed, I find an opinion which right reason advises to me, and several classical authors confirm, now I have no need to inquire further, and to search out all the doctors, to compare each of their reasons and authorities, and to judge concerning their inequality and preponderance, which would be a morally intolerable burden, as entangled in innumerable scruples and liable to dangers of erring." And hence it is more than sufficiently clear, not only that Muzzarelli in reality simply defends probabilism, but also that he excludes equiprobabilism and probabiliorism; whence below he asserts still more clearly: "But if it should sometimes happen that there is at the same time a greater notable persuasion for the respectively contradictory opinion, I would not indeed dare to add anything to the rule of Benedict XIV, who simply counsels following that which reason advises, not that which advises more....

Most prudently Pontiff Benedict XIV abstained from these comparative preeminences, and prescribed only that we descend to the opinion which reason advises and authority confirms." And this opinion indeed, in obscure and disputed matters, is indeed an opinion which is truly probable, whatever may be the degree of its probability, concerning which it is so difficult a matter to judge that, as the same Muzzarelli says, "it is not to be presumed that God willed, when it is a question of the observance of law necessary for salvation, to cast us into so many difficulties and ambages, from which we cannot extricate ourselves, and by which we are almost driven into despair."

5. The mind of St. Alphonsus is also the same; since the holy Doctor openly says that, when an opinion certainly much more probable for the law stands, the will cannot prudently adhere to the less safe part. Therefore this part, if it is such that the will cannot prudently adhere to it, is already not truly probable, and the opposite is already morally certain. And indeed the holy Doctor established this in order to retain Probabilism within the limits of true probability, and consequently to remove from it slender and doubtful probability. Hence in the text brought forward in the case, the holy Doctor does not speak of any probability whatever, but of that which plainly appears to the intellect of the one judging; who consequently, if he departed from this probability, would depart from his own judgment by a certain effort of the will, and would act against his conscience, to which therefore he applies that saying of the Apostle, Rom. 14:23: What is not from faith is sin. Hence the holy Doctor taught most constantly: "That there be no grave sin, it suffices that true probability be had; I understand that which rests on a foundation NOT SLENDER, so that safely, according to the common opinion, the question of the more probable and the less probable being set aside, it can be held and taught." *Op. Mor.* l. 3, after n. 130, *Epist. Resp.*, part *Adversarius in Dissertat.* And the holy Doctor indeed opposes and calls lax that opinion which defends even the less probable for liberty WITHOUT ANY DISTINCTION between grave and slender, between certain and doubtful probability. *Apol. cont. il P. Patuzzi*, year 1765. Cf. I. M. 131 seqq. And l. 3, n. 547, St. Alphonsus establishes

and develops this assertion: "Precepts are not to be imposed under grave fault unless evident reason advises it." And this, as far as pertains to us, is truly the Probabilism which we defend, with every question set aside concerning the more probable and less probable, concerning the much more and the little more probable, and the equally probable. Probabiliorists simply assert that one must stand for the more probable, the less probable being left. Equiprobabilists affirm that one must stand for the much more probable, the much less probable being left; but they concede that someone can hold the probable, the other equally probable or a little more probable being left. Probabilists say that it is licit to follow an opinion simply probable, provided it is truly probable, the other being left although it is more probable and much more probable. Therefore we defend this system with St. Alphonsus and with St. Thomas, and no other: "Precepts are not to be imposed under grave fault unless evident reason advises it," l. 3, n. 547; "No one is bound by any precept except through knowledge of that precept," Quodl. 14, *De Verit.*, a. 3. - G. 46, 47, 56-64.

2. Probus the theologian does not approve Probabilism, but Probabiliorism; because, he says, the intellect strives to attain truth as nearly as possible. What concerning Probus?

R. That which Probus affirms, that our intellect strives to attain truth as nearly as possible, can be taken in two ways. First indeed for the objective truth of the thing, or for the effect of some action of ours, to be obtained absolutely. But in this sense the reason of Probus proves nothing against Probabilism. For when it is a question of that objective truth and objective effect to be obtained absolutely, the probabilists themselves say that it is neither probable nor licit to follow the less probable and less safe opinion. Therefore in such a case it is not licit to follow that probable opinion about the thing itself, not because it is not licit to follow a probable opinion, but because it is not licit to follow a false opinion. For it is not probable, but false, that it is licit to follow a probable opinion about the thing itself when the thing itself must be obtained absolutely. In the other sense, however, the assertion of Probus can be taken for the merely subjective truth of the liceity of some action, in the speculative order, which ought to be, in the practical order, that from which the practical dictate of conscience would be taken for acting, so that our action would become licit and honest. And in this other sense the assertion of Probus is altogether false.

For then the question is not whether the intellect ought to adhere to the more probable opinion, because it is, or rather appears, nearer to the truth. But the question is whether the will ought to adhere to the more probable opinion, because it is then bound by law. But it is not only not nearer to the truth, but altogether alien from the truth, that the will is then bound by the law; for then the law, if it has against itself a truly probable opinion, although it has for itself a more probable one, is doubtful, and it is an axiom that a doubtful law does not oblige.

Only then could the obligation of the will from the probability of the greater opinion have place, when, where there stood, for example, a more probable opinion for the law, the law would thereby become certain, and knowledge of the law would then be had. For the will is not bound except by a certain law, and by a certain law through knowledge of the law itself. But an opinion, although more probable, exhibits neither certitude nor knowledge. Therefore from the reason of Probus the contrary follows, namely, that if the intellect strives to attain truth as nearly as possible, the intellect cannot impose on the will the obligation of a law while its doubt stands; which Probabilism declares.

Therefore from the fact that the intellect embraces what appears more probable, it does not follow that the will ought to follow what the intellect has judged more probable. For it is altogether one thing that this or that is speculatively more probable; another thing that consequently it is more probable that, that greater probability standing, notwithstanding the opposite probability, the law is certain and certainly obliges. This is not only not more probable, but not even probable, since the principles are admitted by all: Probability excludes certitude; a doubtful law does not oblige.

3. Titius, a confessor and probabilist, says: either Probabilism is true, and it is true in every case; or, if it is false even in one case, it is always false. Hence he does not hesitate to assert that Probabilism ought consequently to be extended even to the sacramental seal. But Titius adds: what is true speculatively is also true practically. Therefore without any scruple he is accustomed to speak in a rather free manner about things heard in confession. And if at any time others wonder at this manner of speaking, he says: they are ignorant; so much the worse for them.

Q. What as to the case?

R. It is true what Titius affirms: either Probabilism is true, and it is true in every case; or, if it is false even in one case, it is always false. The reason is, first, because the truth of a universal proposition must be verified in every other particular proposition contained under it; secondly, because in every true case of probabilism the axiom holds on which probabilism rests: a doubtful law does not oblige. Therefore if this axiom is once false, the foundation of all Probabilism is destroyed. - But the conclusion of Titius concerning the extension of probabilism to the sacramental seal of confession is not legitimate. The reason is that probability here does not regard the subjective liceity or illicitness of the action, which probabilism alone touches, but regards the very objective truth of the matter: whether the sacramental seal is manifested. For if it is probable that by speaking or acting in this or that way the sacramental seal is manifested, now it is not probable that it is licit to speak or act in this or that way, but it is certain that it is not licit. The reason is that the sacrament of penance is certainly rendered odious, and the faithful are removed from it; and moreover that probability does not make it so that, if in reality by that speech or by that action the sacramental seal is violated, the penitent is not thereby defamed, to which he has a certain right in whatever case, as much as is by force of the sacramental seal. And he has a certain right not to be exposed, by force of sacramental confession, even to a probable danger of infamy. Each has place, as is clear, both in probability of fact and in probability of law, which many wrongly distinguish in this matter. G. Comp. v. 2, 650; Cas. v. 2, 749; I. M. 116, 117, 120, 121. But what Titius adds, that what is true speculatively is also true practically, contains truth in the abstract, not in the concrete. For in the concrete, extrinsic circumstances can be superadded which render a matter licit in itself, although accidentally, illicit in practice. But in the case of Titius speaking in a freer manner about things heard in confession, according to his doctrine about probabilism, the matter is illicit not only extrinsically because of the wonder and scandal of others, but also intrinsically. Therefore not the others, but Titius himself, is ignorant, and for him the matter stands altogether badly.

4. Antoninus remembers that long ago, to avoid very frequent relapses against chastity, he most firmly brought into his mind that henceforth he wished to abstain from every sin against the angelic virtue, and that he had indeed often promised this to the confessor before receiving

sacramental absolution, and that he had often renewed the same will immediately after receiving Communion. Hence Antoninus is anxious whether, by reason of a vow made, he ought to abstain from entering marriage. But he remembers that, in order to fulfill in deed what he had resolved in mind, on the feast day of the Most Sacred Heart of Jesus he vowed several fasts to be performed, and several rosaries to be recited. But he does not now know whether he ought to do this on each Friday and Saturday, or only on the first Friday and Saturday of each month. He doubts besides whether he ought to do both on Friday and Saturday, or to fast on Friday and say the rosary on Saturday, and whether the whole rosary, or only a chaplet or third part of the rosary, since he himself did not distinguish sufficiently between the one and the other.

Q. Whether and how is Antoninus bound by the aforesaid vows?

R. Antoninus is not held by a vow of chastity; for a purpose of chastity, although most firm, which he most firmly brought into his mind to be observed, is not a vow. Nor is a promise often made to the confessor in confession and before sacramental absolution a vow. For a vow is a promise made to God alone. Nor likewise does that renewal of purpose and promise immediately after Communion have the value of a vow; for renewal is of the same will, which contained no vow. And, if Antoninus had truly emitted a vow of chastity, as he now well remembers that he vowed fasts and rosaries, so certainly he would also well remember that he vowed chastity. But as far as fasts and rosaries are concerned, after the matter has been weighed and the doubt remains, he is obliged only to the minimum. Therefore he must fast only and recite the rosary on the first day of Friday and Saturday each month; namely, fast on the first day of Friday, and recite the rosary on the first Saturday day, which seems more likely. And if there is also serious doubt about reciting the whole rosary, it suffices that he recite the chaplet, namely if, not sufficiently distinguishing between rosary and chaplet, he had in mind and vowed the rosary as he was accustomed to recite it in his family, and as it is also commonly accustomed to be recited. - I. M. 570, 572, 577, 586, 592, 593; Elbel 156 seqq.; G. 44.

5. Leofridus the confessor, following a probable opinion, imposed on his penitent an obligation of restitution from which he had already been freed by another confessor, who had also embraced a probable opinion in favor of his penitent. Hence, when the penitent refused to restore, Leofridus says: it is a matter of justice, in which probability has no place. For it belongs to justice to preserve equality; therefore, when doubt and probability stand, restitution must be made at least according to the proportion of the doubt and probability. - But although he himself was certainly persuaded about the reality of fire in hell, and he himself certainly held the contrary opinion as false and erroneous, nevertheless he did not hesitate to absolve a certain noble man who, on the contrary, thought the fire of hell to be metaphorical. For there are not lacking, he said, theologians, both old and also more recent, who think the matter doubtful, and the Church has as yet defined nothing about this matter. But a confessor does not have the right of imposing his own opinions on a penitent, since there are others who think the contrary.

Q. 1. Can the confessor impose on the penitent, at least a rude and ignorant one, his own opinion? 2. What as to the case?

R. To the first, cf. I. M. 119. To the second: first, Leofridus, in itself, is held to restitution toward his penitent. For since the penitent had for himself a truly probable opinion, Leofridus unjustly obliged the penitent to restitution, and so was an efficacious and unjust cause of the penitent's damage. But his general doctrine is false, that probability has no place in justice, as is seen everywhere among the doctors, and especially in St. Alphonsus. Likewise his reason is false, for it indeed belongs to justice to preserve equality and to restore it when injured; but restitution is to be made, from the same justice, by rendering to each one his own right, where it is certain concerning such a right. But where the right of another is doubtful, the very equality of justice to be preserved requires that the right of the possessor prevail, and that the possessor in good faith not then be despoiled of his own thing. G. 62, 70; L. 1, 6, n. 547.

Secondly, since Leofridus was certainly persuaded concerning the reality of fire in hell, and he himself certainly held the contrary opinion as false and erroneous, he could not give absolution to the noble man thinking otherwise. Nor indeed does his reason avail, namely that no definition of the Church has yet come forth on that matter, nor are there lacking some theologians who do not admit real fire of hell, but metaphorical fire. For first, if these things did not destroy the certitude of his intellect concerning the truth of the fire of hell, he could not form a conscience for himself by some reflex principle for absolving; for it is impossible that someone be directly certain concerning some truth, but reflexively doubt concerning the same. Then, in fact, it is not a matter here of something disputed among Catholic doctors, but of the common opinion of Catholic doctors, which Suarez affirms to be certain and Catholic. Cf. Suarez, *De Angelis*, l. 8, c. 12, n. 9; Petavius, *De Angelis*, l. 3, c. 5, n. 7; Toletus on I p., q. 64, a. 3, etc.; G. 71. But what Leofridus asserts in excuse of himself by no means excuses him. For from the fact that the Church has defined nothing, it does not follow that therefore the opposite opinion can be held as probable, or at least not improbable. Likewise from the fact that theologians are not lacking who hold the contrary opinion, this opinion cannot therefore be held as extrinsically probable, or at least not improbable. Extrinsic probability cannot be invoked if no probable reason is brought forward by the theologians; for extrinsic probability is resolved into intrinsic. And only then can extrinsic probability be invoked, abstracting from intrinsic, when it is a question of some matter entangled, obscure, involved in difficulties, not in reality sufficiently clear among doctors. Lastly, it is true that a confessor cannot impose his own opinions on his penitents when the opinion of the penitent is probable, or at least does not appear certainly improbable; but he cannot approve that the penitent follow false and erroneous opinions in a practical matter which pertains to faith and morals. L. 1, 6, n. 604; G. 69, 71-74. The present resolution is confirmed from the response of the Sacred Penitentiary, 30 April 1890.

6. Sigismundus admits a testament made in his favor, but destitute of legal formalities, because, he says, it probably avails. But he refuses to pay certain pious and profane legacies inscribed in it, because, he says, they are probably null. The same Sigismundus juridically asks that another testament made in favor of Caius his blood-relative be annulled, since it is destitute of due formalities. He obtains the annulment of this testament. Likewise he refuses to pay certain profane legacies inscribed in it, because, he says again, they are null, as having been inscribed in a null testament.

Q. 1. Can one change a probable opinion once accepted, by acting according to the opposite probable opinion? 2. What as to the case?

R. To the first, cf. I. M. 128. To the second: Sigismundus, first admitting the testament, follows a truly probable opinion, and cannot be disturbed. Cf. I. M. 1029. But he cannot not pay the pious and profane legacies inscribed in it; since, accepting the testament as valid from a probable opinion, by that very fact he both acquires the right as to the advantage of the testament and at the same time contracts the obligation of the burden of the legacies, according to Rule 55 of Law in the Sixth: "He who feels the advantage ought also to feel the burden."

But if a testament lacking formalities is for a pious cause, it is certainly valid indeed, if from elsewhere the will of the testator is certainly established. I. M. 1030, 1031. But whether profane legacies contained in it are also valid is disputed. The reason for denying is that a testament of this sort does not avail except from the will of the Supreme Pontiff and from Canon Law, which does not involve itself in profane causes; and so profane legacies do not avail, but consequently by right of accretion they will pertain to the pious cause itself. The reason for affirming is that, since the pious cause suffers no damage from the defect of solemnities, equity at least requires that from the same defect, against the will of the deceased, it not take an advantage. But, on the contrary, since the heir is the pious cause itself, because the will of the deceased is certainly established by natural law alone, when by the same natural law the will of the deceased is certainly established as to the legacies, it is necessary that the pious cause execute this certain will of the testator. - Lugo d. 22, n. 274; L. 1, 3, n. 922.

Sigismundus, having recourse to the judge concerning the other testament, relying on a probable opinion concerning its invalidity, acts licitly, and uses his right, which a just law concedes to any citizen. But once the nullity of the testament has been declared by the sentence of the judge, consequently the profane legacies inscribed in it are null. For the law renders such testaments destitute of due formalities simply liable to nullity, no distinction being made between the testamentary disposition itself and the legacy. C. I. 804; C. G. 1001. - G. 75-78; I. M. 936.

13. On Doubtful Conscience

Ferdinandus, on a certain day, doubtful whether he had drunk after midnight, although he had certainly drunk that night, received Holy Communion. In doubt, he says, the condition of the possessor is better. When again on another day he was about to receive Communion, he inadvertently brought a small piece of sugar to his mouth, but, immediately adverting to the Communion to be received, as quickly as possible he spat out whatever was in his mouth. Nevertheless, doubtful whether he had swallowed anything of the sugar, he nonetheless approached the sacred table, saying again: in doubt, the condition of the possessor is better.

Q. 1. What is doubtful conscience, and can it be a rule of morals? 2. What as to the case?

R. To the first, cf. I. M. 137 seqq. To the second: if the matter happened involuntarily, Ferdinandus reasoned rightly, and he cannot be deprived of the right which he certainly possesses of approaching Holy Communion in each case. Cardinal Lugo, *De Sacr. euch.*, d. 15, n. 43, distinguishes case from case. He concedes that in the latter case Communion can be received, but denies it in the former. His reason is that "he who admits eating must prove a new day after eating, in order that he may have a right to Communion; meanwhile he will be rejected on this title, that he ate, and he does not have the right until a new day begins after the eating. This reason does not proceed in the case when there

is doubt about the eating itself; for nothing can be opposed to this man by which he has lost the right to communicate on the same day, since eating cannot be opposed to him, concerning which it is not established." But, if this man has a right to communicate because eating cannot be opposed to him, that man also has a right to communicate, because eating after midnight cannot be opposed to him. For he is deprived of the right to communicate not by eating, but by eating after midnight. But in order that he be deprived of this right, which he certainly and legitimately possesses, the fact of eating after midnight must be proved. Aptly St. Alphonsus, l. 1, n. 39: "Therefore, if, in order that they cannot communicate, the fact that they have taken something must be proved, the fact that they took it after midnight must also be proved." Thus also G. 67, 68; La-Croix l. 6, p. 1, n. 565-567, and many others. Cf. Gur.-Ball., *Comp.*, t. 1, n. 79, q. 5.

If the matter is done voluntarily, Eusebius Amort rightly says, tom. 2, diss. 5, quaestiunc. in fin., § 4, q. 4, 5, that "he would sin at least venially who, for the sake of merely pleasurable drinking, would thus traffic around the laws of the Church, exposing himself to the danger of at least material transgression; and if he does this from custom, or from a purpose of always acting in this way, with no other reasonable cause concurring, for example thirst, infirmity, etc., he will also sin mortally. Because such a purpose argues an interpretative contempt of the laws, and a defect of charity toward God and the Church, whose comeliness he defiles." - Elbel 165 seqq.

14. On Scrupulous Conscience

1. "Titius, a cleric, had completed a rather long journey with the intention of receiving the order of presbyterate; but when he entered the church, this thought occurred to him: Behold, you have not yet elicited a formal and sufficient intention for the reception of the presbyterate, for that recently made does not yet avail. For this reason he proposed that he wished to elicit an actual intention during the actual conferral of the order; but when it came to the actual reception, Titius, perhaps from distraction, elicited no further intention. Therefore, having returned home on the day before his first Mass, agitated by scruples, he said that he could not celebrate with a safe conscience, because through defect of intention he had not been validly ordained."

Q. 1. What is scrupulous conscience, and can it be a rule of morals? 2. What judgment is to be made of Titius?

R. To the first, cf. I. M. 158 seqq. To the second: "It is easily clear that Titius must be held not only as scrupulous, but almost as foolish, since from no foundation, or certainly from a wholly empty one, he doubts concerning the sufficiency of his intention and concerning the value of the order received. For what could seem more foolish than to make long journeys, undergo examination, and, after confession and other preparations have been made beforehand, dispose himself for the reception of order, and nevertheless doubt concerning the sufficiency of his intention?" Elbel 220.

The same judgment seems to be made concerning one to be ordained who is very anxious whether he is in the state of grace, does not wish to receive sacred orders in the state of sin, and in fact receives them; since the will then predominant is the will of receiving sacred orders.

The same also must be said concerning those scrupulous priests "who are more anxious than is fitting concerning the sufficiency of intention around the administration of the sacraments. Indeed we have found that there are men of this sort, who, called to a sick person, visit him and absolve him after confession; likewise those who, asked by parents, baptize a recently born child; likewise those who, solicited by a penitent that they be willing to receive his confession, immediately enter the confessional, and thus without further express intention administer the requested sacraments; but afterwards, agitated by scruples, they begin to doubt whether they had sufficient intention, and whether they are not held to rebaptize an infant of this sort again, etc. Let them note, I say, this very common doctrine of theologians: that for the valid administration of a sacrament, a formal explicit intention is by no means necessary, but a virtual one suffices, such as they are certainly convinced to have when they immediately comply with those requesting the administration. For when, asked by someone, for example, that you receive his confession, you immediately enter the confessional, receive the confession, impose penance, and finally say: I absolve you, etc.; do you not by that very fact show that you have the mind of administering the sacrament? Would you not yourself judge foolish whoever doubted about this?" Elbel 222.

Finally those are also disturbed without reason concerning confessions made, that they lacked sincere sorrow and purpose, and did not confess integrally, because they experienced dryness of spirit in themselves, or also a certain natural repugnance toward confession while they were confessing, and were ignorant of the species of sins. For sorrow and purpose are acts of the rational will, which can well exist in the will without any sensible effect and sign in the body. Likewise, natural repugnance and shame in explaining sins is not an argument that one has not confessed integrally. And this is to be noted here, that this repugnance and shame is often rather about certain circumstances not necessarily to be declared than about the sins themselves. Nor has someone confessed invalidly and sacrilegiously because he was ignorant of the various species of sins. If he was ignorant of them when he was confessing, he was also ignorant of them when he was sinning. Therefore, if someone cannot bring forward another motive of a disturbed mind, let him be ordered by the confessor to acquiesce, and to trust in the divine goodness and mercy. - Elbel 223 seqq.; G. 48 seqq.; I. M. 158 seqq.

2. Caius doubts whether he touched the chalice. What is to be done?

R. Let him acquiesce. Holy Office, 25 March 1895. Every deed is presumed to have been done rightly. M. E. v. 9, p. 1, p. 91.

3. Sempronius, doubting whether he was suitable for the presbyterate, wished to remove the intention, and at the same time wished to form it. Finally he decided within himself: I intend that which I shall certainly intend in some part of the ordination. Doubtful, he received the first and the other imposition of hands; but when he was receiving the consecration of the hands, he resolved to receive the presbyterate. What concerning Sempronius?

R. Let him acquiesce. Holy Office, 26 January 1898. M. E. v. 1, p. 1, p. 243.

On Laws

15. On the Nature of Law

1. A bishop, in a diocesan synod, reserved to himself for the future some sins and some censures. After the bishop had died, the chapter, the see being vacant, ordered this reservation of cases to be printed, so that it might come to the knowledge of all confessors. It placed this title on the folio, edited and printed: *Cases and Censures in the Synod of N. Diocese, held in the year 1637*. It was doubted whether that reservation had sufficient force.

Q. 1. What is law? 2. What as to the case?

R. To the first, cf. I. M. 166 seqq. To the second: Cardinal De Lugo, *Resp. Mor.*, l. 1, d. 21, thus resolved this case: "I inclined more to the opinion denying the value of that reservation.... I am moved..., namely because the chapter did not seem to use its own authority for promulgating that reservation and inducing its obligation. For it did not signify that it reserved the absolution of those cases, nor did it say that it supplied the authority which, the bishop having died before promulgation, he did not have; but it only caused those cases to be printed as having been reserved by the bishop in diocesan synod, the proper authority of the chapter, the see being vacant, not being interposed, but only the diocesan synod with the bishop being commemorated. Therefore, since the authority of the bishop had already expired, the obligation of law could not begin when the legislator can no longer command and oblige. For I suppose that before promulgation a law is not a law, except inchoatively; nor is promulgation merely a condition or application of a law already preexisting, but rather it is a constitutive part of the law itself in the character of law.... And whatever may be the case concerning this, nevertheless it must be admitted that promulgation, required for the obligation of law, is not promulgation through private knowledge which individual subjects may have about a law already made, even if the greater part of the subjects had that knowledge; but it ought to be public knowledge, that is, arising from a solemn act by which, at the command of the Legislator, the law is published, as the doctors commonly note. But the reason from what has been said is that the act of commanding, such as law is, includes a speech by which the Prince or Legislator commands and manifests his will to the subjects, which happens when the law is promulgated. But promulgation cannot be the speech of the Prince except by command and authority of the Prince. Therefore, since the dead bishop can no longer speak to the subjects, or command, it follows that promulgation made by the chapter alone cannot be made in the name of the bishop, nor receive authority from the same bishop; therefore that promulgation is not sufficient for inducing obligation, since through that promulgation no superior speaks and commands. Nor does the dead bishop, who now can neither speak nor command. Nor does the chapter, which, although it could command, nevertheless does not signify that it commands, nor interposes its own authority, but that of the bishop alone, now dead. Therefore the promulgation required for obliging was lacking, namely promulgation made by the Superior himself, commanding through that same promulgation."

2. "Caius, a counselor of great name and no less wealthy, had understood that in the last assembly it had been decreed that the value both of ducats and of grain would be diminished,

while on the contrary the value of another certain silver coin would be raised. Wherefore, thinking that he should use the opportunity of time and of this private knowledge, one or two days before the aforesaid Constitution was solemnly promulgated, he asked from a certain Jew a notable sum of that species of silver coin, in place of which he gave him ducats and grain. After some days, the promulgation of the aforesaid Constitution having already been made, he came to the confessor, having ingenuously confessed that he had notably deceived a certain Jew, and asked to know whether on account of this he had sinned, or had incurred an obligation of restoring."

Q. 1. Is promulgation of a law necessary for its obligation? 2. What will the confessor answer to Caius asking?

R. To the first, affirmatively. For promulgation is the act by which a law is exhibited and shown to the subjects. Whence it is also clear that, although promulgation is necessary for the obligation of the law, it nevertheless does not pertain to its essence. For the essence of law consists in this, that it is a rule of morals; and promulgation is not regulating, but only showing the rule. Cf. I. M. 166, 167.

To the second: "Caius, by force of this deed, at least speaking in itself, did not sin, nor did he contract any obligation of restoring.... The reason is that, since, at the time of this exchange made, the ducats and grain were truly in their former value, it is certainly clear that Caius, by giving gold and grain for silver, repaid an equivalent. Granted even that he is supposed to have known that the grain would at once be of lesser value after the promulgation, nevertheless because this promulgation had not yet happened, nor was Caius otherwise obliged to intimate it to the Jew, hence he inflicted on him no injury at all, but wisely used his right in order to avoid the damage which he foresaw was threatening him from retention of the ducats and grain.

"Nevertheless I said that Caius, in this deed, speaking in itself, did not sin. For from the manner of accusing, he seems to have insinuated quite clearly that at least from erroneous conscience he sinned gravely: for deception of one's neighbor in grave matter is not free from grave fault. Therefore since Caius thought that he was deceiving, indeed willed gravely to deceive, the Jew, it seems practically certain that he sinned gravely, although he is no longer held to rescind the contract, nor to restore anything to the Jew, because, according to what was just said, the contract was truly just." Elbel 257, 258; G. 89, 90. Cf. I. M. 1147.

3. Epipodius the theologian and Thiphonius the canonist, conferring with each other, sharply dispute about the promulgation of pontifical law. The former contends that it is enough if its promulgation is made at Rome, or in the principal city of the whole world, so that it has force for obliging all the faithful. But the latter contends that promulgation must be made in the individual dioceses, to manifest knowledge of it to all of them. For Rome is very distant from the greater part of the dioceses of the whole world.

Q. 1. How and where must laws be promulgated? 2. In order that pontifical laws oblige, must they be promulgated not only at Rome, but also in each diocese by its own bishop?

R. To the first, cf. I. M. 168, 169. To the second: first, negatively, if it is a question of Pontifical Constitutions concerning a matter of faith and morals. The reason is that they are not new laws, but mere declarations of natural and divine law, already sufficiently promulgated before.

Secondly, affirmatively, if it is a question of disciplinary laws, and promulgation of this sort is established in the law itself, as in the Tridentine Decree, session 24, ch. 1, *De Ref.*, concerning the nullity of clandestine marriage. The reason is that the mode of promulgation depends altogether on the will of the legislator.

Thirdly, if it is a question of the same laws, and nothing is had in the law concerning a special promulgation to be made, "the first opinion affirms, and several grave authors hold this.... But still, according to this first opinion, Bulls inserted in the Bullarium must be excepted, because these are already the Body of laws; and in this all agree, as Cardinal Petra testifies.... But the second opinion, very common and more probable, denies it.... When the Apostolic See wishes some law not to oblige except after publication made in the provinces, it expresses this.... When the Pontiff establishes that his Bulls be published only at Rome, it is by no means likely that he intends to oblige not the other provinces, but only the Roman province. When the Pope wishes to bind only Romans, he is accustomed to issue particular Edicts.... But making statutes for the whole Church, and promulgating them solemnly with obligatory clauses, he is without doubt presumed to wish to oblige all the faithful as soon as knowledge has reached them.... This is clearly deduced from c. 1, *Ad haec de Postulat. Praelat.*.... The same is sufficiently inferred from c. *Quia cunctis* 1, § *Nec obstaret*, *De Concess. praeb.* in the Sixth.... But what gives more force to our opinion are two clauses.... One clause speaks thus: 'But in order that the present letters may more easily come to the knowledge of all, and that no one may be able to allege ignorance of them, we will that they be affixed to the doors, etc., and published, and that, thus published, they bind and affect all and each whom they concern, just as if they had been personally intimated to each one of them.' The other says: 'But we will that to transumpts of the present letters, even printed ones, subscribed by the hand of some public Notary, and fortified by the seal of a person constituted in ecclesiastical dignity, the very same observance everywhere be applied, both in judgment and outside it, as if they had been exhibited or shown to each one.' But these clauses show too plainly that the mind of the Pontiff is to wish to bind all the faithful to statutes of this sort independently of their publication in individual Provinces. And Sylvius and Roncaglia, although they admit the first opinion as probable, nevertheless hold as certain that all Bulls promulgated at Rome with the aforesaid clauses oblige in themselves without another promulgation. Moreover, Roncaglia rightly says that from the reported words of such clauses a firm argument can be adduced for the probability of the first opinion with respect to those Bulls where the aforesaid clauses are lacking: for nothing in laws is to be supposed placed in vain, and those clauses would be altogether superfluous if all Bulls, published at Rome even without such clauses, obliged before any other publication in the Provinces.... Furthermore Suarez and others probably say that pontifical laws which invalidate some contract valid by its own nature... or which take away jurisdiction, for example, in the sacrament of penance, concerning these we can benignly interpret the mind of the Pontiff to be that he does not wish them to have effect unless after they have been promulgated in the dioceses; otherwise they would redound to the detriment of many, who would be invincibly ignorant of them." Lig. l. 1, n. 96.

This latter opinion seems altogether truer from the fact that a response was given by the Sacred Penitentiary, 8 November 1821, that the Constitution *Ecclesiae* of Pius VII, and on 15 June 1870, the Constitution *Apostolicae Sedis* of Pius IX, oblige on the day after its publication made at Rome. It is confirmed from the very recent Constitution *Officiorum* of Leo XIII concerning the prohibition and

censure of books, which the Supreme Pontiff wills to be inviolably observed by all, and which indeed is to be observed by all after the promulgation already made at Rome.

Fourthly: "Not only Pontifical Constitutions which have been solemnly promulgated induce the obligation of law, but also all others which, from the use and consent of the universal Church, for several centuries now are held as sufficiently promulgated and authentic." St. Alphonsus l. 1, n. 105, 106; Struggl. tr. 3, q. 1, n. 21, 22.

Fifthly: "It is special in censures that, for their obligation, it is required that they be published not only at Rome, but also through the prelates of places. C. *Cum infirmitas* 13, *De Poenit. et Remiss.*" Thus Engel, l. 5, tr. 39, n. 122. But the disposition which is contained in the aforesaid chapter can be held as a special disposition for a special matter. For it is a question of physicians called to the sick, who must before all things induce the sick person to confession. Moreover in the Constitution of Pius XI, *Apostolicae Sedis*, IV Id. Oct. 1869, by which censures *latae sententiae* presently in force are established, this special disposition is not had, and that Constitution is in force everywhere. - G. 92 seqq.; Elbel 254, 256.

4. Flavius, a cleric, on account of grave negligence committed in the care of souls, having been denounced to his Ordinary and found culpable, was condemned to perform spiritual exercises for eight days in a certain monastery, and to give fifty lire to the same monastery by way of alms. This latter Flavius in no way performed. As for the former, during that entire eight days, he did not make even one meditation, saying that mental prayer is a merely internal act, which cannot be commanded by a human superior. Hence he neglected all the other spiritual exercises, content only to dwell in the monastery for eight days, which he spent reading profane books and newspapers.

Q. 1. Can merely internal acts be the object of law and precept? 2. What concerning Flavius?

R. To the first, cf. I. M. 117. To the second: the bishop altogether legitimately condemned Flavius to the aforesaid penance, the proportionate gravity of the fault being supposed. For although the bishop in words, in his sentence or mandate, did not express that he wished to oblige Flavius gravely, nevertheless by the fact he must be judged sufficiently to have expressed it, from this, that any superior, speaking regularly, must be presumed to have wished to oblige according to the capacity of the matter. Hence, Flavius, by omitting to give to the monastery the alms of fifty lire, sinned gravely; because when matter commanded by a superior is divisible into several parts, and those parts in themselves constitute grave matter, the neglect of any part is grave sin. - But besides, Flavius sinned gravely because of the omitted spiritual exercises, which also themselves constitute grave matter. Nor indeed does the reason of Flavius avail anything in the case; because spiritual exercises do not consist in merely internal acts, or in mental prayer alone, but in several acts at once internal and external: in withdrawal from all secular business and profane actions; in pious readings; in conferences with the spiritual Father, or confessor, or director of the exercises; in due preparation for meditation, after first hearing or reading over the various points of meditations; in meditations and examinations of conscience, on bent knees at least for some space of time; in vocal recitation of prayers; in visits to the Most Holy Sacrament, etc. All these, as is clear, are mixed acts, which without doubt can be commanded by human authority. - Elbel 339-341; G. 95, 96; Lugo, *Resp. Mor.*, l. 6, d. 7.

16. On the Author and the Subject of Law

1. A certain archbishop, when various means had been tried and other penalties imposed, could not root out an abuse which had crept too much into his diocese, by which some, for various reasons, wishing to contract marriage secretly, under pretext of infirmity or some similar thing, called the parish priest to themselves, and, with him present and two witnesses, suddenly contracted marriages before the parish priest could flee. From these marriages many scandals and dissensions arose. Therefore, by law and public edict, he not only prohibited this, but removed from parish priests, and from other priests with their license, the faculty of assisting at marriages of this sort when denunciations had not first been made; and he suspended them all as to this act of assisting and declared that marriages, if any thereafter were made in this way, would be invalid, on account of defect of the power of assisting on the part of the parish priest, or of another priest, which had now been taken away by this law.

Q. 1. Can bishops make laws? 2. Could the archbishop validly do this?

R. To the first, cf. I. M. 181. To the second, negatively. The first reason is because, since "the Council of Trent requires for the validity of marriage only the presence of the parish priest and of two witnesses, the archbishop could not invalidate marriages made before the parish priest and witnesses, such as are those of which there is question, since he truly still remains the true parish priest, retaining the title of his parish, especially since that assistance is not an act of jurisdiction in the parish priest; wherefore, even if, on account of excommunication or some other censure, he were suspended from all jurisdiction, he would still validly assist at marriage, as Sanchez teaches with the common opinion, l. 3, d. 21, n. 4." Lugo, *Resp. Mor.*, l. 1, d. 45, n. 5. The second reason is because, "whatever may be the case concerning other matters, nevertheless in this matter the bishop cannot by his law introduce an impediment invalidating marriage beyond those which have been introduced by common law; for this, as being a most grave affair, and one from which most grave inconveniences follow, the Supreme Pontiff has deservedly reserved to himself alone, as the doctors commonly admit, whom Thomas Sanchez, l. 7, *De Matr.*, d. 1, n. 9, Basilius Pontius, and all others follow." Lugo l. c., n. 6. It is confirmed from the response of the Sacred Congregation of the Council in the same Lugo, l. c., n. 4.

2. Cunegunda, abbess of nuns, commands her professed nuns and novices certain exterior exercises of mortification and penance, and decrees that these are always to be observed in the future. Exterior mortification, she says, is very useful for spiritual perfection; and it was omitted in the Constitutions approved by the Holy See, and so was left to the power and discretion of the Abbess. Moreover, she commands all equally that each one exhibit to her in writing all her virtues and all her sins, every month. The rendering of conscience, she says, was always in use among the Saints and the ancient Monks; and it is a salutary and best means of holiness and perfection, indeed to be counseled to all.

Q. 1. Can the Abbess or Superior of nuns make laws? 2. What must be thought concerning Cunegunda?

R. To the first, cf. I. M. 182. To the second: the abbess or superior of nuns can indeed, in particular cases and to particular or individual professed nuns, impose precepts in virtue of holy obedience, by

force of the vow of obedience, obliging gravely or lightly, with respect to those things which pertain to regular discipline, according to the Rule and Constitutions approved by the Holy See. For otherwise nuns would profess obedience by vow in vain. To professed nuns: for precepts of this sort cannot be imposed on novices, since they have not yet emitted the vow of obedience. But since she does not have spiritual and ecclesiastical jurisdiction, she does not have the power of making laws; and so Cunegunda cannot impose on the whole Community, and in perpetuity, those exterior exercises of mortification and penance. And since they are not found prescribed in the Constitutions approved by the Holy See, they would be imposed not according to the Constitutions, but beyond the Constitutions; whence also under this head Cunegunda lacks the aforesaid faculty. For she herself cannot establish a new Constitution beyond the approved ones. - But, although the superior of nuns, as being a woman, lacks ecclesiastical jurisdiction, nevertheless she has economic power, which in itself does not depend on the Keys of the Church or on sacred Orders, but is annexed by natural law itself to any superiority, and is found in any community or society which is ruled by some superior. Hence, by force of this power, a superior can also command something to novices, and correct them, or restrain them by some moderate penalty; but this power, as is clear, is very limited and restricted. Therefore the first precept of Cunegunda is of no force.

The same must be said of the other precept of Cunegunda; which "is no less imprudent than iniquitous. Iniquitous, because she wishes to bind subjects to defame themselves concerning their offenses, however hidden, and indeed before a woman, to whom neither God nor any mortal ever wished to entrust the power of discussing the hidden places of consciences. But it ought to be judged imprudent from the fact that, for the simpler ones, it can easily become a stone of offense, and give occasion to innumerable sacrileges, while they persuade themselves that they are held to put all their offenses, however hidden, on paper, which nevertheless, shame prevailing, they will not do; nor even will they expose more to the confessor than they have noted down in writing. Indeed such superiors, by their damnable curiosity, will expose themselves to dangers of temptations while they attempt to penetrate the hidden things of consciences, which God willed to reserve to himself alone and to his vicars, namely priests." Elbel 284. - Elbel 281-284; G. 97, 98.

This is confirmed from the general Decree of the Sacred Congregation of Bishops and Regulars, 17 December 1890, in which rendering of account of conscience of this sort is prohibited, both for monasteries of nuns, even of solemn vows, and for Institutes of simple vows of either sex, only those Institutes of men excepted which are altogether ecclesiastical in nature and governance. And in the same Decree it is declared to be an abuse that "sometimes in their Constitutions manifestation of conscience had been permitted, that the pupils might more easily learn from experienced superiors, in doubts, the arduous way of perfection, and, contrary to this, by some of these an intimate scrutiny of conscience, which is reserved uniquely to the sacrament of penance, was introduced."

3. Amalia has sons of five, seven, and nine years, to all of whom she is accustomed to give meat on Friday, because, she says, they are not bound by the law of fasting; and because, since the meat was left over from Thursday, it could not conveniently be preserved until Sunday.

4. Exuperius, very early in the morning, departs from the place of his domicile, where a special and obligatory feast of the Patron of the place is celebrated; and he comes to a nearby place, where there is also celebrated a special and obligatory feast of the Patron of the place. In

neither place does Exuperius hear Mass that day. Having returned to his homeland after some days, he finds a special fast observed there. But, since before he began the journey he had already in the morning and at midday fortified his stomach with a solid breakfast and an abundant dinner, and with meats, in the evening in his homeland he is refreshed with the customary whole supper and with meats.

Q. 1. What is the subject of law? 2. What concerning Amalia and Exuperius?

R. To the first, cf. I. M. 192 seqq. To the second: Amalia could give meat to the five-year-old son, because he is not yet habitually master of reason. But she could not give meat to the seven-year-old son, the seventh year already completed, and to the nine-year-old son; because, although these are not yet held by the law of fasting, nevertheless they are held by the law of abstinence. For they are held to observe those ecclesiastical laws whose observance is proportioned to their powers. Nor indeed, speaking in itself, is it an excusing reason that the meats are left over from Thursday and could not be preserved until Sunday.

Exuperius is exempted from grave sin because he did not hear Mass; because absent from his homeland, he could not be held by the law of his homeland, nor was he bound by the law of the place in which he was staying, because in that place he was a traveler. But having returned to his homeland, although he was excused from the law of fasting on that day on which he had returned to it, because fasting was no longer possible after several meals had been taken, he was nevertheless still held, during the remaining part of the day, to observe abstinence from meat. - G. 79-87; Elbel 367-472.

5. Paphnutius, a monk dwelling in Rome, on the vigil of the feast of the Purification, on which, by vow, one fasts in the City, does not fast, because, he says, Regulars by force of the privilege of exemption are not held to fasts prescribed by the authority of the Ordinary of the place.

Q. What as to the case?

R. La-Croix, l. 3, p. 2, n. 1274, speaking of religious, says: "Religious are held to ecclesiastical fasts of common law, as is clear in itself; but they are not held to those which are introduced by special custom or vow of the townspeople among whom they reside, because they are not judged part of the profane community; thus Diana, who nevertheless had said that they are obliged by a general custom received in some city. Nor are exempt religious held to those things which are introduced by Ordinaries of places, although by new law they are held to observe diocesan feasts and cessation from divine offices in time of interdict; thus Sanchez, Bonacina, Castro Palao, and others commonly with Diana."

Nevertheless Paphnutius is bound at Rome to the aforesaid fast, both because at Rome there is already such a custom that religious also observe that fast, and because otherwise wonder and scandal could easily exist for the people, especially if other monks also, led by the same reason, should themselves not observe the fast.

"If in some community of Regulars," says Benedict XIV, *De Syn.*, l. 13, c. 4, n. 7, "an ancient custom of observing fasts which the bishop, whether in synod or outside synod, appoints had prevailed, no one doubts that the same community can be compelled thereafter to observe them: for then the

obligation of fasting does not arise from the jurisdiction of the bishop, but from the custom itself, which has force for inducing the obligation of law.... similarly, not by the precept of the bishop, but by natural law, Regulars are compelled to fast on those days which the bishop has ordered to be days of hunger, if by not fasting they give scandal to others." And after he had affirmed that the fast on the vigil of St. Apollinaris, prescribed in the diocesan Synod in the year 1627, is observed in the whole diocese of Ravenna both by seculars and by regulars, he adds: "Clement XI, so that every year there might be celebrated the memory of liberation from the danger of the earthquake by which the Roman City was afflicted, established that a fast was to be observed yearly on the day before the feast day of the Purification of the Blessed Virgin Mary; and although this fast was commanded by the said Pontiff as bishop of the City, it is observed up to the present day by seculars and by regulars."

6. Zephirina, her husband having died, remained in her parish. Civilly married to Lucretius, who lived in another parish, she was led into his house. After a week they contract marriage before the parish priest of the former parish of Zephirina. Is it valid?

R. A woman has the domicile of her husband, and having become a widow she preserves it until she acquires another. C. I. 18; C. G. 108. But when other marriages intervene, the domicile of the woman is changed. L. 22, *Ad Municip*. Therefore Zephirina, although only civilly married, having been led into the house of the man living in another parish, first lost her domicile and acquired a new one. Therefore even if she had contracted marriage not after a week, but on the same day, before the parish priest of the former domicile, the marriage would have been null. - I. M. 199.

7. A girl, bereft of parents, left the domicile of the family, not with the mind of not returning, but so that she might be a servant for some time. Meanwhile she completed majority. - Soon, intending to enter marriage, she goes to the parish of the domicile of the parents, or of the family. - The parish priest says: Now I have no jurisdiction, and he requires delegation from the parish priest of the preceding quasi-domicile. - Had the aforesaid parish priest lost all jurisdiction?

R. Negatively. For the parish priest did not lose jurisdiction in the case, if that girl did not lose her first domicile. But in fact she did not lose the domicile. For first, children of the family follow the domicile of the parent under whose paternal power they are. L. 3, C. *de Municip*. But domicile is not lost without intention and fact, just as it is not acquired without intention and fact. Therefore domicile is not lost by the intention only of departing, as, for example, if someone resolves to depart from such a place and then does not depart. Nor likewise is it lost by simple departure, if someone, for example, goes off elsewhere for some time and then returns to the place of his own domicile. Therefore, in order that domicile be lost, it is required that he depart with the intention of not returning, or as one not going to return. But the aforesaid girl departed not with the mind of not returning, but only so that she might be absent for some time, and then in fact she returned. Therefore she did not lose the domicile.

Nor indeed should it be said that in the case the domicile was lost by the very acquisition of a new quasi-domicile through service in another parish. For first, from the case this acquisition of quasi-domicile is not established. For for it there is required intention and fact: the intention of remaining somewhere for at least the greater part of a year, and the fact, namely that one has truly come there.

Concerning intention, nothing is established in the case. Rather the contrary is established, because she seems to have come wholly by her own will, as if precariously, and to have come only for the sake of finding service, and, this not having been found, intending to depart. Whence it is that although she remained in that place, contrary to her opinion, both for the greater part of a year and even for an entire year, as appears from the difficulty made by the parish priest, nevertheless she more truly did not acquire a quasi-domicile. And although she acquired this new quasi-domicile, she did not thereby lose the prior domicile. For if someone can have a double domicile, why will he not be able to have at the same time both a domicile and a quasi-domicile, as in fact is verified in students who for several years study, for example, in some University and afterwards return to their homeland?

Nor likewise can any difficulty be had from the fact that that girl had in the meantime attained majority,

For first, since, as long as a child of the family is under paternal power, it is not permitted to her to transfer her domicile elsewhere; therefore meanwhile the aforesaid girl retained the paternal domicile. Then from the majority which she attained, it does not follow that she had previously lost the domicile of her parents or of the family, but it follows only that, according to modern laws, she can, if she wishes, transfer her domicile elsewhere. C. I. 220, 221; C. G. 372, 374.

Lastly, from the fact that this girl had been bereaved of her parents, it does not follow, first, as is clear, that by the death of her parents she lost her domicile; nor, as is clearly gathered from the case, did it happen that that girl had in reality stayed outside the domicile of her parents or family, except for that last and brief time of service, of which there is question. - I. M. 199.

17. On the Obligation of Law

1. Caius accepted the inheritance of Sempronius simply, without first making an inventory, seeing that it consisted of many movable and immovable goods. Wherefore Caius hoped that his fortune would be increased not a little from it. But, since the debts of the deceased exceeded the inheritance, he, seeing that he had been deceived, refused to pay them. The matter is brought into court, and by the sentence of the judge, in the first instance and in the second and third appeal, he is condemned, according to law, to payment.

Q. 1. What is a law founded on presumption? 2. Is Caius held in conscience to pay those debts?

R. To the first, cf. I. M. 204, 205, 206. To the second: "If the heir," say the Salmanticenses, "does not make an inventory within the term prescribed by law, he is held to all the debts and obligations of the deceased, even beyond the resources of the inheritance; because the law presumes that the heir, by entering upon the inheritance without inventory, received more things sufficient for satisfaction, and concealed some by fraud. But in the forum of conscience, if the inheritance is truly insufficient to pay all the debts, are the heirs held to pay the debts of the deceased? Doctors dispute here. But the resolution of this difficulty depends on that which we have resolved: namely, whether laws founded on presumptions oblige in conscience, if the presumption fails. There we have proved at length the negative part. Wherefore, since the said laws are founded on the presumption of fraud and deceit, the heir who entered upon the inheritance without inventory is not held to pay, above the resources of the inheritance, the debts of the deceased in conscience, as at present Sylvester, Gomez, Petrus

Navarrus, Villalobos, Alvarus, Martinus a S. Ioseph, Sanchez, Sayrus, Trullench, Diana, Vasquez, Bonacina teach. And this is also true even after the sentence of the judge; because even such a sentence rests on a false presumption of fraud or deceit, as Sanchez, Trullench, Bonacina, and others hold." Tr. 14, c. 5, p. 11, n. 151.

St. Alphonsus, *Homo Apostolicus*, tr. 2, n. 26, says: "It is asked whether penal laws founded on a false presumption oblige in conscience? It is necessary to distinguish the presumption called of presupposition, which is the presupposed fact, from the presumption of definition, which is the presumption of law, which judges according to the presupposed fact. Therefore, if the presupposition of fact is false, the law does not oblige; for example, if in court it was falsely proved that your animal caused damage, then you are not held to pay the penalty, and, sentence having been passed that you pay, although externally, in order that scandal may be avoided, you are held to pay, nevertheless you can secretly make compensation to yourself. The same holds for heirs who, on account of a neglected inventory, are punished by paying the debts of the deceased beyond the hereditary goods, when in reality the debts exceed the inheritance. But otherwise it must be said if the false presumption were only false in law; for example, if your animal certainly was the cause of the damage, but the presumption that this happened by your fault is false; because then you are held to pay the penalty (this is understood after sentence); because the end of the law is not only that it punish, but also that it render men more diligent in avoiding the damages of others."

D'Annibale, 3rd ed., p. 2, n. 396 bis, has these words: "When an inventory has duly been made, the goods of the inheritance and the goods of the heir, with the rights and obligations cohering with them, remain separated from each other by the law itself; on the contrary, when the inventory is in any way lacking, from the goods of the inheritance and from the proper goods of the heir one patrimony is made, and the rights and obligations of both coalesce. By this fact, in the former case the creditors of the deceased do not become creditors of the heir, who for that reason is not compelled to pay them beyond the resources of the inheritance; but in the latter case the creditors of the deceased become creditors of the heir; and therefore the heir is compelled in the external forum, if the inheritance is not adequate, out of his own goods also to satisfy not only the creditors, but also the legatees. Whether also in the internal forum is not sufficiently agreed. Some affirm it, since, by entering upon the inheritance, he is understood to have promised this to the creditors and legatees; others, more commonly, and more truly, deny it, because the law rests on a presumption of fact; namely, that the inheritance was rich." Nevertheless the same D'Annibale, not very consistent with himself, in the number almost immediately preceding, namely 394, says that, if an heir enters upon an inheritance without the benefit of inventory, whether the heir is held to satisfy all the debts of the inheritance "is not sufficiently agreed; the more common opinion affirms, and to me the truer. This question is whether hereditary creditors, who, once an inventory has been made, remain creditors of the deceased alone, when it is omitted become creditors of the heir? And who would deny it, the patrimonies of the deceased and of the heir being confused?"

The same is affirmed by many other theologians. Wherefore, as regards extrinsic authority, Caius cannot be obliged in conscience to pay the debts beyond the inheritance. But as regards the reason, a doubt can indeed be raised whether that law and sentence are founded on a presumption of fact, namely that the inheritance in reality exceeds the debts (since, ordinarily speaking, men are not accustomed in such a matter to be negligent and incautious, so that they enter upon an inheritance

without the benefit of inventory unless they are first certain of its sufficiency and excess with respect to the debts), and that fraud and deceit truly intervene; or rather on a presumption of law, namely of the common danger of deceit and fraud. But since, as has already been said, men in this matter are not accustomed to be so incautious that they not only take no profit from it, but even suffer loss, it seems that that law and sentence are founded in reality on a presumption of fact. But since that presumption is false, Caius cannot in conscience be obliged by that law and sentence; for presumption yields to truth. Furthermore, since at most it is doubtful whether that law and sentence are founded on a presumption of fact or of law, an obligation in conscience cannot be imposed; for it is not certainly established. For it is unjust, and contrary to the axiom, *That the condition of the possessor is better*, to impose the payment of a debt when it is probable that no obligation of this payment exists. - I. M. 1055; G. 105, 106, 1016; Comp. v. 1, n. 102, 823; Elbel 307-310, 427-430.

2. Alexius completes the twenty-first year of his age on Saturday evening; nevertheless he would like to receive the subdiaconate in the morning, and he explains his desire to the vicar general, who responds that he can. For, he says, in those things which are morally estimated, the minimum is reputed as nothing. And this is also handed down by St. Thomas, II-II, q. 62, a. 2, c. and ad 4, and it is also had in L. 1, *de Rest. in integr.*

Q. 1. To what does law oblige? 2. What as to the case?

R. To the first, cf. I. M. 207, 208. To the second: Alexius cannot receive the subdiaconate. For, completing the twenty-first year of his age in the evening, he had not yet in the morning entered the twenty-second year required for the subdiaconate. The minimum in the case must altogether be computed and cannot be neglected; because there is question of a matter altogether determined and defined by law. The minimum is indeed reputed as nothing, as is well said in the case, when there is question of things which are morally estimated, as for example if a very little thing is omitted in hearing an entire Mass. But when there is question of things altogether defined, even the minimum on the contrary cannot be neglected. L. 15, *de Divers. tempor. praescr.* Moreover, from the Council of Trent, sess. 23, ch. 13, *de R.*, no one can be promoted to the subdiaconate before the twenty-second year of age. And therefore the year begun is indeed sufficient, but the year not yet begun is by no means sufficient. - D'Annibale, 3rd ed., p. 1, n. 39.

3. Liborius, from the penance imposed on him by his confessor, had to keep a double fast, to hear two Masses, and to recite two rosaries. He willingly kept the fasts, led by a motive of avarice; and in order to diminish the inconvenience of the fast, he indulged sleep for almost the whole day, rising only to take the little morsel in the morning, at dinner, and at supper. But he heard two Masses at the same time, reciting two rosaries at the same time. And, since he himself was accustomed daily to recite the rosary, on that day he omitted reciting a third rosary out of devotion. But while he was hearing the Masses, having been gravely tempted, he consented to an evil desire.

Q. 1. How is law to be observed, and how is its obligation satisfied? 2. What is to be thought concerning Liborius?

R. To the first, cf. I. M. 213, 214, 215. To the second: Liborius indeed satisfied the obligation of keeping the double fast, although he sinned venially on account of avarice and laziness. For he kept

the two fasts imposed on him in reality. But he by no means satisfied the obligation of hearing two Masses; for evidently the intention of the confessor was that he should hear two Masses at different times, otherwise he would have imposed on him only one Mass to be heard. Wherefore it suffices now that he hear the other Mass. For the fact that he adhered to an evil desire at the time of Mass did not indeed prevent him from truly hearing Mass, if at least he placed no exterior act incompatible with hearing the sacred rite. He also satisfied the obligation of reciting two rosaries; although he recited them during the time of Mass; since these two obligations can be fulfilled at the same time. Nor indeed is he held to recite a third rosary. For that is prescribed by no law, no precept, but is a work of supererogation. - G. 99-102; Elbel 392-396, 401, 402.

4. Pantaleo, a soldier, had harmed a certain rustic indeed beyond his intention, but not without some negligence. Pantaleo, accused by the same rustic, was condemned by his military commander to compensate the damage. But, because he was unwilling to compensate the damage, military pay of 60 lire was therefore subtracted from him. Pantaleo, thinking that he had been unjustly condemned and despoiled of his own property, secretly compensated himself for this subtraction of pay, stealing 30 lire from the rustic, and another 30 lire from his own commander.

Q. 1. Did Pantaleo satisfy justice, being unwilling to compensate the aforesaid damage, and unwillingly suffering the subtraction of his salary for repairing it? 2. Did he then act licitly by compensating himself secretly?

R. To the first: although Pantaleo had not afterwards used tacit compensation, nevertheless, unwillingly sustaining the subtraction of salary for repairing the damage, he would not have satisfied justice in conscience, namely as regards the internal affection of the mind. For this is opposed to the virtue of justice, and justice is injured in the affection, although in reality in the effect there is no injury to it. Cf. I. M. 213. To the second: Pantaleo acted illicitly and unjustly by secretly compensating himself, and he is held to restitution. For although theological fault was lacking, juridical fault was not lacking because of the negligence committed; and therefore the commander's sentence was legitimate and just. Wherefore, in the forum of conscience, he must altogether stand by it. - Elbel 397-400; G. 105, 106.

5. Patritius, on the day before the Ember days, spends the whole day hunting, foreseeing that by reason of weariness it will not be possible for him to fast. Moreover, on a feast day very early in the morning he indulges in wine a little more freely, foreseeing that he will not be able to be present at the sacred rite.

Q. 1. Is it licit to place impediments to the observance of law? 2. What as to the case?

R. To the first, cf. I. M. 220, 221, 222. To the second: Ithuriaga, Cas. 32, n. 9 seqq., resolves this case in this way. Patritius in the second case sinned both against temperance and against the precept of hearing the sacred rite. "What is more conformable to reason than that any precept, when it urges, at once by itself obliges both to placing the means which are by themselves and proximately necessary so that we may execute it, and to not placing impediments which can proximately obstruct the execution of it? Let him deny this who dares to deny it: that he who is held to the end is especially held to all that without which the end would be intended in vain.... He who is obliged to the

execution of law is held also from this source both to employ the ordinary means necessary in themselves for observing the law, and, as far as can be done, to remove everything which can in itself obstruct the law from being observed when it urges.... Unless, however, there is question of impediments that are necessary, or so useful that it is preferable that they not be removed than that the law be fulfilled. For then it is settled that human laws do not urge so strictly that they oblige to omitting either necessary things, or things which are more excellent than the matter prescribed, so that this should be preferred to those. Wherefore, if necessity urges, or the advantage of assisting a sick person at the time when the precept of Mass urges, Mass is rather to be omitted than aid to the sick person. If someone truly cannot keep the fast and at the same time preach, or hear confessions, let him rather not keep the fast, so that he may apply himself to these works of piety, which are better than fasting. Nor by this reason is a work of counsel preferred to a work of precept; but the matter is constituted in such a state that, on account of the greater good, the obligation of the precept ceases, lest it seem to impede the greater good.

"Now, did Patritius sin or not, hunting on the day before the Ember days, as in the case? Indeed, under the leadership of the great Suarez, Sanchez, Dicastillo, Gobat, Tamburini, La-Croix, Palao, Sporer, Becanus, Moia, and all who with the latter contend that it is licit to place an obstacle to the execution of a precept, it is more probable to me, so that it may be permitted me to maintain it even through the Probabiliorists themselves, that Patritius did not sin against the law of fasting. For what is it on account of which he is said to have sinned? Is it because the day before he devoted himself to hunting? But the day before the precept was not yet present. Is it because on the following day, when the precept was now urging, he did not keep the fast? But on the following day, on account of the incapacity which followed, he was bound by no precept.... Therefore he sinned neither on the preceding day nor on the following day.

"You will say that he sinned on the preceding day, because the precept which now for now does not oblige, obliges now for then; whence Patritius on the preceding day had to abstain from hunting, so that on the following day he could fast. Very fine indeed! But what does this mean: the law obliges now for then? Certainly nothing else than that the law which now does not oblige will oblige afterwards; if therefore it will not oblige afterwards, it is badly said to oblige now for then; but, the incapacity for fasting supervening, the law no longer obliges to fasting; therefore Patritius on the preceding day, not even for the following day, was obliged absolutely, but only conditionally, namely if the law of fasting should find him fit for keeping the fast; but it did not find him fit because of the supervening weakness; therefore he did not sin against the law of fasting.

"But you will say that this is true if Patritius indeed foresaw, but did not intend not to keep the fast. For if he had devoted himself to hunting with that design, he would have clearly offended against the law of fasting. Yet I say the contrary myself: It is licit for anyone, with impunity, to place means licit by their own nature, from a direct intention of obtaining an end not prohibited by law; but hunting is something licit by its own nature, and to flee the obligation of the precept, or to effect that the precept not oblige, is not something prohibited by law; therefore it was licit for Patritius with that design to use his right, by hunting, so that he would not be bound by the law of fasting.

"If these things are true, with equal right and reason it will be said to be true that an ecclesiastic, the day before a voyage, can throw his breviary into the sea.... There is a distinction. For there are some means which must be placed before the precept begins to urge, so that we may fulfill the precept

when it urges; because, namely, they are both directly and immediately necessary for the execution of the precept, almost as its matter, and otherwise they cannot so easily be procured when the precept is already urging. Thus, if today you have the opportunity of a confessor, which you foresee that you will not have tomorrow when you will be obliged to Communion, by the precept itself of Communion you are held to anticipate confession. And thus, by the precept itself by which an ecclesiastic is held to recite, he is held either to preserve the breviary or even before the time to provide for himself, so that, the precept arriving, he may be able to recite.... The matter is otherwise in the species of the case: for to abstain from hunting does not in itself, directly, proximately, and immediately pertain to fasting, so that by the very precept of fasting we must abstain from hunting, for this reason, that we may preserve strength for fasting; unless you wish that those gravely ill offend against the precepts of the Church even from this, that for the end of fulfilling them, they do not procure good health. Therefore, to finish in a word: the precept of reciting the canonical hours obliges absolutely to having a breviary, so that we may recite the hours; and hence the ecclesiastic who voluntarily deprives himself of the breviary sins against the precept. The precept of fasting obliges, not that we have strength for fasting, but that, if we have strength, we fast; and hence, if we do not have strength for fasting, by not fasting we do not sin against the precept of fasting. But we would sin (which is proved by the parity objected), if, foreseeing that on the very day of fasting fasting foods would not be available, we should be unwilling deliberately on the day before the fast day to provide them, or should consume those already provided for this end, that on the fast day we might be able to eat forbidden foods; because, namely, as the breviary for the canonical hours, so also fasting foods for the fast are equally required in themselves, directly, proximately, and immediately, as it were as the matter of the precept, so that by the very precept of fasting we must provide such foods even before the time, just as by the very precept of the divine office we must provide ourselves with a breviary. But strength for fulfilling the precept does not pertain to the matter of the same, nor is it a means, except by way of disposition by accident and remotely necessary for the execution of the precept.

"By custom thus interpreting the law, guilty of violation of feast days are sacristans, tailors, shoemakers, and in some places even bakers, who, when they could conveniently do so, are unwilling on the day before a feast to adorn churches, finish garments and shoes, bake bread, so that they may be compelled to perform all these very things on the feast day itself, by a necessity industriously sought. Similarly I think those guilty against the precepts both of annual confession and of paschal Communion, who on the day before the day (which is the term for fulfilling the precept) would go elsewhere, where he could not receive Communion or expiate his sins; because, namely, particular laws of this sort, no one denying it, oblige to not placing impediments on the day before to the execution of the precept: not so the law of fasting in the species of the case which we have discussed."

This resolution of the learned theologian can indeed be admitted, insofar as Patritius, as in the case, acting for another honest end, merely foresees that afterwards he cannot fast. For if, beyond this, he intends it, and with that design devotes himself to hunting, and therefore does not undertake hunting from another honest cause, then he seems to act in fraud of the law. For to act in fraud of the law is nothing else than to do something deliberately, so that the law may be eluded. This indeed the law itself implicitly prohibits; otherwise the obligation of the law, if not altogether, certainly in great part, would be made void. I. M. 221. "He transgresses the law," says D'Annibale, 3rd ed., p. 1, n. 176,

"both he who does against the words of the law, whether he omits what the law commands to be done, or admits what it forbids to be done; and he who, embracing the words of the law, strives against the will of the law, L. 5, C. h. t.; whether he omits that which the law wished to be done, but did not command to be done in express words, or does that which the law did not wish to be done, but did not forbid to be done in express words, L. 29, h. t.; which we properly call acting in fraud of the law. Moreover fraud can be done to the law in almost innumerable ways. But, so that fraud may seem to have been done to the law, it is necessary that what is done or omitted be forbidden to be done or omitted by some law at least implicitly; for otherwise, against whom is the fraud? For the things which by no law, either explicitly or implicitly, are commanded or forbidden, each man omits or does by his own right; and no one acts in fraud who uses his own right, L. 56, *de R. I.*; C. 31, *de Elect*." But nothing seems more implicitly willed by the law than that nothing be done precisely with that intention or with that design, namely, that by eluding it someone may afterwards with impunity be able to act against the very words of the law and the law itself. - L. 1, 3, n. 672, 674, 1045, 1046; 1. 6, n. 569, 583; G. 103, 104.

6. Cleophas, born from a most noble family and lacking offspring, bound himself by a vow that, for the whole time of his life, on every Friday in honor of the Lord's Passion, he would keep a strict fast, if he should have male offspring for propagating the name of the family; otherwise that family would have to be extinguished. Cleophas obtained the desired offspring, and began faithfully to observe the fast. But after a year the offspring dies, nor does any hope appear that he will have another son.

Q. 1. When the end of a law ceases, does the law cease? 2. What as to the case?

R. To the first, cf. I. M. 172, 173. To the second: Cleophas is no longer held to keeping the fast, because the vow was uttered only under the condition, if God should give a male heir by the force of whom the family would flourish again. But this condition was not fulfilled, because the son born died a little later. Therefore the vow, as conditioned, the condition not subsisting, ceases to oblige. There is added that, the adequate final cause ceasing, likewise the obligation of the law ceases. But the final cause, and indeed the adequate one, of this quasi-private law has ceased by the very fact that every hope of obtaining a male heir and of propagating his family is supposed to have been cut off for him. - Elbel 424-426; G. 107, 108.

18. On Invalidating and Penal Law

1. Eligius and Elodia, consanguineous in the third degree, ignorant of the law of the Church, contract marriage in good faith. Moreover, even if they should know the impediment, they cannot seek a dispensation because of the most dreadful persecution already stirred up against the Church for a long time; whence no recourse to the parish priest, to the bishop, or to the Roman Pontiff can be had. Wherefore they are also compelled to contract marriage clandestinely, notwithstanding the promulgation, in the place, of the Tridentine Decree concerning contracting marriage before the parish priest and witnesses.

Q. 1. What is the force and obligation of an invalidating law? 2. What as to the case?

R. To the first, cf. I. M. 223 seqq. To the second: the marriage of Eligius and Elodia is null. For 1. ignorance of a diriment impediment cannot make valid an act declared null by the legislator by an invalidating law. For an invalidating law directly and in itself regards the common good; and therefore, just as it does not cease in the case of a particular inconvenience and necessity of persons, although that be most grave and this be most grave, so also it does not cease in the case of ignorance and good faith. 2. But although, on account of that most grave and long persecution, by reason indeed of the common good itself, the impediment of clandestinity ceases; for the impossibility of recurring to the parish priest is common to all; nevertheless the other impediment of consanguinity does not cease, because here the inconvenience is altogether particular for some, not common to all. And indeed spouses of this sort can contract marriage with other persons. - G. 122, 124.

2. Among the evangelical workers of the Chinese regions a question arises concerning the cultivation, trade, and use of opium. Some contend that trade in opium is not illicit in itself, because the civil law, established by an unbelieving prince, and prohibiting it with most grave penalties, is penal. And although that law were prohibitive, and obliging in conscience, nevertheless it would not follow from this that its transgression is always a grave sin, since human laws, ordinarily speaking, do not oblige with grave inconvenience. Others, on the contrary, contend that that trade is altogether illicit; for in the *Acta S. Sedis* the use of opium is declared abuse; and therefore that trade is trade in a thing altogether illicit. Moreover the civil law prohibiting the trade in opium is moral and prohibitive, since it looks to protecting honorable morals.

Q. 1. What is the nature of a penal law, and from what is it recognized? 2. What as to the case?

R. To the first, cf. I. M. 227 seqq.; *Enchir. Mor.* N. 84. To the second: the response is clear from the following Instruction of the S. O., 29 Dec. 1891, to which the aforesaid question concerning opium gave occasion.

"1. From the responses given up to this point, if they are rightly understood, it is plainly clear that the Holy See has never disapproved that cultivation, trade, and use of opium which would serve medicine.

"2. It is also clear that in the decrees of the Sacred Congregations, both those which were issued concerning use to be permitted or tolerated, and those concerning abuse to be reproved, there is not an absolute, but a relative force. Namely, they regard the things which were proposed; therefore they are not to be mixed together indiscriminately with each other, but must be referred to the individual cases with their peculiar circumstances. If this is done, it will easily be found that they agree with themselves continually. Nor will any difficulty be able to arise from the fact that in the *Acta S. Sedis* sometimes the use of opium, sometimes abuse, is named; for the use which is disapproved is to be held as a true abuse.

"3. Since therefore the Sacred Congregation for propagating the Christian name had already opened its mind in the year 1830 concerning the abuse of which there is question, 'to remove doubts and perplexities of mind which can arise in particular cases,' it judged that an instruction should be drawn up, in which in a matter of such great moment it wished great account to be had both of the civil law forbidding the trade in opium, and of the most grave evils which from the abuse of opium are accustomed to emanate in those regions."

It decreed that this instruction be transmitted in the year 1848 to the Vicars Apostolic of Yunnan and Malacca, adding that, the general harm considered, every care had to be applied to extirpating the use of opium. Here the word use, as anyone easily understands, must properly be said to signify abuse. For there was not question of that use for which opium is prepared by nature, but of that which obtains among the Chinese, and which is situated in this, that they chew opium with the teeth, or drink it mixed with alcoholic potions, or draw it in by smoke.

"4. Therefore this Supreme Congregation in the year 1852 indeed declared generally illicit the trade and use of opium, but according as it was being explained, and ordered the Vicars Apostolic to apply every care to uprooting that use and trade. Nor did it judge that it should depart from this decree in the year 1858, although it had been reported by the Vicars Apostolic of Xensi and Hunnan that the civil law forbidding opium no longer existed.

"5. Nor is it to be thought to have departed from this prohibition, although to some it seemed otherwise, in the year 1878. For on account of peculiar and altogether extraordinary circumstances which were being explained, and on account of the suspension for a decade of the civil law forbidding the cultivation of opium in those places which had been devastated by war, and whose inhabitants had been brought to extreme poverty, the Supreme Congregation established only this, that the sacraments should not be denied to those Christian faithful who, in the Province of Keuy-Thceou, during that ten years' space permitted by the civil law, had cultivated opium solely for relieving poverty. And when it had been asked: whether those who, from inveterate habit, cannot bid farewell to opium except with danger of death, or grave detriment, can be admitted (to the sacraments), and whether opium can be taken by way of medicine, because danger from the habit is imminent, the response was: Affirmatively, yet with diligence and cautions having been placed, so that the abuse of opium, and the evil effects arising from abuse of this sort, may be avoided. By this response, which regards an exception, everyone sees that the general decrees by which the abuse of opium is reproved are by no means weakened; and this was clearly declared Wednesday, 4 July 1883.

"6. From all these things it follows: 1. that the cultivation of opium is indeed not illicit in itself, but in the Chinese regions, on account of abuses to which from long experience it is certainly established to be liable, it becomes illicit, and therefore generally must be forbidden to the Christian faithful; 2. nor otherwise must judgment be made concerning trade, which, although in itself it is not evil, nevertheless becomes evil on account of the grave abuses flowing from it for the most part and almost universally, and on account of the laws forbidding it; and therefore it is to be prohibited not only to those who exercise it directly, but also to those who favor it, namely who knowingly lend money at interest to merchants of opium, or lease fields for the cultivation of opium; 3. that the use of opium which is said to obtain in China has been held by the Church as a detestable abuse and declared illicit; 4. that use of the same can be permitted to those who have accustomed themselves to it, and who cannot altogether abstain from it without danger of death or grave detriment; likewise that opium can be taken by way of medicine, yet by this law, that the mode and quantity be observed which by no means exceed the medicinal measure, and with due diligence and cautions applied, so that abuse of the same and the evil effects flowing from it may be prevented." *Acta S. Sed.*, v. 24, p. 506 seqq.

3. Osius, a beneficed cleric, at the beginning of navigation threw his breviary into the sea. Hence it happened that in the long voyage he could not recite the breviary. But he immediately

repented of the deed. Must he restore the fruits?

R. He who has offended is not exempted from penalty from the fact that he has repented of the delict, whether after the effect has already followed, or even before the effect has followed, because penalties are for the example of others and for protecting the common good. Hence Osius, although he immediately did penance for his sin, is held to restitution of the fruits. Nevertheless, because in the proposed case the delict has a successive tract, D'Annibale, 3rd ed., p. 1, n. 312, note 76, judges that Osius is not to be disturbed. But this opinion is difficult, because Osius omits the office, and that omission is voluntary and culpable in the cause, and therefore in that successive tract it is always culpable in the cause, and consequently always liable to penalty. Wherefore it does not appear how he can make the fruits his own.

4. Elpidius vowed to fast if hereafter he should play at dice. But behold, from a contracted habit, wholly forgetful of the vow, he plays at dice. Is he held to the fast?

R. The vow, in the case, is a penal vow, and is a certain quasi-conventional penalty. Moreover, whether the nature of penalty be considered, or the intention of the one vowing be considered, it is clear that the penalty cannot be inflicted if no fault was present, and that Elpidius certainly did not wish to inflict that penalty on himself otherwise than if, namely, knowingly and prudently, he gave his attention to the game. Therefore Elpidius is not held to the fast.

19. On the Law of Taxes and Military Service

1. Nicasius is accustomed to transport by cart grain, wine, and other goods on which taxes are imposed. But lest he pay them, he passes by a hidden road, or by night, avoiding the officers of the treasury. But sometimes, by the straight road, by day, he passes securely before those very officers of the treasury, carrying nothing that is subject to tax; and he does this so that on other occasions he can likewise pass securely, since he is already known to the officers of the treasury, yet carrying hidden prohibited goods, tobacco, sugar, etc.

Q. 1. Does the law of taxes oblige in conscience? 2. What as to the case?

R. To the first, cf. I. M. 232. To the second: the matter indeed is controverted among the doctors. Thus St. Alphonsus, l. 3, n. 616, reports the doctrine of Sanchez and others, without handing down his own opinion: "Sanchez thinks that no one who openly passes by the straight road is held to pay tolls, by reason of passage through a gate or bridge, which are imposed for the securing of roads; for it would be most harsh to oblige strangers to know these statutes, at gates or bridges. And Sanchez, with others, thinks this probable even if someone hides the goods or himself; because taxes of this sort are so received that they are not owed unless demanded. But speaking generally of all tolls, Lugo thinks that peoples are to be admonished to pay taxes, but after the fact they are not to be compelled to restitution of the tax defrauded, if they probably persuade themselves that amid so great a multitude of tolls they have paid some unjust tax, or have contributed competently to public necessities." "A prudent confessor," says Struggl 32, "ought not so easily to condemn those who evade as guilty of mortal sin; and much less ought he to oblige them to restitution; for this could scarcely be persuaded to one in a hundred. Besides, the opinion which teaches that the laws of taxes and tolls

are universally purely penal is defended by many doctors, and is commonly acknowledged to be truly probable." And Fr. Gury 751 says: "There is no doubt to anyone that the faithful are to be exhorted to pay all taxes diligently. Nevertheless the confessor is not held to ask penitents whether they are guilty of some defrauding; for this is altogether alien from common practice. The confessor has not been constituted like an officer of tolls or a public collector. But as regards the forum of conscience, generally the faithful, even the God-fearing, do not think that they commit sin, at least grave sin, nor that they are held to restitution, if they sometimes omit paying tolls, if they hide the goods on account of which the tax is demanded, if they avoid the officers. For the most part the confessor would accomplish nothing if he should attempt to shake them out of their good faith. Furthermore, the matter is subject to the greatest controversy among theologians, nor does it pertain to the confessor to settle it."

2. Sabas, a subdeacon, in order that he may be exempted from the law of military service, offers a certain moderate sum of money to Sabanus, a physician. Sabellus, noticing this, recently made a doctor in both laws and preparing himself for exercising the profession of advocate, offers a doubled sum of money to Sabanus. Sabinus, present in the hall of medical examination, since he is poor but an astute young man, feigns and assertively affirms an interior and hidden disease. And thus all are freed from the burden of military service.

Q. 1. Is the law of military service a merely penal and just law? 2. What as to the case?

R. To the first, cf. I. M. 171, 4; 228, 232, 1386. To the second: Sabas the subdeacon is by no means held by the law of military service. Wherefore he by no means sins by offering a gift to the physician, so that he may be declared incapable of military service. Sabanus the physician, since the law is unjust as regards Sabas, by declaring him incapable by no means sins. Nor indeed does Sabanus seem to be disturbed on this account, that he accepted from Sabas a moderate gift of money spontaneously offered to him.

Sabellus, corrupting the physician with money, cooperates in true injustice on the part of the physician, who is obliged from quasi-contract and office. Whence it is that, speaking in itself, both Sabellus and the physician are held in themselves to compensation of the damages which come to the other youth called to military service in his place. Speaking in itself; for in practice it is difficult to persuade this obligation; for often many act in good faith in this matter from ignorance, or hold the law as unjust. But Sabanus is not held to restore anything to Sabellus, since he has already declared him invalid: since, although the contract was illicit, nevertheless, the thing promised having been fulfilled, it probably is valid. But it would be otherwise if he had not yet declared him invalid. I. M. 959.

Sabinus, feigning and affirming a disease which he does not have, certainly sins against truth. He also sins gravely against legal justice, since there is question of a law directly regarding the public good, and altogether necessary for it; and therefore just; namely, speaking in itself. But does he also sin gravely against commutative justice, so that he is held to restitution? It seems more probable that it must be affirmed. For the law establishing that necessary soldiers be designated by lot, which can favor all equally, and consequently does not appear unjust from this head, constitutes a strict right, and confers it indiscriminately and equally on all, namely that those designated by lot be enrolled for military service, while others remain free; and if this right is injured by lies and frauds, consequently

commutative justice is injured. Nevertheless, there are not lacking many who assert that the law is unjust, since only families having young men fit for military service sustain so great a burden. But this in reality does not seem to prove the injustice of the law. For on the contrary the law should rather be called unjust if such a burden were imposed even on those not fit. But it is by accident that this or that family has young men not fit. Furthermore, if the law had to be held as unjust, then concerning Sabinus and others similar to him it would have to be said that not only does he not sin against commutative justice, but also that he does not sin against legal justice. Indeed it would also have to be said that he does not sin against truthfulness by thus lying, but uses a legitimate mental restriction; and this in reality seems rather hard. - I. M. 1386; G. 757-761; Frassinetti tr. 10, diss. 7; Gennari, *Consultaz. Mor. Can. Lit.*, Cons. 22.

20. On Dispensation of Law

1. Leopoldus sought from his confessor a dispensation from the law of abstinence and fasting, both because he was already fifty-eight years old, and because he suffered weakness of the stomach, needing more abundant food, and experienced nausea at fasting foods. Hence not infrequently, on account of fasting, he suffered in the head, and on account of abstinence he could not take sleep at night. The confessor refused to give the dispensation, saying that he did not have such power. Hence Leopoldus went to the parish priest, seeking from him the same dispensation; but the parish priest granted it only for the days of fast already imminent in the Ember days, saying that he could not dispense except only in particular cases. Wherefore Leopoldus sought an indefinite dispensation from the bishop, who denied it. Then Leopoldus wrote to Rome, seeking a perpetual dispensation, and affirming as the cause in the supplicatory libellus both advanced age and infirmity, passing over in silence the denial of the bishop. The dispensation having been obtained, after a year Leopoldus is so well that he anxiously doubts whether he can licitly use it.

Q. 1. Who can dispense in laws? 2. What as to the case of Leopoldus?

R. To the first, cf. I. M. 241. To the second: the confessor of Leopoldus responded rightly that he could not dispense. A confessor, unless he has a special faculty delegated to him in this matter, cannot dispense either in the external forum or in the internal forum. For an inferior cannot dispense in the law of a superior. Yet where a cause is present which of itself excuses Leopoldus from abstinence and fasting, for example, infirmity, or another grave detriment, then the confessor can in a particular case declare that the law does not oblige. And in such a case Leopoldus by no means ought necessarily to seek a dispensation, although he can easily do it, since the law then does not urge. And this also holds in doubt whether the case needs dispensation, if he himself can form his conscience for himself; for otherwise then properly there has place the office of the confessor, that he declare the law, in the case, not to urge. But this was not in reality the case of Leopoldus, who was seeking a dispensation absolutely and perpetually. The parish priest also responded rightly. For the parish priest can by custom dispense in cases of this sort, which occur frequently, even if recourse to the bishop were easy. But a sufficient cause of dispensation was not lacking for Leopoldus, and it could easily still be increased, in the aforesaid particular case, on account of almost three continuous days

of abstinence and fasting. The bishop also rightly denied an unlimited dispensation, since he could not give it.

But, the dispensation having been obtained from the Holy See, Leopoldus can indeed licitly use it. For although he did not manifest the denial of the bishop, as also the denial of the confessor and parish priest, nevertheless the dispensation is altogether valid. For the Supreme Pontiff uses his power absolutely, and is judged to dispense absolutely, unless something else is explicitly expressed in the rescript. In conceding a dispensation, the will of the superior is not ruled by the will of the inferior, but by the gravity of the motive cause. And furthermore this is prescribed by no law, if some peculiar cases are excepted. Cf. I. M. v. 2, n. 1041. Nor indeed was that threefold denial to be manifested, since neither the confessor, nor the parish priest, nor the bishop could concede an unlimited and perpetual dispensation.

But the twofold cause set forth by Leopoldus in the supplicatory libellus was indeed sufficient for obtaining the dispensation licitly and validly, as he in reality obtained it. Concerning sufficiently advanced age, there is indeed no difficulty. But as regards infirmity, although, strictly speaking, Leopoldus is not infirm, nevertheless nausea at fasting foods, weakness of the stomach, and difficulty of sleep can well be called infirmity; since those things certainly do not pertain to bodily health and firmness of strength. This also must be added, that in doubt concerning the value of a dispensation obtained, generally there must be a presumption for the value of the act, for which possession already stands.

But the fact that Leopoldus is well after a year does not for that reason seem to make the dispensation cease. For very probably Leopoldus was well because he constantly used foods suitable to his stomach, and in due quantity; whence perhaps Leopoldus would easily fall again into the same inconveniences if he departed from a manner of life of this sort. Moreover, with attention to his approaching old age and natural temperament, there is truly a prudent fear of relapse into the aforesaid inconveniences from the observance of fasting and abstinence. Whence the final motive cause of the dispensation has not in reality totally ceased. Finally, the dispensation was given also on account of sufficiently advanced age, and this cause of itself is perpetual. Therefore the dispensation is to be judged not conditioned, but absolute and perpetual, which does not cease, although perhaps by accident the cause ceases. But the dispensation would without doubt have been given conditionally if in it the clause had been added: *on the advice of both physician and confessor*; since then the confessor and the physician would have had to declare the state of infirmity; and therefore, if the infirm man had entirely recovered health, there would no longer be place for the dispensation. Cf. I. M. 1577, 1615 seqq.; G. 109-114, 120; Elbel 450-452.

2. Before the admission of a candidate to solemn vows, the superior of religious, the three-year period of simple vows having been completed, must seek the consultive vote of the chapter. Moreover, concerning the three-year period not yet completed, but shortened by apostolic dispensation, it is asked:

1. Whether, on account of the shortening of time by apostolic dispensation, the consultive vote of the chapter is transmuted into a decisive one?

2. Whether the superior must seek the vote of the chapter before supplication is made for the grace, or after the grace has already been obtained?

R. To the first: no thing can operate beyond its own nature. Moreover, the dispensation of law of which there is question in the proposed doubts is nothing else than, in a special case, the relaxation of law. Therefore it stops within the limits of the law dispensed, and is not extended beyond it. Furthermore, by the very fact that a dispensation derogates from law, speaking in itself, it has a strict interpretation, and therefore also by this special reason it stops within the limits of the law of which it is the dispensation, without progressing further.

Hence the dispensation of one law does not include the dispensation of another law, unless perhaps without the other dispensation it would be useless; for then this also is understood to have been tacitly conceded. L. 3, § 3, *de Servit. praed. rust.*; C. 5, *de Off. et pot. iud. Del.* But the transmutation of the consultive vote of the chapter into a decisive one is beyond the dispensation of the required three-year period, and indeed would be a new dispensation of another law, which in no way can be understood as virtually included in the dispensation of the three-year period of profession of simple vows required before solemn vows. But if that dispensation has not yet been sought and conceded, but would still have to be sought and conceded, how indeed could a transmutation of the consultive vote of the chapter into a decisive one be had for that reason? For this there would be need of a special faculty of the Holy See. For the chapter would acquire a new power, of which it is altogether destitute. - Wherefore to the first doubt it seems that it must be answered: Negatively.

To the second: from common law, for admission to solemn vows after the completed three-year period of simple vows, the conventual chapter must be heard only for the instruction of the mind of the superiors. S. C. super. St. RR., 7 Feb. 1862.

A fortiori, therefore, it seems that the conventual chapter must be heard before supplication is made for obtaining the grace of shortening the time before solemn vows. For first, the very fact of making supplication for such a grace is in reality virtually to admit to the profession of solemn vows. Furthermore, if that vote of the conventual chapter has been judged necessary by the Holy See for the instruction of superiors, when admission to solemn vows is made after the ordinary time, much more will a vote of this sort indeed be necessary for instruction if that ordinary time is shortened. But, the apostolic grace of shortening the time having been obtained, that vote is now useless. And certainly the execution of the apostolic grace already obtained could not impede it; since, once it has been obtained, it cannot have such authority. Moreover, a simple instruction would be sought altogether incongruously after the grace had been obtained, if, once that instruction had been had, the case can be supposed that the superior would no longer admit to solemn vows. For he would have sought from the Holy See a dispensation for one unworthy, and would have deceived the Holy See, although in good faith. For the Holy See, giving that dispensation, evidently supposes that nothing else obstructs the profession of solemn vows except the prescribed time not yet elapsed, and that the candidate to be dispensed is altogether worthy of such a favor of shortening time. Wherefore to the second doubt it seems that it must be answered affirmatively to the first part; negatively to the second part; namely, before supplication is made for the grace, the consultive vote of the chapter must be sought, and that vote must not be sought after the grace has been obtained.

3. Gerbertus, a canon, obtained from the Ordinary of the place the faculty of dispensing from the law of fasting and abstinence in the sacramental forum. Among others, he dispenses many pilgrim penitents, granting to some the faculty of a double refection and of eating meat during the journey, even if they are already outside the diocese. But he himself, with his servant, his ordinary penitent, making a journey outside the diocese, dispenses both himself and his servant from both laws.

Q. Did Gerbertus act rightly?

R. Gerbertus acted rightly by dispensing pilgrim penitents. For pilgrims can well be dispensed by the Ordinary of the place, since by access to the local superior, if they seek a dispensation from him, they become voluntarily and sufficiently subject. But Gerbertus, enjoying the faculty delegated to him by the Ordinary of the place, can indeed dispense those same persons just as the bishop himself would dispense. He also well dispenses pilgrims during the journey, even if perhaps they are staying outside the diocese, provided however that the cause of the dispensation endures; for this is personal, and therefore adheres to the person, follows him everywhere, and is not restricted by territory. Thus indeed Fr. Gury 115. But D'Annibale 232 seems to deny the same thing, saying: "But, if a dispensation has a successive tract, since it is multiple, it ceases immediately when the one dispensed has ceased to be a subject." Yet this reason is not pressing. "When a dispensation has a legitimate cause in the person itself, and always goes with the person itself, it also goes outside the territory of the one conceding." Suarez, *de Legib.*, l. 8, c. 26, n. 15; Albitius, *de Inconst. in fide*, c. 30, n. 253. But he acts badly in dispensing himself, because he is neither a superior, nor is he delegated to dispense in laws in the totality of causes, but only in particular occurring cases as regards abstinence and fasting; and because he has the faculty of dispensing only in the sacramental forum. But if outside the diocese he himself had been approved by the Ordinary of the place for hearing confessions, then he could indeed have dispensed his servant, his penitent, because the penitent would then have been sufficiently subject, and he could have dispensed him in the sacramental forum. But if he himself had not had the aforesaid approval from the Ordinary of the place, then he could not have dispensed his servant; since he could not have exercised the power had in the sacramental forum. Nor indeed could he have dispensed the servant in any way in the external forum, since he was not his subject, and a dispensation of law is exercised only upon a subject; nor could he have received such a power, for the external forum, from his own Ordinary, namely so that outside his own diocese, he who in no way was his subject should become his subject. - G. 115, 116, 140; Lig. l. 1, n. 158; l. 3, n. 262; I. M. 241.

But what if the dispensation is both personal and local after the manner of a privilege, "such as is the recent concession made by the Pontiff to some dioceses of France, of eating meat on Saturday, on this condition, that each person seek the faculty from the parish priest? Is it licit to use the license conceded outside the territory? It must be denied, because the dispensation is primarily local. This is clear from the response of the S. C. of the Inquisition to the Belgian bishops, who asked the Holy See concerning a similar case. The case seems to be excepted in which someone would pass through other places in which the same grace had been conceded." G. 140. But if the dispensation is primarily local, this exception is not without difficulty.

4. Renaldus, bound by a vow of perpetual chastity, desiring to contract marriage, sought a dispensation from the Sacred Penitentiary under the fictitious name of Titius. As the cause he

alleged grave temptations which he was suffering against chastity. He received a negative rescript. A year having passed, he writes again to the Sacred Penitentiary, asking the same dispensation, with the same cause alleged, the fictitious name of Titius having been changed into the name of Sempronius, and the rejection which he had previously suffered being kept silent. On this occasion he kindly obtained the desired grace.

5. Laurentius, occupied with the grave affairs of his office, requested from the bishop a dispensation from a vow he had made of pilgrimage to a certain distant sanctuary of the Blessed Virgin Mary; but he by no means obtained it. When the bishop soon died, he sought and obtained the same dispensation, the same cause having been proposed, from the successor bishop, who was entirely ignorant of the prior petition.

6. Aurelius sought from the Apostolic Datary a dispensation from the impediment of consanguinity, for entering marriage with his cousin; but he did not obtain it. But discovering that his bishop had a special power for dispensing from the same impediment, he sought and obtained the dispensation from him, the same cause having been brought forward which he had previously set forth to the Apostolic Datary, but the denial which had previously been made to him at Rome being kept silent.

Q. 1. What is required for the validity of a dispensation? 2. What as to each case?

R. To the first, cf. I. M. 237. To the second: the dispensation of Renaldus is valid. "For a dispensation of this sort is by no means surreptitious, although perhaps the superior would have denied it if he had remembered the denial previously made. The reason is that the presumption that the superior would have denied is founded on no law. For, if he grants, the same reasons having been brought forward which had already previously been alleged, from this it is argued that there are sufficient causes for dispensing. Nor does the prior denial obstruct; for it has nothing to do with the cause, and to deny the dispensation on account of that cause alone does not seem consonant with reason. The reason is clear; for if a just cause is present, it is more fitting to moderate the prior rigor than to confirm it; therefore the circumstance of the denial previously made is impertinent to the value of the subsequent dispensation. Therefore Renaldus was not held to recall it to the mind of the superior. Therefore this dispensation is not surreptitious; therefore it is valid. Nor does it obstruct that Renaldus changed the fictitious name the second time, because attention is never paid to the name in dispensations of the Sacred Penitentiary, since it is the custom that a fictitious name always be used. But it matters little whether it is Titius or Sempronius. Nor should you say that Renaldus can thus be accused of a bad will of deceiving the superior. For he is not said to deceive who uses his own right. Thus Suarez, *de Legibus*, l. 6, c. 22, with others against many." G. 118.

The dispensation of Laurentius is also valid. "For from what has been said in the preceding case, a dispensation denied and afterwards conceded by the same superior forgetful of the denial is valid; therefore, from parity of reason, a dispensation denied by one superior and given by his successor, ignorant of the denial, is also valid. The reason is that the successor has the same power as the predecessor, nor is he ruled by the judgment and will of the latter. Indeed in him there is a much less probable presumption of involuntariness; and furthermore the will of the predecessor in no way has anything to do with the cause." G. 119.

The dispensation of Aurelius is likewise valid. "The reason is that the power of the inferior was not restricted by the denial of the superior; therefore, if he enjoys the faculty, the cause being sufficient, the dispensation is judged valid. Therefore neither did Aurelius act surreptitiously; for he used his own right; and consequently he is not to be disturbed. Suarez, in the same place, and others against others." G. 121. Thus indeed Gury. But, "when a dispensation has been denied by the Apostolic See, it is not permitted, the same cause having been alleged, to seek a dispensation from the Ordinary, even if mention is made of this rejection in the supplicatory libellus." Zitelli, *de Dispens. matr.*, Rome, 1887, p. 70; I. M. v. 2, n. 1041.

7. Zoilus, scrupulous, superior of a monastery, is very anxious as regards dispensing his own subjects, namely whether a sufficient cause is present. Hence it often happens that he denies the dispensation, thinking the cause is not present, when in reality it is present. But sometimes he dispenses, thinking a cause is present when in reality it is not present, and sometimes he also dispenses, although it seems to him that the cause is not present, when nevertheless in reality it is present, lest he himself become odious and sadden his subjects.

Q. Is a dispensation valid, if the superior, through error, in good faith judges there to be a just cause; or, if, thinking that the cause is not present, which nevertheless in reality is present, he rashly dispenses?

R. Affirmatively to both, if he is a primary superior; for he has a true will of dispensing, and he can validly dispense even without a just cause. Therefore his will has its effect in the first case, namely if the superior dispenses absolutely, not, if the petitions rest on truth, insofar as there is no essential obreption or surreption in the petition; and likewise, if the matter is doubtful; for it is by no means reasonably presumed that he is unwilling also to dispense if the matter is not objectively true. For this would render consciences liable to innumerable anxieties and scruples. But in the second case the matter is objectively true. Whence from this head there can be no difficulty. But negatively to the first, affirmatively to the second, if the superior is secondary. The first reason is that it is a certain principle that an inferior dispenses invalidly in the law of a superior without sufficient cause. Nevertheless D'Annibale, 3rd ed., p. 1, n. 233, holds the opposite opinion as extrinsically probable. The second reason is that the value of the dispensation does not depend on knowledge of the cause, but on the existence of it. - Lig. l. 1, n. 180, 181, 186; l. 3, 251; l. 7, n. 353.

8. "Caia, a girl, in the fifth year of her age, had uttered a vow of perpetual chastity. But, after six years had then elapsed, when the charity of God gradually and insensibly began to diminish, and on the contrary the stimuli of the flesh to increase, Caia likewise began to love and to be loved by men to such a degree that she was impregnated. But because the vow was only simple, and secretly uttered, hence she sought from Rome a dispensation in order to contract marriage, with a twofold motive alleged, namely that the offspring born might be legitimated by the subsequent marriage, and that the husband might be able to relieve the mother of Caia, who was a widow rather advanced in years. After approximately two months had elapsed, the dispensation came from Rome, directed to a discreet man, with that usual clause, that he dispense if the petitions rest on truth. But because meanwhile not only the offspring born, but also the mother of Caia died, therefore that discreet man rightly began to doubt whether he could still execute the aforesaid dispensation."

Q. 1. When does a dispensation cease? 2. What as to the case?

R. To the first, cf. I. M. 248. To the second: "If both the offspring born and also the widowed mother died before that discreet man (namely the confessor) actually executed the dispensation, he can no longer execute it. The reason is that the final motive cause must necessarily be verified at the time when the dispensation is actually given by the deputy in the rescript, as Kesslinger hands down in addit. 1 to tr. 2, dist. 4, after n. 26, *theol. mor.*, Reiffenstuel with Covarruvias, *de matr.*, p. 2, t. 1, c. 6, § 9, *de dispensat.*, n. 22, where he testifies that it was so decided by the Rota. But in this species of fact the twofold motive is said to have ceased. Therefore that discreet man could no longer execute the dispensation. Consequently it must be said that Caia would indeed contract marriage validly, yet not licitly; because namely the simple vow of chastity is an impeding impediment, although not diriment of marriage.

"But what, you say, if we suppose that the offspring and the widow first died after the confessor had already dispensed with Caia, yet before the marriage had been contracted: would it be licit for her by force of the aforesaid dispensation to marry her betrothed? R. Many deny this because, at least in revocable acts, the legislator must be judged to have wished only to dispense for that time for which he could licitly and without sin dispense; whence just as one dispensed on account of infirmity in the eating of meats, or on account of weakness of the eyes in reciting the canonical hours, is held again to abstain from the eating of meats or to recite the canonical hours as soon as the infirmity has ceased, so likewise such betrothed persons are held to abstain from contracting marriage, notwithstanding the dispensation already obtained. Thus Sanchez, *de Matr.*, l. 8, 30, n. 12 and 13, with many others, certainly not improbably. Nevertheless I judge the opposite opinion of Gobat, tr. 9, *Theol. experim.*, n. 675 and 692; Castropalao, p. 1, tr. 3, disp. 4, p. 15; Illsung, tr. 1, disp. 3, n. 41; and Henno, *de Legib.*, disp. 3, q. 15, a. 5, to be sufficiently probable, especially in this our case. The reason is that the dispensation of Caia had already once been conceded, and indeed absolutely, not only for a certain time, as is accustomed to be conceded to the infirm in the eating of meats, and Caia was simply dispensed from her vow." Elbel 456, 457. There is indeed an essential distinction between a dispensation from the eating of meats, from the recitation of the divine office, etc., and a dispensation of an impediment, whether impeding or diriment of marriage. For the former has divisible matter by a successive tract of time, but the latter has indivisible matter. Whence it is that the former, the cause ceasing in the tract of time, as having been given almost conditionally of itself, consequently ceases; the latter, once given and consummated by a single act, is of itself absolute and perpetual; and, the cause ceasing in the tract of time, it can no longer cease. - Cf. I. M. 248.

21. On Privileges and Rescripts

1. Gervasius, having a privilege by which he can hear Mass during a time of interdict, nevertheless omits it, because, he says, no one is held to use a privilege. The same Gervasius, suffering from a very troublesome gout, by no means can seek the church for hearing Mass on feast days. But although he can hear Mass in the private oratory of his house, of which he has the privilege, he also omits it, relying on the same principle.

Q. 1. Is he who can by privilege hear Mass during a time of interdict held to hear it? 2. Is he who cannot leave home held to hear Mass by privilege in a private oratory?

R. To the first, affirmatively. The reason is that that special privilege has no other effect than to remove the impediment of inability in the observance of the common precept, which interdict brings. Therefore, such an impediment having been removed, since consequently one is able to fulfill the law, the obligation of fulfilling the precept is in force. - To the second, probably negatively, because to do the sacred rite in a private oratory is of itself something odious, and less becoming the reverence due to this divine sacrifice. Therefore no one can be compelled to use such a privilege. Hence the distinction is clear between this case and the preceding one. For in the case of interdict, the impediment of inability having been removed by the privilege, afterwards no dispensation of law intervenes, but Mass is said in the regular way. On the contrary, in the present case, through the privilege the impediment of hearing Mass is not removed, sickness for example, but the faculty is made that Mass be celebrated and heard outside the church against the common canon, and therefore truly there intervenes here an active use of privilege, which no one is held to use. Ithuriaga, Cas. 32, n. 19, 20. Others, however, deny it. And thus G. 139 says: "Gervasius is held to use the privilege, if he can easily have a priest who will celebrate gratuitously in the oratory; the reason is that, although he is not held to use a privilege, he is held to satisfy the precept whenever he can do this without inconvenience. Indeed, the same must be said if he can hire a priest for a modest stipend, because each person is held to suffer a slight inconvenience in order to satisfy a precept.... But if Gervasius cannot hire a priest without a notable stipend, he is more probably to be excused from the obligation of Mass." - Cf. I. M. 259; Gur.-Ball. Comp. 348.

2. Odoardus sought several graces from the Supreme Pontiff. But since all the rescripts had been remitted to the Ordinary, and were to be communicated to Odoardus by the Ordinary, the Ordinary abstained from making such communication. For with respect to some, he did not judge it expedient that Odoardus enjoy those graces and privileges. With respect to others, however, he judged that the causes set forth to the Pontiff were not consonant with the truth. When this came to the knowledge of Odoardus, he indeed offered humble prayers to the Ordinary, that he would be willing to communicate the apostolic rescripts to him, yet at the same time asserting, with all reverence toward the bishop, that he himself could not impede or delay their effect.

Q. 1. What is a rescript? 2. Did the bishop act by right or by injury; did Odoardus speak rightly or erroneously?

R. To the first, cf. I. M. 283. To the second: the resolution of the question depends on the form and on the various clauses by which the rescripts were conceded. Thus, for example, the bishop indeed acts injuriously if the rescripts are in gracious form. For these rescripts are those in which the Supreme Pontiff by himself immediately makes the grace, without this being able to be impeded or delayed by another. And this has place either without any commission or execution to be given by the Ordinary, for example: *The Most Holy One benignly assented for the faculty sought*; or with a commission or mere execution to be given by the Ordinary, for example: *The Most Holy One benignly assented at the judgment of the Ordinary for the indult sought*. In the first case, there is no executor. In the other there is a mere executor, to whom a bare ministry to be executed is committed without exercise of jurisdiction, whose office consequently consists in the fact alone, nor can he assume the parts of a judge. Nor indeed by force of the clause *at the judgment* can the Ordinary, to whose judgment the execution is committed, abstain from the executorial decree, and impede or delay the grace immediately conceded

by the Supreme Pontiff through a rescript in gracious form; for this clause, *at the judgment and conscience, at the judgment and prudence*, is only an expression and signification of mere fittingness and reverence, S. C. C., 6 Dec. 1845. Therefore in such a case Odoardus spoke rightly. Indeed, a mere executor, to whom rescripts in gracious form have been committed, must altogether, without any knowledge of the cause, entrust them to execution; because to the indultary, through the grace immediately conceded by the Supreme Pontiff, a right in the thing in some way has already been acquired.

But another thing must be said if the rescripts are in commissary form.

These rescripts are those in which the Supreme Pontiff does not make the grace by himself, but commits, or gives a mandate to Ordinaries that they make it if they judge it expedient in the Lord, for example: *The Most Holy One remitted the petitions to the judgment of the Ordinary, with the necessary and opportune faculties for this, that he can and may be able to provide concerning the premises*. Or also: *The Most Holy One granted the faculty to the Ordinary of conceding to the petitioner the indult sought, if he should thus judge it expedient in the Lord*. Namely, since the Supreme Pontiff himself sometimes does not have knowledge of the things with which there is then question, and otherwise does not dissent in general that the grace be conceded, he then commits to the Ordinaries that they concede the grace, by granting them the faculty for this. For they can more easily have full knowledge and certitude of the things narrated. The executor then is not a mere executor, but a mixed executor; for to him is committed not a bare ministry, but a ministry with exercise of jurisdiction. For to the executor is committed the office of verifying the things set forth or narrated to the Supreme Pontiff, and at the same time the power of conceding the grace. Whence before this execution the indultary does not have a right in the thing, but only a right to the thing. Wherefore, in this other case, if, the verification of the things set forth having been made, the Ordinary does not find them true, he rightly abstained from bestowing the grace; and Odoardus spoke erroneously. But otherwise, if, the verification of the things set forth having been made, it was established that they were true. S. C. EE. et RR., 29 Apr. 1768.

Finally, another thing must also be said if the rescripts are in mixed form, that is, gracious and commissary at the same time. These rescripts are those in which the Supreme Pontiff himself indeed concedes the grace, but dependently on conditions to be verified by the Ordinary. Wherefore the concession is quasi-conditioned, and becomes absolute when that condition is verified, for example: *The Most Holy One assented at the judgment of the Ordinary, it being established concerning evident utility, and with the consent of those having an interest acceding, for the faculty sought, or sale*, etc. In this case the executor is also mixed, for although there is not committed to him also the power of bestowing the grace, nevertheless there is committed the power of knowing and verifying the things set forth, and the conditions added in the rescript. Cf. Ferraris, v. *Exequutor*. Whence before execution there is acquired to the indultary only a right to the thing. But, as in gracious form, so in this mixed form, the grace has been made, and therefore it does not expire through the death of the Pontiff, provided that on the contrary, in commissary form, the grace is to be made, and expires through the death of the Pontiff; but when a new Pontiff has been elected, it revives, by force of rule 12 of the Chancery. Wherefore, in this case also, the bishop acts rightly if the causes set forth to the Supreme Pontiff were in reality false; and therefore Odoardus spoke erroneously. But otherwise it must be said if the causes were true, and the other conditions added in the rescripts were verified. C. 9, *de Off. et pot. iud.*

del. in 6.; I. M. 251, 255, 283, and v. 2, 1045; Aloisius Trombetta, *Praxeos Regulae circa contr. rer. eccles.*, c. 6.

3. Titius obtains from the Holy See the grace of a private oratory and some indulgences. Must he manifest these to the Ordinary under pain of nullity?

R. Affirmatively as regards the private oratory, because it is a dispensation, and dispensations by which derogation is made from some law, whether they are in commissary form or in gracious form, are to be exhibited to Ordinaries, so that they may either execute them or at least know them. Trent, sess. 22, ch. 2, *de R*. Negatively as regards indulgences, because there is no question of a dispensation, of which alone the Council of Trent speaks in the cited place, but of a mere grace. S. C. Indulg., 20 May 1896. - M. E. v. 9, p. 2, p. 142.

4. The bishop N. sought a dispensation from the Sacred Penitentiary upon the impediment of consanguinity in the second degree of the collateral line, so that Carolus D. and Iulia M. could contract marriage. For causes he set forth the almost advanced age of the female petitioner, namely 23 years and 6 months, and her condition as deprived of both parents. The Sacred Penitentiary conceded the dispensation on account of the age of the female petitioner, 24 years, and her condition as orphan. Since Iulia M. has not completed the twenty-fourth year, is the rescript valid?

R. "Since another cause for dispensing is present, nothing obstructs that the aforesaid rescript of dispensation be entrusted to execution." S. Poenit., 28 Apr. 1897. M. E. v. 10, p. 1, p. 195.

On Sins

22. On the Nature of Sin

1. Stanislaus is accustomed to be harassed by evil thoughts. He indeed rejects them, but immediately they return, and remain in the mind for a rather long delay. He himself always fears concerning consent given. The confessor adds courage to him, saying that fully deliberate consent is required for mortal sin, and that the mere thought of an evil thing, and even its delay in the memory, does not suffice; and that mortal sin is a monster so horrible that he who is stained by it knows this well; nor indeed does anyone sin unknowingly. Stanislaus, thinking these things over, has the thought occur to him that, in order to free himself from the most troublesome anxiety of mind concerning consent given to evil thoughts, he might sometimes consent to them, so that he may experience the different state of mind. But soon he is vexed by a greater anxiety concerning the sin committed by this thought.

Q. 1. What is required for grave sin? 2. What as to the case?

R. To the first, cf. I. M. 287-289, 311-314. To the second: Stanislaus is without doubt too much liable to scruples; nevertheless let him be consoled, because he is not to be blamed for grave sin. For sin is not without consent, and consent is not in the thought, nor in the importunate and even long-lasting thought of an evil thing against the will, nor even in the most importunate thought of delectation, or consent, or mortal sin, as when scrupulous persons of this sort, on account of such a thought, then fear concerning delectation, consent, and sin committed. Thought is in the intellect; consent is in the will. But the anxiety itself and the fear by which Stanislaus is continually vexed, lest he have sinned in thoughts of this sort, sufficiently shows that every consent was lacking in him. But in the case of doubt, the presumption favors him, if, as appears, he himself is not accustomed to consent with full advertence; because from things commonly happening a prudent presumption is made. A fortiori, indeed, this very thing must be presumed concerning a scrupulous person, as one whose whole solicitude tends to this, that he not offend God. For from what other cause is he so vehemently distressed and disturbed? Cf. Elbel 226 seqq., 548 seqq.; Reuter, *Neoconfess.*, 267, 8; Scav., 12th ed., Milan, 1874, l. 1, n. 740; G. 141.

But what if Stanislaus deliberately conceived that proposal? Without doubt he would have sinned gravely. But of what species such a sin would have been depends on the nature of those evil thoughts to which he had resolved to consent. For if those evil thoughts occurred to Stanislaus against some determinate virtue, charity, justice, chastity, etc., the evil proposal of Stanislaus would have been in the same species. But if no determinate evil thought was being objected to Stanislaus, that evil proposal of his would have been against no determinate virtue, nor consequently of a determinate species, but would have been of generic malice against that general rule of morality: Turn away from evil and do good. Elbel 548; I. M. 315.

2. Parthenius promised by vow that he would give to the parish church two most beautiful golden candlesticks, so that the Marian month might be celebrated with greater solemnity in honor of the Blessed Virgin Mary. Meanwhile, while he is at home, he often looks at those candlesticks,

and is affected by grief and displeasure. Nevertheless, the month of May being near, although with still greater grief and displeasure, he calls a servant, and orders him to carry the candlesticks to the parish church. Seeing them on the altar on the first day of the month of May, furnished with many lit candles, before the statue of the Blessed Virgin Mary, he is affected by great joy and great gladness.

Q. 1. Is grief and sadness over a completed work of virtue a sin? 2. What as to the case?

R. To the first, cf. I. M. 392. To the second: "He who, after he has bound himself by a grave vow, then seriously grieves that he has done so, does not sin gravely, provided that he retains the mind of fulfilling it." L. 123. But the displeasure of Parthenius does not seem serious and deliberate; but rather natural displeasure, on account of the beauty of those candlesticks, which, as is gathered from the case, were very dear to him. This is gathered from the prompt mind with which he exactly fulfilled the vow, from the fact that Parthenius appears a very good man and devoted to the Blessed Virgin Mary, and from the joy by which he is then affected. Wherefore from that natural displeasure his vow in no way loses its merit. "If however," says St. Thomas, II-II, q. 88, a. 6, ad 2, "the work itself, considered according to itself, were sad and involuntary after the vow, provided nevertheless that the will of fulfilling the vow remains, it is still more meritorious than if it were done without a vow." Indeed, with that natural repugnance standing, and by conquering and expugning it, acting against it, merit increases. Cf. I. M. 56. Nor indeed is it established from the case that the grief and displeasure of Parthenius were over the vow performed; but merely over a thing dear to him being given up, which is clearly different.

3. Quirinus, desiring to avoid every sin, judges this altogether impossible for himself. For, he says, every act, in the concrete, is either good or evil, since indifferent acts are not given in the individual. Moreover, when I act, I could always indeed do something more perfect. But to omit the more perfect act is not an act of virtue and good. Therefore by choosing the less perfect I sin, and consequently I always sin. Hence Quirinus is agitated by great anguish, and approaches various confessors that they may resolve his doubt, and he acquiesces in the resolution of none.

Q. Is it always a sin, in the concrete, to do what is less perfect?

R. Negatively. This is clear 1. from this very thing, that otherwise it would follow that anyone sins in every act, which is absurd. For no one necessarily sins. 2. Because by the very fact that someone chooses a lesser good, he indeed chooses a good; and therefore he acts honorably. Whence 1 Cor. 7:25-40: "Therefore, he who joins his virgin in marriage does well; and he who does not join her does better.... Let her marry whom she wishes.... But she will be happier if she remains thus." 3. For if someone, by choosing a lesser good, had a will actually contemning the greater good, or delighting itself in the rejection of the greater good, then certainly sin would be present. But this perverse will does not necessarily and always accompany the choice of the lesser good. For often and ordinarily a man leaves behind the greater good by simply pursuing the lesser good, without by a positive act of the will abstaining from the pursuit of the greater good, to which he is not held. And then indeed there is no sin, and no evil act; but the act is only good and virtuous. But if he leaves behind the greater good by a positive act indeed of the will, and pursues the lesser good, because he sees this to be good, and that not to be commanded, nor necessarily to be done, but free; because he sees this at

present to be suitable for himself, within the limits of the virtues of prudence, temperance, modesty, etc.; because he wishes to use his own right, to preserve liberty for himself, not to form for himself a too strict conscience, nor to become liable to scruples, etc., certainly choosing the lesser good and leaving behind the greater, he sins in nothing, and acts honorably and virtuously, although less virtuously and less perfectly. - Hence let Quirinus strive always to act from right reason and from the motive of some virtue; and not to be led by sensual inclination or a less right motive; and he will always act honorably and virtuously, without it also being necessary always that by a reflex act he institute that comparison between the greater and lesser good. Let Quirinus acquiesce in this doctrine, reduce it to practice, and he will be freed from all anguish and will avoid every sin.

23. On the Specific Distinction of Sins

1. Pauperius, pressed by grave misery and a large family, burned with anger against God, because He had enriched other evil men with many riches, but had oppressed him, an honest man, with most grave poverty. Hence he proposed that thereafter he would no longer avoid any occasion of sinning, nor observe any precept, which he carried out for many years.

Q. 1. How are sins specifically distinguished? 2. What as to the case?

R. To the first, cf. I. M. 298 seqq. To the second: Pauperius, burning with anger against God, sinned most gravely against the charity of God. He also sinned most gravely by efficaciously proposing that thereafter he would avoid no occasion of sinning and no sin. But this sin is not a sin of some certain species, but of an unnamed species, which implicitly embraces all species of sins. Elbel, *De Act. hum.*, 71; I. M. 318.

2. Confundius accuses himself, in sacramental confession, of evil thoughts had, to which he consented, saying: I had evil thoughts three times against chastity, four times against charity, five times against justice, and to these I always gave consent. But he omits explaining other circumstances. He is accustomed to do the same in his confessions where there is question not of simple delectation, but of inefficacious desire.

3. Dominicus, in confessing, says that he had the thing with a woman, and once detracted from the reputation of his neighbor. But as regards the first sin he omits saying that he sinned with his maidservant, who was at the same time consanguineous with him in the third degree, and on a Sunday, on which in the morning he had approached the sacred synaxis. As regards the other sin, he omits saying that he detracted from the reputation of a priest, and did this in church while he was hearing Mass.

Q. What as to the various cases?

R. 1. Confundius, speaking in itself, does not accuse himself rightly. For delectation is specified by the object thought, and by the apprehended circumstances of the same object. Wherefore the nature of an object of this sort and of the apprehended circumstances must of itself be declared, so that the lowest species of those evil thoughts and of the delectations in them may be declared. Likewise the nature of the object of an inefficacious desire, and of the circumstances changing its species, must be declared. And the desires themselves, although inefficacious, must be declared. For desires, although

inefficacious, or although they lack the purpose of applying means to their execution, nevertheless differ essentially from simple evil delectation, and introduce a different species. Indeed, not otherwise than efficacious desires, they are clothed with all the species of the object toward which they tend. G. 158.

But Fr. Gury 160 notes: "The object specifically different of evil delectation must indeed of itself be declared, because complacency in a representation, for example, of a shameful look, differs in species from the representation of forni- cation, etc. But in practice it would be more difficult for the confessor to ask about these in particular, and this would induce most grave inconveniences, which are altogether to be avoided. Furthermore, those who easily give consent to evil thoughts are easily also judged to have adhered to whatever representations." Yet there is often no need of questioning. For first, penitents themselves, declaring other sins, or returning to what has already been accused, often explain the nature and lowest species of internal sins; without there being need on any part of the confessor for direct questioning, but only patience and due attention to an integral confession. Besides, often penitents in good faith from ignorance do not apprehend, in the object or in the interior act, a different specific malice, and therefore then, since they have not contracted such malice, they are not held to explain it. Finally, if there is inconvenience and danger in making an interrogation, the confessor can stand by the general rule, namely of judging concerning the sins heard in the obvious and natural sense, with attention to the matter of which there is question and to the condition of the penitent; nor then is there need of a subtler and troublesome inquiry. - I. M. 291; La-Croix, l. 6, p. 2, n. 1028 seqq.; Reuter, p. 2, n. 209.

1. The omission of the circumstance of the maidservant does not render the confession defective, because, speaking in itself, and excluding a special contract of committing the young woman to the special custody of the master, the sin of the master with the maidservant does not introduce a new species. Yet a circumstance of this sort can be asked by the confessor, so that the confessor may know the nature of the occasion in which the penitent is found. 2. The omission of the circumstance of consanguinity, on the contrary, renders the confession defective; since that circumstance introduces the species of incest. 3. The circumstance of Sunday and of Communion does not introduce the grave species of sacrilege, and therefore it did not have to be declared necessarily. Yet grave sacrilege would be had if someone immediately after Communion should perpetrate a shameful sin. 4. Detraction made from the reputation of a priest and in a sacred place and at the time of Mass does not constitute grave sacrilege, nor consequently must circumstances of this sort necessarily be declared. G. 146, 147, 148; I. M. 493, 502, 507, 798, 806-808; v. 2, n. 711-714.

24. Numerical Distinction of Sins

1. Lupinus, making a confession, says that for a year he retained another's property and did not wish to restore it; likewise for a year he nourished hatred in his mind against his brother; but for a month he had the desire of fornicating, and afterwards renounced it; but then for a month he was delighted with lingering thoughts of fornication.

2. Vulpinus efficaciously proposed to himself to corrupt a virgin. For this end over several days, weeks, and months he flatters her, kisses her, and touches her, and at last completes the work

itself. Then he confesses, saying that he once fornicated. At another time, wishing also to seduce a girl, he employed various means for this end, namely words not very chaste and flattering, amatory letters, shameful looks, dishonest touches; but, being about to complete the sin of fornication, by a fortuitous event supervening, he could not consummate it. Then he confesses, saying that he wished to fornicate and tried to do it, but could not because of an involuntary obstacle supervening.

Q. 1. How are sins numerically distinguished? 2. What as to the cases?

R. To the first, cf. I. M. 303 seqq. To the second: Lupinus, precisely from this, that he delayed restitution for a whole year, even if he could have restored sooner, committed only one sin. The reason is that, morally speaking, there is judged to be one unjust detention of another's property. Granted even that it be supposed that he repeated this his purpose more often, nevertheless all those repetitions, as united in the same real omission, do not integrate anything except one sin in number; in the same way as an intention, for example, of stealing or killing, although often repeated, does not make many sins, but one sin in number with the theft that finally followed by force of the same intention. It would have to be said otherwise in the case in which he had often interrupted the malicious purpose, or had even retracted it, and then had reassumed it anew; for then purposes of this sort of not restoring would remain sins numerically distinct among themselves, and necessarily to be expressed in the act of confession. In such a case, since for the most part it is at least morally impossible to express the number of internal acts, therefore ordinarily it suffices to express the delay of time, by saying, for example, for a whole year I persisted in the malicious purpose of not restoring, which I renewed often. And in a similar case confessors ought not to be too anxious in themselves, too troublesome to penitents, in investigating the number of interruptions, since it is morally impossible to know it exactly. Elbel 551.

As regards the remaining cases of hatred, desire of fornication, and lingering delectation in evil thoughts, Lupinus did not satisfy the integrity of confession. For here there is question of merely internal sins, which are multiplied more easily by interruption; and perhaps a multiple interruption was present. But again, since the exact number of sins in these matters for the most part cannot be obtained, it will be enough to say whether he renewed sinful acts frequently, whether several times in the day, etc. G. 151.

Vulpinus satisfied the integrity of confession in the first case; for all those acts, as by their nature tending to the same end and repugnant to the same virtue, are judged to be in some way united in the same end, and morally completed. Elbel 555. But in the second case he did not satisfy the integrity of confession; for generally he made as many sins as there are evil means by their nature, and as many as are different in species, which he used. Therefore Vulpinus had to accuse separately the shameful words, the amatory letters written for seducing the girl, the shameful looks, and the dishonest touches. The reason is that, the sin not being consummated, those various means evil in themselves can no longer be referred to the end, and constitute one thing in the consummation of the sin. Wherefore those individual acts must be regarded with their own proper malice, and accused separately in confession. G. 156; Elbel 637, 640; I. M. 310, 783.

25. On Capital Vices

1. Augustus, a veteran soldier, desires to be placed over the remaining fellow-soldiers, because he has firmly persuaded himself that he surpasses all of them both in strength of mind and in skill of war, already proved by deeds many times, or at least is second to none. But since he is a fervent Catholic, he has persuaded himself that no other of his fellow-soldiers will be able to benefit the spiritual good of the soldiers as he himself will, if he is placed over them. Wherefore, by efficacious but honest means, through the intercession of friends, he tries to obtain the aforesaid prefecture.

Q. 1. What is pride and what kind of sin is it? 2. What as to the case?

R. To the first, cf. I. M. 321. To the second: that Augustus judges that he excels others in the military art, and is pleased in himself in this his excellence, is not grave sin in itself. Indeed it is not even a light sin if, without contempt of God and of others, he neither extols himself more than is fitting, nor is excessively pleased with his own excellence. - If Augustus in reality is a strong and capable soldier, and worthy of a higher public office, he did not sin by desiring promotion to it moderately. The reason is that to seek one's own promotion to nobler offices, and one's own excellence, is a thing of itself altogether indifferent, free from all fault, and if it is done from a good end and with due moderation, it becomes praiseworthy. For only an inordinate appetite of one's own excellence is vicious. But Augustus, by hypothesis, is in reality worthy of further promotion, procures it by honest and licit means, and is led by the best end; nor from elsewhere does excessive desire of it appear. Wherefore he does not seem to be disturbed. Elbel 611.

2. Angelus, a doctor in philosophy and theology, canon of the cathedral church, famous in the whole diocese both for knowledge and for holiness of life, is agitated by great anguish of conscience. For when he sees that the present bishop does not rightly govern the diocese, whence many detractions and many rumors pervade the whole diocese against the bishop, he is very saddened by this, and prays God for the diocese, that after the death of the bishop, now octogenarian and infirm, a prudent pastor may be placed over it. For there are many discords in the clergy on account of various candidates who are proposed for the episcopal see. Yet often he thinks that, if he himself in reality were chosen, he would govern all things wholly in a holy and just way, would extirpate these or those abuses, would promote these or those pious works. While he turns these things over in his mind, he experiences in himself a desire of the episcopate. But immediately he fears that he has wished for the episcopate by culpable ambition. Meanwhile the bishop dies, and without Angelus doing anything, by unanimous vote of the canons he is named capitular vicar, and then is announced as bishop by the Supreme Pontiff, beyond every opinion and expectation of his. But Angelus is uncertain whether he ought to renounce or accept the episcopate.

Q. Has Angelus sinned in a desire of this sort, and does he sin by not renouncing the episcopate?

R. The desire of Angelus was rather will as nature than will as reason, I. M. 80, and therefore no sin was present. This is clear from all the circumstances of the case; from which it indeed appears that Angelus is not ambitious. But if it is supposed that perhaps that desire was semi-voluntary, or altogether voluntary, then it also does not seem that Angelus sinned by ambition. For "in the episcopate three things can be considered. Of these one is principal and final, namely episcopal operation, by which the utility of neighbors is intended.... Another is the height of the grade, because

a bishop is constituted over others.... But the third is what consequently has itself to these, namely reverence and honor, and sufficiency of temporal things. Therefore to seek the episcopate by reason of goods of circumstances of this sort is manifestly illicit and pertains to cupidity or ambition.... But as regards the second, namely the loftiness of grade, to seek the episcopate is presumptuous.... But to seek to benefit neighbors is in itself praiseworthy and virtuous." St. Thomas, II-II, q. 185, a. 1. But Angelus certainly does not seem to seek the episcopate on account of the loftiness of grade, but on account of the utility of his neighbor. Therefore his desire, speaking in itself, is praiseworthy and virtuous. Speaking in itself; for, as the same St. Thomas continues in the cited place, "because, according as it is an episcopal act, it has the loftiness of grade annexed, it seems presumptuous that someone should seek to preside for this, that he may benefit subjects, unless manifest necessity is imminent..., especially when someone by the zeal of charity is divinely urged to this. Yet without presumption anyone can desire to do such works, if it should happen to him to be in such an office, or even that he be worthy of executing such works; so that the good work falls under the desire, but not the primacy of dignity." Moreover Angelus does not seem to desire to benefit subjects without some grave and manifest necessity existing. For since the clergy, and consequently also the seculars, are already being split into various factions, it is certainly to be feared lest by secular protection someone less suitable perhaps be chosen to the still greater harm of the diocese. But Angelus, since in the whole diocese he already enjoys the reputation of a learned and holy priest, seems suitable, as is also gathered from the very fact of the election, who by his authority can restore peace and tranquility and the right order of things. Whence it also is that it now happens that he is in such a dignity, and that Angelus is worthy of it. Nor indeed does Angelus seem in any way to seek anything else than the good work itself, so that it truly seems possible to say of him that, desiring the episcopate, he desires a good work, 1 Tim. 3:1; because in it he desires nothing except the good work. For this reason also, absolutely speaking, it does not seem that Angelus ought to fear concerning presumption of himself. - Lig. l. 6, n. 804.

Finally the doubt of Angelus, whether he ought to renounce the episcopate or accept it, the Angelic Doctor himself resolves thus, in the cited place, a. 2: "It must be said that in the assumption of the episcopate two things are to be considered. First indeed, what it is fitting for a man to seek according to his own will. Second, what it is fitting for a man to do according to the will of another. Therefore, as regards one's own will, it is fitting for a man principally to insist upon his own salvation; but that he attend to the salvation of others, this is fitting for a man from the disposition of another having power. Whence, just as it pertains to the disorder of the will that someone by his own motion be carried into this, that he be placed over the government of others, so also it pertains to the disorder of the will that someone altogether, against the injunction of a superior, finally refuse the aforesaid office of government, for two reasons: first indeed, because this is repugnant to the charity of neighbors, for whose utility someone ought to expose himself according to place and time.... Second, because this is repugnant to humility, by which someone subjects himself to the commands of superiors." Wherefore, since Angelus himself did nothing to obtain the episcopate, of which he himself had no ambition, he is not held to renounce the episcopate. And, if the command of the Supreme Pontiff accedes, on the contrary he is held to accept it. But if no command of the Supreme Pontiff and no injunction accedes, then let Angelus make the Spiritual Exercises of St. Ignatius, and according to the most wise rules which St. Ignatius hands down there for the election of a state of life, he himself will be able, under the direction of a spiritual master, better to define what is to be

done by him in the case for the greater glory of God, and the salvation of his own soul and of neighbors. - St. Thomas, Quodl. 2, a. 11; Quodl. 3, a. 9; Quodl. 5, a. 22, 24; Quodl. 12, a. 17; Lugo, *Resp. Mor.*, l. 2, d. 5; M. E. v. 11, p. 74.

3. Maximus, a very rich and most noble man and very pious and religious, seeing the Franciscan Fathers in public ways clothed with rough and coarse clothing, is disturbed in mind. For he thinks that he continually sins venially, because he does not imitate that vileness and roughness of garments. Hence he manifests to the confessor his anxiety and his purpose of changing the garments which he himself wears, proper to a noble man, into cheaper garments. He himself indeed would have done this immediately; but a difficulty occurs to him, that then perhaps he could no longer appear in the company of friends of equal condition, and that from this all his blood relatives would take grave displeasure.

Q. Is it always a sin to use costly garments?

R. To the proposed question St. Thomas responds thus, Quodl. 10, a. 14: "It must be said that here one must speak otherwise concerning a private person. For in a public person both the state of dignity and the condition of the proper person are considered; concerning these two he ought so to bear himself that the authority of the dignity not come into contempt, and that he himself not be carried away into pride. Therefore each can be praiseworthy: both that he use costly things to induce reverence for authority, and that he use cheap things by reason of his own humility; only thus, lest the things which are done for conserving authority degenerate into pride; and lest, while the humility of the ruler is too much preserved, authority be broken.... But in him who is a private person, it is virtuous if, on account of humility, he uses more abject clothing even than his own state requires.... But it is licit that he use costly things according to the measure of his own person; but it is a sin if he exceeds his own measure. And because costly is said relatively, as also great, since that which is costly to one is not costly to another, costliness of garments always sounds in excess of one's own measure. And according to this, it is always a sin to use costly garments."

But since Maximus, from the case, does not seem to exceed this proper measure, let him altogether acquiesce, and persuade himself that he is not for this reason in continual venial sin. Let him avoid every immoderation, with attention to the custom of those who are of equal condition, and with whom he himself must converse. Let him furthermore avoid every inordinate affection of vain glory, delights, excessive solicitude, and then there will be no sin. Indeed, even in this matter disorder can also be from "the negligence of a man who does not apply study or labor to this, that he use exterior adornment according as he ought." St. Thomas, II-II, q. 169, a. 1.

Nor indeed do the Franciscan Fathers therefore sin, but on the contrary they use more abject garments virtuously and praiseworthily. "Yet he who uses cheaper garments than others does not always sin. For if he does this on account of boasting or pride, so that he may prefer himself to others, it is a vice of superstition. But if he does this on account of maceration of the flesh, or humiliation of the spirit, it pertains to the virtue of temperance.... But especially it befits those to use cheap garments who exhort others both by word and by example to penance." St. Thomas, II-II, q. 169, a. 1, ad 1.

4. Leopoldus, professor of a certain faculty, seems in a certain way born for contentions. He is accustomed to attack most sharply the opinions of his colleague Modestinus, although he himself holds them as true. He does this so that he may be held by the students in the Lyceum as wiser than Modestinus. And in reality he obtained this shortly and easily, both on account of a certain subtle manner of arguing, and on account of facility of eloquence, and also on account of a clear and sonorous voice, in which he prevails over his colleague not a little.

Q. 1. What are discord and contention? 2. What as to the case?

R. To the first, cf. I. M. 322. To the second: Leopoldus without doubt incurs the sin of discord, because he does not consent with his colleague in the good of truth, but rather, from mere forwardness or pride, is accustomed to attack recognized truth for this end, that he may seem more learned. Yet discord of this sort is not a grave sin unless it turns upon the matter of faith and morals, unless it is done with notable injury of honor or some other grave damage of the adversary, and unless it is done with grave scandal of others, which will have to be judged from the various circumstances. - He also incurs the sin of contention, because he attacks truth with confidence of clamor, as also the sin of pride, because he contends for this end, that he may extol his own authority and diminish that of the other. If the truth of which there is question is merely philosophical, it will not be a grave sin by reason of the matter, because then it is precisely against truth, whose violation is not gravely sinful from its own genus. But if there is question of certain theological truth, speaking in itself, it is a grave sin. Likewise the circumstances must be attended to, so that it may be defined whether contention of this sort, by reason of them, is a grave sin. - Elbel 346, 347.

5. Lucretius, a rich man, very solicitous about increasing his little fortune, neglects no occasion of acquiring gain. Hence, with great vigilance and great labor, he attends to the business of his workshop. He rises very early in the morning, goes to bed very late, and very fatigued. Furthermore he repels almost all poor persons who meet him, and gives alms only rather rarely. Likewise, he does not deny to his wife and children the things necessary for food, clothing, habitation, and education, but he uses great parsimony with respect to other less necessary things, and denies them almost every recreation and other honest amusements.

Q. 1. What is avarice and what kind of sin is it? 2. What as to the case?

R. To the first, cf. I. M. 323. To the second: Lucretius certainly cannot be excused from venial sin because of his altogether excessive solicitude for temporal things. But whether Lucretius is to be charged with mortal sin or not is not established. For from the case it does not appear that he commits some grave injustice or gravely injures charity. G. 173.

6. Livonius, a physician, is altogether saddened by the knowledge and talents of other physicians, because before others he appears more abject and cannot show his own knowledge and his own talents. Likewise he grieves vehemently when he sees other physicians, his friends and companions, being called by more clients, but himself being summoned only by a few, and by persons of the lowest class.

Q. 1. What is envy and what kind of sin is it? 2. What as to the case?

R. To the first, I. M. 327. To the second: Livonius, speaking in itself, sins gravely from envy, since he is saddened by the good of others as impeding his own good, excellence, honor, and advantage. Speaking in itself; for perhaps practically he will be able to be excused, at least from grave sin, if either he does not sufficiently attend to the malice of the matter, or in reality is not saddened by the good of others, but only by his own evil, that he is held abject and is deserted by all. G. 168 seqq.

7. Gaudiosus, powerful in sustaining wine, never casts off the use of reason; but he experiences heaviness of the head, and sometimes walks with wavering feet. Hence he is altogether vigorous in emptying cups, and conquers all his companions in taverns, provoking his fellow-drinkers to equal draughts.

8. Gaudentius is made drunk by a moderate cup of wine. Yet he by no means abstains from wine when he is stirred up by companions to drinking in taverns. Otherwise, he says, those companions begin to ridicule me as scrupulous and at the same time ridicule religion and priests.

9. Esculapius, a physician, counsels his client Albinus to drink generous wine, and in sufficient quantity for sustaining and strengthening his weakened powers. But since Albinus is not accustomed to wine, lest he become drunk, he first begins to drink wine in moderate quantity; then, with habit now contracted and the stomach accustomed, he drinks wine also in greater quantity, and very generous wine, without feeling any inconvenience. And now he is so accustomed to drinking wine that he can no longer abstain from it without feeling languor of the stomach and experiencing difficult digestion of food.

Q. 1. What is drunkenness and what kind of sin is it? 2. What as to the various cases?

R. To the first, cf. I. M. 352 seqq. To the second: Gaudiosus does not commit mortal sin by reason of drunkenness, although he drinks much. The reason is that in him there is not a voluntary and perfect privation of reason. But he sins gravely by reason of scandal and cooperation, by efficaciously provoking and inducing others to drunkenness. - G. 176.

Gaudentius is not excused from the grave sin of drunkenness. For this is not in the fact that someone drinks much or little; but in the fact that someone voluntarily, without any necessity, by an intoxicating drink deprives himself of the use of reason. Nor can grave fault, in the case, cease from the fact that other companions ridicule him, or even begin to ridicule religion and sacred things; for one must not sin so that another may be removed from sin. The sin is altogether voluntary to the others, and depends only on their malice. Abstaining from drunkenness, Gaudentius commends religion, and on the contrary induces others by his example, so that they also abstain from sin, whether of drunkenness or of blasphemy. - G. 178.

Albinus seems to sin in nothing. For he himself takes precaution against drunkenness, and has a sufficient reason for drinking wine, even generous wine, and in a certain greater quantity. But he has by no means exceeded the limits of temperance, since he feels no inconvenience from this; indeed on the contrary he receives the great advantage of more robust health. - G. 181.

10. Ignatius, of an inflamed mind and incapable of restraining anger, often moved by grave anger, utters blasphemies against God and imprecations against men. But he often rebukes and scolds

his wife, children, and other domestics, assailing them with insults and disgraceful names. When he is alone, he also becomes angry at himself, and devotes inanimate things to all the devils.

Q. 1. What is anger and what kind of sin is it? 2. What as to the case?

R. To the first, cf. I. M. 341. To the second: Ignatius, as he is often angry, so also often becomes guilty of mortal sin, not only because of blasphemies, and grave imprecations and contumelies against men and blood relatives, but also because of grave inflaming and disturbance of mind, provided sufficient advertence is present. And, although in the act of the grave movement of anger this sometimes is lacking, for that reason he is not excused from grave sin at least in the cause, unless he retracts the evil habit and seriously tries to extinguish it. - G. 175.

11. Robertinus, a son of the family, very obedient to his parents, indeed fulfills all religious duties. But since his parents besides compel him to perform many other works of devotion and virtues to which he is not held, he himself is somewhat saddened by this, and in executing them often experiences this sadness in himself.

Q. 1. What is sloth? 2. Is Robertinus guilty of sloth?

R. To the first, cf. I. M. 343. To the second: Robertinus indeed commits sloth, a general vice, fleeing spiritual good insofar as it is laborious and troublesome; since "every vice flees the spiritual good of the opposite virtue." But he by no means commits sloth, the special vice, to which it belongs "to be saddened by divine good." Indeed, "sloth is not a withdrawal of the mind from just any spiritual good, but from divine good, to which the mind must cling by necessity. Whence, if someone is saddened by this, that someone compels him to fulfill works of virtue which he is not held to do, it is not the sin of sloth; but when he is saddened in those things which are incumbent on him to be done on account of God." St. Thomas, II-II, q. 35, a. 2, 3.

On Faith, Hope, and Charity

26. On the Obligation of Internal Faith

1. Simplicius, an unlearned man, while confessing before Macarius the parish priest, when questioned concerning the things necessary to be believed, is found very ignorant. For he does not know how to recite the symbol of faith, nor to give an account concerning the mysteries of the Most Holy Trinity and Incarnation, etc. But the confessor, indignant, scolds and rebukes the penitent, as a man too careless about his own salvation, and, absolution having been denied, dismisses him until he has learned the things which are necessary to be known for salvation.

Q. 1. What things must necessarily be believed? 2. What concerning the manner of acting of Macarius?

To the first, cf. I. M. 349 seqq. To the second: Macarius the confessor is more to be scolded and rebuked than Simplicius the penitent; since he so harshly repels from himself an unlearned man, and deters him from the sacraments. For first, it is not necessary that the penitent know by memory all things to be believed; but it is enough that he know them as to substance. Nor indeed is it necessary that an account concerning the individual mysteries be explicitly given; it suffices to know and believe them. Wherefore, if Simplicius knew at least the principal heads of faith which are contained in the Apostles' Creed, the precepts of the Decalogue and of the Church, and the principal sacraments of baptism, penance, and Eucharist as to substance, although he did not know how to give an account of them, he could indeed and ought to have been absolved by Macarius. But if Simplicius was altogether ignorant of these things, and it was to be feared lest, having been dismissed, he would not return further, or would return with the same ignorance, he ought to have instructed him sufficiently as regards the one God and Rewarder, as regards the mystery of the Trinity and the Incarnation, then eliciting with him a general act of faith; he ought furthermore to have disposed him for absolution, by stirring him to contrition and purpose, also eliciting with him an act of contrition; finally he ought to have exhorted him that thereafter he should wish to learn the same things better, and should also learn the other things which are contained in the Creed, the precepts of the Decalogue and of the Church, and the principal sacraments; and thus to impart absolution to him. But if there is a prudent hope that Simplicius will return, then either Macarius himself ought to instruct him gradually on individual occasions, or ought at least to indicate to him, or even procure for him, the means by which he may be instructed by another, and thus gently he ought to send him away for a few days, until he is sufficiently instructed, earnestly asking him to return as soon as possible. If Simplicius knows how to read, it will be very useful to give him some suitable little book which contains and explains a small catechism. Elbel 31 seqq.; G. 186.

2. Politianus, a supporter of civil liberties, who often confesses and approaches Communion, making a journey at paschal time, confesses outside his own parish, lest he be deprived of paschal Communion. But Fabritius the confessor, understanding that he stands for the civil liberty of government, denies him absolution, and declares him unworthy of paschal

Communion, because, he says, liberalism is a sin, and all liberals are in a continual state of mortal sin.

Q. What as to the case?

R. The manner of acting of the aforesaid confessor certainly cannot be approved, since there is question, as appears from the case, of an honest man and a good Catholic, who frequents the sacraments of the Church, and bears their deprivation at paschal time with difficulty, since even when established on a journey he is unwilling in any way to omit them. Nor indeed can the doctrine of the confessor be approved, since in its universality it is altogether false. Liberalism is a sin, if that also comprehends errors condemned by the Church. Liberals likewise are in sin if they hold and defend errors of this sort. But if civil liberty imports nothing else than the republican or constitutional form of government, as it is called, and consequently civil liberties of government which are contained within the legitimate limits of justice and of the public good, there is certainly nothing illicit in it in itself, nor has it ever been condemned by the Church in itself. Whence it also cannot be affirmed that those who from this are called liberals are in mortal sin. Hence in the Instruction of the Holy Office, 29 Aug. 1877, to the Canadian bishops, the Sacred Congregation says: "The Church, in condemning liberalism, does not intend to strike all the individual political parties which perhaps are called liberal, since the decisions of the Church refer to certain errors opposed to Catholic doctrine, not to a determined political party." *Collectan. S. Congr. de Prop. Fid.*, n. 1665. And as regards the very form of government,

Leo XIII, in the encyclical letter *Quella lunga*, 29 June 1881, teaches these things: "Yet it is important to note here, that those who will be placed over the public thing can in certain circumstances be elected by the will and deliberation of the multitude, without Catholic doctrine being contrary or repugnant to this.... Nor is there question here of the modes of public government, since there is no reason why the Church should not approve the principate of one or of many, provided it is just and directed to the common advantage. Wherefore, justice being preserved, peoples are not prevented from procuring for themselves that kind of government which better suits their character, or the institutions and customs of their forefathers." If it were otherwise, it would have to be said that now all those in the Catholic nations of Europe and America who favor modern institutions of governments are in mortal sin and are unworthy of sacramental absolution, which indeed is altogether absurd.

3. Blandina, a pious woman, heard from a preacher that acts of faith, like acts of the other theological virtues, must frequently be elicited. Wherefore she fears vehemently lest she has not satisfied this precept, and has thus gravely offended.

4. Sylvius, a confessor, is not accustomed to ask penitents whether they sometimes elicit acts of faith. He acts thus also with penitents careless for many years about salvation and the sacraments; especially if they are matrons and conspicuous men, whom he does not dare to question.

Q. 1. When does the precept of faith oblige? 2. What as to the cases?

R. To the first, cf. I. M. 354, 355, 376, 381. To the second: Blandina, since she is a devout woman, ought not to be anxious concerning the obligation of eliciting an act of faith, since she is most frequently raised by faith in following the devout life. G. 188.

As regards Sylvius, the confessor is not held specially to ask penitents concerning acts of faith. For they are presumed sufficiently to satisfy the divine precept, unless a special reason persuades the opposite. This certainly holds as regards those who do not neglect the practice of religion, and approach the sacraments. But as regards the others, Lugo excellently admonishes this: since this obligation, as regards the time when it urges, is so uncertain, and since for this very reason it is partly not known, and partly the omission, if ever it were present, is not adverted to, hence it happens that neither among penitents is there a custom of confessing about this, nor among confessors of asking about this. G. 189.

27. On the External Profession of Faith

1. In places of the missions, a prince, moving persecution against Catholics, made a public edict by which he commanded that all Christians had to present themselves before the judge within the space of fifteen days; otherwise they were judged to have denied the faith. The faithful of several provinces asked the missionaries what was to be done, and almost all answered that they should flee, or, if it could conveniently be done, that they should hide themselves. Yet some reproved this, opposing proposition 18 condemned by Innocent XI, and ordered all the faithful of their mission to present themselves before the judge.

2. In a region of heretics, it was prohibited by law for religious to celebrate Mass. Mathurinus, a religious, had celebrated Mass there daily for a year. At last, having been caught, he is asked by the judge whether he knew the prohibition of the law, and whether he himself was a priest and a religious. To all these things Mathurinus responded with subtle evasion.

3. Lucianus, a heretical minister, already converted in his heart to the Catholic faith, seized by a lethal illness, calls a Catholic priest so that he may receive from him the sacraments of the Catholic Church. Yet he first asks him that he be willing to come to him clothed in lay garments, lest he introduce any suspicion of himself to others; then, that, if he should die from that illness, he say nothing concerning his conversion, lest perhaps his parents be liable to persecution; but if he should recover, that he himself should await a suitable time for manifesting his conversion, lest his whole fortune be confiscated.

Q. 1. When does the external profession of faith urge? What as to the cases?

To the first, cf. I. M. 364, 365. To the second: the missionaries responded well; nor is the condemned proposition rightly invoked against them. "If only," says Viva on this proposition, n. 13, "in general through an edict it is proposed that, if someone is faithful, he betray himself, when many are hidden, no one, speaking in itself, is held to betray himself." The reason is that, when a tyrant questions concerning the faith, someone is held to respond, not because he legitimately asks, but from this, that through such questioning there arises an article of necessity, for which the precept of confessing the faith obliges. Moreover, in the case, this article of necessity is not had. For flight and hiding, in the case, does not yield to contempt of faith, since on the contrary those who flee and are hidden are

rather manifested as Christians and faithful. - "If a prince," says Scavini, 12th ed., Milan, 1874, l. 2, n. 911, "by a general law commands that the faithful betray themselves, by carrying such a sign or otherwise, the faithful are not held to this; since no one is held to tell the truth unless specially asked. Except, unless the circumstances are such that by the very fact that they do not betray themselves they seem to have denied the faith, as, for example, if some were previously known, and then from this they would be thought to have defected from the faith." - Struggl, q. 1, n. 39, 40; Lig. 13, 14; G. 193.

Mathurinus was not held to respond to the judge questioning him, since he had no right, in the case, of juridically questioning a priest. But to dissemble, by mental restriction, knowledge of the aforesaid law, or that he is a priest and religious, is certainly not to dissemble the Catholic faith, and much less to deny it. Wherefore Mathurinus acted rightly. Indeed, without any evasion Mathurinus could have simply denied that he knew anything about the law, understanding namely about a true obliging law; likewise he could deny that he is a priest and religious, understanding namely in order to the illegitimate celebration about which he was being asked, and to the illegitimate questioning of the judge, or that he himself was held to confess. - St. Thomas, Quodl. 12, a. 28; Elbel 62, 63; G. 192, 193.

The Catholic priest could indeed approach Lucianus clothed in lay garments. For this contains nothing against faith; and not rarely Catholic priests, from a reasonable cause, walk as laymen lest they be recognized, for example, in time of persecutions, etc. - But he could not permit Lucianus to dissemble the faith by dying. For there urges, especially in the article of death, for a heretic who is then converted to the faith, the positive obligation of the Church of external profession of faith, which obligation Lucianus was not ignorant of, as appears from the case. Furthermore, it was altogether necessary by that profession of faith to remove scandal and retract the errors which he had taught; otherwise others, either seduced by Lucianus or certainly confirmed in their errors, without doubt would have persevered further in these errors, not without most evident loss of salvation and detriment to divine honor. Wherefore Lucianus ought altogether, at least before two witnesses before he died, to profess the Catholic faith. But if Lucianus had been altogether in good faith concerning this obligation of the Church, which he had entirely been ignorant of, and had not been a heretical minister, but a man from the common people, who had never confirmed anyone in his false sect; since in such a man then neither the honor of God nor the salvation of souls would be endangered, and therefore the natural and divine precept would not then urge concerning externally professing the Catholic faith for removing scandal, then, on account of a truly reasonable and grave cause, the external profession of faith could more easily be dissembled. Nor does it matter that he would be believed by others to have died in heresy; for scandal having been removed and a grave cause standing, that false opinion can be permitted. The other thing could be permitted to Lucianus, namely that, health having been recovered, for some time he dissemble the external profession of the Catholic faith, until he could suitably provide for himself and his affairs. For to dissemble the faith on account of a reasonable cause is not to deny it. Yet he ought altogether to abstain from acts protestative of false religion, as for example, to go on in the exercise of a heretical ministry: for this is to deny the faith. Elbel 67-70; G. 195-198; *Collectan. S. C. de P. F.*, n. 1639, 1642, 1643, 1647, 1650-1653, 1686.

4. "How ought a confessor to conduct himself toward apostate penitents placed in the article of death, when he is summoned secretly by them, so that he may absolve secretly? The reason of the difficulty is that in that article they are accustomed to be induced by an infidel family or false priests to acts of false religion, nor can they refuse without danger of death.

R. The Most Holy One judged that the confessor ought to absolve the apostate penitent placed in the article of death, the apostasy having first been abjured in the forum of conscience; and if he should survive for some space of time, and if he can, let him abjure in public before the faithful; but if he cannot, let him leave a written document of his abjuration, signed at least with the sign of the cross; but if he cannot do this either, let him commit to the confessor that he manifest his abjuration to the faithful.

Yet the apostate penitent then placed in danger of life is not held, even with Turks persuading him with danger of life, to confess the Catholic faith which he then embraced after abjuring infidelity, but to elude their persuasions, either by not responding, or by using equivocal words." Holy Office, 25 July 1630. A. S. S., v. 26, p. 642.

28. On Communication with Infidels

1. Marcellinus the missionary proposes the following doubts:

1. Is it licit for Christians to rent houses and workshops to gentiles? The reason for doubting is that the gentiles, in the nobler place of those houses, burn incense, exhibit reverence to an idol, and exercise other superstitious things.

R. "It is licit, if it is established that the houses are sought for inhabiting and the workshops for an indifferent use; yet it is not licit if they are expressly sought for constructing a shrine." S. C. de P. F., 8 Feb. 1806.

2. Is it licit for Christians to lease farms belonging to a temple?

R. Here is in summary the instruction given by the S. C. de P. F., 15 Jan. 1807. 1. It is licit to lease farms belonging to a temple; especially if a cause consonant with reason for contracting concurs; for the thing is of its own nature indifferent. 2. To pay the lease price is a debt of justice, even if the lessee thinks it will be expended for the sake of the temple. 3. Scandal which perhaps arises for Christians from a thing of this sort, insofar as it is born from ignorance, or is scandal of the little ones, must be restrained by protestation and instruction; insofar as it is produced by the malice of the wicked, or is pharisaic, it must be contemned. 4. The lessee is to be exhorted to abstain from the lease if from this some danger of perversion or occasion of scandal is feared.

2. Christians buy territories on which there are idols or oratories of idols. Can they admonish the gentiles, to whom the territory previously belonged, to remove them from the territory?

R. "They cannot, if the ownership of these idols or oratories is annexed to the territory, and passes with the dominion of the land to the buyer, who is held to remove and destroy them, or so change their form that every occasion of superstitious worship is removed, and no appearance of an oratory

consecrated to idols appears any longer. But if such idols or oratories are of public right and under the power of the prince, it is not licit for Christians to remove or destroy them, but rather they should abstain from buying those territories in which these profane images and oratories are found." Holy Office, month of May, year 1781.

3. Gentiles who preserve the tablets of the progenitors of the family are converted to the faith. Can they hand over tablets of this sort to pagan relatives, to whom they belong, or admonish them to remove them from their house, or hide them, to be handed over afterwards if they are demanded by relatives or by prefects, and they are compelled to this? Likewise, to what are proselytes held who have with themselves the idols of other pagans, which they preserve by way of deposit?

R. "If those superstitious tablets by special dominion belong to the converted gentile, he cannot preserve them at home, nor hand them over to other pagans of the family, but must altogether destroy them; and thus it is to be taught and enjoined by the missionaries. But if these tablets belong jointly to others of the family, the Christian is held to remove them from his house; but he can hand them over to others of the family to whom they belong, or admonish them to remove them and take them for themselves; for thus he will confess his faith, and will render to another his own right. By equal right, the idols of pagans which the proselyte preserves for the sake of deposit are to be restored to their owners." Holy Office, 20 Aug. 1778.

4. The bishop of Sergiopolis, Apostolic Vicar of Kiang-nan, proposed a case to the S. C. de P. F.: "Whether Catholics can be permitted, with boats and carrying-chairs, by which they are accustomed indiscriminately to transfer all persons from place to place, also to convey those gentiles who, bringing with themselves incense, idols, and other superstitious things, approach the sepulchers of their ancestors, or other places, so that there they may exercise superstitions."

The S. C. de P. F., 14 Sept. 1868, transmitted the response of the Holy Office, July 1854, given to a similar question:

"Since the actions of which there is discussion are in themselves licit, or at least indifferent, and do not directly influence superstition, provided that scandal is not present, and grave damage is imminent, those Catholics are not to be disturbed; and provided that it is not in contempt of religion, and a protestation is made by the Christian sailors, insofar as it can conveniently be done, that they do not intend toward superstition." *Collectan. S. C. de P. F.*, n. 2195.

5. Marcellus, a missionary, proposes the following doubts:

1. In order to avoid some tumults against Christians, is it licit for Christians to contribute money which is demanded, to be spent in the new year on idolatries of demons, and at the same time on other indifferent demonstrations of the people's joy?

R. "The Chinese Christians can contribute money, provided that through contributions of this sort they do not intend to concur in superstitious acts, the cause which is narrated being supposed, especially a protestation having been premised, if it can conveniently be done, that they furnish the

taxes imposed only in order to the joy of the people and to indifferent acts, or at least to acts not repugnant to the worship of the Christian Religion." S. C. de P. F., 12 Sept. 1645.

2. Is it lawful for Christians to contribute money which, if one is unwilling to give it, he is prohibited from entry into the market of goods; which money partly falls to the leading men, partly to repairing the market, and partly to burning incense to a false deity?

R. "The payment of the tax can be permitted to Christians, especially with a protestation premised." S. C. de P. F., year 1816; Holy Office, 21 Apr. 1849.

3. What if the tax to be paid is imposed solely for a superstitious end, for constructing pagodas, for making sacrifices to idols, etc.?

R. That indeed is not licit, even with any protestation premised. For this contribution bears before itself at least external consent with the superstition of the gentiles, which is altogether illicit. Holy Office, 16 Nov. 1769.

4. By the edict of the king Christians are now compelled to erect shrines to idols and to progenitors. Moreover, in very many places where pagans and Christians are mixed, Christians make an agreement with pagans that they themselves will sustain, according to their choice and as they can, a greater and some special part of public and licit works in the village, provided that the pagans do not disturb them concerning superstitions nor betray and accuse them before the Mandarins, and furthermore handle the superstitious business before the Mandarin for the whole village according to their choice and as they can. By acting thus, the Christians do not intend that the pagans perform superstitious things in their place, but only to free themselves from doing superstitions, and to hide themselves from the Mandarins. Moreover, the pagans do not do more superstitions, either greater or more in number, than they do according to their custom. - Q. Is such an agreement between Christians and pagans licit, with attention to the things said above, with attention also to the reason that, unless Christians make an agreement with pagans in such a way, they will either perform superstitions, or will be compelled to sustain innumerable vexations?"

R. "As it is explained, it can be tolerated, or they are not to be disturbed." S. C. de P. F., 10 Aug. 1841, Vicar Apostolic of Western Tonkin.

6. "Christians, few in number, cannot avoid using the society of gentiles: they find themselves daily at their tables and banquets; but because pagans have it as a custom that they offer to idols foods prepared not only directly for the worship of idols, but for the ordinary eating of the family, and place them indifferently on the table, Christians who sit there, timid, likewise eat indifferently, because it would be shame to themselves and injury to the gentiles if they refused to use the foods placed there."

"Q. Can those Christians eat of these, when scandal is not given?"

R. "It is licit to eat feasts placed indifferently, although offered to idols, provided that it is not in a temple, nor in a place sacred to idols, and provided that every appearance of worship or veneration of

idols and of superstition is absent, and no danger is present of scandalizing the faithful or infidels." Holy Office, 15 Dec. 1768. *Collectan. S. C. de P. F.*, n. 1703.

7. The wives, daughters, and maidservants of pagans are compelled to cook foods for the common meal of the family. But some part of these foods will afterwards be offered to an idol.

Q. In the case, can the aforesaid persons licitly cook foods?

R. "It is generally licit to cook and prepare foods if there is question of ordinary servants and cooks, who through the whole time of the year are assigned to a ministry of this sort; if extraordinary banquets of this sort are made primarily for the joy of the family, for guests, and for other occasions by no means superstitious, although it is not unknown that some part of them is to be offered to idols; if the dishes are not distinguished, so that some are made for a superstitious offering, others for the food of the guests, but the destination depends on the judgment of the father of the family; if no dishes are specially directed and prepared for the idol; if in the division of the feasts, nor in their exposition at the place of sacrifice, or at the table of the idol, they do not cooperate.

"It is not licit for maidservants and children of the family to buy, cook, or in any way prepare extraordinary foods accustomed to be deputed to sacrifice or superstitious offering, when they well know that such foods are destined by masters, husbands, or parents for sacrifice or offering to be made to their deceased. Nor is this licit for the same persons because of grave fear or damage which probably or certainly threatens themselves, even if a protestation is premised, that their mind is altogether alien from superstition. Likewise this is not licit for the same persons even when those extraordinary foods are bought, cooked, etc., in a greater quantity than is necessary for furnishing the said table serving superstition, when the primary end of the said preparation is to make the aforesaid superstitious table, although the part of the foods which remains over serves occasionally and accessorily for licit eating." S. C. de P. F., 13 Jan. 1793.

29. On the Trampling of the Cross

Pagans, driven into rage against Christians, engraved the sign of the Cross in public roads, on bridges, and on the threshold of city gates, to be trampled by the feet of those going to and fro; and this with such frequency and continuity that it is impossible for travelers to abstain from that injury. Furthermore some of the pagans placed themselves on watch, so that they might silently observe the manner of acting of Christians. The Christians, the matter having been known, threw themselves into anguish: for on one side they cannot abstain from access to the city unless they wish to renounce their commerce and the procuring of things necessary for life; on the other, it seems to them that by trampling those crosses they give an indication of religion forsworn.

Q. What is to be done in these straits of affairs?

R. The preceding case was proposed by the Apostolic Vicar of Hu-nan. The S. C. de P. F., 26 June 1863, responded: "... 1. If Christians are admonished by no one concerning some sign of the cross which perhaps they have before their feet, the Sacred Congregation judged that they should walk freely, examining nothing. For when those things are established which have been set forth by Your Apostolic Lordship, and those two especially are evident and publicly known, namely the necessity of making the journey for conducting one's own business and sustaining life itself, and the firm will of

Christians to be retained in their religion and to exclude all those things which are contrary to it, anyone easily sees that such a manner of acting cannot be refuted either from the end, or from the object, or from the circumstances, which are the three elements by which the morality of an action is constituted. For the end, which is not directed to contempt of Religion, but to consulting one's own necessities, is manifestly honorable.

"But with an end of this sort proposed, the material act also of walking over crosses, in which act the object of the action here is, if it is considered in itself and receives nothing of depravity from the circumstances, must without doubt be free from all fault. For since to walk and to place footsteps is an act indifferent by its nature, it necessarily follows that, if a dishonorable end is excluded, but an honorable end and one conformable to reason is proposed, the act itself also must be held as honorable and conformable to reason. Therefore you know that not only is it counted among scruples if someone turns it into religion for himself that while walking he trampled straws joined in the form of a cross, but also that everywhere and freely in churches the faithful walk over the stones of sepulchers, where the most holy name of Jesus, and its monogram and crosses, are very often engraved.

"It remains, therefore, that from the circumstances nothing of depravity accede; of these, one proposition occurs which seems to stretch forth some appearance of difficulty, that in describing the aforesaid crosses the pagans proposed to set a snare for Christians, namely so that, if compelled by necessity they should trample them, they might seem to have forsworn religion; to which Your Apostolic Lordship adds another by which he seems not a little moved, namely that in the first days pagans were also seen on watch, so that they might observe the Christians' manner of acting; yet you will easily perceive that this circumstance brings no moment. For since you say that the same persons stood by altogether silent and daring nothing at all, you plainly understand that they are to be held just as those who by chance saw Christians passing by. Wherefore this one thing is to be asked here, both as regards them, and as regards others who by chance are present, and also as regards the rest who, absent, know the deed, whether, because the pagans engraved crosses with that evil mind, scandal would rightly arise among them if Christians walked over them, as if namely they seemed to have given a judgment of religion forsworn. Since those two things which we have mentioned leap into the eyes of all, and are publicly known, namely the will of Christians, which openly and firmly adheres to its religion, and by equal reason abhors those things which are contrary, and the true reason which drives the same to frequent the roads of the city, which is the necessity of conducting their affairs and sustaining their life, this indeed follows: that if someone, blinded by his voluntary malice, is unwilling to see these things which all see, so that by calumny he attributes apostasy to Christians, he certainly suffers not the scandal of the little ones, nor one born from infirmity, but that of the Pharisees and one produced from malice. But you know that the scandal of the Pharisees is to be spurned.

"2. If Christians are admonished by someone concerning some cross which they have near their feet, the same Sacred Congregation responded that they ought diligently to take care lest they press the cross; since, if, admonished, they should freely trample the same, when nevertheless they could avoid it, they would rightly seem to the little and weak to have violated the sanctity of religion....

"3. But if the way is so blocked that it is licit to pass only over the described crosses, in that case, since it is manifest that one walks over them not from some irreverence but from mere necessity, the

Sacred Congregation indeed responded that this can be done, but that for removing every account of scandal a twofold condition must be observed. The first is that before the one admonishing, and those hearing, Christians expressly profess that the will of inflicting injury on the cross is altogether absent from them. The other is that, in the very fact of passing, they hold a manner, as far as can be done, becoming, so that some sign of reverence may appear from it.... But if someone should wish to take scandal from this, he would plainly follow the ways of the Pharisees, and therefore his calumny would have to be despised, especially since, if Christians allow themselves to be terrified more than is fitting by these injuries of pagans, an occasion would be furnished to them for making the condition of the Christian Religion more difficult day by day, and easily extinguishing it by these acts...." *Collect. S. C. de P. F.*, n. 1662.

30. Communication with Heretics

1. Francisca, a noble girl, her father having died burdened with debt, fell into such poverty and misery that she is compelled to seek alms, and thus sustain her own life and that of her infirm mother. With every zeal she seeks whether she can apply herself to some art or office, and by her industry and labor provide for the necessities of her own life and her mother's. Having suffered rejection by all, she is finally sought by a Protestant minister, that she be willing, to the sound of the organ on Sundays, to sing psalms in a Protestant temple during the time of public offices. Since Francisca is very skilled in the art of music and endowed with a beautiful voice, there is offered to her a rich and altogether extraordinary stipend, by which alone she could thereafter live together with her mother in a decent and suitable state. Francisca is a fervent Catholic, and has a firm purpose of fulfilling all the duties of the Catholic religion; indeed also, so that she may fortify herself against any danger, she proposes to approach sacred Communion more frequently, and to persist more fervently in daily prayer, which she never omits. Francisca indeed has no doubt concerning the liceity of the matter; nevertheless, because she is of a timorous conscience, she manifests the matter to her confessor, seeking counsel from him, ready rather to suffer poverty than to offend God.

Q. 1. Is communication with heretics prohibited? 2. What as to the case?

R. To the first, cf. I. M. 367. To the second: for the solution of the case two things are to be inquired. The first is whether it is licit for Francisca to accept the office of singer in a Protestant temple. The other, insofar as a negative response must be given to the prior question, is whether the confessor can and ought to manifest the truth to his penitent.

Now, as regards the first question, it must altogether be answered negatively. This is clear 1. from the authority of theologians. La-Croix, l. 2, n. 68, has these words: "Lessius rightly notes that it is not licit in temples or banquets of non-Catholics to sing their psalms together; likewise that it is not licit in their temples to play the organ or other instruments, because in these things there seems to be public approbation or scandalous communication in sacred things." Philippus de Carboneano, in the appendix to the treatise of Fr. Antoine, *de Virt. Theol.*, part 1, c. 2, says: "Secondly, by deed they deny the faith who do those things which approve and ratify a false rite and sacrilegious worship. For this is to contemn the orthodox faith, which condemns these things, and to profess a false Religion by work. But they ratify the false rite and worship who in the temples of schismatics, heretics, and

infidels play organs or other instruments, sing meters, or compose things to be sung, or exercise the musical art in another way." Kenrick, tr. 13, n. 37, speaking of the temples of heretics, says: "Those who in them sing hymns, play organs, respond to the herald, become plainly participants in the worship, and therefore in some way betray the faith." Other more recent theologians commonly teach the same.

It is clear 2. from the instruction of the Eminent Cardinal Vicar for parish priests of Rome: "Most strictly, moreover, it is forbidden to enter, from mere curiosity and knowingly, the halls and temples of Protestants during the time of conferences; and all sin gravely who, from mere curiosity, listen to the conferences of Protestants and assist, although materially, at non-Catholic ceremonies; and all craftsmen who, even for the sole reason of gain, sing or play in the temples of Protestants." *Enchir. Mor.* 367.

It is proved 3. by reason. For then that could be licit for Francisca when her cooperation in the worship of Protestants were material. But her cooperation is formal, and that altogether illicit. Indeed, formal cooperation is had not only when someone has the explicit intention of cooperating in the evil action of another, insofar as it is evil; but also when someone, notwithstanding a contrary intention, performs some work which, by its intrinsic nature and with attention to all circumstances, is ordered solely, directly, or immediately to that evil action. For then, as is clear, by the very act exercised the prior intention is retracted, and at least an implicit intention of that evil action is had. Moreover, the singing of psalms in a church during the time of public offices is by its nature a religious act of external worship. Therefore, as the singing of psalms in a Catholic church is an external act of Catholic worship, so the singing of psalms in a Protestant temple is an external act of Protestant worship. Besides, with attention to all the circumstances of the case, although perhaps no scandal is to be feared for Francisca, nevertheless the matter is very dangerous, and scandal of others is certainly present, if it should come into notice, as is a very easy thing, that Catholic Francisca sings in a Protestant temple. She furthermore will be the cause why both Protestants become bolder, and more easily and more frequently both Protestants and also the faithful approach the Protestant temple to hear her singing skillfully and with a sweet voice.

It is confirmed 4. from the response of the Sacred Congregation, 19 June 1889. The archbishop of Mario- nople had set forth: "A certain man of that archdiocese had sought the faculty of playing the organ on feast days in the temples of Protestants to procure his own livelihood." The Sacred Congregation on prayers of this sort issued this decree: "It is illicit in the temples of heretics, when they exercise false worship there, to play the organ." *Collectan. S. C. de P. F.*, n. 1854. But another decision of the Sacred Congregation, 23 Feb. 1820, to the third, is to be noted here: "A Catholic man being lacking to play the organ in a certain Catholic church, can a non-Catholic musician be admitted temporarily to that function? R. Scandal, or danger of scandal, having been removed, affirmatively." *Collectan.* cited, n. 1834.

As regards the other question, the confessor can and ought openly to declare the truth. The reason is that he is asked concerning the truth to be said, and he can prudently judge that fruit will come from his admonition. For the good, indeed the best, dispositions of Francisca are such that the confessor can conceive no suspicion concerning a bad outcome of his admonition.

2. Germanus, a missionary intending to favor the union of dissenting brethren, easily permits Catholics to go to the temples of Protestants, and Protestants to approach the churches of Catholics, so that they may hear Mass, confess, and receive the sacred synaxis; so that they may hear the sermon; so that they may be present at funerals; so that they may play the organ; so that they may also assist at marriages and baptisms. Indeed he even permits Protestants to build the Church of Catholics and Catholics to build the temple of Protestants. This manner of acting of Germanus indeed obtains this best effect, that Catholics live fraternally in peace with Protestants, and from time to time conversions of Protestants are not wanting.

Q. What as to the case?

R. Because Germanus the missionary intends to promote the union of heretics with the Catholic Church, he acts altogether well and is to be praised because of his apostolic zeal. This is that very work which Leo XIII desired and inculcated by his letters.

But that which Germanus does for this end has not been rightly done. For first, easily and positively to permit Catholics to go to the temples of Protestants is a thing which, although in itself indifferent, in the case however is practically dangerous, and certainly prohibited, since scandal follows from it. Furthermore, as appears from the whole tenor of the case, Germanus permits Catholics to go to the temples of Protestants, namely so that they may assist at their sacred functions. Moreover, communication with Protestants in divine things which smell of heresy is altogether illicit, because it is protestative of heresy. And this holds even if their sacred functions differ from Catholic rites and ceremonies only in rites and ceremonies; for this diversity of rites and ceremonies is distinctive of the heretical sect, and consequently is protestative of heresy. Only in extreme necessity is it licit to receive from them the sacraments of the dead, if they validly minister them, even though not by a Catholic rite, Albitius, *de Inconst. in fide*, c. 18, n. 32. - The difficulty is only if heretics perform divine things in a matter and rite altogether Catholic. There are those who affirm that this is not illicit in itself, and these are many and grave doctors; because then we are prohibited from them not as from heretics, but only as from excommunicates. Others deny it, and at least practically and regularly it must altogether be denied. The reason is the danger of perversion and scandal, which ordinarily exists in communication of this sort; and the favor which is had from this toward heresy and heretics. Furthermore, the Sacred Congregation of the Holy Office and the S. C. de P. F. have constantly prohibited it. And thus Pius VI, Instruction, 1 Apr. 1794, forbade being present at the Masses of intruding priests, and performing the office of sponsor when they baptized. And the Holy Office likewise forbade accompanying or following them when they carried Viaticum. - Suarez, *de Fide*, d. 21, s. 3, n. 4; Lugo, *de Fide*, d. 22, s. 1; Albitius, cited place, c. 18, n. 30; Benedict XIV, *de Syn.*, l. 6, c. 5, n. 2.

Then Germanus permits heretics to be present at sacred things in the churches of Catholics, to receive the sacraments, and to hear a sermon. As regards hearing a sermon, there is or can be no difficulty. For although Catholics cannot assist at the sermons of heretics on account of danger of perversion and scandal, nevertheless it is not prohibited to admit heretics to the sermon, indeed also to invite them, since this is both useful to religion and a great work of charity toward heretics.

As regards hearing Mass, although likewise Catholics cannot hear the Masses of heretics and schismatics, although otherwise on feast days they cannot hear Mass, nevertheless it can be tolerated

that tolerated heretics and schismatics assist at Masses. And thus this is tolerated in colleges of Catholics in which the sons of heretics are educated. S. C. de P. F., 25 Apr. 1868. But it is not licit to minister to them the sacraments of confession and Communion; for it is communication in divine things bearing before itself adherence and favor to a condemned sect, and it fosters religious indifferentism. The same must be said by proportionate reason concerning assistance at marriages, baptisms, and funerals, namely if they assist at those as witnesses, at these as sponsors, at those as fulfilling a religious office, for example, by carrying a lit candle in procession with others. But they are not prohibited from assisting at all these as fulfilling a merely civil office, if a graver cause is present, by merely accompanying the spouses, merely assisting at the baptism, merely accompanying the funeral. Because this is a civil office, from a graver cause it is licit also for Catholics with respect to heretics, and they can follow the procession as far as the doors of the heretical or schismatic temple, and more probably they can also enter. Cf. Lugo, cited place, n. 10.

Although it is altogether illicit for Catholics to play the organ in the temples of heretics or schismatics, to call them into Catholic churches to exercise this office, others being lacking, and scandal having been removed and for a time, is not illicit.

That Protestants build a Catholic church is certainly not evil, but good and consequently licit. But it is otherwise concerning Catholics building the temple of Protestants. For this, although it can be tolerated, and therefore those who build these temples are not to be disturbed, provided that there be no scandal, and it not be done in contempt of religion, but either to avoid grave harm, or from another grave cause; nevertheless, from grave sin in the case there is no excuse, since it redounds in favor of the heretical sect, because labor and expense are employed so that it may exist and persevere conveniently.

Finally, that Catholics live fraternally with heretics and associate together in civil matters is not illicit in itself, because it is not to communicate with heretics, but with citizens. Hence it is not illicit in itself even to serve heretical masters, even in a temple. But in the case, from the imprudence of Germanus, this also appears illicit in its generality, because it seems to have this effect, namely the aforesaid religious indifferentism, if no caution is employed, if, rather than being tolerated or permitted for particular cases, it is counseled and fostered indiscriminately. Hence, as appears, Germanus seems infected with the error of Americanism, namely of removing all limits and boundaries between Catholics and Protestants, so that the one approach the others in this way, and approach in all things.

3. Elpidia, a Catholic woman, taken by love of a heretical sect from the reading of Protestant books, resolved to depart from Spain into England. While she was passing through France, she fell into a lethal illness. Her Catholic husband immediately approached the parish priest of the place, asking of him that he visit his wife and dispose her for a good death, yet in such a way that he say nothing about Purgatory, Indulgences, or Confession, since the admonition would not be profitable, but would gravely harm. Soon the parish priest, having followed the husband, found Elpidia struggling with death. He recites in a loud voice acts of faith, hope, charity, and contrition. He likewise recites the Apostles' Creed. He exhorts her to sorrow for all sins, and absolves her under condition. Afterward, however, he buried her in a sacred place.

Q. Whether the parish priest acted well, absolving Elpidia and burying her in a sacred place?

R. To the first, the parish priest seems to have acted well. The reason is that he tried, in the best way in which it could be done in these circumstances, to procure the salvation of the soul, namely by disposing the sick woman both to true supernatural sorrow for sins, and also to assenting to the mysteries of faith necessary to be believed for salvation. Therefore he acted well, partly because he absolved her, lest perhaps, dying with only attrition, she should incur eternal damnation, who, with the benefit of absolution also coming, perhaps obtained eternal salvation; partly because he absolved her not absolutely, but only under condition. For whenever on the one side there shines forth a probable hope of the validity of this sacrament, and on the other side the danger of frustration is to be feared, then, the case of necessity urging, it can, indeed also must, be administered not absolutely, but under condition, in order to provide both for the salvation of the soul and also for reverence toward the sacrament. But in this case there truly was the greatest danger of the soul; and on the other side some hope of sacramental validity appeared. For Caia [i.e., Elpidia] had previously been Catholic and, as appears in the case, well instructed in the matters of the Catholic faith. Therefore, not altogether improbably, placed in so great a danger, stirred by the exhortation of the pious parish priest and aided by the grace of God, she could return to the heart, and desire sacramental absolution, and by sighs and other signs of this sort confess, although it was not noticed. - Elbel 34; G. 190; I. M. V. 2, n. 345, 346, 750 seqq.; *Commentar. de Moribundorum Absolutione et Assistentia*.

But what if Elpidia had also previously been non-Catholic? If Elpidia had also previously been heretical, and did not contemn the sacraments of the Church, the parish priest would indeed do well, unless something else stood in the way, to approach her and with her elicit acts of faith, hope, charity, and contrition. And, if the circumstances permitted it, he ought afterward to ask her whether she wished to embrace the saving faith, if she knew herself not to be in the true faith; likewise whether she wished to embrace and do all things necessary for salvation, to confess and to be absolved. And if she nods assent to these things, she can be absolved under condition. - La-Croix, l. 6, p. 2, n. 1866; Elbel 35; Lig. l. 6, n. 483; G. 190.

To the second. Elpidia could be buried in a sacred place, provided scandal was absent, as in fact it seems to have been absent. The reason is that she was supposed, in the article of death, really to have given signs of penitence, and consequently to have been truly absolved from sins and from the censures which she incurred. And although doubt was present, nevertheless one had to incline to the more benign part. Elbel 36; G. 141.

31. On the Instruction of the Caste of Men Commonly Called *Mangiò*

"There are in the town of Kafa certain men of the most abject lot or caste, commonly called *Mangiò*, in Abyssinia commonly named Woito. These are judged not only themselves to be unclean, but also to communicate uncleanness to the persons with whom they deal, and to the things which perhaps they handle. It has not yet been begun to instruct the same concerning the Christian Religion; because, if a missionary should associate with them, he too would become unclean, and no one would any longer speak to him; besides this, that if even once some *Mangiò* should enter a church, it would immediately be held as unclean. Wherefore it is asked:

1. Whether the mentioned difficulties furnish a sufficient motive, so that the missionary should not seek to instruct this caste? - 2. Whether, in the case in which some man of this caste

should ask instruction spontaneously from the missionary, he can deny himself to such a ministry? - 3. A certain family of this caste is under the dominion of the Mission, and serves it. Would the missionary sin, if on account of the aforesaid difficulties he omitted to instruct that family?

R. The Catholic Church, in the dispensation of the ministries of God, not only never distinguished anything between rich and poor, between nobles and the abject, but also has always embraced the poor and the abject with a certain, as it were, peculiar charity and maternal solicitude; who, as manifest experience testifies, are accustomed more easily to approach the faith than the nobles and rich of the world. For the Church imitates Jesus Christ Our Lord, with whom there is no respect of persons, and who said that he had been sent to evangelize the poor, and ate with publicans and sinners, although the Pharisees took most unjust scandal from this. Therefore, as regards the three petitions, there must in no way be doubt that missionaries, according to their office, ought also to labor most diligently, as much as they can, for the instruction and conversion of men called *Mangiò*; and much more if the *Mangiò* themselves, moved by divine grace, ask to be instructed, or, having undertaken the rightful service of the missionaries, have become their domestics. Nor is it only illicit, for the reasons brought forward, to abstain entirely from instructing the *Mangiò*, but also lest the missionaries seem by their authority to confirm a superstitious custom, probably effected from Jewish traditions, namely of fleeing the contact of men of the *Mangiò*, indeed, of having no communication with those touching them; which custom indeed, so greatly opposed to Christian charity and right reason, missionaries should strive with all diligence utterly to extirpate. Meanwhile, however, so that provision may be made as quickly as possible for eternal salvation, the Eminent Fathers judged that one of the missionaries must be deputed without delay for their spiritual care. Christians, however, who observe that custom, can be admitted to the sacraments, provided that they do this solely lest they be separated from the commerce of the other citizens, and not of their own accord and from the erroneous opinion that the men of the *Mangiò* are unclean, and communicate stain and uncleanness, even by touch alone, to the persons with whom they deal or associate, to the things which they use, and to the churches themselves into which they enter. For this opinion is in no way to be tolerated in a Catholic man, after God showed Blessed Peter that no man is to be called common or unclean." Holy Office, 20 June 1866, Vicar Apostolic of Gallas.

32. On Sins Against Hope

1. Argyrophilus clings so ruinously to riches and to the present life that he thinks neither of paradise nor of hell, but only of hoarding treasure. Hence he desires to live on earth for thousands of years, indeed perpetually, lest he be drawn away from riches.

2. Melania, afflicted by a long-lasting illness, begged health from God and from the Blessed Virgin Mary for several years. Since she did not obtain it, she resolved to pour out no more prayers to God and the Saints, saying: God does not wish to hear me.

3. Marinus, after a long life of sins, hears a preacher exhorting sinners to penitence. But he himself, considering the long series of his sins, says within himself: I am already lost; it is now useless to renounce sin.

4. Leonardus, a recidivist, was often admonished by his confessor, but with almost no amendment. The confessor insists, admonishing him again, but he says: Father, indeed I fear the future judgment on account of the multitude of my sins, and scarcely perhaps shall I obtain divine mercy; for I can no longer abstain from sins, both on account of inveterate custom and on account of my excessive frailty.

Q. 1. What are the sins opposed to hope? - 3. What as to the cases?

R. To the first, cf. I. M. 371. To the second: Argyrophilus sins gravely against the virtue of hope. The reason is that he truly places creatures before God; content to be without God, he establishes his happiness and his last end in creatures. G. 203.

Melania sins gravely against hope, if therefore she truly ceases to pray because she is persuaded that God is unwilling to furnish her his aids. But if from a certain inordinate sadness she loses heart and ceases from prayer, she sins only venially. If, finally, she ceases to ask health because she believes that God, by the secret judgment of his wisdom, does not will to restore health to her, she does not on account of this sin. G. 204.

Marinus sins gravely from desperation. This is a most grave sin, and most dangerous. The confessor ought not to desert him; but with all solicitude he ought to try to raise him up, and to stir him to hoping firmly, to sorrowing, and to proposing. If the sick man should despair of recovering bodily health, the prudent physician does not desert him, but then labors especially, so that by salutary counsels and suitable medicines he may restore him to his former health. Elbel 184; G. 203.

Leonardus does not seem to sin gravely from desperation. For he does not seem truly to distrust divine mercy, but only fears too much lest he fall into sin, as one who is well conscious of his own frailty. Wherefore the confessor ought to console and strengthen a pusillanimous man of this sort, so that he may place all his hope and confidence not in his own powers, but in the assisting grace of God, to whom nothing is impossible. G. 203; Elbel 184.

33. On Charity Toward Neighbor

1. Christina, having several children, desires that her little son, recently born blind, be snatched by death from the miseries of this world and enjoy paradise. She desires the same grace for another son, five years old, deaf and mute, and for a third son, nine years old, lame in both feet. Likewise she makes a vow that her daughter of marriageable age, but unmarried on account of excessive poverty and deformity, depart from the living, lest she remain exposed to the dangers of sinning. But she fervently prays God that her husband, who often beats her and continually vexes her with many imprecations, and daily and at every hour blasphemes God and the Saints, at last be converted to God and rest in peace.

2. Leontia, in frequent conversation with a certain friend, is accustomed often to sadden her with words. And although the friend often shows grave sorrow, nevertheless Leontia has no scruple in this matter; for she says that she does this only for joke and recreation, and to cheer the other friends present.

Q. 1. Is there a precept of charity toward neighbor? - 2. Have Christina and Leontia, in the aforesaid cases, sinned gravely against charity?

R. To the first, cf. I. M. 382. To the second: Christina in none of the aforesaid cases sins against charity and piety; for she does not desire evil for her children and husband, but, on the contrary, that they be freed from the evil of punishment and from the evil of sin, and possess the infinite good in heaven. Nor indeed, as appears from the case, is she led by weariness, impatience, or hatred toward the children or toward the husband; but she is impelled only by the motive of faith and piety. Wherefore Christina seems to sin neither gravely nor lightly. G. 213.

But what is to be held concerning Christina? Would she sin gravely if she desired death for her husband, so that at last she might be freed from the husband's most harsh vexation and tyranny? This must certainly be denied, the spirit of inordinate revenge being excluded. For, according to the common opinion of the doctors, it is licit to desire death for oneself in order to escape this most harsh treatment. Why then could someone not, from the same end and without sin, desire death for his neighbor? I. M. 374, 386; Elbel 342.

As regards Leontia, she can perhaps be excused from grave sin on account of an erroneous conscience, or on account of a defect of advertence and due consideration. But the thing in itself is grave, against charity. "It is grave against charity," says D'Annib., ed. 3, p. 2, n. 92, "to affect someone with grave sorrow without a grave cause, even short of injustice; whether he is reasonably saddened, which no one doubts; or irrationally, as for example from games, jokes, perhaps because he is of a small and pusillanimous spirit."

34. On Love of Enemies

Leocadia caught her husband shamefully associating with the maidservant. She, asking pardon, at once drives her from the house, and no longer deigns her with conversation or sight. Indeed, if at any time the maidservant meets her in the street and greets her, she turns her eyes in another direction and does not return the greeting. But she scarcely speaks to her husband for a month, and moreover has resolved that she will no longer render the debt to him.

Q. 1. Are enemies also to be loved? - 2. What as to the case?

R. To the first, cf. I. M. 390 seqq. To the second: Leocadia could at once drive the maidservant from the house without wounding justice and charity, since she had so gravely wounded the right of the marriage bed, and more frequent relapses could deservedly be feared. Nor does it matter that, so suddenly cast out of the house, she perhaps undergoes danger to her reputation; for she ought to impute this to herself. Besides, Leocadia could also prosecute her before a judge, and by this very fact defame her before him. Therefore, all the more, she can cast her from the house and permit her defamation, if perhaps it follows. Nor indeed does Leocadia seem therefore to be disturbed, if she neither looks at nor greets in return the maidservant meeting her, provided nevertheless that she does not do this from hatred of enmity toward the person, but from abomination of the crime, or for her own amendment, or lest there be danger that she come into the house and return, or to show more fully the gravity of the injury inflicted on her, or even for a certain just punishment. For nothing prevents that, in things which merit punishment, yet not such that they be referred to the judge, someone, although a private person, by himself punish the person of another with such a

punishment as pertains to the private commerce of persons. Therefore, all the more, if there is question of a graver offense, which could be referred to the judge, it will be licit to punish it by privation of conversation or greeting, which are not common but special signs of charity, to which otherwise one is not held. But otherwise it would have to be said, if Leocadia did this from hatred toward the person herself, and from an inordinate affection of revenge, willing and desiring evil to the maidservant. The same seems to have to be said concerning the privation of conversation of Leocadia with her husband. Since from the case it does not seem that she did this beyond a month, from this it can be gathered that she did this only to show her just displeasure, and also to soothe her sorrow, in so grave a matter. But because she resolved to deny the debt perpetually, she sinned nothing against justice. The reason is that the husband, by committing adultery, lost the right of asking the debt. I. M. V. 2, n. 981. But whether she sinned at least against charity, Elbel 253 affirms; since the husband is thus exposed to the danger of incontinence. But this is commonly denied. For charity does not oblige with grave inconvenience, and it is most grave for the wife that she be compelled to keep faith with a husband breaking faith. Besides, if the reason brought forward were valid, never again, neither by private nor by the judge's authority, could divorce be instituted, if not justice, then charity prohibiting it. St. Thomas, Suppl. q. 62. Nevertheless, Leocadia is to be counseled that she fully condone the offense to her husband, and then render the debt, lest she expose her husband to the danger of incontinence and of new adultery, and perpetual discords reign between herself and her husband. Elbel 249-253; G. 216, 217.

35. On Almsgiving

Lucretia, pretending that she is poor, burdened by numerous offspring, and has an infirm husband, although she has neither children nor husband, obtains a monthly pension of 60 lire from a certain noble and pious man. Likewise, pretending that she is near childbirth, she obtains a notable sum of money from a certain rich and fervent matron. Using other arts, she obtains other alms from various confessors whom she approaches, and from other priests; indeed she has also obtained a legacy from her parish priest.

Q. 1. Is there a precept of almsgiving? - 2. What as to the case?

R. To the first, cf. I. M. 396 seqq. To the second: Lucretia sins gravely. The reason is that, with grave fraud, she accepted another's property in grave quantity, the owners being reasonably unwilling. For if these had known Lucretia's fiction, certainly they would never have given alms, and in so notable a quantity. Therefore Lucretia must altogether abstain in the future from such fraud, and she can no longer receive the charitable pensions assigned to her, and other charitable subsidies. Besides, she is held to restitution. What she received in notable quantity must be restored to the proper owners; since surely these are entirely known to Lucretia, and they would not have given alms in so great a quantity to other common poor persons. The legacy must be restored to the heirs or to the new parish priest, so that it may be distributed to another true poor person, or to other poor persons, since the legacy is pious. But moderate alms are to be restored either to the owners themselves, or to other poor persons, especially if they cannot be restored to their proper owners, I. M. 493, from the presumed will of the owners, that, if they had not given to this feigned poor woman, they would have given to other poor persons. She must also restore altogether trifling alms in the same way. Yet there are not wanting those who say that these alms of the least moment are not necessarily to be

bestowed upon others, because the owners are less unwilling about them, and because it is piously presumed that the owner wished to give them principally on account of love of God and neighbor, and only secondarily for relieving the need of this or that poor person. Indeed these small alms are more easily given without attention to the persons to whom they are given, and all know that among begging poor persons there are not lacking those who are not truly poor. Elbel 283-285; G. 221, 222.

36. On Correction and Admonition

1. Calpurnia, a mother, sees her daughter Lucina given too much to vanity. But since at the same time she sees that she herself is given to vanity, although she would wish to admonish her daughter for her good, nevertheless she does not dare to admonish.

2. Catharina, a maidservant, notices that Olympia, daughter of the household, admits her lover Damian alone, at night, into her bedroom. Hence she prevents his entrance into the house by various devices. Olympia, discovering this, who seems to have the governance of the house, very angry, rebukes Catharina and threatens her that she will treat her harshly and will even cast her from the house, if either she attempts anything similar thereafter or manifests the matter to anyone.

Q. 1. Is there a precept of fraternal correction? - 2. What as to the cases?

R. To the first, cf. I. M. 409 seqq. As to the statute of Religious Congregations in this matter, cf. I. M. 416, 417; Elbel 314; St. Thomas, Quodlibet 11, a. 13. To the second: Calpurnia indeed is less apt for making an efficacious correction, since she herself is subject to the same vice. Nevertheless, she is not therefore exempted from the obligation of correcting her daughter, because on account of sin no one is exempted from the divine law. But correction is owed by superiors to inferiors by natural and divine law. Wherefore let Calpurnia first precede her daughter by example, so that afterward she may correct her daughter more efficaciously, if she is not first moved by the mother's example. Elbel 311.

If Catharina cannot prevent the aforesaid meetings without grave detriment to herself, as in fact appears from the case, she can with a safe conscience dissemble the whole matter and behave permissively. The reason is that charity does not oblige one to impede the sins of others, unless this can be done without grave inconvenience. Besides, admonition in the case can in no way prudently be estimated as going to be profitable. Nevertheless Catharina will in no way be able positively to concur in fostering those little meetings. Elbel 301; G. 225.

3. Xaverius, a missionary, knows well that those celebrated eight permissions of the Patriarch of Alexandria, Apostolic Visitor General in the kingdom of China, in which prostrations and ceremonies toward the dead, with some cautions, were permitted, had been condemned by Benedict XIV in his Constitution *Ex quo singulari*, and their practice execrated as superstitious. But since he sees that several of the neophytes still perform superstitious rites of this sort from ignorance and in good faith, and that, if they were admonished, no fruit of the admonition would follow, except that formally they would be sinning in the same rites, he remains altogether silent and abstains from making any admonition.

Q. Does Xaverius act rightly?

R. Negatively. This is established from the Instruction of the Holy Office, 14 Jan. 1753, given to the Bishop of Coricus, Apostolic Vicar of Eastern Tonkin, and approved and confirmed by Benedict XIV. "As regards the controversy... whether the confessor is held to admonish and teach penitents who invincibly are ignorant of the prohibition of certain superstitious rites, or of the condemnation of the Alexandrian permissions, when he foresees that the penitents, admonished and instructed, will not amend themselves, or whether he ought to leave them in good faith; the Supreme Pontiff considers that to leave such ignorant persons in their own ignorance concerning the cases of which there is question is not only the same as to close every entrance to all those Christians, lest they furnish uniform obedience to the Apostolic Constitution, the same as to elude the mind of the Holy See, which prudently commanded that the declarations narrated concerning the aforesaid rites be notified to all Christians; but also that the omissions of such instruction tend to grave scandal of the gentiles, and to public harm of the Christian name in those parts. His Holiness furthermore declares that, even if in some cases... confessors can omit the instruction of penitents... nevertheless in the present case this doctrine has no place... therefore confessors and missionaries ought to admonish and teach not only penitents, but also other Christians, who invincibly are ignorant of the prohibition of certain superstitious rites and of the condemnation of the Alexandrian permissions, even if no fruit from such admonition were hoped for; for the instruction of such ignorant persons is incumbent upon evangelical workers as the proper duty of their office enjoined on them by the aforesaid Apostolic Constitution."

37. On Scandal

1. Fulvia knows well that her husband, given to hidden thefts, feeds the family from them. Fulvia indeed shows her displeasure to her husband, but in vain. But since she does not have anything from which she and her numerous offspring may sustain themselves, she uses stolen money and other things for the necessary support of the family. But, since she is of a timorous conscience, although she sees that she cannot act otherwise, nevertheless she always fears lest she sin, either by thus inducing and confirming her husband in those thefts, or at least by cooperating. Wherefore she sets forth the whole matter to the confessor.

Q. 1. What is scandal, and what kind of sin is it? - 2. What as to the case?

R. To the first, cf. I. M. 419 seqq. To the second: Since Fulvia does not have from elsewhere the means by which she can sustain herself and her children, she seems able with a safe conscience to use those stolen things for sustaining the family. A husband owes food to wife and children, which consequently Fulvia can claim from her husband. But that he is unwilling to give anything except what was obtained by theft is *per accidens* with respect to Fulvia, who, as pressed by inevitable necessity, by accepting must be judged merely to behave permissively in order to the sins or thefts already committed by the husband. And certainly no one will say, in the circumstances of a case of this sort, that Fulvia induces the husband to commit thefts, or confirms the husband in them, or cooperates with the husband in the same. Lig. l. 4, n. 110.

"This is confirmed by parity. For according to the common opinion of the doctors, to which Diana, Sporer, and Babenstuber also subscribe, on account of a reasonable cause which service itself or subjection furnishes, cooks, male and female, licitly prepare meats for their masters who are going to

violate the fast and serve them, because this action by its nature is not ordered to sin, but only to the substance of the act of eating, to which the sin of the masters is joined *per accidens*, which the male servants and maidservants, morally speaking, cannot impede, and by this very fact are not held to impede. Therefore similarly, if the husband is unwilling to furnish food unless it has been stolen here and there, the wife, pressed by grave necessity, licitly accepts it, otherwise behaving permissively with respect to the sins of the husband, since, morally speaking, she cannot impede them." Elbel 369; D'Annib., *Summ.*, ed. 3, p. 2, n. 94.

But Fulvia, as appears from the case, having nothing else for the support of herself and of the family, is not only in grave, but in extreme or quasi-extreme necessity. For to verify this, one must not first wait until someone perishes by hunger. Hence from this head there can be no difficulty, that Fulvia, using the things of others, destroys and consumes them. Cf. I. M. 676, 1006; Lig. l. 2, n. 78; l. 3, n. 695; l. 4, n. 110; Pavone, *Spicilegium*, dissert. 2; G. 725, 726.

2. Ugolinus, on a certain day, at night, in his own house attacked by two armed robbers, and foreseeing unavoidable death, spontaneously offers to the unwelcome guests not only a numerous amount of money, but also a most abundant draught of very excellent wine, with other choice and very strong liquors. The rogues drink eagerly, and soon lie utterly drunk. Then Ugolinus, first having recovered the money and called for help, hands the robbers, bound hands and feet, over to the guards.

Q. What as to the case?

R. Ugolinus is not to be condemned of grave sin from the fact that he placed the cause of drunkenness. For he placed an indifferent cause, namely by placing wine and liquors before the robbers. Hence he certainly placed an occasion of drunkenness, but not truly a cause necessarily producing the effect, since the robbers can drink freely without becoming drunk; nor indeed does he compel them to drink, but they drink freely. And if, by placing wine and liquors before them, he thus induces them to drinking, nevertheless he by no means thus also induces them to drunkenness. Moreover, Ugolinus by no means intends the evil effect, or drunkenness, but merely permits it, intending only the good effect: to preserve his life unharmed and recover his money; and this good effect well compensates for the evil; this is, in the case, a sufficient reason for permitting the drunkenness of the robbers. G. 183.

38. On Cooperation with Respect to Faith

1. Franciscus, destitute of all work and not having from which he might live and honorably sustain his numerous family, after he had tried other means, with an ample wage offered to him, accepts the office of typographer, of compositor of type, in a Protestant workshop, in which Bibles and other books of Protestants treating of Religion are continually published, to be disseminated here in Rome among the people even gratuitously. At Easter time Franciscus approaches confession, and the confessor commands him that, notwithstanding whatever grave inconvenience, he depart from that workshop. Franciscus obeys, and since he does not find work in a Catholic workshop, he sells newspapers through the public streets, *La Tribuna*, *il Messaggero*, *L'Osservatore Romano*, *La Voce della Verità*, and others, good and bad mixed together.

Q. 1. Could Franciscus licitly remain in that workshop? - 2. Can he now licitly sell good and bad newspapers indiscriminately?

R. To the first, negatively. The reason is, 1. because his cooperation in disseminating those depraved books against the Catholic religion is proximate, and in fact a sufficient cause to excuse him is lacking. For when that workshop has been left, it is very difficult that he not find another, at least not so bad and perverse; or at least that he exercise another office from which he can live honorably and sustain his family, although perhaps not without some inconvenience to him, which is proved by daily fact here in Rome and in almost all great cities. Nevertheless, in the case of true most grave detriment, he could remain for the briefest time, until he should find another workshop, or find another office to be exercised, if scandal and contempt of religion are absent. Since to set a heretical writing in type, just as also to transcribe it, is not evil in itself from its intrinsic nature, since it can be done both for an evil end and for a good end, for example to refute that writing, and then it is evidently not prohibited. Aptly Laymann, l. 2, t. 3, c. 13, n. 5: "In a very grave necessity, however, if other scandals also and contempt of the Catholic religion are absent, such a thing could be furnished for a brief time, for example, if the son of a heretical typographer should be converted to the Catholic faith, who could not so quickly desert his father without very grave detriment to himself. Since to set in type a writing of heretics, just as also to transcribe it, is not evil *per se*, if it is not done for an evil end; nor does an ecclesiastical law prohibiting this oblige in so grave a necessity." The same is taught by Gury, *Comp.*, v. 1, n. 253, q. 5; Frassinetti, *Comp.*, 6th ed., Genoa, 1875, v. 1, tract. 4, dissert. 5, n. 21; D'Annib., ed. 3, p. 3, n. 142; and other more recent authors commonly.

The second reason is drawn from the Instruction of the Eminent Cardinal Vicar for parish priests of Rome: "they sin gravely..... and typographers, even secondary ministers, who, lest they be cast out by superiors, collect letters for printing the books of heretics; nay indeed, if there is question of books of heretics by which heresy is taught and upheld, even secondary ministers of the typographer incur the major excommunication reserved in a special way to the Pontiff." *Enchir. Moral.*, n. 367.

To the second, negatively again. The reason is that still sufficiently proximate cooperation is had in spreading among the people those depraved and prohibited newspapers. Nor in fact is there a sufficient reason to excuse Franciscus. For just as, when the Protestant printing workshop had been left, he found this new office, so assuredly there is not lacking another office which he can exercise in a Christian manner, as we have already observed; especially since he himself is endowed with so good a will that, to avoid sin, he is prepared, in place of the nobler office of typographer-compositor, to exercise even the lowest office of public crier through the streets. Besides, there is no necessity of selling good and depraved newspapers; indeed let him sell only good ones, and he will conciliate to himself the favor of the good, who without doubt will be at hand for him and his family in necessity. Nevertheless, since also in this case the cooperation is material and less proximate, especially since there are many others who do this, he will be able meanwhile to exercise that office for some very brief time, until he finds another office, to avoid most grave harm; for example, if he should be compelled to beg and scarcely have from which he himself might live and sustain his family, yet scandal and contempt of religion always being excluded. Frassinetti, l. c.

2. "... In the city M. there exists a hospital... in which nuns take care of the sick.... But since in this hospital followers of a non-Catholic religion are sometimes received, and they from time to time ask for a heretical minister, from whom they may receive the aids and consolations of

religion, it is asked whether it is licit for the aforesaid nuns to call a minister of false religion? It is asked besides whether the same solution is to be given where a heretical sick person dwells in the private home of a certain Catholic; namely, whether then the Catholic can licitly call a heretical minister?

The Fathers responded: According to the things set forth, it is not licit; and they added: Let them behave passively." Holy Office, 15 Mar. 1848. - G. 202; *Collectan. S. C. de P. F.*, n. 1845, to 7.

3. "1. Whether it is licit to minister the sacraments of the dying to the faithful who indeed do not adhere to the Masonic sect, nor are led by its principles, but, moved by other reasons, have ordered their bodies to be cremated after death, if they are unwilling to retract this command?

2. Whether it is licit for the faithful whose bodies have been cremated, not without their own fault, publicly to offer the sacrifice of the Mass or even privately to apply it, and likewise to accept foundations for this end?

3. Whether it is licit to cooperate in the cremation of corpses, either by command and counsel, or by furnished work, as for physicians, officials, and workers serving in the crematory? And whether this is licit at least if it is done in some necessity or to avoid great harm?

4. Whether it is licit to minister the sacraments to those cooperating in such a way, if they are unwilling to desist from this cooperation, or affirm that they cannot desist?

R. To the first. If, admonished, they refuse, negatively. But that admonition may be made or omitted, let the rules handed down by approved authors be observed, having regard especially to avoiding scandal.

To the second. Concerning the public application of Holy Mass, negatively; concerning private application, affirmatively.

To the third. Never is it licit to cooperate formally by command or counsel. But material cooperation can sometimes be tolerated, provided that 1. cremation is not held as a protestative sign of the Masonic sect; 2. nothing is contained in it which of itself, directly, and solely expresses the reprobation of Catholic doctrine and approbation of the sect; 3. nor is it established that Catholic officials and workers are constrained or called to the work in contempt of the Catholic religion. For the rest, although in these cases they are to be left in good faith, nevertheless they are always to be admonished not to intend to cooperate in cremation.

To the fourth. Provision was made in the preceding. And let the Decree of f. IV, 15 Dec. 1886, be given. This Decree indeed has itself thus:

Whenever there is question of those whose bodies are subjected to cremation not by their own will, but by another's will, the rites and suffrages of the Church can be applied both at home and in church, but not as far as the place of cremation, scandal having been removed. But scandal can also be removed if it becomes known that cremation was not chosen by the will of the deceased himself. But where there is question of those who chose cremation by their own will, and in this will certainly and notoriously persevered until death, attention being given to the Decree of f. IV, 19 May 1886, one must deal with them according to the norms of the Roman Ritual title, *Those to whom it is not licit to*

give ecclesiastical burial. But in particular cases in which doubt or difficulty arises, the Ordinary will have to be consulted, who, having accurately weighed all the circumstances, will decree that which he judges more expedient in the Lord." Holy Office, 27 July 1892. M. E., v. 9, p. 1, p. 31.

4. Can Catholic wives place meat before husbands asking for it on prohibited days, while they themselves do not eat?

R. Affirmatively, if the women would suffer grave harm by not complying with their husbands, and contempt of religion being excluded." S. C. de P. F., 26 June 1820, *Collectan.*, n. 2064.

"Very many of ours are held to buy or cook or set meat at the table of Protestants every day. If they are compelled to leave the office, they know no other art by which they can provide for themselves for sustaining life; they are reduced to extreme want. Can it be permitted or tolerated that they act thus, when there is so great an inconvenience, and on the part of the Protestants this is not done in contempt of the Church, about which they seem to care little, or perhaps even do not think?

R. Affirmatively, on account of the grave detriment which could arise thence for Catholics." S. C. de P. F., 26 June 1820, *Collectan.*, n. 1658.

5. "There is a Christian official whose office is to preside when goods are sold under the spear. Sometimes, however, books of heretics or others containing obscene things are found; is the aforesaid official held to investigate whether they are such books or not?

R. The official of whom there is question in the case is not held to investigate whether, among the goods which are sold under the spear, books of heretics or others containing obscene things are found. But if by chance he has recognized this, and can prevent the depraved books from coming to bidders who will abuse them, let him indeed furnish this, since each one ought to impede the sin of neighbor when he can do this conveniently, or without his own grave inconvenience." S. C. de P. F., 26 June 1820, *Collectan.*, n. 1874.

39. On Cooperation with Respect to Justice

Aurelius, a bookkeeper for a certain merchant, writes the books of merchandise and commerce, recording daily in them what is given and received, expenses made, sales, and other contracts. Hence Aurelius knows well that the merchant, who before him and before others simulates by every art that he is an altogether honest man and merchant, proceeds, on the contrary, often with bad faith and fraud, deceives buyers and defrauds partners in commerce. It is indeed difficult for Aurelius to find another merchant, or anyone else, with whom he can exercise his office. But if he himself leaves the office, very many others are already prepared to undertake it.

Q. Can Aurelius continue in such an office?

R. The transcription of what is given and expended, and also of the various contracts, indeed of itself influences nothing in the merchant's frauds. For it supposes these as already done. Wherefore no cooperation in those frauds can be had from this. Nor indeed does the merchant become bolder from this, nor is he confirmed in his frauds, since he thinks that he is held by Aurelius and others as an honest man. Nor likewise, if Aurelius leaves his office, will the aforesaid frauds therefore be impeded.

Finally, grave inconvenience is present for Aurelius if he leaves the office. Therefore Aurelius is not held to leave an office of bookkeeper of this sort.

"He does not sin," says La-Croix, l. 2, n. 268, "who assists a usurer in counting monies, in writing bare accounts, which do nothing toward demanding usuries, in carrying a pledge for the security of usury, in friendly demanding usuries, lest the other seem unfaithful. The reason is that these suppose the sin, or merely accompany it, nor is the borrower unwilling with respect to these things. Nevertheless a notary sins when writing a usurious contract, because although the usurer consents, he himself acts against his oath, by which he is held not to serve in unjust acts. And the same is true of witnesses signing such a contract." And St. Alph., l. 2, n. 78, says: "He who assists a usurer only in counting monies, writing accounts, or in carrying a pledge, can be excused from sin by the sole reason of service; but otherwise if he demands usuries, because the demand is cooperation more proximate to the sin of the usurer, even if he demands amicably. But if he were to demand by force or threats, he would not only sin, but besides would be held to restitution."

Another question could be raised in the case, namely whether Aurelius is held to warn buyers and partners of the merchant and others defrauded by him, that they may be on guard for themselves. It seems that one must respond affirmatively, if nevertheless he himself can effect this, due caution having been preserved, without grave inconvenience to himself, and without scandal being provoked from it. For then, from charity, he is held, as much as he can, to impede grave harm to neighbor.

On the First Precept of the Decalogue

40. On New Cults

1. Renatus, a parish priest, from devotion toward the Most Sacred Heart of Jesus, and to promote it more and more, often speaks to his parishioners about the Heart of Jesus doing penance for us, and counsels them this special devotion, namely toward the Penitent Heart of Jesus, and this frequent invocation: Penitent Heart of Jesus for us, have mercy on us.

2. Nicolinus, a parish priest, likewise to promote devotion to the Most Sacred Heart of Jesus, propagates among his parishioners certain new emblems of the Most Sacred Heart of Jesus in the Eucharist. For he asserts that worship toward the Most Sacred Heart of Jesus in the Eucharist is more perfect than simple worship toward the Most Sacred Heart of Jesus, since it embraces the Sacrament of the Eucharist itself, which is the Sacrament of love.

3. Nicolaus, a parish priest, propagates a special cult toward the adorable Face of the Divine Redeemer, and one diverse from that usual one, up to now attributed to the image of the Holy Face.

4. Lucianus, a parish priest, from devotion toward St. Joseph, propagates a special cult of this Saint under the title: of St. Joseph, friend of the Sacred Heart. But from devotion toward the Most Holy Virgin he preaches that she is to be worshipped under the title of Our Lady of the Sacred Heart of Jesus, and distributes among his parishioners images of that Virgin which represent her standing with hands spread out, and the child Jesus standing likewise before her knees.

5. Lucas, with every effort, from devotion and love of Our Lord Jesus Christ, propagates devotion toward the Most Holy Soul of Jesus Christ, makes an image representing it, and institutes Confraternities in its honor. He likewise propagates devotion toward the Interior of the Blessed Virgin Mary; he also makes an image, and institutes a Congregation of nuns. Finally, among the faithful he propagates a certain formula of prayer "for obtaining that all men may recognize the supreme dominion of Christ and of Mary Immaculate over all creatures."

Q. What is to be held concerning these various cults?

R. Renatus does not act rightly, nor can he persevere in that practice. For the Holy Office, 15 July 1893, prohibited and condemned the titles: Penitent Heart of Jesus, Penitent Heart of Jesus for us, Penitent Jesus, Penitent Jesus for us. M. E., v. 8, p. 1, p. 175.

Nicolinus likewise does not act rightly, nor can he persevere in his practice. For by the Holy Office, 3 June 1891, it was decided: "The new emblems of the Most Sacred Heart of Jesus in the Eucharist are not to be approved by the Apostolic See. For fostering the piety of the faithful, the images of the Most Sacred Heart of Jesus already used and approved in the Church are sufficient; because the cult toward the Most Sacred Heart of Jesus in the Eucharist is not more perfect than the cult toward the Eucharist itself, nor another from the cult toward the Most Sacred Heart of Jesus." *Monit. Eccles.*, v. 7,

p. 1, p. 101. But when doubts had been proposed: "1. Whether the images of the Sacred Heart representing the Heart alone without the rest of the body can safely be distributed? 2. Whether they are approved at Rome? 3. Whether they must be withdrawn from the houses of the faithful, where they are an object of veneration?" The Holy Office, 26 Aug. 1891, responded: "To the first, second, and third: The image of the Most Sacred Heart of Our Lord Jesus Christ, concerning which there is question, is permitted from private devotion, provided it is not exposed on altars to be worshipped with public veneration." M. E., v. 9, p. 1, p. 32.

Nicolaus likewise must abstain from the propagation of the aforesaid special cult, and one diverse from the usual one, toward the adorable Face of the Divine Redeemer. For, when the doubt had been proposed concerning approving or at least permitting a cult of this sort, the Holy Office declared: It is not expedient. Therefore Nicolaus may indeed propagate the cult toward the image of the Face of the Divine Redeemer, or copies of that image, but as it was already usual from ancient times, namely so that in the minds of the faithful, from veneration and contemplation of the aforesaid image, the memory of the sufferings of Christ may grow more day by day, and in their hearts sorrow for faults and an ardent desire of repairing the injuries inflicted on the divine Majesty may be increased. M. E., v. 7, p. 2, p. 221.

As regards Lucianus, concerning the cult of St. Joseph under the title Friend of the Sacred Heart, the Fathers of the S. I. C. "decreed, with the approval of Our Most Holy Lord Leo XIII, that there is not to be an interlocution concerning the matter proposed. Besides, they ordered that the Sacred Congregation of Rites be warned lest in the future decrees, rescripts, etc., be issued in which the new title mentioned above is approved in any way, or even in which mention simply is made of it." M. E., v. 7, p. 2, p. 220. But as regards that title and image of the Blessed Virgin Mary, the same S. I. C., 3 Apr. 1895, decreed "that the title indeed can be admitted, but the images are not approved and are to be removed from public veneration."

As regards Lucas, although that prior cult contains nothing false, nor even anything incongruous, nevertheless it is a new cult, as it is proposed, and is not to be propagated publicly without the approval of the Church. "The Most Holy One.... commanded... that the writers are to be warned who sharpen their talents over.... arguments which savor of novelty, and, under the appearance of piety, strive to promote unaccustomed titles of cult even through journals, that they desist from their plan, and weigh the danger which lies beneath of drawing the faithful into error even concerning dogmas of faith, and of giving an occasion to haters of Religion for disparaging the purity of faith, Catholic doctrine, and true piety." Holy Office, 15 July 1893, M. E., v. 8, p. 1, p. 175. And this especially, in this cult of the Soul of Christ, is to be noted: that in it the whole Humanity of Christ and Christ the Redeemer appear less clearly than in the cult of the Most Sacred Heart, the Most Precious Blood, the Five Wounds, and the other mysteries of the life and Passion of Jesus Christ; whence surely the cult seems less suitable to be spread among the people.

But concerning the other cult toward the Interior of the Blessed Virgin Mary, the following doubts were proposed: "1. Whether and how it is fitting to approve the title of the Interior of the Blessed Virgin Mary, which the new Institute of the Sisters A. of M. of the diocese of P. assumes? 2. Whether, the aforesaid title being admitted, it is fitting also to admit among the other feasts of the aforesaid Institute that of the Interior of the Blessed Virgin Mary?" The Holy Office, 13 Dec. 1893, responded: "To both, negatively." But as regards that prayer, the Holy Office, 12 June 1895, decreed: "the prayer

concerning which there is question is not to be approved, nor propagated among the faithful, nor enriched with indulgences."

41. On the Cult of Relics

Andreas, a priest, often heard speak about notable Relics; but he does not know what they are. He also heard speak about the exposition of Relics, and blessing with Relics, and also about their procession, but he does not know how all these things ought to be done. Wherefore he desires to be instructed briefly in all these things, as regards those things which more belong to practice.

R. Notable Relics are the Body, Head, Arm, Leg, or that part of the body in which a Martyr suffered, provided it is whole and not small, and legitimately approved by the Ordinaries. S. R. C., 8 April 1628, to 3, *Urbis*. Bones of the femur would not be. Nor likewise the tibia. S. R. C., 3 June 1662, *Dubium*. - Thorns from the Crown of Our Lord Jesus Christ are counted among notable Relics, and are worthy of special cult. - Notable relics are to be kept not in monasteries, but in the exterior Church of nuns.

As regards the exposition of Relics, in all Churches it is licit to expose Relics, provided they are recognized by the bishop. S. R. C., 2 Sept. 1690, *Fundana*. - The abuse is to be eliminated of placing the Relics of Saints and pious images upon the tabernacle in which the most august sacrament is reserved; nor before the little door of the tabernacle, even if it is a Relic of the Most Holy Cross. S. R. C., 31 March 1821, to 6, General Decree; 12 March 1836, to 1, *Triden.* - But a Relic of the Most Holy Cross is to be separated from the Relics of Saints. - Under the Relic of some Saint, exposed to public veneration among candlesticks, a pall ought not to be used. S. R. C., 7 Apr. 1832, to 3, *Ariminen.* - When Relics of Saints are exposed, beyond the lamp, at least two lights must continuously burn upon the altar, though not at night; otherwise they are not to be exposed. S. R. C., 22 Jan. 1701, to 9, *Congr. Mont. Coron.* - Relics of the Blessed can be exposed, as images and statues, in churches in which the office and Mass of the Blessed can be recited and respectively celebrated.

As regards blessing with Relics, a priest in a private Mass, the Mass having been finished, vested in the sacred vestments, can distribute ashes and present relics to be kissed, if there is such a custom, after Mass is completed. S. R. C., 16 March 1833, to 5, n. 2704. - Before the wood of the Holy Cross openly exposed, one must genuflect on one knee in passing. S. R. C., 23 May 1835, to 2, n. 2722. In blessing with a relic of the Most Holy Cross, it is not licit to sing: *Benedicat vos omnipotens Deus, Pater*, etc. S. R. C., 23 May 1835, to 3. - Blessing and the kiss of the Relic are to be omitted as long as the Most Holy Sacrament remains exposed. S. R. C., 17 July 1900.

As regards the procession of Relics, it is not licit, for any cause or custom whatever, to carry Relics of Saints processionally under a baldachin; nevertheless it can be tolerated and permitted that the wood of the Most Holy Cross and the other Instruments of the Lord's Passion, with attention to the peculiar veneration of these, and to the almost universal custom, be carried under a baldachin, provided it is done separately and apart from the Relics of Saints, to whom this distinctive honor is by no means fitting. S. R. C., 27 May 1826, n. 2647, General Decree. The decree seems to have to be understood of ordinary processions, which are customarily celebrated every year, but not of solemn ones for the translation of some sacred Image or Relics. - Relics of the Blessed are not to be carried about in processions. S. R. C., 27 Sept. 1659.

42. On Divination

Beatrix, a nun, had a spiritual friendship with another nun, Sanctina. When she was now near death, Beatrix asked of her that, if it pleased God, she would reveal to her the state of her soul after her death. With her hand stretched out toward the Crucifix, Sanctina nodded with her head. But, when Sanctina had piously died in the Lord, Beatrix immediately began to be disturbed by scruples; whence, approaching the confessor, she manifests the matter to him. You have acted very badly, the confessor responds; for, in these matters, the devil is accustomed to mingle himself. For it is not licit to inquire into things which God wills to be hidden, according to that saying of Eccl. 3:22, *Do not seek things higher than you*. But God wills the state of the soul after death to be hidden; which is clear from this, that when the rich man asked that Lazarus be sent to his living brothers, this was denied, as is said in Luke 16:29. Beatrix, more disturbed by this response, asks her Superior that before night she call Fr. Thomas, her extraordinary confessor; otherwise she certainly will not be able to sleep quietly and in peace.

Q. What will the extraordinary confessor be able to respond to Beatrix?

R. Fr. Thomas will be able to respond with that which St. Thomas would respond, Quodl. 3, a. 22. "I respond that it must be said that, since sin is against nature... to seek the fulfillment of a natural desire is not a sin, unless some disorder is added, as is clear in the taking of food and drink. But man naturally desires to know. Hence, if he seeks knowledge of some thing, it is not a sin, unless perhaps by accident, that is, through some disorder added; for example, if through the study and inquiry of some science someone is impeded from those things to which he is held to attend; for example, if a preacher is impeded from the office of due preaching on account of the study of geometry; or also, if someone seeks to know something, trusting proudly and presumptuously in his own ability; or if some other disorder of this sort should happen concerning this. But no disorder seems to be in this inquiry, if someone should seek from one dying to know his state after death, nevertheless submitting this to divine judgment. Hence no reason appears why this ought to be said to be a sin, unless perhaps he inquires from a doubting of faith concerning the future state, as though tempting.

But to that which is objected to the contrary, it must be said that God wills many things to be thus hidden from us, knowledge of which we cannot acquire by our own powers or merit; which nevertheless he wills to be revealed to those asking humbly and piously, according to that saying, Matt. 2:25, *You have hidden these things from the wise and prudent; and have revealed them to little ones*. Hence it is not marvelous if God was unwilling that some things be revealed to the proud brothers of the proud rich man, which nevertheless he wills to be revealed to the faithful asking piously and humbly."

"He does not sin gravely," says La-Croix, l. 3, p. 1, n. 18, "who enters into an agreement with another, that the one dying first appear to the survivor, God permitting this, being about to warn the other concerning things pertaining to salvation; for in this he intends to know nothing by the aid of the devil. Nevertheless there could be venial sin present on account of curiosity or danger of deception."

43. On Vain Observance

Gerafinia, perfectly restored to health from a grave illness of influenza, makes a vow of abstinence and fasting for her whole life, on all Sundays and the days of the Nativity and of Easter. For she has

heard that it is an efficacious and infallible remedy for preventing a relapse. And she holds this as altogether certain, since in fact she has now persevered in perfect bodily health for three years.

Q. 1. What is vain observance? - 2. Is Gerafinia guilty of superstition; and is she bound by the vow?

R. To the first, cf. I. M. 478 seqq. To the second: Gerafinia is guilty of superstition. The reason is that fasting, observed on the aforesaid days, is not of itself an infallible means for preventing a relapse into influenza. But she resolved to observe it with certain faith in the effect that would follow.

Besides, she is not bound by the vow. For the cult is superfluous, foreign to the custom of the Church, and bearing singularity before itself. Hence a vow of fasting ordinarily on Sundays and on the more solemn feasts of the Church is null, especially when the one vowing by no means observes fasting on other days. Nevertheless, superstition being excluded, of itself it would not exceed venial sin. Indeed it would not even be venial if someone fasted from mortification. But it is better to abstain from such a fast, and therefore the doctors commonly teach that a fast promised on Sunday can be fulfilled on Saturday; and, if someone has vowed to fast for a month, that he is not bound on Sunday. But if someone accustomed to fast on other days sometimes fasts, from some good end, on Sunday, he does not sin. - Reuter, p. 2, n. 427; Lig. 4; G. 258-260; I. M. 466.

44. On Magnetism and Hypnotism

Hedvigis, laboring under a grave illness, consults several physicians, but in vain. Hence she first approaches Pancratius, who prescribes to her that she wear an artfully fashioned necklace for exciting the electric, biotic fluid. When she had done this for some time and had experienced some relief, she consults Nicetas, another physician, indeed an honest man, who counsels her to be subjected to hypnotism for exciting magnetic sleep in her, in which a benign crisis of the infirmity will be had. And he asserts that he will do this with every superstition and every other illicit circumstance entirely removed. But Hedvigis, since she is a timorous woman, before she furnishes her consent, seeks the counsel of the confessor.

Q. Has Hedvigis, in the first case, sinned; and what ought the confessor to respond to her in the other?

R. Hedvigis, in the first case, sinned in no way. The reason is that in applying that remedy there was no superstition, and no other illicit circumstance. As regards superstition, there is no doubt that electric fluid exists in inanimate bodies, of altogether marvelous power and efficacy. Therefore nothing prevents that the same fluid exists in animate bodies, in plants, in animals, in man, and that in these it obtains a still special efficacy from the soul, which is the intrinsic principle of life; whence a fluid of this sort is also called biotic. And certainly, as electricity excited from without in man can be gravely harmful to man, like other elements, why also can it not, when excited in due manner, produce salutary effects, which also happens in other elements applied extrinsically to the organism? And thus in fact there are several who are well or badly disposed according to the various state of the electricity of the air. But there is nothing illicit and immoral in this, that someone should wear a necklace made from a determined metal, or from sealing wax, or from another similar material apt for exciting or extinguishing electricity.

As regards the other case, since there is question only of merely exciting sleep, which can be excited by several natural means, it does not seem that superstition must necessarily therefore be asserted. And every superstitious cause being removed, as, for example, if this were done by the mere command of the will, and likewise every immoral circumstance being removed, as, for example, if a dishonest touch were used, nothing is then had which appears illicit. Wherefore it does not seem that the confessor, in the case, can burden Hedvigis' conscience with grave sin. Indeed, the oracles themselves of the Holy See condemn not magnetism, but the abuse of magnetism. And it is well established among the doctors that those things are to be judged natural which are not established to exceed the powers of nature, whether from the effects themselves which followed, or from the causes applied, or from the manner of applying these. But, since this matter generally is not without grave danger, the confessor will indeed act prudently by exhorting Hedvigis that she apply another remedy and omit this one. D'Annib., ed. 3, p. 2, n. 53. Cf. G. 271 seqq.

It will not be beside the matter here to note that, just as in this matter of magnetism and hypnotism there are several who hold all things as natural and licit, so on the contrary there are not lacking those who hold all things as superstitious and illicit. The former and the latter err together. - Speaking of fascination, St. Thomas, 1 p., q. 117, a. 3, ad 2, says: "It must be said that from the strong imagination of the soul the spirits of the conjoined body are changed, which change of the spirits takes place especially in the eyes, to which the subtler spirits come.... Thus therefore, when some soul has been vehemently moved to malice, as happens especially in old women, her look is made poisonous and harmful according to the aforesaid mode, especially to children, who have a tender body and one easily receptive of impression. It is also possible that, by the permission of God, or even from some hidden pact, the malice of demons cooperates in this, with whom sorceress old women have some covenant."

When the aforesaid change has been produced in the body, as St. Thomas says in the same place, "the continuous air is infected up to a determined space." And this indeed is verified in contagious diseases, which are not always communicated by bodily touch, but also without touch, and therefore through infected air. And thus through this change of one's own body an exterior body can be changed. St. Thomas, ibid., ad 3. What, then, prevents some impression from being produced naturally by a look, for example, imagination also assisting? - And thus Scavini, 12th ed., Milan, 1874, l. 1, n. 247, commemorating this doctrine of St. Thomas concerning fascination, says: "One is natural, of which we have an example in magnetism, when from the fixed gaze of another someone easily receives impressions.... Another is superstitious and is called common fascination, which is believed by the common people, namely that those looking with an envious mind harm.... Here also we note that not all things which are believed to be deceits are such; for the sagacity and imagination of man can have many parts; for how very powerful it is, and of how many evils it is a cause, philosophers everywhere prove by inescapable arguments and facts." Besides, St. Thomas wisely warns, 2. 2, q. 60, a. 4: "Where manifest indications of someone's malice do not appear, we ought to hold him as good, interpreting for the better insofar as it is doubtful." - Yet it is rightly counseled then to premise a protestation of not willing the effect, if some superstition lies beneath. Cf. D'Annib., l. c.; St. Thomas, Quodl. 12, a. 13.

45. On Temptation of God

Macrina, a nun most observant of regular discipline, frequently fasts, rises at night to pray, and exercises other austerities of the body. When Petronia the superior had learned these things, she prohibits all things to Macrina. For she says that sanctity does not consist in these things; and, with attention to Macrina's physical constitution, that this is to tempt God, assuredly a grave sin. Although Macrina is not of robust health, nevertheless she is altogether well. But preferring obedience to her superior, she submits herself altogether to her.

Q. 1. What is temptation of God, and what kind of sin? - 2. What is to be thought concerning Macrina? - 3. What is to be thought concerning Petronia?

R. To the first, cf. I. M. 487 seqq. To the second: Macrina indeed is to be praised on account of her virtue of penitence and obedience. That Macrina was led by the good spirit of God in the exercise of that exterior penitence is clear from this, that although she was not of very strong health, nevertheless she was well; whence it can also be gathered that in fact she had not been indiscreet by exercising penances beyond her strength. It is especially clear from the promptitude of her obedience; whence it is also gathered that she was moved not by a certain pursuit of singularity, but by a true desire of virtue.

To the third. Petronia indeed errs when she says that sanctity does not consist in exterior penitence, in order to contemn it. For although sanctity essentially and formally is not in this exterior penitence and mortification, nevertheless it consists in it instrumentally; since several other virtues themselves also do not essentially constitute sanctity; nevertheless they are most valid means and instruments for acquiring sanctity. St. Thomas, Quodl. 4, a. 24. She likewise errs when she affirms that Macrina tempts God. For then Macrina would have tempted God, when Macrina, seeing, for example, that she was being weakened in her powers by those exterior austerities, had still persevered in that manner of acting, for the sake of making trial of the goodness and power of God, expecting from him that she be preserved unharmed. And in such a case she would have sinned not only against the first precept of the Decalogue, but also against the fifth precept, if by acting thus she had exposed herself to grave danger of life, without any necessity or proportionate utility, but only from the rash inclination of her own will. Wherefore Petronia gravely errs when she affirms a grave sin.

Besides, Petronia, in this matter, interferes with the office proper to the confessor, contrary to the Decree of the S. C. EE. and RR., 17 Dec. 1890. For spiritual direction properly pertains to the confessor, which by its nature also embraces the exercise of these penances. Hence, according to the present practice of the Sacred Congregation, for private penances of this sort, which are in no way public, nothing is required except the approval and permission of the confessor; but for those which would in some way be public, the approval also of the superior is required, for preserving the right order of the whole Community.

But in granting or denying exterior penances of this sort, due discretion and prudence must be preserved. "For there are some directors so imprudent that they seem to place every progress of the soul in burdening it with fasts, hairshirts, bloody disciplines, burnings, and similar things. But others seem altogether to reprove external mortifications, as useless for spiritual progress, placing all perfection in interior mortification. But these also err, as the first do, because bodily mortifications aid internal ones, and are in some way necessary, when they can be exercised, for restraining the

senses; and therefore we read that they were practiced more or less by all the Saints.... To assert absolutely: External mortifications profit nothing, or little, is the greatest error." St. Alph., H. A., last treatise, App. 1, n. 23. Cf. this whole number and the following ones.

46. On Sacrilege

1. Theofridus, on feast days, is accustomed to go to Church, yet not with the mind of honoring God, but of seeing his betrothed, and inviting her to come together into another place. Hence during the whole time of the sacred functions he morosely feeds his eyes by looking at his betrothed, and in her, in his own mind, he takes complacence to himself, and with shameful touches upon himself he is venereally delighted.

2. Livonia and Vibiana stubbornly contend and quarrel with each other over the ownership of a certain prayer book, in church. Hearing the shouts, Andronicus, the church custodian, immediately runs up, who at once, with his staff, beats the women and casts them out of the church. But behold, while Livonia hastens to go out, she is driven against the door of the church and pours forth blood from her nostrils.

Q. 1. What is sacrilege, and what kind of sin? - 2. Is Theofridus guilty of sacrilege? - 3. What concerning Livonia, Vibiana, and Andronicus?

R. To the first, cf. I. M. 94, 493 seqq., 800 seqq. - To the second: Theofridus did not commit grave sacrilege from this, that on feast days he frequents the church with the mind of feeding his eyes and inviting his betrothed there. The reason is that sacred time does not come among the things to be numbered as sacred things; for, granted that sacred things are done in it, nevertheless time itself is not consecrated. Likewise, he did not commit grave sacrilege by morosely looking at his betrothed in a sacred place, nor probably even by inviting her to copula to be had in another place, contempt and the will of dishonoring the sacred place nevertheless being excluded. The reason is that, as an external act, that look does not seem gravely to detract from the honor of the sacred thing, although by that look he sins gravely in his own mind. And the same seems to have to be said about that invitation, which, although in itself it is a grave sin, does not bring some special filthiness upon the sacred place. For look and speech do not seem so to affect the place that therefore it be held gravely befouled and profaned. Hence, all the more, the grave guilt of sacrilege is not had by interior complacence alone. But, by exercising gravely immodest touches upon his own body, at least more probably, he sinned gravely and sacrilegiously. The reason is that since acts of this sort, more material, contain grave turpitude, they are judged gravely to befoul and profane the Church. At least more probably; for the matter is not altogether certain. Whence Fr. Gury, in *Cases of Conscience*, in one place probably denies grave sin, but in another more probably affirms it. - Elbel 575, 576; G. 146, 281.

But what if Theofridus had also committed pollution in the Church? He indeed would have committed local sacrilege, and as many times as he repeated it, however secretly. The reason is that by this most shameful exterior sin the sacred place is affected with grave irreverence and filthiness. Yet the Church would not have been polluted, nor would there have been need of reconciliation, since it had not been public. I. M. V. 2, n. 641; Elbel 576, 282.

Likewise, "what is to be held concerning those who accuse themselves that in Church, during divine services, they have emitted flatus? R. This scruple is to be removed from them, lest thereafter perhaps they sin from an erroneous conscience, and it must be said that an emission of this sort, unless perhaps it were done from contempt or with scandal of hearers, is free from every fault." Elbel 577. The reason is that it is a certain natural necessity, and, according to the prudent estimation of men, no filthiness or turpitude is judged thence to be in the sacred place. But otherwise it would have to be said if, no natural necessity compelling, someone were to discharge his bowels in church, urinate, or vomit, or stable horses in it; since actions of this sort befoul the sacred place.

To the third. If the contention and quarrel of Livonia and Vibiana was grave, they committed grave sacrilege. From the case, a great tumult seems truly to have been present in the church; whence without doubt grave and sacrilegious irreverence was inflicted upon the church. But if the contention and quarrel had been only slight, only slight irreverence and malice of sacrilege is judged. But Andronicus, immediately running up and at once beating, is to be excused from every sacrilege and sin; because he surely did this impelled by zeal for divine honor and for his office; and therefore he did not act injuriously against the church. Therefore the Church was not polluted by that effusion of blood; for it was altogether accidental and beyond intention. Besides, the nostrils are too prompt an organ for pouring forth blood, so that it could properly be called an effusion of blood. - Elbel 578, 579; G. 283, 284; I. M. V. 2, n. 641.

47. On Simony

1. Ascanius fictitiously promised that he would give a gem of great value to Anselm, if he should withdraw from contention for the parish, certainly hoping that, with him withdrawing, the parish would fall to himself, otherwise not unworthy. The matter fell out according to his opinion; but, having become master of his wish, he denies that he wishes to give the gem, nor does he give it except terrified by Anselm's long-lasting threats.

Q. What as to the case?

R. "It is most certainly certain that that guilty man (Ascanius) is guilty of the sin of unjust deception and of cooperation in the mental simony of Anselm, yes even of presumed simony, so that therefore in the forum of the court he can be punished by the Judge.... For the rest, I altogether deny, against several, with far more doctors of the first rank, among whom is the distinguished Doctor, that the agreement, as in the case, was simoniacal; although he professes that Navarrus' affirmative opinion does not lack every appearance of probability, nevertheless he pronounces without hesitation that the negative opinion, which we embrace with him, is true. - And indeed, since a fictitious promise is posited, the intention of paying the price is lacking; therefore also, and necessarily, the will of buying the benefice is lacking, so that no place remains for mental simony; but, mental simony having been removed, conventional simony, which is founded on mental simony, falls; and, conventional simony having been removed, real simony is simply taken away, which cannot consist without it. Therefore, since the promise of the gem is posited as fictitious, the agreement of Ascanius is stained with no stain of true simony. Indeed there is fictitious simony in the contract; but if it is fictitious, then it is not simony just as fictitious gold is not gold....

Anselm, withdrawing from contention for the parish with the empty hope of the gem, himself committed simony as to affection, or mental simony, through the depravity of his internal mind; yet as to effect, none except fictitious and altogether merely apparent. For just as the will of each spouse is required for true marriage, so the will of the buyer, as equally of the seller, is required for true purchase and sale. If either spouse is unwilling to marry, the marriage is simply null; therefore, whether the seller is unwilling to sell, or the buyer unwilling to buy, there is no purchase, sale, and consequently in the case there is no simony, which consists in the studious will of buying or selling....

But what after the gem has been handed over?... I consider this one thing in the present matter: that Ascanius paid the fictitiously promised gem only late and terrified by the long-lasting threats of Anselm, so that consequently he seems to have paid it not as the price of the parish, but to redeem himself from unjust vexation. For this is called unjust vexation, by which someone intends to deprive another of a right already absolutely acquired and certain, and indeed by unjust means, such as threats of revealing, for example, an offense; which we suppose to be hidden, not without great dishonor of the delinquent joined with immense harm to him. This Anselm intends; therefore he was inflicting unjust vexation by threats upon Ascanius, possessing the parish by acquired right, as regards value, in order to deprive him of the right of the parish. But the common opinion with the Angelic Doctor, 2. 2, q. 100, a. 2, ad 5, teaches that it is not simoniacal if someone by money redeems vexation unjustly done to him in a right already acquired, with an express text in chap. *Dilectus* 1, *de Simonia*; therefore, even after the gem has been handed over, Ascanius can retain the parish in the forum of the Pole." Ithur., Case 36.

2. Hieronymus obtained a canonry from the bishop, by a spontaneous commendation made by his vicar general. When Hieronymus learned this, he approached the aforesaid vicar and, giving thanks to him for his efficacious and spontaneous favor, spontaneously promised him that he would leave to him the fruits of the first semester, as a sign of a grateful mind.

Q. What as to the case?

R. Assuredly no stain of simony is had in the commendation made to the bishop by the vicar general, since it was wholly spontaneous, imposed no obligation on the bishop, nor was there any intention of it, since nothing of this sort is said in the case. Nor indeed is there a stain of simony in that promise of Hieronymus. For simony indeed would be had if, before the office of commendation had been furnished and before the conferral of the canonry, the vicar general had stipulated those fruits of the first semester, or Hieronymus had promised them, although for the sake of a grateful mind alone, because from the stipulation and promise a new obligation, at least of fidelity, would have arisen. But in the case that promise was made after the office of commendation had already been furnished and after the canonry had already been obtained. Therefore it was made altogether spontaneously and liberally, from a grateful mind. And indeed, if someone, with no benefit accepted from another, can liberally promise and give to him, why could he not do the same after receiving a benefit, from a grateful mind? And if, for services furnished, it is licit to confer a benefice on another on account of gratitude, it will assuredly be licit also to give him only the smallest part of the fruits. In order that simony be had, it would be necessary in the case that that which is given, although it is given spontaneously, nevertheless be given not principally, and much less solely, on account of gratitude, as

in the case; but that it be given by the title of compensation or gratuitous repayment, and as owed under this name. I. M. 508.

3. Alphonsus makes an agreement with Augustinus, that he not compete with him in the present concursus for the parish, promising back to him that he himself, in the next concursus for a canonry, will by no means give his name.

Q. What as to the case?

R. Alphonsus would indeed commit simony by agreeing with Augustinus that he abstain from the concursus, if he offered him money or another temporal thing. For then, evidently, by money or a temporal thing he would directly and proximately prepare for himself the way to obtaining spiritual things; the temporal thing would evidently be given principally, indeed solely, on account of the spiritual; and therefore in fact, by the moral estimation of human actions, the temporal would be given for the spiritual, which is simoniacal. But in the case simony, at least certainly, does not appear. The reason is that in the case it is not verified that a spiritual thing is given or promised on both sides for a temporal thing; but altogether the same right, quasi-spiritual, is renounced, and on account of a spiritual thing. Certainly simony of divine law is not had when either spiritual things alone or temporal things alone are given on both sides, as if two should exchange between themselves either offices alone or revenues alone. Simony, if there be any, can be had only from positive law, as if someone should exchange a benefice with the benefice of another, without the legitimate faculty of an approving superior. Yet this is not verified in the case; for no prohibition is had by positive law. La-Croix, l. 3, n. 142, affirms that simony is had in the aforesaid case; but he assigns no special reason.

4. Cleonicus, a priest, furnished services for many years to a certain Count enjoying the right of patronage over a benefice, having in his heart this hope, that at some time he would be presented by the Count for obtaining the benefice. Hence, when the benefice is vacant, he himself sets forth his merits to the Count, to whom he promises a grateful mind; and he asks a friend that he set these forth to the Ordinary. But to the Countess, whom he knew well to be very greedy for gold, he gives six hundred lire, so that she may intercede for him with the Count. The Countess in fact furnishes this, and Cleonicus obtains the benefice.

Q. What as to the case?

R. 1. Cleonicus committed no simony from this precisely, that he served the Count under the hope of obtaining the benefice. The reason is that in this hope no pact is had of giving a temporal thing for a spiritual thing, and of obtaining a spiritual thing for a temporal thing. This hope likewise gives Cleonicus no right, imposes no obligation on the Count. Nor indeed is he to be accused of simony because he himself alleged his merits and asked a friend that he report them to the bishop. For the worthy are to be promoted to benefices, and therefore it is altogether necessary that the various gifts and merits of candidates be known. And thus, as common and received practice has it, especially in concursus, the candidates themselves are accustomed to set forth the various offices which they have held, studies formerly made, academic degrees which they have obtained, and other things of this sort. Nay indeed, it is not simony, although it is dangerous, "if you give someone money so that he simply propose your merits to the bishop, because for simony it is required that the obtaining of the

spiritual thing be the immediate end of the furnishing of the money, but it is not sufficient that it be something consequent from another immediate end having no connection with it." Lig. l. 3, n. 64. Likewise, Cleonicus, in itself, is not to be charged with simony from the fact that he promised that he would be grateful. Because this promise of a grateful mind, speaking in itself, also contains no pact, nor does it contain any intention of giving a temporal thing for a spiritual thing; but only of having gratitude, which by the law of nature is owed to any benefactor. I. M. 515.

Cleonicus is guilty of simony by giving money to the Countess for intercession; the Countess is guilty of the same crime by accepting the money. For that money is not given merely for favor and intercession, which in itself is something temporal, without the benefice being intended by the same offering of money; but it is indeed given for favor and intercession, intending at the same time and principally by that offering of money to obtain the benefice. This is not obscurely allowed to be gathered even from this, that for favor alone or for intercession alone he would never in any way give so great a sum. And certainly, if Cleonicus had offered the Count six hundred lire, and by asking at the same time had requested that that benefice be conferred upon him, he would have incurred simony, cc. 18, 34, *de Simonia*; and this for this reason, because it would prudently be presumed that by this offering, as a certain motive, he principally intended the benefice. Therefore the very same thing seems to have to be said if, with the weight of gold offered, he petitioned for himself through the Countess. Nor is it to be doubted that the Countess herself also, as greedy for gold, intended this sum more in view of the benefice than of her intercession. Besides, although such mediation formally is something temporal and extrinsic to the spiritual thing, nevertheless in itself and proximately it "prepares the way for obtaining a spiritual thing," St. Thomas, 2. 2, q. 100, a. 2, ad 5; and therefore on account of this connection and order which it has toward the conferral of the benefice, it is a certain virtual conferral of the benefice; whence a true comparison of the temporal and the spiritual is had. Lig. l. 3, n. 64. - Elbel 603-608; G. 285-287; D'Annib., p. 3, ed. 3, n. 38; I. M. 508, 511.

5. "A certain ecclesiastic, suitable for obtaining benefices, desires to institute a new benefice from his own goods, with this condition nevertheless interposed: that to himself first, and then after his death to certain blood-relatives, the right of nominating be attributed. He likewise adds that he wishes to enjoy this benefice first, and for that reason to present himself to the bishop, by whom he ought altogether to be admitted to the benefice."

Q. Is this licitly?

R. This can seem simoniacal for the following reasons: 1. "From chap. *Tua nos de Simonia* this is inquired: If someone should offer certain things from his own goods to some church, asking that in his life it may be licit for him to hold the same goods in that church as a prebend, whether goods offered thus ought to be received; and whether the same cleric can be assumed as a canon of the same church without the vice of simony. But the Supreme Pontiff makes response in these words: We therefore respond thus to your devotion: that if some cleric with condition or pact gives or offers his goods, so that afterward he may retain them as a prebend, and that he be admitted as a canon, an offering or reception of this sort cannot be made without the vice of simony, since in such matters every pact or agreement ought to cease according to the canonical sanctions; but if purely and without any pact and condition he offers his goods, humbly asking that he be admitted as a canon, and that it be licit for him to retain the goods themselves as a prebend, and the clerics of the same

church consent purely, a reception of this sort undoubtedly can be made without scruple of simoniacal depravity.

2. The distinguished man Fagnanus, in the same chapter *Tua nos*, n. 4, *de Simonia*, likewise commemorates that this happened to him: Since a certain cleric not so long ago had conferred his patrimonial goods for the erection of an archpresbyterate in a cathedral church, with reservation of the right of patronage, this pact having been added, that he could present himself and not others; when consulted by the same cleric, I responded that the erection and institution thence following had been simoniacal and null by this decretal, and that there was need of a new erection and provision of the Apostolic See, which the same cleric afterward obtained from Our Most Holy Lord Urban VIII; for from presentation there is acquired a spiritual right to obtaining the benefice, and the bishop can be compelled to institute.

3. But the recent Nicolius hands down a sentence promulgated by the S. C. C. in the year 1686, by which an agreement proposed by a certain man is rejected and disapproved as simoniacal: he promised an augmentation of the endowment of a canonry of lay right of patronage, with this law added, that afterward he be nominated by the patrons to the same canonry. When the canonry in the collegiate church of St. Mary of the Snow, of the right of patronage of the brothers de Mantellis, had been vacant for several months, the priest Thomas Maria Verrus proposed to the said patrons that he would increase the endowment of the said canonry by assigning a certain vineyard, with this express law nevertheless added, that he ought to be presented by them to the same canonry." Is the said agreement simoniacal? The S. C. C. responded affirmatively.

4. It cannot so easily be understood by what reason the patron of a benefice can present himself, since this is forbidden in chap. *Per vestras de Iurepatronatus*. For ought there not to be a distinction between the presenter and the presented?"

But these things in no way agree with the proposed case. "For the cleric asks to erect a new benefice from his own goods; he adds this law nevertheless, that he himself and then his blood-relatives obtain the right of nominating; he likewise adds the condition that it be licit for him to present himself.

Surely, if the institution is legitimate and altogether consonant with law, whereby the founder of a benefice desires to present his son, friend, or blood-relative, how can it happen that no stain of simony is recognized in this, and nevertheless the patron who wishes to present himself is accused of the same mark? Indeed, the agreement from which alone simony flows is proposed on both sides, and that also most aptly agrees which Fagnanus hands down: from presentation there is acquired for the one presented a spiritual right to obtaining the benefice, and the bishop can be compelled to institute.

Chap. *Tua nos de Simonia* by no means seems contrary. For he who then had offered goods, asking that it be licit for him to hold them as a prebend, and that he also be enrolled among the canons, was not instituting a canonry, but only desired to be assumed, and with a change of name to retain his patrimonial goods as a prebend, lest perhaps the canons refuse to enroll him in their body because he lacked a prebend. Besides, since in the same place there is no mention whether the same prebend

ought to remain for posterity, it is most plainly established that simony was then implicit. Nevertheless the Pontiff testifies that the contrary would be the case if, without any agreement, he had offered his goods to the church, declaring that he wished to enjoy them as a prebend, and the canons, no consideration of the offered gift being had, had received him into their body.

What Fagnanus asserts cannot be approved by all, on account of those causes which we have lately explained. But that which was then carried out ought in no way to be adverse to those who defend the contrary opinion. Since no one is ignorant that even in causes which contain no impediment of law, if someone nevertheless anxious and solicitous flees to the Pontiff for obtaining absolution, it is very easily granted, so that an entrance may be closed to scruples, and the faithful may be rescued from all solicitude.

But those who run through the sentence of the S. C. C. brought forward above will recognize a manifest distinction between this question of ours and that which was then proposed. For we are treating of the institution of a benefice, which is perfected with the bishop knowing and approving; we are treating of retaining the right of patronage, which sane condition is permitted by the sacred sanctions, so that the faithful may be stirred up to establish new benefices. Finally, we are treating of the condition of presenting oneself, which is joined together with the institution of the benefice, which indeed bears before itself nothing alien from equity. But in that cause the canonry had already been instituted: he who superadded a vineyard for the augmentation of the endowment was not acquiring for himself any right of patronage over the same canonry, which remained with the former owner. The augmentation of the vineyard was decreed without the authority of the bishop; and although he himself had known and approved the matter beforehand, this nevertheless was not sufficient that the most manifest stain of simony be avoided. Since Thomas Maria Verrus, without the institution of a benefice, and with no right of patronage obtained, was augmenting the endowment of the canonry, and by agreement was treating with the patrons of the benefice, that they nominate him to it.

Finally, what was set forth concerning the distinction between the presenter and the presented is very strong when the benefice has already been instituted, of which, if a vacancy should occur, the patron asks the benefice for himself. Then also that distinction has force when, in instituting the benefice, the condition was not added that it be licit for the patron to nominate himself. For it is most certain that conditions can be decreed by the founder of a benefice which even are repugnant to Pontifical law, which nevertheless the bishop ought to admit. But if he himself refuses to assent, it is certain that his dissent is to be supplied by the higher Power." Benedict XIV, Institution 95.

To all these things this also is added, which the same Benedict XIV notes, l. c., namely that several institutions occur approved by bishops without any hesitation, "an agreement having been interposed, by which it is conceded to the founder of the benefice to present himself." - M. E., v. 9, p. 1, p. 173.

6. Anselmus, a beneficiary, on a certain day resolved not to go to choir partly on account of laziness, partly on account of very rainy weather. But when he recalled that on that day extraordinary and rich distributions were to be made among those present, on the occasion of some funeral, altogether energetically he immediately flies to the church. Then, reconsidering the matter in his mind, he fears lest he has become guilty of simony.

Q. Whether he who goes to church on account of distributions, otherwise not going to go, sins by reason of simony?

R. Simony is had if a spiritual thing is sold for a temporal price. To celebrate the divine office in church is indeed a spiritual act, belonging to a cleric from this very fact that he is a cleric. And therefore he commits simony who intends to sell this act. But in any sale the price itself is the end. "And therefore in the aforesaid case a distinction must be made. For if he receives distributions of this sort as the end of his work, principally intended, he commits simony, and thus sins mortally. But if he has for his principal end God in such an act, and looks to distributions of this sort secondarily, not as to an end, but as to that which is necessary for his sustenance, it is established that he does not sell the spiritual act, and thus does not commit simony, nor sin. For thus the accepting of the distributions will not be the cause why he goes to church, but properly the determination of this sort why he goes now, and not at another time." St. Thomas, Quodl. 8, a. 11; I. M. 512.

7. Gerontius, a parish priest, already advanced in age, resolved to resign his benefice to his nephew Quirinus; but with the burden that Quirinus annually pay, from the fruits of the benefice, a certain pension to his poor niece Sophia, during her life. Quirinus accepts the burden; and Gerontius seeks and obtains the assent of the bishop, that he himself may resign the benefice, at the same time most humbly supplicating him that he be willing to confer the parish on Quirinus; which the bishop furnishes, ignorant of the pact between Gerontius and Quirinus.

Q. 1. What is confidential simony? - 2. Have Gerontius and Quirinus committed confidential simony? - 3. Was the bishop also guilty of simony?

R. To the first, cf. I. M. 509. To the second, affirmatively. For this is established from the very definition of confidential simony, "which is committed concerning ecclesiastical benefices, namely when one procures an ecclesiastical benefice for another, whether by electing, or by presenting, etc., or by resigning, but from confidence, that is, from a pact either expressed or at least tacit, that the other in turn resign that benefice to the procurer or to some third person, or resign a certain pension from the same benefice." Elbel 592. Hence the aforesaid resignation, as simoniacal, was altogether null and invalid, and consequently null was the conferral made by the bishop. Besides, there is inability for the same benefice, and excommunication simply reserved to the Supreme Pontiff. - I. M. 521; Elbel 647-649; G. 291, 292.

To the third. The bishop could be guilty of simony insofar as he conferred the benefice on Quirinus at the prayers of Gerontius. For "a gift from the tongue is called either praise itself, pertaining to human favor, which falls under price; or also prayers, from which human favor is acquired or the contrary avoided; and therefore, if someone principally intends this, he commits simony." St. Thomas, 2. 2, q. 100, a. 5, ad 3. If therefore the bishop had given the benefice for prayers, service, flattery, or favor to be procured for himself, he would indeed have committed simony; for he would have equated a spiritual thing with a temporal thing. But this simoniacal intention does not appear from the case. But if he gave the benefice, as it is commonly given by all who are timorous, indeed in view of an intercession of this sort, that is, only impelled by those prayers, and therefore without a pact, without a burden, without the mind of comparing thing with thing and of repaying thing for thing, then there was no simony. For for simony it is not sufficient to give a spiritual thing on account of, or because

of, a temporal thing, consanguinity, friendship, prayers, services; but it is necessary that it be given for a temporal thing, as for a price, that is, in compensation for it, as from an obligation of justice. I. M. 512; Elbel 612; Laymann, l. 4, tr. 10, c. 8, § 3, n. 26; Scav., 12th ed., Milan, 1874, l. 2, n. 274, 276.

8. Celinus, money having secretly been given, procured a rich benefice for his son. Several years having passed, struck by remorse of conscience, he opens the matter to the confessor, who orders Celinus to reveal the matter to his son and persuade him to renounce the benefice and restore the fruits received, since there had been no conferral.

Q. When simony intervenes inculpably in a benefice matter, is the conferral of the benefice null?

R. 1. If all are immune from fault, namely both those giving and promising, and those receiving and accepting, and all others who cooperate in that conferral of the benefice, the conferral of the benefice is valid. The reason is that, just as excommunication and other penalties, so also the nullity of a simoniacal conferral seems to be a penalty, not from defect of solemnity or of required form, but in hatred of the offense, as is established from the Extravagant *Cum detestabile de Simonia*. But when the cause ceases, the effect ceases; and consequently, when fault ceases, which is the cause of that invalidation, the invalidation itself ceases. Therefore. Thus Lugo, *Resp. Mor.*, l. 6, d. 4, n. 8-10.

2. When the one receiving the benefice is excused from fault and the sin of simony on account of ignorance, but the collator or another third person, noticing the matter well, commits the sin of simony, the conferral of the benefice is null. The reason is that the Church pursues the crime of simony with so great a hatred that, by whomever it may have been committed, she does not leave it unpunished; although, for the punishment of another, the innocent receiver himself suffers *per accidens*. Thus Lugo, l. c., n. 11-13; Suarez in the same Lugo; and other doctors commonly.

Yet the first case is excepted, if another acted in fraud in this matter, namely in order to render the elected or presented man incapable of the benefice. Schmalzgr., l. 5, t. 3, n. 266. Second, if the one receiving the benefice has persevered for three years with the same good faith in peaceful possession of the benefice; for the 36th Rule of the Chancery concerning triennial possession is defended, and therefore, when that three-year period has elapsed, he is held to restore neither the fruits nor the benefice itself. Schmalz., ibid., n. 267; Castropal. in Lugo, l. c., n. 8; and others; Lig. l. 3, n. 507.

3. If the son of Celinus does not possess the benefice for three years, consequently he must leave it. He must indeed restore the extant fruits; but by no means the others, which, during good faith, he consumed or received as the stipend of labor. But if he possesses it for three years, he can retain that benefice. Elbel 640-642; G. 238-290; I. M. 521 seqq.

On the Second Precept of the Decalogue

48. On Blasphemy

1. Caprasius, a shepherd, often signifies his anger against the goats fleeing to the mountain by exclaiming: Name, Great Name, A Thousand Names, Names of Names. Sometimes, however, also by exclaiming, he says angrily: Blessed Name, Sacred Name. And likewise sometimes he exclaims: Name of God, Name of Jesus, Name of Mary, Name of all the Saints.

Q. 1. What is the vain usurpation of the Name of God, and what kind of sin? - 2. What as to the case?

R. To the first, cf. I. M. 527 seqq. To the second: Caprasius, by exclaiming, Name, Great Name, etc., is free from the sin of blasphemy. For these locutions are not locutions of malediction against God, neither of themselves nor from the circumstances of the case. Not of themselves, because in some the name of God does not intervene; but in others, in which it does intervene, no injurious word is had. Not from the circumstances, because Caprasius is angry neither against God nor against the Saints, but only against the fleeing goats. G. 293; I. M. 533.

2. Hypparchus accuses himself in sacramental confession that he is often accustomed to blaspheme, uttering true blasphemies. But to excuse himself he adds that he does this by no means from the intention of reproaching God, but only of spurring horses, or sometimes of scolding his wife or children.

Q. 1. What is blasphemy? - 2. What as to the case?

To the first, cf. I. M. 531 seqq. - To the second: Hypparchus is guilty of blasphemy. Nor indeed is he excused from the fact that he did not intend to reproach God. For from this very fact that someone knowingly pronounces blasphemous words, if not directly and explicitly, at least indirectly and implicitly he wills to reproach God. "Nevertheless it must be confessed that in practice those who use blasphemous words are often excused from mortal sin, whether on account of inadvertence, or on account of good faith, etc." G. 295; I. M. 535, 536, 538.

3. Aman, a debtor, after many and useless promises already made beforehand, that he would pay the money owed as soon as possible, was again promising his creditor John, and was invoking his own faith as an honest and noble man. John, moved by anger because of the debt often promised to be paid and never paid up to now, began to curse the faith of Aman, saying: cursed be your faith, which is always deceived and deceives; may accident seize you and your faith; may the devil himself seize you with your faith. But a little afterward John, thinking about what he had said, immediately approaches the confessor, accusing his sin. But after hearing the confession the confessor says to John: I cannot, my son, absolve you, or at least I cannot absolve you immediately; for the Angelic Doctor, 2. 2, q. 13, a. 3, says: "blasphemy is the greatest sin." Go therefore in peace, and return after a month.

Q. 1. What is practically to be held concerning blasphemy from anger? - 2. What as to the case?

R. To the first: "Here it must be noted that some blasphemers of this sort say that they did not advert to the malice of blasphemy. And some doctors say that these, sometimes, on account of the impulse of anger or contracted habit, can blaspheme without advertence. But I think... that there is always present in blaspheming some advertence, at least confused, concerning the malice of that utterance; for anger, or habit, ordinarily does not so darken the intellect that it is utterly not adverted to the malice of blasphemy, although this itself is not known reflexively." Lig. l. 3, n. 127; I. M. 53, 57. Cf. I. M. 533, 536.

To the second. The confessor indeed erred first by judging that the aforesaid locutions contained blasphemies. For, as is evident, no word injurious to God is contained in them. The aforesaid locutions contain only malediction and contumely or reproach, and imprecation. But since John was moved by anger and, immediately thinking about what he had said, approached the confessor; and Aman had often broken faith; neither does that malediction of deceitful faith contain grave guilt, nor does that contumely or reproach contain a grave wounding of honor, nor was that imprecation uttered with a serious and malevolent mind. Wherefore John seems to be excused not only from the guilt of blasphemy, but also from the guilt of grave sin. And, since John otherwise does not lack due dispositions, since, fearing the sin committed, he immediately runs to expiate it in the sacrament of penance, the confessor indeed acts badly by denying or deferring absolution to him. And although Aman had been guilty of blasphemy, and blasphemy is the greatest sin according to its genus, it does not therefore follow that absolution is to be denied or deferred. - I. M. 342, 541, 542, 1514-1516.

49. On an Oath

1. Rusticus, a rude man, often swears from anger, saying: By my soul; may God punish me. At Easter time he confesses, and the confessor vehemently reproves him, saying: Do you not know that this is grave perjury and grave sin? Rusticus, terrified, on that day of confession indeed abstains from that perjury, but afterward goes on swearing as he did before.

Q. 1. What concerning the custom of swearing? - 2. What concerning an oath uttered in anger? - 3. What as to the case?

R. To the first: the custom of swearing in itself seems to wound only the judgment required in an oath, and therefore regularly and in itself must be called a light sin, insofar as it is voluntary. But by reason of the danger which it contains of perjuring, it is not without grave sin. Perrone § 253. Hence in Ecclus. 23:9 it is said: *Let not your mouth become accustomed to swearing; for there are many falls in it*.

To the second. An oath uttered in anger is often free from grave fault. Thus Busemb. and St. Alph., l. 3, n. 146: "Those uttering words from anger, namely, by God, by Christ, I will kill you, commonly do not sin gravely, because for the most part they are excused by ignorance or indeliberation."

To the third. The proposed case can easily be resolved by the very words of St. Alph., l. 3, n. 150: "Some simple persons seem sometimes able to be excused from mortal perjury by reason of inconsideration, when they use certain sworn formulas, such as by my soul; may God punish me. For although they know that this is called an oath, nevertheless they do not apprehend that to swear and to invoke God as witness is something grave; but only apprehend some confused notion of an evil not of so great moment. Indeed it must be noted that commonly rustics do not apprehend the gravity of

perjury; while, confessing themselves about oaths, they little or not at all distinguish true oaths from false; and this I have long since understood from practice in Missions. Wherefore for those who have the custom thus of perjuring, I judge that confessors rather ought to abstain from instructing such persons about the grave sin which in fact is in perjury, lest material sins in them, on account of the bad habit which they have, become formal; from the general rule.... Nevertheless such habitual persons are to be strongly warned that thereafter they cease swearing falsely. For the rest, it is not always expedient to warn a rude penitent of this sort concerning the gravity of perjury, if the admonition is foreseen not easily to be profitable." G. 296; I. M. 549, 551.

2. Candidus, a priest, since, by applying himself to a game of cards, on a certain day he had inadvertently prolonged it beyond midnight, and consequently had omitted on that day to recite vespers and compline, noticing this on the following day, emitted an oath of no longer playing, lest he again be exposed to a similar danger. But it is very difficult for Candidus to keep his oath; since his two brothers and two other priest friends, who come together toward nightfall, are accustomed to play cards together for the sake of recreation, a moderate quantity of money having been exposed. And since Candidus no longer appears and remains alone in his own separate room, pretending that he must prepare Lenten sermons, both his brothers and the priest friends strongly urge him that at least sometimes, or for a shorter time, by his presence he be willing to make the conversation of brothers and friends more cheerful, and to be present at the game as before. So that he may do this more willingly, his brothers propose to him that they themselves will pay for him that moderate quantity of money, if he himself is defeated in the game, and that they themselves will give him all the money which as victors in the game they obtain.

Q. 1. What concerning an oath of not playing? - 2. What concerning the oath of Candidus?

R. To the first: "If an oath has been made of not playing in general, all agree that it does not oblige one to abstain from an honest and moderate game." For an oath of this sort is understood to have been made lest someone spend notable time, expose a grave sum of money in a game, squander goods, etc.; unless something else must be judged from particular circumstances, for example, "if the one swearing expressly intended a greater good in abstaining from play, as that he might be free for God, mortify himself, etc." For then he is held to abstain even from licit and small-quantity play. "But in this play there can well be smallness of matter, which is to be measured according to the end intended by the one swearing. Such a one swearing can also give money to another for playing, and watch him, and also assist him; because this properly is not to play." Lig. 178; I. M. 562.

To the second. If Candidus, asked by his brothers and friends, merely assists at the game without playing, he does not break the oath of not playing. If Candidus recites all the canonical hours in the morning and evening; nay indeed, if in the evening he also anticipates matins and lauds of the following day, neither, by playing late with friends and brothers for the sake of urbanity, does he violate the oath. For in cases of this sort, for defining sin and grave sin, attention must be paid both to the quantity of matter and especially to the end which someone proposed to himself in swearing. - I. M. 562, 566; G. 298.

3. Thomas, leader of an army, in a war altogether unjust on the opposite side, captured by enemies and cast into prison, is then sent as an envoy to his own people, so that he may

negotiate concerning concluding peace, with an oath nevertheless that, whatever may be the outcome of the negotiation, he return to the city and prison of the enemies.

Q. Is Thomas held to return?

R. "He who promises with an oath to return to prison, according to others, is not held to return with probable danger of most grave unjust harm; for it would be to offer himself to it spontaneously. But much more probably he can, because, the promise having been placed, to return is an act of virtue." Scav., 12th ed., Milan, 1874, l. 2, n. 229.

4. Ambrosius, a servant, having known the fornication of the son of the household, swears to him that he will manifest it to no one.

Q. Does such an oath bind?

R. "The oath binds; unless silence gives occasion of another fornication; or unless there is present the necessity of correction, or the just interrogation of a superior intervenes." Scav., 12th ed., Milan, 1874, l. 4, n. 229.

5. Minantius often swears, saying in a rather raised voice: I swear by this Cross, and showing with his hand whatever object first occurs to him. Nay indeed, he often swears, saying: By God, by Christ, I will kill you, I will cut off your head. At other times also he swears, saying: May as many Angels take my soul as the times I have done this; So may God favor me, as I....

Q. What is to be thought concerning formulas of this sort?

R. It is not a true oath, "regularly speaking, to say: May as many Angels take my soul as the times I have done this.... Nor is it an oath to say: I swear by this Cross, the Cross nevertheless not having been shown or signed." Lig. 143. But, speaking in itself, it is a comminatory oath to say: By God, by Christ, I will kill you, I will cut off your head; and it is a grave sin. For God is expressly named there, and invocation of him is added to confirm a grave and unjust threat. Lig. 143, 146; I. M. 554.

6. Sisinius in court affirmed by oath that the one hundred gold pieces which Caius owed to Sempronius had already been restored by the former to the latter. Yet Sisinius had known this only from the assertion of Caius himself, his friend, of whose truthfulness he was firmly persuaded, and could have no suspicion of falsity.

7. The same Sisinius in court affirmed a falsehood by oath. But he swore according to the form introduced into the courts on account of those who refuse to invoke the holy name of God, namely: I swear to tell the whole truth, and nothing other than the truth.

Q. Was Sisinius perjured in either case?

R. Affirmatively, in the first case. The reason is that for an oath in judgment, knowledge of the matter is required, which he does not have who hears the matter from others related to him, and all the more related by one having an interest in that cause himself. To the point, St. Alph., l. 3, n. 148: "They say that what has been heard from a person so worthy of trust that he makes us morally certain can indeed be affirmed with an oath. Yet this does not run in judgment." - I. M. 556.

Affirmatively also in the second case. The reason is that that formula contains a true oath. "To say," says St. Alph., l. 3, n. 136, "I swear it is so, is not truly an oath, because then divine testimony is invoked neither explicitly nor implicitly.... Unless an interrogation concerning an oath preceded, because then, through the preceding interrogation, that *I swear* is sufficiently determined to a true oath." Now that formula, from the very interrogation and admonition of the judge, is determined to a true oath. For in the Italian Code of Criminal Procedure, after in art. 297 that form has been established in art. 299 it is said: "The oath shall be furnished by witnesses or experts, standing on their feet, in the presence of the judges, after a serious admonition which will be made to them by the president or by the praetor concerning the moral importance of such an act, concerning the religious bond which believers contract by it before God, and concerning the penalties established against those guilty of false testimony or expert opinion," etc. - I. M. 550, 551.

8. When a ship had come to the port of Marseilles from the Canary Islands, the captain of the ship was asked by the harbor master whether he had touched at those islands, which were altogether falsely asserted in the public newspapers to be infected by plague. The captain of the ship immediately responded negatively, since those islands in fact were infected by no contagious disease.

Q. 1. Is it licit in an oath to use mental restriction? - Who regularly can use mental restriction? What as to the case?

R. To the first, cf. I. M. n. 557. To the second: "Regularly public persons can use broadly mental restriction when asked about matters committed to their faith, such as secretaries, parish priests, captains, magistrates, advocates, physicians, midwives, etc. For if things committed to persons of this sort were violated, most grave inconveniences would certainly follow. For the rest, we do not deny that the present question is difficult, in which we can be deceived, both in assigning a legitimate cause and in using legitimate formulas of speaking; for easily a broadly mental restriction can be a purely mental one. Wherefore one must proceed cautiously, lest we harm human society, lest we introduce confusion, lest we derogate from Christian simplicity." Scav., 12th ed., Milan, 1874, l. 2, n. 231.

To the third: "He who comes from a place which is falsely thought to be infected by disease can deny that he comes from there, namely, as infected with pestilence, such as is and ought to be the mind of those asking." Scav., l. c.

And thus also "he who was compelled to marriage can assert that he did not contract it, namely freely. He who is not held to customs duties can say that he bears nothing, so that he is held to pay." Scav., ibid.

"Invited to table, and asked whether the food is good, he can affirm that it is such, although in fact it is tasteless, understanding, for mortification and penance; and otherwise all know that from urbanity, in that case, it is customary to respond thus, however the food may have been prepared." Scav., l. c.

50. On a Vow

1. "A Protestant emitted a vow of chastity, and also of poverty and obedience, by voice and in writing before an Anglican minister. It is asked whether it has at least the force of a simple and private vow, or whether it must be held as altogether void in the case of conversion to the Catholic religion?

R. The vow of which there is question in the prayers is simple, and the one vowing is held to observance of the vow, if he had a true intention of vowing." Sacred Penitentiary, 29 Nov. 1842; *Collectan. S. C. de P. F.*, n. 2086; I. M. 570-574.

2. Benedictus, having a depraved habit of speaking badly about everyone, in order that he may be corrected efficaciously, emits a vow of speaking well about everyone, insofar as this can be done from prudence and from rightly ordered charity. Fearing nevertheless lest he transgress the vow and sin, he does not bind himself by that vow under sin, but only under imperfection.

Q. 1. Is a vow of this sort valid? 2. Does it have at least some effect?

R. To the first. The aforesaid vow is in no way valid. For a vow is essentially a promise made to God. But a promise essentially contains an obligation from fidelity. Therefore a vow without any obligation is a vow without a promise; namely, it is a vow without a vow, or it is not a vow. Therefore a vow of this sort can be nothing else than a mere proposal of not speaking badly about others, but well, according nevertheless to prudence and due charity. I. M. 570, 572, 573; St. Thomas, 2. 2, q. 88, a. 1.

To the second. Moral imperfection, as it is distinguished from mortal and venial sin, is nothing else than the privation or mere negation of a more perfect act, which ought to be placed for the better, or could only be placed. Now the aforesaid proposal does not have this effect, that it renders the act itself more perfect; for the act has this from the object and from the circumstances. And thus, if to speak well of neighbor in these or those circumstances is a more perfect act, this indeed does not arise from the proposal made, as a grave or light obligation arises from the vow itself; but because that act of speaking well about others is more perfect in itself by reason of the object and circumstances about which it is concerned. Hence, choosing not to speak, even independently of the proposal made, would be less perfect. But the aforesaid proposal has only this effect, and one proper to itself: that by not choosing at some time to speak well about others, when one can do this according to prudence and charity, someone incurs the mark of inconstancy and instability, which in the genus of morals is at least a not light imperfection. Hence it is that, although someone does not propose under imperfection, or under the penalty of imperfection, thinking nothing about it, nevertheless he still incurs that mark of imperfection and of inconstancy and instability. And, if someone firmly proposes and repeats the proposal, by failing in it he incurs not only the common imperfection from the lack of a more perfect act, but still incurs a special imperfection from the lack of constancy and stability in the proposal firmly established before and often confirmed before God; whence by force of a proposal of this sort the more perfect act not only could, but also ought to be done, and the lack of it is not a mere lack and negation, but a privation, namely in relation to the proposal made. - Lugo, *Resp. Mor.*, l. 6, d. 8; I. M. 572, 573.

3. Bibiana, a very religious woman, vowed that on Sunday, in the evening after visiting the church according to her pious custom, and after reciting the rosary there, she would be free for pious reading for half an hour, and then for mental prayer for an hour. But forgetful of this vow, on

the occasion of the first communion of some poor little girls, she vows that she will teach them the rudiments of the Christian Faith at those same hours.

Q. Which vow of those incompatible ones must be observed?

R. Fr. Gury, 313, says: "the prior vow must be observed. For that vow, affecting a determined time, binds the will of the one vowing, and prevents her from being able to take up another obligation affixed to this same time. Therefore the second vow by this very fact is void, since it regards a will already obliged in a diverse way. For it is made concerning a thing no longer free, and therefore concerning an impossible thing." - But Scavini, 12th ed., Milan, 1874, l. 2, n. 220, says: "She ought to observe what is more worthy, even if made later. For the vow is judged to have been commuted into something better.... If they are nearly equal, or if there is doubt, let her prefer the prior to the posterior vow; for the former possesses." But that presumption of commutation is not in fact commutation. But presumption yields to truth. Wherefore, when the memory of the prior vow occurs, someone can indeed commute it into something better; but, if then in fact she is unwilling, the prior vow remains, since no commutation of it had been present, and that preceding will, in the case, was predominant and prevailing. For the rest, cf. I. M. 627. And Scavini himself, n. 228, ibid., raises the question concerning an oath: "Does an oath made against a first oath oblige?" and responds: If the second oath is opposed to the first in matter already sworn, it does not bind, as if you swore marriage to Caia, and afterward swear it to Titia; because it would be concerning something illicit."

4. Ludentius, addicted to play and accustomed to sin against chastity, vows that he will never, through his whole life, apply himself to play, if for a whole year he abstains from every sin of impurity. The matter succeeds very well for the greater part of the year. But toward the end of the year, bearing the vow made with difficulty, in order to be freed from it, he sins against chastity by design.

Q. Has Ludentius violated the vow, and is he still held by the vow?

R. Negatively to both. For first, by sinning against chastity he did not properly violate the vow; for the vow was not about preserving chastity. Nevertheless he sinned gravely by the sin of sacrilege, or against religion, by impeding by design and fraud lest he afterward be held by the vow; since from the same virtue of religion he was held to do nothing directly for impeding the vow. But although chastity was violated by design and fraud, nevertheless in fact the condition was not fulfilled. The condition not being fulfilled, the conditioned thing does not subsist. Besides, since the condition had been added generally, if for a whole year he abstains from every sin of impurity, this very thing had to be verified: that he not sin against chastity even by design and fraud in order to be freed from the vow, since evidently Ludentius ought especially to have intended this implicitly in his vow, lest the vow which he wished to apply as a means for not sinning become for him an occasion of sin, although from his malice. - Suarez, *de Voto*, l. 4, c. 17, n. 11, 14; Laymann, l. 4, t. 4, c. 6, n. 4; St. Alph., l. 2, n. 218; G. 320; Scav., 12th ed., Milan, 1874, l. 2, n. 218; D'Annib., ed. 3, v. 2, n. 309.

5. Aurelius, seized by a grave infirmity, emitted a vow in honor of the Blessed Virgin Mary, that, if he were restored to health, through his whole life on each Saturday he would either fast or give alms to some poor person. Fully convalescing from the infirmity, he began to fast on each

Saturday, and faithfully furnished this for three years. These having passed, he was affected with such pain of the head and weakness of the stomach that he could no longer fast. Hence, anxious, he asked of his confessor whether he was held at least to give alms on each Saturday, since he could no longer fast.

Q. What as to the case?

R. If a disjunctive vow has been made of furnishing one of two things, the vow is null if someone disjunctively vows a good or evil thing, or a vain or impossible thing. But if each part is apt matter, as in the case, the vow will be valid; and the choice is made by the will, which reserved it to itself. But whichever part is chosen will have to be furnished, even if after the choice the other part perishes or becomes impossible; for the vow is now determined by the choice. Conversely, if one part perishes or is rendered impossible before the choice, you are not held to the other, unless the thing perishes by your fault, or you were in culpable delay; for then, from your manner of conducting yourself, you are tacitly judged to have wished to determine your obligation to that part. Wherefore, all the more, if the very thing chosen perishes or becomes impossible after its choice, altogether independently of the will, as in the case, one is not held to the other. Lig. 224.

6. Trepidantius, doubting about a vow of perfect chastity emitted, seeks and obtains dispensation from the bishop. Then, weighing the matter better, he becomes altogether certain concerning the vow made.

Q. Must he seek dispensation again from the Supreme Pontiff?

R. Negatively. The reason: for a doubtful vow of chastity is not reserved. Therefore the bishop could dispense from it, who legitimately used the power which he had of dispensing in doubtful vows. "This," says Lugo, "seems to me most true: because otherwise the dispensation would have been vain; for dispensation is not made under the condition, if there was not a vow; but rather under the condition, if it was truly a vow; for if it was not a vow, it is not dispensable. Therefore, if the bishop can then dispense, he can remove the obligation, in the case in which it existed." *De Poenit.*, d. 20, s. 2, n. 22. Cf. also Sanchez, who holds the same doctrine, *In Decal.*, l. 4, c. 44, n. 3, 11; I. M. 620.

7. Chrysophilax, addicted to play, with great detriment to his affairs and immense loss of money, in order to meet these evils, emits a vow of not playing for a whole year. But, while it is running, more than once he gives money to a friend, with which the friend may play while he himself sits by and rejoices with him. Sometimes also he plays in another's name, but twice in his own name for about an hour, but with only a few obols exposed.

Q. Has Chrysophilax gravely violated the vow in these cases?

R. Negatively. For in the first case, although Chrysophilax plays through another and what someone does through another he does through himself in the moral estimation of things, nevertheless in fact he himself does not play, but another for him. But vows are proper and to be understood by strict interpretation. Besides, the thing is evident, that the mind of Chrysophilax in that vow regarded play through himself, since another case of playing through another is altogether extraordinary, which perhaps first occurred to his mind then, when he had already made the vow. And this is confirmed from the fact that Chrysophilax in fact played thus through another and not through himself because

he thought that he would not thus transgress the vow; and therefore in that vow he intended only personal play; for otherwise he would not have used this art and contrivance. For the rest, "in doubt," says Busembaum, "concerning the mind of one vowing, interpretation ought to be made according to the propriety of the words which he used, or rather their common and usual acceptance." And St. Alph. says: "it must be noted that vows are always to be interpreted according to the more benign part." L. 2, n. 222, 224.

In the other case, when Chrysophilax played in another's name, and consequently with another's gain or loss, he did not violate the vow. For vows are to be understood according to the intention of the one vowing. Now the thing is evident from the case, that Chrysophilax did not regard play, materially such, or mere recreation for him, but regarded play as gainful or harmful for him, for averting detriment to his own affairs. Wherefore, just as he would not have transgressed the vow by playing for the sake of mere recreation, no wager of money having been added for the victor, so neither did he transgress the vow by playing in another's name, that is, with another's gain or harm.

Finally, in the third case, when for about an hour he played in his own name, he transgressed the vow. But, if the time is inspected, the matter is not grave. Wherefore from this head he sinned only lightly. But if the quantity of money which he exposed is inspected, since this also was not grave, not even from this head did he sin gravely.

8. Ioannes, in the twelfth year of his age, emitted a vow of approaching a certain sanctuary of the Blessed Virgin Mary. His father impeded the fulfillment of the vow, saying that the vow was null. Ioannes again emitted the same vow in the seventeenth year of his age; but again his father was unwilling that Ioannes fulfill the vow, declaring that the vow was altogether invalid. His father finally having died, Ioannes asks of his confessor whether he is held by the obligation of the vow emitted.

Q. What as to the case?

R. Since the father, on the one hand, did not speak clearly, and seems to have spoken rather historically or doctrinally, for instructing his son about his obligation, the obligation of the vow could seem still to persist. But, since, on the other hand, he altogether prohibits the son from the execution of the vow, which the son certainly would not licitly do in that hypothesis in which the father would not use his power; and according to the theological rule, sins are not to be presumed, but proved, the father seems in fact to have spoken altogether authoritatively. Hence, since

Ioannes is in the twelfth year of his age, and consequently has not reached puberty, the vow was directly annulled; and therefore, the father having died, its obligation, as not reviving, does not subsist. But since Ioannes in the seventeenth year of his age again emitted the same vow, he must be asked whether he wished to ratify that former vow emitted by him; or wished to bind himself by vow altogether independently from that prior vow. If the first is verified, he is free from every obligation for a twofold reason. The first is because, since the prior vow does not subsist, the ratification of a null vow is null. The other is because the father still directly annuls the vows of pubescent children which they emitted during impuberty, although they had ratified them after puberty had now been attained. For that which did not subsist from the beginning is not made firm, and therefore is not made firmer, by the passage of time. Chap. 18, *de R. I. in 6*. If the second is verified, then since the vows of the pubescent are annulled by the father only indirectly, the father having died, the vows

revive, and therefore Ioannes is bound by the obligation of the vow. But D'Annib., ed. 3, p. 3, n. 206, thinks that by more recent law the father could still directly annul the vow of a pubescent son; wherefore then Ioannes would not be held by the vow. For by more recent law the distinction between the pubescent and the impubescent is not acknowledged, and paternal power is acknowledged in parents up to the greater age of the children or emancipation. Neither is verified in Ioannes. - I. M. 599 seqq.; G. 328, 329; La-Croix, l. 3, p. 1, n. 488, 489.

9. Claudina, in order to refuse a marriage offered to her by her father, emitted a vow of entering a certain Congregation of Sisters, and of never seeking and accepting dispensation from such a vow. But after three months, another marriage having been offered to her, in good faith she seeks and obtains dispensation from the vow of entering the aforesaid Congregation, not attending to the other vow of neither seeking nor accepting dispensation. After the betrothal had been entered upon, on the day immediately preceding the marriage, attending to that second vow, she manifests the matter to the confessor.

Q. 1. Was each vow of Claudina valid? 2. Is there need of a new dispensation for entering marriage?

R. To the first. The vow of entering the Congregation of Sisters was valid. For due intention and deliberation was not lacking on the part of Claudina; for nothing is had in the case from which the contrary could be gathered. The matter of the vow is certainly of a better good; indeed this good is best. Nor indeed does that circumstance render the vow null, namely, that she might more efficaciously and firmly reject the marriage offered by her father, less pleasing to her. For this circumstance in itself is not evil, but good: for a marriage contracted not from one's own inclination but from the inclination of the father will have difficulty having a good outcome. Nor indeed was the vow made by Claudina as by motive on account of this end alone, so that it could be said that, this end ceasing, the vow ceases, as though a vow either conditioned, namely if the father persists in offering that marriage, or a disjunctive vow, namely either of entering a Religious Congregation, or of abstaining from that marriage. Nothing of this sort appears from the case. Claudina simply and absolutely emitted the vow, indeed impelled by repelling from herself that marriage very disagreeable to her; choosing that it was better to enter religion than to enter that marriage; but at the same time choosing religion simply and absolutely; whence she emitted another vow of never seeking and accepting dispensation; and, another marriage having been offered to her, she simply sought dispensation of the vow emitted, raising no question about the value of the vow itself. Wherefore that vow was altogether valid, and was still so when another marriage was offered to her.

Concerning the other vow of Claudina, of never seeking and accepting dispensation, there is a question, says St. Alph., l. 3, n. 208, "whether the vow of not seeking dispensation, commutation, or annulment of a vow is valid, even with just cause; for without just cause it is certain that it is valid. The first opinion denies.... But the second affirms.... And this seems more probable; noting that in the case in which it is more useful on account of spiritual good to seek dispensation, the vow does not oblige, although it was valid. Yet this vow can always be relaxed by a superior, for whom his power is always saved.... But it must be noted that one vowing not to seek dispensation can seek commutation; and conversely." Thomas Sanchez, *in Decal.*, l. 4, c. 8, n. 21, says: "I judge it more probable that that vow or oath furnished to God is not valid, and therefore obliges in no event.... I am led, because vows emitted generally, which in certain cases are apt for inducing obligation and are

useful, but in others are inept and useless, by no means oblige, unless when, either by law or by the common understanding of men, they have a tacit condition, that they be extended to useful cases alone, such as the vow of obeying a superior in all things has included. And the reason is that those vows are emitted by way of one thing, and equally comprehend useful and useless cases."

To the second. There is no need of a new dispensation; wherefore, especially if there is danger in delay, Claudina will be able with a quiet conscience to enter marriage. The reason is: 1. because that vow made absolutely and universally of never seeking and accepting dispensation is at least probably null. 2. Because, although it was valid, it has now become impossible. For in good faith dispensation has already been sought and accepted. 3. Because the vow which alone can stand in the way of marriage is the vow of entering religion, not the vow of never seeking and never accepting dispensation. Now although Claudina had even sinned by seeking and accepting dispensation, the dispensation obtained and accepted would be valid. Therefore at most she would have to do penance for the other vow violated, but would by no means be prohibited from entering marriage. For her other vow neither takes away in any way from the superior the faculty of dispensing, nor makes it the case that there was not a just cause of seeking dispensation, if this in fact was present, and therefore the dispensation given and accepted was and is altogether valid. Cf. Sanchez, l. c., n. 26. 4. Finally, if she had adverted to her other vow, she could still have sought not simple dispensation, but commutation of the prior vow; for she had made a vow concerning not seeking dispensation, and, ignorant of the distinction, perhaps she had not even thought about commutation.

10. Antonius, a parish priest, is accustomed to dispense and commute the vows of the faithful of his parish, whether within or outside sacramental confession, judging that this power belongs to him, both on account of the jurisdiction which he himself has in his parish, and on account of the equal power with which he is endowed, from the common doctrine of theologians, of dispensing with subjects for particular cases in fasts, in abstinence, in works prohibited on a feast day, and in other similar things. I. M. 245. But, a doubt having arisen concerning this manner of acting, he asks whether he can persist in it.

Q. What as to the case?

R. Antonius cannot persist in that practice. The reason is that the power of dispensing from vows, special privilege or legitimate custom being excluded, belongs only to prelates who have jurisdiction in the external forum. The parish priest does not have this jurisdiction, nor in this matter is there present a special privilege or legitimate custom favoring him. Let Busembaum be heard, whom St. Alphonsus tacitly approves: "The power of dispensing belongs to all prelates who have jurisdiction in the external forum or privilege.... Hence a bishop can dispense with respect to his subjects; but not a parish priest, because he has only jurisdiction of the internal forum," l. 4, n. 456. But the distinguished Doctor has these things concerning this matter: "A parish priest or proper priest does not have ordinary power for dispensing or commuting vows. It is the certain and common opinion of theologians.... The reason *a priori* is that this dispensation is an act of ecclesiastical jurisdiction distinct from the jurisdiction of the sacrament of penance; but in a parish priest and similar persons there is no such jurisdiction; for by no law is it conceded to them, nor can it be gathered from the nature of the thing or custom.... Hence the argument taken from dispensation of law can be turned back, because a parish priest cannot dispense in laws; but if in some law he could by special custom,

it is not to be extended to other laws, much less to vows." T. 9, *de Relig.*, l. 6, c. 10, n. 11, 12. Hence the response to the twofold reason of Antonius the parish priest is clear. To the first it is responded that the parish priest indeed has jurisdiction in his parish in the administration of the sacraments, but by no means ecclesiastical jurisdiction in the external forum, the act of which is dispensation of vows. To the second it is responded that the parish priest can indeed dispense in those ecclesiastical laws for particular cases only; but he can do this from custom, which custom is not present also for dispensation of vows. - I. M. 615.

11. Theotimus emitted a vow of perpetual chastity. An occasion of an excellent marriage having been offered, he sought dispensation from the Holy See for entering marriage, which he obtained. After a year his wife dies, and another marriage to be entered is offered to him. Hence Theotimus, uncertain, asks of his confessor whether he needs a new dispensation, and from whom it is to be sought, in the affirmative case.

Q. Does the vow of chastity remain reserved to the Supreme Pontiff after dispensation has been obtained for the effect of contracting marriage?

R. Affirmatively. Thus Card. de Lugo, *Resp. Mor.*, l. 6, c. 1; G., v. 2, n. 331; and others. The reason is that, when, on account of various causes which are customarily alleged, dispensation is conceded for the effect of contracting marriage, the preceding vow of chastity, just as it is not annulled, so neither is it commuted according to its whole self into other pious works. For, just as the matter of that vow was divisible, so also its obligation was divisible. Through the aforesaid dispensation only the obligation of not contracting this first marriage is taken away, and is commuted into a new obligation to other pious works. Although, therefore, this new obligation according to a probable opinion is not reserved, that other part of the preceding obligation prohibiting a second marriage, and all other things which are opposed to chastity except the first marriage, is not a new obligation, but is altogether the same one which was before, and which was never taken away. Therefore this part of the obligation retains the same nature and quality of reservation which it had from the beginning. But that, from the intention of the Supreme Pontiff dispensing, the same vow in fact remains, and is dispensed only as regards the effect of contracting marriage, but by no means as regards the remaining effects, is gathered from the express clause added to the dispensation, that, if the spouse dies, he who had emitted the vow must remain celibate. Cf. Lugo, l. c., n. 1 and 8; G., l. c. The same is signified still more by those words which are customarily added in the commission of dispensing directed to a discreet confessor. For at the end of the commission the penitent is again said to be admonished concerning the perseverance of the vow in these words: If he should again contract and consummate marriage, or ever fornicate outside marriage, let him know that he will act against a vow of this sort. Cf. Lugo, l. c., n. 8. Whence adultery committed during that first marriage contracted by dispensation is also against a vow of this sort.

12. Carolina emits a vow of entering a more recent Congregation of Sisters. But, an occasion of a good marriage having been offered to her, she sought from the bishop dispensation from the aforesaid vow, which the bishop conceded without difficulty.

Q. What as to the case?

R. Carolina could not be dispensed from her vow except only by the Supreme Pontiff, if there were question of a Religious Order properly so called. But since there is question only of a more recent Congregation of Sisters, she can be released from her vow either by the bishop, or even by a regular confessor having privilege. G. 333; I. M. 620.

13. Polidorus emitted a vow of entering a religious order, and in fact enters the Order of St. Francis. But after six months of novitiate, he departs from it, since he had been judged by the master of novices by no means suitable for religious life. Thinking of entering marriage, he sought dispensation of the vow from his confessor, who denied that this could be done by him, and remitted Polidorus to the Holy See.

Q. What as to the case?

R. Polidorus seems altogether free from any obligation of the vow; and therefore seems to need no dispensation. The reason is that he made a vow of entering religion, and in fact he entered it. But otherwise it would have to be said that, if he enters another religion, and departs from that also because he is unequal to that kind of life, he ought to enter a third religion, and so on, which is foreign to the ordinary mode of entrance into religion, and to the intention of the one vowing. For indeed ordinarily religions are not accustomed to receive those who have departed from another religion; and those who enter religion after due consideration enter it with this intention, that in it they live out life perpetually, not that after some time they leave it and enter another. Therefore this is also the intention of him who emits a vow of entering religion, unless he explicitly thinks of his departure in some determined case. Finally, Polidorus, since he departs from the Order of St. Francis because he is unfit for embracing religious life, by entering another order would depart from that one also. And thus he does not seem to be held to doing a useless thing for the scope and end of that vow. And this holds not only if Polidorus was dismissed because from human frailty, from depraved custom, from weakness of powers, he was altogether unequal to fulfilling the obligations of religious life and of the monastery; but also if he himself, of his own accord, had to depart on account of causes of this sort, or on account of another rational motive. But it by no means holds if he directly or indirectly procured that he be cast out; for then, departing without legitimate motive and rational cause, he acts against the vow and violates it. - G. 320, 321; D'Annib., ed. 3, p. 3, n. 215.

14. Ferdinandus, a religious bound by simple vows, having lost his former fervor, and falling into a tepid life gradually, but daily more and more, is now affected by weariness of religious life. Hence he sought dismissal from his superior, who, when he had in vain applied all means from his charity, so that he might recall Ferdinandus to good counsels, finally dismisses him, obstinate and dispensed from vows, from religion. After a year Ferdinandus marries; but he is agitated by many stings of conscience on account of the lost religious vocation, and especially because, since he had no grave cause for obtaining dispensation from vows, except his tepid life, he judges it void and himself still obliged by religious vows.

Q. What as to the case?

R. Ferdinandus is agitated under a twofold head; first indeed on account of the religious vocation lost by his fault. And Ferdinandus truly lost a great good. For it would have been very easy for him not only to save his own soul, but also to arrive at an eminent degree of sanctity. "The state of religion,"

says the Angelic Doctor, 2. 2, q. 186, a. 3, "is a certain exercise and discipline through which one arrives at the perfection of charity." Therefore let Ferdinandus return, if this is still whole for him, either to the same or at least to another religion, and let him make a firm proposal that he will exactly observe the rules and religious vows, lest so great an evil befall him again. But if either the thing is impossible for him, or certainly he does not yet experience such a desire, but on the contrary is rather content to live in the world: let him not despair. Divine grace, which is not lacking to sinners even blinded, hardened, and obstinate, will not be lacking to him, so that he can work the salvation of his soul by cooperating with divine grace.

But Ferdinandus is chiefly agitated on account of the nullity of the dispensation of religious vows from defect of sufficient cause. Ferdinandus can be altogether at peace; for that dispensation conceded to him by the superior, if nevertheless he had such power, was altogether valid on the part of the grave cause required. For a grave and proportionate cause was not lacking. His very tepid and little religious life could furnish this cause, not only on account of his private good, if now, for example, in religion he was sinning constantly, and it was hoped that, marriage having been entered, a remedy would be brought to his perverse life, but also on account of the common good, lest he be a scandal to others, and induce relaxation by his depraved example into the monastery and into the order. Wherefore, excluding the case that he obtained dispensation of vows in bad faith and by fraud and deceit, if, after by tepid life he had lost the vocation, or had already fallen into grave lapses, or had been placed in continual danger of sinning, he manifested the whole matter in good faith to his prelate, and the prelate had this special power of dismissing him and dispensing from vows, he can be safe in conscience as regards the validity of the dispensation. Cf. *Epitome Instituti Soc. Iesu*, Prato, 1882, p. 245, n. 123, 125; p. 251, n. 142, 143; *Compend. Privileg. Soc. Iesu*, n. 160; S. C. EE. et RR., 19 Apr. 1893. Benedict XIV, *de Syn.*, l. 13, c. 11, n. 17, speaking of religious of the Society of Jesus, says: "The cause of dismissal is usually taken from this, that the religious is by no means able laudably to pursue the course begun, and to conduct his life according to the Institute of the Society." S. C. EE. et RR., 15 March 1892; A. S. S., v. 26, p. 320; Lugo, *Resp. Mor.*, l. 4, d. 3.

It is said: If the prelate has this special faculty. For by common law, as regards more recent Institutes already approved by the Holy See, dispensation of vows, whether temporary or perpetual, is reserved to the same Holy See. Thus from the constant practice of the S. C. EE. et RR. Likewise, as regards religious orders properly such, "the simple vows of which there is question are perpetual on the part of the one vowing, as being those which tend to the subsequent emitting of solemn vows, in which they receive perfection and completion. The dispensation of the same simple vows is reserved to the Roman Pontiff, to whom professed members, when grave causes urge, can offer prayers. But the same simple vows can also be dissolved on the part of the order in the act of dismissal of the professed; so that, dismissal having been given, the professed by this very fact become free from every bond and obligation of the said vows. Nevertheless superiors ought to proceed with the greatest charity, prudence, and from just and reasonable causes, every human affection being removed; otherwise their conscience remains gravely burdened. But no one can be dismissed on account of infirmity supervening after the profession of simple vows." S. C. EE. et RR., 12 June 1858. Nay indeed, not even as regards more recent Institutes will a professed member be able to be dismissed after only temporary vows on account of supervening infirmity. Thus from the practice of the same Sacred Congregation. Besides, a judicial process is required if there is question of a professed member to be

dismissed who has emitted simple perpetual vows or simple temporary vows and besides has been constituted in sacred orders. S. C. EE. et RR., 4 Nov. 1892. - Cf. A. S. S., v. 26, p. 320.

From these things which precede, the resolution of the case given by the aforesaid S. C. EE. et RR., 19 Nov. 1886, is easily understood:

"Sometimes it happens that one simply professed seeks his dismissal, asserting that he does not have, or has lost, the spirit and vocation to religious life. It is now asked whether this assertion of his, pertinaciously retained, even if no other cause of dismissal is present, can be judged a sufficient, just, and reasonable cause for this end, that one bound by simple vow can be dismissed from the order? - R. Negatively, since the simple vows of which there is question are perpetual on the part of the one vowing, and their dispensation is reserved to the Supreme Pontiff."

15. Cunegunda, having departed from a more recent Congregation of Sisters, obtained from the bishop dispensation from the religious vows, the vow of chastity nevertheless remaining. Desiring to enter marriage, she seeks dispensation from that vow and obtains it from a confessor having privilege of dispensing from vows.

Q. What as to the case?

Cunegunda could indeed be dispensed by the bishop from religious vows if that more recent Congregation of Sisters was merely diocesan, approved only by the Ordinary of the place, "provided that a right acquired by a third party from an onerous contract is not harmed when he is reasonably unwilling." Holy Office, 2 Aug. 1876; and therefore "the petition of the superior having been had beforehand and her counselors consenting," S. C. de P. F., 24 Aug. 1885, *Collectan.*, n. 2088, 2091. But if that more recent congregation had already been approved by the Apostolic See, then Cunegunda could not be dispensed by the bishop. For vows, in such a case, whether they are perpetual or temporary, remain reserved to the Holy See. Bizzarri, *Collect. Meth.*, at the end; G., v. 2, n. 130, 134-136, 140. But since the bishop in fact dispensed Cunegunda from the vows, it must be said that that congregation is merely diocesan, merely dependent on the Ordinary of the place, and that it has not yet obtained any approval from the Holy See.

But as regards the other dispensation, the case of Cunegunda does not seem to lack some difficulty. For a vow of chastity, although joined with the other vows of religion, can well be from an affection absolutely such toward chastity itself; and then the vow is reserved, and cannot be dispensed except by the Supreme Pontiff. But if the vow of chastity is not emitted except insofar as it is joined with the other vows of religion, not from an affection absolutely such of chastity itself, but only from love of religion and religious profession: then the vow is not reserved, the other vows having been dispensed.

But, unless it is established that the vow was not perpetual and absolute, it cannot be dispensed. S. O., 2 Aug. 1876. Wherefore Cunegunda must be questioned whether, for example, she emitted the vow of chastity in Religion, not precisely from affection toward chastity itself, but because, for example, since she could not or would not enter marriage, nevertheless she did not wish to remain in the world in the state of celibacy. For then she vowed for Religion alone, and, unless she were freed from the vow outside Religion, she would be compelled to remain in celibacy, from which she was always averse. G. V. 2, n. 132, 133. - Cf. *Enchiridion Morale*, 2nd ed., n. 180.

On the Third Precept of the Decalogue

51. On the Sanctification of Feasts

Silvius, established in a region of unbelievers, had more than two hundred artisans and workers, all pagans, whom he had called to work, paying to them a very rich salary. But since his artisans and workers were all pagans, he orders them to work even on Sundays and on feast days. And, being rebuked by a missionary, he responds that unbelievers are not subject to the laws of the Church, forbidding servile works to Christians on feast days. The missionary responded to Silvius that infidels indeed can work licitly on feast days, because, since they have not been baptized, they are not subject to the laws of the Church. For that reason also, he said to him, you can command them to do those things which are licit to them, although to you they are illicit. Nevertheless, he said to him, on the Lord's day or Sunday, you must altogether close your establishment, because unbelievers also are subject to the universal law given to all descendants of Adam, by which it is commanded, from paradise itself, that on each seventh day they abstain from servile works. Another missionary, however, who afterward came there, being asked by Silvius, responded that the establishment must be closed, not only on Sunday, but also on any feast day whatsoever; for a Christian is held to abstain from servile works on feast days, not only by himself, but also through another pagan, since he is then the true author of the work, by commanding what is prohibited to him, even if it is licit to others. For this reason Silvius wanted to impose rest on his workers on feast days and Sundays. But they responded to him: If you wish that we observe your laws, pay us the salary also for feast days and Sundays; otherwise we will seek another master of our own cult. But since this could not be done without very great loss to Silvius, therefore he ceased indeed to command work on feast days and Sundays, but allowed them to work. The prelate, however, who finally came to visit that mission, responding to Silvius, says that he sinned in no way, since he was merely permitting his artisans and workers to work on Sundays and feast days. For, he said, these gentiles are held to abstain from servile works neither on the other feast days nor on Sundays. Not on the other feast days, indeed, because they are not members of the Church. Not on Sundays either, because the precept of the Sabbath or of the seventh day, as determined for this or that day, was taken away by the death of Christ, with the other ceremonies of the Old Law. Nor is there any scandal in the case, because Silvius lives among gentiles, who know that on Sundays and feast days Silvius himself never works. Wherefore he concluded: Let him not command, but, as he had already begun to do, let him conduct himself passively, permitting them to work, after nevertheless having explained to them his will concerning the sanctification of feast days and Sundays, and having exhorted them to spend at least some time on these days in the worship of God.

Q. What as to the case?

R. St. Thomas says: "The precept concerning the sanctification of the Sabbath, literally understood, is in part moral and in part ceremonial. For it is moral in this, that man deputes some time of his life to divine things. For there is in man a certain natural inclination to this: that to each necessary thing some time is deputed, as to bodily refreshment, to sleep, and to other such things. Hence also, according to the dictate of natural reason, man deputes some time to spiritual refreshment, by which

man's mind is refreshed in God. And according to this, that some time be deputed to attending to divine things, it falls under a moral precept. But insofar as in this precept a special time is determined in signification of the creation of the world, it is ceremonial.... The observance of Sunday in the New Law succeeds the observance of the Sabbath, not from the force of a precept of the law, but from the constitution of the Church and the custom of Christian people." 2. 2, q. 122, a. 4. Similarly the Roman Catechism says: "The word Sabbath signifies cessation and rest.... And although the Sabbath signifies the seventh day, nevertheless this rest, which God prescribed to be given to him, must not be referred to this day alone.... If indeed we consider a fixed and determinate time of the divine worship, that is, a determined day, the precept concerning the Sabbath is not fixed and constant, but mutable; nor does it pertain to morals, but to ceremonies. Nor is it natural, because nature did not teach or form us to give external worship to God on that day rather than on another; but from that time at which the people of Israel were freed from the servitude of Pharaoh, it observed the day of the Sabbath.... If one considers the worship and religion which is contained in the precept of the Sabbath, it is plain that it is such that it ought to be numbered among the moral precepts and those of natural law.... It pleased the Church of God that the worship and solemnity of the Sabbath be transferred to the Lord's day; for just as the light first shone upon the world on that day, so our life was recalled from darkness to light on the same day by the resurrection of the Redeemer, who opened the gate of eternal life to us. Wherefore the apostles also willed that it be called the Lord's day." P. 3, c. 4, q. 6, 7.

From these things, therefore, it follows: He who on a feast day commands others to work, if he sins, sins insofar as he induces others to work, and thus to what is prohibited to them, which indeed can be a grave or light sin. But he does not sin insofar as he directly transgresses the precept of sanctification. For the precept of sanctification contains only the precept of hearing Mass and of abstaining from servile works. But someone, by inducing another through command not to hear Mass or to be occupied in servile works, is not therefore himself not hearing Mass or being occupied in servile works. Hence, if the other is not held to hear Mass and can do servile works, the one commanding does not sin in any way. Thus the infirmarian and the one having care of the sick by command of the superior does not sin by commanding other religious not to hear Mass and to be occupied in necessary servile works for the care of the sick, since these are not bound to hear Mass in the case and can be occupied in those servile works. Similarly, someone commanding servants and workers to extinguish a fire, etc., does not sin.

No one indeed is held, with his own grave spiritual or temporal harm, to prevent others from sinning in something which depends entirely on their own free will. And no one is held to pay money to others lest they sin by transgressing a law which they could fulfill. I. M. 434.

Therefore: 1. The first missionary responded well concerning feast days; but concerning Sunday he erred in everything.

2. The second missionary simply erred in everything.

3. The prelate finally responded well in everything.

52. On Hearing Mass

1. Fabritius entered the church, intending to seek a friend there because of a grave family business. He did not find the friend; but he found a priest beginning Mass at the altar. Seeing him, by a certain natural instinct, he stood there up to the end of the Mass.

2. Fridericus went to church in order to hear Mass, which was already beginning when he entered. But, since in a lateral part of the same church he saw some pilgrims piously making the Way of the Cross, he too at once joined himself to them and remained with them up to the end of the Mass and of the Way of the Cross.

3. Fidelis, assisting at Mass through the whole time of its celebration, looks at and admires the precious ornaments of the altar, the paintings, statues, columns, walls, and ceiling of the church; indeed, he considers them fixedly, on account of their perfection of art.

An officer of the police, charged with preserving order in a church on the occasion of a great solemnity, although by reason of his office to be exercised he had to stand outside the church, went to the open door of the church and, while standing outside, took care to hear Mass.

Q. What as to these cases?

R. To the first. Fabritius satisfied the precept. For although he did not enter the church with the intention of hearing Mass, nevertheless in fact he heard it. Moreover, the very fact that, although he did not find the friend, he nevertheless stood there from the beginning of the Mass up to its end, sufficiently proves the intention, at least then had, of hearing Mass. Otherwise, when he did not find the friend, he would have gone away.

To the second. Fridericus did not hear Mass, if the lateral part of the church where the Way of the Cross was being performed was wholly separated from the altar at which Mass was being celebrated. For then, since he was doing the Way of the Cross, at least externally, he was doing something else, pious indeed, but something else entirely, and not hearing Mass. But if that lateral part of the church was not separated from the altar, then Fridericus, while doing the Way of the Cross, could attend to the Mass externally and internally, and consequently hear Mass.

To the third. Fidelis, with his continuous and fixed view of the ornaments of the altar, the paintings, statues, columns, walls, and ceiling of the church, altogether lacks that internal and external attention which is required for hearing Mass, and is occupied with another thing, and consequently does not hear Mass.

To the fourth. The police officer, although he had to stand outside the church, nevertheless, when he had gone near to the open door of the church, he could there attend to the Mass which was being celebrated, and he did attend to it, since he procured this for himself by standing near the open door of the church, that is, in order that he might hear it. Therefore he truly heard Mass. For although he was materially outside the church, nevertheless, being very near to the place in which the Mass was being celebrated, he was, morally speaking, present in the church, or certainly present at the Mass. Besides, if someone hears Mass by standing in the window of his own house, from which the altar can be seen, and the public street does not lie too greatly interposed between the house and the church, so that by reason of the distance of the one hearing the Mass and of the too great distance of

the place the moral presence required for satisfying the precept of the Church is not taken away, then certainly the police officer, in the case proposed, heard Mass. Cf. G. 39; Lig. 312; I. M. 642.

4. Antonia confesses that ten times she had come late to Mass on feast days. The confessor asks whether the Gospel had already been read when she came late. She responds: three times she came before the Offertory, the Gospel already having been read, and while the Creed was ending; twice she came after the Canon had already begun, but before the Consecration, and then she heard another Mass up to the Consecration exclusively; five times, finally, she came after the Gospel had been read, but before the Creed. But, she says, she always read the whole Mass in a prayer book. Moreover, she adds that she is disturbed with scruples concerning the time preceding the last confession. For she remembers that, on a certain feast day, she came late when the Consecration had already been completed in the last Mass, but she did not remain for the rest of the sacrifice. In fact, then she did not even read the Mass in the book. She remembers also that once she heard the Mass of a certain priest of an Oriental rite. The confessor, after hearing these things, says to her: Beware lest you do this again, because grave matter was present; nor were you excused from grave sin by the fact that you read the whole Mass; indeed, this can be omitted without any fault, provided that someone assists at the sacrifice and applies his mind to the actions of the priest, or to the mysteries signified, or to God in some other way. But since each one must hear Mass in his own rite, you certainly could not hear Mass in another rite.

Q. Did the confessor judge rightly?

R. To the first. He judged rightly concerning the omission of prayers, or that no obligation exists for reciting them. "The precept, as an affirmative precept, does not oblige to any other act of divine worship except that of the Mass. And therefore the faithful are not held to other prayers besides those which are contained in the Mass and are said by the priest or the minister.... And hence, if someone on a feast day is unable to hear Mass because he is justly impeded, he is not held to recite something in place of it or to exercise some other act of religion. Similarly, if someone omits Mass, justly or unjustly, he is not held to compensate for this on the same day by prayers or the next day by another Mass, etc." Suarez, *De Religione*, tom. 1, l. 2, c. 16, n. 1, 4, 16; I. M. 640.

To the second. The confessor was somewhat too severe concerning attention. For he requires precisely internal attention, by which someone adverts and applies the mind, either to the words and actions of the priest, or to the mysteries, or to God, praying or meditating. Practically it must indeed be counseled that internal attention is required. But for hearing Mass virtual and confused internal attention suffices, namely such that someone at the beginning at least had the intention of hearing Mass, and adverts, at least in some way, to what is being done, nor of his own accord is distracted from the Mass for a notable time, while fully adverting to his distraction from hearing Mass. But the opinion which holds external attention to suffice, namely that one does not place an external action which impedes the application of the mind to the sacrifice which is celebrated, such as writing, painting, etc., is not lacking true probability. Cf. St. Alph., *H. A.*, tr. 6, n. 28; *Op. Mor.*, l. 3, n. 313; I. M. 647, 648.

To the third. The confessor again was somewhat too severe when he asserted that there was grave sin in the remaining cases. First, indeed, many theologians think that he does not sin gravely who omits

everything from the beginning up to the Gospel inclusively, even if the Creed also has been omitted. And St. Alphonsus does not think this opinion improbable, because Mass was once begun at the Offertory, according to St. Isidore, and because thus it is thought by Lugo, Palaus, Turr., Gobat, Granado, Leander, Pelliz. And Scavini says that this opinion is probable. And this same opinion, indeed, St. Alphonsus positively approves in *Op. Mor.*, l. 6, n. 313, in which he says: "Who will deny that it is probable in this matter, which depends on human estimation, which is supported by so many and such great authors?" Cf. Laymann, l. 4, tr. 7, c. 4, n. 5; La-Croix, l. 3, p. 1, n. 734.

Then, this is also a probable opinion: "He satisfies the precept who hears one Mass from one priest up to the Consecration exclusively, and another from another priest from the Consecration up to the end; because he then hears the essence of the Mass from one priest." Laymann, l. 4, tr. 7, c. 4, n. 6; Navarr., Sà, Sotus, etc., cited by La-Croix, l. c. Nevertheless, in this case, as in any case of hearing two half Masses, all admit that, because of the disorder, such a one cannot be excused at least from venial sin. And this opinion, at least extrinsically probable, is affirmed by St. Alphonsus, l. c., who says: "It is probable, at least extrinsically, that he satisfies the precept who hears two half parts of Mass, successively, from two priests, even if the first part is heard after the second part, and even if the space of an hour intervenes, according to Mazzotta." And he adds: "But if someone hears the first part from one priest up to the Consecration exclusively, and the second from another from the Consecration up to the end, then we call it most probable that he satisfies the precept." Cf. I. M., l. c.

Moreover, as St. Alphonsus, *H. A.*, l. c., n. 39, openly asserts as something to be held, since it is also probable that the essence of the sacrifice consists in the consumption, if someone comes after the Consecration of the last Mass, he is held to hear the remaining part. Fr. Gury, however, teaches the opposite; but the opinion of St. Alphonsus seems altogether probable. For then, far more probably, the essence of the sacrifice has not yet passed, and therefore there is an obligation of assisting at the essence of the Mass. Cf. *Op. Mor.*, l. c.; I. M., l. c. But if someone, coming after the Consecration of the last Mass, can still assist at a notable part, then again he is probably held to hear the remaining part. For even if someone were present at the essence of the sacrifice, but omitted a notable part, he would sin gravely. Therefore if someone can be present at a notable part, he is held to be present. A similar case is found in the recitation of the canonical hours. For, "if you cannot recite Matins and Lauds, but can recite the rest of the hours, you are held to recite them; nor can you excuse yourself because you cannot recite the whole office; for the whole is not so integral that, if one part cannot be fulfilled, the other part is to be omitted." La-Croix, l. 4, n. 1385; and cf. prop. 54, condemned by Innocent XI: "He who cannot recite Matins and Lauds, but can recite the remaining hours, is held to nothing, because the greater part draws the lesser to itself."

To the fourth. The Propaganda Fide, on 11 Dec. 1838, to the question: "To satisfy the precept of hearing Mass on Sundays and feast days, is it necessary that each one hear Mass in his own rite; or is it enough to hear any Mass whatsoever?" responded: "To the first, negatively; to the second, affirmatively." I. M., l. c.; *Collectanea*, n. 1597.

5. Augustinus has the privilege of a private Oratory, which he uses in the city, in which he usually dwells, and in the countryside, where he betakes himself each year and remains through the whole autumn. The chapel, however, in each place is nothing else than a large hall, divided by a silk cloth, one part of which is deputed for the chapel. The altar, however, is of marble, in an ample cabinet, as it were, constructed in a deep cavity of the wall like a small room, which, the

Mass having been finished, is closed by a decorated wooden door. One time, while Augustinus is dwelling in the countryside, his own feast day is celebrated; his relatives and many noble friends are invited for some days. But all hear Mass in the aforesaid Oratory on the feast day. And, since there are many of them, through the whole day that same hall is occupied by his nephews, and all sleep there at night.

Q. 1. What is a public, semi-public, private Oratory? 2. What as to the case?

R. To the first. Cf. *Enchiridion Morale*, *De Eucharistia*, n. 640; I. M. 644.

To the second. First, Augustinus can use the privilege of a private Oratory not only in the city, but also in the countryside, so long as he dwells there, provided he does not use both private Oratories at the same time. For a privilege of this sort is a personal privilege, and it is no obstacle that he dwells in the countryside only through the autumn; for it is a dwelling for a longer time, which, for that season, can also be called his usual habitation. Ferraris, *Orat. Privat.*, a. 1, n. 41; Lig. 358.

Then, as to the hall divided by a silk cloth and the altar placed in that small room, as it were, built in the cavity of the wall and closed by a wooden door, this also does not seem to disturb anything. "It is not necessary," says St. Alphonsus, "that the Oratory be so separated from other places that it be enclosed by four walls with a door; but it suffices if there are three walls and a fourth, as it were, of tapestry or cloth, or some other similar thing, so that it can be opened and closed." L. 6, n. 359. St. Alphonsus indeed says again, n. 360, ibid.: "Fr. Fortunatus Brixia thinks it is not enough that the altar be placed within an ample cabinet existing in a cavity of the wall, furnished on the lateral parts and able to be closed after Mass." And in fact, without doubt it is far more fitting that the altar be placed within a fixed place, whether with four walls or three, and in some separate room. But St. Alphonsus adds, ibid.: "I know that several Oratories of this sort exist in the city of Naples, and have been approved by the Archbishop. For Oratories of this sort do not seem to be forbidden by the indult; indeed, the aforesaid lateral tablets sufficiently stand in the place of walls." But, to establish this more firmly, St. Alphonsus observes, "as F. Fortunatus also says, it is necessary that the wooden altar not be movable, but fixed to the wall, according to the decree of the Sacred Congregation of Rites, 3 Dec. 1661, and not have the appearance of a portable altar." But the Oratory of Augustinus is not really in an ample cabinet, constructed in a cavity of the wall, but in a deep cavity of the wall as in a small room constructed there with four walls.

Then, as to the occupation of the hall, and to the fact that at night the nephews and guests sleep there, no difficulty can arise either; because that is done rarely, namely once a year, on the feast day of Augustinus, and because of the necessity arising from the presence of many relatives and friends. "For in a case of necessity," says St. Alphonsus, "even churches can be used for eating, sleeping, holding assemblies, etc.; ... all the more, therefore, the Oratory, which is deputed to sacred use only by transitory deputation." L. 3, n. 460. Indeed, La-Croix thinks that "even if necessity does not excuse, this nevertheless does not exceed venial sin. For doctors say that, even in a consecrated church, the use of a profane use is not a mortal sin, unless it is used constantly and by habit as a profane place." L. 6, p. 2, n. 257. But in the case the hall itself properly is not the Oratory, since it is before the Oratory, which is constructed in the cavity of the wall and separated from the hall by the wooden door.

Finally, the relatives of Augustinus and noble friends, hearing Mass in that Oratory, satisfied the precept. For Augustinus was using his right. Moreover, by force of the indult, noble guests can be admitted, even "guests coming for only one day, and those invited to dinner, so that they participate in the privilege, provided that the privileged person is present." Lig., l. c., 361.

53. On Abstinence from Servile Works

Tullius, a preacher, about to hold a conference concerning the observance of feast days, says that, in order to discern servile works from non-servile, one must chiefly attend to these things: whether a work is done gratuitously or for pay; whether it is ordered to gain or for the sake of recreation; whether, finally, it brings with it great or light bodily fatigue. Hence he infers that a work cannot be considered servile if, for example, it is done with no hope of gain and by way of recreation, or so that idleness may be avoided, or if it can be exercised with light bodily fatigue: such as knitting stockings by hand, making rosaries and scapulars, painting images with a needle, setting type, photography, and other such things.

Q. What as to these things?

R. To the first. Cf. I. M. 652 seqq.

To the second. 1. A servile work is that which is exercised directly and immediately through the powers of the body, and by its intrinsic nature tends directly and immediately to the utility of the body, and which is usually done by servants. Wherefore the criterion of a servile work is partly intrinsic, namely from the nature of the work itself; and partly extrinsic, namely from common custom and from the common estimation of men. It is false, therefore, that one must chiefly attend to gratuity, intention, and bodily fatigue. For gratuity, and intention or end, since they are merely extrinsic circumstances, do not change the intrinsic nature of the work. Bodily fatigue, moreover, is also had both in liberal works and in common works. Therefore the work of plowing another's field, even gratis and only from charity, is certainly a servile work. But to play the organ, to dance, to walk, is not a servile work, even if this is done for a long time and with much fatigue. Nor, again, is transcription, though long and laborious, a servile work, even if it is done for gain. Therefore Tullius errs in the criterion assigned.

2. To knit stockings by hand, considered in itself, is a servile work, and such also by the common estimation of men. But the light fatigue can make it licit for a longer time, from a just cause; yet it does not make it simply licit.

3. To make rosaries and scapulars is also a servile work, if considered in itself, and there is little matter whether rosaries and scapulars are made, or chains for watches and handkerchiefs; for the distinction is material. Yet an extrinsic element can enter which excuses, namely piety, or which altogether permits, namely legitimate custom, as happens in certain places, provided that these things are done merely to foster piety; for then, by common opinion and estimation, such work is regarded as a work of piety proper to nuns or to other pious persons, and not as servile work. A case, for example, would be if, during the sacred time of a mission, such things had to be distributed to the faithful.

4. To paint images with a needle cannot be regarded as servile work. For this does not agree with the definition given, and it is chiefly a work of ingenuity, which is also exercised by noble women.

5. The composition of type is not in itself a servile work. For it is equivalent to writing, and is exercised chiefly through the powers of the mind. And although, indeed, an illiterate person can materially arrange the letters, nevertheless he can never in this way form coherent words and sentences. Yet if it is done in a public workshop, then it is servile by the common estimation of men and by custom; because the faithful abhor that apparatus and manner of mercenary and artisan work. Hence all condemn typographers working on feast days.

6. Finally, photography is not servile work. For it is a work of ingenuity and science, and by professors of the natural sciences it is reckoned among the works by which natural science is advanced. Besides, it is equivalent to painting, which pertains to the liberal arts, and it is exercised by nobles themselves. And finally, neither by common opinion and estimation, nor by custom, has it been prohibited on feast days. At most it could be regarded as servile work if it were done with base apparatus and in a gross manner. Cf. Scav., 12th ed., Milan, 1784, l. 2, n. 260.

On the Fourth Precept of the Decalogue

54. On the Obligations of Children

1. Aloisius, a young man of noble family and honest morals, desires to enter some strict religious Order, so that more securely he may render his own salvation secure. His father resists the religious vocation of Sempronius [i.e., Aloisius], because, after secretly squandering a great quantity of the goods of the family, he places hope in Aloisius that, by his talent and industry, he may restore the domestic wealth. Aloisius has also a brother already joined in marriage, who, in a short time, on account of his vicious life, consumed his share of the family goods, so that from now on, for himself and his family, there remains scarcely what is necessary for an honorable sustenance. Nevertheless Aloisius, his father being unwilling, enters Religion; and when he has professed, in order to attend more perfectly to Christian perfection and to theological studies, he breaks off all communication with his family, not even sending or receiving letters. Nevertheless he daily prays much and fervently to God for his family, especially for his father and for his brother, whom he knows to be declining from the path of virtue; and, while these are converted to God with a sincere heart, although they afterward fell into graver temporal necessity, and each of them dies most holily, he receives supreme consolation from the news, brought to him by the Superiors themselves, and gladly celebrates many Masses for them.

Q. What are the obligations of children toward parents? What as to the case?

R. To the first. Cf. I. M. 665, 666. To the second. Aloisius used his right when he entered Religion. For each one is free in the choice of state, as already often said. Moreover, Aloisius is worthy of praise, since for rendering his salvation more secure, he wished to enter Religion and take up the evangelical counsels. Again, he is worthy of praise, since he wished to enter a Religion of stricter observance, in which he could more easily and surely render his salvation secure.

But Aloisius is not held to obey his father and remain in the world, so that, by his own talent and industry, he may restore the domestic wealth squandered by the fault of the father. First, indeed, the whole thing is uncertain. Then, the opulence and honor of the family are of an order far inferior to his own spiritual and eternal salvation, to which, because of this, he most greatly provides by embracing the evangelical counsels. Besides, the good of the family is not necessary to the sustenance of life. "If parents cannot be sustained without the service of children, then children are not permitted, with the parents having been deserted, to enter Religion. But if they can be sustained in some way without the service of the children, not honorably, then because of this the children are not held to leave aside the works of perfection. For it is one thing to provide that someone may in some way live; and another, that he may live honorably. But he who is in the world is held to provide his parents that they may live honorably, if he can; but he who has already entered Religion is reputed dead to the world. And therefore, according to the mode pertaining to him, he is not held to provide that his parents live honorably, but only that they live in some way." St. Thomas, *Quodlibet* 10, a. 10.

Much less is Aloisius held to abstain from entering Religion so that he may increase the wealth of his brother's family, or so that he may sustain him honorably, since he has been reduced to grave want by his own vices and fault.

Aloisius, after entering Religion and then professing, conducts himself praiseworthily, when he gives himself more perfectly to Christian perfection and to theological studies. For "the religious state can be considered in three ways: first, insofar as it is an exercise tending to the perfection of charity; secondly, insofar as it quiets the human mind from exterior cares, according to 1 Cor. 7:32: I will that you be without solicitude; thirdly, insofar as it is a certain holocaust, by which someone offers himself and his goods totally to God. And according to this, Religion pertains to perfection not only of charity, but also of religion." St. Thomas, 2. 2, q. 186, a. 1. "Properly, therefore, religious are called those who totally bind and, as it were, hand themselves over to divine service, offering, as it were, a holocaust to God." Ibid. a. 1. But the state of Religion "was principally instituted for acquiring perfection by certain exercises, through which the impediments of perfect charity are taken away." Ibid., a. 2.

Finally, that Aloisius wishes no communication thereafter with his family, even by letters, is also, speaking of itself, a thing worthy of praise; for we read this of several saints, among whom St. Ignatius Loyola, who only once, if I remember well, wrote to his brother from the time of his conversion. And speaking of itself, this difficulty of communication seems also to have been present for Aloisius.

But parents, after the entrance of Aloisius into Religion and after his profession, fell into rather grave need. Aloisius indeed cannot be obligated on account of this to leave Religion, as is clear from the words of St. Thomas just cited. But he does not seem able entirely to neglect the grave need of his parents. "He who has already professed in Religion is regarded as though dead to the world. Hence he must not, on the occasion of sustaining his parents, leave the cloister in which he is buried with Christ, and implicate himself again in secular business. Nevertheless, with obedience to the prelate and the state of Religion being preserved, he is held to apply a pious effort, so far as he can, as to how his parents may be helped." St. Thomas, 2. 2, q. 101, a. 4, ad 4. "When someone sees his parents to be in necessity and he does not have the care of them, before he enters Religion he is held to minister to them and must not leave them if they cannot be sustained without him. But if after he has entered Religion and made profession, his parents have been reduced to poverty, he ought, so far as possible, with obedience to his prelate preserved, to strive, either through himself, if this belongs to him, or through another, as he can, that assistance be given to his parents." *Quodlibet* 3, a. 16.

Finally, Aloisius is also to be praised, since he daily prays much and fervently for his family, especially for his father and his brother, whom he knew to be declining from the path of virtue. He receives supreme consolation worthily, because of the news of their conversion and of their most holy death. Finally, he praiseworthily celebrates many Masses for them. For the care of children for parents, especially in grave spiritual necessity of parents, certainly pertains to that love which they owe them. Hence St. Alphonsus, l. 4, n. 333, says: "Children sin gravely if they neglect prayers and sacrifices for their parents." And again: "Children sin gravely, if they do not take care that their parents, in the article of death, receive penance and the other sacraments."

2. Alphonsus, being twenty-one years old, by the counsel of his confessor hears Mass daily in a nearby church, and each week frequents a Congregation of the Blessed Virgin Mary, where he also confesses and communicates. Moreover, he earnestly applies himself to the study of canon and civil law, and indeed, by natural inclination, he desires the profession of an advocate. His father, otherwise Catholic, displeased at these things, forbids his son to continue in this course; for he fears lest these spiritual exercises harm his health. Therefore he wants him to abstain from daily Mass and to hear Mass only on Sundays and feast days; and to approach the sacred table at most once a month, since because of Eucharistic Communion he must often be fasting up to the tenth hour. He wishes besides that his son embrace the medical profession; for he himself is a notable physician and has many clients. Therefore Alphonsus refers the thing to his confessor, who responds that he must be patient and obey his father, because a son is bound to obey his father in all things.

Q. Can Alphonsus continue his pious exercises and embrace the profession of advocate? What as to the response of the confessor?

R. To the first, affirmatively. For these things, in the case, do not pertain to the right governance of the house and to the education of the son, but to the spiritual exercises of Alphonsus, the direction of which belongs to the confessor, not to the father. Besides, in the case, the father's fear concerning the son's health is excessive and unfounded. And finally, the choice of profession belongs to the son himself, according to each one's talents and inclination. The father can indeed direct his son by counsel and help him, but not command him in this matter, if the son wishes to embrace a fitting profession. For the rest, Alphonsus must take care that he does not fail in reverence toward his father, and not resist openly, but sweetly persuade him to allow himself to be directed by the confessor.

To the second. The confessor erred in responding that a son must obey his parents in all things. For obedience is owed to a superior or to a prelate according to the mode and order of the superiority or prelacy. Hence, just as secular subjects are not held to obey ecclesiastical superiors, nor vice versa, except perhaps in those things in which the one power depends on the other; so subjects are held to obey their own prelates only in those things concerning which they have been appointed over them. But just as man is created by God, and is subject to God's governance, so also the son is naturally generated by the father; and, in the beginning, indeed, according to body and soul, and then, in the course of time, according to the soul by discipline and education. And therefore the father, in the first place, has right over his children as to domestic intercourse. "The carnal father is partaking particularly of the nature of principle, which is universally found in God. But the father is the principle both of generation and education and discipline, and of all things which pertain to the perfection of human life." St. Thomas, 2. 2, q. 102, a. 1. Hence the carnal father has the right over his children in domestic intercourse, as also the king in the kingdom, etc. And consequently sons and servants are held to obey the father of the family in those things which pertain to the governance of the house. But secondly, he has right as to the moral discipline and education of his son; wherefore the Apostle says, Heb. 12:9: We had the fathers of our flesh as instructors, and we reverenced them. For the father is held to educate and instruct children. In these therefore the son is held to obey the carnal father, and not in others. Cf. St. Thomas, *Quodlibet* 2, a. 9; 2. 2, q. 104, a. 5.

3. Virginia, an exceedingly modest and laborious girl, works diligently in her father's shop. But her brothers spend much money in games and drinking parties; her parents, moreover, imprudent and lacking counsel, spend at present everything which they receive, having no care for the future. Virginia therefore, seeing the future needs of her parents and brothers, and wishing to provide both for herself and for her brothers and her parents in case of sickness, of death, or of another rather grave necessity, secretly takes money aside, and by her own industry already has several thousand lire. But afterward, becoming anxious, she refers the whole matter to the confessor.

Q. What dominion do children in the family have over goods? What is to be answered to Virginia?

R. To the first. Cf. I. M. 666 seqq. To the second. Insofar as Virginia takes money aside, not for herself, but for the whole family, and especially for the needs of her parents, she is safe in conscience, and indeed worthy of praise. The reason is that, since she retains nothing for herself, but spends the whole for the utility of the family and especially of her parents, she injures no one and procures good for all. And indeed, if a wife does not sin by taking something for food, clothing, and other necessities of the family, which husbands often do not care for, and would be sought from them in vain; if a wife, seeing her husband dissipate the goods of the family to the detriment of the family, can hide them and reserve them for the good of the family, as the doctrine of theologians holds, why will not the same thing be possible for a daughter of the family, the mother being dead, for example, or if the mother herself also associated herself with the husband in dissipating all the goods of the family? Cf. G. 824. 2°, *Comp*. 554.

But insofar as Virginia sets aside money also for herself, so that she may provide for herself for the future time, her parents being dead, she does not seem to be disturbed, although the matter presents greater difficulty. For if a wife, who brought a very small dowry, can secretly and gradually subtract money from a rich and avaricious husband in order to support a very poor and miserable mother, although she knows that the husband would bear this most unwillingly if he knew it; if a wife can do the same in order decently to clothe a son whom she has from a prior marriage, to whom the husband, besides necessary food, scarcely wishes to concede anything else; if finally the same is also permitted to a wife in order to provide for herself for the future, lest she lack the things necessary for preserving the decency of her state, as the opinion of theologians also holds, the same certainly seems able to be conceded to a daughter of the family. Cf. Gury, *Cas.*, v. 1, n. 560, 561. And the reason is at hand: for therefore such an indulgence must be granted to such a miserable wife, if she helps her needy mother or a son born from a first marriage, because the husband cannot reasonably be unwilling in that matter. But therefore the same must be granted to her, if she also provides for herself for the future, seeing that her husband is much older, infirm, and knowing certainly that he will give nothing to her, because a husband must provide for a wife in these circumstances. Now each of these reasons, which militates for the wife, seems also to hold for a daughter of the family constituted in the same straits. Let Virginia therefore take care lest she be led by blind passion; but if the matter is certainly established, she does not seem to be held to restitution, provided that she does not exceed what is reasonably necessary for herself. And especially unhappy Virginia merits indulgence, if, while she sets aside for herself only what is necessary, she uses labor altogether not owed. For something is owed to her extraordinary industry itself; and the industrial fruit is owed to him who uses the industry.

Fr. Gury holds the contrary opinion, *Cas. Consc.*, v. 1, n. 503, who consequently, while in the place cited above he judges that a wife constituted in a similar case must be indulged, nevertheless thinks that a daughter of the family cannot of herself be excused from mortal sin. But the reason which Fr. Gury brings is, "because she committed theft in grave matter against parents reasonably unwilling." But this is precisely what can be denied in our case: namely, that the parents are reasonably unwilling. For if, in a similar case, the husband is not reasonably unwilling toward the wife, why would the parents be reasonably unwilling toward the daughter? - But Fr. Gury objects to himself, l. c., n. 504: "According to several very grave authors, children of the family in a similar case merit at least the wage owed to a servant." He himself responds: "that doctrine is full of dangers and not easily to be tolerated in practice." But that same doctrine the same Fr. Gury, in *Comp.*, v. 1, n. 547, affirms "appears sufficiently probable," and for that very reason just brought forward, "because a son is not of worse condition than a servant." He indeed carefully notes at once in the same *Comp.*, l. c., "that in practice one must not depart from the negative opinion." But, as Fr. Ballerini well observes, "since otherwise he admits that the opposite is probable, he is not to be understood as if an obligation ought, or even could, be imposed on anyone; for a confessor is not a legislator, nor does he have the power of imposing or enjoining a certain obligation when this is uncertain; and it is certainly uncertain when it is probable that it does not exist. Therefore this author only intimates this: that that practice should be prudently advised; prudently, I say, lest, while he fears hallucinations in the penitent, he himself hallucinate more gravely, and thus deprive the penitent of a utility not unjust."

The question therefore is one of prudence, not of liceity. Nor indeed does it avail to object against the argument brought from that case of the wife, that parity is not present; since the goods which she subtracts, as common to herself and her husband, are not only the husband's, but also her own. For Fr. Gury, l. c., openly holds the contrary; for he says that such a wife must be indulged, "if the husband were much older, infirm, and if it were established that he would give nothing to his needy wife, because a husband must provide for a wife in these circumstances." Therefore those goods which the wife subtracts are the husband's goods, not her own. And this is confirmed; for immediately proceeding, Fr. Gury adds these words: "A fortiori a wife would not be condemned who, while her husband was dissipating the substance of the family, would withdraw money and preserve it for the children, or even for herself, if she had goods in common with her husband." Therefore in no way was it a question of common goods.

Finally, since the same Fr. Gury in the two immediately preceding cases, 449, 502, is so easy with a son of the family, it does not appear why he is so difficult in the following case for a daughter of the family. For in the first of those cases, the question is about a son who, after the death of his father, remains with two sisters in the paternal house and alone carries on the father's trade with notable profit; and Fr. Gury says: "Leopoldus, who contributed not only an equal part of the money, but also himself alone the whole labor and industry, ought to obtain the greater part of the profit mentioned. For although the civil law does not except a case of this sort, nevertheless some place seems to be given to epikeia, at least in proportion to the extraordinary and undue labor, according to the judgment of an upright and skilled man. But if he has a certain and evident right to some compensation, strictly speaking, he could make it secretly, if in another way he cannot recover that to which he has a right." Let Leopoldus be removed, let Virginia be put in his place, and certainly the same conclusion remains. But in the other case the question is about a son of the family who trades with his father's money and receives profit from it, and Fr. Gury says: "Nor is Marius held to restore

the profit which he acquired by private trade, because it is to be attributed to his extraordinary industry; but the industrial fruit is owed to him who applied the industry." Let it be said not Marius, but Virginia, and here also the same conclusion remains. For that Virginia exercises that extraordinary industry not, as Marius, outside the paternal house, the father unaware, but in the paternal house with the parents present, this certainly does not change the nature and dominion of the fruit of this industry. For a thing always and everywhere fructifies for its owner. But the difficulty would be still less for Virginia if, as can be sufficiently gathered from the case itself, she is no longer a minor, but of age; and there would be no difficulty at all if she were separated in goods from her father and from the family; if she labored not in the name of the father, or in the name of the family, nor by the aid of common money, but in her own name and with her own money, from Virginia's saved frugality, for example, which sufficiently appears in Virginia from the case. For the fruit of frugality from those things which are altogether owed to her in the family, as to a brother, is entirely her own.

55. On the Obligations of Parents

1. Melania, a widow, has two sons; one she loves greatly, but the other she can scarcely bear to see, for she herself did not nurse him. Although this one is of a good disposition and of no common talent, the mother experiences toward him a natural antipathy, which, as she says, she cannot overcome. Hence it is that she constantly reproves him with words and afflicts him with insults and even beatings. But the other son, whom she had nursed, although he is of a depraved disposition and of rather mediocre talent, she heaps with every blandishment. She continually bestows hand-gifts upon him, gives him precious objects, notable sums of money, and also a certain small villa, bought by her, which she pretends was given to him by an uncle. Indeed, in her testament she assigns to this one the whole remaining disposable part.

Q. 1. What are the obligations of parents toward children? 2. Has Melania sinned in the case?

R. To the first. Cf. I. M. 671 seqq. To the second. 1. It cannot be doubtful that Melania, by that manner of acting, sins, and sins gravely against piety. For in the correction and chastisement of her son she gravely exceeds moderation, and in these things she is led by no honorable motive of good toward the son, but by a natural and disordered passion; and this perhaps she cannot overcome insofar as she cannot extinguish it in herself; but she certainly can overcome it insofar as she does not act according to it, but according to right reason. So pertinacious a manner of acting on Melania's part can at length inflict grave harm on her son. "You fathers," says the Apostle, "do not provoke your sons to anger." Eph. 6:4. Immoderate chastisement harms children much. It renders them morose, dull, pusillanimous, and sometimes affected with despair. In place of the love owed to parents, it is accustomed to produce contempt and hatred. Reuter, *Neoconfessar.*, p. 2, 6, 4, q. 3, n. 9; Gur., *Comp.* 375.

2. In those gifts which Melania lavishly bestows in every way upon her other son, she also sins gravely against charity; for she is led by aversion of mind against her other son, to whom, by such excessive gifts, she causes evil. But from this acceptance of persons, with the lapse of time, grave dissension and discord can also arise between the two brothers. Does she also sin gravely against legal and commutative justice? It seems it must be denied.

For through various acts between the living and through the testament she gives and bequeaths to her favorite son only the disposable part. Wherefore, if the legitime of the other son remains untouched, Melania seems to be exempt from grave sin against justice. But it would be otherwise if she harmed this legitimate part, and then the other son, after he had already received it, would be held to restitution, but not before the sentence of a judge. "But it must be noted," says St. Alphonsus, l. 3, n. 740, "that the donee is held to restore nothing to the children before the sentence of a judge." I. M. 673; G. 822-824.

2. Titius first contracted an ecclesiastical marriage only with Bertha, from whom he begot children. Then, having left his family, he entered civil nuptials with Caia, from whom he begot other children. Being near death, he made a testament, and in it, with not even a word having been made about Bertha and her children, he assigned the whole inheritance to Caia and her children. To what are these heirs held in conscience?

3. Caius, with children received from a merely ecclesiastical marriage, dies intestate; and thus the inheritance civilly devolves to his collaterals. What of these in conscience?

4. Seia, when she could not, after an ecclesiastical marriage contracted with Titius, induce him to complete the civil act, steals something from his goods, so that she may compensate herself for the legal part which, at his death, she will not be able to obtain. Can she justly conduct herself thus in conscience?

Q. What must be responded to the various cases?

R. As regards the civil law, these things must be noted in advance:

1. Civil laws, definitive of right and translative of dominion of property, oblige in conscience. Of this sort, moreover, are the laws which define the legitime of necessary heirs and the legitimate succession of legitimate heirs.

2. Laws are to be interpreted in a fitting way, if this is possible, and are not to be drawn to an iniquitous and unjust disposition, if this is not necessary. Now the law of civil marriage, if it is understood of a true marriage to be entered, where the Council of Trent has been promulgated, is iniquitous and unjust, and then must not be attended to. For no legitimate right can flow from a law which is contrary to natural and divine right, and which is not from the use of legitimate authority but from its abuse. But this interpretation is not necessary. For it can be understood only of a certain exterior form, so that there may be certainty concerning true marriage in order to its civil effects, which depend only on true marriage, from the very fact that they are the civil effects of marriage; and by no means on that legal form, which is only for the proof of true marriage. Besides this common and extrinsic reason, there is also a proper and intrinsic reason for this interpretation. For first, that law concerning civil marriage has its foundation in the power which the civil authority has of ruling the civil effects of marriage. Therefore, if an effect supposes its cause, that law cannot be understood except of true marriage, that is, of the mere civil declaration or proof of true marriage. Moreover, the law itself distinguishes between marriage, concubinage, and adultery; and, what is more, between valid and null marriage. Therefore again it must be understood only of true marriage, that is, of

the proof and declaration of true marriage. - Moreover, some civil laws have been approved by the Church and oblige, others have been reprobated by the Church and do not oblige, others have neither been approved nor reprobated, which in particular are to be examined in order to define the force and nature of the obligation. Now the law of civil marriage, if again it is understood of true marriage to be entered, has been reprobated several times by the Church. But if it is understood only of the legal form and civil proof of marriage, thus that law has never been reprobated; indeed, it has been positively approved. Nor indeed is that law approved in another sense, except insofar as the civil authority can dispose concerning the civil effects of marriage, namely true marriage. Cf. the letter of Leo XIII, *Il Divisamento*, 8 Feb. 1893, to the Cardinal Bishop of Verona and to the Episcopate of Venice, concerning the schema of the law on the precedence of civil formalities with respect to religious marriage.

3. It is worthwhile to report certain words of the praised letter, which bear most upon the matter: "It is not inappropriate to declare once more that the civil power may indeed dispose of the civil effects OF MARRIAGE, but let it leave to the Church what regards marriage in itself; LET IT ADMIT THE FACT OF TRUE AND LEGITIMATE MARRIAGE, as it was instituted by Jesus Christ and practiced by the Church, AND FROM THERE TAKE ITS MOVES to grant or deny the effects which follow from it in civil society." Lower down the Supreme Pontiff reprobates the civil law in this same matter, which indeed could not bring it about that a marriage legitimately contracted be null, "because it is a matter of natural and divine right, against which there is no power in the world that can prevail; but it would put into operation all means to make it be considered as null, to impede its duties, AND TO FRUSTRATE THE EFFECTS WHICH LEGITIMATELY FOLLOW FROM IT." And afterward the Supreme Pontiff asserts that civil effects of this sort pertain solely to the civil State, and that sufficient provision had been made by the State regarding them, even beyond measure, through civil marriage, without the precedence also of the same marriage being imposed.

4. The same observation must be made as regards the civil law constituting the legitime, in testamentary disposition, and legitimate succession, in legitimate disposition, in favor of the spouse and legitimate children. Cf. C. I. 721. This law is pious and just, and it must be understood piously and justly only of a true spouse and of children born from true marriage, who truly and uniquely are, and are called, legitimate. But impiously and unjustly it would be understood of an adulterous concubine and adulterine children, whom the law itself punishes and excludes from any succession. Nor indeed would the same law be fittingly and honestly understood of a merely fornicating concubine and fornicating children; nor would that law be understood coherently in this way, since the law itself distinguishes between merely natural children, born outside marriage, and legitimate children, born from marriage. Moreover, the law here disposes in reality concerning the civil effects of marriage. Therefore it presupposes true marriage, and accordingly treats of truly legitimate children and a true spouse. Cf. tit. *Qui filii sint legitimi*.

As regards the natural law: 1. No right belongs to collaterals and ascendants from natural law and from strict justice; but only from civil law, founded on charity and piety. Wherefore, with the assistance of civil law and legitimate succession failing, and with testamentary disposition also failing

for them, ascendants and collaterals cannot exclude from testamentary succession the spouse and children, whether only civil marriage was present, or whether only ecclesiastical marriage was present. For these legitimately succeed in either case, as at least voluntary heirs, if testamentary disposition was present for them. But if testamentary disposition failed and only civil marriage was present, they also legitimately succeed, as voluntarily called to the inheritance by the testator himself, who, entering civil marriage and dying intestate, is now considered to bestow rights upon the wife and children from the civil marriage, according to the very laws to which he remits himself. If again testamentary disposition failed, and also civil marriage, but only canonical marriage was present, then from natural law ascendants and collaterals have no right to succession, nor do they have any right to succession from civil law, since a truly legitimate spouse is present, and truly legitimate children are present; to whom, in the case, the civil law itself gives assistance.

2. The spouse and children, as many think, have no strict right from natural law and from justice to succession, but only from civil law, founded on equity and piety. Others, on the contrary, hold that the spouse and children have a right to succession from the natural law itself. But those who opine thus in reality fall back into the prior opinion. For they must finally necessarily agree in this: that a right of this sort is not a right in the thing, but to the thing; it is in no way a right from strict justice, but one arisen only from piety and founded in piety, to which natural equity consequently accedes. But this right certainly is neither to the whole inheritance nor to this principal part of the inheritance, but only to some goods, namely to food and due provision, if they need these things. Wherefore, with the assistance of civil law failing, they could claim nothing else, even from natural right. But the civil law admits the spouse and children to legitimate succession, and establishes the legitime for children, but not always for the spouse. Nevertheless the Italian Code also assigns a legitime to the spouse.

Hence to the first case it is answered: Bertha and her children have a right to the whole inheritance, by force of legitimate succession, according to the civil law. For the testament in favor of Caia the adulteress and the adulterine children, with the legitimate wife and legitimate children having been passed over, is of no force with respect to the adulterine children, declared incapable by the law itself, and to whom only food is owed, C. I. 767. But with respect to Caia the adulteress, no more can be owed to her by force of the testamentary disposition than if she were the legitimate spouse of Titius; this cannot exceed, in the case, the portion of one of the children, within the limits, nevertheless, of the disposable part, C. I. 770; CC. 10, 13, *Qui fil. sint legit.*

To the second. The collaterals of Caius have no right to the inheritance of Caius, neither by force of testamentary disposition, which did not take place, nor by force of legitimate disposition, since, when legitimate children, or legitimate children and a legitimate spouse, are present, as in the case, collaterals are excluded.

To the third. Seia, in the case, from what has been said does not seem to be disturbed. - D'Annib., 3rd ed., p. 2, n. 342, notes 22, 23; Gennari, *Consult.* etc., cons. 24, 27; Scav., l. 4, n. 560, cas. 6.

5. Aristides, married and having legitimate children, committed adultery with Vincentia, from whom he had a son and a daughter. The matter is hidden and remains so; for Vincentia died before the adulterine children arrived at the use of reason. But Aristides provided for the sustenance and right education of his children, as of orphans altogether foreign to himself,

placing the son in a certain college of religious, and the daughter in a house of nuns. Hence the son, now having become older, is initiated into sacred orders, and Aristides establishes a patrimony for him; but the daughter contracts nuptials, and he establishes a fitting dowry for her. But Aristides makes a testament and leaves the disposable part to each, son and daughter, while pretending a work of charity toward abandoned orphans, whom he also commends to his testamentary executor.

Q. 1. Do adulterine children succeed to their parents? 2. Has Aristides acted rightly?

R. To the first. Cf. I. M. 663, 1038, 1039, 1045. To the second. Aristides acted rightly indeed in providing for the sustenance of his adulterine children. For it is of the law of nature that children be nourished by parents, although they are illegitimate, because they are always children. If, generation being considered, all are children in the same way, it follows that, if parents, because they are the principle of generation, the cause and authors of children, owe food from the law of nature to legitimate children, by the same right likewise and by the same reason they must provide the same things to any illegitimates whatsoever, with respect to whom they have the same character of principle and the conjunction of blood. Hence the contrary disposition of Roman law, Auth. *Ex complexu*, C. *de Incest. et inutil. nupt.*, Auth. *Quibus modis naturales efficiuntur sui*, cap. fin., was corrected by Canon Law, C. *Cum haberet de Eo qui duxit in matrimonium* etc., C. *Per venerabilem Qui filii sint legitimi*. But by more recent civil law, food is positively conceded to adulterine children of this sort. C. I. 767; C. G. 762; C. H. 845; C. A. 166.

Aristides also acted rightly in providing for the right education of his children, and that so prudently and secretly that no dissension and no scandal would arise in his family. For this also is required by natural law itself, and is confirmed by civil law also, since food granted by civil law extends also to fitting instruction, according to the condition of the person. C. I. 138, 143, 846; C. G. 203, 308, 762-664; C. H. 143; C. A. 166.

Nor indeed does Aristides seem to be disturbed when he establishes for the son a patrimony and for the daughter a fitting dowry, by no means excessive or inofficious. For in C. *Cum haberet de Eo qui duxit in matrim.* etc., it is said that necessities must be furnished to children of this sort according as means suffice. But among necessities, in the case, a patrimony is counted for the son, and a dowry for the daughter; for a son lacking a patrimony perhaps will not be able to ascend to sacred orders, nor will a daughter lacking a dowry be able to marry, and by not marrying perhaps she would live shamefully. C. I. 143; C. G. 208; C. H. 143, 146; C. A. 166.

But Aristides does not act rightly in also instituting his two adulterine children as heirs, to the grave damage of the legitimate children, from whom for this reason the whole disposable part is subtracted. Adulterine children by law are incapable of succession, whether legitimate or testamentary; likewise they are incapable of donation. Hence, if the son and daughter knew their condition, they would be held to restitution. L. *Si quis incesti*, C. *de incest. nupt.*; L. 1, C. *de Naturalib. liber.*; C. I. 752, 767, 1053, 1055; C. G. 762, 908, 911; C. H. 139, 625, 628, 845; I. M. 1039, 1045; G. 868.

6. Iacobus, a priest, a beneficiary, since he had had a son from a certain unmarried woman, instituted this son and his wife as heirs of all his patrimonial goods and of the goods which he was able to collect from the fruits of the benefice through several years. He thinks that he can

do this with a safe conscience, since the law speaks only of adulterine and incestuous children, and excludes only these, besides food, from all succession. C. I. 180, 767. Besides, he says, the civil law certainly cannot touch at least ecclesiastical revenues; and he left these directly to his son; for the patrimonial goods he left to his son's wife, whom, since she is in no way his daughter, he judges in no way able to be repelled from the inheritance. Has Iacobus acted rightly?

Iacobus has not acted rightly. The disposition in favor of the sacrilegious son is invalid, and likewise the disposition in favor of the wife of the same son, as an interposed person, is also invalid. This is established from the Constitution of St. Pius V, *Quae ordini*, by which all faculties of testating and disposing concerning ecclesiastical goods, and also, as regards clerics, concerning patrimonial goods in favor of any illegitimates whatsoever, the incapable and incapacitated, are revoked. These things are contained in § 4: "Henceforth, however, we more strictly prohibit that such things be done either for the aforesaid illegitimates of either sex, or for their spouses, or for their parents, children, descendants, ascendants, or other relatives, whether the illegitimates are dead or living, even with a view to poverty, dowry, or any other pious work whatsoever; nor shall they ever succeed in the aforesaid things, goods, monies, rights, jurisdictions, and actions, whether wholly or in part, or have them come to them, although supported by dispensation, even through the aforesaid circuit; nor shall any concession, donation, transfer, or other disposition be made concerning these to another or others, so that other goods, similar or dissimilar, may be conceded to illegitimates or to others above-mentioned."

And these things can in no way licitly and validly be done, since St. Pius V, ibid., § 2, decreed that illegitimates in no way can "either immediately, or through interposed persons, and in whatever manner, succeed in the goods of an ecclesiastical father, or have those goods otherwise come to them, even through any circuit of multiplied successions to others who are capable." And ibid., § 5: "But if anyone of the aforesaid should be a violator of the present letters, the testament, donation, legacy, and disposition shall altogether not hold, nor shall it be valid even with respect to others capable and other things," etc. Sanch., *Cons.*, l. 4, c. 3, d. 20; Roncaglia, *Consil.*, cons. 28.

56. On the Obligations of Spouses

1. Philemon, married, thinks to undertake a pilgrimage to Rome and Jerusalem. He manifests his desire to his wife Anna, who openly asserts that she is altogether unwilling. Hence Philemon asks his confessor whether, notwithstanding the manifest dissent of his wife, he can depart.

Q. 1. What are the obligations of spouses? 2. What must be responded by the confessor?

R. To the first. Cf. I. M. 674, 675; V. 2, n. 1051, 1052. To the second. The confessor ought to respond that he cannot depart. For there is a grave obligation of the consortium of an undivided life; nor does the reason, in the case, of mere devotion excuse him from such an obligation. Nor indeed is the wife held, in this case, to follow the husband, since this is altogether grave for a woman. Hence it is that a wife can also annul a vow emitted by the husband of a long pilgrimage, since this vow gravely prejudices her. Lig. 235. For indeed those things which are of necessity are not to be passed over on account of those things which are of one's own will. Hence also the Lord, Matt. 15:13 seqq., rebuked

the Pharisees, who taught that the commandment concerning the honoring of parents should be passed over, so that some voluntary offerings might be offered to God. But from necessity it is incumbent on a man that he have care for his wife and cohabit with her. But that he undertake a pious pilgrimage is subject to his own will. But if it is of necessity of the Church that the man undertake such a pilgrimage, then the wife is held to consent to it. St. Thomas, *Quodlibet* 4, a. 11; S. q. 64, a. 6, ad 1.

2. Polydorus, managing the family estate badly, seeks borrowed money so that he can continue the trade which he exercises. Aurelius, his friend, indeed gladly gives it to Polydorus; but he requires that his wife Apollonia also sign the debt. Apollonia, fearing lest the matter turn out badly, altogether refuses, but, pressed by the entreaties of Polydorus, signs the debt. A little afterward Polydorus dies, burdened by debt. Aurelius demands payment of the debt from Apollonia out of her dotal goods. Since it is a question of an immense sum of money, the whole family is exposed to most grave misery. Apollonia consults Philetus the advocate, who immediately says that she is held to nothing, according to the law, since her private signature is not admitted by law, and that she can fear no detriment from this, since, if the matter were treated before a judge, sentence would certainly have to be rendered for her. Hence, Philetus adds, Aurelius himself will suppress the matter in deep silence. Apollonia, agitated by scruples, asks her confessor whether she can with a safe conscience stand by the counsel of the advocate Philetus, an excellent Catholic.

Q. 1. What are the rights and obligations of spouses concerning goods? 2. Is Apollonia held to pay the debts of her husband from her own dotal goods?

R. To the first. Cf. I. M. 677 seqq., 868. - To the second. Negatively. For from C. I. 1407, no alienation and obligation of a dowry exists, although the spouses consent, unless it was permitted in the marriage contract itself and the prescribed formalities are fulfilled. Thus also from C. G. 1554. Laws of this sort, since they are just, for they are directly on account of the public good, and since they are definitive and constitutive of the right of property, have effect in the forum of conscience and oblige. Therefore Apollonia can use the benefit of the law. Indeed, if Apollonia, during marriage, incautiously permitted her husband to draw off part of the dowry for entering some contract or paying debts, she has a right to obtain the rescission of the contract, or compensation for the detriment brought upon the dowry; for the dowry of a wife cannot be alienated. - I. M. 677, 678, 953; Lig. 354; G. 506.

3. A father of a family, about to give his daughter in marriage, had promised to the bridegroom a dowry of fifty aurei. But because, the nuptials having been celebrated, he does not have them ready at hand, meanwhile he gives to his son-in-law in pledge a little vineyard which he possesses, of about the same price.

Q. Is the son-in-law held to compute into the principal the fruits which, all expenses having been deducted, he gathers from that little vineyard?

R. Negatively, provided nevertheless, as is supposed, that the son-in-law, not the father-in-law, feeds the wife. The resolution of this case is found in C. *Salubriter* 16, *de Usuris*, where it is said: "Indeed, we do not think that a son-in-law must be compelled to compute into the principal the fruits of possessions which have been obligated to him by the father-in-law as a pledge for the counted dowry,

since frequently the fruits of the dowry do not suffice for bearing the burdens of marriage." But because it is generally certain that a creditor must compute into the principal sum the fruits received from a thing given to him in pledge, as is clear from C. *de Pignoribus* and C. 1 *de Usuris*, therefore the present decision has not undeservedly seemed difficult to doctors, both jurists and theologians, and they have brought forward various interpretations of it, most of which obscure rather than illustrate it. The rest being omitted, that which is brought forward by Emanuel Gonzalez in his commentary on the cited C. *Salubriter*, n. 7, is especially approved by us, where he says: "That we may assign the true reason of this text, it must be premised that a husband, to whom the promised dowry is not paid, is not held to sustain the burdens of marriage; indeed the father, or the stranger promising the dowry to the husband, is held, while the dowry is not paid, to support the burdens of marriage, L. *Si is qui* 56, § 1, ff. *de Iure dot.*; L. *Si filia nupta* 20, § 2; L. *Si maritus* 46, *Famil. ercisc.* Then it must be premised that if, from the beginning, when there is question of the constitution of the dowry, it has been agreed between the husband and the one constituting the dowry that the dowry be paid within a month or a year, pledges having been given, although meanwhile he sustains the burdens of marriage, nevertheless for this reason he cannot profit from the fruits of the pledge or seek interest on the dowry, unless an agreement intervened that meanwhile, while the dowry is not paid, something be paid under the title of interest. But in the present text the dowry was constituted for the present, with no delay of time having been given to the father for its payment. These things having been premised, the true reason appears why in the present case the husband can receive the fruits of the pledge and is not held to impute them to the dowry: namely, because he receives them not by reason of a loan, nor of delayed payment, but from this cause, namely, because he fed his wife and sustained all other things without the dowry, which the father-in-law ought to sustain. Wherefore what wonder, if the son-in-law sustained the burdens of marriage from the things of the father-in-law, namely from the fruits of the pledges, which burdens the father ought to have sustained, and therefore is not held to impute such fruits to the principal sum?... Therefore the whole reason why in the present case the husband duly and rightly profits from the fruits of the pledges consists in this: that he sustains the burdens of marriage which the father-in-law ought to have sustained." *Cas. Bonon. Dioec.*, year 1766, month Sept., case 2, p. 142.

The same indeed is the resolution of the case from more recent laws. For in the Italian Code, art. 1397, it is thus had: "The interests of the dowry run by right from the day of the marriage against those who have promised it, even though a delay of payment has been agreed upon, if there is no stipulation to the contrary." The disposition of the French Code, art. 1440, 1548, is altogether the same. Wherefore the son-in-law in the case, since the father-in-law did not pay the dowry, will be able rightly to use the fruits of that little vineyard of equivalent price, without afterward having to compute those fruits into the principal sum. - *Dal giorno del matrimonio*, from the day of marriage, namely from the day of the celebration of the marriage before the civil magistrate, not from the day of the celebration of the dotal contract before the notary. From the day of marriage, because from that day the burdens of marriage begin, for the sustaining of which the dowry is destined. - I. M. 677.

4. Felix, a tailor, having his own shop in Naples, is joined in marriage to Feliciana, a seamstress, also having her own shop, without any marital contract. Felix, during several years of marriage, gains fifty thousand lire. But Feliciana gains ninety thousand lire. With the capital, by common consent, being constituted as one for its more convenient administration, from its fruits both

spouses are sustained, and they perform many pious works and give alms. Meanwhile Feliciana, wishing, for the future case of death, to make a testament, since she is ignorant of these matters, approaches her confessor, asking of him whether she can make a testament, and whether by her testament she can leave 30,000 lire to her surviving husband, 30,000 lire to her sister, 10,000 lire to the chapel of the Blessed Virgin Mary, 10,000 lire to the Capuchin Fathers, 5,000 lire to the poor of the place, 4,000 lire for her soul, so that Masses may be celebrated for her, and finally 1,000 lire so that each year ten Masses may be celebrated for her in perpetuity in the parish church.

Q. 1. Is that which a wife gains by her own industry proper to the wife? 2. What must be answered to Feliciana?

R. To the first. Cf. I. M. 677. 4°. - To the second. That sum of 900,000 lire [printed thus; context indicates 90,000] which Feliciana gained by her singular industry, exercising the art of seamstress, belongs entirely to Feliciana. That sum constitutes neither a dowry and a dotal good, nor a common good. For no dowry was constituted at the beginning of the marriage, and no contract was entered concerning community of goods, C. I. 1388, 1425, 1433. Besides, Feliciana gained that sum not by common labor with her spouse, but from her own singular industry and extraordinary and proper labor. Wherefore a sum of this sort constitutes an extradotal good and one altogether proper to Feliciana. But that afterward, from the 50,000 lire of Felix and from the 900,000 lire [printed thus; context indicates 90,000] of Feliciana, one capital was made, this was only for more convenient administration, and accordingly those two spouses remained owners, each of his or her own capital. Wherefore Feliciana can rightly dispose by testament concerning that whole sum. - I. M. 677.

But as to the testamentary dispositions which Feliciana proposes to make for herself, these things must be noted.

1. As seems to be gathered from the case, Felix and Feliciana are Italians; therefore Feliciana, according to the Italian Code, can make a testament concerning her own goods, nor for making a testament does she need the consent of her husband or the decree of a judge. I. M. 1137.

2. A spouse is not declared by law incapable of receiving an inheritance. If the testator spouse does not leave ascendants and descendants who have a right to the legitime, the other spouse has a right to the usufruct of a third part of the goods. C. I. 814. Feliciana, as appears from the case, has neither ascendants nor descendants. But the part left to Felix exceeds the legitime. Wherefore, since the rights of Felix are not only not harmed, but on the contrary he receives far more than is owed to him, the disposition of Feliciana can be placed in the testament. I. M. 1043.

3. According to civil law, indeed there is no obligation to institute brothers and sisters as heirs or legatees. Indeed this obligation is not present according to natural law and in the forum of conscience either, unless they are in grave necessity; in which case it suffices to leave to them only as much as suffices for relieving their need. Nothing therefore can be noted against Feliciana if she does not have other brothers and sisters, or if, should she have them, they are not needy. But as regards her sister who is to be her legatee, Feliciana used her own right,

since Feliciana can freely and altogether dispose of her own goods, apart from the usufruct owed to her husband by law, since she lacks necessary heirs. I. M. 682, 1040-1042, 1044.

4. The legacy of 10,000 lire for the chapel of the Blessed Virgin Mary is altogether valid as a pious legacy, which is governed only by Canon Law.

Nor indeed from civil law can this disposition suffer any difficulty; since here it is not a question of dispositions ordered to instituting simple benefices, or lay chaplaincies, or other similar foundations, which art. 833 declares null. Nevertheless the permission of the Government is needed. C. I. 1060. Wherefore this disposition also can be placed in the testament. I. M. 1039. But to avoid every difficulty on the part of this permission, and since, generally speaking, pious legacies are often subject to the annulment of civil laws, because they are considered as autonomous moral entities which are not approved by law, in place of bequeathing the aforesaid sum to the chapel of the Blessed Virgin Mary in the testament, it should be bequeathed to the Ordinary of the place, with his name and surname expressed, and beforehand, by a particular letter, the destination of this pious legacy should be signified to him.

5. The legacy in favor of the monastery of the Capuchin Fathers is valid, since they can receive a legacy after the manner of alms. But from civil law there can be grave difficulty, since Institutes, Congregations, and other foundations whose existence is not legally proved are incapable. Indeed, moral bodies, although they are legally recognized, need the permission of Superiors. C. I., a. 2; law of 5 June 1850; decree of 26 June 1864. But religious, from the Italian Code, even if they are professed, are not incapable either of making a testament or of acquiring an inheritance. Wherefore Feliciana will be able to leave 5,000 lire to some determined Father, for example, Fr. Philip of Naples or another, with a note privately delivered to him and to be preserved in the archive of the monastery, by which she declares her mind concerning that legacy in favor of the monastery. I. M. 1038, 1039.

6. Nor indeed can there be any difficulty, also on the part of civil law, as to the legacy of 5,000 lire for the poor of the place. For this disposition is expressly approved by art. 832. But this disposition, from the same article, devolves to the local Institute of Charity. I. M. 1039. Wherefore if she wishes it to be distributed, by the parish priest, for example, among the present poor, it should be bequeathed to some determined person who merits trust; and by living voice, or better by some written note, the destination of that sum should be signified. - Besides, the disposition by which the testator assigns to the parish church a determined revenue, constituted in certificates of public debt, with the obligation that the parish priest distribute it annually to the poor of the parish, is juridically valid. Likewise, a resolutive clause in favor of relatives is valid, when from any cause whatever the legacy can no longer be fulfilled. A legacy in favor of the poor blood-relatives of the testator is juridically valid. For the legacy is not uncertain, since that double quality can easily be certified.

7. The disposition made in favor of her soul, of 4,000 lire, is valid and is admitted by the civil law itself. For Feliciana's disposition is in no way perpetual, nor is it expressed generically, but is altogether precarious and is determined as to its scope. I. M. 1039.

8. Finally, the disposition of the foundation of ten Masses in perpetuity, in the parish church, is also valid from the civil law itself. For here it is not a question of a benefice, or of a chaplaincy, or of a similar foundation. Nor indeed is it a question of a pious work expressed generically, but one altogether determined. C. I. 832; I. M. 1033. Moreover, legacies made to the parish church for worship and suffrages, mandated by testament, are juridically valid. For the testator does not create an autonomous entity, but only bequeaths certain goods to the parish Fabric with the obligation of burdens of this sort. Nevertheless, immovable goods bequeathed are converted by the Treasury, and the corresponding revenue must be paid by the same to the Fabric. - Likewise, a testament has juridical value by which the testator imposes on the heir the burden of giving to the parish priest, or to other celebrants designated by the testator himself, or to be designated by another person, annually and in perpetuity, a certain determined sum of money for offices and Masses to be celebrated in suffrage for his soul. *Cassaz. di Roma*, 10 May 1882; *Cassazione di Napoli*, 17 Dec. 1880.

9. Let Feliciana name as heir in the testament her spouse or her sister, and let her impose on the heir the burden of executing the remaining pious dispositions. For thus the dispositions will be firmer; for it will be a testamentary disposition under a mode. But if Feliciana wishes to be altogether certain concerning the fulfillment of her will, as regards pious legacies, it is much better that, during her life, she herself hand these things over from hand to hand to the bishop, so that afterward they may be applied to the destined purpose.

5. Romanus and Romana, spouses separated in goods, had handed over the administration of their goods to their firstborn son Peter. Now a certain spacious and very ancient villa was being exposed to public sale. Romana, desiring to buy it, gave a mandate to Peter that he buy it in her name and with her money. But at that moment there was not found, in the chest of the mother's administration, sufficient counted money. Peter, greatly desiring to comply with his mother, took money from the chest of the father's administration, and with that money bought the villa. After the contract had already been perfected, Romanus learns that his money had been used for that purchase; hence he contends that the purchased villa is his, although integral restitution of the money had already been made from the chest of Romana's administration into the chest of Romanus's administration.

Q. 1. Can a wife enter contracts? 2. Whether the villa belongs to Romana or to Romanus?

R. To the first. Cf. I. M. 678, 953. - To the second. The villa belongs to Romana. For it was bought in her name and from her mandate. Therefore she is the one who, by the contract of purchase, acquired its dominion. Nor indeed is it an obstacle that the purchase was made with another's money. For it is not money which acquires dominion for the person; but it is the person of the buyer who, through the money, in the purchase, by an act of his will, acquires dominion, which is transferred from the seller to that person. And thus dominion of the thing bought can be acquired even when the price has not yet been paid. C. I. 1448, 1507 seqq. This is besides established also from L. 1, Cod., tit. *Si quis alteri, vel sibi, sub alterius nomine, vel aliena pecunia, emerit*: "If land and slaves were purchased with the father's money, nevertheless, since you state that the purchases were made in the name of your mother, you must not be ignorant that by tradition your mother was constituted mistress." Likewise L. 2 and 8, e. t., and L. 6, Cod., tit. *de Rei vindicatione*: "If from that money which you had deposited,

the one with whom it had been placed purchased possessions for himself, and they were delivered to him, it is unjust for them either all to be delivered to you, or for some of these to be conferred upon you by him unwilling, by way of compensation." I. M. 1127.

57. On the Obligations of Masters, Disciples, Subjects

1. Vincentius has already rather often detected his male servant with the maidservant, occupied in lascivious intercourse; yet because he adverts that from the dismissal of the male servant, as being especially necessary to the domestic estate, no small detriment threatens him, hence, anxious, he asks whether he can dissimulate with a safe conscience.

Q. 1. What are the obligations of masters? 2. What as to the case?

R. To the first. Cf. I. M. 693, 694. To the second. Vincentius cannot dissimulate the sins of the servants. For upon him, as superior and father of the family, there rests the obligation from justice of impeding the sins of subjects. And if, correction having been made, they are not amended, he is held under grave obligation to expel them from the house, if from such ejection it is prudently believed that they will return to good conduct. Indeed, even if this is by no means hoped, nevertheless he must altogether eject them, both because, since the servant has the concubine not outside the house but in the very house of the master, and sins with another maidservant, a present and far easier occasion of sinning is had from this; and also because of the grave danger and scandal of the family which is present, as is established by sad experience itself. Parents, retaining depraved servants at home, expose their own children most gravely to corruption. But it is scarcely credible that Vincentius, from the departure of the servant, can fear so great a loss that it would outweigh the most grave obligation of impeding the sins of subjects. And if danger and scandal to the family were present in fact, there certainly is no temporal detriment by which Vincentius could both dissimulate the sins of the servants and retain them at home. Indeed, the sins of subjects can in no way be imputed to a superior when he has tried according to his powers to impede them, by correcting, threatening, etc.; and for that reason only does he dissimulate something, because he cannot impede it without a graver, or certainly rather grave, detriment. But where danger and scandal are present to the family, to retain depraved servants at home is to constitute one's own children in a certain proximate and necessary occasion of sinning; and where servants advert that the masters know and are silent, and fear to expel them, they certainly become more bold for sinning and sin more securely, which is altogether illicit. - *Collectan. S. C. de P. F.*, n. 2106; Elbel 17, 18, 19; Tambur., *in Decal.*, l. 5, c. 1, § 4, n. 21; G. 374, 375.

2. Mathurinus, a student of Moral Theology, is pressed by grave anguish of conscience. For a disciple, he says, owes love, reverence, and obedience to a master. I have love toward my master; I also have reverence for him; but I cannot have obedience to him. It is impossible for me to admit all the opinions of my master. For there is some opinion on which the master always and much insists, and it seems to me contrary to dogma; but there are also other opinions which seem to me at least equally probable, and even more probable, than those which the master defends as most probable, as uniquely probable, as at least altogether to be held practically.

Q. 1. What are the obligations of disciples toward masters? 2. What is to be held concerning Mathurinus?

R. To the first. Cf. I. M. 700. - To the second. Mathurinus, before he forms and pronounces judgment against the doctrine of his professor, ought first to understand it well and weigh it with mature consideration, lest perhaps he himself consider and attack as handed down by his professor a doctrine which the professor in no way taught. By acting thus he would both form a rash judgment against his master and, by speaking with others, would harm his reputation. But if, after serious study, and after other learned men have also been consulted, the doctrine of his professor seems erroneous to him, he is certainly not held to follow it. Likewise, if the opinions of others seem to him probable, more probable, or most probable, and are commonly held as such by authors, he is not held to follow the opposed opinions of the master as most probable, or uniquely probable, or altogether to be held. But with due modesty he will be able to think otherwise. Appositely St. Thomas, *Quodlibet* 3, a. 10: "It must be said that diverse opinions of doctors of Sacred Scripture, if indeed they do not pertain to faith and morals, hearers can follow either opinion without danger; for then what the Apostle says in Rom. 14:5 has place: Let each one abound in his own sense. But in those things which pertain to faith and morals, no one is excused if he follows the erroneous opinion of some master... otherwise those would have been immune from sin who followed the opinions of Arius, Nestorius, and other heresiarchs... Therefore he who assents to the opinion of some master against the manifest testimony of Scripture, or against that which is publicly held according to the authority of the Church, cannot be excused from the vice of error."

Moreover, if the confessor himself cannot impose his probable opinion on the penitent, who wishes to follow another probable opinion, much less will the teacher of moral theology be able to impose his opinion on his hearers when another opinion is truly probable and commonly held by authors as probable. Lugo, *Resp. Mor.*, l. 1, d. 26.

But this is directly confirmed from the response of the Sacred Penitentiary, 5 July 1831. For to the question: "Whether a professor of Sacred Theology can safely follow and profess the opinions which Blessed Alphonsus de Liguori professes in his Moral Theology?" it responded: "Affirmatively, without nevertheless judging that those are to be reprehended who follow opinions handed down by other approved authors." Therefore both the teacher of moral theology and his hearers can and are held so to defend their own probable opinions that they do not exclude the contrary truly probable opinions of other Catholic doctors. This certainly, especially in moral theology, would not be to build up, but to destroy.

3. Honoratus, a Catholic, never salutes the Prince, although others commonly salute him in the public streets and halt their step. For he says that the Prince is non-Catholic and by no means virtuous, but honor is owed only to virtue. - What of Honoratus?

R. Honoratus neither reasons rightly nor, of itself, acts rightly. "Honor is a certain testimony concerning the virtue of him who is honored; and therefore virtue alone is the due cause of honor. Nevertheless, it must be known that someone can be honored not only on account of his own virtue, but also on account of the virtue of another, as princes and prelates are honored, even if they are evil, insofar as they bear the person of God and of the community over which they are placed... and by the same reason parents and masters are to be honored on account of participation in the divine dignity,

who is the father and master of all. But elders are to be honored on account of the sign of virtue, which is old age, although this sign sometimes fails... But the rich are to be honored on account of this, that they obtain a greater place in communities. But if they are honored with a view to riches, it will be the sin of acceptance of persons." St. Thomas, 2. 2, q. 63, a. 3; *Quodlibet* 8, a. 7. "If prelates are evil, they are not honored on account of the excellence of their own virtue, but on account of the excellence of dignity, according to which they are ministers of God; also in them the whole community over which they preside is honored." St. Thomas, 2. 2, q. 103, a. 3, ad 2; *Quodlibet* 10, a. 12. Cf. I. M. 701, 704.

4. "An infidel king lays snares for the Christians subject to him, or wishes to destroy them here and now and to blot out the Christian name in his kingdom. While he is meditating and preparing these things, other wicked men, by conspiring and warring against him, try to cast him out from his kingdom.

It is asked: Whether Christians are held positively to defend him, namely the tyrant who wishes here and now to slaughter them; or rather can behave negatively, neither warring against him nor helping him?

R. As it is set forth, negatively to the first part; affirmatively to the second part." S. O., 27 Jan. 1892; *Collectan. S. C. de P. F.*, n. 2099; I. M. 706.

On the Fifth Precept of the Decalogue

58. On Killing Oneself

1. Maurus, a novice, of strong powers and robust complexion, began to labor under grave pain of the head, although before entrance into Religion he had enjoyed the best health. Several remedies were applied, but in vain, to the great sorrow of Maurus, because, as the disease grew worse day by day, he became altogether unfit for the ministries proper to that Religion, and there was already question of his departure. After other physicians, Eugenius was called, a physician endowed with extraordinary knowledge and experience, but not of equal fame. Eugenius observed the sick man and, without any hesitation, immediately declared that he could cure the sick man, and with all certainty, if nevertheless the matter turned out well. For after other medicines had been applied, he said, one most efficacious still remains, which indeed will place the sick man in proximate danger of death; but if this is overcome, as there is certain hope, Franciscus [i.e., Maurus] will be immune thereafter through his whole life from an infirmity of this sort. The medicine was applied, and Maurus completely recovered, and is still well, and is an outstanding preacher.

Q. 1. Is there a precept of conserving one's own life? 2. Could Maurus apply such medicine?

R. To the first. Cf. I. M. 715, 716. To the second. Since the danger of death is nothing but a mere probability and not certainty of death, whence danger of death is distinguished from the article of death, a proximate danger of death, in the case, is really only a grave and very grave probability of death; on the contrary, in the case, there is moral certainty of health to be restored. That probability in no way contradicts this certainty speculatively. For that danger of death is considered from the extrinsic efficacy itself of the drug, not from the intrinsic disease of the sick man. But the certainty is taken from the intrinsic state of health of the sick man. Hence practically, in the case, there really is not a grave danger of death; but on the contrary there is moral certainty of recovering health. But this can be had, in the case, because Maurus, a young man otherwise of robust health and strong complexion, is deservedly judged able to resist the crisis which the violent drug will determine in him; and in this crisis every root of the evil is to be directly destroyed altogether by the powerful virtue of the aforesaid drug, or by force of the same crisis the aforesaid cause of the infirmity is to be dissolved. Therefore, since there is had a moral certainty both of overcoming the danger and, as is asserted by the skilled physician, of expelling the cause of the disease and the disease itself, it is permitted to commit oneself to such a danger, given the most grave cause: that otherwise Maurus would have to pass his whole life uselessly and be afflicted with grave pain of the head. Besides, in that first hypothesis made, namely that from the power of the drug the crisis is directly determined, and the root of the infirmity is directly extinguished, there is had an act producing two effects, of which one is good and is the one which alone is intended, while the other is evil, and this is beyond the intention and is merely permitted. But a very grave reason is not lacking why the bad effect can reasonably be permitted and the act placed. But in the other hypothesis, that the drug determines the aforesaid crisis of the whole organism, and by this same crisis the whole cause of the evil is resolved, as happens in various diseases, then the crisis cannot be called simply evil, but indifferent, since it is

both evil and good at the same time: evil on account of the loosening of powers and weakness, good on account of the extinction of the depraved quality which is the cause of the disease. Wherefore again the case returns to an act producing two effects.

Hence, a fortiori, that seems to have been licit which I heard narrated about a certain man who was coming from America into Europe. Having been seized by a most grave disease of fever, which is commonly called *flaca*, and now altogether despaired of, he was cured by a certain hot and very powerful intoxicating potion. - Cf. I. M. 334 and V. 2, n. 89.

2. Eulalia, a pious virgin and most loving of chastity, when on a certain day she was being compelled to lust by a soldier and could not otherwise escape the danger, threw herself from a high window and, falling upon sand which by chance was found heaped in great quantity in the public way for repairing it, remained unharmed. After some months, violently seized by the same soldier, most constantly refusing to sin, she most urgently asked him that he would rather kill her than violate her; and then the fierce soldier, burning with anger, slew her with the sword.

Q. 1. Is it permitted to kill oneself? 2. What as to the case?

R. To the first. Cf. I. M. 710 seqq. To the second. Eulalia could rightly throw herself from the window, although this was done with evident danger of life, and although in fact she had afterward died. The reason is that first Eulalia did not intend to kill herself, but only to escape from the hands of the worst man who wished to violate her. But that action of throwing herself from the window, in these and similar circumstances, is an indifferent action, namely of fleeing in the case from the hands of a lascivious man, and of falling from the window to the earth. And, if it is considered well, that action is first an action of fleeing, and then of falling from the window to the earth, that is, first it is flight, and then a casting down from the window to the earth. And thus the same is permitted, even to escape a harder death, for example, in a fire, or also, probably, to free oneself thus by flight from the squalor of perpetual prison. G. 377, 379, 384; L. 367.

Eulalia could also ask the soldier that he kill her rather than violate her. For by this request Eulalia first certainly did not intend to induce the soldier to kill her, but only to avert him from the base violation of herself, to which she preferred death. But by that request Eulalia did not directly procure her killing, nor did she induce the soldier to kill her. For, force having been inflicted on her, since she had already been violently seized, she asked the soldier that he inflict on her rather the lesser evil of death than the evil, far greater to her, of base violation. Therefore she did not directly procure death, nor provoke the soldier to homicide; but she directly procured that she avert the soldier from inflicting a greater harm on her and from violation of herself, permitting her own death instead, if that soldier should be unwilling to desist from so great a crime. And in fact, to ask the soldier to kill her rather than violate her is not to ask that he kill, but to ask that he not violate, while at the same time showing a spirit prepared to undergo death rather than to consent to her violation.

3. Anselmus, a Carthusian, exercises grave tortures upon his own body by disciplines and hairshirts, uses sparing food also, and takes brief sleep; although he thinks that for this reason perhaps he will die sooner. Nevertheless, only after several years is he gravely ill, but even then he refuses to eat meat, although the physician has prescribed it as a necessary means for

recovering health. Likewise he refuses to leave the cloister and return to his family for some time, although the same physician asserts that a change of air is altogether necessary for him.

Q. 1. What is the obligation of conserving life? 2. What as to the case?

R. To the first. Cf. I. M., n. 715 seqq. To the second. Anselmus in no way sinned by exercising various exterior penances. For by exercising them discreetly, which sufficiently appears in the case, life is not taken away, but only its vigor and longevity are not procured; and to this no one is held of itself. But spiritual utility and the exercise of virtue prevail over bodily convenience. Otherwise so many saints would have sinned gravely, rather than having been sanctified. And if it is permitted to artisans to sweat over hard works, and to diminish life for themselves by daily laboring, and to expose themselves to so many dangers of death, why will it not be permitted to a religious man to embrace bodily austerities for the good of virtue, by the counsel of a prudent prelate or confessor? Lig. 371. Wherefore Anselmus is not held either to eat meats even to avoid death, or to seek healthier air outside the cloister in his own country and family. Hence also someone can enter Religion although he is weak in health, nor afterward is he held to depart from the novitiate, or to seek food different from the common food, although he foresees that his life will be shortened from this. - Lugo, *De Iust. et Iur.*, d. 10, n. 32 seqq.; Lig. 370, 371; G. 386, 387.

Besides, in singular cases, it matters very much to attend to what age, physical complexion, disposition, state, and condition that person is, to whom mortifications and exterior penances of this sort are conceded. "One must judge differently concerning the end, and differently concerning those things which are for the end. For that which is sought as an end must be sought without measure. But in those things which are for the end, measure must be applied according to proportion to the end. Therefore it must be considered that in the spiritual life the love of God is as the end; but fasts, vigils, and other bodily exercises are not sought as the end, but are applied as necessary for the end; and therefore things of this sort must be applied with a certain measure of reason, so that namely concupiscence may be tamed and nature not extinguished.... But if someone weakens the power of nature so much by fasts and vigils and other things of this sort that he is not sufficient to execute due works, for example, the preacher to preach, the doctor to teach, the singer to sing, and so concerning others, without doubt he sins; just as a man would also sin who by excessive abstinence rendered himself impotent to render the debt to his wife." St. Thomas, *Quodlibet* 5, a. 18.

59. On Defense of Oneself

1. Martialis, a soldier, quarreled with his fellow soldiers, and when he had afflicted one of them with insulting words, that one, impatient of the injury, aimed the gun which he held in his hand at him in order to kill him. But Martialis, who had inflicted the insult, forestalled him and killed the assailant with his own gun.

Q. 1. Is it permitted to defend life by the killing even of an unjust aggressor? 2. Was Martialis guilty of homicide?

R. To the first. Cf. I. M. 726, 727. - To the second. "In his favor the doctrine of those could be brought forward who say that he who provoked another by insults or injuries, if nevertheless he is attacked by

him to the point of death, can licitly defend himself and kill the assailant.... Hence an adulterer who, detected by the husband, cannot flee, if he cannot otherwise avoid death, can kill the husband.

Nevertheless, in our case, that doctrine can with difficulty have place, because, according to the narration of the fact, first the adversary, provoked by insults, pulled the trigger of the gun so that it might catch fire, and then this other man pulled the trigger of his gun to the same effect; at which time indeed that defense was useless, by which he could not escape the blow of the adversary, but only strike back. Therefore then it was better either to flee or to avoid the blow, if he could; especially since, although in other cases a soldier attacked is not held to flee, but can defend himself by killing when he cannot otherwise be rescued from the assailant, nevertheless, when he himself gave the unjust cause of the attack, he ought to flee, nor can he licitly kill the assailant if there is place for flight, because he himself unjustly cast the assailant into those straits; wherefore he ought to render him unharmed.... Then... because it cannot be denied that the killing, in our case, was culpable in its cause, with insulting words having been rashly uttered against an angry and armed soldier, in which circumstances the danger of killing him could and ought to have been foreseen, if he wished to avenge himself, as it could be feared almost certainly; which suffices so that he who unjustly gave a culpable cause is guilty of the homicide afterward following." Lugo, *Resp. Mor.*, l. 4, d. 17.

But the question properly is not whether Martialis could and ought to have foreseen homicide, but whether in fact he at least confusedly foresaw it; and this, from the very fact of the homicide afterward following, without Martialis himself being questioned in order to know the truth of the matter, is difficult to assert with certainty. For it was a matter of mere insulting words, which are altogether frequent among soldiers, and nevertheless homicide does not ordinarily follow from this.

Moreover, it is also difficult to assert with certainty that Martialis did not lack another means of defending himself, namely by fleeing. For if the gun, as these arms were in the time of Lugo, was not yet prepared to fire, it can be understood how Martialis truly had time both to flee and to avoid the blow. But if the gun was already altogether prepared to fire, it does not indeed appear how Martialis could otherwise have escaped death or at least a grave wound.

And these things seem not to have escaped Cardinal Lugo himself, since at the end of his discourse, n. 7, he concludes: "These things at least render our case doubtful." Certainly it is not permitted to forestall the aggressor and kill him before the actual aggression; for this is not to defend oneself by repelling force with force. But to defend oneself in an actual aggression does not consist in this: that someone first ought to wait to be killed, or for an action to be placed by which he will soon be certainly killed; for then defense will already be impossible, and it will be impossible to repel force with force. To defend oneself in an actual aggression consists in this: that someone defend himself in an unjust aggression actually, morally speaking, already so impending that he cannot repel it unless force is applied. I. M. 727. Otherwise, not even someone against whom the sword of the aggressor has already been directed with every impetus could kill the aggressor with his own sword unless he himself had first been struck and wounded; and then there would no longer be place for force to be repelled, since force would already have been inflicted. If not with a sword, but with a gun already prepared to fire, someone unjustly attacks another, and has already aimed the gun toward him, so that nothing is lacking except that it fire, what else is required for actual aggression? That it fire, strike, and kill? Therefore the other will be able, by firing first, to defend himself. This is, in the case, the only efficacious mode of defending oneself: by the blow of one's own gun, efficaciously to forestall

the lethal blow of the adversary's gun. But it is one thing to forestall a blow in actual aggression, another thing actually to forestall the actual aggression. In this forestalling, there is no actual aggression, but there is an aggressor prepared to attack. And concerning such forestalling, whether it is permitted, St. Alphonsus, 387, brings forward three opinions. The first denies it, because to forestall an enemy only prepared to attack would not be true defense. The second affirms it, because, in order to kill an assailant for one's own defense, it is not necessary that the other already have begun to harm, but it suffices that he be prepared to harm. The third affirms it, if someone from some action has known that the enemy is determined to attack, for instance, if he knows with moral certainty that the enemy has already prepared arms for this, or has given a mandate to a servant; then, if he cannot otherwise escape, he can licitly forestall him. But otherwise it must be said, if he does not know certainly, but has only suspicion or doubtful fear concerning the attack. The Holy Doctor, giving his judgment concerning these three opinions, says: "I judge that the second opinion, even with this distinction supposed (of the third opinion), can scarcely be followed in practice, on account of the danger of hallucination which can be present in a matter of this sort." Wherefore, as regards Martialis, since he did not forestall an actual aggression, but only forestalled the blow of the adversary in an actual aggression, it does not seem that he can be regarded as guilty of homicide.

2. Martialis and Hector, leaders of soldiers, start a quarrel between themselves and contend with harsh words. After words they come to blows. Hector first suddenly inflicts a notable slap on his companion, in the presence of other distinguished men. Immediately Martialis, with incredible dexterity, retorts and augments the argument by inflicting two slaps on Hector. Hence the storm grows, until by other friends the two contestants are separated one from the other.

Q. 1. Is it permitted to defend honor by force? 2. Is it permitted to defend honor even by killing the aggressor? 3. Did Martialis sin by striking Hector back?

R. To the first. Cf. I. M. 733; E. M. 733, 748. To the second. Cf. St. Alph. 381; I. M. 750. - To the third. "It is not permitted to kill if the injury has already been contracted, or the aggressor has already fled, because this would not be to defend oneself, but to avenge.... But Henry and Navarrus say that, if the injured party would suffer a great loss of honor unless he at once pursued the fleeing one, he can pursue and strike him as much as would be enough for the defense of honor. But the opposite must altogether be held. The reason is that then honor is not recovered in itself, but through the harm of another among wicked men, which is intrinsically evil. And I cannot understand why the contrary opinion ought not be called proscribed from proposition 30 condemned by Innocent XI, which permitted one to strike back at the one striking, who flees, if otherwise ignominy could not be avoided." Therefore Martialis cannot be excused from sin, and from grave sin. St. Alph. 382; I. M. 733; *Enchir. Mor.* 733; G. 390.

3. Gerardus, a parish priest, was keeping at home the gold and silver furniture of the church and a great sum of gold money pertaining to various pious causes, in a well-locked chest. This became known to three thieves. Behold, at an untimely hour of night, equipped with arms and with face disguised, they burst into the house of the parish priest and threaten that they will take his life from him unless he swiftly hands over to them whatever of gold and silver he has at home. Gerardus, placed in certain danger of life, is compelled to bring out for the thieves all

that they require, even his own money and his own silver furniture and other precious objects. The three thieves carry away all things with three chests. But Gerardus, freed from danger, as soon as the thieves have gone out from the house, closes the door well and approaches the window armed with a firearm. As soon as he saw them going out from the door of the palace, lest he afterward be unable to discern them on account of the dense darkness of the night and the copious rain, he fires the firearm at them and kills one. The other two flee. But they leave the chests. And thus Gerardus recovered the whole thing.

Q. 1. Is it permitted to defend goods by force? 2. What must be thought concerning the case of Gerardus?

R. To the first. Cf. I. M. 731, 732; E. M. 731. - To the second.

"Card. Lugo, Molina, Lessius, etc., with Diana, concede that it is permitted to pierce with a dart or arrow a thief fleeing, for example, with your horse, because the invasion still endures." Thus Busembaum, 382. "We say with Lessius, etc., that it is permitted to kill a thief from a distance with a weapon, if he himself carries off the thing and, having been forewarned of his danger, is unwilling to leave it." Thus St. Alphonsus, 383. But those three thieves, in the case, were now carrying off the thing, nor could it be recovered by another way, and any other warning would have been useless. Moreover, the thing was altogether of great value. Wherefore Gerardus cannot be condemned of the sin of homicide. Nor indeed is it an obstacle that he is a priest, because the right of defense is of natural right and therefore belongs to each one. Hence Gerardus incurred no irregularity, whether from delict, which was absent, or from lenity, which has no place here. For it is incurred by soldiers in a just offensive war and by ministers of justice in the killing of a guilty person. - St. Alph. 183, 184; G. 394, 395; I. M. V. 2, 1330.

60. On Homicide and Abortion

1. Sempronius, wearied of his wife, made espousals with another. Wherefore, in order to free himself from his present wife, while she was on a journey, in a certain solitary place, he pierced her with a bullet; and seeing her as though struggling with death, he commanded his servant, whom he had taken with himself as a companion of the journey, under penalty of death to be inflicted immediately upon him likewise, to slaughter the still-breathing mistress with a sword, and without delay to commit her, slaughtered, to the earth.

Q. 1. Is homicide ever licit? 2. Could the servant in this case licitly obey his master?

R. To the first. Cf. I. M. 719 seqq., 736 seqq.; E. M. 722. - To the second. The servant could not obey his master by slaughtering the mistress with a sword; nevertheless he could licitly obey by committing her to the earth after death. The reason for the disparity is this: because to commit a dead woman to the earth is not evil, but rather good, or certainly indifferent of itself. But what is good, or at least indifferent, we licitly do from a just and grave end, namely that of escaping death or another grave evil threatened to us. On the contrary, to slaughter an innocent person was evil, intrinsically such, forbidden by natural and divine right. But an evil intrinsically such may never be committed, however grave a fear of death may impend over us. - Elbel, *De Act. hum.* 43.

Hence another case is resolved: whether, at the time of the Paris Commune, and generally, whether in a time of anarchy, regular soldiers of the preceding Government, from fear of death, could fire upon religious, clerics, and honest citizens, and slaughter them. Altogether negatively, since neither by private nor by public authority is it licit to kill the innocent. And this is intrinsically evil; and accordingly it remains evil even when most grave fear of death stands.

2. "The Catholics of this diocese are inexorable in vengeance, and this because there is no one in those regions who administers justice. Therefore it is asked: 1. Whether, every other means of obtaining redress for their wrongs being excluded, Christians can consider themselves with respect to this point as if they were in the natural state. 2. Whether they are capable of the sacraments so long as they persist in this desire of vengeance. The reason which they bring forward to prove the necessity in which they are of avenging themselves is that the killer and his supporters would become fiercer and more intolerable against the relatives of the killed man, and would commit new homicides, if these did not resist and did not oppose force to force.

R. Negatively to each part." S. C. de P. F., 21 May 1759; *Collectan.*, n. 2092, 2094, 2098.

3. A popular disturbance having been made in a certain great city, the Prince is expelled, and Anarchy is proclaimed for several weeks. Meanwhile thieves and highway robbers commit thefts, robberies, and homicides with impunity. Carolus, a powerful and honest man, judging that crimes ought to be punished, in order to protect honest citizens, public authority being lacking, himself assumes this office for himself. Hence, when he hears that either thefts and robberies or homicides have been committed by someone, judging that no other punishment in the present circumstances is possible and efficacious except the punishment of death, by night he himself with his servants kills thieves and homicides. And the matter always succeeds prosperously for them, so that it is altogether unknown by whom they were killed. What of Carolus?

R. Carolus acts altogether badly. For he himself has no power of exercising public vindication of crimes, since he has no authority in civil society. But citizens, for protecting themselves, can rightly use, if thieves and homicides attack them, the natural right of defense, repelling force by force, with the moderation of blameless defense. For indeed, "to kill evildoers is licit insofar as it is ordered to the safety of the whole community; and therefore it belongs only to him to cut off a rotten member, when the care of the safety of the whole body has been committed to him. But the care of the common good is committed to Princes, having public authority, and therefore it is permitted only to them to kill evildoers, not to private persons." St. Thomas, 2. 2, q. 64, a. 3. Nor indeed does it avail to object from the same Holy Doctor, ibid., q. 108, a. 1, that vindication is a virtue of a private person, and accordingly that it is also permitted to private persons at least to avenge injuries inflicted on themselves. For it is singular in this virtue of vindication that the person who is the subject of the virtue cannot through himself consummate the proper action of that virtue because of the necessity of the matter; because namely its matter is the evil of punishment, which requires coercive power in the author; and accordingly, although vindication is a virtue of a private person, nevertheless a private person cannot consummate his action unless public power is joined, on account of the condition of

the matter to be rendered, namely the evil of punishment for the evil of the inflicted injury. Cajetan, in l. c. Cf. St. Thomas, 2. 2, q. 66, a. 8.

4. Gaspar, a physician, gave a drug to a certain woman to impede conception, namely in order that he might remove the most grave danger of death which he knew from experience threatened her; and accordingly he intended this only, that is, to procure her safety. But that woman, already made pregnant, is in reality placed in the highest danger of life, together with the offspring, which consequently would die without baptism together with the mother. Hence Gaspar, in order to save the mother from death and to procure baptism for the offspring, at the suitable time procures abortion by medical art. And thus the mother is in reality saved, and the offspring, having come forth alive, dies only after baptism.

Q. 1. Is it licit to procure abortion? 2. Has Gaspar acted rightly?

R. To the first. Cf. I. M. 742 seqq.; E. M. 742, 745; *Comment. Theolog. Moral.*, fifth commentary, *De Procuratione Abortus*; sixth commentary, *De Responso S. Officii circa craniotomiam*.

To the second. Gaspar first sinned gravely by impeding generation, which in reality he himself intended, although he illusorily asserts that he intended only to procure the woman's safety. He indeed intended this as an end; but as a means to obtaining that end, he assumed this means: to impede generation by a drug, whence the woman's safety, from asserted experience, was being brought into danger. Therefore he intended this also. G. 400.

Gaspar also sinned gravely by directly procuring abortion, which from its intrinsic nature is true homicide. Nor indeed can he be excused from the excellent end of saving the mother and baptizing the offspring; for evils must not be done so that goods may come. But in the case the abortion is procured directly; for abortion is assumed and is intended in itself as the means to each. G. 400 seqq.

Hence Gaspar, on account of the direct procurement of abortion, incurs the excommunication reserved to bishops from the Constitution *Apostolicae Sedis*. Moreover, he becomes irregular; for since the question concerns a fetus which is so harmful to the health of the mother, it cannot be doubted that it is now informed by a rational soul. Cf. I. M. V. 2, n. 1204, 1335.

5. Hortensia, pregnant and now near birth, seized by a grave disease in the West Indies, dies. Richardus, a new missionary, judging himself obligated to perform the Caesarean operation, soon carries it out and baptizes the offspring still alive, which then continues to live. But as soon as the matter is made known, he is nearly slaughtered by the inhabitants of the place as the murderer of the mother. Immediately Richardus flees, and no further report of him is had in that place.

Q. 1. Whether and when can the Caesarean operation be done, and what precautions are there in practice? 2. Has Richardus acted rightly?

R. To the first. Cf. I. M. V. 2, 469 seqq. - To the second. Richardus did not act rightly. For, as appears from the case itself, the most grave danger of scandal was not lacking. Besides, there is the prohibition made to missionaries by the decree of the Holy Office, 15 Feb. 1760. Cf. *Enchir. Moral.* 471.

If, the mother now being dead, the Caesarean operation cannot be done, then the infant in the mother's womb can be baptized in the best way in which it can be done, namely by the aid of a small siphon or another instrument by which the infant in the maternal womb may be reached and water poured upon it. Hence, by the aid of an instrument of this sort, the membranes in which the fetus is enveloped must be cut, so that the water may immediately reach the fetus. This operation is easy and can rightly be done by a midwife or by another woman. - If, as is gathered from the case, a surgeon or another skilled man was truly lacking for carrying out the Caesarean operation, Gaspar could have procured that baptism be administered to the infant through some experienced woman in the way said. - G. v. 2, 218, 220; Gennari, *Consultazioni*, etc., p. 1, cons. 21.

61. On the Duel and War

1. Marcus and Marcianus, soldiers, quarreled among themselves, and each afflicted the other with various insults. This was reported to the commander of the cohort, who ordered that those two soldiers should perpetrate a duel between themselves, otherwise they were to be cast into hard prison for a month. Unwillingly they institute the duel, and Marcus gravely wounded Marcianus.

Q. 1. What is a duel, and is it licit? 2. What of the duel of Marcus and Marcianus?

R. To the first. Cf. I. M. 746 seqq.; E. M. 747. To the second. The commander of the cohort indeed sins gravely by commanding the duel, and Marcus and Marcianus also sin gravely by perpetrating the duel. For a duel is intrinsically illicit and is gravely prohibited both by natural law and by canonical law. Nor indeed can the duel become licit for those perpetrating it from the fact that it is commanded. For from such a precept the danger in it of grave wound, mutilation, and death is not taken away, nor do those perpetrating the duel acquire a right, each over the other's members and life. Hence neither is its illicitness taken away as regards the one commanding, in the case, who commands it by way of punishment to avoid the frequent quarrels of soldiers. For the one commanding, in the case, neither himself has a right over the integrity of the members and the life of the soldiers, nor consequently can confer that right on the duellists themselves. Then the great scandal which comes from this is clear; for by this manner of acting, a broad way is opened for entering duels, especially among military men. And if a duel is illicit when it is only for the sake of spectacle or of showing courage, how much more must a duel be illicit in the case. C. *Felicis* 1, *de Torneamentis*. And this can also be confirmed from the following resolution of the Sacred Congregation of the Council.

"In the schools of the German universities certain special duels are had. For scholastic duels consist in this: that the duellists, using special arms, that is, a certain small knife, and the other parts of the body being well covered, inflict on themselves an incision or wound in the face, the traces of which nevertheless generally disappear in a short time. Therefore in no way is death or mutilation intended, and these sad facts happen very rarely and only by accident, from imprudence or from another cause extrinsic to the duel. Nor are these duels always committed properly from vengeance or for repairing honor, but chiefly for the sake of a game, cruel indeed, or of exercise. For this effect, indeed under the appearance of furnishing and fostering this game or exercise, there are societies among the disciples of the University, in which, for obtaining a higher grade, a certain number of duels to be instituted is

prescribed, and, after a certain time has passed without duels, the presidents of the societies come together to raise pretexts for instituting duels."

But when the doubt was proposed: "Whether, by whom, and from what title irregularity is contracted when a duel is committed in that way in which in these times it is customary to be done among alumni of the University of Germany in the case," the Sacred Congregation of the Council, 9 Aug. 1890, responded: "Affirmatively, by the duellists and their seconds, from infamy of law." *Acta S. Sed.*, v. 23, p. 242. From infamy of law, established by the Council of Trent, sess. 24, c. 19; by no means from lenity, which in the case has no place, nor from delict, since neither death nor mutilation follows. Cf. I. M. V. 2, n. 1332 seqq., 1350 seqq.

Therefore Marcus and Marcianus incur irregularity from infamy. As regards irregularity from delict, if death in reality or mutilation had followed, this also would have had place; but since Marcianus was only wounded, Marcus does not incur irregularity also from delict. I. M. V. 2, n. 1335.

But whether they have also incurred the excommunication reserved to the Supreme Pontiff can at first sight be doubted, because *ex condicto* seems to be lacking in the case, since Marcus and Marcianus institute the duel unwillingly and perpetrate the duel from a command imposed on them under penalty. But it does not seem that the agreement is in reality lacking in the case as to place, as to time, and as to arms, although unwillingly and from fear of prison they consent into the previous agreement, into the duel itself. Nor indeed do they seem able to be excused from fear of the penalty of prison, since even positive law, in the case, does not cease. And this is gathered from the propositions condemned by Benedict XIV. Cf. *Enchirid. Moral.* 747, 748; I. M. V. 2, n. 1118, 1128 seqq.

2. An unjust war was declared between Prince Albinus and Prince Rubinus. The army of Rubinus, who was justly defending himself in the war, was conquered; and, victory already having been obtained by the army of Albinus, the signal for ceasing from hostilities was made on both sides by the commanders. While the soldiers of Albinus are returning peacefully to camp from the field of battle, Leontius, a most ardent soldier of Rubinus, was still pursuing the enemies and killed one of them. Seeing this, a certain soldier from those to whom the military police had been committed in the army of Albinus immediately seized Leontius and was leading him before himself to the commander of the war. Leontius, now certain of undergoing the punishment of death, when they had to pass through a narrow place, feigning civility, invited the soldier to pass before him. Scarcely had the soldier gone before, when Leon- tius struck him from behind with a sword and killed him, immediately fleeing unharmed.

Q. 1. Is war licit, and what things are licit in war? 2. What must be thought of Leontius?

R. To the first. Cf. I. M. 751 seqq.; E. M. 753. - To the second. Leontius is guilty of a double homicide. He is guilty of the first homicide because, the hostilities now having ceased, and the signal of truce having been made by the commander of war, no soldier could now pursue, strike, and kill adversaries. And although the soldiers of the army of Rubinus were fighting altogether justly, nevertheless, the war ceasing, or even only being interrupted, none of them could now licitly and justly kill, since no one by private authority can kill a man, even one guilty and culpable. Hence Leontius is also guilty of the second homicide. For that soldier altogether legitimately and justly seized him, nor was he an unjust aggressor against his life. But the fact that Leontius killed him in order to avoid the punishment of death by no means makes the unjust homicide honorable.

Hence another case is resolved: whether, during war, private citizens can kill enemy soldiers whom they peacefully receive as guests, although they are compelled to this, or who meet them on the road, for example, unarmed, or few in number, or each one alone separated from the others. It must be altogether denied; for by private authority it is permitted to kill no one; and even in time of war, private citizens do not receive this power of wounding and killing. This one thing is permitted to them: to repel by force the force unjustly inflicted upon them, plainly in the same way as when there is question of an unjust aggressor.

On the Sixth Precept of the Decalogue

62. On Non-Consummated Acts of Lust

1. Candida, seized by a grave disease, is placed in proximate danger of life unless she undergoes excision of the ovaries. Fearing for this reason to lose virginity, she refuses to undergo that surgical operation. But, opening the matter to her confessor, she asks of him whether, having undergone that operation, she herself remains a virgin. The perplexed confessor asks what he ought to respond.

R. The confessor in the case can rightly respond that virginity is not lost for this reason. "For evidence of this, it is necessary to see what is required for virginity. The first of these is principal and formal, namely the choice or intention of the will, as in all moral things; whence this is required of necessity for virginity: that there be present to someone a constant will never to experience venereal pleasure. The second is material, namely a passion of the sensitive appetite, that is, the pleasure which someone experiences in the venereal act, the privation of which is required for perfect virginity materially, for sensitive passions are the matter of moral virtues. But if this happens apart from the choice of one's own will, for instance when someone is polluted in sleep, or when a woman is oppressed by an enemy through violence, the virtue of virginity does not perish.... The third is as it were per accidens and concomitantly related to virginity, namely bodily integrity. Hence, if the barriers of modesty are corrupted otherwise than through the venereal act, for instance if a midwife or physician cuts with an iron instrument for healing, nothing is lost to virginity." St. Thomas, *Quodlibet* 6, a. 18; 2. 2, q. 152, a. 1.

2. Maevius often has depraved thoughts against chastity. Thinking that he is not obligated under grave obligation to resist them positively, he conducts himself merely negatively, and consequently permits those thoughts to remain longer in the mind and to represent depraved things more vividly. Hence it happens that, as the imagination of depraved things grows according to the occasion, frequently, and almost always, he experiences depraved motions and pollution. Nevertheless, because he himself refuses every consent to these depraved effects; indeed, he says, this displeases me greatly; he never made confession concerning this matter, because he thinks himself immune from every sin. Has Maevius sinned gravely?

R. Affirmatively, of itself, and with good faith, or simplicity, or rudeness, and a cause sometimes rendering honorable this manner of conducting himself negatively, being excluded. Cf. I. M. 58, 295-297. The reason is that someone is held under grave obligation to remove causes which of themselves gravely influence venereal pleasure and pollution; such certainly is a morose and long thought of shameful things. Besides, practically speaking, proximate danger of consent is present. Hence St. Alphonsus, l. 5, n. 7, says: "When venereal pleasure supervenes, we are held under grave obligation to resist it positively, because commotions of this sort, when they are vehement, generally, if they are not positively repelled, at least by an act of simple displeasure, draw with themselves the consent of the will." - G. 22, 143; Lig. l. 3, n. 426, 482; l. 6, n. 914; Sanch., l. 9, d. 45, n. 19, 24, 25; Lessius, *De*

Iust. et Iur., l. 4, c. 3, dub. 14, n. 102; Billuart, *De Temper.*, dissert. 6, art. 12. Hence you will collect long-lasting cases, Scav., 12th ed., Milan, 1874, l. 1, n. 780.

Appositely Lessius, l. c.: "When the cause is privative, namely negligence in removing an involuntary positive cause, for example, a shameful thought, man is held to shake off that apprehension and transfer the mind elsewhere as much as he can. But if he omits this, that omission will be the voluntary cause of the effect; just as the negligence of the shipmaster is the cause of the sinking of the ship, which indeed in the physical genus is a cause per accidens; nevertheless in morals it is judged as per se, because interpretative intention lies underneath.

Yet here note: If that work, from which that shameful imagination arises beyond the intention, is licit, you are not held to omit it in order to avoid that imagination, provided danger of consent is absent.... But if it is not licit, we are held to omit it even on account of that effect arising per accidens; nevertheless not under mortal sin, unless the work is mortal and of itself pertaining to lust; but under venial sin, as when the work of itself does not pertain to lust, or, if it does pertain, is only venial.... For you are not held more to avoid such an imagination than pollution; since that is only the means and way, but this is the end and terminus. Hence, just as one is not held under mortal sin to avoid those actions on account of the danger of pollution to follow beyond the intention, so neither on account of the imagination and pleasure thence rising beyond the intention; nevertheless, danger of consent being set aside in all things.

Yet if by another reason, the prior work not being discontinued, you can easily drive away an imagination of this sort and the pleasure of the sensitive part, you are held to do it, and indeed under mortal sin. Hence you cannot then conduct yourself negatively, that is, in a middle way without consent and positive displeasure. The reason is that, by not driving it away when you conveniently can, you interpretatively consent to it. Wherefore, since the object of itself is grave, it will be a deadly sin. Nor here is there merely consent in the cause, as when the cause is not removed, but it is immediate consent in the pleasure itself, because even while the cause remains, you can easily remove or impede it.

The same must be said concerning pollution. But whether, when it cannot be removed except by removal of the cause, and we are not held to remove the cause under mortal sin, because it is a remote cause or one per accidens, we can conduct ourselves negatively concerning that pleasure, so that by this one does not sin by a new sin, or at least not mortally, can be doubted.

I respond briefly: it will not be a mortal sin if danger of consent is absent. The reason is that then to conduct oneself negatively is in no way to consent except in the cause, which consent we posit from what has been said not to be deadly. It is confirmed: because it cannot be driven away except by removal of the cause, as is supposed; therefore I am not held to try to drive it away otherwise, for I am not held to try what is morally impossible for me; therefore neither am I held to have positive displeasure of it. For this will be ineffectual for driving away the effect, and from the other side it is by no means necessary for impeding consent. In practice, however, because the frailty of man is great and easily, while pleasure lasts for a long time, he is drawn into consent, this subtlety must be avoided, and detestation of that pleasure must be excited as soon as possible."

Sanchez, l. c., also to the matter: "Fifth, it is inferred among... the unmarried... that no act has mortal malice because it is the cause of foreseen and not intended pollution, unless, with that danger of

pollution set aside, it would be mortal against the sixth precept of the Decalogue. Because only such acts are a notable cause of pollution. And, when they would notably influence of themselves, and notable necessity would excuse from pollution, it would similarly excuse from fault against the sixth precept.... Except, however, unless in venereal pleasure the will conducts itself negatively, neither admitting nor rejecting. For although it is most probable that it is not mortal, when danger of consent ceases, nevertheless, if there is danger of pollution, although there is not danger of consent, it is mortal. Because man is held under mortal sin to remove causes notably concurring toward pollution; such is this. Indeed... then to resist tepidly is mortal, the danger having been foreseen. But the will is held to conduct itself more fervently, by which it may avert that cause of pollution."

3. Ioannes, a traveler, visiting the museums of the city, walking through their halls, out of mere curiosity looks at the nudes of paintings and statues that present themselves; nevertheless, when motions arise, he denies consent. Likewise, walking through the public streets, he curiously looks at women nursing infants or bearing the neck somewhat uncovered, since in his own country he had never observed anything of this sort.

Q. 1. Are immodest looks always a grave sin? 2. What must be thought concerning Ioannes?

R. To the first. Cf. I. M. 774, 775. - To the second. St. Alphonsus, 424, speaking of pictures, says: "To look at obscene pictures only out of curiosity is not mortal, if shameful pleasure and its danger are absent. But in practice I think that a man morosely looking at the pudenda of a depicted woman is with difficulty excused from mortal sin, because here he will with difficulty be able to free himself from shameful pleasure, or from its probable danger, unless he were looking for a very brief time and at a great distance." Hence the same seems to be said concerning the look at statues. Wherefore someone sins gravely if their nudes are total, and the looks are made deliberately, closely, and with notable delay. For then, without sufficient reason, he posits a cause gravely influencing of itself toward shameful motions and proximately exposes himself to danger of sinning. But it is otherwise, of itself, if the looks are made in passing and from afar, or also if the art in the painting or statue is not eminent.

As to the other look at nursing women, someone is not excused from grave sin if this look is so long and with commotion of the spirits that it then brings in proximate danger of pollution, or of shameful motions, or of consent. The same must be said concerning the other look at women who bear the neck somewhat uncovered, if likewise it is morose or long, with commotion of the spirits, so that proximate danger of pollution, or of depraved motions, or of consent is had, as easily happens in one looking who is very prone to venery. But it will be only a light sin if such looks are made in passing or without such danger. In practice, however, great caution must always be used to avoid especially too long looks at immodest things and even less modest things; for in this corruption of nature, it cannot be long before concupiscence sharpens its stings. L. 422, 423, 484; Sanch., l. 9, d. 45, n. 19, 20, 24; d. 46, n. 23-26; Lessius, *De Iust. et Iur.*, l. 4, c. 3, dub. 14, n. 98-102; Billuart, *De Temper.*, dissert. 6, art. 16; *Colliges* 11°, Scav., 12th ed., Milan, 1874, l. 1, n. 792-795.

As regards Ioannes, since in the case his looks are said to have been from mere curiosity, and from the other circumstances it sufficiently appears that they were made only in passing, and that he denied every consent when motions arose, he seems to be immune from grave sin. It is sufficiently established that Ioannes was led by mere curiosity from the fact that he was struck by the novelty of

things outside his own country; whence he could also be moved somewhat by the diverse manner of morals.

4. Nicolinus, indeed a good Christian, but, from love of knowledge, greedy for reading, rather often reads books which, although they are not depraved in themselves, nevertheless everywhere appear somewhat less chaste. While reading, he sometimes experiences some less chaste thoughts and motions of concupiscence, which he despises; and, with consent firmly denied, he continues the reading begun. But afterward, agitated by the stings of conscience, he hastens to the confessor and asks of him whether, notwithstanding the temptations which arise, he can indulge in readings of this sort.

Q. 1. Are immodest readings gravely prohibited? 2. Has Nicolinus sinned?

R. To the first. Cf. I. M. 776-778. To the second. Negatively. The reason is that, although he placed a cause influencing toward depraved motions lightly at most, nevertheless he did this not from curiosity or from natural pleasure, but from an honorable and useful reason, namely from the desire of acquiring knowledge; and he at the same time studiously elicited an act of displeasure toward the depraved effect. Billuart, *De Actib. hum.*, diss. 1, art. 1; G. 10. - But if he reads from curiosity, he indeed sins, but of itself only venially, because the cause is only venial, with danger of consent always excluded. - But if, besides, without cause he reads very shameful things, he sins gravely, at least on account of the proximate danger of complacency. Perhaps except if one reading from curiosity alone, on account of advanced age, cold complexion, or another peculiar reason, does not incur grave danger of lust. L. 1, 3, n. 426; G. 21.

5. Medardus, since from his condition as a physician he must often converse with persons of every kind and treat them, feels a greater propensity toward dealing with women and curing them than toward dealing with men and curing them.

6. Anatolia, exercising commerce, is accustomed to show herself pleasing, courteous, and familiar with customers, so that she may increase their frequenting of her shop and receive greater profit from it. Nevertheless she is anxious, because she fears lest perhaps several internally sin on occasion of her.

Q. Do Medardus and Anatolia sin?

R. Medardus must be excused from sin, provided that he acts honorably with all and resists temptations arising. "Nor does it matter that Medardus seems to himself to feel a greater inclination of nature when he understands that he is being called to succor a woman than to succor a man; both because to succor a woman also is not evil, but rather good, and if not owed from justice, at least owed from charity; and because a prurience of nature of this sort is not moral and free, but rather natural, especially after the fall of Adam. Therefore it is not formally evil, although it must be confessed that it can be rather troublesome to a chaste mind, indeed even dangerous, and therefore it must be advised to Medardus that he strive to repress it through reason as far as possible, and to strengthen his mind by contrary protestations." Elbel, *De Act. hum.* 15.

"Anatolia did not sin by this, that she showed herself more familiar toward the customers flowing in, provided that she did not exceed the limits of honesty or give scandal. The reason is that to show

oneself familiar, indeed more familiar than others, yet within the limits of honesty, is not evil, but of itself indifferent. But a means indifferent of itself we licitly embrace in order to a good end, as was that intended by Anatolia." Elbel, l. c., 75. Hence neither does she, of herself, provide any scandal, if, as appears, that courtesy and familiarity stands within the limits of mere urbanity and honesty, nor is referred to anything else than conducting the business affairs of commerce well. G. 24, 25.

7. Livonia advised her daughter, who was aspiring to very favorable nuptials, that she show herself cordial toward the bridegroom, and flatter him, and by no means refuse conversations, kisses, embraces, or other allurements, for the end that she may capture his love and the marriage not be impeded.

Q. 1. Are kisses and embraces gravely illicit? 2. Have Livonia and her daughter sinned gravely?

R. To the first. Cf. I. M. 782; V. 2, n. 946-948; E. M. 765. - To the second. Livonia sins gravely both against piety and against chastity, by reason of the scandal given to her daughter, since without any discrimination she indifferently advises her daughter things honorable and dishonorable. But her daughter also sinned gravely against chastity if, therefore lest she be abandoned by the bridegroom, she in reality permitted acts gravely shameful to her bridegroom. And although perhaps she had already become pregnant, she ought altogether to abstain from these things. For one must not continue in sin, but must altogether cease from it. Let her strive by other honorable means and honorable signs of love to gain the mind of the bridegroom. Marriages obtained by illicit means generally obtain an unfortunate outcome. - Elbel 74, 76, 77, 308; G. 26.

8. Gaudentia, a mother of a family, permits, indeed commands, her daughter Honorata to be taught by a master in the art of playing various musical instruments, singing, and dancing. But it often happens that Honorata must dance at various gatherings which are held in the paternal house, even with young men of different sex who are relatives, neighbors, and friends. Honorata does this, seeing or grasping nothing evil in it. Hence her confessor, learning the matter, indeed exhorts her by way of counsel that, as much as she can, she abstain from dances, but imposes no obligation on her.

Q. 1. What must be held concerning dances generally? What as to the case?

R. To the first. Dances of themselves are not illicit, even among persons of different sex. Nevertheless they can be illicit if they are done in a less honorable manner, by reason of nudities, looks, and touches, likewise by reason of danger and scandal which can be present in them. Hence dances generally are indeed to be dissuaded, as having more or less danger; but their illicitness and grave or light sin cannot be affirmed absolutely unless the various circumstances occurring in practice are attended to. The necessity which someone can have of assisting at dances must also be attended to. For not rarely the faithful are impelled by a grave cause and moral necessity to be present at dances. Nearly the same must be said concerning spectacles, which of themselves are not evil, and therefore not illicit. Nevertheless they can be evil and illicit if shameful things are represented, if words and songs are immodest, if dress is indecent; likewise if danger of grave sin is had from various circumstances which furnish foment to vices, or scandal is had, which especially can be had in small cities, since individuals are there known by all. - I. M. 777, 782; G. 233 seqq.

To the second. Gaudentia, speaking of itself, cannot be accused of sin, especially grave sin, if she applies the means which prudence suggests in such a case, namely that the master be an honorable man, and that she herself be present, or at least watch through another prudent person. Honorata likewise is not to be blamed for grave sin especially, since there is no danger for her and she sees nothing evil in those dances; whence it must be concluded that they are only honorable. But whether she is to be accused at least by reason of cooperation in the sins of others is not established; nor can it be affirmed, since she herself places an act not evil but indifferent in itself, and she altogether does not know whether others are present who suffer scandal on occasion of her. Nor indeed does a certain necessity of dancing seem to be lacking for her from the fact that those dances are instituted in her own house by her parents. Wherefore the confessor acts well by exhorting Honorata, and by not reproving her importunately or erroneously obligating her. - G. 233 seqq.

63. On Acts According to Nature

1. Mauritius had carnal intercourse with a prostitute. Repenting of the deed, he approaches the confessor and says that he once fornicated.

2. Tiburtius, after the proposal of not sinning further with his concubine, unhappily falls again into sin. Greatly grieving, he confesses his sin, saying that he fell twice into fornication.

3. Urbitius with every industry solicited a virgin to sin and finally deflowered her when she consented. Accusing himself in sacramental confession, he says that he committed the sin of fornication.

4. Sulpitius sinned with his betrothed. But in confessing the sin he accuses himself of simple fornication.

Q. 1. What is fornication and what kind of sin is it? 2. Have all confessed integrally in the various cases?

R. To the first. Cf. I. M. 788, 789; E. M. 788. - To the second. Prostitution is the state of a woman who is prepared to make the abundance of her body available to all for pay. Therefore to have carnal intercourse with a prostitute is not, speaking of itself, a special sin distinct from fornication. Nevertheless, in a particular case a special sin can easily be had, if something is positively done to impede generation or harm is brought to offspring already conceived. Since there is no circumstance of the case from which this can be conjectured, consequently it must be said that Mauritius, if he is unmarried, sufficiently explained his sin. Yet if the prostitute herself were to approach confession, in practice that circumstance would have to be explained, in order to know the state and the kind of occasion of the penitent, and consequently for her due direction.

Concubinage is frequent intercourse of an unmarried man with one and the same unmarried person. It makes no difference that the persons remain in the same or in different houses, provided nevertheless that they live together after the manner of spouses. Indeed, if this intercourse is had with a married man or married woman, it is still called concubinage, although improperly, because then the malice of adultery is also included. Therefore in this concubinage differs from simple fornication: that fornication indicates simply intercourse of an unmarried man with an unmarried

woman, now one, now another; but concubinage is exercised toward the same person as if she were a spouse. Concubinage is a most grave sin, because the concubinarian both sins and perseveres in the state of mortal sin, whence ordinarily he must not be absolved unless the concubine has been dismissed. Therefore Tiburtius sufficiently explained the species of the sin, if he is unmarried; nevertheless that circumstance of concubinage must be discerned by the confessor because of relapse and occasion.

Stuprum, taken in the strict sense, is the deflowering of a virgin while she is unwilling, and it is a special sin, because besides most grave fornication it contains the injury inflicted on the oppressed virgin. Taken in the strict sense; for in a broad sense stuprum is also called not only violent stuprum, but also voluntary, or with the virgin altogether consenting, and then it is more commonly held as mere fornication. Wherefore Urbitius sufficiently explained his sin, if nevertheless every fraud was absent. For if the virgin is induced to evil by fraud, for example, by a false promise of marriage or of a great dowry, or also by grave reverential fear, although she herself also sins by consenting, nevertheless her consent was extorted by grave injury and by moral force. - I. M. 790.

Fornication of a betrothed man with a betrothed woman is more probably not of a diverse species. Wherefore Sulpitius sufficiently confessed his sin. Nevertheless, that circumstance of espousals would from another source have to be known by the confessor, for the due direction of the penitent and for judging the occasion of sin.

5. Bertina, a maidservant, a woman fearing God and therefore abhorring sin, having been earnestly solicited several times to evil by her master, as often resisted him. Having been induced by the confessor to abandon an occasion of sin of this sort, she asks and insists that she may remain in the same service, because she receives a greater stipend from the master and would with difficulty be able to find another honorable place. The confessor accedes to her wishes. But soon she is again solicited by the master, and by him, against her will, she is oppressed. What is the miserable woman to do? At first she does not dare to cry out, lest she defame both the master and herself. Then, when she wishes to cry out, that man, furious with lust, threatens death. Therefore, placed in the last straits, Bertina externally conducts herself merely passively, but internally from heart and soul detests the sin.

Q. 1. What is stuprum? 2. Ought Bertina to have abandoned this occasion of sin, and to have been obligated to this by the confessor, even under penalty of absolution to be denied? 3. Did she sin gravely by not crying out, because of fear of infamy? 4. Did she sin gravely by not crying out and by conducting herself passively because of fear of death? 5. If she had been able, ought she to have killed the master in the case?

R. To the first. Cf. I. M. 790, 791. To the second. If Bertina could easily have found another master, she indeed ought to have abandoned the present occasion of sin, since then there would have been no reasonable cause for persisting in it. But if she could not easily have found another master, since in reality the occasion of sinning is remote for her, since she is a woman fearing God, abhorring sin, and has always resisted temptation, she could not be obligated by the confessor to abandon it under penalty of absolution to be denied.

To the third. It is controverted. According to many, she did not sin. For they say, "when from cries she fears for herself grave harm of infamy, death, or excessive shame, she is not held to it. Thus Soto,

Navarrus, and Reginaldus; Bonacina also seems to embrace this opinion, which also seems probable to me when she would fear grave harm to herself from crying out." Lugo, d. 10, n. 198; La-Croix, l. 3, p. 1, n. 916. According to others, she sinned gravely of herself, by not crying out at first, unless she was excused by good faith. For she ought to have applied an easy remedy for escaping so great a danger to chastity. Nor indeed does the excuse brought from fear of infamy avail. For she incurs no loss of reputation by crying out, since only honorable women in a like case are accustomed to cry out. But as to the master's reputation, let him impute it to his own malice if he suffers danger to his reputation. Elbel 40.

To the fourth. It is likewise controverted. The denying opinion much more does not lack probability because of the most grave fear of death. For "that permission then is not moral cooperation, but only material; and therefore it is sufficiently excused on account of danger of death.... Nevertheless it must not be denied that the affirmative opinion is altogether to be advised in practice, at least on account of the danger of consent, which can easily be present in that permission." L. l. 3, n. 368.

To the fifth. Bertina would indeed have licitly killed the master, the assailant of her modesty, if she had been able. For it would have been a just defense. Nevertheless she was not held to this, although she herself would have had to be killed. "For no one is held to kill an aggressor, but licitly and laudably can permit his own killing, lest the other be deprived of temporal and eternal life." L. 380. Cf. I. M. 727, 729, 730; G. 19, 20.

64. On the Use of Marriage

1. Marina, after marriage had been entered, was able to complete intercourse the first time not without grave difficulty. For it could not be completed otherwise than by exciting herself, in the very approach of the husband, even to seminal emission, namely before intercourse was in reality completed. The same difficulty always persevered because of narrowness of the organ, whence unless she does that, conjugal intercourse is impossible for her, or not possible without grave pain. She often explained the matter to her confessors. Some told her that it is permitted to her to excite herself thus even to seminal emission, immediately before the intercourse itself, just as it would be permitted to excite herself in the same way immediately after intercourse. But others said that it is by no means permitted thus to excite herself immediately before the intercourse itself, and added that the marriage, in the case, is null on account of impotence, since intercourse is not possible except by a means altogether illicit.

Q. What as to the case?

R. That a marriage of this sort was null on account of the impotence of the woman can indeed in no way be admitted. For in fact intercourse was completed, as appears from the case; and accordingly this marriage cannot be null from impotence, which impotence is for coition simply, and not for coition easily or with difficulty, with pain or without pain. And that impotence which is present in the case, whatever it is, can rightly be removed, and in fact is removed, without bodily danger and by a remedy otherwise licit, as will soon be explained. For nullity by reason of impotence in the case could not reasonably have been affirmed otherwise by those confessors, except insofar as they thought that that manner of congress was illicit, and accordingly that the impotence in the case is not removed except by an illicit means.

But as to the discord of the confessors concerning that excitation immediately before intercourse, perhaps they would be brought to concord if some explained their mind rightly to others. For if that immediately before is taken in a certain gross way and broad meaning, so that namely the woman, before the coition itself, indeed before the very approach of the husband, excites herself even to perfect seminal emission or pollution, this indeed appears altogether illicit. For that act, in reality, as a whole and entire thing, is in itself fully perfect independently of intercourse, and accordingly truly has the nature of pollution. And if afterward intercourse in fact follows, as far as concerns the very nature of such an act, this following intercourse is not related per se to that prior excitation as its natural perfection and natural complement, but that intercourse is related merely per accidens. But in such a case it is not really had that that excitation is done immediately before the intercourse itself, since in reality other actions intervene between this and that, and accordingly that immediately before is taken in a broad and gross way.

But if that immediately before the intercourse itself is taken properly and strictly, so that the aforesaid excitation has place in the very approach of the husband to the wife, and not before it - which approach alone is that which can truly and properly be understood immediately before the intercourse itself - then the grave illicitness of that excitation does not appear, so that it cannot be permitted without a grave and proportionate cause. The brief and urgent reason seems to be that that excitation is then related to the intercourse itself not at all per accidens, but on the contrary per se, and is related only to the intercourse, since it is in reality the beginning and commencement of the intercourse itself. And only this beginning and commencement of intercourse immediately precedes the intercourse itself, not another. The same assertion is confirmed from the authority of theologians. For there is truly no one who denies the illicitness of an excitation of this sort on the part of the wife in the intercourse itself now begun.

For 1. although theologians commonly do not teach this explicitly, because they do not treat this question, supposing that the woman is always of a colder nature, nevertheless they seem at least to intimate this implicitly, when they permit the wife before the act "to prepare herself for intercourse by touches." St. Alphonsus, n. 919. Indeed, such preparation by its nature progresses even to seminal emission, which can be confirmed from the very comparison which the Holy Doctor makes in l. c., which otherwise would prove nothing at all: "just as the wife can prepare herself for intercourse by touches, so also she can complete the act of intercourse," namely after the husband has withdrawn himself. And the same is also evinced from the other reason which the Holy Doctor adds: namely, that the wife can, after the husband has withdrawn himself, immediately excite herself by touches to seminal emission, because that seminal emission of the woman contributes much to generation. Now, from physiology and the opinion of physicians, that excitation contributes still more both to the marital act and to generation itself, if it is done immediately beforehand, namely in the very approach of the husband and in the commencement of intercourse. Pont., *de Matr.*, l. 10, c. 11, n. 5; Giribaldi, tr. 10, *de Sacr. Matr.*, c. 19, d. 7, n. 41, 47.

2. The principle commonly admitted by theologians is: "It is not necessary that each spouse have seminal emission at the same time." Sanchez, *de Matr.*, l. 9, d. 17, n. 9. The husband can have emission first and then the wife; the wife can have emission first and then the husband, in the conjugal act. Cf. St. Alph., l. 6, n. 918, 919. Hence it is commonly deduced that immediately after the conjugal act also the wife can have emission, because that emission of the wife is had,

the emission of the husband being supposed, as the complement of the conjugal act. Now from this it also follows, by logical deduction, that immediately before, in the very approach of the husband, the wife can have emission, since then the commencement of intercourse is had, which, the intercourse having been carried out, is completed and perfected by the emission of the husband. But attending to physiological doctrines concerning this matter, that improper emission of the woman pertains rather to the proximate and immediate preparation and disposition of the conjugal act and its commencement than to its complement. Moreover, it is more related to intercourse, and is more a preparation and commencement of intercourse, if it is done immediately before, while namely the husband is in that which completes coition and is already at the mouth of the woman's vagina, than if it is done immediately after, namely, as theologians commonly say, after the husband has withdrawn himself; for intercourse then is no longer had in any way, and nevertheless the emission of the woman is regarded by theologians as the complement of intercourse.

3. Besides, the conjugal act consists in this: that by marital congress the husband and wife become one flesh through the mingling of seeds. This indeed does not prevent the woman who did not have seminal emission in the marital congress, after that congress has now ceased, from having emission immediately afterward, because the mingling of seeds is still had by force of the same marital congress. But the same is verified altogether, and much more, if immediately before that congress, the woman, preparing and disposing herself proximately for it, namely in its very beginning and commencement, has emission; for, the congress itself immediately following after from this proximate preparation and beginning of the congress, the mingling of seeds is now had by force of the same conjugal congress.

It is added that, according to the opinion now commonly admitted, it is permitted to the husband to institute imperfect intercourse, that is, only to begin intercourse, and by this beginning of intercourse, from some reasonable and sufficient cause, also to pour out seed at the external surface of the female organ, or at the mouth of the vagina. Cf. Ballerini, note to n. 855; Fr. Gury, vol. 2, p. 830 seq.; D'Annib., p. 3, a. 431, 3rd ed. Therefore a fortiori the woman can, without doing anything repugnant to nature, excite herself even to seminal emission in the beginning of the same intercourse. Sometimes indeed natural intercourse on the part of the woman is possible in no other way, nor can it be done in another way without grave pain and inconvenience to the woman; for the fibers are then naturally relaxed and dilated.

4. The same follows from another commonly admitted principle, that in order that there be mortal sin between spouses, something must be done against the good of marriage. But that act immediately before intercourse, in the very commencement of intercourse, according to the teachings of physiology, harms human generation in no way; indeed it is commonly regarded by physiologists as useful, and very useful, both to the conjugal act itself and to the generation of offspring itself. From the aforesaid principle theologians gather that, the crime of voluntary pollution outside the vessel and of sodomy being set aside, scarcely anything else can be condemned with certainty as grave fault in spouses. It is not a question here, as is clear, of sodomy, nor can there be question of pollution outside the vessel, since female emission naturally and commonly is not done outside the vessel, unless from purpose and from

lasciviousness the woman procures in herself that outpouring of humor outside the vessel, and this is not the present case. Scav., 12th ed., Milan, 1874, l. 1, n. 778. Nor indeed can there be question of pollution, simply such, for this is an outpouring of seed without congress with another, so that a futile outpouring of seed is had against the order of nature. In the case at issue, the beginning of intercourse is had, and accordingly it cannot be said that that without congress with another is verified; and much more it is not verified in this case than in the other already indicated, in that aforesaid complement of intercourse. But most certainly a futile outpouring of seed is not had, since, with intercourse soon perfected, the mingling of seeds is had, the conjugal act being completed on each side. Cf. Verricelli, *de Apost. Miss.*, tit. 18, q. 303 seqq.; *Quaest. Mor. leg.*, tr. 4, q. 27, s. 7; Mendo, *Statera*, etc., d. 5, q. 18, at the end.

And from these things which precede, that also is clear which was declared by the Holy Office on 24 March 1897, namely that artificial fecundation of the woman is not licit. From which illicitness those things also which precede are in turn confirmed.

2. Candidus, a confessor, although he has a prudent suspicion that spouses use marriage onanistically, always omits interrogating those same spouses, who do not accuse themselves of that sin. For first, he considers all as constituted in good faith. Besides, he himself acts thus lest he offend the spouses.

3. Pius, a confessor, asks: 1. Whether a woman can be absolved who indeed would suffer the husband if he acted rightly in conjugal intercourse, but vehemently desires that the husband withdraw himself, because that woman fears to have offspring. 2. Whether a woman can be absolved who, in conjugal intercourse, could by her blandishments obtain from the husband that he not withdraw himself, and does not do it, because that intercourse displeases her.

4. Bertha has a husband whom she has known by constant experience to be an onanist. In vain she has tried every means to draw him back from so unspeakable a crime. Indeed, most grave, or at least grave, evils now probably threaten her, so that she must either incur these evils, or flee from the house of her husband, unless she permits at least sometimes the abuse of marriage.

5. Flavia has an onanist husband, whom she can in no way resist. After the withdrawal of the husband, since she herself is greatly aroused, she is accustomed still to excite herself by touches so that she herself may at length complete the act. Since she was doubtful concerning this matter, she questioned Doctor C. C., who responded to her that this is licit to her, since what of itself is licit to her cannot be made illicit to her by the sin of the husband alone.

Q. 1. What concerning onanism? 2. What as to the various cases?

R. To the first. Cf. I. M. V. 2, n. 1066, 1067. - To the second. The practice of Candidus cannot be approved, in always omitting to interrogate spouses, even when the abuse of marriage is prudently established. But it is altogether false that all spouses of this sort, acting badly, are in good faith. And for omitting the interrogation which otherwise must be made, the fact that the aforesaid spouses may be offended is not a sufficient reason. Sacred Penitentiary, 21 May 1851; 10 March 1886; *Enchir. Moral.* 1058. But the interrogation, when it ought to be made, must be made discreetly and prudently. Let

the aforesaid confessor recall to mind that adage: holy things must be treated holily. And lest he exceed in interrogations, let him also weigh the words of St. Alphonsus, who in *Praxis Confessariorum*, § 4, n. 41, says: "But concerning the sins of spouses, with respect to the conjugal debt, ordinarily speaking, the confessor is neither held nor is it fitting to interrogate except wives, whether they have rendered it, in the more modest way in which he can. Let him be silent about the others, unless he has been questioned." Sacred Penitentiary, 8 June 1842.

To each question of Pius one must respond negatively. Sacred Penitentiary, 27 May 1847. For in the first case that woman desires a thing intrinsically evil, since the thing is contrary to the natural right of marriage. Sacred Penitentiary, 21 May 1851. But in the other case, the woman is consenting in the abuse of marriage on the part of the husband.

As regards Bertha, "since in the proposed case the woman indeed on her own part does nothing against nature, and gives work to a licit thing, but the whole disorder of the act proceeds from the malice of the husband, who, instead of consummating, withdraws himself and pours out outside the vessel; and therefore, if the woman after due admonitions accomplishes nothing, but the husband insists, threatening beatings or death or other most grave evils, she herself will be able, as approved theologians teach, to conduct herself permissively without sin, since in these circumstances of things she simply permits the sin of her husband, and that from a grave cause which excuses her; because charity, by which she is held to impede it, does not oblige with so great an inconvenience." Sacred Penitentiary, 1 Feb. 1832. - Gury, *Comp.*, vol. 2, n. 927 seqq.; Scav., 12th ed., Milan, 1874, l. 3, n. 921, 922.

As to Flavia, the response of Doctor C. C. cannot be approved. For, given the withdrawal of the onanist husband, that act now has the true character of pollution. Hence in circumstances of this sort that act is not licit to her of itself, nor is it in any way made illicit to her by the sin of the husband. Wherefore, although the husband were not an onanist and withdrew himself from a reasonable cause, because, for example, he could not consummate the act, nevertheless the wife, thus aroused, could not for this reason then complete the act herself by her own touches. St. Alph., l. 6, n. 918, 919; I. M. 810, 811, 813.

6. Moevia, fearing to have several children, is accustomed immediately after the conjugal act to wash herself with cold water. But at the same time fearing lest this be a sin, she questions four confessors. The first responds that this is altogether illicit. The other asserts that it is simply licit. The third affirms that it is indeed illicit if it is done immediately after marital congress, or a little afterward, but by no means if it is done at least after three or four days. The fourth says that it is illicit if it is done with cold water, but by no means if it is done with hot water. Hence Moevia, after so many diverse resolutions, approaches a fifth confessor, that she may know whether she can continue in that practice, candidly asserting that she in reality has had no further child after she began to apply that washing.

Q. What as to the case?

R. First, there can be no doubt concerning the grave sin of Moevia in the aforesaid practice, from the depraved intention which she has of impeding generation, even prescinding from the very nature and force of that washing. It appears sufficiently and more than sufficiently that Moevia persists in it from

the fear by which she is affected of having several children; consequently she applies it to impede conception.

But what must be thought concerning the aforesaid practice, sufficiently common? If it is considered in itself and the depraved intention is absent, since by prescription of a physician it is applied on account of infirmity, namely on account of a flux of humor which women not rarely experience.

From the opinion of physicians and physiologists, cold water either kills the germ, or certainly diminishes its fecundative power, which needs a certain determined degree of heat. For the fecundating activity of the spermatozoa is preserved by heat exceeding 30 degrees; but when the heat decreases below 20 degrees, although it is still preserved, nevertheless its energy is less. Hence washings or interior irrigations made with cold water are illicit of themselves, because they either impede generation or at least contain a sufficiently proximate danger of generation to be impeded.

Likewise, if the water, although sufficiently warm, nevertheless is not simple water but medicated water, then the case must be examined in particular; for there are certain drugs which have the same force of killing the germ or impeding generation, but others which are altogether innocuous.

Moreover, if the washing is done not only immediately, but even a little after the conjugal act, the seed is wasted and generation is impeded. It is necessary that at least a half hour, or at most three quarters, or even a whole hour have elapsed, lest generation be impeded. If besides the washing or irrigation is done not only in the vagina but also in the womb, so that water is sent by some greater pressure into the womb itself and penetrates it, the aforesaid washing and irrigation is altogether illicit, since either the germ is carried away by it or, if conception has already been made, abortion is procured. Wherefore the washing must be done only with light pressure of water, lest it pass beyond the vagina and seed be carried away from the womb or the fetus be expelled; and because, if seed still remained in the vagina, the more easily is the seed then carried away from the vagina, the greater will be the pressure of the water by which it is introduced within. But in the beginning of pregnancy it is at least prudent to abstain from washings or irrigations of this sort, since some danger of abortion can be present in them.

Hence, if due precautions are applied, both lest seed be ejected, and lest conception be impeded, and also lest abortion be procured, the aforesaid washing does not seem illicit, so that the wife must abstain from it under grave obligation, although otherwise it is altogether necessary for her on account of the infirmity which she suffers, of a flux of acrid and harmful humor. But if she could abstain from it, or at least defer it longer after the conjugal act and wait an entire day, or two or three days, it would certainly be better. Nor indeed does there appear, at least ordinarily, so urgent a reason why it is not deferred thus. Cf. Debreyne, *Essai sur la Theol. Mor.*, p. 3, c. 1; Legrand du Saulle, *Médecine Légale*, Paris, 1886, pp. 265, 266, etc.

Those things which precede can be confirmed by the doctrine and authority of St. Alphonsus as to other cases very practical in this matter. 1. "Spouses indeed can from a grave cause do something from which, per accidens, an outpouring of seed follows; nevertheless they sin if in the use of marriage, or after the use, they do something by which conception is impeded or the seed conceived is rejected. The reason of the former is that generation is not impeded, not even indirectly, but it is only permitted not to take place, which is licit from a reasonable cause. The reason of the latter is

that they act against the faith and principal end of marriage. Hence poverty threatening or danger from childbirth does not excuse such persons." Lig. 954.

2. Hence it is grave if a woman in the use of marriage diverts her mind to other things in order to impede conception. Lig. 918, 954. Likewise a wife will sin mortally if immediately after intercourse she urinates, or rises, or does something else, with the intention that she expel the received seed, because she frustrates the end for which seed is instituted by nature.... But it was said if the woman does this immediately and with the intention of expelling the seed; for if she did this from some necessity, for example, to avoid danger of death or the scandal of others, all say that she does not sin, just as they also agree that there is no need that the wife, after intercourse, remain long unmoved and supine, because in a short time the womb draws the seed and is closed most tightly." Lig. 954, 918.

"It seems to me indeed," says Capellmann, "to be preferable that this sin be removed from the midst by this reason: that to a woman accusing this in confession it should be answered that that manner of acting in no way helps the woman's depraved counsel. For it is certain that seed which has now penetrated into the female vessel does not flow out so easily. The walls of the vagina, after the withdrawal of the husband, are immediately composed hermetically, and therefore on account of the capillary sucking force of the touching walls it cannot happen that the seed flows out." *Medicina Pastoralis*, 11th ed., Aachen, 1896, p. 139.

3. Speaking of the natural position, the Holy Doctor adds these things at the end: "But Sanchez, Pontius, Palaus, and Bossius say, with Perez, Hurtado, and Aversa, that it is not mortal if, on account of a variation of position, only part of the seed falls out, the rest being retained within the vessel, sufficient for generation; which Sanchez and Bossius say sometimes happens; indeed Palaus and Pontius say that it happens almost always, and Pontius testifies that physicians assert this. But the Salamanticenses call this opinion too lax, because, as they say, to waste human seed without reasonable cause cannot be excused from mortal sin. Moreover, the Salamanticenses themselves, and Sanchez and Sporer with Aversa, say that the confessor is not held to interrogate a spouse accusing himself of this whether seed was poured out or not, because rarely, as they say, does it happen that seed is poured out; and thus I also have heard several times from those who accused themselves to me in confession of having had intercourse in an inverted manner. But those who have intercourse standing, or sitting, or with the woman above, I think to be in greater danger of pouring out the seed. But by this I do not dare to condemn the opinion of Sanchez, Pontius, Palaus, and others, as above; for they could respond to the Salamanticenses that to waste seed without a just cause, or, as the Salamanticenses ought better to have said, to permit that seed be wasted, is never licit when the seed is poured out outside the vessel of the wife, but not when it is sent within and, per accidens and not from the act itself, is wasted; because then the womb, as the aforesaid authors say, already draws what is sufficient for generation and expels the rest as superfluous." Lig. 917.

The same Capellmann, l. c., p. 151, says: "Every position, even if unnatural in intercourse,... of itself does not exceed venial fault, provided that the conjugal act can be sufficiently completed... that is, provided that introduction into the vessel and emission of seed into the vessel can take place.

Infusion into the vagina is plainly sufficient. From anatomical causes direct infusion into the womb will very rarely have place; descent

(according to the law of gravity) will never happen. Reception of seed into the womb is effected partly by motions of the muscles and of the ciliated epithelium of the mucous membrane, and partly certainly by motions which are present in the spermatozoa themselves. Wherefore, in order that seed be introduced into the womb, position in intercourse is of no importance. Partial loss of seed after infusion into the vessel can indeed happen in some positions, nevertheless not so that conception is impeded by it. For it is established that the least amount of seed suffices for generation." And St. Alphonsus also says in l. c.: "Change of position does not impede generation, since the seed of the man is not received into the womb of the woman by infusion or descent, but by attraction, while the womb of itself naturally draws the virile seed."

4. "One taking or giving a potion, or effecting anything else by which conception of offspring is impeded and the spouse becomes sterile, sins mortally, whatever end this is done for, for instance, because the wife is accustomed to give birth with danger of death. The reason is that by deliberate work the seed is impeded from its natural end of generation, and it is against nature. Thus Cajetan, in 2. 2, q. 154, a. 1, ad 2; Sanchez, *de Matr.*, l. 9, d. 20, n. 2. And it is established from C. *Aliquando*, 32, q. 2. V. Lig., l. 6, n. 954." Scav., 12th ed., Milan, 1874, l. 3, n. 839.

Hence consequently it must be said that it is altogether illicit to wet the mouth of the womb with alum, by whose force it is tightened and closed, enough to impede the ascent of seed into the womb, by which the ovule may be fecundated.

65. On Acts Against Nature

1. Lubanus is accustomed to ride horseback, either for the sake of utility or also not rarely for the sake of recreation. But often while riding, he experiences carnal motions, indeed sometimes even pollution itself. Although he detests depraved effects of this sort from his soul, nevertheless he fears lest he gravely stain his conscience, and again, anxious, asks the confessor whether he ought to form the proposal of riding no more.

Q. 1. Is pollution voluntary in the cause ever a grave sin? 2. Has Lubanus sinned?

R. To the first. Affirmatively, namely when the cause placed influences pollution per se, proximately, and gravely, and is placed without a just reason of necessity, or utility, or convenience. Now actions or causes influencing pollution per se, proximately, and gravely are those which directly, by their nature, of themselves tend to pollution, in almost the same way in which the infliction of a lethal wound is said to be a cause per se of death; and for this reason they constitute grave fault in the genus of lust. Such are, for example, morose thoughts about venereal things, voluntary sight of human intercourse, conversations openly too immodest, the reading or hearing of very shameful things, shameful touches in the private parts. I. M. 35-37, 40; Scav., 12th ed., Milan, 1874, l. 1, n. 780.

But it is permitted, from a just reason and notwithstanding the depraved effect, to place the aforesaid causes.

The reason is that no artisan ought to omit the beginning or prosecution of a work because of defects following from the necessity of the matter. For someone would foolishly omit the construction of a saw or sword because they will contract rust, since they are made from iron, and so concerning other things. But pollutions and stings of the flesh in the proposed matter happen from the necessity of the matter, from the fact that venereal matter is matter to be cleansed, washed, disputed about, preached about, thought about; from this, by natural sequence, there follows commotion of the flesh, etc. Therefore man ought not, because of defects occurring from the necessity of venereal matter, to omit not only necessary, but useful thoughts, speakings, hearings, etc. For otherwise it would be necessary either that angels or very privileged men only dispute, hear, etc., concerning things of this sort, the opposite of which ecclesiastical custom holds and reason teaches. Thus Cajetan, tom. 1, *Opusc.*, tr. 22, q. un.; Billuart, *De Temper.*, dissert. 6, art. 12, par. *Confirmatur Conclusio*.

And Lessius, l. 4, c. 3, d. 14, n. 102: "If that action or cause is of itself a proximate disposition to pollution, such as contact with and sight of immodest parts, etc., we are held by reason of pollution to avoid it under mortal sin, unless some necessity compels us to that action. The reason is that, speaking per se, to consent to the effect and to its proximate cause is of the same moral character. Nevertheless, when another just cause of that action underlies it, then that effect is not judged willed, but only permitted, as coming beyond the intention. It is confirmed in the proposed matter. For that contact does not move except as apprehended by the imagination. But apprehended by the imagination, for example, as a necessary means for curing, it does not have the power of stirring up lust. But if, with that apprehension, another also creeps in at the same time, as of a pleasurable thing, and this moves, that is per accidens, from the misery of nature and beyond the intention of the agent, not from the nature of the object considered under the aspect of a means to health. Hence, on account of such an effect, we are not held to deprive ourselves of that convenience. But it is called a per se disposition, or proximate cause, because when it is apprehended according to itself, not as a means to another end, it is such."

To the second. Lubanus must not be disturbed. The reason is that this cause is remote and per accidens; whence in such and a similar case, "man rather suffers than acts, since pollution proceeds not from his malice, but from the infirmity of nature.... To this is added that, when a cause has two effects, one good, the other evil, it can be placed from the intention of the good effect alone, conducting oneself permissively toward the evil." L. 483; St. Thomas, 2. 2, q. 64, a. 7; G. 11.

2. Marchantius once had shameful pleasure, but doubts whether sleeping or awake. Often in sleep he suffers pollution. But in the morning he rejoices because for this reason he is well and free from temptations. Finally, having awakened during pollution begun in sleep, he does not try to impede it. Often he also suffers distillation, concerning which he is very uncertain whether it is a sin.

Q. 1. Is distillation a grave sin? 2. Has Marchantius sinned?

R. To the first. Cf. I. M. 809, 811. To the second. Marchantius, in the first case, can be excused from sin. For the presumption stands for the state of sleep, since things which are done in the state of waking are adverted to and known. Voit 37.

In the second case he is still more to be excused from sin because of the defect of the voluntary. Nevertheless it could have been voluntary in the cause, if, foreseeing that depraved effect at least in a confused way, he placed its cause by shameful readings, conversations, thoughts, etc. Cf. Sanch., l. 9, d. 45, n. 28.

In the third case he is to be excused at least from grave sin, if he rejoices only concerning the good effect which followed. I. M. 292, 294; G. 23. - In the fourth case, "nor is he held to restrain its actual flow, because, from the fact that the motion of the flesh has been excited while sleeping, it is no further subject to the will of one awake; and although it were subject, it could not be restrained without notable burden of the body and danger of infirmities. Wherefore he can permit it as the effect of a natural cause which can no longer be impeded.... The same seems to be said concerning any involuntary pollution, whether it happens in sleep or in waking, since the reason of each is the same as to this." Billuart, *De Temper.*, dissert. 6, art. 13, at the end; Scav., 12th ed., Milan, 1874, l. 1, n. 782; Lig. 479.

Physicians indeed deny the aforesaid danger of infirmity in the case. And thus Dr. C. Capellmann, *Medicina Pastoralis*, 11th ed., Aachen, 1896, p. 79, openly says: "There is no such corrupted seed which can in some way bring disease to the body." But even prescinding from a danger of this sort, the reason brought forward holds, namely that in that pollution naturally begun the will conducts itself merely permissively, not impeding it, since it does not arise from any influence of the will and any efficacy of the will, but by force of nature itself; whence it is that, as it begins naturally, so consequently it is also completed merely naturally. Hence St. Alphonsus says in the cited place: "When emission began in sleep, but afterward is consummated in full waking, in that case, provided consent in the pleasure or proximate danger of consent from past experience is absent, man is not held to restrain it.... For then he does not will the pollution, but merely suffers it.... Then it is expedient to fortify oneself with the sign of the cross, and by averting the mind from that shameful pleasure, and by invoking the Most Holy Names of Jesus and Mary, fervently to pray them not to permit any fall."

Finally, as regards distillation, this first must be noted: that distillation properly differs from pollution. For pollution is the outpouring of human seed without congress with another. But distillation is a certain flow of humor intermediate between urine and true seed, which falls drop by drop in small quantity. Then indeed it must be adverted that, if distillation happens beyond the intention, without voluntary sense of the flesh and without voluntary commotion of the genital spirits, it is not a sin, nor is it necessary to be disturbed about it more than about any other simple sweat of the body.

But if it happens with voluntary carnal sense and with voluntary commotion of the spirits serving generation, for example, from shameful touch, from shameful conversation, from shameful sight, it is a grave sin. Wherefore it is mortal deliberately to procure even light distillation which carries with itself some commotion of the flesh and the outpouring of a little true seed, or certainly contains proximate danger of it. The same must be said a fortiori if the voluntary distillation is in great quantity, which is with notable venereal pleasure and notable commotion, or with some outpouring of true seed. Scav., 12th ed., Milan, 1874, l. 1, n. 778, 783; Lig. 477.

Hence St. Alphonsus, l. c., says: "Just as he sins gravely who procures a notable commotion (which is incipient pollution), so also he who procures great distillation." And Sanchez, l. 9, d. 45, n. 32, says:

"Whenever it is a mortal sin to give a cause to foreseen pollution, by not removing causes notably influencing it, it is similarly mortal to give a cause to notable distillation or to commotion of the vital spirits serving generation through similar causes. Because this distillation and commotion of the spirits is notably shameful and as it were incipient pollution." Ballerini has the same, *Op. Theol. Mor.*, 1st ed., v. 2, p. 725, where he asserts that distillation "frequently itself also happens with commotion and pleasure of the genitals; for it is joined to some outpouring of seed, or disposes to it. But again and again it has place without any pleasure. If therefore it happens in the former way, moral malice will be placed in the venereal pleasure procured either in itself or in the cause, and also in pollution or outpouring of seed, or in the proximate danger of this. But if it happens in the other way, without pleasure, although with a certain natural commotion, theologians say that it is not to be cared about, just as concerning any other excretion, nor ought we to avoid its cause." And from these things it is abundantly clear what must be thought concerning Marchantius in the fifth case.

Now, progressing further in this matter, that must be noted which the praised Sanchez, l. c., has concerning married persons. For after the words just reported, he immediately adds: "Whether this holds true in married persons, we shall say in the last number." But in this number, namely 43, he says: "I do not think that it is mortal in married persons, through touches, sights, and shameful words, and through venereal pleasure arising from intercourse thought about, to give a cause to commotion of the members serving generation and to incur foreseen distillations." And Fr. Gury, *Comp.*, v. 2, n. 919. 3°, says: "Spouses do not sin gravely, even if, from touches had even without the intention of intercourse, there arises commotion of the spirits or members serving generation, or distillation follows.... The reason is that, the crime of voluntary pollution outside the vessel or of sodomy being set aside, nothing is done against the good of marriage." But this conclusion of Sanchez and Gury, as regards distillation, does not seem able to be admitted absolutely of itself, as is easily gathered even from the very reason brought forward by Gury. For it can indeed be admitted concerning distillation which is without outpouring of seed. Nor indeed is distillation always with outpouring of seed, which indeed is opposed to the very definition of distillation.

But as regards that distillation which is in reality joined with an outpouring of seed, even if only partial, the aforesaid acts seem to be prohibited for the same reason, by reason of distillation as by reason of pollution. Wherefore, just as from the aforesaid acts which can be exercised by spouses, at least without grave fault, those acts must altogether be excluded which by their nature are an inchoate pollution, or of themselves proximately dispose to pollution, so consequently those acts seem to have to be excluded which of themselves proximately dispose to distillation joined with the outpouring of seed, and which consequently, by reason of this sort of joined distillation, are by their nature an inchoate pollution. Cf. I. M. V. 2, n. 1079-1083.

On the Seventh Precept of the Decalogue

66. On Ecclesiastical Goods

1. Ioannes a Deo, a most pious physician, partly from his own patrimony, partly from donations spontaneously made to him, partly from donations made to him at his request, founded an immense hospital, in which a thousand poor persons are admitted and cared for altogether gratis. That the good of souls also might be promoted, Ioannes was accustomed to call the Capuchin Fathers from a neighboring convent, that they might hear the confessions of the sick and have a sermon for them on Sundays and feast days. Then also, from the neighboring house of the Sisters of Charity, he often called Sisters, that they might offer help to the sick women. But behold, Ioannes dies, and his son receives the hospital by inheritance from his father. Since he also is a physician and equally pious as his father, he undertakes to continue the pious work. But the pastor of the place brings suit against him, contending that the hospital is a good ecclesiastical from its institution, and parochial, since it is situated in his parish; and therefore that it pertains to him.

Q. 1. Whether the Church has dominion of goods? 2. What as to the case?

R. To the first. Cf. I. M. 869. - To the second. The pastor in the case seems altogether deceived. For from the fact that this sort of work was instituted from a pious end and with the purpose of charity and mercy, it certainly does not follow that that hospital is an ecclesiastical good. Otherwise, if a layman in his own house received poor boys, that he might teach them the rudiments of the Christian faith, and if he destined the whole house or a part of it to this pious work, by that very fact he would then lose the dominion and ownership of the house, which is absurd. But from the fact that Ioannes called the Capuchin Fathers and the Sisters of Charity, that in the aforesaid hospital they might exercise works of mercy, whether corporal or spiritual, neither does it thence follow that the aforesaid hospital is an ecclesiastical good. Finally, this certainly cannot be drawn from the fact that the aforesaid hospital was founded from the patrimony of Ioannes himself. Perhaps the pastor can affirm that only from the fact that it was founded from offerings and donations of the faithful spontaneously made to Ioannes, or at the instance of Ioannes himself. But even this foundation is altogether weak. For, the offering and donation having been made to Ioannes, the thing offered and donated was now Ioannes's; although the offering and donation was made under a mode, or burden, of founding a hospital, and for the pious purpose of helping the poor. For from this head it follows only that Ioannes could not dispose at will of the accepted offerings and donations; but it does not follow that the founded hospital is not his, but is an ecclesiastical good, proper to the pastor of the place.

A sacred place is indeed distinguished, first, and it is a church, which becomes sacred either by the solemn consecration of the bishop, or even by the simple blessing of a priest. A cemetery is also a sacred place, which becomes sacred by blessing. Second, a religious place, in which, by the authority of the bishop, works of piety and mercy are exercised. Places of this sort are subject to the authority of bishops, and enjoy the immunity of asylum. Hence, for a religious place it is required that in it a

work of religion or charity be exercised, and that it be erected by the authority of the Supreme Pontiff or of the bishop, as, for example, a monastery or a confraternity of laymen, which are destined to a work of religion; an orphanage or a hospital, which serve for a work of charity. C. *Ad haec* 4, *de Relig. domib.* Wherefore a sacred place, a religious place, is not an orphanage or hospital erected by laymen, with the bishop's authority in no way intervening, nor a private oratory in a private house; and for this reason these are rather accustomed to be called pious places from their destination to a pious work; and consequently they are not subject to the jurisdiction of the Ordinary, nor do they enjoy the immunity of asylum. Schmalz., l. 3, t. 36, n. 24; t. 40, n. 19.

The bishop can visit sacred and religious places, Trent, s. 22, c. 8, *de R.*, s. 25, c. 8, *de R.*, with the exception, however, of the houses of regulars, by privilege of exemption. But truly pious places he cannot visit, except in the cases expressed in law. S. C. C. apud Fagnan., C. *Ad haec* 4, *de Relig. dom.*, n. 54. Nevertheless, the founder having died, he can inspect whether all things proceed according to the will of the deceased, C. 7, *de Testam.*, and therefore require the accounts of administration yearly, unless either they are under the immediate protection of kings, Trent, s. 22, c. 9, *de R.*, or something else was provided on the threshold of the foundation, from Clem. 2, pr., *de Relig. domib.*, Trent, l. c.; Schmalz., l. 3, t. 40, n. 18.

Therefore the hospital erected by Ioannes, although it can be held as a pious place, is by no means a sacred place, a religious place; and as a private oratory, although it is a pious place, nevertheless does not cease to be private property, so also the hospital of Ioannes is altogether private property, and neither the pastor nor the bishop can claim in it any right of dominion and ownership, apart from the other rights altogether distinct which have already been indicated, by which the bishop, and not the pastor, enjoys. The pastor has only the right and obligation of administering the sacraments there, since it is situated within the boundaries of his own parish, and the place is not exempt. Therefore let him hear the confessions of the sick and of the dying, let him minister viaticum and extreme unction, let him offer assistance to the sick in the last agony of life; and both Ioannes a Deo and afterward his pious son, and also the Capuchin Fathers, and also the Sisters of Charity, will rejoice altogether over this zeal of his, and will congratulate him. - Cf. I. M. 869.

2. Polydorus, a pastor, neglecting the poor, gathered a notable sum of money from stipends of Masses and other honoraria, from a benefice, from a certain pension received from the Government, from the revenues of his patrimony, and from sparingness in food; he distributed it partly among various relatives and friends, and partly reserved it for old age. But seized by sudden death, he was taken from the living without a testament. Wherefore all those things which are left by Polydorus are divided among the heirs.

Q. 1. What sort is the dominion of clerics? 2. Whether and how did Polydorus sin? 3. Whether the heirs are held to restore that reserved money to the poor?

R. To the first. Cf. I. M. 870. To the second. Polydorus did not sin of himself by spending among relatives and friends the money received from stipends of Masses and other honoraria, and likewise from the sparingness employed in his own sustenance; for these goods are his, nor as to their use does he have any special obligation. Likewise he did not sin by distributing the money proceeding from that Government pension. For, since this pension, as appears sufficiently from the case, is not by title of benefice, but by another title, which in the case is not indicated, it also is his, nor of itself

does it bring any special obligation. The same must be said a fortiori about the revenues of his patrimony distributed among friends and relatives. But he sinned gravely of himself by spending similarly the revenues of the ecclesiastical benefice while neglecting the poor. For a beneficiary indeed has perfect dominion of these revenues, so that he can use them freely for honorable sustenance; nevertheless he has a grave obligation, but at least probably not from justice, of spending the surplus on the poor, or on pious causes. I. M. 870; Lugo, *Resp. Mor.*, l. 5, d. 11.

To the third. They are not held. For Polydorus at least probably did not sin against justice by not spending on the poor the surplus of the revenues of the benefice, concerning which alone there can be question. Therefore much less can the heirs be held from justice. For the obligation of Polydorus was not real but merely personal; but the heirs do not have this personal obligation. Besides, in the case there is truly the greatest difficulty of knowing whether the money left by Polydorus proceeds from the surplus revenues of the benefice, or from other goods. And although this perhaps can be affirmed of some quantity, it is very difficult that it be established that Polydorus did not also secretly give sufficient alms. I. M. 871; G. 508, 509.

67. On the Co-ownership of Things

1. Titus, Sempronius, and Caius possess a house, of which the lowest part is Titus's, the middle Sempronius's, the upper Caius's. The roofs having been destroyed by the force of hail, a controversy arises among them, and Titus and Sempronius compel Caius to repair it, since he himself is the owner of the upper part of the house. Caius then begins not to repair the roof, but to construct another story, *piano*; but again Titus and Sempronius rise up against Caius.

Q. 1. What is co-ownership of things, and by what laws is it governed? 2. What as to the case?

R. To the first. Cf. I. M. 1241, 1242. - To the second. If there are various owners of different parts of the same house, the repair of the great walls, *muri maestri*, and of the roofs is common, according to the proportion of the value of the story of each owner. The same is true for halls, *anditi*, gates, wells, cisterns, aqueducts, and other things common to all the owners. But latrines are common, as to repair, according to the proportion of the number of openings, *aperture*, of immission. The owner of each story is held to repair the pavements on which he walks and the vaults, *volte*, by which he is covered, and also the ceilings and panels, *soffitti*, which cover places pertaining to him. - Stairs are to be built by the owner of the story which they serve, according to the value of each story. Wherefore, if the same story is common to several, each is held according to the value of his part. And the repair of those stairs which provide access to the first stories is to be made proportionately by all; but the repair of those which provide access to the higher stories is to be made only by the owners of those stories. - Underground cells, *cantine*, floors, *palchi morti*, rooms, *soffitte o camere a tetto*, are considered as stories of the house. - The same is to be observed for the repair of terraces and roofs. If their use is not common to all, he who has their exclusive use contributes for a fourth part of the expenses, and the other three parts are to be furnished by him and by the other owners according to the value of each part. The owner of the last upper story cannot raise it higher without the consent of the others. He can construct only the coping of the terrace, *parapetto*, if it harms the others in nothing. C. I. 562-564. Cf. C. G. 664.

Hence it is clear that the repair of the roofs in the case does not pertain to Caius alone, but to Titus, to Sempronius, and to Caius according to the value of each part. But Caius cannot raise his apartments, *appartamento*, higher without the consent of the others, since this can well harm the others.

2. Amelius constructs a cabinet in the common wall of his house, since that wall is very deep. Likewise he places an aqueduct within it, since that wall is much nearer the public road through which the public water canal passes. Is this by right?

R. A wall between two houses, gardens, or courtyards, *cortili*, is presumed common, C. I. 546; C. G. 653; C. A. 854. - In a common wall no one can open windows, C. I. 583; C. G. 675, nor build against it an oven or chimney, C. I. 574; C. G. 674, nor make a hollow, *incavo*, in it, C. I. 557; C. G. 662, nor, generally, do anything which harms the common wall itself or the co-owner; yet it is permitted to insert beams in it. C. I. 551, 552, 558, 573; C. G. 657, 674.

Someone can raise a common wall higher, provided he does this at his own expense, does not harm the co-owner, and repays him damages, if he has brought any upon him; and the latter can compel him to cede to himself a part of the wall superimposed.

And generally the owner of any estate contiguous to a wall can make that wall common to himself, provided he does this over its whole extension, public buildings excepted. C. I. 553-556; C. G. 658-661. Someone can demand the communion even of a wall which has been built within a half-meter. C. I. 571.

Finally, someone can compel the co-owner to repair the common wall at common expense. C. I. 559, 561; C. G. 663.

It is clear from these dispositions of the law that Amelius could have done neither thing without the order of the other co-owner; and if he refuses, the necessary means are to be defined by experts, lest the work harm the rights of the other. C. I. 557; C. G. 662.

3. Sedulus and Sedulius move a dispute between themselves concerning the ownership of trees which are placed on the common boundary of their own fields. Sedulus says they are his, because they are nearer his own field. Sedulius contends they are his, because the hedge in which they are situated is his.

Q. What as to the case?

R. A hedge between two estates is presumed common and is preserved at common expense, unless one estate alone is enclosed by it, or there is a boundary marker, or proof to the contrary. C. I. 568; C. G. 670; C. A. 854. Trees which arise in a common hedge are common; and each of the two owners can always demand that they be cut down. Always, because division of a common thing is never prescribed. Trees arising on the boundary of two estates are presumed common when there is no title or proof to the contrary. Of them there belongs to each a part as great as he has in the land. Trees which mark the limits of fields cannot be cut down except by common consent, or with judicial authority approving. C. 569; C. G. 673; C. A. 421; L. 83, *Pro socio*.

Therefore the trees placed on the boundary of the two fields of Sedulus and Sedulius are common; namely those which are in the hedges are so in equal parts, although they are nearer Sedulus's estate. Hence the fruits belong to each from the region of each one's estate; trees uprooted or cut or torn away are common and are equally to be divided between the two owners. Wherefore what Sedulus says, that the trees are nearer his own estate, has no value, just as what Sedulius says, that the hedges are his, has no value, unless he proves this positively. For unless this is shown by some title, the hedge is presumed common and the trees situated in it are presumed common.

4. From a certain mountain water is flowing forth most abundantly, which until now was being dissipated, since all the surrounding fields were uncultivated. The owner of one of those fields, deciding to cultivate his field and to establish in it a large workshop, constructed a new course of the water at his own expense, and directed all the water to his own field and workshop. But the other owners of the neighboring fields, seeing this and wishing now also themselves to cultivate their fields and to build other workshops, bring suit concerning the aforesaid derivation of the water.

Q. What as to the case?

Water flowing naturally, and without manufactured works, except that which belongs to public right or to the right of some private person, can be used by him who possesses an estate near its bank, whether for irrigating his own estate or for exercising his own industry; but he must restore the remaining water to its ordinary course, which accordingly cannot be disturbed. And, if the water passes through the estate itself, likewise the owner of the estate can use it, but he also must restore it to its ordinary course when it leaves his estate; and therefore its course can be disturbed on one's own estate. C. I. 543; C. G. 644. Where a controversy arises, the water is to be divided by the judge, equity being preserved, according to the measure of the possessions and at the same time of the utility of agriculture and industry. C. I. 544; C. G. 645. If someone having a right to divert to his own estate the water of a river, torrent, stream, canal, lake, or water deposit must use a manufactured work, he is held to pay the expenses of this, and to repay all damages of other estates. C. I. 613.

It is clear from what has been said that the aforesaid owner altogether exceeded in appropriating all the water to himself and in changing its course, neither of which he could do. Hence by right the other owners of the neighboring fields protest. The water, its natural course having been changed, is to be divided among them according to the ownership of each one's estate, and then that which is left over, when it leaves one's own estate, must be restored to its ordinary course. Namely, just as the owners of lower fields receive the inconveniences, so also they should receive the advantages of waters flowing nearby.

68. On Occupation

1. City P., during a war, was pressed by siege and was harassed by the throwing of fire-bearing balls. Hence the palace of a certain rich man, the flames immediately increasing immensely, was set on fire. All the servants, altogether despairing of extinguishing the fire, fled away. Chrysophorus then secretly entered the house, and there carried off a little chest full of gold,

and at once escaped, rejoicing over his happy lot. Moreover, he keeps the aforesaid money without any scruple, as the fruit of his extraordinary and audacious industry.

2. Fortunatus, after a city had been captured and sacked by enemies, bought from some soldier certain precious garments at an altogether trifling price. Then, examining these garments, he found in one of them various banknotes sewn in, each of which is of the value of 10,000 lire. Attributing this to divine providence, he keeps this whole sum for himself.

Q. 1. What is occupation? 2. What as to the cases?

R. To the first. Cf. I. M. 882 seqq. - To the second. Chrysophorus in the first case cannot keep the thing for himself. The reason is that that little chest full of gold belonged to the owner of the house, as the house itself belonged to him. Wherefore, just as, if the house itself had been preserved entire by the extraordinary and audacious industry of Chrysophorus extinguishing the fire, it would not have ceased to belong to its own owner, so also the little chest of gold, snatched from the fire, continues to belong to the former owner, and must be restored to him. La-Croix, l. 3, p. 2, n. 112; Elbel 172; I. M. 888.

Fortunatus is not held to return to the soldier the banknotes found in the garments. The reason is that, although that soldier in a just war and justly had occupied those garments and acquired dominion of them, nevertheless those banknotes, lying hidden in the garments beyond all his opinion, he neither occupied, nor consequently acquired dominion of them. But if the owner of the garments and of those banknotes can be known, to him indeed those banknotes are to be restored, since he did not cast aside the intention of possessing his own thing and of retaining its dominion. But if the owner can no longer be known, then he can keep the aforesaid banknotes for himself. Elbel ib.; I. M. 883; G. 510, 511.

3. Ambrosius has a garden open on every side. Hence the hens of Augustinus, the neighboring owner, freely enter his garden and devastate it. To prevent so great a loss to himself, Ambrosius kills the hens of Augustinus at night. Did Ambrosius act rightly?

R. Negatively. For hens are not wild animals, but tame and domestic. Nor is there present in the case a sufficient reason for preventing loss to himself. For he can easily remove this by closing his own garden, or by warning Augustinus that the hens not go out from his field and enter the neighboring garden; and, if he acts otherwise, by seeking reparation of the damage. Hence they also commonly say that it is not licit to kill another's doves, if they do not bring grave damage to one's own field, or can easily be driven away, for example, by setting up scarecrows, or by warning their owner. But it is otherwise if they gravely harm the estate and the damage cannot be avoided in another way. For it is licit for each one to preserve and defend his own thing, although equal damage indirectly follows to another. But doves are not presumed to harm gravely, unless in the time of harvest or of sowings.

4. Iacobus, a building craftsman, while working in a certain old house which had several times been sold by its owners and inhabited by several persons, found a huge sum of gold money of the seventeenth century, hidden between two neighboring walls, which appeared to be one wall. He hid half of this money and kept it for himself; the other half he yielded to the owner of the house.

5. Philippus, a servant, found a great quantity of money in a certain old and large chest, already placed for a long time in some room of the castle of his lord. In this room the old furnishings of the house were accustomed to be placed, and were preserved with great care in memory of the antiquity of the family. Rejoicing, Philippus took all that money to himself.

6. Blondina, a maidservant, bought fish. In gutting one of them she found an old gold coin; in another, however, she found a precious gem. Blondina keeps the gold coin and the gem for herself.

7. Praxedes, maidservant of a certain deceased priest, asked from his heirs for a certain chest which was found in his room. The heirs gladly gave it to the most faithful maidservant. Observing the chest, the maidservant notices that it contains a certain secret part, which she herself opens not without difficulty, and in it she finds 30,000 lire. It is unknown whether the priest knew of the thing; it is known only that he received a certain inheritance from a certain deceased blood relative of his.

Q. 1. What is treasure? 2. What as to the various cases?

R. To the first. Cf. I. M. 889. - To the second. 1. The money found by Iacobus has the true character of treasure. For, considering the circumstances of the case, there are no traces that that money belongs to such a person or family; nor is it morally possible to know this. Wherefore he acts rightly by keeping half for himself and yielding the other half to the owner. G. 523.

2. But the money found by Philippus does not seem to have the character of treasure. For from all the circumstances of the case it appears that that money had been deposited there by some person of that family, which always inhabited the castle; and therefore, although given over to oblivion, it is established that it belongs to the heir and his family. Otherwise, rich castellans of this sort, who often are ignorant of those things which they possess and which they receive by inheritance, would have to be despoiled of their own goods by their ministers and administrators.

3. As regards Blondina, some wish the whole to be adjudicated to the master of the maidservant, for the fish and whatever was in it was bought at his expense and for him; others, however, wish it to be divided between the master and the maidservant, just as treasure is divided, since that gold coin and that gem are not part of the fish, so that account of them could have been had in the purchase of the fish. Del Vecchio 36. But the whole seems to have to be adjudicated to Blondina herself. For first, nothing is owed to the fisherman, who, since he was ignorant that the gold coin and gem were hidden in those fish, did not occupy them nor make them his own. But nothing is owed to the owner of the fish, because the gold coin and gem enclosed in the fish do not have the character of treasure; for its definition is not verified in the case. Therefore Blondina can keep the whole for herself by title of simple finding and occupation of a thing which belongs to no one. I. M. 889, 931, 932, 933.

4. Praxedes must restore that whole sum to the heirs of the aforesaid priest, and she has no right to it. For first, that found sum is not a treasure. For it is essential to treasure that no one can prove the thing to be his own. But now the money contained in that chest, in order that it

remain there so hidden, could not have been other than paper money, and therefore of altogether very recent time. Therefore that money was either placed there by the priest himself, who afterward wished the chest itself to be preserved in the room of the most faithful maidservant, or certainly it was placed there by that deceased blood relative of his, from whom perhaps he received this chest with other things. In either case the chest and the money contained in it belonged to the priest, and now it belongs to his heirs. Besides, that money is not a lost thing; for it never was in danger, but always was and is in a safe place, nor is the owner unknown. Hence it is that neither can the maidservant keep that money for herself, nor does she have a right to the reward constituted by law, which from C. I. 718 is the twentieth part of the sum, when this exceeds 2,000 lire. Nor, finally, is it management of affairs. For to find a sum of money by chance and to restore it to its owner constitutes no management of affairs. Wherefore the maidservant from a certain equity deserves only some reward for her outstanding fidelity in the case, by restoring that whole sum to the heirs. But this reward can well be practically defined, having before one's eyes the reward constituted by the law itself for things lost and found.

68. On Accession

1. Magdalena, a noble woman, donated some estates to Henricus, that in part of estates of this sort a monastery might be built for receiving Discalced Carmelites, and that the remaining part ought to serve for their sustenance. The donation, having been manifested to the Carmelites, was accepted by them. The building already completed, and the Carmelites now dwelling in the convent, Henricus built another college on the same estate on which the convent of the Carmelites was, destined for educating girls, and handed it over to other nuns. Hence the Carmelites complain greatly and ask that the rights which belong to them over the estate donated to them by the pious woman be preserved entire, and that the college be removed.

Q. 1. What are accession and building upon? 2. What as to the case?

R. To the first. Cf. I. M. 900, 904, 905. - To the second. This must first be noted: that, as clearly appears from the case, the donation of the estates was made not to Henricus, but to the Carmelites; Henricus is only a merely interposed person, so that the will of the pious matron could easily be put into execution. Therefore the estates donated by Magdalena pertain, as to perfect dominion of ownership, to the Carmelites. Moreover, he who builds on another's soil with his own material loses the building, because it yields to the soil. "On the contrary, if someone has built on another's soil with his own material, the building belongs to him whose also the soil is; and, if he knows that the soil is another's, he is understood to have lost the ownership of the material by his own will." L. 7, ff., § 12, *de Acquir. rerum domin.* Indeed, rather, he who knowingly and in bad faith has built on another's soil cannot ask the price of the material and the wages of the workmen. "Certainly, if the owner of the soil seeks the building and does not pay the price of the material and the wages of the workmen, he will be able to be repelled by the exception of fraud: that is, if he who built did not know that the soil was another's, and built in good faith as on his own; for, if he knows, fault can be objected to him, because he built rashly on that soil which he understood to be another's." Loc. cit. But Henricus knowingly, and therefore in bad faith, built the college on the soil of the Carmelites. Therefore

Henricus is held to destroy the college at his own expense; he himself is held to sustain every loss and to compensate all damages brought upon the Carmelites. Cf. Inst. l. 2, 1, § 30; A. S. S., v. 24, p. 550 seqq.; I. M. 904.

2. The women of a certain village, in autumn time, had spread flax in the meadows according to custom near the bank of a river. An unexpected storm having arisen, and the river swelling, all the flax was carried away to an island situated in the middle of the river, not very far distant. The farmer who was on that island with his family gathered almost all the flax and kept it for himself. But behold, when the storm had been calmed, the women, coming and seeing the flax from the bank exposed to the sun so that it might be dried, begin to cry out that the flax be restored to them.

Q. 1. What is alluvion? 2. What as to the case?

R. To the first. Cf. I. M. 903. - To the second. The farmer cannot keep the flax for himself by title of alluvion. For by alluvion here is understood not any profit whatever brought to someone by the force of waters, but only an increase of land or soil made to an estate by the force of waters. Therefore the flax must altogether be restored to the women. But since the mixing was made altogether by chance, without any consent of the women, and the women can no longer distinguish their own flax, the whole mass is common according to the proportion of each one's portion. Wherefore it is not licit for individual women to snatch from that mass placed in common that quantity of flax which they can seize, but only that which they had before the mixing. And, if some quantity of flax was dissipated in that misfortune, this detriment must be sustained proportionately by each one, and proportionately less then each one ought to receive from the whole mass. G. 564, 548; Elbel 232, 233; I. M. 903, 907.

3. Girinus stole another's wool, from which he had cloth made. Likewise he stole another's wheat and mixed it with his own wheat of the same quality, but of a far greater quantity. The owner of the wool and wheat, learning of the theft, demands from Girinus the cloth and the whole heap of wheat.

Q. 1. What is specification? 2. What as to the case?

R. To the first. Cf. I. M. 906. - To the second. Girinus did not become owner of the cloth by specification under the more recent law, and therefore he must return the cloth to the owner of the wool. This owner is indeed held to pay Girinus the price of the specification or art. But, since Girinus acted in bad faith, he is held toward the owner of the wool concerning damages, if any perhaps followed. But since Girinus's wheat was of a far greater quantity, he himself became, by commixture, owner of the whole heap; nevertheless he is held toward the other owner of the wheat to adequate compensation. Likewise, since Girinus acted in bad faith, he is also held to repair damages, if any followed. - G. 551, 552; I. M. 906, 907.

4. Donatilla, from her slender labor, was providing sustenance for herself and her parents. On a Saturday, having received the modest wage of the whole week, she was returning home, when behold, night now having fallen, she fell among three robbers, who cruelly despoiled her of the received wage, equivalent to five lire. But she begged earnestly that they leave at least something to her, by which she might in some way revive her wretched parents from hunger.

Moved by her tears, the robbers extended to her three silver lire, as they appeared by touch. Donatilla, having returned home and narrating the event, brought out the three lire received from the robbers; but, examining them with great joy, she found that they were gold and equivalent to 60 lire.

Q. 1. What is commixture? 2. What as to the case?

R. To the first. Cf. I. M. 907. - To the second. Donatilla, the thieves being unknown, can keep for herself the money received from them. For in such a case that money is an abandoned good: namely, not because it was handed over by the robbers themselves to Donatilla, since it was handed over altogether ignorantly and involuntarily; but because, in the present hypothesis, it is impossible to find them. I. M. 893; G. 527.

Even if the thieves are known, Donatilla can keep the money for herself. The reason is that, on the one hand, Donatilla has the right of denouncing them, and therefore can keep the money by reason of cession of her right; but the thieves are implicitly and rightly considered to consent to abandon the money, that they may redeem themselves from just vexation and not be brought before the judge. But on the other hand, either that money is the robbers' own, and then there is no difficulty from this head; or it was taken by theft, and then either the thieves mixed it with their own, which was in greater quantity, and by mixing it with their own made it theirs, and were held only for the value toward the despoiled owner, and in this case again there is no difficulty; or they did not mix it with their own, because they had none of their own, or a very small quantity, and in this other case, given the impossibility of finding the owner of the money, Donatilla can also keep it for herself. But what if the owner of the money appears? In truth it would be difficult in practice to prove that such a species of money belonged to such an owner, and that the robbers did not have other similar species of their own, or that other similar ones had not been stolen from others. I. M. 907; G. 527, 528, 531, 550, 551.

But what if someone had exchanged a silver coin for a gold coin, and should discover that the gold coin had been stolen from Peter: would that gold coin have to be restored to Peter? If the thief made that coin his own as such by commixture with other coins of his which he had, it would not have to be restored to Peter, and the thief would be held for its value toward the owner. But if the thief did not mix it with his own, it would have to be restored to the owner. But in practice it is very difficult for the identity of the coin to be established. This would be altogether easier if the matter concerned banknotes, which are distinguished not only by nation, but also by determinate numbers; these consequently would altogether have to be restored to the owner, as otherwise common practice and custom also holds. Hence in these banknotes attention is paid not only to the value, as in monies, but also to the species and to the individual. - G. 529; I. M. 907, 1420; C. I. 708.

69. On Prescription

1. Dominica, abbess of nuns, found in the archive of the monastery an ancient document by which it is established that a Mass was founded in the church of the monastery, and was to be applied for the founder. Yet since this foundation had been given over to oblivion already from a very long time, Dominica is doubtful whether she ought to procure that the aforesaid Mass be celebrated, and that the Masses omitted up to now also be celebrated, or at least that a

sanation be obtained for them from the Holy See. For there seems to be place for legitimate prescription.

Q. 1. What is prescription, and what is its object? 2. Whether burdens of Masses are subject to prescription?

R. To the first. Cf. I. M. 908, 913, 914. - To the second. It is controverted; nevertheless the negative opinion seems truer. The reason is that, if there is question of Masses to be introduced or increased, for example, if when 50 Masses were to have been applied, a beneficiary has up to now applied 100, the Masses applied beyond the intention of the constitutors are just as if they had not been applied. But no one prescribes against himself. Hence the same beneficiary will not be held in the future to apply 100 Masses. But if there is question of Masses to be deleted or diminished, for example, if when there were 100 Masses to be applied, the beneficiary applied only 50, the reason of the common good, the foundation of prescription, lest ownership be uncertain and lawsuits be lessened and settled, does not press here, as is clear. For the obligation merely regards the private conscience of each one. But if there is question not of ordinary or even extraordinary prescription, even forty-year prescription, but of immemorial prescription, this is almost in place of a title. Wherefore the archive of the monastery must be better examined, that it may be seen whether another document is had, from which the reason is established why the Mass was not applied. Likewise one must see from what time the application of that Mass was omitted. These things having been investigated, it will then be easy to resolve the proposed case. - La-Croix, l. 4, n. 852; Bened. XIV, *de Syn.*, l. 3, c. 25; St. Alph., H. A., tr. 15, n. 74; tr. 20, n. 84; Ferrar., v. *Usucapio*, n. 17, § 1, n. 30; D'Annib., p. 3, n. 76, n. 14; S. C. C., 18 Feb. 1702, 18 Aug. 1845, 20 Dec. 1879; A. S. S., v. 13, p. 220 seqq.; Decr. Auth. S. R. C. 333; I. M. 913, 914.

2. Ernestus was bound to pay yearly to Marcellus a canon of 10,000 lire from a perpetual census. For thirty and more years, in good faith, they did not pay the canon, neither he nor his son Ernestinus, the universal heir. Nor indeed did either Marcellus or his son Marcellinus, the universal heir, make protest. But one day Ernestinus, reading through ancient papers of the private family archive, came to knowledge of the omitted payment. But since thirty years had now elapsed, he asks whether prescription has now legitimately been made.

Q. 1. What is required that prescription proceed? 2. What as to the case?

R. To the first. Cf. I. M. 915. - To the second. Prescription could not have been made, although thirty and more years have passed, and the payment of the canon was omitted in good faith. Wherefore Ernestinus is held to payment of the canon. The reason is that prescription begins to run from that point at which it can freely be opposed. If Titus, for example, borrowed from Sempronius, with an agreement of restoring the loan within five years, prescription, if he does not restore, does not begin except after the five-year period has elapsed. Hence the conclusion emerges that a perpetual census can never be prescribed; because the capital by which the revenue was constituted can never be reclaimed, and the right to exact the canon is not had except when each year has been completed. Wherefore Ernestinus is held henceforth to pay the canon to Marcellinus. I. M. 915.

But is Ernestinus also held to pay the canon of past years not yet paid? It does not seem that he is held to pay the canon not yet paid beyond thirty years ago. For in the space of thirty years actions,

namely rights of pursuing and recovering in judgment what is owed to us, are prescribed, whether they are real or personal; real, for example, if there is question of vindicating for oneself an estate possessed; personal, for example, if there is question of reclaiming money given as a loan. Nor indeed can defect of title or bad faith be opposed to him who alleges prescription. C. I. 2135. But good faith is altogether required in the forum of conscience; this, however, was not lacking in the case. Wherefore, although the existence of that original debt is now brought forward, nevertheless it has now been altogether extinguished by this thirty-year prescription.

Indeed, neither does it seem that Ernestinus is held to pay the canon not paid in preceding years before five years ago. For it is openly had in C. I. 2144 that those things are prescribed in the space of five years which are owed yearly for perpetual or life revenues. I. M. 922.

And here it must be noted that, to impede prescription of some debt, he who is held to pay any annual prestation whatever which will endure beyond thirty years must at his own expense, after twenty-eight years have elapsed, give to the creditor, if he asks, a new document by which he acknowledges his debt. C. I. 2136. Caius, for example, pays Titus a thousand lire yearly for a debt which he has toward him, and in individual years receives from him a note testifying that payment was made; if Titus could not from Caius exact after twenty-eight years a new document, Caius could destroy the aforesaid notes and assert that, since he has paid nothing through thirty years, prescription has been made. It is enough that the debtor by another note declare that he has paid up to now and has received a note from the creditor testifying that payment was made, or that he simply declare his debt. But if the mortgaged estate has passed to a third party, a new authentic document is necessary; otherwise there would be a personal action against the first debtor, but by no means a real action against the third party. Indeed, even inscription and its renewal do not interrupt prescription of the mortgage. C. I. 2127.

3. To Ambrosius there had been handed over for keeping a certain chest containing several precious gems and various objects made of gold and silver. Ambrosius having died, his son, the heir, in good faith reckons the aforesaid chest among the hereditary things and keeps it for two or three years. But behold, one day Augustinus claims the chest as his own.

Q. 1. Of what sort must the possession required for prescription be? 2. Can the son of Ambrosius oppose prescription?

R. To the first. Cf. I. M. 916, 917. - To the second. Negatively. The reason is that the heir in the case represents the deceased, who had it by title of deposit, not of ownership. Wherefore, just as Ambrosius could by no means prescribe by that non-dominative possession, so neither can his son, the heir, who uses the same possession. I. M. 917.

4. Quidonius, an artisan, had made a portable watch for Remboldus at the price of 100 lire. Payment by Remboldus was deferred for several years. Quidonius, fearing Remboldus, a powerful man, omitted the demand for payment. Six years having now elapsed, Remboldus dies. Then Quidonius immediately seeks the price of the watch from his universal heir, who opposes prescription to Quidonius.

Q. 1. How great is the time required for prescription? 2. What as to the case?

R. To the first. Cf. I. M. 921, 922. - To the second. The debt in the case cannot be prescribed except in the space of 30 years and with good faith. Remboldus lacked both conditions, and therefore he by no means prescribed. Nor indeed could his universal heir prescribe. For the bad faith of Quidonius still stands in the way; for an heir of this sort is considered by law to make one moral person with the testator. But since Quidonius immediately sought the payment of the debt, the heir could by no means complete prescription in the case independently of the testator. For for this there is required prescription of the longest time, or 30 years. G. 538, 540, 541; I. M. 922, 930.

5. Silvester donated several gems to Silvestrinus. He now wishes to reclaim them, pretending that that donation had not been made by a legal act.

Q. 1. Whether for prescription a title is required, and of what sort? 2. Whether Silvestrinus can keep the gems by title of prescription?

R. To the first. Cf. I. M. 919, 920. - To the second. Affirmatively. For since certainly Silvestrinus possesses the aforesaid gems in good faith, he can altogether keep them. It would be otherwise if there were question of all the movables of some house; for then possession alone does not suffice, but the other conditions for prescribing are required. Besides, even by title of manual donation Silvestrinus can keep those gems; for the donation was altogether valid, and for it there is not required that it be made with legal solemnity, as is the most common custom of these donations. - C. I. 707; I. M. 922, 1011.

6. Eugenius knows that his father possesses another's field in good faith. But he himself is silent, and allows him to possess the aforesaid field for ten years. These being completed, the father dies.

Q. 1. Whether good faith is required for prescription? 2. Can Eugenius keep the field?

R. To the first. Cf. I. M. 911, 925. - To the second. Although Eugenius sinned against charity by not warning his father concerning the possession of another's thing, nevertheless now he does not sin against justice by keeping the field; for, the legitimate time having passed, the father truly prescribed in each forum. Wherefore the son receives from the father what was now truly the father's. I. M. 922.

7. Eugenius, a minor son, in good faith possesses a house bought in bad faith by his tutor. After nine years Hippolytus attacks the possession by a certain false document. Wherefore he obtains nothing from the judge. But after three years Gustavius also, son of Hippolytus, attacks the possession, who found an authentic document of his own title. But Eugenius opposes prescription. Is this by right?

R. Eugenius rightly opposes prescription. For he himself is the one who possesses, not the tutor; nor can the bad faith of the tutor buying weaken the good faith of the one possessing. Good faith is required in the possessor, not in another. But his prescription was not interrupted by the suit of Hippolytus, because Hippolytus suffered repulse from the judge. But the authentic title was brought forward by Gustavius when prescription was now complete. G. 536, 538; I. M. 917, 922, 923, 925.

70. On Contracts

1. Lucas and Lucillus at the Mantuan fairs each bought a hundred sacks of wheat from the same merchant, to send them by ship to Venice for the sake of trading. The one hundred sacks of Lucillus having been placed in the bottom of the ship, the sailor placed certain other goods over them, and then the one hundred sacks of Lucas. Lucillus, making the journey by land, arrived at the port near Ferrara, and there sold his wheat; and lest everything be overturned, he handed over to the buyer the hundred sacks of Lucas, which were in the upper part of the ship, since they were of the same quality and quantity. Afterward the ship, going to Venice, suffered shipwreck, and the wheat perished.

Q. 1. Whether consent is required for a contract? 2. Whether that wheat perished for Lucas, or for Lucillus?

R. To the first. Cf. I. M. 938, 939. - To the second. Clericatus, consulted by a Brescian friend, responded that the sacks perished for Lucillus the seller, whose in reality they were, not for Lucas. The true owner of that wheat which was in the bottom of the ship was Lucillus. But every thing, if it perishes by chance, perishes for its owner. Nor can it be said that an exchange had been made, and therefore that dominion of that wheat had been transferred to Lucas. Since in all contracts, by every natural and civil law, the consent of each party is necessary, L. *Adeo*, ff. *de Pactis*; and what is ours ought not to be taken from us without our act, L. *Ius nostrum*, ff. *de Reg. Iur.*; and finally he who receives another's thing without the consent of the owner is held to restitution. But Lucas, unaware of the thing and absent, furnished no consent, nor could he furnish it, L. *Si et me et Titium*, ff. *Si certum petatur*; and therefore Lucillus, without the consent of Lucas, exchanged his wheat and received it without his act. Therefore. Nor does it avail that if he had not received it and had not exchanged it, it certainly would have perished in the shipwreck of the ship. For a thing is not judged from that which will be, but from that which was or is. For future events that are fortuitous and uncertain do not pertain to the justice or injustice of human actions, which are done concerning the present.

But Molina, on the contrary, responded to Portuguese merchants that the thing had perished for Lucas, the absent merchant. The reason is that Lucillus exchanged the sold sacks with as many of his own from the presumed and reasonable will of his friend, converted them to his own advantage, and sold them in his own name. Hence, although there was not in that exchange the actual and explicit consent of Lucas, nevertheless there was present a tacit and presumed consent, which altogether suffices for the contract of exchange. Indeed, Lucillus the seller acted in good faith, and in those circumstances the consent of absent Lucas to an exchange of a thing of wholly the same nature, quantity, and quality was prudently presumed by Lucillus; and Lucas certainly would have given that same consent if, being present, he had been asked. For you are reasonably presumed to consent to that which does not harm you and benefits another. - *Casus Consc. Bononen. Dioeces.*, year 1778, month of June, case 1.

But precisely this is what seems to have to be denied in the case. For the exchange in the case certainly harms its owner, as is clear from the very fact. For, once the exchange has been admitted, Lucas will no longer be able to reclaim his own thing existing in fact. Besides, owners, and especially merchants, are so tenacious of their own things that in reality consent cannot reasonably be presumed to the onerous contract of exchange, notwithstanding those circumstances of the same nature, quantity, and quality of the things. For there is always danger and fear lest perhaps it is not so; lest someone be deceived by fraud; lest another danger of losing one's own thing arise thence. Nor

indeed does the aforesaid reasonably presumed consent seem to suffice for exchange, on account of the same nature, quantity, and quality of the things. For otherwise we could almost continually exchange our things with others' things; and certainly no one can admit this. Nor likewise for presuming consent reasonably does friendship suffice, since friendship is then true and solidly preserved when a friend preserves unharmed the rights of a friend. Lastly, if from the aforesaid circumstances of friendship and of equal goodness and quantity of the merchandise, Lucillus could have exchanged his merchandise with that of Lucas, he also could have done this in the hypothesis that Lucas had committed his merchandise to him to sell in that port, and that he himself was going to sell his own at the same price in Venice. For then, evidently, by exchanging his own merchandise with the merchandise of Lucas, and selling it in his own name in that port, he would thereafter expose Lucas to undergoing a new danger of navigation, which in fact was not lacking, with grave damage to him. Wherefore then indeed that consent of the owner as to exchange could reasonably be presumed, when someone would take upon himself every danger of the thing belonging to another which could arise therefrom, and would not deprive the owner of every advantage which could come thence to him, as in the proposed case. Otherwise Rule 48 of law in the Sixth indeed holds: "Someone ought not to be enriched with the injury or loss of another."

2. Certain nuns handed over various estates in emphyteusis for 99 years to a certain Carolus. The contract was perfected on this condition, that the Apostolic Beneplacitum be obtained. A pact was likewise added that the emphyteuta could rescind the contract after 10 years if the canon established to be paid, 3,225 lire, became too onerous to them. Hence the nuns had recourse to the Holy See, that they might obtain the necessary permission; but Carolus also had recourse to the same, asking that that permission not be given, saying that because of the agrarian crisis the aforesaid canon could not be obtained from those estates.

This cause having been proposed in the S. C. C. on 23 Jan. 1897, it was resolved: "There is no place for diminution of the canon, and the Apostolic indult for confirmation of the contract is to be conceded to the nuns."

The reason is clear, because in every contract, one party not consenting and keeping faith, it is not licit for the other party to withdraw from the contract. But in the case this also is added, that precisely because of the foreseen case of diminution of the value of the estates, the pact of rescission after 10 years was added.

Moreover there is question of a monastery of nuns, namely of a moral person, which by law is equated with minors, to whom favor must always be shown. Hence their acts are altogether to be sustained when otherwise advantage would come to others and loss to them. A. S. S., v. 29, p. 591 seqq.

3. "Vincentius, wishing to sell his house at the highest price to Leo, his neighbor, pretends that he is dealing concerning the sale of this house with Ursinus, an angry, quarrelsome man and dreaded by all the neighbors. Then Leo hastens to offer him the required price, lest he obtain so unwelcome a neighbor.

4. Narcissus had received money as a loan from Gordianus, with an agreement about legal interest to be paid yearly. A year having elapsed, Narcissus, paying back the annual census,

says to Gordianus: I am unwilling in the future to grant you anything except four for each hundred; but if you are unwilling, I will restore to you all your money. Moreover, he was not going to accomplish this thus; for he needed the money. Gordianus, not adverting to the fraud, furnishes consent."

Q. 1. Whether fraud invalidates a contract? 2. What as to the cases?

R. To the first. Cf. I. M. 943. - To the second. In the first case, "the contract seems valid as to substance, if Leo indeed gladly acquires the house, as being truly useful to him; for although, the fraud being set aside, he would not have bought it, nevertheless he is not properly considered unwilling. Yet, in this case, at least as to the highest price of the house, the buyer is deceived; hence for that excess of price at least he has a right to compensation. - The contract must be held as invalid if the house is little useful to the buyer, so that very unwillingly, or with great repugnance of the will, he bought it, and indeed uniquely to remove from himself so hateful a neighbor; because then the consent is altogether erroneous, or the error or fraud is truly the moving cause of the contract."

In the other case "one must distinguish. Narcissus does not do injury to Gordianus, and therefore is not held to pay five percent in the future, if he had the money or could have it, so that he might refund the principal; because in reality he yields concerning his right of refunding the principal, and that being refunded, Gordianus perhaps will not receive more. - But if Narcissus does not have the money, nor can have it, he lies and does injury, and therefore is held to restitution, because he does not yield concerning the power of refunding, since he lacks that power; therefore he does not have the right of diminishing the pension, and is held to stand by the contract. Nor should you say that fraud intervenes in the first case, just as in the second: for in the first case the fraud is not unjust, since Narcissus has the right of rescinding the contract; but it is otherwise in the second case. Reuter n. 122; La-Croix n. 635, 1018." G. 783, 744; I. M. 943.

5. "Sidonius has a wicked neighbor, from whom he fears most grave evils. For he heard from him threats of death and arson, several times repeated in the midst of quarrels. To compel him to go away, he buys his house at the highest price."

Q. 1. Whether fear invalidates a contract? 2. Whether the contract of purchase is valid in the case?

R. To the first. Cf. I. M. 944 seqq. - To the second. It is controverted. The purchase of the house carried out by Sidonius does not seem to be valid, because, although fear was not inflicted in order to contract, nevertheless the contract is made only to repel an unjust vexation on the part of the other contracting party. It would have to be said otherwise if that fear came from some third party. Reuter n. 127; G. 786.

But, on the contrary, the contract seems to be valid. For there was in it no bad fraud and deceit on the part of the other contracting party; nor was that unjust vexation ordered to the contract. Wherefore, if the contract were valid when that unjust vexation came from some third party, when it came, for example, from the tenant of the house, not from its owner, why therefore will it be invalid if it comes from the owner himself? The contracting party is indeed held to cease from that unjust vexation, and to remove all inconveniences which proceed from it. But thence it does not follow that the contract is void, but only that it is rescindable. I. M. 944.

6. Bertholdus, at an agreed price of one hundred lire, bought from a fisherman whatever fish he would catch by a casting of the net; and from a shepherd of sheep he bought at the price of as many scudi whatever lambs would be born from the whole flock in the coming month of June. But the fisherman caught nothing, and nothing was born from the flock in that month.

Q. 1. Of what sort must the object of a contract be? 2. Whether in each case Bertholdus ought or ought not to pay the agreed price?

R. To the first. Cf. I. M. 955. - To the second. Bertholdus is not indeed held to pay the agreed price to the shepherd, but nevertheless he is held to pay it to the fisherman. Thus the laws openly define. L. *Nec emptio* 8, ff. *de Contrah. empt.*, then L. *Emptorem* 12, *in fin.*, and L. *Si iactum* 13, *de Act. empt.* And the reason of the distinction is that in the sale of offspring or fruits a future thing is bought; and therefore, if nothing is born, there is no thing either sold or bought. Hence that sale is as it were conditional, which, unless offspring or fruit is brought forth, is not understood to be perfected, as the said L. 8 splendidly says: *Neither buying nor selling can be understood without a thing which may be sold. And nevertheless future fruits and offspring are rightly bought: so that when the offspring has been brought forth, then already, when the business was contracted, the sale is understood to have been made.* But, on the contrary, in the sale of the catch of fish or birds the hope of the thing is bought absolutely, which shines forth in the very casting, and is estimable by price; hence whether much or little or nothing is caught, the buyer is held to pay the price: *For the purchase is contracted, even if nothing should fall in: because it is a purchase of hope*, the same L. 8. And certainly, if you buy the casting of the net in such a way that you seem to buy not the hope of the thing, but the future thing, the same reason will hold as concerning offspring and fruits; as if you say: I will give you one lira for any pound of fish whatever; if nothing is caught, I am held to nothing. For a contract has been entered concerning a determinate future thing; if it will not exist, the contract will not be confirmed, and therefore I will be held to nothing. Giribald., *de Contr.*, tr. 3, c. 2, n. 21. - *Casus Consc. Bonon. Dioec.*, year 1778, month of July, case 1.

And these things hold also under the more recent laws. And thus C. I. 1117 says: "The thing which forms the object of the contract must be determined at least in its species. The quantity of the thing can be uncertain, provided that it can be determined." The thing would be indeterminate as to species, and the obligation would be null, if someone, for example, promised another some animal. Likewise the quantity would be uncertain and could not be determined, and therefore the obligation also would be null, if someone were obligated in general to give wheat to another. For he could give any very small quantity of wheat. - And art. 1118: "Future things can form the object of a contract." Namely, insofar as someone contracts concerning a future thing, or concerning the hope of a future thing. For hope of future things is estimable by price. But in the purchase of the catch of fish, of offspring, and of fruits, the thing is determined in its species; and although the quantity is uncertain and unknown, nevertheless it can in some way be determined from the circumstances. The same are the dispositions of C. G. 1129, 1130; C. H. 1271, 1273. And the same also is the resolution of the case from C. A., which explicitly has a contract of the hope of a future thing as an aleatory contract, and therefore the buyer is subjected to the danger of frustrated hope. Cf. C. A. 878, 1054, 1065, 1276. - I. M. 955.

7. Petrus, an Italian, by a private act in Austria made a donation of a rural estate, situated in Italy, to a certain Austrian friend, an excellent Catholic, dwelling in Italy, upon whom, however, he

imposed the burden of receiving into his own house and educating a nephew whom he has, whose mother was altogether incapable for this. But after five years Petrus learns that his friend indeed had taken possession of the rural estate, yet had been unwilling to receive into his own house and educate his nephew, lest he assume for himself that grave obligation; but had given to his mother ten thousand lire, that she herself might take care of the education of her own son. Hence Petrus juridically seeks revocation of the donation.

Q. Whether a prescribed form is necessary for contracts? 2. What as to the case?

R. To the first. Cf. I. M. 934, 936. - To the second. From C. I., Preliminary Dispositions 9: "The extrinsic forms of acts among the living and of last will are determined by the law of the place in which they are done. It is nevertheless in the power of those disposing or contracting to follow the forms of the national law, if this is common in all parts." Hence the donation of Petrus made by private act in Austria is valid. For although from C. I. 1056 a public act is required, nevertheless from C. A. 943 even a private act is admitted. And this has place also as to the celebration of civil marriage. The place governs the act. C. I. 100. From the same C. I., Preliminary Dispositions 9: "The substance and effects of donations and dispositions of last will are reputed to be regulated by the national law of those disposing." Wherefore Petrus rightly could seek revocation of the donation. For from C. I. 1080, a donation made with some burden imposed on the donee is reputed made under a resolutive condition; and therefore the donor can seek revocation of the donation because of the non-fulfillment of that burden. Moreover, the burden imposed by Petrus on his friend was fulfilled neither in its own nature and form, nor equivalently, since it is quite a different thing to give that sum of ten thousand lire to the incapable mother of the nephew of Petrus, that she herself may educate her own son at home, and to receive him into one's own house, that he himself may promote his education. - Cf. I. M. 934, 936.

8. Lucanus sold to Rutilius a house sufficiently large, and situated on the principal street of the city, for 20,000 lire. The contract having been perfected by the consent of each, they determined together that on another day the instrument of the contract would be made by a notary, and that the handing over of the house would be made. Meanwhile Germanus, who wished to buy the house, by chance learns of the sale of the house at so small a price and offers Lucanus 40,000 lire. Hence Lucanus refuses to stand further by the contract previously entered, unless Rutilius pays the price offered by Germanus, saying that the contract is not yet valid, because it had not yet been perfected in legal form. What about Lucanus?

R. From C. G. and from C. A. and from C. H., Lucanus is altogether bound to stand by the prior contract of sale. For it was entered in good faith by the other party and by the mutual consent of each; and from C. G. 1582 it is altogether perfect, nor for its validity is it required that it be perfected by an instrument, either public or private. This instrument is required only for proof of the purchase made. C. G. 1315. Likewise from C. A. 883, contracts are valid whether they are made viva voce or in writing, whether in court or outside court, whether with witnesses or without them. And from C. H. 1450 the sale itself is perfected by the agreement of the parties. - From C. I. 1314, sale in the case must be made by public act or private writing under penalty of nullity. Wherefore, this being lacking, the contract is not yet altogether perfect; but although it is valid, nevertheless it is rescindable. Given so great a ceasing profit and arising damage, it seems that Lucanus can invoke rescission, and that

Rutilius ought at least to increase the price by half, or the matter is to be settled through equitable arbitrators.

But, in all rigor and given the circumstances of the case, it seems that Lucanus can invoke rescission of the contract, both from C. G., from C. I., and from C. A., by another title, namely lesion, if, the house having been appraised according to its condition and value at the moment of sale, Lucanus was injured beyond seven twelfths parts of the price from C. G. 1674, 1675; beyond half the part of the price from C. I. 1529, 1530 and from C. A. 1060. - I. M. 934, 936, 1126-1128, 1132; G. 776, 777.

9. Osius bequeathed to Maurinus 20,000 lire, if his widowed mother should marry again. Maurinus having died, his mother passes to another marriage. The sons of Maurinus then exact the aforesaid legacy from the heir of Osius.

10. Thomas, dying, bequeathed to Alphonsus, aged nine years, 20,000 lire, to be handed over to him after twelve years, with legal fruits, that is, when he had attained the 21st year of age. Alphonsus dies in the 20th year of age. His parents reclaim the legacy.

Q. 1. What in general is a condition, and what is its force in contracts? 2. What as to the cases?

R. To the first. In general a condition is a circumstance added to an act, upon which the act itself depends. A circumstance, that is, an event; wherefore, that it be truly a condition it is necessary, first, that an event of this sort be added from outside, for example, if some sick man vows to enter religion if he recovers. Those things which are tacitly present, whether by nature or by law, do not make an act conditional if the same things have been expressed, but they only expressly signify that in the act there is to be observed what must otherwise be observed; for example, that someone be absolved at the point of death, the party having been satisfied; that he contract marriage, the Tridentine form being observed, the banns having been made beforehand, etc.; but these being omitted, it would still be valid. S. C. C., 12 July 1721; Pyrr. Corrad., *de Dispens. matr.*, l. 7, c. 7, n. 11; Sanch., *de Matr.*, l. 8, d. 34, n. 29. Second, it is likewise necessary that from the aforesaid circumstance the act depend, and therefore the right and obligation proceeding thence. Wherefore the event ought to be something future and uncertain. Otherwise whatever is done is either immediately valid or immediately void. Besides, it ought to be knowable in a human way; otherwise it vitiates the act, since it always remains uncertain. But an impossible or base condition vitiates acts among the living; but in acts of last will it is held as not added.

Now then, the event either depends on chance and is called casual, or on the will of the agents and is called potestative, or on both and is mixed. C. It. 1159; C. G. 1169; C. H. 1115. But when it exists or fails, either the act then begins to be valid, and the condition is called suspensive, which is most properly a condition and is understood when condition is used simply; or then the act ceases to be valid, and the condition is called resolutive. While a suspensive condition is pending, it is just as if nothing had been done; while a resolutive condition is pending, it is just as if it had been done absolutely without condition. But when that condition is fulfilled or fails, by that very fact, although it is hidden, it immediately exercises its force; nor is there need of a new consent; and it is retroactive, as if either from the beginning nothing at all had been done, if the suspensive condition is not verified, or it had been done absolutely, if the resolutive condition has no place; and it is valid

thereafter, since the right and obligation which follow from it can no longer be revoked. - C. I. 1157 seqq.; C. G. 1168 seqq.; C. H. 1114 seqq.; C. A. 696; I. M. 972, 973.

To the second. Maurinus having died, while his mother still remained unmarried, the legacy became lapsed; and therefore his heirs have no right. For the testamentary disposition of Osius has a condition added which binds its validity to the uncertain event of that condition. Wherefore the disposition remains null if the legatee dies before its verification. I. M. 1032; C. A. 703.

Alphonsus having died, his right to the legacy is transmitted to his heirs. For the testamentary disposition of Thomas has an attached condition which suspends its execution, not its value, and therefore the legatee truly acquires a right; and, if meanwhile he dies, he transmits it to the heirs, even though the condition has not yet been verified. But since the added condition is not verified except after twelve years from the death of the testator, and only eleven have passed, the parents of Alphonsus must wait one further year, that they may be able to claim the legacy. But that time having elapsed, they will be able to claim both the capital and all legal fruits from the day of the death of the testator. C. I. 854, 865, 1172; C. G. 1014, 1015, 1185; C. A. 705; C. H. 881, 882, 1125; I. M. 1032, 1056, 1057.

11. Beatrix, by a donation among the living, handed over to Iulia, her sister, an estate worth 15,000 lire, on the condition that while she herself lived she would pay 100 lire yearly to the pastor, destined for educating poor girls. But, Beatrix having died without a testament, Andreas, brother of Beatrix and Iulia, juridically seeks and obtains rescission of the donation, since the donation had not been made by a legal instrument. Hence, by succession from intestacy, half of the field remained to Iulia, and the other half was ascribed to Andreas. But Iulia, having recovered by price the other half of the estate from which she had been evicted, is urged by the pastor to pay the 100 lire attached to the donation; by other consulted men she is obligated to pay back only 50 lire; by others she is freed from every burden. - What about Andreas and Iulia?

R. Andreas, seeking rescission of the donation, seems to act by right, since he relies on a just disposition of law. Wherefore, just as, speaking of itself, the nullity of a testament is legitimately invoked when legal formalities have not been observed, so also the nullity of a donation is legitimately invoked when the form of law has not been observed.

Iulia seems to be held to nothing. For she is not held to pay 100 or 50 lire by title of succession; for she succeeds from intestacy in exactly the same way as Andreas her brother, who certainly is not held to pay those 100 or 50 lire by this title. Nor likewise is she held by title of donation; for the donation was made void, and Iulia lost the estate by this title. Nor also is she held by title of purchase of the other part of the estate. For that part belongs to Andreas, who sells it without such a burden, since he himself does not have such a burden. Finally, she is not held by reason of the estate itself possessed, partly by title of legitimate succession, partly by title of purchase. For that pension to be paid by Iulia is, from the case, a merely personal obligation, since it is to be paid only by Iulia, while she lives, and by no means real, affecting the estate itself. Wherefore Iulia is held to pay neither 100 nor 50 lire. G. 805.

Nor indeed does it avail in the case to object that there is question of a pious donation; and that, as a pious legacy would be valid if the will of the testator were certainly established, so also a pious

donation is valid in the case, since the will of the donor is certainly established. For the reason of a legacy and of a donation in the case is unlike. The legacy would be valid, because the legacy is immediately acquired for the legatee from the death of the donor. I. M. 1056. Similarly a pious donation would be owed if, in reality, the donation had been made directly to the pious cause itself, and the thing itself or the estate in the case had been burdened. But no donation was made to the pious cause; the donation was made to Iulia, upon whom the burden was imposed as a condition of retaining the donation, and, by title of the same donation, of furnishing the aforesaid sum to that pious work. But when the donation ceases, by that very fact the condition of the donation ceases, or the burden added to the donation itself and uniquely inhering in it.

12. Titius, a priest, about to make a testament, promises a rich legacy to Bertha, his niece, a most pious girl, if she swears that she will remain a virgin through the whole time of life; and Bertha immediately furnishes this. He further promises to Caia the maidservant a thousand lire by title likewise of legacy, provided she diligently serve his sick mother and marry, only after her death, another nephew, Sempronius, who nevertheless, unknown to the uncle, had already taken a wife. Faith also having been had from Caia, Titius makes the testamentary tablets, in which, however, he inscribes the promised legacies without any condition, and shortly afterward yields his life. - But after the uncle's death, Bertha most miserably loses her virginity. Caia, however, falls into a long-lasting illness, by which she is impeded from offering service to the mother of Titius. Finally Sempronius, who after the death of the mother of Titius had remained a widower, refuses to take Caia as wife.

Meanwhile, however, both Bertha and Caia take no care at all to restore the legacies.

Q. What as to the case?

R. The testamentary disposition of Titius, by title of legacy, can be considered in two ways. For it can be looked at as a disposition under a mode, and as a disposition under a condition. If it is considered as a modal disposition, then the dominion of the legacy was transferred absolutely to Bertha and to Caia, with an obligation for Bertha of preserving virginity, and for Caia of offering assistance to the mother of Titius and of marrying Sempronius. Wherefore, although Bertha most miserably lost her virginity, she is not held to restitution of the legacy. Likewise, although Caia could not offer assistance to the mother of Titius, nor can marry Sempronius, she can altogether keep the legacy. And the disposition of Titius seems to have been modal rather than conditional. For he indeed promised the legacy under condition of oath and of counter-promise; but then he inscribed the legacy in the testament without any condition. Wherefore the legacy seems rather to have been made under a mode than under a condition; namely it is understood to have been made implicitly under that burden and obligation, previously undertaken by Bertha and Caia. But that disposition was made by Titius under the burden and obligation of virginity for Bertha, and of furnishing service and marriage for Caia, in such a way that evidently he principally intended to provide for his pious niece and faithful maidservant.

If it is considered as a conditioned disposition, then, as regards Bertha, the condition of imposed virginity is evident in a twofold way. For a legacy under the condition of preserving celibacy, or of preserving virginity, can be considered as a merely profane legacy, and as a legacy of a pious cause. If it is considered as a merely profane legacy, this condition by civil law is held as not added. Thus from

Roman law and from the Italian, French, Spanish, and Austrian Code 700. Theologians do not reject this law, and admit its force also for the forum of conscience on account of the reason which Roman Law brings, because namely it is expedient for civil society to be multiplied by offspring. Hence, although Bertha lost her virginity, the legacy can be kept in conscience.

But the legacy of Bertha can also be considered as a pious cause, and therefore not according to civil laws, but according to Canon Law. The reason is that, if marriage is honorable and useful to civil society, virginity, which excels marriage, is most useful to ecclesiastical society on account of the excellent honor of its virtue, and on account of the state to be held in the greatest price in the Church. And since in the case there is question of Titius the priest, of Bertha his most pious virgin niece, of the solicitude of Titius that the added condition of virginity be observed, whence he wished Bertha to furnish an oath, it is certainly clear that Titius looked to the honor and excellence of the state of virginity in the Church. Besides, from the circumstances of the case there is no doubt that Titius efficaciously intended virginity. But by civil law, the condition of virginity is held as not added. Therefore it must be said that Titius looked at it rather according to the laws of the Church and

Canon Law.

Now theologians, speaking of this condition added in legacies, in relation to civil law, in order to defend that law, say that Canon Law is silent and says nothing, and therefore that someone can stand by that law in conscience. But Canon Law in reality is not altogether silent; for it is Catholic doctrine that there is a preeminence of virginity with respect to marriage. Therefore, if the case is to be decided from Canon Law and ecclesiastical authority, it does not seem that this condition would always have to be held as not added. Indeed, if, because widowhood is in honor, its condition added by a deceased spouse is to be preserved, by law not only civil but also canonical, how can the condition of virginity, which is in the greatest honor in the Church, be held as not added?

Nevertheless Bertha can keep the legacy and is not held to any restitution, even according to this consideration less favorable to Bertha. The reason is that the added condition of virginity, in the obvious sense, is not understood of excluding any sin whatever, even hidden, against chastity, but is understood of excluding marriage, and of excluding a publicly scandalous life. For that effect of honor and estimation to be had among men concerning the state of virginity in the Church, the saying of Roman Law holds in the case: Not to be, and not to appear, is the same. L. 77, *de Contrah. empt*. Wherefore, notwithstanding that Bertha most miserably lost her virginity from human frailty, she by no means loses ownership of the legacy. For she is still reputed and esteemed a virgin. Cf. G. 855; Scav., l. 2, n. 539; D'Annib., p. 2, n. 359.

As regards Caia, she also can keep the legacy and is not held to restitution. For the first condition concerning assistance to be offered to the mother of Titius, independently of her will, became impossible. The same must be said of the other condition, which also is impossible, because marriage cannot be made without the consent of the other; and besides, it is contrary to good morals, because forced marriages are of bad outcome. Moreover, the things are not in that state in which the testator supposed them; since then, when Titius made the testament, Sempronius was not unmarried but married, while now he is a widower. Finally, Titius wished to provide for his mother by the assistance of a faithful maidservant, and for his nephew by the companionship of a faithful wife; then also he intended in a special way to favor the maidservant herself by the concession of a legacy. Wherefore Caia can keep the legacy. - I. M. 972, 1032; G. 787, 788, 1854; C. A. 698, 709, 710.

13. Aurelius instituted Blasius, his cousin, as heir, leaving to him an inheritance of ten hundred thousand lire, under the burden that, during his life, on the anniversary day of his death, he would distribute 10,000 lire to twenty poor girls for twenty dowries. Blasius, hindered by a grave business, was not able in one year to fulfill this obligation. Hence he is very doubtful whether he has lost the inheritance.

Q. What as to the case?

R. The testament of Aurelius is under a mode. A mode is an addition made to an act, by which he who gives something in any way to someone demonstrates what he wishes to be done thence, as, for example, if someone bequeaths an estate to a pastor, that he erect an orphanage there. It agrees with a condition insofar as it adds an obligation for the advantage either of the giver, or of the receiver, or of a third party. It differs from a condition because the latter suspends the act and the obligation, while a mode does not. But the intention of the giver must be weighed; for, if the added obligation, from the intention of the donor, is principal, the other must furnish it, unless he is impeded; and therefore the donation becomes lapsed, and the donee is held to restitution. But if the added obligation is secondary, the donation does not fall, but can be made void by the donor. In the former case the mode falls back into a resolutive condition; in the other case it is a mode properly, insofar as it modifies the principal act, a burden having been added. As a condition is accustomed to be expressed by the particle *if*, a cause by the particle *for* or *on account of*, so a mode is accustomed to be expressed by the particle *that*. Lessius, l. 2, c. 18, n. 124; I. M. 974.

Moreover, although the burden imposed on Blasius was the principal end of the testator, nevertheless the testament of Aurelius did not for this reason become lapsed, since Blasius was legitimately impeded. Wherefore Blasius would then be held only to satisfy the imposed burden not yet fulfilled. But from the case it evidently appears that the imposed obligation was the secondary end of the testator. For, since Aurelius left a very rich inheritance to Blasius, and imposed on him the burden of distributing yearly only 10,000 lire in dowries, and this burden does not burden the inheritance in perpetuity but only during his life, the thing is evident that Aurelius principally intended to favor his cousin. Wherefore let Blasius fulfill the burden omitted because of an impediment, and he can altogether keep the inheritance. Lessius, l. c.

14. Proculus gave to his brother as a loan the sum of 5,000 lire. Exercising trade together with his brother, but not in partnership, every year they weighed together the accounts of what had been given and received. Nevertheless Proculus never sought from his brother restitution of the sum. Proculus having died, the heirs seek it; to them the brother of Proculus opposes the remission of his brother.

Q. 1. How does the obligation of contracts cease? 2. What as to the case?

R. To the first. Cf. I. M. 966. - To the second. The whole resolution of the case depends on a remission tacitly made by Proculus to his brother. This indeed is admitted by Common or Roman Law, and precisely for the case set forth, in L. *Procula* 26, *de Probation.* It is indeed a certain presumption of law; but this is not admitted by C. I. 1279 except in one only case, namely when the creditor has returned to his debtor the original title of the credit. The same is had in C. G. 1282; and in the following article it is had that the same presumption is present if the engrossed copy of the

title, *la grosse du titre*, has been remitted, but proof to the contrary in this case is admitted. Similarly, remission is not presumed from the fact that the creditor returned the pledge or freed the surety; for these are accessories, C. I. 1880, 1383; C. G. 1286, 1237. Therefore, the presumption of law having been removed, nothing remains except presumption of fact. But from the case no indication of this presumption is had, except the fact that Proculus did not seek restitution of the loan.

There could have been several causes of this fact besides remission. Wherefore remission simply cannot be presumed from it, and therefore the case would have to be weighed more in particular, and the circumstances which perhaps were present favoring that remission must be investigated. As the case lies, there seems to stand in the way of a remission of this sort the fact that Proculus indeed exercised trade together with his brother, but not in partnership and in common; there seems to stand in the way the diligence with which he weighed yearly the accounts of what had been given and received. But that he omitted to repeat the loan could well have happened because Proculus knew well that restitution of the loan, even if he did not seek it, was sought by the law itself and was vindicated for himself and his heirs; and therefore, because he was certain of this vindication, Proculus could consider it useless to urge restitution.

71. On Promise and on Donation

1. Leopoldus often says to his servant that he has in mind to leave him a legacy after his death; and to his wife he frequently repeats that he has the intention of leaving to her after his death the whole disposable part of the inheritance. Meanwhile Leopoldus dies, without having in reality disposed anything for the servant and for the wife.

Q. 1. What is a promise, and what is its obligation? 2. What as to the case?

R. To the first. Cf. I. M. 983 seqq. - To the second. Neither the servant nor the wife can compensate themselves by taking money. For it is altogether one thing to have the mind and intention of doing something, another to promise, another to donate and do it in reality. Wherefore to have the mind and intention of donating or of leaving a legacy certainly is not the same as to promise a donation or legacy, nor to donate and bequeath in reality. Since, therefore, there was no donation, no legacy, indeed no promise, by no title would the servant and wife compensate themselves.

But what must be said if Leopoldus had manifested to the pastor his mind and intention of leaving something for his soul, that so many Masses, a thousand Masses for example, be celebrated with an alms for each of ten lire? Can the pastor secretly take, if he can, ten thousand lire for this end, if Leopoldus meanwhile dies without having disposed anything even about this matter? A negative answer must likewise be given, for the same reason. There is no donation in the case, no promise; for a promise is not a mere intention and mere proposal of doing something, but an obligation of one's own faith. I. M. 982 seqq.

2. Simon, sick and near death, openly declares to his servant that he should take the money placed in the desk, which he donates to him independently of salary. The servant accepts the gift; nevertheless he delays taking the money for himself, which he knows is placed in a safe place, from which he himself can always freely take it. The master dies, and then the servant takes the money for himself and keeps it, manifesting nothing to the heirs.

Q. 1. What is a donation *mortis causa*, and what is its force? 2. What as to the case?

R. To the first. Cf. I. M. 955 seqq. - To the second. The servant altogether by right takes the money for himself and keeps it. For it truly had been donated to him by the master, and the donation had been accepted by him. The donation in the case, as appears from the circumstances, was indeed on occasion of death but not properly on account of death; but it was such that the donated thing was immediately made the donee's, and in this respect it was a donation among the living by a dying man. Nor indeed does it seem that handing over was lacking, since Simon not only says that he donates to the servant the money placed in the desk, but says that he should take it for himself; whence there clearly appears both an actual donation and an actual handing over on the part of Simon. Only the material apprehension of the money was lacking, which was in no way necessary for acquiring perfect dominion of it. - G. 817-819.

3. Privatus, sick, calls Belina his maidservant and says: If I die of this illness, you will receive from my chest a little box filled with a thousand lire. My death occurring, I leave it to you. Belina, accepting the donation, renders a thousand thanks to her master. Privatus had scarcely breathed out his soul when all his goods were immediately sealed by the heirs. Hence it was impossible for Belina to receive the little box. Nevertheless she claims it, but in vain. Whence, since she can accomplish nothing else, she begins little by little, when occasion is given, to use hidden compensation.

Q. What as to the case?

R. By natural law and by common positive law, and also by the more recent law, the heirs are held to pay out the money to the maidservant if the donation is certainly established to them. I. M. 997-999. But if the donation is not certainly established to them, they are not held. Nor indeed are they held to apply faith to the asserting maidservant. For anyone could affirm that this or that had been donated to him by the deceased. - Belina, on the contrary, since she herself is altogether certain of her right, could have received the money immediately after the death of Privatus. But since she could not take the money certainly donated to herself, she can now secretly compensate herself. Elbel 427, 428; G. 811-813.

But if Belina had received the little box after the death of Privatus, and then were compelled by the heirs or by the judge to furnish an oath that she had received nothing from the goods of the deceased, could she swear that she had received nothing? She indeed could, because in reality she then received nothing from the goods of the deceased, but only that which was hers. For, the death of Privatus intervening, dominion of the money was immediately transferred into Belina. The donation of Privatus was by no means indeed a donation *inter vivos*, which is accustomed to be expressed by the word *I donate*, but was a donation *mortis causa*, which is altogether clearly expressed by those words, *I leave, my death occurring*. Likewise the donation was conditioned, which is also clearly expressed by that clause, *if I die of this illness*, etc. Therefore, the condition of death from that illness of Privatus having been verified, the donation was made absolute.

Therefore, the donor having died, the donated thing immediately passed into the dominion of the donee, and was made hers. G. 812, 815, 816.

But what if, the little box having been received and the matter having been known, with the sentence of the judge intervening, she were condemned to restore it? Belina would then be held per accidens to restitution: by reason of obedience to be furnished to the judge, and by reason of scandal of those who are ignorant of the donation. Since Belina cannot juridically prove her right, the sentence of the judge is formally just, and therefore she is held to conform herself to it. But, restitution having been made, she will be able to compensate herself secretly. For she herself has a certain right, and the sentence of the judge was materially unjust and founded on a false presumption of particular fact, that a donation from Privatus had not been accepted. But it would be otherwise if the donation itself were made void by the judge. G. 816, 820, 821; I. M. 997, 998.

4. Blasius sends a thousand gold coins by a messenger to Odilla, his absent niece. Odilla dies before the messenger has reached her. The sons and heirs of Odilla altogether in vain claim the gift, first from the messenger, then from Blasius himself.

5. Agoardus sends a thousand gold coins to Drusilla, his blood relative, through Timotheus. But the mandatary unjustly keeps them for himself. Meanwhile Agoardus dies, and, the donation made being known, both the heirs of the donor Agoardus and Drusilla the donee claim the aforesaid thousand gold coins at the same time.

Q. 1. Whether a donation made to an absent person is valid? 2. What as to the cases?

R. To the first. Cf. I. M. 1004, 1001, 1003, 1011. - To the second. Since Odilla died before she could accept the donation, the donation was in no way perfected, and therefore by no agreement could dominion of the gift be acquired for the donee. But if dominion of the gift was not transferred into the donee, it certainly could not pass from the donee to her sons and heirs. Nor indeed can the sons and heirs of Odilla, in the case, accept the donation for her; for they could do this only from the presumed will of the donor, when the donor did not intend uniquely or principally to favor the person herself of the donee, but primarily or at least equally also her sons and heirs; which, speaking generally, must be settled from various circumstances, and in doubt the donor must be questioned concerning his mind. Moreover, in the case, since the sons and heirs of Odilla claim the gift altogether in vain, it is an evident sign that Blasius was unwilling to donate the aforesaid thousand gold coins to them, but wished to make the gift only to the very person of his niece. I. M. 1004, 1011; G. 803.

The donation of Agoardus is not valid; for it was not accepted while the donor was living, and, he having died, it can no longer be a donation *inter vivos*. Wherefore the thousand gold coins must be restored by the mandatary to the heirs of the donor Agoardus; but he himself is held for damages toward Drusilla the donee, since, unless he had unjustly kept those thousand gold coins, Drusilla certainly would not have sustained such damage. - G. 804.

6. Benno, extraordinarily rich and soon to die, donates to Margarita his wife a thousand gold coins, of the value of 20,000 lire, hidden in a certain chest; she, by command of her husband, immediately receives them. Benno made such a gift to his wife, that he might repay her cares and distinguished offices bestowed on him during the marriage and during his long illness; and Benno signifies this to that same wife by words, also asking her that after his death she diligently take care that a monastery of nuns be built, and that several other pious legacies,

expressed in his testament, be fulfilled, which perhaps from the side of the sons would be subject to grave difficulties.

Q. 1. What is to be held concerning manual donations? 2. What as to the case?

R. To the first. The common opinion is that, according to civil jurisprudence itself, customary gifts and gifts by brief hand, if they are freely made between capable persons and in the disposable part, have force in the forum of conscience and in the civil forum, even if the solemnities prescribed by civil law are lacking, as if no act of donation is drawn up, neither public nor private. For civil law, in establishing the aforesaid solemnities, wished only to shut off the way to ill-considered donations, not to just liberalities. And this is confirmed by common custom itself, which is the best interpreter of laws. Indeed, it would be altogether intolerable that someone without a public writing could not licitly and validly donate a ring to a friend, a watch to a servant, five lire to a poor man. And this is furthermore drawn from Cod. Civ. It. 707 itself, C. G. 2279. For with respect to movables, and from C. I. to bearer instruments, possession produces as to third parties in good faith the same effect as title. This disposition, however, from C. I. is not applied to the universality of movables. Wherefore the donation of movables and of the aforesaid instruments will be altogether licit and valid, if they have already been handed over to the donee in good faith. And from this same disposition of the law of the Italian Code, it is drawn that manual donation of this sort, although it is permitted, must nevertheless be restrained within just limits, which belongs to prudent men to define, with account taken of the circumstances. I. M. 1011.

To the second. From C. G. the donation in the case would be altogether valid, as indeed a donation by a dying man, but among the living. For there is nothing whence its invalidity can be drawn; for it is a clear, determinate donation, accepted, made by a man capable of donating among the living to a wife capable of receiving. But it openly appears that the legitime was not injured, for there is question of an extraordinarily rich man.

From C. I. there is difficulty from the fact that a spouse cannot donate to a spouse. But every difficulty vanishes in the case if it is considered first that therefore donations of spouses among themselves, during marriage, are prohibited by law lest by mutual love they despoil each other. For this reason they cannot validly accept them, neither through interposed persons, nor under the species of an onerous contract. C. I. 1054, 1055; I. M. 1008. But, in the case, since Benno is soon to die, by legitimate epikeia the law does not seem to be applied, since in the same law acts of last will are excepted. Besides, the aforesaid donation is a remunerative donation, since it was being made on account of an office furnished and a benefit received; and this donation is rather a certain compensation. Likewise the aforesaid donation is at the same time an onerous donation; Benno, at his request, attached a burden, and this donation also is rather a certain payment or a certain exchange. Wherefore it is not comprehended by that law. Therefore Margarita, even according to C. I., can keep the sum received.

But the difficulty is that the donation seems excessive. Yet, if it is considered that there is question of an extraordinarily rich man, and of a donation not properly such, but of a remunerative and onerous donation, and that there is not question of a maidservant to be remunerated but of a wife, the aforesaid sum of 20,000 lire in this manual donation does not seem altogether exorbitant, although in reality it is not customary. And although a donation of this sort exceeds ordinary manual

donations, an excess of this sort in the case does not hinder its validity, since by French law and by Italian law itself it is not invalid. I. M. 1011. Moreover, Benno certainly could have left that sum, the legitime of the sons being uninjured, under the name of a legacy to his wife even from the Italian Code; perhaps Benno did not do this to avoid the inconveniences which could have been present from the side of the sons. Therefore, if it is not valid as a donation, it certainly can be valid as a legacy lacking legal forms, from so certain a will of the testator in the case. G. 802, 814, 817.

7. Lucius donated, in the year 1890, 3,000 lire to Lucianus; he donated, in the year 1891, 3,000 lire to Lucinus; he donated, in the year 1892, 3,000 lire to Lucillus; he donated, in the year 1893, 3,000 lire to Lucidus. In the year 1894 Lucius dies and leaves only 4,000 lire to Lucia, his only daughter.

Q. 1. What is reduction of a donation? 2. Whether the aforesaid donations are to be reduced?

R. To the first. Cf. I. M. 1014. - To the second. Lucia, the sole surviving daughter, has a right to half part of the goods of her father. Moreover, the whole substance of the father was the sum of 16,000 lire. Wherefore Lucia has a right to 8,000 lire. Therefore the aforesaid donations are to be reduced up to the constituting of this sum, beginning from the donation made in the last place. Wherefore Lucia can seek that the donation made to Lucidus be declared null, and that the donation made to Lucillus be reduced to 2,000 lire. If the petition is made within a year from the death of Lucius, the fruits of the excess of the disposable part are also to be restored from the day of the death of the same donor. But if reduction is sought after a year, the fruits are to be restored from the day of the petition made. C. I. 1093, 1094.

8. Paulus donated 24,000 lire to Paulinus. Dying, Paulus left another 24,000 lire, but at the same time a debt of 30,000 lire. Paulianus, son of Paulus, demands reduction and says that half part of that gift is owed to him. But the creditor of Paulus also seeks from Paulinus reduction of the gift received, and consequently full payment of his credit.

Q. What as to the case?

R. Supposing that the donation of Paulus made to Paulinus was not in fraud of his creditor, concerning which nothing is had in the case and therefore it is not to be presumed, the creditor of Paulus cannot seek reduction of that gift. For none can seek it except only necessary heirs. Wherefore the creditors of the heir, because they use his rights, can indeed compel him to demand reduction, or they themselves can demand it in place of him; but the creditors of the inheritance, or of the deceased, cannot seek it; nor can it profit them if it is sought by a necessary heir. Wherefore, if the heir enters the inheritance with benefit of inventory, and himself seeks reduction, it profits the creditor nothing at all. Therefore Paulianus, as a necessary heir, by right demands reduction of that gift, and therefore there are truly owed to him 12,000 lire, or half part of that gift of 24,000 lire by title of legitime. But the creditor of Paulus, since he has no right to demand reduction and consequently cannot enjoy it, ought to be content with only the 24,000 lire left by Paulus. - C. I. 1091, 1092.

9. Titius, while he was living, donated to his paternal uncle an estate of 12,000 lire, and dying left another estate of 24,000 lire, but at the same time left several debts which come to the sum of

30,000 lire. The creditors vindicate for themselves the 24,000 lire left, and seek in addition from those 12,000 donated another 6,000 lire, that satisfaction may be made to their credits. Moreover, the heir of Titius also urges reduction of that donation, and, since that estate after the death of Titius was worth 20,000 lire, he demands for the legitime owed to him 10,000 lire. But the paternal uncle of Titius altogether refuses these demands, because he says that from a benefit would follow a harm; for finally the donation would be turned into a payment to be furnished from his own patrimony, since, 10,000 lire having been given to the heir and 6,000 lire given to the creditors, he would already have had to add another 4,000 lire from his own patrimony to the 12,000 lire received by donation. Indeed, because the value of the estate left decreased at the time the inheritance was entered, the paternal uncle of Titius is forced to add from his own another two thousand lire, as much as that estate decreased.

Q. What as to the case?

R. For reckoning the disposable and the legitime, one mass is brought together, at the time of the death of the testator, for then the legitime is owed, from the goods left by the testator when he died and from those donated by him while he lived. C. I. 822, 1091; C. G. 922. Therefore an estimation of these is made. Things left are estimated from the day of the inheritance deferred, as they were and as much as they were worth then, when the testator died, whether afterward at the time the inheritance was entered they increased or decreased. C. I. 822; C. G. 922. Things donated, if they are movable things, are estimated as they were and as much as they were worth at the time of the donation; if immovables, as they were at the time of the donation and as much as they are worth at the time of the inheritance deferred. C. I. 822. Cf. C. G. 922. *As they were*; wherefore, if by the diligence or negligence of the donee after the time of the donation they were made better or worse, this profits or harms him. *As much as they are worth*; and therefore, if after the inheritance was deferred and before it was entered their price increased or decreased, this by no means pertains to increasing or diminishing the legitime. C. I. 1012; C. G. 855. - Since therefore in the proposed case, at the time of the inheritance deferred, the estate left was estimated at 24,000 lire, and the estate donated at the same time of the inheritance deferred is estimated at 20,000 lire, the sum to be computed is 44,000 lire, without computing the two thousand lire of decrease of the estate left, which happened after the inheritance was deferred. Whence it is that by a decrease of this sort the legitime and disposable are not diminished, just as they would not be increased by an increase. Moreover, from the hereditary mass the debt is to be deducted; for goods are understood to be what remains after debt has been deducted. But debts are to be deducted not from the whole mass, namely from things left and from things donated, but only from things left, and therefore donated things remain entire. For donated things are no longer in the patrimony of the debtor. Since in the case the things left were 24,000 lire, and the debt 30,000 lire, the debt absorbs all the things left, and 6,000 lire still remain unpaid, which the creditors cannot obtain by reduction of the donation. Indeed 8,000 lire remain unpaid because of the diminished value of the estate. For reduction of a donation cannot be invoked by creditors of the inheritance, but only by heirs; and that in favor of the heirs. Therefore in the proposed case there remain 12,000 lire of the donated estate, indeed 20,000 lire, which was the value of the estate at the time of the inheritance deferred. Therefore the legitime is 10,000 lire, and the disposable is likewise 10,000 lire. Wherefore it is false that the paternal uncle of Titius must pay from his own 4,000 or 6,000 lire to the creditors; but he keeps 10,000 lire from the received donation, and must hand over

the other 10,000 to the necessary heir, who is thus helped by favor of the donation carried out by his father. For, if that donation among the living had by no means been carried out, once the debt of 30,000 lire had been paid, the hereditary mass would have been only 14,000 lire; the legitime would have been only 7,000 lire, and the disposable also 7,000 lire, which Titius likewise could have left to his paternal uncle by testament. - D'Annib., 3rd ed., p. 2, n. 387 seqq.

10. Titius donated to a stranger more than the disposable part, namely three fourths. But dying he left a brother and one son, who renounced the paternal inheritance. Can the brother seek reduction of those things which were donated to the stranger?

R. Affirmatively. For from C. I. 1092 reduction can be sought only by those to whom the law reserves the legitime or another quota of succession, and by their heirs and those having cause. But from the same C. I. 805, for establishing and defining the legitime, the children left are considered, not the heirs. Cf. C. G. 921 and the following case; D'Annib., l. c., n. 347.

11. Gabinius donated to Fabritius, his friend, a house of the value of 12,000 lire; but dying he left a field of the value of 6,000 lire, leaving at the same time one son, a spouse, and a brother. The son declares that he wishes no part in the paternal inheritance. Hence the widow of Gabinius and the brother of Gabinius first contend with Fabritius, that the donation made to him be rescinded or at least reduced, because it diminishes their inheritance. Then indeed they contend among themselves, because, the son abstaining from the inheritance, the widow of Gabinius, the mother, claims a greater portion for herself.

Q. What as to the case?

R. From C. I. 1092, reduction can by right be sought by the spouse, because the spouse is a necessary heir to whom the law reserves a legitimate portion. Whether the brother also can seek reduction is a question. But it seems that it must be answered affirmatively from the cited article. For there it is said that reduction can be sought by those in whose favor the law reserves the legitime, as is the spouse, or another quota of succession, and a quota of succession is reserved by law to the brother, and by their heirs and those having cause; wherefore in the case the spouse and the brother can seek reduction.

But the widow of Gabinius cannot vindicate for herself a greater portion from the fact that the son of Gabinius abstains from the inheritance. For from C. I. 812, 815, the part is assigned to the spouse, not the quota which belongs to the individual sons, but the quota which would belong to them, including the spouse also among the sons.

Hence, the 12,000 lire donated to Fabritius having been brought into the inheritance, the patrimony of Gabinius is 18,000 lire. The legitime is 9,000 lire and the disposable likewise 9,000 lire, to which portion the donation is to be reduced. Consequently to the spouse belongs the usufruct of half part of that legitime, that is, of 4,500 lire, which namely would belong to her if the son entered the inheritance. C. I. 753. Moreover, the son abstaining from the inheritance, his portion devolves to the legitimate heirs, C. I. 883. These in the case are the spouse and the brother, to whom belongs two thirds, one third being left to the spouse. C. I. 754. Wherefore 6,000 lire belong to the brother, 3,000 to the spouse as to ownership; because this ownership which would belong to the son, he renouncing

the inheritance, passes to the legitimate heirs, but the spouse besides retains the usufruct of the aforesaid 4,500 lire. Wherefore the usufruct of the other 4,500 lire belongs in two third parts to the brother and in the other third part to the spouse.

12. Curtius donated to his grandson Paulinus, son of Paulus his son, 3,000 lire. He likewise donated to his son Paulus another sum of 3,000 lire. Curtius dies, and his inheritance devolves to his three sons, Paulus, Petrus, Ioannes.

Q. 1. What is collation? 2. Whether Paulus and Paulinus his son ought to bring into the mass of the inheritance 6,000 lire received from the father and grandfather?

R. To the first. Cf. I. M. 1015. - To the second. Paulus indeed must bring in 3,000 lire received as a gift from his father. But Paulinus his son does not have to bring back the 3,000 lire received from his grandfather, if the legitime has remained uninjured. For they were donated as it were to a stranger. But it would be otherwise if Paulinus succeeded to his grandfather by right of representation. C. I. 1001, 1002, 1004; C. G. 843, 844, 847; I. M. 1016.

13. Columbinus donated 50,000 lire to Lucinus, secretly committing to him that he hand them over with fruits to his youngest son Faustinus after his death. Then he sold to the same son Faustinus a large house at the price of 50,000 lire, which nevertheless, the contract having been completed before a notary, he immediately restored to that same Faustinus. Finally he sold to the aforesaid Faustinus a field at the price of 50,000 lire, though its true value was 100,000 lire. On the occasion of the marriage of his daughter Augusta, however, he donated to her by title of dowry 150,000 lire. Columbinus dies and his four children, Faustinus, Augusta, Fausta, and Augustinus, enter the inheritance. Fausta and Augustinus urgently demand that the dowry of Augusta and all the other goods donated and sold by their father be brought into the inheritance. But Faustinus contends that all things are owed to him either by title of donation or at least of onerous contract. Indeed, he contends that he has several other things from the paternal inheritance from the partnership entered with him by his father in the commerce which he exercised.

Q. What as to the case?

R. Descendants, when they succeed to their ascendants, even with benefit of inventory, must bring together into one, or compute, in the hereditary mass, the goods donated to them among the living by those ascendants, whether directly or indirectly, that they may divide all things equally among themselves, unless it was otherwise disposed by the deceased himself, and the legitime was not injured. C. I. 1001; C. G. 843; Lig. 957; I. M. 1015, 1016. But now that sum of 50,000 lire donated to Lucinus is a sum in reality indirectly donated to his son and heir Faustinus. That house sold to the aforesaid Faustinus was in reality directly donated to him under the species and form of an onerous contract. Likewise the dowry given to the daughter Augusta is a donation made directly to her. Wherefore all these things must altogether be brought into the inheritance. Indeed, not only are all those things to be brought in which were given for dowry, but also for nuptial furnishings. C. I. 1007. If, however, the dowry was paid to the husband without suitable security, the dowered wife is held to bring in only the action against the husband, which is therefore valued less because of the difficulty of payment. C. I. 1007. Certainly the useful things which an heir has perceived from an agreement

entered with the deceased are not to be brought in, provided that he did not obtain profit immediately from the agreement itself. C. I. 1010. Hence Faustinus, for the field bought, does not have to bring in the field itself, but only 50,000 lire, since the advantages indirectly obtained at the very moment of the agreement are to be brought in. But that field was of the value of 100,000 lire, and he bought it from his father at the price of only 50,000 lire. Finally, those things which came from a partnership entered between the testator and the heir are not to be brought in, but it is necessary that it was entered without fraud, and that the conditions were confirmed by certain writing. C. I. 1011. Moreover, there certainly would have been fraud if Columbinus had associated Faustinus to himself in his commerce by falsely supposing that he had furnished funds for it. Wherefore, whether from this head Faustinus claims by right, the particular circumstances in the case would have to be further sought out and examined, since nothing explicitly is said in the case. - Cf. I. M. 1015 seqq.

14. Seius, dying, left 26,000 lire and four sons: Osius, to whom he had donated the whole disposable portion by title of preference; Orosius, to whom he had also already donated 6,000 lire before; Orontius and Terentius, to whom he left only the legitime. But Seius having died, Orontius and Terentius protest that Osius should bring 16,000 lire into the common inheritance to complete the legitime. But Osius protests that Orosius should bring in 6,000 lire to complete the disposable portion.

Q. What as to the case?

R. The whole inheritance in the case is not 26,000 lire, but 32,000 lire, because the 6,000 lire donated to Orosius must be brought into it. Therefore the disposable is 16,000 lire and the legitime is also 16,000 lire. Therefore by title of legitime there belong to each one 4,000 lire, and therefore to Osius also by this same title 4,000 lire are owed. But those 6,000 lire donated to Orosius and to be brought in for determining the legitime are altogether not to be brought in also for determining the disposable, C. I. 1014, so namely that Osius would receive 16,000 lire. Whence it is that the disposable is to be determined not from 32,000 lire, but only from 26,000, from which, 16,000 for the legitime having been deducted, there remain only 10,000 for the disposable, which alone by this title Osius will be able to vindicate for himself. But since the 6,000 lire donated to Orosius are to be brought into the common inheritance, hence the portion of each heir is to be increased by 1,500 lire. Wherefore Osius receives 15,500 lire, while the other three brothers each receives 5,500 lire. - I. M. 1015.

15. Chrysologus, while he was living, donated 12,000 lire to his firstborn son; but dying he left 8,000 lire to his two sons. But the firstborn, content with the donation, renounces the inheritance. Nevertheless the other brother, by no means content, demands from him that he bring the 12,000 lire into the inheritance.

Q. What as to the case?

R. If someone abstains from the paternal or maternal inheritance, he cannot, as if a stranger, be compelled to the collation of things donated to him by the deceased. But if the legitime of the other heirs is injured, then the accepted donation is to be reduced as much as is necessary that the legitime remain entire. C. I. 1001, 1092; C. G. 843, 921.

And so the firstborn in the case must restore 2,000 lire to his brother, namely so that the legitime may be had; and thus in the case each of the brothers obtains 10,000 lire: the firstborn by title of donation and of the renounced inheritance, the other brother by title of legitime, which he himself receives whole. C. I. 805.

16. Remigius, unmarried, donated an estate to his friend Albertus, with the condition added of a life census to be paid to himself. But in the very act of donation he declared that he renounced any right whatever of revoking the donation made. But from the first year Albertus refused to pay the life census. And, when Remigius sought the debt, he was overwhelmed by dire insults and most grave wounds. Wherefore he asks from the judge revocation of the donation; but before sentence was rendered, he himself departed from the living. Hence his heirs ask for restitution of the gift in place of the donor.

Q. What as to the case?

R. Remigius certainly could revoke the donation. For that cession of his right of revoking the donation could not validly be made against the clear disposition of the law. Besides, the intention of Remigius certainly was not to renounce his right if the condition were not fulfilled; otherwise he would not have added it to his donation. Nor was it to renounce his right on account of an ungrateful mind; otherwise he would not have made this donation to a friend rather than to a stranger. Wherefore Remigius, from this double head, can juridically seek revocation of his donation. For it is not revoked by full right for this double reason. I. M. 1022. But since Remigius himself, the donor, began the action of revocation before the judge, his heirs can prosecute it. C. I. 1082; C. G. 957. - G. 809, 810.

72. On Testament and on Legacy

1. Vincentius, an Italian, makes a holographic testament in this form: "I the undersigned institute as universal heir of all my goods my wife. - On the first day of January of the year one thousand eight hundred ninety-four. Vincentius de Vincentiis." He writes it in the Latin language and on common paper, not sealed with the seal of the kingdom. But he omits to note the place in which it was made. Likewise there is a blank after the words, *I the undersigned* [blank] *institute*, etc.; for he wished afterward to write his own name and surname. There is also another blank after the words, *of all my goods* [blank] *my wife*, etc.; for he also wished to add the name and surname of the wife. Then there are erasures of the words *universal* and *goods*, which afterward again are clearly written by the same hand of the testator. The word *my* is interposed between line and line. Finally three additions were added at different times, each of which is wholly written by the proper hand of the testator himself, with indication of the day, month, and year, which in the first addition is found at the end; in the second and third it is found at the beginning and is written not in letters, but in numbers. Finally, at the end, they were signed by the testator himself.

Q. 1. What is the form of a testament? 2. What as to the case?

R. To the first. Cf. I. M. 1026. - To the second. The testament of Vincentius is valid. For to the validity of a holographic testament only three things are required: 1. That the whole be written by the hand

of the testator. Nor do blanks, or erasures, or interpositions hinder, provided all things are written integrally by the hand of the testator himself; so that if even one word is written by another hand, as a true part of the testament itself, the whole disposition is void. Nevertheless it must be established that the word added by another hand is a part of the testament; otherwise anyone, into whose hands it came, could make it void by adding a word. But it can be written in any language and on any paper. Law of 14 July 1866. Wherefore no fine as to paper is to be paid in Italy.

2. It is required that at the end or under the beginning of the disposition the day, month, and year in which it was made be indicated. And this can be effected either in numbers or in letters written out. If even the notation of the day alone is omitted, the testament is null; for example, if the date is noted thus: July 1873. But the place is not also necessarily to be indicated.

3. It is required that at the end it be signed by the testator himself. - The signature must altogether necessarily be last, and such that the identity of the person is established. Although it seems to suffice that the testator use that signature which he was accustomed to use in public acts and under which he is commonly known, as, for example, bishops are accustomed to sign acts with only the initial letters of the name, or only with the whole name, the dignity of the episcopate and the name of the diocese being added; nevertheless it is better to put the personal name and the surname of one's own family, and, if necessary, also other specifications to avoid every difficulty. But for a wife it is enough that she write her own personal name with the surname of the family of her husband.

Additions can afterward be made, provided, however, that all have the three noted conditions. - C. I. 774, 775; I. M. 1026.

2. Felix, the only son of Felicissimus, attacks the testament of his father, by which Felicissimus left half part of the patrimony to his nephew Adauctus, vindicating the whole patrimony for himself. A testament of this sort was: We leave all our goods, immovable and movable, to Felix our only son; nevertheless half part of the paternal patrimony we leave to our nephew Adauctus. On the feast of the Nativity of the Holy Year. - Felicissimus de Felicibus; Felicissima de Felicibus.

Q. Does Felix by right attack the testament?

R. Felix can by right attack the testament of his father and mother. For a testament cannot be made by two or several persons in the same act, neither for the benefit of a third party, nor by reciprocal disposition. C. I. 761; C. G. 968, 1097. For this hinders the freedom of revoking a testament. It must also be noted, as to the preceding testament, that the date of the feast of the Nativity also invalidates the testament in the case. For the date must altogether be written, although, as jurists think, it is not necessary that it be added in its specific form of day, month, year; but it suffices to add it equivalently, namely if the date is clear of itself, for example, on the feast of the Nativity of the year 1899. But in the case the date is doubtful and ambiguous; for it can be of the year 1899 and of the year 1900; indeed, rather, it can be of any other Holy Year. Besides, the preceding testament seems to be a holographic testament, and consequently the whole must be written by the hand of the testator. Wherefore, since it was written by one Felix alone or by one Felicissima, the testament is void also from this head.

3. Gerontius, lacking necessary heirs, soon to die, the notary having been called by him but not yet present, before the pastor and several women spontaneously declares that he leaves all his goods to Eugenius, his only natural heir, and to his friend Paulinus. Soon the notary is present, with the required witnesses and future heirs. But behold, while he interrogates the dying man, he himself can no longer speak. Nevertheless, when the pastor asks whether he holds ratified the will just now set forth by himself, he assents by a nod of the head and a little afterward dies. Eugenius, that he may receive the whole inheritance, immediately obtains from the judge the invalidation of the testament. But Paulinus, thus deprived of his right, by title of compensation keeps for himself both 10,000 lire which he had received as a loan from Gerontius and 1,000 lire which he secretly owed to Eugenius himself.

Q. What as to the case?

R. The testament of Gerontius is certainly valid by natural law. Wherefore Paulinus can altogether in conscience claim and keep the inheritance until it is made void by sentence of the judge. For the will of the testator is certainly established; and civil law does not declare void by full right a testament lacking the formalities of law. I. M. 1029.

But Eugenius legitimately invokes the invalidation of the testament. For that law, establishing various forms of testaments under penalty of invalidity, is just. But in the case from the prescription of the law it was altogether required that the testator himself declare his will viva voce before the notary and legitimate witnesses, all of whom afterward ought to have signed the testament. Wherefore it does not suffice that the sick man, being interrogated, answer affirmatively, whether by word or by nod of the head. I. M. 1026, 1029.

Paulinus before the sentence of the judge can indeed keep the 10,000 lire received as a loan from Gerontius, if these do not exceed the part of his inheritance. But he must altogether restore them, a legitimate sentence intervening, by which he is altogether cast out from the inheritance.

But Paulinus by no means can keep the 1,000 lire which he owes to Eugenius, whether before or after the sentence of the judge. For that money does not pertain to the inheritance, since it is not of Gerontius the testator, but of Eugenius the heir. Besides, before the sentence, Paulinus has only a probable right to the inheritance; but after the sentence he no longer has any right to the inheritance; but whether before or after the sentence, no injury has been done to him by Eugenius, and therefore he has no right at all to compensation, since there is no injured right to be compensated. - G. 829, 830, 831, 837, 839; I. M. 936, 1029. But cf. here n. 198, 200, 3.

4. *Legitime of children.* I. M. 1043. - 1. Ambrosius divided his whole patrimony by testament into two equal parts between his two sons. To one, however, whom he believed very suited to agriculture, he assigned the rural estates; but to the other, who was exercising the liberal profession of advocate, the urban estates. He who obtained the rural estates cannot stand by this division made by the father and contends that all the rural and urban estates must be divided equally between himself and his brother. Is this rightly?

R. Negatively. For the only thing which is owed to children is the legitime, which must be given from hereditary goods, and therefore cannot be supplied by another thing or by money. But by law only the

quota part, not what sort, is established as to be left to necessary heirs. Therefore that son to whom the father left the rural estates cannot complain by right. - I. M. 1041-1043.

2. Sempronius dies in France, leaving two grandsons from his predeceased son. What is the legitime of those grandsons?

R. From French law 913, the legitime part of one son is a half, of two sons two thirds, of three or more three fourths. Moreover, since in the case two grandsons succeed who hold the place of the predeceased father, they themselves are computed as one person. Wherefore their legitime is a half, not two thirds.

3. Tullius in France left three sons. But one of them renounced the inheritance. Is the legitime of the other two sons two thirds or three fourths?

R. From French law 913, when a father dying leaves three sons or more, not heirs, their legitime is three fourths. But if he leaves two sons, not heirs, their legitime is two thirds. But Tullius in the case left three sons, although only two heirs. Therefore their legitime is three fourths, not two thirds. - I. M. 1040, 1043.

5. *Legitime of children together with a wife.* I. M. 1043. - 1. Aloysius by testament left 30,000 lire to Titus, his son from the first marriage; 40,000 lire to Caius, another son from the former marriage; 50,000 lire to Sempronius, the third son from the same marriage. What can he leave to the second wife?

R. The second wife cannot obtain a sum greater than 30,000 lire. For this is the part of the less-considered son of the prior marriage. - I. M. 1044, note.

2. Philippus instituted as heirs, in equal portions, his sons, to whom he leaves all his substance. But he leaves the universal usufruct to his spouse. Is this disposition valid?

R. The disposition of Philippus is valid. But if the sons are unwilling to consent to the aforesaid disposition, the disposable part in full dominion devolves to the spouse. C. I. 810.

3. Raphael, a French citizen, dies at Rome and leaves four sons, to whom by testament he assigns half part of the goods to be divided equally among them, and assigns the other half part, as freely disposable, to his wife. Did he act by right?

R. Raphael did not act by right. The reason is that C. I., Preliminary Disposition 8, establishes: "that legitimate and testamentary successions, as to the order of succeeding, as to the measure of rights of succession, and the intrinsic validity of dispositions, are governed by the national law of the person whose inheritance is in question, of whatever nature the goods may be, and in whatever region they may be found." Wherefore this is valid even if the goods are immovable and all are situated in Italy. Therefore the part owed to the widow of Raphael must be reduced to a fourth part. C. G. 920. For Raphael can dispose only of a fourth part according to C. G. 913; but by no means of a half part according to C. I. 805. But will the widow of Raphael be able in conscience to keep the whole, if his sons do not seek reduction? One must answer affirmatively. For reduction from C. G. 920, 921 is not

had by the law itself, but must be sought, and cannot be sought except by those in whose favor the law constituted the reservation of goods.

4. Zacharias, dying, left a wife and two sons. One of these renounced the inheritance. In the computation of the legitime pertaining to the wife, ought he also to be enumerated?

R. Affirmatively. For from C. I. 812, 815, even a son who does not make part makes number. For children are computed for defining the legitime. Besides, a portion is assigned to the spouse, not that which belongs, but that which would belong, *spetterebbe*, to the individual sons. I. M. 1043.

5. Lucius died leaving a wife and one son. - Lucidus died leaving a wife and two sons. - Lucillus died leaving a wife and five sons. What is the legitime of the wife?

R. To the wife of Lucius there is owed in usufruct a fourth; to the wife of Lucidus a sixth; to the wife of Lucillus a twelfth is owed. The reason is that to the surviving spouse, not separated by a sentence which has passed into a judged thing, if children of the deceased are present, there is owed a part of usufruct, namely the virile share of the legitime of the children, the spouse being computed as if a child. C. I. 812; I. M. 1043.

6. *Legitime of illegitimate children together with legitimate children, with ascendants, and without them.* - 1. Ioannes has five natural and legitimate children, and two natural children only, but legally recognized. But he has a fortune of 28,000 lire. What is their legitime?

R. Since half part of the whole inheritance in the case is 14,000 lire, the legitimate children each obtain by title of legitime 2,800 lire. But since illegitimate children are present, and these must be computed with the legitimate, that for them half the quota part which would pertain to them if they were legitimate may be determined, and this part is to be deducted from the disposable part, it is clear that their legitime is 1,000 lire. For 14,000 lire divided among seven give 2,000 lire to each, of which the half is 1,000 lire, which are to be deducted from the disposable part. C. I. 815; I. M. 1043.

2. Alphonsus has no legitimate ascendant and descendant; he has one natural son, but legally recognized; he has a fortune of 60,000 lire. What is his legitimate part?

R. If the son had been natural and legitimate, his legitime would have been 30,000 lire, namely half. Since he is natural and illegitimate and the only one, his legitime is 20,000 lire, namely two thirds of the aforesaid quota. C. I. 816; I. M. 1043.

3. Sempronius leaves one illegitimate child and ascendants. What is the legitime of the illegitimate child, if he was duly acknowledged?

R. The illegitimate child of Sempronius obtains a fourth, namely half of the part which would have fallen to him if he had been legitimate. C. I. 815.

7. *Alienation of patrimony.* - 1. Laurentius alienated his whole patrimony, that he might constitute for himself, his wife, and his children a life annuity. Did he act by right?

R. Laurentius acted by right. For he alienated the patrimony by an onerous title. But the law provided for children only as to liberalities and alienations carried out by gratuitous title. C. I. 805, 1791, 1794, etc.

2. Gabriel, during his life, alienated the whole disposable part of his patrimony, that he might found a hospital for the poor. But he reserved the whole legitime for his sons and wife. Did he act against the laws?

R. Parents do not seem to be held, not even in conscience, to leave all goods by testament to their children; but it suffices if they leave them the legitimate portion prescribed by law, at least if this suffices for them to live according to their own condition. For otherwise parents, the outcome being considered, would have to be called rather usufructuaries than owners of their goods. Wherefore, if the poor were pressed by grave necessity, or some work had to be completed for the public good, for example, a hospital or church, parents do not sin if, the legitimate portion of goods being left to the children, suitable for sustaining them fittingly according to their state, they spend the rest on those works. Certainly they can institute some pious legacies. But they would sin if they acted thus from hatred toward the children; or also if, without sufficient cause, they gave the remaining inheritance to a stranger, for this seems contrary to the order of charity. Prov. 13:22. But Gabriel does not seem to have to be disturbed. Scavini, Milan, 1874, 12th ed., l. 2, n. 331; I. M. 673.

8. *Succession of various children.* - Alphonsus, dying, left Petrus, a natural and legitimate son, Paulus, a natural illegitimate son, Paulinus an adoptive son, and 24,000 lire by inheritance. What is the portion of them by legitimate succession?

R. Petrus and Paulinus each receive 10,000 lire; Paulus receives 4,000 lire. For to him pertains only half part of the portion which he would receive if he were legitimate, and that in the case would be 8,000 lire; whence to him there are owed only 4,000, and the other 4,000 accrue to Petrus and Paulinus. But the illegitimate child must seek his portion from the other two brothers, who can furnish it either in counted money or in goods of the inheritance. C. I. 744; I. M. 1047.

9. *Succession of illegitimate children.* - 1. Titius, dying, left 12,000 lire and one illegitimate son, duly acknowledged, without other legitimate descendants and ascendants and without a spouse.

2. Caius, dying, left 12,000 lire, one illegitimate, legitimated son, and a spouse.

3. Sempronius left 12,000 lire, one natural, legitimated son, a spouse, father, and mother.

Q. What is the portion of all these?

R. In the first case the illegitimate son becomes heir *ex asse* and receives the whole inheritance. C. I. 747.

In the second case the illegitimate son succeeds *ex besse*, or in two third parts, and the other third part, or fourth, pertains to the spouse. - Wherefore 8,000 lire pertain to the illegitimate son; 4,000 to the spouse. C. I. 745. - If the spouse were not present, and ascendants were present, a fourth likewise would be owed to them. C. I. 745.

In the third case the illegitimate son succeeds *ex quincunce*, or in five parts of the inheritance; father and mother receive a third, or four parts; the spouse a fourth, or three parts. C. I. 745. - Wherefore the illegitimate son receives in the case 5,000 lire; father and mother receive 4,000 lire; finally the spouse receives 3,000 lire.

10. *Succession of ascendants.* - 1. Augustinus, dying, left 12,000 lire, a mother and a paternal grandfather.

2. Ambrosius, dying, left 12,000 lire, a paternal grandfather and grandmother, and a maternal grandmother.

3. Bernardus, dying, left 12,000 lire, both parents and two illegitimate sons duly acknowledged.

4. Bernardinus, dying, left 12,000 lire, both parents and a spouse.

5. Benedictus, dying, left 12,000 lire, both parents and two brothers.

6. Gabriel, the adoptive son of Michaël, dies, leaving a rich inheritance. Michaël claims a part for himself in it.

7. In a common shipwreck Aemilius the father and Ludovicus the son die. There remain surviving Michaël, father of Aemilius, and Dominica, mother of Ludovicus and wife of Aemilius.

Q. What in these cases is the part of the various heirs?

R. In the first case the mother receives the whole inheritance, the paternal grandfather being excluded, namely 12,000 lire. C. I. 738.

In the second case the paternal grandfather and grandmother receive together a half, or 6,000 lire; the maternal grandmother by herself receives a half, or 6,000 lire. C. I. 739.

In the third case the parents receive a third, or 4,000 lire; the illegitimate sons two thirds, or 8,000 lire. C. I. 745.

In the fourth case the parents receive two thirds, or 8,000 lire; the spouse a third, or 4,000 lire. C. I. 754.

In the fifth case the parents together receive a virile share, provided this is not less than a third. Hence each receives 3,000 lire. But if there were one full brother, each would receive 4,000 lire. If there were three full brothers, each would receive 2,400 lire. And, if there were four full brothers, each would receive 2,000 lire. If the brothers are consanguine or uterine, they obtain half the quota of full brothers, and what these receive less accrues to the full brothers if there are any; otherwise to the parents. C. I. 740.

In the sixth case there is no portion of Michaël. For the inheritance of an adoptive son does not pertain to adoptive parents, but remains to the proper blood relatives of the adoptive son. C. I. 210, 212, 737. - I. M. 1047.

To the seventh. Since from C. I. in the case the rights of the son into the father and vice versa are not transmitted, Dominica, the mother of Ludovicus, obtains his entire inheritance, if he had goods. But

Michaël obtains two third parts over the inheritance of his son Aemilius; a third is owed to his wife Dominica. I. M. 1077, 2, 5; 1050.

11. *Succession of a spouse with collaterals, with ascendants, with children.* - 1. Titius dies and leaves Titia his wife and Caius his paternal uncle, and at the same time a patrimony of 12,000 lire. What is their legitime?

R. To the spouse pertain 8,000 lire, to the paternal uncle 4,000, namely two thirds to her, one third to him. C. I. 755; I. M. 1047.

2. Caius dies and leaves Caia his spouse and Sempronius his brother, and at the same time a patrimony of 24,000 lire. What is their legitime?

R. To the spouse pertains a third, to the brother two thirds; and therefore to the spouse there are owed 8,000 lire, to the brother 16,000 lire. C. I. 754; I. M. 1047.

3. Marcus dies and leaves a patrimony of 12,000 lire, and a spouse together with a brother and father. What is the legitime of the spouse?

R. A third, that is, 4,000 lire, are owed to the spouse; a third also, that is, 4,000 lire, are owed to the father; and a third likewise, or 4,000 lire, are owed to the brother. C. I. 740, 754; I. M. 1047.

4. Marcellus dies and leaves a spouse with a father and illegitimate son, legitimately recognized, and a patrimony of 12,000 lire. What is the legitime of each?

R. To the spouse there is owed a fourth, or 3,000 lire; to the father a third, or 4,000 lire, pertain to the father; the remainder, that is, *quincunx*, or 5,000 lire, pertain to the illegitimate son. C. I. 745; I. M. 1047.

5. Stanislaus, dying intestate, leaves seven legitimate sons and Stanislaa his wife. At the same time he leaves an inheritance of 16,000 lire. What is their legitime?

R. Since there are seven sons and, besides, the wife is present, she is to be computed with the sons; and therefore the whole inheritance will have to be divided into eight parts. But since the eighth part is 2,000 lire, Stanislaa, who has the right only of usufruct, obtains the usufruct over this part. But Stanislaa must compute in this part all things which came to her from matrimonial agreements and dotal profits. The remainder will have to be divided in equal portions among the seven brothers. - I. M. 1047, 5.

12. *Succession of brothers, with ascendants, with a spouse, with both, no others concurring.* - 1. Raphael having died, and father and mother and two full brothers having been left, and a patrimony of 24,000 lire:

Q. 1. What is the legitimate portion of the brothers? 2. What, if there were four or five full brothers? 3. What, if with a spouse? 4. What, if they concurred at the same time with ascendants and spouse? 5. What, if there were no others concurring?

R. To the first and to the second. Brothers concurring with ascendants receive *ex asse* a virile share, namely either the whole, according to their number, or with a third deducted for the ascendants. Wherefore in the first case they receive a virile share, the whole, that is, each receives 6,000 lire; in the other, a virile share with the third of the ascendants deducted, namely, if they are four, each receives 4,000 lire; if five, each receives 3,200 lire. C. I. 740.

To the third. They receive two thirds, and therefore 16,000 lire. C. I. 755.

To the fourth. They receive a third, namely 8,000 lire. C. I. 740, 754.

To the fifth. Brothers, if they alone exist, whether full, consanguine, or uterine, receive the whole inheritance, that is, 24,000 lire. C. I. 741.

2. Paulianus, dying, left 24,000 lire and four brothers, two full and two consanguine. Since with consanguine or uterine brothers concurring with full brothers there pertains half the portion of the quota pertaining to full brothers from C. I. 741, it is asked whether to the two consanguine brothers there pertain 3,000 lire, that is, half part of the portion which they themselves by right would receive if all were full brothers, or whether there rather pertain 4,000 lire, that is, half part of the portion which in fact, the inheritance having been divided among them, the full brothers would receive. For if the consanguine brothers each received 3,000 lire, then the full brothers in fact would receive not 6,000 lire, or double, but triple, namely 9,000 lire.

R. This matter is doubtful. But since in the cited law it is said that consanguine or uterine brothers, concurring with full brothers, have a right only to half part of the quota pertaining to full brothers, this seems to be understood rather of half part of the quota pertaining in fact, or which truly falls to them. Hence those two consanguine brothers have a right to 4,000 lire, and the full brothers to 8,000 lire, two consanguine brothers being computed as one full brother.

13. *Testament between spouses.* - Serapio, spouse of Sylvia, proposes to that same wife that by testament she leave all her goods to him, since they themselves have no children, nor does Sylvia have any ascendants. Sylvia accepts, but on this condition, that Serapio in turn make a testament by which he leaves all his goods to her, if perhaps he himself dies first, since he also lacks ascendants. Serapio accepts, with this condition also superadded by him, that she herself also at once make a testament in his favor, that the completed testaments then be revoked by neither, and that this be confirmed by oath. A double testament is thus made; but Sylvia, just as she immediately made the testament, so immediately repenting of the deed destroys her testament and makes an entirely new one. A little after, Serapio dies, and Sylvia enters his ample inheritance.

Q. What as to the case?

R. The testament made by Serapio is altogether null, since from positive law there is no testamentary disposition made by a testator under this condition, that he himself in turn be called to the inheritance by his own heir. Hence Sylvia cannot keep the inheritance, but must restore it to the legitimate heirs. C. I. 852; C. H. 794; I. M. 1032. Nevertheless, C. A. 602, 1249, cf. 543, admits pacts concerning inheritance among spouses only. But C. G. 965, 1097 says that spouses cannot, either by

an act among the living or by testament, effect any mutual and reciprocal donation in one and the same single act. I. M. 1005, 1008, 1037, 1038.

But the pact entered of by no means revoking the completed testaments is null, and therefore Sylvia from this head of itself could still revoke her testament and enter the inheritance of her husband; for again from positive law there is no renunciation of the faculty of revoking a testament, and therefore that agreement was invalid. C. I. 916; I. M. 1024. But, in the case, Sylvia in reality could no longer revoke the testament; for Serapio furnished his consent on this condition, and therefore, by force of that pact so conditioned, if Sylvia had changed her testament, as in fact she did, she ought to have warned her husband. Wherefore also for this reason, since Sylvia used fraud, and the testament of Serapio was null, she cannot enter his inheritance.

It would be otherwise if, no condition about not revoking the testament having been added, she herself afterward secretly revoked the testament; for since a testament is essentially revocable, she would then have used her own right and would not have employed any fraud, just as Serapio also could then, if he wished, have secretly changed the testament. Likewise, if no condition had been added that the testator himself be instituted heir by his heir, each testament also would have been valid, and then Sylvia could have entered the inheritance. I. M. 1034.

But the added oath, in the case, was null; an oath follows the nature of the act. But the act is declared invalid by law. Therefore the oath also is invalid. For it cannot confirm a null agreement. - G. 846, 847; I. M. 560, 565, 970.

14. *Testament for one's own soul.* - The sisters Maria and Laureta by testamentary disposition left their own souls as heirs of their own patrimony, naming a testamentary executor. He sold the goods, caused Masses to be celebrated, and distributed alms among many poor. Since money still remained, he sought from the Sacred Congregation the faculty that he could spend it on certain poor blood relatives and other pious works.

The S. C. C., on 17 Dec. 1887, responded: There is no need. The reason is that whenever the soul of the testator himself is instituted heir, satisfaction is made to his will if the things left are applied either to Masses to be celebrated, or to promoting a pious cause, or to relieving the poor. For all these things yield to the suffrage and relief of the soul of the deceased. M. E., v. 5, p. 1, p. 245.

15. *Fideicommissum.* - Moevia, a widow, has two daughters, of whom one is legitimate and the other spurious, but recognized by public act. Grieving that only a modest part of the goods legally belongs to this latter one, she commits to Anna a thousand francs, that after her death they may be secretly handed over to that same spurious daughter. But Moevia having died, Anna remains anxiously uncertain, not knowing to which of the two sisters this money committed to her faith is to be delivered.

Q. Whether the money committed to Anna belongs to the spurious daughter of Moevia, or to the legitimate daughter?

R. The solution of the question depends on the state of the fortune of the mother. If the fideicommissary legacy harms the rights of the legitimate daughter, it cannot be fulfilled; but otherwise, if it by no means harms. For the mother could give to her recognized natural daughter,

beyond that which is assigned to her by law, whatever she could give to a stranger. Hence, if the mother is rich enough, Anna can assign this fideicommissary legacy to the illegitimate daughter, since the other girl has no right in this money, since, by hypothesis, she would not be injured in her legitime." Thus P. Gury 867. But this resolution suffers difficulty from C. I. 768 and also from C. G. 908, since by each law illegitimate children whom the testator has legally acknowledged, or whom a sentence of the judge establishes to be such, while legitimate children exist, cannot receive anything from the father or mother beyond the legitime. I. M. 1038. Wherefore Anna can give nothing to the spurious daughter of Moevia; but those thousand francs must be restored to the whole inheritance of Moevia, so that afterward from the whole mass of the inheritance the legitime of the legitimate daughter and of the recognized natural daughter may be determined. The same seems to be drawn from C. A. 160, 162, 165, 166, 752, 753; and the same would have to be said if there were question not of the mother but of the father of the illegitimate daughters. But since in the case there is question of the mother, something else seems to have to be said from art. 754. For a distinction is made between succession to the paternal patrimony and succession to the maternal patrimony. In this succession illegitimate children have the same right as legitimate children. C. H. 847 permits a certain donation to a legally recognized illegitimate son, which does not exceed a third of the free disposition. - I. M. 1038, 1039, 1045, 1047.

16. Florus, a dissolute and rich man, has a twofold offspring, one from fornication, but not recognized, and the other from incest with Flavia, his blood relative. Since he wished to benefit each, he committed to Antonius twenty thousand francs to be divided between each after his death.

Q. Whether Antonius can or ought to execute the fideicommissum toward each spurious offspring of Florus, or to assign the received money to the heirs?

R. "Florus probably could commit to Antonius money to be transmitted to his fornicary offspring. The reason is that he could also have instituted that offspring heir, not indeed insofar as his offspring, but insofar as a person not incapable by law. The same also by natural law as to a legacy to be bequeathed to incestuous offspring, on account of the same reason. But by French law incestuous children, just as adulterine children, are declared altogether incapable of receiving donations. For they have a right only to receive those things which are necessary for living. Nevertheless, several contend, not improbably, that donations of this sort are not made void unless the defect of birth is juridically established." Thus Gury 868. But this solution also does not lack difficulty. For as to fornicary offspring, the distinction between his offspring and a person not incapable is altogether chimerical in the concrete; for the legacy, in the case, is made to one's own fornicary offspring, by no means legally recognized, which is a person incapable by law. I. M. 1038. But as to incestuous offspring, although by natural law the legacy is not void, nevertheless by positive law it is void, and this suffices that the legacy cannot in reality be made to him. Nor indeed does what is affirmed seem solid, namely that the defect of birth ought to be juridically established; for this is not established from law; indeed the contrary is established. For as to illegitimate children, none are admitted to succession except recognized and legitimated natural children, who by legitimation acquire the quality of legitimate children, C. I. 194; C. G. 333, and therefore have the same rights as they do, and natural children, only legally recognized, who also have some rights to succession, although not the same as legitimate children. Natural children neither legitimated nor at least legally recognized are

excluded from succession. But adulterine and incestuous children whom the testator has acknowledged, or whom a sentence of the judge establishes to be such, have a right only to support. Cf. I. M. 663, 1038. Besides, if that juridical proof were required that an adulterine and incestuous child be excluded from succession, the law would then almost always be evaded; and that law would now by no means protect marital fidelity and piety. Wherefore Florus, of himself, seems to be bound to assign the received money to the heirs. The same seems to have to be said from C. A. 165, 166, 167, 752, 753, 754. Cf. C. I. 752; C. G. 762; I. M. 1039, 1045; Scav., l. 2, n. 542.

17. Titius in the year 1860, according to the laws then in force, left his inheritance by a testament clothed in legal form to two nephews, Sempronius and Caius, of whom the latter then had no children. Titius bequeathed his inheritance to each in equal portions, but with this condition for the second nephew, then destitute of children: namely, that if he himself should die without children, half part of the portion received from the paternal uncle testator would be given to the other nephew, who had children.

The new Code having been promulgated in Italy, which in articles 899, 900 prohibits substitutions and declares them to be without effect, without voiding the institution of the heir or legatee, Caius, lacking children, contends that he can keep for himself the whole portion of inheritance received from his paternal uncle. But Sempronius contends that that half portion pertains to him if Caius really dies without children, according to the certain will of the paternal uncle testator.

Q. What as to the case?

R. Sempronius can by right claim the aforesaid half portion. For here there is no question of a fideicommissary substitution prohibited by law, which consists in this, that someone is burdened with the obligation of preserving an inheritance, and then after his death of rendering the same to a third person. But, on the contrary, there is question of a conditioned testamentary disposition, which the Italian Code itself altogether admits. Therefore the condition established by Titius must altogether be preserved.

18. "Eudorius, a celibate man, destitute of necessary heirs, lying gravely ill, that he may provide for his soul, determined to spend part of his goods on pious works. To this end he instituted Bonifacius as universal legatee by a testament clothed with the due forms. But he delivers to Bonifacius a private writing, in which he manifests his pious will, and asks of him that he faithfully execute the same. But Bonifacius, Eudorius being dead, keeps the whole inheritance, on the ground that he holds it by a valid testament. It is asked whether he can be safe in conscience? The Sacred Penitentiary responds that, in the case set forth, Bonifacius is held in conscience to fulfill the certainly known will of Eudorius, for the forum of conscience."

23 June 1844. The matter treated, as is evident, in the case, is a fideicommissum for a pious cause. I. M. 1030, 1031.

19. *Revocation of a testament.* - Genesius instituted as universal heirs the three sons whom he had from Genesia. When she had died, he contracted marriage with Lucretia, from whom he begot two sons, and afterward he dies.

Q. Is the testament in the case revoked?

R. The testament in the case is not revoked on account of the two sons supervening. Wherefore the two later sons, in the case, have a right only to the legitime portion. Scav. ed. 12.ª Mediol. 1874. l. 2. n. 450; I. M. 1034, 1035.

20. *A testament destroyed by accident.* - Titius, after making a holographic testament, delivered it for safekeeping to Caius, whom he had named heir. But by ill fortune, on the same night on which Titius died, the room of Caius is burned, and the very desk also, in which the testament was being kept, is consumed by fire. It therefore happens that the parents of the deceased enter upon the inheritance *ab intestato*. The pastor presents himself to them, a man above every exception, who swears that he read the testament of Titius the day before it was burned, and that in it Caius had been instituted heir, and at the same time certain pious legacies had been inscribed, to be furnished for the good of his parish. Since the legitimate heirs of Titius in no way attend to the pastor's attestation, he asks them at least to pay the legacies left for pious causes. But in vain. Hence the pastor agrees with Caius to fabricate certain money notes, the signature of Titius being perfectly simulated, by which both he himself may recover the pious legacies, and Caius may recover something for himself, from the heirs, who in fact, taken by the fraud, pay the sum of money designated by the notes.

Q. What as to the case?

R. First a distinction must be made, and it must be seen whether the room of Caius was burned after the death of Titius, or before it, which can easily be verified in practice. If the testament was consumed by fire after the death of Titius, the dominion of the inheritance had already been transferred to Caius, and likewise the dominion of the legacies had been transferred to the pious causes. The pastor read the testament, and therefore has every certainty of the matter. The same seems to be said of Caius.

For since Titius made a holographic testament, and delivered it to the instituted heir Caius for safekeeping, it does not appear at all that the testament was a secret one; but rather that Titius had manifested also viva voce the institution of Caius as heir, and that then the testament was delivered to him. But if perhaps Titius handed the testament to the pastor to be read, on account of the pious legacies, to ask him about them, again it is not credible that Titius kept the testament secret, at least as regards the institution of Caius as heir, to whom he delivered it for safekeeping. But Caius and the pastor, by forging false notes, sin venially against truth, gravely against charity toward themselves, since they expose themselves to the gravest penalties established against forgers, and also to scandal. Moreover they sin gravely against legal justice, which, on account of the common danger of fraud and deceit, forbids under the gravest penalties any false writing of this sort. And such a law obligates in conscience, even if by chance no prejudice is done to anyone.

Nevertheless, since matters have succeeded well, that which they received by a means indeed illicit, but not unjust, can be retained by them. For they do not seize what is another's; they take what is their own. But the parents of Titius can be excused from fault, because they were not held to give faith to Caius and the pastor, who were testifying in their own cause. - G. 841, 842.

But if the testament was consumed by fire before the death of Titius, Titius died intestate. Wherefore his parents rightfully entered upon the inheritance; nor are they held to pay anything to Caius; nor can Caius in any way use occult compensation, and despoil, by his own authority, a legitimate possessor. For civil laws concerning successions obligate in conscience, since they confer a true right of property; and this right cannot be conferred except in the forum of conscience. Wherefore Caius, despoiling the legitimate heirs by means of the forged notes, acts unjustly, because by the false notes he employs true fraud, and therefore he is held to restitution. The same must be said if Caius had fabricated a simulated testament, that he might despoil the legitimate heirs, or forestall them from the possession of the inheritance. But what if, without any simulated document, Caius simply says that he was instituted heir by Titius, and reports the event of the fire and of the testament destroyed, and the legitimate heirs, believing him, neither enter upon the inheritance nor invoke the sentence of the judge? Then Caius will be able to keep the inheritance, as will appear from what is said later. For just as an heir from an informal testament can keep the inheritance until he is removed by the judge, and can enter upon it if the legitimate heirs have not lawfully taken possession, so also can an heir from a testament destroyed before the death of the testator; because in both cases the will of the testator can certainly be established, and an informal testament is not invalid by full right, but is only liable to rescission. Indeed, in such a case, if the legitimate heirs enter upon the inheritance, but Caius, who had earlier received from the testator a sum by title of loan, does not return it to them and keeps it for himself, still it seems to be said that he can do so. For he does not despoil the legitimate possessors of goods held by them, and that informal testament was, at least probably, valid until the sentence of the judge intervened, which had not intervened in the case. Therefore neither legitimate possession nor the sentence of the judge stands in the way. Cf. G. 829, 830, 831, 837, 839, 841, 842; I. M. 936, 1029.

Finally, as to the pastor, if the legitimate heirs of Titius have moral certainty of the pious legacies left by Titius, they are held to pay them. For pious legacies are governed not by civil law, but by natural and canon law. But if they do not have moral certainty, they are held to nothing. "If the pious will of the testator," says St. Alphonsus l. 3. n. 924, "has not been established to the heir, Laymann says that the heir is not held to give faith to one witness to his own prejudice, even if he is approved in other respects, according to C. *Relatum*, where it is said: we command this to be done, if by three or at least two suitable witnesses it has been proved that the testator so wished. The same is gathered from c. 10 *Licet*, where: no cause is terminated by the testimony of one, even if he shines with legitimate honor. Nor should it be said that a pastor can prudently be believed; for it is necessary for the common good, so that the door not be opened to fraud, that no one, whoever he may be, be admitted as a witness. Thus Laymann, Lessius, Bonacina, etc. Hence Laymann says that the heir is not held to believe the pastor alone, unless, besides him, another witness confirms the same."

Concerning the same matter, Reuter P. 3. n. 386 says: "If the pastor, after the death of a parishioner, produces a schedule containing pious legacies, and he asserts that it was given to himself by the deceased, it is plain that, if the schedule is recognized or proved by two witnesses to have been written by the testator himself or by another in the name of the deceased, such a pious will must be executed. Likewise, if the pastor asserts that the schedule was dictated to himself by the deceased, in the presence of two witnesses, and the schedule is subscribed by the pastor and those two witnesses, there is no doubt that a will of this sort must be executed. If, however, the pastor himself noted in writing the pious legacies left to his church or for other pious causes, I do not think that the pastor is

to be believed, unless at least one other witness accedes, who was present when the dying person was declaring his last will. Wherefore pastors and confessors should be admonished not to receive such final dispositions for pious causes, unless one or two male or female witnesses are called; for one witness together with the pastor can suffice." Cf. Gennari *Consult.*, etc. p. 1, cons. 36.

21. On dividing a patrimony among children who succeed to their father *ab intestato*. - Titius, a rich man, having a patrimony especially in cash, struck by a sudden illness, dies in extreme old age and intestate. Two sons, who by constant labor and industry had greatly augmented the family patrimony, and who had served the aged father until death, take for themselves the whole paternal inheritance, and give nothing to their sister Caia, who had long since been married with a suitable dowry. But Caia demands from them an equal division of the inheritance, according to the civil laws now in force, and, when they refuse, she threatens them with the judge. Then the brothers gather up all the money of their father, hide part for themselves, and deposit the rest in the bank under a fictitious name. But Caia, who indeed suspected that such a thing had been done, yet wishing to avoid litigations, reluctantly ceases from the judicial petition of her part.

Q. Are those sons of Titius safe in conscience?

R. The sons of Titius cannot in any way be regarded in the case as sons under paternal power, that is, as minors, to such an extent that those fruits of their industry would belong to the father himself and would increase his patrimony. For in the case they are described as grown men. Nor, on the other hand, can they be regarded as extraneous persons, or merely as administrators, such that the ordinary reward is owed to them for the labor given. For in the case they are described as having served the family property by constant labor and industry up to the extreme old age of the father, and also as having greatly increased the same patrimony.

Therefore there is no difficulty under this head. But since it is supposed in the case that the patrimony of Titius consisted especially of cash, one must inquire into the origin of the money hidden or deposited by the brothers in the bank. Ordinary fruits, that is, legal interest, arising from money, even if administered by the sons, certainly pertain to Titius and to his patrimony. For an ordinary administration does not confer dominion in the fruits, but at most the right to an ordinary reward and compensation. And therefore the patrimony of Titius, together with such fruits, must be divided equally between Caia and the two brothers. But the dowry of Caia must be brought into the inheritance. Wherefore, if the part owed to Caia equals the dowry, nothing must be given to her; if it exceeds, the brothers owe the excess.

But, besides the aforesaid ordinary fruits, there are other extraordinary fruits of money, which arise from the labor and industry of the brothers. Since these do not come forth from the patrimony, but from the extraordinary industry and labor of the brothers themselves, they belong exclusively to them, and the sister has no right to them. For a thing fructifies for its owner, that is, in favor of the one to whom it belongs, so that he receives the fruits arising from the thing; it by no means fructifies in favor of the one who works upon the thing, so that he takes the fruits for himself. But the extraordinary fruits of the industry of the brothers, by which the patrimony is notably increased, cannot be considered as arising from the patrimony; they are certainly to be regarded as an acquisition proper to the brothers themselves. Therefore, if the money hidden by the brothers or

deposited in the bank is only what they acquired by their own industry, they are not to be disturbed, and they are held to nothing toward their sister Caia.

22. *On legacies.* - Maria N., widow B., in her testament, written by a certain priest, corrected by herself, and transcribed in another form by a notary, constituted several legacies. Among the legatees there was Clementina B., to whom she left 100 scutata, with this condition, that, if she had predeceased the testatrix, the said scutata were to be spent for as many Masses as could be celebrated in suffrage of the testatrix. When the testament had been opened, and the death of the testatrix had occurred, it was found that no person in the family B. named Clementina existed, nor had ever existed. But since there is a man named Clemens, he contends that the legacy is due to himself.

Q. What as to the case?

R. Since by the supposition of the case, and by the attestation made, it is certain that no person of the family B. named Clementina exists, nor has existed, there is no doubt that the legacy must be assigned to Clemens. For evidently there was an error in the transcription of the name by the priest, or by the notary, and an error of this sort in the name of the person harms nothing, when, namely, one person cannot be confused with another, as in the case. Thus in L. 4 C. *de Testam.* it is had: "If a father has instituted a son heir under another name, which is certain by express designation, although the person of the heir designated from custom is used, nevertheless because that which is written is certain, we do not permit the testament to be invalidated by cavil over the name." And in Inst. *de Legat.* § 29: "But those names only are regarded which are inserted to signify persons: nor does a false demonstration stand in the way; such as if he should say: Stichus my slave, born from Seia, is to be free; for although he was not born from Seia, yet, if it is established concerning the slave, freedom is valid."

Thus likewise C. I. 836 establishes: "A disposition has its effect, when the person of the heir or legatee has been erroneously indicated, provided that from the context of the testament or from other documents, or from facts, it results which person the testator wished to name. The disposition has its effect also when the thing which forms the object of the disposition has been erroneously indicated or described, provided that it is certain what thing the testator wished to indicate." Cf. A. S. S. v. 19, p. 128 seqq., *Ius Pontif.* vol. 7, p. 53.

23. "Joseph, a pastor, and from the title added to the parish called Prior, according to the triennial custom makes a solemn testament before a notary and witnesses; in which, among other things, he sets forth: 'By title of legacy I leave to my successor Prior my whole library.' But Joseph, who had attended to letters and ecclesiastical studies from youth, possessed a very large collection of books, suited entirely to a pastor eager for learning and learned. Peter, succeeding Joseph in the parish and in the priorate, obtained possession of the library, and scarcely ten years had passed when, transferred to another parish, he carried those books away with him. But a little afterward Peter himself, struck by sudden death, left them with his heirs. But meanwhile two or three priests succeeded him in the parish or priorate, no one of whom complained of the said carrying away of the books. Now the heirs of Peter, fearing lest they possess another's goods, desire that their doubt be resolved, namely: whether the legacy of the

library, left by Joseph to his successor Prior, was due to Peter as a private person, or to the Prior as prior, and to the successors in the same dignity.

"The resolution of the doubt seems to depend on the following: In law the legacy inscribed for the rector of a church is then regarded as left to the rector himself, and not to the church, or to the rector and his successors, when from the conjectures, or from the concurrence of special circumstances, the same seems certainly to be persuaded by cap. 15 *Requisisti de Testam.*, and by the common authority of the Doctors, according to Amostazii, l. 3, tit. 4, q. 36. This learned man writes as follows: 'It must be distinguished whether a legacy is left to the rector, and there is some conjecture that he left it on account of the person of the rector, such as because he is a relative or a close friend, or because the rector has conducted himself well toward the testator, or there is another similar cause; and then the legacy will belong to the rector himself, not to the church. If, however, there is no reason why he should be judged to have left it to the rector as a particular person, it will be judged to have been left to the church and to the successor of the rector; because although the legacy may have been left to the bishop or to the rector, it is nevertheless understood to have been left to him as administrator, not as a private person. Thus etc.' Since, therefore, in the present case no probable reason is offered by the heirs why Prior Joseph should be said to have left the books to Peter as a private person, and not rather to the priorate; the Most Eminent Fathers being asked: Can the heirs of Prior Peter retain the library left by Joseph to the successor Prior? Or rather does this library, with the books that have perhaps been added, pertain to the Prior who is presently incumbent? On 17 February 1854 they replied: To the first negatively, to the second affirmatively." Bizzarri *Collectanea* 1st ed. p. 55. Cf. Laymann l. 3. tr. 4. c. 5. n. 4.

24. "Mercorus had promised one hundred gold coins to Publius, to be left in a testament. But being overtaken by a sudden illness, and now about to die, he called to himself his son Andreas, and says: I wish you to give one hundred gold coins to Publius. These things having been said, he died intestate.

Q. Is Andreas bound to pay the legacy to Publius? - And can Publius, if he refuses, compensate himself?

R. Andreas the heir is probably not held to fulfill the legacy of his father, at least *per se*, because that mode of disposing is not conformable to law; for a legacy is probably not valid unless it is constituted in a valid testament. Except if the son promised the father that he would fulfill his will; because then an implicit contract would intervene, by which the son would take on the obligation of fulfilling the legacy by natural law. For the father, relying on the promise of the son, abstains from another safe way of transmitting the legacy. I said *probably*, because concerning this there is sharp controversy before the sentence of the judge. Therefore there is a twofold probable opinion. Some urge the obligation by natural law of executing the will of the dying man; others, however, oppose the disposition of the law." Thus Fr. Gury 852, 857, 858, who then omits to speak of the compensation of Publius. But the aforesaid legacy, from positive law also admitting a natural obligation, seems more truly valid, although liable to rescission. Wherefore, as long as the sentence of the judge does not rescind it, it does not appear why Publius could not compensate himself, if Andreas should refuse to pay the legacy, and should not invoke the sentence of the judge. He may compensate himself, namely, in that way which was stated in the preceding cases above n. 72, 3, 20, and which is admitted by Fr.

Gury himself 831, namely by retaining those things which pertain to that legacy, if perchance he has them, but by no means by retaining those things which pertain to Mercorus, if he has them, or by despoiling him with his own money or things. Still, there are not lacking those who simply admit compensation in this case, as in the preceding cases, although they hold the validity of the testament and legacy as only probable. "Third," says Lugo d. 16. n. 94, "one who ought to have a legacy from a less solemn testament, since there is a probable opinion that those legacies are owed in the forum of conscience, although the contrary opinion is sufficiently common and probable, can nevertheless detain the legacy, or receive it anew, or secretly compensate himself, as Granado, Molina, and Lessius confess; Lessius adds that an heir *ab intestato* can also use occult compensation against him who possesses the goods of the deceased from a less solemn testament, because the contrary opinion also is probable, to which he can conform himself." Cf. I. M. 936, 1011, 1029, 1477, 1478; Lugo d. 16. n. 94; S. Alph. l. 3. n. 521.

25. Gabriel by testament left to Raphael one thousand lire, by title of alimony, to be paid for twenty years by his heir. After ten years Raphael dies. His sons reclaim the legacy. But Gabriel [i.e., Gabriel's heir] refuses to pay it.

Q. What as to the case?

R. Raphael [i.e., Gabriel's heir] is held to nothing. For alimonies cohere with the person, and consequently are not transmitted to heirs, even if they have been constituted for a certain and definite time; indeed, even if they are owed from a thing adjudged. C. I. 146.

These things are had to the point in L. 20, *Quando dies legator. vel fideicomm. cedat*: "If a legacy has been made with a prefixed definition of years, for example, ten each to Titius up to ten years, Julian writes in the thirtieth book of the Digest that it matters: and indeed, if it was left by name of alimony, there are several legacies, and the legacy of future years does not transmit the dead legatee to the heir; but if he did not leave it for alimony, but divided it into several payments for the sake of relieving the heir, in this case, he says, there is one legacy of all the years, and that the legatee dying within the decade also transmits the legacy of future years to his heir; which opinion is true."

26. *Pious legacies.* - On account of a testament destitute of legal conditions, Francisca received the inheritance *ab intestato*, after a legitimate sentence of the judge. Among other dispositions, the testator destined 1,000 lire to his confessor, that he might celebrate 100 Masses for his soul. Hence Francisca asks: 1. Is she held to take care that those Masses be celebrated? 2. Must she hand over the prescribed alms of the Masses to the confessor of the testator, so that Masses may be celebrated by him, or can she hand it over to another priest?

Q. What as to the case?

R. To the 1st. Affirmatively; for it is most truly a disposition for a pious cause, which always retains its value, if it is certainly established concerning the will of the testator. But concerning it there is certainty even through a testament destitute of legal conditions, provided only that it be established that the testament was truly made by the testator, and that it was not simulated nor changed. Therefore. This is confirmed from the common authority of theologians, who teach that, although a testament principally made for a non-pious thing is not valid, nevertheless the pious legacies left in it

are valid. Nor does the sentence of the judge already rendered stand in the way; for in dispositions for pious causes one must stand by canon law, not civil law. Cf. Molina de Just. et Iure disp. 134. n. 2, 6, 7; Lugo de Just. et Iure disp. 22. s. 9. n. 267, 272, 273; Laymann l. 3. tr. 4. c. 2. n. 1-5; Schmalz. de Testam. n. 45, 46; Roncaglia tr. 14. q. 14. c. 2. q. 2; G. 859-865; Lucid. de Visit. ed. 3.ª v. 2. p. 426, 427; D'Annib. ed. 3.ª v. 2. n. 339.

R. To the 2nd. She must hand over that alms to the aforesaid confessor of the testator. For that whole sum seems destined with a view to the confessor; since a lesser sum would suffice for celebrating those Masses; nor would there be any need to constitute the person of the celebrant. Therefore the disposition is for a pious cause not only as to the Masses to be celebrated, but also as to the celebrant himself, whom the testator wished to favor. It must therefore be observed altogether, and indeed from strict justice. For when an election is imposed, not in favor of the community and on account of the common good, but in favor of the one elected, that person acquires from the will of the testator a strict right of justice to the thing left to himself. And thus, if a testator should expressly leave a legacy for the poor of a place, for poor relatives, for virgins, and it were given to outsiders, strangers, or married women, there would be place for restitution. Lugo d. 24. n. 284.

27. A pious woman, near death, making a testament, declared these things: "I institute as heir my daughter Agnes, with the obligation of causing a sacrifice to be celebrated on each Saturday at the altar dedicated to the Virgin Mother of God; and this sacrifice, if he can, the priest B., teacher of the boy, will celebrate. Likewise for my soul I desire that it be celebrated each Saturday before the image of the Virgin Mother of God; and this, if he can, the priest A., teacher of my grandson, will celebrate." Agnes diligently satisfied the obligation; but when Agnes had died, her sons and heirs petitioned the Apostolic See: 1. Whether the legacy of Masses is truly obligatory. - 2. Whether, in the affirmative case, such a legacy ceased by the death of Agnes?

S. C. C. on 4 Aug. 1863 judged: The legacy is obligatory and perpetual. For truly, in the interpretation of legacies, attention must chiefly be paid to whether the testator wished to burden particular persons, whom he called heirs, or the inheritance, to which he nominated certain persons to obtain it. If the first, the legacy is temporary and expires with the persons called. If the second, the legacy is perpetual. But these things being considered, if the mind of the testator, which is more to be attended to, is still doubtful, and as to the locution, judgment is usually given in favor of the pious cause, or the favor of the pious cause overcomes the liberty of the heir, and therefore the legacy is judged perpetual. A. S. S. v. 1. p. 272; Scav. ed. 12.ª Mediol. 1874. l. 2. n. 541.

28. "Cleoniphas instituted Amedaeus as his universal heir, with the burden that he should pay 600 francs to the fabric of the church. But behold! Amedaeus is seized by sudden death; a little afterward the testator himself also dies, without making another testament. Paschasius enters upon the inheritance, succeeding *ab intestato*. From him the pastor requires the pious legacy in favor of the Church; but Paschasius refuses to pay it.

Q. Is Paschasius held to pay the legacy to the church?

R. Paschasius is held to nothing at all. For no obligation was imposed on him, since he succeeded *ab intestato*. Why, therefore, should the pious intention of the deceased be imposed on him to be

fulfilled, when he was not even constituted heir by him?" G. 851.

29. Carolinus, the son and heir, when his father Carolus had died, gathering the writings left by his father so that he might know the rights of his inheritance, found a schedule in which the father had noted by his own hand pious dowries and alms.

Q. Is the aforesaid heir held to fulfill those dowries and alms?

Resp. 1. The words of the schedule must be considered. For if the schedule contains a certain legacy, it must altogether be observed, although it is destitute of every solemnity of civil law; for the disposition is for pious causes. Auth. *Quod sine*, ibique Glossa, C. *de Testam.*, C. *Cum esses*, C. *Relatum de Testam.*

2. If the schedule contains an obligation to be fulfilled by Carolus from justice or from vow, it must likewise be fulfilled by Carolinus, unless he should discover that it had already been fulfilled by the father. For a son and any universal heir succeeds in all the rights and burdens of the testator. C. *In litteris* 5. *de Raptorib.*

3. If the schedule contains only a pious work which Carolus, from devotion and from charity, had resolved to do himself, the heir is not held to fulfill it. For the schedule was then written only for his own memory, not to bind the heir. Indeed, even if Carolus had had the intention of obligating the heir, the heir is still not held by an obligation, if the testator had not expressed the aforesaid intention. For a purpose retained in the mind effects nothing. L. *Quinam* ff. *de Hered. instit.* Wherefore the will of the testator is not attended to unless it is expressed. - Cases of the Diocese of Bologna, year 1778, month of August, case 2; I. M. 588, 589, 1030, 1031.

30. *Pious legacies delayed.* - Serapio, testamentary executor of Hilarion, wished to delay the sale of the movable goods of the same Hilarion, so that, if he could, on an opportune occasion, he might sell them at a greater price and thus be able to distribute more alms. But there is a doubt whether, from this delay, the soul of Hilarion suffers detriment rather than perceives utility.

Q. - 1. Does a dead man feel any detriment from the fact that the alms which he ordered to be given are delayed? - 2. Should the executor delay the distribution of alms, for this reason, that the things of the deceased may be sold better?

R. To the 1st. "It must be said that here there is need of a twofold distinction. First, on the part of the detriment itself. For detriment is twofold. For one detriment is that which pertains to the toleration of punishment, according to that which is had in 1 Cor. 3, 15: *If any man's work shall burn, he shall suffer loss*. Another is that which pertains to the subtraction of a remedy. Secondly, a distinction must also be made on the part of alms, concerning which even the merit of the alms itself can be considered. The deceased suffers no detriment from the aforesaid delay, especially if, as much as lay in him, he took care that alms of this sort would be given quickly, because merit depends principally on the will and intention; but as to the effect of the alms, he suffers detriment, not indeed because he is punished for delay of this sort, but because the remedy is not applied to him, while the suffrages from which he would be greatly helped are deferred." S. Th. Quodlibet 6. a. 13.

To the 2nd. "It must be said: In a delay of a moderate time there does not seem to be great danger; whence, if the executor defers giving the alms for a moderate time, so that, the things of the deceased being better sold, he may be able to give larger alms, he does this laudably. But if, on the contrary, he defers for a long time to distribute the alms, so that he does not make the alms much larger, he does not seem to be without fault, because perhaps the deceased would be freed from purgatory, in which, while he exists, the remedy of suffrages was especially necessary. But this requires the examination of a prudent executor; namely, that, considering the delay of time and the condition of the person, who is believed to be freed sooner or later, and also the quantity of the increase of the alms, he may do what will seem expedient for the deceased." S. Th. Quodl. 6. a. 14.

31. *Reduction of Masses.* - Ioannes possessed a rich benefice, to which was annexed the burden of 300 Masses yearly. For each Mass 5 lire corresponded. But, the house being destroyed by an earthquake and the vineyard being devastated by a flood, which constituted the dotal property of the benefice, he now scarcely receives 300 lire yearly. Although in the diocese the stipend of one Mass is one lira, nevertheless, no permission having been sought from the Holy See or from the bishop, he celebrates only 60 Masses yearly, saying that, the revenues having been diminished, the Masses are diminished. - Does he act rightly?

R. Ioannes does not act rightly. For he can still celebrate the constituted Masses with a suitable stipend, according to the diocesan tax. But if he were still receiving a lesser quantity, so that the Masses could not be celebrated even according to the diocesan tax, then he would act more advisedly by recurring to the bishop, who can settle the matter as if by the judgment of a good man. More advisedly, since Doctors are not lacking who teach that in such a case the Holy See is not to be approached; while others judge that reduction can be made only by the authority of the Roman Pontiff; and others think that reduction can be made also by one's own authority, for no one can be compelled to celebrate Mass without a just stipend. Add that the bishop will also be able to use those faculties which are accustomed to be communicated to Ordinaries in this matter. D'Annib. ed. 3.ª p. 3. n. 75, case seq.

32. *Commutation of a pious legacy.* - Armandus left a rich legacy of 500,000 lire for alms to be distributed each day among the poor of the place of his birth. Since there are few poor there, and there are no religious communities, the son and heir of Armandus asks the Ordinary to be willing to commute this legacy, so that the money may be spent in the foundation of a monastery of nuns, who would furnish assistance to the sick of the place, and in a public school would teach girls gratuitously and instruct them in a Christian manner.

Q. 1. Is it lawful to extinguish or moderate pious legacies, and to whom is this lawful? 2. What as to the case?

R. To the 1st. 1. Pious legacies generally are some personal, some real, some mixed. *Personal* are those which the deceased, no estate having been designated, ordered to be furnished by the heirs. *Real* are those which he imposed on an estate taxatively, that is, because the testator obligated the estate alone for the legacies to be furnished. *Mixed* are those which he imposed on an estate demonstratively, that is, because the testator obligated it before other things for the legacies to be furnished. - Personal legacies obligate the heir to the extent of the inheritance, although afterward he

has sold the hereditary goods. Real legacies adhere to the estate, and with it pass to a third and fourth, etc., possessor. Mixed legacies obligate the heirs as personal legacies do, and a third possessor of the thing as real legacies do. - Moreover, personal legacies are extinguished when all hereditary things, without fault of the heirs, have been destroyed. Real legacies are extinguished when the estates to which they adhered have been destroyed. Mixed legacies, when the estate has been destroyed, survive insofar as the inheritance is equal to paying. Cf. Bened. XIV. de Syn. l. 13. c. 25. n. 31.

2. It is lawful for pious legacies to be moderated: 1. By a just commutation of the will of those who left them. This, as many judge, is lawful to Ordinaries, as delegates of the Apostolic See. But in Italy and where the Tribunal of the Fabric of St. Peter is in force, bishops are not accustomed to use this right. Trid. s. 22. C. 6. de R.; S. Alph. l. 3. n. 931; Barbosa *De Off. et Pot. episc.* p. 3. Alleg. 83. n. 5; *Collect. in Conc. Trid.* in s. 22. C. 6. de R.; De Luca ad Trid. Disc. 21. n. 2. By interpretation, for example, if relatives of the founder, or the beneficiary, or chaplains labor under want. At present, however, Ordinaries are forbidden to reduce "any burdens of Masses, either imposed after the Council (of Trent), or in the threshold of the foundation, unless it was expressly provided in the erection of the benefice itself that the bishop may reduce the burden enjoined," Urban VII, Innocent XII, Decr. *Nuper* 21 June 1625, 23 Dec. 1697; La-Croix l. 6. p. 2. n. 63; Bened. XIV. de Syn. l. 5. c. 10. n. 2. But since this decree derogates from preexisting law, C. 12. *de Constit.*, and from the rights of bishops, it must be limited to reductions of Masses, and those perpetual. Wherefore it is still whole for bishops to moderate other legacies, for example, of alms, dowries, etc., and legacies of Masses for a short time. S. Alph. l. 3. n. 381; l. 6. n. 331. d. 3; La-Croix l. 4. n. 855. 3. When justice itself demands it, whenever the revenues of estates no longer suffice for satisfying the burdens, either because the revenues have been diminished, or because the stipends have been increased, if a stipend had been fixed. For if the founder fixed no stipend, he is understood to have willed the customary one for the time and place. In this third case some think that reduction can be made only by the authority of the Supreme Pontiff, namely as regards things left in the very threshold of the foundation, or after the Council of Trent; others say that it can also be made by one's own authority, for no one can be compelled to celebrate without any or without a just payment; others say that the matter must be dispatched by the judgment of the Ordinary, as of a good man. La-Croix l. 4. n. 855; Lugo de Sacram. l. 5. c. 12. q. 9. n. 97, 98; S. Alph. l. 6. n. 331. d. 2; I. M. 1067, 1068; A. S. S. v. 3. p. 374 seqq.

3. Whenever there is place for moderation of legacies, they ought so to be moderated that the least detriment possible should thence be taken by him who left them. Wherefore first the remaining pious works must be deleted, the number of Masses being left intact, S. C. C. apud Fagnan. in C. *Ex parte* n. 34, unless either the mind of the testator persuades otherwise, or these burdens cohere with other estates. Bened. XIV. de Syn. l. 13. c. 25. n. 23. But when it is altogether necessary to restrain the number of Masses, if some are to be celebrated with chant, and others without chant, one must begin from the former. S. C. C. apud Bened. XIV. l. c. n. 34. Finally, the reduction ought to be computed according to the alms of a manual Mass in accordance with the diocesan tax. S. C. C. 3 Feb. 1725. And if the revenues afterward increase,

the number of Masses must be increased, or restored, with proportion preserved. Instr. S. C. C. apud Bened. XIV. l. c.

To the 2nd. It seems that the bishop can commute the aforesaid legacy, at least by legitimate epikeia, interpreting the will of the testator. For first, the testator left a rich legacy, and the poor of that place are few. Wherefore, if the alms left were distributed among them, so great a sum of money would be spent with plainly minimal utility. Besides, the proposed work is far better, and looks more to the common good of that place. Moreover, the poor are not altogether frustrated of the legacy left; for the daughters of the poor, and the sick poor, enjoy it. St. Alphonsus, treating l. 3. n. 931. d. 2 concerning the causes on account of which the bishop may be able to commute last wills, says: "A third cause is, if the legacy has been made for a use not so necessary; for then the bishop can commute it into another pious use more necessary to the same church; indeed also to another fruitful use, if the cause is very grave, and the mind of the testator is thus presumed." I. M. 1038.

73. On Commodatum, on Deposit, on Mandate

1. Fuscianus lent to Rutilius tapestries, or textile pictures, for adorning the rooms of the house, silver candlesticks, golden vessels, and other precious furnishings, on the occasion of a wedding banquet and feast. When it had ended, at night, from a cause altogether unknown, the whole house is burned, and all things perish. Scarcely did Rutilius and some of his family have time to save their own life.

Q. Is Rutilius held for the damage of the things lent to him?

R. Negatively. For, on the one hand, a thing perishes for its owner; but on the other hand, since the cause of the fire is altogether unknown, it can in no way be established whether there was theological fault, or even juridical fault; and therefore he cannot be held for the damage. The same would have to be said if the things lent had been taken away by theft, no fault of Fuscianus intervening [printed thus; the sense requires Rutilius].

But what if there were doubt concerning negligence? Neither in this case of doubt could Rutilius be obligated to compensate the damages, because then the obligation, if there is one, is doubtful and consequently also uncertain. But one cannot be obligated to certain compensation of damages on account of a mere doubt about damage having been brought about.

But what if there had indeed been negligence, but not theologically culpable, as it is not rare to happen in fires of this sort? It seems then that Rutilius is held to the compensation of damages in the case. Thus indeed from civil law and in the external forum; and the same seems to have to be said in the internal forum, on account at least of an implicit contract concerning diligence to be applied, indeed also concerning not ordinary and common diligence only to be applied; since the question is of a loan for use in favor of the borrower only, and of very precious things, and in notable quantity. But when the sentence of the judge has intervened, there is no doubt that Rutilius, in this same hypothesis, is held to compensate the damages. - I. M. 1070 seqq.; G. 869 seqq., 877.

2. Pibertus, a merchant, under an express promise of secrecy accepted, manifested to his friend Gedonius the intention which he himself had of declaring a cession of goods to his creditors.

Wishing, however, to withdraw 500,000 lire, he asked the same Gedonius that he secretly keep with himself that sum of money deposited with him, and restore it to him after a composition had been made with the creditors. Then he added that the aforesaid money was partly silver and gold coins, partly titles of the public Debt, among which, he says, there are 100,000 lire in Russian titles, which I most recently received from the Russian gentleman Photius Telletoff, well known to all in the whole city.

Q. What as to the case?

R. Gedonius could in no way accept the aforesaid secret. And although he has accepted it, he is in no way held to keep it. For the matter concerns an illicit thing, a thing gravely harmful to others, a detriment to be brought about by the very one committing the secret, a secret employed for accomplishing by deed the aforesaid damage. - I. M. 1542, 1543.

Moreover, Gedonius can in no way accept the aforesaid deposit. Otherwise he becomes an unjust and efficacious damager, by cooperating in the damage of the creditors, and he is held to restitution. But if he has already accepted the deposit, and the cession of goods has already been made, he cannot restore it to Pibertus, but it must be restored to the creditors of Pibertus; and therefore, that this restitution may be made rightly, creditors of this sort must be admonished, or rather the legitimate authority must be admonished, lest in this restitution, as can easily happen, some injure others. - But if, again, he has already accepted the deposit, but the cession of goods has not yet been made, he ought to admonish Pibertus concerning his injustice, that he abstain from it altogether. But if Pibertus is altogether determined to make the cession of goods, the creditors must be admonished, that they may beware for themselves, or better, at an opportune time, the legitimate authority must be forewarned; and the deposit received must be consigned either to the creditors, or certainly, practically speaking, to the legitimate authority, that it may be restored among the creditors. But if it is certainly established, as it seems, that those Russian titles were given individually by the Russian gentleman Telletoff, they must be restored to him. But due precautions must be employed in this restitution, if it is made without the intervention of legitimate authority, lest damages thence come upon Gedonius himself. I. M. 1075, 1076, 1423. - Gennari *Consult.*, etc. p. 1, cons. 48.

3. Canutus, treasurer of a certain prince, with monies entrusted to himself, the owner not knowing, trades for his own advantage in the money market, and makes for himself a sufficiently notable profit. One day, when a small chest filled with the money of the lord had been handed to him, instead of immediately putting it back in the money chest which was kept in the same house of the prince, he carried it away to his own house, that he might be able to trade also with that, as he was accustomed to do. But after a few days, inspecting the small chest and counting the money, he noticed that one thousand lire had been withdrawn from it.

Q. What as to the case?

R. Canutus in the case does not seem able to be excused from sin, and from grave sin, on account of the use which he makes of the money of his lord. For the prince is certainly unwilling, and reasonably unwilling; and there is no doubt that, if the prince knew the infidelity of his treasurer, he would immediately expel him. Canutus, by trading with the money of his lord, certainly exposes it to great

danger, since the aforesaid trading of money in the money market, or exchange, is in itself a very dangerous thing, as daily experience itself establishes.

Nevertheless, since the matter has hitherto succeeded well for Canutus, he can keep for himself the sufficiently notable profit which he has received from that trading, because they are the fruits of his industry. But it is supposed, as appears from the case, that that money was to be stored in the chest and to remain there idle, so that from that money, employed for trading, no ceasing profit of the prince follows.

But Canutus is held to restore the one thousand lire withdrawn from the small chest. For by carrying the money away into his own house, that he might be able to trade with that money, he took upon himself the risk of the same. - I. M. 1075 seqq.; G. 882-884; Ithur. cas. 2. n. 12, 13.

4. Durandus deposits with Martinus, a public money-changer, a sum of counted gold money, 50,000 lire. Durandus likewise deposits with the same Martinus 50,000 lire in 50 schedules of the public Debt. A writing is made by the money-changer of the deposit handed over, namely, of gold money of 50,000 lire and 50,000 lire of the public Debt, without the serial numbers of the aforesaid schedules being indicated. The deposit having thus been completed, after five months one of those schedules obtains a prize. But after a year had passed, Durandus demands back from Martinus the deposited money together with legal interest and the prize obtained. Martinus restores only 50,000 lire in gold money, and 50,000 lire in 50 schedules of the same public Debt.

Q. Did Martinus act justly?

R. Affirmatively. For first, the depositary is not held to pay any interest on deposited money, except from the day on which he is constituted in delay. Thus C. I. 1852. Wherefore it altogether suffices that Martinus restore the money received, in that species in which it was received, whether it has increased or decreased, nor does he owe any interest for it. Moreover, since the schedules of the public Debt were deposited only as to species, number, and value, and in the deposit no account was taken of the serial number of the same schedules, those schedules by that very fact passed into the ownership of the money-changer, so that, if they had been carried off by theft or burned by fire, he himself certainly would have had to substitute others for them. Therefore the prize of that schedule belongs not to Durandus, but to Martinus, to whom the schedule itself belongs. Scav. l. 2. num. 458.

5. Ludovicus receives from Aloisius a ring, with a precious gem, to be sold for 100 lire. He immediately finds Diogenes, who buys it for 130 lire. Rejoicing at such good fortune, Ludovicus hands 100 lire to Aloisius, but keeps 30 lire for himself.

Q. Did Ludovicus act rightly?

R. If Aloisius agreed with Ludovicus that he should sell the ring for 100 lire to be handed over to him, and that, if he should receive anything beyond that, he should keep it for himself, Ludovicus can indeed keep the 30 lire for himself. Apart from such an express or tacit agreement, Ludovicus must return the whole price to Aloisius. For then he cannot keep that excess for himself by reason of the thing sold, which belongs to Aloisius, and therefore its price also belongs to the same Aloisius. Nor can he keep the aforesaid excess by reason of the designation of the price made, because that

designation, of itself, apart from another pact of retaining the increase, has only this force, namely, that the thing not be sold below a price of this sort, but by no means that it not be sold for a greater price, if this is possible. Nor indeed can he retain those 30 lire by reason of industry. For first, as appears from the case, there was no special industry of Ludovicus in that sale. Moreover, generally the increase of the price of a thing pertains of itself to the very price of the thing, because a thing which is worth 100 and is sold for 100 can also be worth 110, 120, 130, and be sold for this greater price. For the price of a thing, especially of some things, is not indivisible, and from many circumstances it can be increased as well as diminished.

If Ludovicus agreed with Aloisius about some wage to be received, this indeed is owed to him, namely that which was determined by pact, and which no longer depends on the judgment of the mandatary. But if no agreement was made about a wage to be received, then Ludovicus is judged to have wished to perform his office gratuitously. Nevertheless Ludovicus deserves some reward for a matter so usefully managed. And if he had not immediately found a buyer, but had had to apply notable time and undertake extraordinary labor to sell the ring, then, in a manner proportioned to the labor, he could have compensated himself. I. M. 1112 seqq., 1170; G. 563, 887, 888.

6. Maximinus orders the maidservant Claudia to buy necessary goods from Marcus. Since Marcus sells only inferior things and at a dearer price, Claudia buys the goods from other merchants at hand, of better quality and at a lower price. Sometimes, moreover, to buy the things at a still lower price, she goes to the public market, where she can also choose what things are better. Claudia would like to keep something at least for herself, and therefore she asks her confessor.

Q. What as to the case?

R. 1. Apart from a special pact between Maximinus and Marcus, Claudia, passing over Marcus and managing a matter very useful to her lord, violates no right of Marcus, and therefore is held to nothing toward him.

2. But the money which she gains by buying from other merchants she is held to return to her lord; for she herself buys the goods in the name of her master, wherefore the remaining money belongs to the master. Moreover, by reason of her office and of the stipend which she herself receives, she is held to procure the utility of her lord. Nor indeed is there any special industry or labor in this, that she herself buys goods from other merchants at hand. And the same must be said as to the profit received when she goes to the public market, unless, on account of the distance of the place and the untimely hour at which she must go there, there is special labor and fatigue on her part; and likewise some special industry in completing contracts with merchants of this sort, who sell things in greater quantity and at a lower price in the public market, which industry, that the matter may succeed well, certainly is not of all persons; especially since it can easily happen that the things are of inferior quality. Wherefore, if Claudia, by her labor and industry, buys goods in the public market in greater quantity and better quality, and at the same time at a cheaper price, so that Maximinus is altogether content, if she herself keeps something for herself, either of the greater quantity of goods bought, or of the reduced price, she does not seem to be disturbed. And if some scruple should still remain, if Maximinus, seeing the goods bought and considering their quantity and quality

and price, shows himself altogether content, he now has ratified the manner of acting of Claudia. - I. M. 1170; G. 571, 572, 886.

7. Remigius buys for 50 lire a gem worth 200 lire, knowing that it is stolen and belongs to Germanus, that he may perform for him a matter very useful and pleasing. Otherwise Germanus would have lost the gem entirely. But Germanus indeed claims the gem for himself, yet refuses to refund to Remigius the price paid.

Q. What as to the case?

R. Germanus acts unjustly, in not wishing to refund the price to Remigius. For Remigius in the case truly undertook to manage his business usefully. Wherefore, both by natural law and by positive law, he is held to compensate the price paid. But since Remigius has a strict right to compensation, he can compensate himself from that very gem, by retaining it for himself, or by selling it, and by giving the excess of the price to Germanus. - I. M. 1118, 1119; G. 889, 890.

8. Raphäel bought a watch from Michäel for the price of 100 lire, which he gave to him, the watch having been received. Michäel forgot to note in his book the price received; hence after two years, reading through the book of sales, and seeing that the price of the watch had not yet been paid, he asks it from Raphäel. Raphäel affirms that he has already paid the price, and that at home he still keeps the schedule signed by Michäel himself of the price received. But when Raphäel could not find that schedule, and Michäel believed his own book rather than Raphäel, he brought the matter to the judge. In judgment Raphäel is condemned to pay the price and the expenses of the judgment itself. Raphäel patiently pays everything. But after ten years, while he was burning his useless papers, he found among them the lost schedule. He immediately showed it to Michäel; but Michäel opposes prescription to him. Then Raphäel consults an advocate, who responds that in the case he will obtain nothing from the judge. Then Raphäel, by occult compensation, renders himself indemnified both as to the price paid twice and as to the expenses of the litigation.

Q. 1. What contracts are had in the case? - 2. What concerning the sentence of the judge? - 3. What concerning Michäel? - 4. What concerning Raphäel?

R. To the 1st. Two contracts are had in the case: namely, the contract of buying and selling, and besides this the quasi-contract of the payment of what was not owed. I. M. 1124.

To the 2nd. The sentence of the judge indeed was just. For, the proof of payment failing, and the proof of payment owed and not yet satisfied standing, Raphäel is condemned by the judge rightly and deservedly. C. I. 1312.

To the 3rd. There is indeed difficulty in the prescription opposed by Michäel. From Roman Law the prescription of movables with title is made in three years, nor is the payment of what was not owed excluded from prescription; indeed this is also explicitly commemorated. Dig. lib. 41. tit. 10. L. 3. But this prescription is not had in the Italian Civil Code as to the action of reclaiming what was unduly paid. Nor likewise can prescription be had in the Italian Civil Code from the fact that the matter concerns a movable thing, namely money, for which possession in good faith and with title suffices, as is verified in the case. For whatever may be true of the French Civil Code, from which that

disposition of law was taken, from the Italian Code prescription is had only as to third parties, but by no means as to those very persons between whom the contract or quasi-contract intervened. Whence it would seem that one must say that Michäel could not oppose prescription.

To the 4th. If prescription has not been completed by Michäel, as is established from what has been said, it follows that Raphäel can use occult compensation for the price unduly paid twice; but not for the expenses of the litigation. For in that litigation there was no injury on the part of Michäel, who proceeded in that litigation altogether in good faith, and also altogether justly according to the law.

74. On Mutuum

1. Ascanius gives money as a loan for consumption with interest of eight, nine, ten per cent, according as the borrowers flourish less or more in resources and industry.

2. Gaspar gives money as a loan for consumption, requiring by a prior agreement, for interest, ten per cent. For he says that the law permits even conventional interest besides legal interest, and leaves it to be defined by the free consent of the contracting parties.

3. Ernestus gives money as a loan for consumption, constantly requiring for interest ten per cent; because, he says, this is the practice of the place, almost commonly observed even by honest men.

4. Iovianus, having an occasion of gaining from trading twenty per cent, asks a large sum of money from Iovinus, spontaneously offering to him ten per cent, that he may obtain it more easily. Iovinus accepts, saying: to one knowing and willing, no injury is done.

5. Cornelius, altogether inculpably, lost an immense sum of money received as a loan for consumption. Hence he wishes neither to restore the capital nor to pay the legal interest owed by agreement; saying, as to the capital, that the thing perishing without any theological fault of his perished for its owner; but as to the interest, that since the thing brought no fruits, he owes nothing to the owner of the capital; for a thing fructifies for its owner.

6. "Whether it is lawful for a Religious Community, which receives a loan for consumption with an increment of four or five per cent, to lend those same monies received as a loan for consumption to some other person with an increment of ten per cent?"

Q. What as to the cases?

R. Ascanius acts illicitly and unjustly. For from the fact that the borrower flourishes more or less in resources and industry, since this thing is altogether the borrower's and depends only on him, it does not furnish a title to the lender for receiving a greater increment. Hence Benedict XIV, Encycl. Letter *Vix pervenit*, says: "Nor indeed, to purge the stain of usury, can any aid be summoned either from the fact that that profit is not excessive and too much, but moderate; not great, but small; or from the fact that he from whom that profit is demanded on account of the loan alone exists not poor but rich; nor that he is not going to leave idle the sum given to him as a loan, but is going to spend it most

usefully for enlarging his fortunes, or buying new estates, or carrying on profitable business." Wherefore Ascanius is held to restitution. Benedict XIV ib.

Gaspar, by title of a mere agreement completed, cannot require ten per cent, an interest exceeding by double the legal interest. The reason is that the law indeed permits conventional interest which exceeds legal interest, but that agreement, in order to be able to have force, must be otherwise honest and just. Such it certainly will not be when there would be no other title for that excess except the agreement itself made, as in the case; for then that agreement would in reality be without a just title, and therefore unjust. On the contrary, an agreement of a greater increment to be paid would be lawful, if the lender truly suffered extraordinary detriment, the compensation of which he can legitimately require. Wherefore Gaspar, suffering no special damage and nevertheless requiring by pact a greater increment, is held to restitution. I. M. 1109; Scav. l. 2. n. 443, 569.

Ernestus does not seem to be disturbed, if that is truly the custom of the place. For the legal tax can be determined by written law and by custom. Just as written law, constituting a tax, defines the compensation commonly to be made, with attention to the common conditions of emergent damage, of ceasing profit, of risk of capital, and of the common good to be promoted by easy trading and commerce, so also common practice and custom can define and determine this same thing. *Enchir. Moral.* 1095; I. M. 1095, 1103, 1109; G. 893 seqq.

If Iovinus required that greater interest for the greater profit of Iovianus in his trading, he would act altogether illicitly and unjustly, and would be held to restitution, as was said in the first case. But since Iovianus himself, altogether spontaneously and not asked, offers that greater increment, it does not appear why it cannot be accepted. For in the case there is truly a free and full donation of the borrower. G. 905; Scav. l. 2. n. 571; Kenrick.

Cornelius is altogether held to the restitution of the capital, and to paying legal interest, according to the agreement made, as is supposed. For the money lent by force of the *mutuum* passed into his ownership, and did not remain in the ownership of the lender. Hence consequently the thing perished for him, and for him also ceased every emolument to be received on the occasion of the money lent and by his personal industry. Hence there remains entire, by force of the previous contract of *mutuum*, the obligation of restoring the capital, and, by force of the previous agreement, the obligation of paying legal interest. G. 891, 892; I. M. 1080, 1095.

"It is not lawful for Communities of Regulars to give to others, at a greater agreed usury, money received with the burden of paying four or five on each hundred." S. O. 4 and 18 March 1784; *Collectan. S. C. de P. F.* n. 2121. ad 7; M. E. v. 7. p. 2. p. 258.

7. Fridericus in France received as a loan for consumption one hundred gold scutata, to be restored in the same species. Since the extrinsic value of gold has increased, so that one hundred gold lire are worth one hundred twenty lire of paper money, Fridericus indeed wishes to restore to the one seeking them one hundred gold scutata, in the same species of money, but only eighty, not one hundred.

Q. Does Fridericus act rightly?

R. Affirmatively. For, apart from a special agreement, when money has been given as a loan for consumption, it suffices that the same extrinsic value be restored, and indeed in the same species of

coin, as in the case, even if the coin which was handed over has meanwhile increased or decreased. For, where the question concerns counted money, its extrinsic value is attended to under the aspect of money, not its intrinsic value under the aspect of gold or silver. For the object of the contract in money is not gold and silver, but its value insofar as it is money.

Except, unless it has been agreed that restitution ought to be made in the same species and quantity, if the question concerns silver and gold money, namely that as many silver or gold coins in number, and of the same species, be restored as were lent, whether their value has increased or decreased. - But if the monies, at the time of restitution, cannot be found, or are no longer in commerce, then there is paid, in current money, what corresponds to the value which they obtained at the time when they were lent. - I. M. 1082, 1084; C. G. 1895; Gousset in h. a.

8. Titius, when the Italian Government had not yet prescribed the compulsory use of paper money, gave to Sempronius as a loan for consumption one hundred gold coins, under the condition that as many be restored in their species, every other bronze coin and every other representative of money being excluded.

This the borrower promised, now for then renouncing the benefit of the law, if anything should have been established concerning this matter. But if the law does not admit renunciation, the borrower obligates himself to compensate every damage, either by paying gold money, or by adding over and above the paper money as much as is required at the time of restitution, that they may be equated with the gold according to the difference. Moreover the law of 1 May 1866 appeared, by which it is established: National banknotes shall be given and received as sounding money according to their nominal value, in paying within the State ... notwithstanding any contrary disposition of law or conventional pact.

Q. 1. Does the simple condition added in the chirograph, concerning restitution to be made in no other way than in sounding money, lose its force even in the forum of conscience through that subsequent civil law invalidating it? - 2. And insofar as affirmatively, can Sempronius in this case, that is, on account of the special conditions stipulated as above, safely conform himself even in the internal forum to this civil law so useful to himself, when this law, even in these circumstances, would have supported him in the external forum?

R. "To the 1st. Regularly, affirmatively, unless peculiar circumstances stand in the way, concerning which recourse will have to be made in particular cases, with the same diligently set forth. - To the 2nd. Attention being paid to the quality of the pacts, and also attention being paid to the tenor of the law of which there is question in the case, negatively." S. Poenit. 21 Jan. 1873, *Acta S. Sed.* v. 7. p. 209 seqq. Namely, just as the law abrogates any contrary preceding law, not a future one, so also it abrogates preceding pacts, not future ones. But it by no means abrogates preceding pacts also by which it had been explicitly agreed that the debtor would not use the benefit of the law, if some future law should abrogate pacts of this sort concerning money to be returned in its proper species. Therefore the law abrogates only pacts made simply before that law concerning restitution to be made in real coins.

9. Rufus in Italy gave to Rufinus as a loan for consumption the sum of 10,000 lire, by a legitimate agreement, that the loan would last for ten years, and that throughout this whole time interest

would be paid to him of twelve per cent, whether because that sum was being given in gold money, or because all others more or less commonly require the same interest. But when the decade was completed, the same sum of 10,000 lire was altogether to be restored according to the same species and quantity of money, express renunciation having been made of any benefit of law concerning a mode of restitution of this sort. Rufinus indeed hoped that he would gain thirty and more per cent. But after six months Rufus, knowing that the commerce of Rufinus was not succeeding well, wishing to secure for himself the sum of money lent and unwilling meanwhile altogether to lose hope of that rich interest, urgently simulates a business of commerce and asks from Rufinus as a loan for consumption the sum of 10,000 lire, to be restored as soon as possible, in turn meanwhile promising him legal interest of five per cent. Thus Rufus, recovering his capital, still continued to receive a profit of seven per cent. But Rufinus, using the good occasion, by a written agreement, gave the aforesaid sum as a loan for consumption to Rufus. But Rufinus, considering the matter, afterward refused to pay the constituted interest, saying that a legal compensation had been made between both loans for consumption. And since a year had not yet passed from the loan received, he adds that he owes no interest. But since the intrinsic value of that gold money had meanwhile been diminished by ten per cent, new coins of that species having been struck, Rufinus gains one thousand lire by the mere change of monies; and he is sufficiently content with this notable and easy profit.

Q. 1. Could Rufus lawfully have made the first agreement concerning interest of twelve per cent on account of the reasons alleged? - 2. Could Rufus lawfully have made the other agreement by which he himself would still receive interest of seven per cent? - 3. Can Rufinus lawfully exempt himself from every obligation of the loan received, and receive the profit of one thousand lire?

R. To the 1st. That the aforesaid sum was given in gold money certainly is not a reason for requiring more than double the legal interest. If the value of the gold money is greater, that excess can indeed be computed in the very sum given as a loan, and the legal interest which is required can be increased proportionately. Hence, if the excess of the gold money had been 15 or 20 per 100, then Rufus in reality would not have required twelve, but ten per cent in reality by reason of the loan. But the better reason for requiring the aforesaid interest is the common practice and custom in that place, which, since it is common to all, certainly is a practice observed also by men of timorous conscience. S. Poenit. 18 Apr. 1889. Hence, such a legitimate custom of the place being supposed, Rufus could lawfully make the first agreement.

To the 2nd. Since Rufinus, from the case, altogether spontaneously consented to less interest to be received from the money lent, and another contract of *mutuum* truly intervened, as is elicited from the very objection made by Rufinus to Rufus, it does not appear why, the prior agreement legitimately made persevering, Rufus cannot still receive seven per cent.

To the 3rd. Rufinus illicitly exempts himself from every obligation of the loan. For legal compensation has no place in the case. For each debt is not equal on both sides as to the interest to be paid, nor can it be immediately exacted and restored as to the capital, since in the first agreement the contract must last for a decade; in the other agreement the money lent is to be restored as soon as possible. If he does not wish to lack the advantage of his money, let him indeed seek its restitution as soon as possible. Yet he cannot exact it before at least one year has elapsed, since meanwhile he consented that legal interest be paid before its restitution, which is owed only after a year. But only after five

years can he himself, from the Italian Code, restore the capital, since its interest exceeds legal interest. But as to the one thousand lire which Rufinus thinks he gains from the diminished intrinsic value of the gold coin, the profit first would still be uncertain; for the matter depends on the value which the aforesaid coin will have then, when Rufinus restores the money lent to Rufus after the decade has elapsed, or at least after the five-year period, unless Rufus should beforehand consent to the rescission of the contract. Then Rufinus will be able to receive no profit from it. For it is established by the law itself that, if gold or silver monies have been given as a loan, an agreement having been made of restitution in the same species and quantity, if their intrinsic value is altered, an equivalent to the intrinsic value of the same coins at the time of the loan must be restored. - C. I. 1286, 1287, 1822, 1826, 1832.

But the condition of Rufinus is better from the French Code. For first, Rufinus, from art. 3 of the law of 3 Sept. 1807, cannot be obligated to pay conventional interest exceeding legal interest. Likewise nothing special is determined from this Code as to a loan for consumption of gold or silver coin. The borrower is held only for the numerical sum designated in the contract, and in the species current at the time of payment. C. G. 1290, 1291, 1895, 1907.

The condition of Rufinus is also better from the Spanish Code. For from this Code also nothing is determined as to a loan for consumption of gold or silver coin, except that restitution is to be made in the agreed current species. C. H. 1170, 1195, 1196, 1754, 1755.

From the Austrian Code, conventional interest cannot exceed the limits constituted by the law itself. Yet by the law of 14 June 1868, the limits predefined in a *mutuum* for conventional interest of this sort were abrogated. But as to the change of monies it is established that changes of coins, by force of law, without alteration of their intrinsic value, are for the advantage or damage of the lender. For he receives the same coins in species, and the same number of them which he gave. But if the intrinsic value is altered, payment is to be made according to the intrinsic value which the coin had at the time of the money lent. C. A. 988, 989, 994, 1438, 1439; I. M. 1082, 1104, 1471.

10. Augustus, a son under paternal power, more than once received money as a loan for consumption with immense usury from a Jewish man, yet with faith first given to him that he would never use the privilege of age, and would restore all things after the death of his father. Augustus spent the aforesaid money in games and a freer life. Meanwhile the father of Augustus dies, and Augustus, having returned to good fruit and having become more prudent, refuses to restore anything to the Jew, opposing in judgment the privilege of the age in which he had received the loan.

Q. What as to the case?

R. Augustus uses his right: for he can use the favor of the law. Nor can the faith given be opposed; otherwise the aforesaid law would in practice be altogether frustrated, since all would require such a promise. This law is consigned in Roman Law, lib. 14, Cod. tit. 6, *de Senatus Consulto Macedoniano*: "It pleases that no action and petition be given to anyone who had given money as a loan to a son under paternal power, even after the death of his parent in whose power he had been." Where it must be noted that "although by the words of this Senate decree only the civil obligation seems to be removed ... nevertheless more probably the natural obligation also is removed; so that in the forum of conscience he is never held to restore such a loan, if he wishes to use this privilege ... And this the

law established, both as a punishment of those who would lend to such persons, and so that every occasion of wicked machination against parents by sons would be cut off. Whence also the son cannot renounce this privilege, because it is more in favor of the parents than of himself ... Yet notice that there are many cases in which the son is held: 1. If he has military goods, or quasi-military goods. 2. If he was publicly thought to be of his own right. 3. If he received as a loan not money, but another thing, such as wheat, wine, and the like; for the law speaks only of a monetary loan, unless he did this in fraud of the law, so that from it he might collect money. 4. If the money was turned to the utility of the father. 5. If the father ought to have supplied it according to right reason, as if the son, absent for the sake of studies, receives a necessary loan so that he may live, so that he may buy necessary books, so that he may pay the teaching fees ... 6. If the son swore that he would pay ... because an oath made in favor of another must always be observed, when it can be observed without sin ... Yet relaxation of this oath can be sought from the prelate, because it was opposed in fraud of the law, and otherwise the law would easily be rendered useless; and it being obtained, he will be able not to pay." Lessius l. 2. c. 20. d. 2.

The same in the case is established from the Italian Code 1307: "No one can claim the restitution of what he paid to a minor, interdicted person, or incapacitated person, or to a married woman, by force of an obligation which has remained void, unless he proves that what was paid was turned to their advantage." The same is had in Cod. Gall. 1312; Cod. Hisp. 1304; Cod. Austr. 152. Wherefore Augustus does not seem to be disturbed, if, using the benefit of the law, he invokes the sentence of the judge, that the obligation contracted may be rescinded. I. M. 565, 953, 970, 1085; S. Alph. 757. Cf. G. 771, 772.

11. Celina, a woman bound to a husband, received money as a loan for consumption, offering a mortgage over part of her dowry, entirely without the knowledge of her husband, to extinguish debts contracted by a freer life. But the children, when both parents were dead, obtain from the judge a sentence by which they are exempted from every payment.

12. Sophia, having paraphernal goods, sought money as a loan for consumption to pay debts common to herself and her husband. This payment having been made, her husband and children were able to continue commerce to the great advantage of the whole family.

13. Generosa, having a husband gravely ill and oppressed by debt, without the consent of her husband sought money as a loan for consumption, to pay his debts, that she might provide for the honor of the family. But she did not obtain it except with a special obligation undertaken, and this only on the condition that she herself would restore it, either from the goods of her husband himself, if they sufficed, or also from her own, even from dotal goods, even after the death of her husband, if the husband should die of that illness, as in fact happened after a few months.

Q. What as to the cases?

R. The children of Celina can legitimately use the benefit of the law, lest they pay; since they suffer no advantage, but truly damage, from the aforesaid loan. I. M. 953; G. 774.

Neither Sophia, nor her husband, nor her children can invoke rescission of the obligation contracted. For the loan truly turned to their advantage. I. M. 678, 679, 953; G. 873.

Generosa is altogether held to restore the money received as a loan. The reason is that she herself truly perceived emolument from the loan, and because she obligated herself to restitution by a special contract. I. M. 953; G. 755. - C. I. 134; C. G. 217; I. M. 677, 678, 679; G. 1009.

14. Marius the usurer dies, who acquired many riches by illicit and unjust usuries. Two of his sons, Marinus and Marianus, succeed as heirs; one of whom indeed consents that restitution of the usuries be made, but according to the proportional part of the inheritance which he received; the other, however, wishes to restore nothing. Must Marinus himself alone restore the whole, when Marianus is unwilling to restore?

Q. What as to the case?

R. The heirs of the usurer are indeed held to restore the usuries according to the resources of the inheritance, if the usurer himself does not restore. The reason is that the heirs, taken collectively, represent the deceased in the goods received by him. But are the heirs of the usurer, and the heirs of any other debtor, held *in solidum*, so that, one failing, the other must pay the whole debt? Many affirm, because individuals represent the person of the testator and succeed to his rights and burdens. Many also, on the contrary, deny with sufficient probability, because individuals represent the person of the deceased only partially, and therefore are held only partially. But except: 1. Unless all the heirs cooperated in the delict of the deceased. 2. Unless the usurious thing itself, or whatever must be restored, exists with one. For then the heir who has it must return it whole to its owner. Yet he has recourse against the other co-heirs, that he may have equal compensation, lest he alone sustain the burdens of the inheritance. 3. Unless the goods of the inheritance were mortgaged. For a mortgage is not divided, but is in any part of the mortgaged goods. Wherefore it confers on the creditor the faculty of prosecuting his right wherever he can; and consequently, one heir failing, the other is held for the whole. But this one again has the right of demanding equal compensation from the co-heirs. Scav. l. 2. n. 437.

But sons, heirs of usurers, are held to restore things illicitly acquired by their fathers from usuries to the certain owners, if they are certain; but if they are uncertain, restitution must be made to pious causes or to the poor. *Collectan. S. C. de P. F.* n. 2111.

75. On Sale

1. Tullius buys a house from Marcus for the price of 60,000 lire, with the pact, however, that the house would be handed over only after a year, namely, when the time of a lease of the same house already made to others had elapsed; and then also the handing over of the price would be made.

The contract having been perfected, and a public instrument also having been made, after some months the whole house is burned by an accidental fire. Hence, the year having elapsed, Tullius refuses to stand by the contract.

2. Titirus, from the abundant flock of sheep which he had, sold one hundred sheep, to be handed over to the buyer after autumn, and then also he himself would receive the price. But by a fatal stroke of lightning the whole flock perished. But the buyer at the established time demands one hundred sheep from Titirus.

Q. What as to the case?

R. Tullius must altogether stand by the contract, and is held to pay the price. For by Roman Law, although, the thing not having been handed over and the price not yet paid, the seller keeps the ownership of the thing, and the buyer does not acquire a right in the thing, but only a right to the thing; nevertheless, if the thing perishes before delivery, and it was certain and determined individually, it perishes for the buyer; for the risk of the thing pertains to him no less than its increase. I. M. 1127. But by more recent law, Italian and French, the contract of sale having been perfected by consent furnished on each side, the ownership of the thing pertains to the buyer, and for him it perishes, or becomes worse, just as for him it increases and fructifies. I. M. 1128.

If Titirus had had only one hundred sheep, and had sold them individually, then, as in the preceding case, so in the present, the buyer would have had to sustain their destruction and pay the price. But since Titirus had an abundant flock of sheep, and from the whole flock of sheep sold only one hundred sheep, the sale then was not of a thing certain and determined individually, but of an indeterminate thing. But the risk of a thing indeterminate individually pertains to the seller. Hence, if from the whole flock one hundred sheep have survived, Titirus must hand them over to the buyer, the price being received. If fewer have survived, he must hand them over to the buyer also, the price being received but diminished in due proportion. If finally no sheep has survived, Titirus is indeed not held to buy one hundred sheep and hand them over to the buyer; for this was not the agreement made, but it was merely the sale of one hundred sheep from the whole flock; and since that flock perished without any fault of Titirus, delivery has become impossible; and therefore neither is their price to be paid by the buyer. I. M. 966, 1127, 1128; G. 908, 936-938.

3. A merchant buys several casks of wine, the price being established for each measure of wine; he gives earnest-money to the seller, and marks each cask with his seal. The casks are carried to his shop, and after a month he himself tastes the wine and finds sourness. The merchant then wishes to return the casks to the seller as if unbought. The seller refuses to receive them as sold, and says that the damage must be sustained by the buyer.

Q. What as to the case?

R. It is indeed certain that the sale of that quantity of wine, the price being established for each measure of wine, depended on the measuring of the wine; and consequently it was not made *per aversionem*. But that measuring ought not to have been lacking in the case, since those casks of wine were even carried to his shop. - As to tasting, there is no doubt that, if it was explicitly added as a suspensive condition of the sale and purchase, before it the sale and purchase is not understood to be perfected; and the buyer is held to taste. And if he does not wish to taste, it is the same as if he tastes and approves. If that condition was not explicitly added, it is tacitly present, because the question concerns a thing which is not customarily bought unless it has first been tasted and approved; and because such is the law, there is altogether no sale and purchase, and the buyer can withdraw and not

taste. - But neither is there any doubt that someone can renounce that tasting, as when someone writes to an absent merchant that he should send him such a quality of wine. Tacitly he renounces tasting, and if truly that quality of wine has been sent, the sale and purchase is perfected.

Moreover, that merchant seems altogether to have renounced tasting; for the casks of wine were carried into his shop, and therefore, delivery of them having been made, the risk of the same no longer pertains to the seller, but to the buyer. For delivery is an argument of acceptance of the thing. Moreover, he marked the casks with a seal; concerning which indeed the Doctors doubt. For some say that this is done not that tasting be renounced, but lest other wine be introduced into the cask, or one cask be substituted for another; and therefore, the sale not yet being perfected, the risk is still the seller's. But others say that by the very fact that the buyer proceeds so cautiously and diligently in signing the casks, he is presumed to have tasted the wine or to have renounced tasting; since by the deed of thus preventing alteration and change of the wine, he shows that the wine pleased him, and that he has already approved it. And thus also it is said in L. 74 *de Contrahenda emptione*: "When the keys have been handed over, the possession of goods stored in warehouses seems to have been handed over, if the keys have been handed over at the warehouses: this being done, immediately the buyer obtains ownership and possession, even if he has not opened the warehouses; but if the goods were not the seller's, usucapion will immediately begin." - L. 1 *de Peric. et comm. r. vend.*; Troplong, *della Vendita*, n. 101 seqq.

Finally, since the merchant kept the casks with himself for a whole month and delayed in measuring and tasting the wine, who indeed can any longer doubt that the aforesaid merchant must sustain the damage of the sourness, since that defect of the wine could well have been contracted in his own warehouses in so long a space of time?

4. Asprenius, having entered a wine shop, bought for 30 lire a cask of wine, which the merchant said contained fourteen cadi. Asprenius marks it with gypsum, closes it with cork and pitch, and marks it with his seal. The cask is carried to his underground cellar. After a month Asprenius, measuring and tasting the wine, finds sixteen cadi. Must Asprenius undergo the damage of sourness, and besides pay the price of two other cadi?

R. The sale of the cask, as appears from the case, was made in bulk, and was not conditioned; and its price was certain and the thing sold determined. It is indeed true that the quantity of wine contained in the cask was added by the seller; nevertheless that declaration of the seller does not make a condition, but only a demonstration of the quantity sold purely and fully, which gives the buyer the right of demanding the demonstrated and declared quantity, but took away absolutely nothing from the certainty of the sale. Wherefore, that the contract be perfect, measurement was not necessary. Hence, since the seller sold the whole cask, although more cadi were contained in it than were declared by him, he has no right to demand a supplement of price. That declaration was wholly for the grace and favor of the buyer, not of the seller himself, insofar as the seller himself ought to have known well the capacity of the cask. It is not likely that the seller was ignorant of the measure of his own thing. "Nor do you permit yourselves to dwell on empty objections, so that he may plead to himself unknown strengths of places, who ought to have known the strengths, merits, and emoluments of a familiar thing." L. *Quisquis de Rescind. vendit.* Cod. And if in fact he was ignorant, this ignorance in a thing well known to himself, and in his own proper pact, merits no excuse. Wherefore,

because the sale was perfected, Asprenius is held to undergo the damage of the sourness; because it was made in bulk, he does not owe the price of the two cadi. Cf. the preceding case.

5. Albertus sold a house to Bonaventura. Then after a few weeks he sold the same house to Bonavenia, who immediately transcribed the act of sale and purchase. After ten years, Albertus being dead, the two buyers learned that the same house had been sold twice, and they ask whose house it now is.

Q. What is transcription? - 2. What as to the case?

R. To the 1st. Transcription is the presentation of a copy of acts, so that they may be written in the registers of the Hypothecary Office of the place where the goods of which there is question are situated, or where the hereditary succession was opened. C. I. 955, 1938.

To the 2nd. The house belongs to Bonavenia. For first, one who in good faith acquired some immovable thing or a real right to an immovable thing prescribes it and makes it his own after ten years from transcription. C. I. 2137; I. M. 922. Moreover, transcription obtains force even against a third party, even if this one is prior in acquisition, if nevertheless he did not transcribe the contract. C. I. 1942; I. M. 934. Therefore Bonaventura has only a personal action against Albertus; but since he is already dead, he will be able to seek back from his heir the price paid, and also compensation of damages. C. I. 1225 seqq., 1462, 2076, 2094, 2097.

6. "Basilius, a pastor, for the price of 5 francs bought from a simple rustic an old panel of the Blessed Virgin Mary, glued together by long-standing smoke. The rustic rejoices, who could never have sold this image even at a much lower price. But the pastor hastens to place it, cleaned in whatever way, in the parish church. But a few days having intervened, behold, a most skilled English painter, when by chance he had entered the church and had looked at the image, immediately offers six thousand francs for it. For he recognized that it was a genuine work of Raphael. At first the pastor wonders and is stupefied! Nevertheless he judges that a more careful inquiry must be made concerning the price of the panel, and finally obtains from the buyer 20 thousand francs, but soon, anxious, he began to doubt whether he must restore the whole profit to the rustic or not.

Q. Is the pastor held to restitution toward the rustic?

R. Basilius the pastor is by no means to be disturbed. For this panel, so precious, was not valued by either contracting party at more than the price of five francs, nor did fraud or deceit intervene in the contract." Thus Fr. Gury 925. But this reason does not seem convincing. For, from the same Fr. Gury 782, if someone sells at a cheap price a diamond stone, which he considers crystal, to a buyer who also himself thinks such to be its value, the contract is not valid; and nevertheless also in that case a thing so precious is not valued by either contracting party at more, and neither fraud nor deceit intervenes in the contract. Indeed, in that case of the ring the contract is not valid on account of substantial error, which nevertheless, says Fr. Gury 925, is denied in the other case of the panel, "because the error is not concerning the substance of the thing, but rather only concerning its price." But this is not true; for therefore there was an error, and so grave an error concerning the price, because there was an error concerning the very substance of the thing. An error concerning the

substance of a thing is not merely an error of the material thing considered in itself, but an error of the thing as estimable by price. Otherwise, indeed, neither in the sale of that crystal stone would there have been substantial error. For the seller saw well that material stone; likewise the buyer saw it well; both erred only as to its preciousness, or its estimation in the ratio of price. For if they had known that it was a precious stone, namely not to be estimated at a common price, whether crystal, glass, or diamond does not matter, the owner certainly would not have sold it at a cheap price. Similarly, in the case of the panel, the rustic and the pastor see well that material panel, but they err as to its preciousness, or its estimation in the ratio of price. Indeed more, if truly that panel is a work of Raphael, in common opinion itself a greater error is certainly judged, as to the substance of the thing, in the case of the panel, than in the case of the stone, since that panel is of far greater estimation, from common opinion.

Nor indeed can the aforesaid sale, in the case, be held as valid from another head, as an aleatory contract by which each contracting party committed himself to the danger of lot. For, as is elicited from the very wonder and stupor of the pastor, after the truth of the thing was discovered, and from his very anxiety, there was no suspicion of the thing; and both the rustic thought that he was truly selling a common and cheap panel, and the pastor judged that he had bought an altogether common panel, the work of any obscure painter.

Fr. Gury, in the two following cases, n. 928, 930, in which the matter concerns old precious coins and an old gold coin, the value of which is unknown by the seller but not unknown by the buyer, says that the sale is invalid. And at n. 928 he says that there is a difference between that case of the coins and the preceding case of the panel, because in this case of the panel the contracting parties are equally in error concerning the value of the thing, but not so in the case of the coins. But that both contracting parties are equally in error, this indeed does not render a contract valid if the error is substantial, unless the contract is aleatory. On the contrary, the error of the seller alone does not render a contract invalid unless the error is substantial. Wherefore, if the contract is invalid when only the seller errs, it remains invalid even if the buyer also errs with him, unless, by common consent, they commit themselves to the danger of lot. Hence, when the matter concerns substantial error, this principle is not true, which again at n. 930 Fr. Gury affirms as to another contract of an old gold coin, namely, that the sale of extraordinarily precious things held for minimal value is probably valid, if each contracting party is ignorant of the true price of the thing. The sophism is in this, that there is not an error of the substance of the thing sold, but an error of its price. For truly, if from an error of price an extraordinarily precious thing is sold for minimal value, now the error of that price evidently shows of itself and includes an error concerning the very substance of the thing sold. For if there were not such an error, would anyone knowingly and willingly sell AN EXTRAORDINARILY PRECIOUS THING AT A MINIMAL PRICE? I. M. 1242.

7. Florentinus, a merchant, in a short time has become rich; while other similar merchants labor under great straits. Florentinus buys goods of the best quality and in great quantity. But he sells them at the lowest price, content with a modest profit in each sale; while on the contrary all the other merchants sell those goods of inferior quality and at a higher price.

Q. What as to the case?

R. Florentinus certainly is by no means guilty of injustice toward the buyers. Nor is he guilty of injustice toward the other merchants. For they themselves, if they wish, can use the same industry. Then, just as Florentinus can give his goods away, so also he can diminish their price. Wherefore Florentinus uses his own right. G. 968; I. M. 1294.

But what if Florentinus mixed other inferior goods with good goods, without the defect appearing; or handed over the best goods, and at the lowest price, but afterward detracted so much from weight and measure, that in reality he sold them at a middle or highest price? He would indeed act unjustly; for by lie and fraud he would induce one to buy at a higher price than was agreed. Wherefore he would be held to restitution. La-Croix 955; G. 940; I. M. 1148.

8. When ecclesiastical goods exposed by the State domain were put up for public sale, under the hammer, Amandus took part in the bidding for them, that he might make extraordinary profit from it. But Alexius, present there, that he himself might be able to acquire the aforesaid goods, offers Amandus a conspicuous sum of money, that he withdraw from the bidding. Amandus accepts the money, and Alexius buys the goods.

Q. What as to the case?

R. 1. Amandus incurs no censure, since he buys nothing, occupies nothing, usurps nothing, and also cooperates in nothing. Moreover, if one who actually takes part in the bidding is immune from censure if the goods are not adjudged to him, S. Poenit. 15 Apr. 1873, much more is he immune who withdraws from the bidding. But Alexius incurs the censure, unless he has sought due permission from ecclesiastical authority. I. M. v. 2. n. 1202.

2. Amandus can keep the money received. For it certainly is not to be given to the Church, since it does not come from the ecclesiastical goods themselves, or from their sale, but from another contract entered into only on the occasion of that sale. Nor indeed is it to be given to the Church on account of harm done to it; for Amandus cooperates in no way in this damage, since he in no way cooperates efficaciously in the purchase. Whence it is that Alexius alone, the buyer, is held concerning the damage of the Church. And here it must be noted that, if Alexius resells these goods and profits thence, he is held to restore also this profit, since it comes from the goods themselves and from their sale, S. Poenit. 1 June 1869.

3. But if Alexius has obtained permission from the Holy See to buy those goods, Amandus then is held to restore the money to Alexius. For Alexius in such a case represents the owner himself, who has the right of vindicating to himself his own thing, without being able to be hindered by another extraneous person. M. E. v. 3. p. 1. p. 73.

9. Antoninus bought a house with a garden for the price of 100,000 lire. The house was valued at 80,000 lire; the garden was valued at 20,000 lire. After three years from the completed purchase, Antoninus suffers eviction of the garden. But, since the price of the garden was increased, so that it is now worth 40,000 lire, he himself demands this sum from the seller, who consents to pay only 20,000 lire.

Q. What as to the case?

R. Antoninus has the right that the thing bought and evicted be compensated to him according to the valuation which the same thing has at the time of eviction. C. I. 1489. Wherefore he can by right demand 40,000 lire for the evicted garden. - But what, in the case, because Antoninus would have wished to buy neither the house nor the garden if he had foreseen the eviction of the garden alone? Then it would be free for him to dissolve the contract, and to use the redhibitory action, by restoring the whole thing to the seller, and demanding from him the price paid. C. I. 1492; I. M. 1133.

10. Bertulfus sold a house to Cornelius for the price of 20,000 lire. Cornelius made many expenses in restoring it. When the restoration was completed, he had to sustain a lawsuit with a certain Maglorius, by whom finally, by sentence of the judge, he was evicted. Cornelius claims against Bertulfus. But the latter wishes to restore nothing to Cornelius, saying that the sale was made absolutely, and that in the contract no mention at all was made of eviction to be furnished.

Q. What as to the case?

R. Cornelius has the right that he be rendered altogether indemnified by Bertulfus, even if no mention at all was made in the contract of eviction to be furnished. C. I. 1482. Indeed more, although it had been agreed that the thing was in no way to be secured, nevertheless, if eviction occurs, the price must be restored by the seller, unless the buyer at the time of sale knew the danger of eviction and took it upon himself.

An agreement concerning the thing not to be secured exempts the seller only from compensation of damages. C. I. 1484, 1485. But since in the case no contrary agreement was made, Bertulfus is held to restore the whole price of the house sold, even if its value had been diminished, or the house itself had been deteriorated, unless Cornelius had received something from that deterioration itself. C. I. 1486-1488. But from the case it appears that the value of the house was rather increased; in such a case Bertulfus must pay also this excess of the price of sale, although this increase of price happened independently of every act of the buyer. C. I. 1489. Likewise from the case it appears that the house was improved. Wherefore Bertulfus is held also to compensate the necessary and useful expenses made by the buyer; indeed also voluptuary expenses, if he himself was in bad faith. C. I. 1490, 1491. Moreover, he must compensate Cornelius for all fruits, if Cornelius was compelled to restore them to the owner of the thing. He must also compensate all expenses which Cornelius had to make for the contract of purchase, for sustaining the lawsuit with the owner of the thing, and any other damages which perhaps Cornelius suffered. C. I. 1486; I. M. 1131, 1133, 1137.

76. On Census

1. "Whether diminution of fruits, or of the annual pension, is owed in those censuses in which for each hundred of scutated coins ten coins of the same kind are paid as fruits, which fruits, regard being had to the unjust circumstances of times and places and to the condition of debtors, seem to exceed just limits."

R. It must be considered "first what was the time of the creation of the censuses; and if it is known that their pensions, at the time when the same were created, did not exceed just limits, there is no place from the title of justice for reduction or diminution of the same pensions, even if, regard being had to a subsequent or present time, those pensions could seem heavy and exceeding what is just,

just as from the same title of justice there would be no place for enlargement or increase of the same pensions, if, regard being had to the time subsequent to the creation of the censuses, they should seem too small and less than what is just; because, just as in all contracts, so also in censuses, their justice is to be measured in relation to that time in which they were created." But since a census is a contract by which a thing estimable by price is bought, and the just common price of things is of three kinds, highest, middle, lowest, it will not have to be judged that the aforesaid pensions exceeded just limits "if the pensions of the contracts in controversy, at the time when the same were created, did not exceed the highest of those which were then in common use." Wherefore then it must be established also from this head that the aforesaid pensions "are to be judged just, and that no diminution is owed from the title of justice." From the title of justice; for, "regard being had to present unjust times and circumstances, there ought to be place for Christian charity and evangelical prudence, in order to avoid murmuring and to ward off scandals." S. C. de P. F. 20 Aug. 1826; *Collectan.* n. 2132.

2. The seller Huetius was seeking diminution of a census, on the ground that part of the censused house had collapsed, and he himself had repaired it amply. Was this justly?

R. It would have to be investigated "whether that part of the house collapsed by chance, or rather from the negligence and fault of the censuary." If it collapsed by the negligence and fault of the censuary, surely nothing would have to be remitted to him for the repair of the aforesaid house. Concerning this matter there can be no place for doubting. "Similarly, it is an undoubted matter that for repairs merely useful and not necessary nothing is owed by the censualists to censuaries.... But neither for the necessary repair of the aforesaid house was anything owed to be remitted to Huetius from justice, if, after the ruin, the part of that house which survived was capable of paying the whole pension of the census." The pension of the census would have to be diminished *pro rata* only "if the part of the censused thing which survived had become incapable of paying the whole pension"; or, that that pension may remain in its integrity, "the principal capital of the census will have to be increased *pro rata*." S. C. de P. F. 20 Aug. 1826; *Collectan.* 2. 2132.

77. On Lease and Hire

1. Longinus, of infirm health, by order of the physicians, leased for a year the villa of Albanus, that there he might restore his health. But the Alban air was harmful to him, and after ten days he had to depart elsewhere. Hence, when the year had passed, he did not wish to pay the agreed rent, adding this also, that the lessor, unless he had leased it to him, would not have found another lessee, as already before he had not found one for several years.

Q. What as to the case?

R. Longinus is held to pay the rent. In L. *Sed addes* 19, *Locati Conducti* ff., it is said: "When a certain scribe had leased his services, and then he who had hired them had died, the Emperor Antoninus with the Divine Severus wrote back to the petition of the scribe in these words: Since you propose that it did not stand through you that you did not furnish the leased services to Antonius Aquila, if in the same year you did not receive wages from another, it is equitable that the good faith of the contract be fulfilled." And ib. L. *Qui operas* 38: "He who leased his services ought to receive the wage

of the whole time, if it did not stand through him that he did not furnish the services. Advocates also, if it did not stand through them that they did not conduct the case, ought not to return their fees." Hence Lugo aptly, d. 29. n. 29: "When a leased thing is rendered useless for the use of the lessee, the general rule is that, when by accidental case it perishes or is removed from the power of the lessee, without fault of himself or of the lessor, because neither could prevent it, the lessor is held to nothing except to remit the rent *pro rata* for the time in which the use of the thing was impeded. This is understood when the impediment holds itself on the part of the leased thing itself. For if it held itself on the part of the lessee himself, who on account of sickness, for example, or another impediment of his own was not able to use the leased thing, he is not for that reason excused from paying the rent; as if he hired a workman for laboring, and afterward, an impediment coming upon himself, he could not send the workmen on that day to cultivate the vineyard." I. M. 1204, 1206, 1208.

2. Pompeius had hired a carriage, that he himself and his whole family might travel from Rome to Naples. But in the middle of the way, one of the horses, frightened by the shadow of a tree, having made a leap, rushed against the side wall of the road, broke its head, and died; and the carriage was broken apart; and only by the miracle of the Blessed Virgin Mary, invoked by all, did all remain unharmed. Wherefore Pompeius had to hire another carriage to continue the journey with his family, at a far dearer price. Hence he wished to pay nothing to the unfortunate driver. But the driver of the broken carriage claimed the price of the whole journey.

Q. What as to the case?

R. The matter in the case concerns the hire of services. For conveyances are a kind of services. But services are the daily office and ministry, L. 1 *de Oper. Libert.*, L. ult. *de Proxen.*, for example of a procurator, administrator, steward, broker, etc. Certainly both a thing and a person, namely his work, can be leased. - Moreover, if the lessor, namely the one who furnishes the service, by some accidental case could not furnish his service, if that case happened on the part of the lessee, namely of him to whom the service is furnished, because for example he died, the lessor can demand his wage, because it is the same as if the lessee could not use the leased thing because of a cause proper to himself. And the whole wage of the whole time and service is to be paid, unless in the meantime the lessor had leased himself to another. Lugo d. 29. n. 55. But if that case happens on the part of the lessor, because, for example, he became sick, or because he was forced to migrate elsewhere on account of enmities, and could not furnish the whole daily office, the wage is owed only *pro rata* for the service furnished, provided that the service furnished in part brought utility to the lessee. But if there was an impediment from the side of neither, but by public authority the furnishing of services, for example, navigation to be undertaken by agreement, was impeded, if indeed that impediment intervened immediately from the beginning before the navigation had begun, neither remains bound to the other from such a contract, except to this, that they bear together the expenses already made. Hence also, a ship being lost by shipwreck before the agreed navigation, if the lessee paid the wage beforehand, he can reclaim it. L. *Ex conducto* 15. § 6. ff. Nor indeed afterward, when such an impediment has ceased, is the lessor held to the service, unless a new agreement has been interposed, because an agreement once dissolved can be renewed only by the will of two. But if the service has already been begun, the wage is owed *pro rata* for the part of the service, if, namely, it is useful to the lessee. Voet l. 18. tit. 2. n. 27. - Hence, since the route traveled is certainly useful to Pompeius, although he can find another

carriage only at a dearer price, and since besides it did not happen by the act of the driver himself that he could not complete the agreed carriage service, Pompeius seems to be held to pay the wage for the proportional part of the carriage service; abstraction being made from any other special law and custom of places, so that, namely, the whole wage would be paid. - I. M. 1204-1206, 1208, 1209.

3. Ascanius often undertakes a journey on the railway. He himself receives a ticket, the price of the third class having been paid. Then, after the inspection of tickets has been made, he often passes over to the seats of the second class, not rarely even of the first class. He also has a counterfeit card of an Architect of the railways; and thus also sometimes he undertakes a journey altogether gratuitously. For he says: no damage is done to the Company, because there are always empty seats in the first and second class.

Q. What as to the case?

R. Ascanius acts altogether illicitly and unjustly, and therefore is held to restitution. For here the matter is not properly of damage, but of an onerous contract of hire of seats and of the service to be furnished which is necessary for the journey. Wherefore, as in any other contract, he acts illicitly and unjustly who does not pay the price owed and is held to restitution, so also in the present case.

The same must be said of those who use the same tickets, washed by chemical preparation or restored to their pristine state by another means, to send letters or goods elsewhere. - Nor is what is said about damage altogether true; for if this were lawful and all did it, an immense damage would thence arise. Wherefore, if damage is absent in the case, it is by accident. But neither is damage altogether absent: for in all those cases there is always the loss of some greater or lesser profit. And if this certainly is not lawful among private persons, neither is it lawful between private persons and a moral body, the Railway Company, or the Government. For commutative justice is always the same, whatever the persons may be of whom there is question. - I. M. 1203, 1206, 1208.

4. Rodulphus obligated himself, at one price of 500,000 lire, to construct a house for Fabritius. The price was to be handed over only when the work was completed and delivered. But when the work was already verging toward the end, Rodulphus claims from Fabritius 600,000 lire because, he says, after the agreement was entered into, the wages of the workmen were increased, and likewise the prices of materials increased. But when the work was now completed, before it was approved by Rodulphus, the house is burned by accidental fire.

Q. What as to the case?

R. The matter in the case concerns the hire of a work. Although the hire of service and the hire of a work are often confused, C. I. 1627; C. G. 1779, nevertheless they are properly distinguished. For service is the office, duty, ministry proper to a person; but a work is whatever, the work of an artisan intervening, is made, or whatever someone undertakes to have made, for example to build a house, to paint a panel, to repair a garment. Wherefore two things are to be considered in a work, material and workmanship. In this hire of a work, the contractor receives the wage, the lessor gives it; whereas in the hire of things and of service, the lessee furnishes the wage, the lessor receives it; although this also is true, that the contractor of a work can at the same time be called the lessor of service, insofar

as the artisan who undertook something to be made leases out his work, that is, the necessity of doing. Voet l. 19. tit. 2. n. 33.

Now, the contractor must complete the work, namely whole, within the constituted time, and at the established price, which just as it is not diminished if the prices of material and workmanship decrease, so also is not increased if the prices of things and services increase. C. I. 1640; C. G. 1793. Wherefore Rodulphus can claim nothing more beyond the price concerning which the agreement was already made.

Besides, that must be noted, that a work can be hired either at one price, or at a price constituted for each measure. C. I. 1638; C. G. 1791. In the first case the work is not understood to have been delivered until it has been approved; but in the other until it has been measured. Wherefore, if the work perishes before that time, if the contractor furnished the material and the workmanship, the whole perishes for him, because a thing perishes for its owner; otherwise the material perishes for the lessor, the workmanship for the contractor, if namely the delay of neither intervened. C. I. 1634-1637; C. G. 1788-1790. Delay intervening, since each one's own delay harms him, in the former case, the whole damage will be either of the contractor or of the lessor, if either the former made delay in handing over, or the latter in accepting; in the latter case, if the contractor made delay, he must pay to the lessor the price of the material; but if the lessor was in delay, he must pay to the contractor the price of the workmanship. C. I. 1635, 1637; C. G. 1788, 1790. Now since the building of the house, in the case, was hired at one price, and the whole perished by accidental case before it had been handed over to Fabritius, Rodulphus must sustain its destruction.

But what if, when the work was already begun, Fabritius had wished to desist from the building of the house? He certainly could have done this, yet with the expenses refunded to Rodulphus, and besides as much as it is to his interest, whether this is damage or profit. The reason is that he who is obligated to some deed is liberated by furnishing that which is of interest. C. I. 1641; C. G. 1794.

What likewise, if meanwhile, while the work is being completed, Rodulphus dies? The hire is then dissolved; but if the begun work and the things which he had prepared on account of it are useful to Fabritius, the latter must pay their price. - I. M. 1205, 1206.

5. "In the Encyclical *Rerum Novarum* it is said: - Let it be, therefore, that the worker and the master freely consent to the same agreement, and namely to the manner of the wage; nevertheless there is always something from natural justice underlying it, and this greater and older than the free will of the parties making the pact, namely that the wage ought not be unequal to supporting a worker who is frugal indeed and well behaved.

Doubt I. By the words *natural justice*, is commutative justice understood, or rather natural equity?

To Doubt I. Speaking per se, commutative justice is understood.

Explanation. - Indeed, the work of the worker differs very much from merchandise, just as wage differs from price. For the work of the worker is a work proceeding from human freedom, therefore clothing itself with the ratio of merit and of right to a wage or reward. And therefore it is far nobler than merchandise and price, which are resolved by exchange alone. Nevertheless, for the sake of clarity, the work of the worker is considered as a certain merchandise, and reward or wage as a certain price.

Nor undeservedly; for although the work of the worker is something nobler than merchandise, nevertheless it retains the whole ratio of merchandise from that part by which this expresses order to price. Therefore the reasoning of St. Thomas, 1.2. q. 114. a. 1, is most right: "For that is called a wage which is recompensed to someone for the recompense of work or labor, as a certain price of it. Whence, just as to render a just price for a thing received from someone is an act of justice, so also to recompense the wage of work or labor is an act of justice." An act, I say, of commutative justice. For just as buying and selling, so work and wage are for the common utility of the contracting parties, namely while one needs the thing or service of the other, and conversely. But what is for common utility ought not to be more a burden to one than to the other, and therefore the contract of justice between master and worker ought to be established according to the equality of the thing, which is the property of commutative justice. Cf. 2.2. q. 57. a. 1.

But if the criterion is sought by which that equality of the thing must be established between the manual work of the worker and the wage to be given by the master, we respond: That criterion in the Encyclical is said to be sought from the immediate end of the worker, which imposes on him the natural office or necessity of working, namely from food and clothing for sustaining life fittingly, and to which manual labor is first and principally ordered. 2.2. q. 187. a. 3. Therefore as often as the work is such that through it the worker satisfies his aforesaid natural office of attaining the immediate end of his labor, and the wage is unequal to attaining this end, namely fitting food and clothing, speaking per se and with the nature of things considered, there is an objective inequality between work and wage, and therefore an injury of commutative justice.

Nevertheless, two things generally must be considered in this matter. One is that, just as the price of saleable things is not punctually determined by the law of nature, but rather consists in a certain common estimation, so also it must generally be said concerning wage. Whence, the exigency from the ratio of the end remaining firm, namely of fitting food and clothing, a modest addition or diminution is made, or at least can be made, to the wage of the worker from common estimation, with justice preserved, just as in the price of merchandise a modest addition or diminution, from public estimation, does not seem to remove the equality of justice. 2.2. q. 77. a. 1. ad 1. The other is that in assigning the equality of justice between wage and manual work, attention is paid by common estimation not only to both the quality and the quantity of the work, but also to the time of its duration, likewise to the prices of things which must be bought by the worker for fitting food and clothing; which prices are not the same everywhere.

But if finally, without justice being injured toward the worker, according to what has been said, the master is much helped by his work, he can indeed, of his own accord and laudably, supererogate something to the worker, but this pertains to his honesty, without his being held from justice. Namely, in our matter the principles are valid which are given for just buying and selling. 2.2. q. 77. a. 1. in c. a.

Doubt II. Will a master sin who indeed pays a wage sufficient for the support of the worker, but unequal to feeding his family, whether this consists of a wife and numerous offspring, or whether it is not so numerous? If affirmatively, against what virtue?

To Doubt II. He will not sin against justice; nevertheless, he will sometimes be able to sin either against charity or against natural honesty.

Explanation. - From this very thing, that according to the things declared in the response to the first doubt, equality of wage and work is observed, the exigencies of commutative justice are fully satisfied. But the work is the personal work of the worker, and not of his family, nor is it referred to the family itself first and per se, but secondarily and by accident, insofar as the worker distributes the wage received with his own. Therefore just as the family, in the case, does not increase the work, so from justice it does not require that the wage owed to the work itself be increased.

Nevertheless he will be able to sin against charity, but not generally and per se, but by accident and in some cases. Whence in the response it was said: sometimes.

Against charity, not only in all those modes by which a man can sin concerning charity toward his neighbor, but also in a peculiar mode. For the work of the worker yields to the emolument of the master. Therefore as often as this master is driven in individual cases by the precept of charity to exercise the offices of charity, he is held also to observe the order of charity. This order indeed makes workers, exercising daily work for his utility, nearer to the master than the poor, or others, doing nothing for him. Wherefore a master able to exercise offices of charity ought to prefer his own workers, by bestowing on them from charity what justice by no means requires, so that the wage thus increased from charity may become less insufficient also for sustaining the family of the worker. But these things must be held generically and as if theoretically; for in practice one must not rashly judge whether a master sins or does not sin against charity.

Against honesty, whose proper thing is to repay, namely spontaneously and not from justice. We do not wish here to understand honesty as inducing gratitude from a benefit received: for the work of the worker is not a benefit, because it is compensated by a wage according to the equality of the thing; but because the master receives from the work of the worker a great benefit and emolument, and therefore from a certain natural honesty he is in some way held to recompense by supererogation, as in the response to the 1st, § *But if finally*, with nevertheless no right existing in the worker to that supererogation, as is plain.

Doubt III. Whether and by what reason do masters sin who, using no force or fraud, give less salary than the work furnished deserves and than suffices for honest support, because many workers offer themselves who are content with that small stipend, or freely consent to it?

To Doubt III. Speaking per se, they sin against commutative justice.

Explanation. - It has been said that, although the work of the worker is not properly merchandise, nevertheless, for the sake of clarity, it can be compared to merchandise, because in order to equality of wage it has the whole of what merchandise has in relation to price, and something further also. Whence the argument is rightly instituted from the lesser to the greater. But in buying it is not lawful, speaking per se, to buy a thing for less than it is worth from common estimation, with regard had to the condition of times and places. Therefore a fortiori it is not lawful, but is against justice, to give less salary than the work furnished deserves, that is, than suffices for honest support. On this doubt let the Encyclical be seen, p. 33 and 38.

I said *speaking per se*: by accident particular cases can be given in which masters can lawfully hire workers content with an inadequate wage. Suppose if the master would draw either no benefit, or a benefit altogether insufficient for suitably sustaining his own life, if he gave an adequate wage; indeed, even if he would suffer damage from it. For in this case and in similar ones, although at first

sight the question is of justice, nevertheless in reality it is more a question of charity, by which the master provides both for himself and for others. Cf. Explanation to Doubt I, § *Duo tamen*." S. O. apud *Monitore Ecclesiastico*, Conversano, v. 7. p. 2. p. 155, 156.

6. "Workers of a certain city, associated in workshops, for example tailors or shoemakers, enter into a pact among themselves that none of their number will furnish labor unless, instead of 30 asses, in the future 2 francs are given to them. But the masters, or mandators, in turn, to break the contumacy of the workers, by mutual consent establish on the contrary that the salary of the workers must be diminished.

Q. Are the associated workers and their masters to be condemned for unjust monopoly?

R. The workers acted unjustly if they compelled the masters to pay them above the highest price for labor which these would have obtained at a lower price. But the masters in this hypothesis did not act unjustly, since they did this only to restrain the workers justly. But if the workers desist from the depraved counsel, the masters also ought to desist. But if the workers agreed concerning the highest price indeed, but a just one, to be required from the masters, it is disputed." G. 960, 961. Namely, the masters also per se acted unjustly in the first hypothesis, if they established that the salary should be diminished below the lowest price. But in the other hypothesis it is disputed as regards the workers, insofar as this question is disputed among the Doctors concerning merchants entering into a pact among themselves about selling goods at the highest price. But in such a pact there is in reality no injustice, because the highest price stands within the bounds of the just price. And if the price is just, a pact concerning selling goods at a just price cannot be unjust. Yet a pact of this sort is against charity, for it brings a notable burden on the masters. L. 817; I. M. 1166.

7. A large house was to be constructed for the whole family of a most noble prince. All the workers, that they might obtain not only a just wage, nor only the highest price, but that they might be able to require a wage even far higher, having entered into a pact among themselves, declare to the prince that they will by no means furnish their work unless a partnership is made between them and him, namely that he put up the money for constructing the house, but they expend all the work necessary up to the completion of the building, which, being appraised, would yield in half part to them, in half part to the prince. Moreover, the value of the house, when it will be completed, is foreseen to be 3,600,000 lire; and in constructing it the masons to be employed, and the carpenters, are numbered at one hundred, and the whole construction will last thirty months, or two and a half years. Hence, calculation having been made, the individual workers absolutely require twenty lire daily, whatever may then happen, so that, in any hypothesis, they neither afterward require more, nor be compelled to restore anything.

Q. What as to the case?

R. That the workers wish to enter into partnership with the master, the master accepting the condition of partnership, is certainly nothing illicit and unjust in this matter. Nevertheless, that must be noted, that the master is held by no right to accept the contract of partnership imposed by the workers. Wherefore, if he accepts it, it is from his merely free and good will of doing a thing pleasing to the workers. But that in the aforesaid partnership the condition be constituted that the master

contribute money, but the workers contribute work, so that the whole completed work yield, as to the whole value of 3,600,000 lire, half part to the master and half part to the workers, which meanwhile is paid to them daily during the construction of the house, certainly is not consonant with justice. For if the matter is well considered in the partnership thus instituted, the whole profit yields to the workers. The profit at most would have to be divided equally between the workers and the master.

For truly in this partnership the master contributes capital of 1,800,000 lire, which is half of the whole sum, 3,600,000 lire, which capital must be paid day by day to the workers; but the workers contribute work to that partnership. Therefore the profit to be divided between the two partners, namely the prince and the one hundred workers, is not the total sum of capital and profit, 3,600,000 lire, but is only the other half part, namely the profit of 1,800,000 lire, since, the partnership being dissolved, the capital must be restored to the master and the profit divided. Wherefore the workers could not require daily 20 lire, as an anticipated and partial payment of the future profit, pro rata as it pertains to them, but only 10 lire. But while the prince absolutely contributes daily 20 lire for each worker, the worker daily contributes only his work, which certainly is not worth so much; whence equality in this contract of partnership is not yet preserved also from this head. Moreover, while the workers daily receive absolutely 20 lire as an anticipated part of profit, this profit is already daily absolutely secured to the workers; while on the contrary the prince daily undergoes, during the construction and after the house is already constructed, the danger of losing capital and profit, if by wind, if by lightning, if by fire, or another cause, the whole house already completed, or while it is being completed, is destroyed, or even if the labors must at least be delayed, if unforeseen difficulties occur, if finally the price of the constructed house decreases. Wherefore, by reason of this danger of capital and profit daily sustained by the prince, the workers also ought to concur in sustaining it, namely by remitting to the prince half a lira, if they are content with only ten lire. But there is another burden to be undergone by the prince, the continually ceasing profit of his capital, which according to the usual interest is daily at least half a lira for each worker, if again they are content daily with only ten lire. Wherefore they could receive only nine lire. But for constructing and completing a building of this sort, one hundred masons and carpenters certainly do not suffice, but there is need also of other workers, ironworkers; there is need of painters; there is need of architects; there is need of other skilled directors as to the individual things which everywhere occur in constructing and completing a house. Therefore the prince must sustain these other immense expenses, which, if they are compensated by the workers by at least another lira, now they can receive only eight lire. But again, for constructing the building money and persons do not suffice; material is required, stones, wood, iron, and other things of this sort. Since the workers contribute only work, the prince must sustain the whole expenses of material, which certainly must be compensated by the workers, and which, since the price of the material either exceeds or certainly at least equals the workmanship in the case, cannot justly be compensated by less than three or four lire. Wherefore from this head also they cannot receive except four or five lire daily. But there are also instruments of art to be bought, and instruments also to be repaired and restored; unless the workers themselves wish at least to sustain these expenses themselves, they also must compensate them to the prince. And thus finally it appears that, with the partnership entered into, not only would they themselves not receive more than by simple hire of work, but less. Finally, this also must be noted, that since not all the workers expend in constructing the house work equally necessary and useful

and of the same estimation and price, neither is justice preserved in that equal distribution of profit among the workers themselves. - I. M. 1221, 1223.

8. Isidorus, a share-tenant, since he himself alone cannot cultivate a large farm, leased half part of it to his brother; the other half part he cultivates himself, but uses the work of servants, to whom he pays a daily stipend, which he compensates to himself from the part of the fruits which he owes to the owner, on the ground that, he says, no special agreement was made concerning the quantity of fruits owed to the owner. But whenever by drought or hail, or by another similar calamity, the fruits of the field perish and are diminished, he keeps for himself the remaining part for his continuous labor and industry.

Q. What as to the case?

R. If in the lease of rural estates a certain and determined part of the fruits is constituted for the lessee, for example five or ten modii of grain, there is had a hire of service. But if that certain and determined part of the fruits is constituted for the lessor, then there is had a simple lease, which nevertheless is also governed by special laws. C. I. 1614 seqq. But if rural estates are leased by that agreement, that the fruits be divided between the owner and the tenant, then there is had a colony or sharecropping colony. L. 25. § 6. *Locati*; C. I. 1647. - Common to the colony are the laws generally constituted for the lease of things, and in particular for rural estates; but it is governed also by pacts agreed upon, and by more special laws and local customs. C. I. 1647, 1654. Hence, among other things, the tenant is prohibited from ceding his right to another or subleasing the estates; otherwise the owner has the right of returning into possession of the leased thing, and the tenant has the obligation of repairing damages. C. I. 1649; C. G. 1763. Wherefore Isidorus did not act rightly by leasing half part of the estates to his brother; he is held to rescind that lease and to repair damages, if any followed. If the owner did not make that faculty of subleasing in the contract of lease, he is certainly gravely unwilling, and Isidorus violates the agreement in a grave matter.

Moreover, Isidorus cannot compensate himself as to the expenses made in hiring the work of servants, from the fruits owed to the owner. For in this colonial lease the owner furnishes the farm and almost all the material; the tenant must furnish the works. Wherefore the tenant is held to cultivate the farm, and consequently is also held to all those things which are necessary for the cultivation of the farm; and therefore he must furnish the instruments necessary for the cultivation of the farm, and the animals necessary for fields either to be cultivated or to be manured, and the straw necessary for feeding them in winter. But the owner and tenant furnish the seed in common. The tenant must make ordinary plantings, prune, cut, and carry out trees. But from coppice woods the tenant receives nothing, excepting those things which are necessary for the use of the farm and for his own use. Ordinary expenses to be made for the ordinary cultivation of the fields and the collection of fruits also fall upon the tenant. To him besides pertain ordinary cartings for repair of the farm and of the colonial house, and for carrying produce into the house of the lessor. He must likewise protect fences, keep hedges, clean ditches even alongside the public road; and if anything has been ordered by the municipalities for strengthening roads, he himself must furnish his work. C. I. 1655-1661. Therefore Isidorus can compensate himself nothing as to these works, altogether owed, from the fruits owed to the owner. Indeed more, he can neither sell the straw and manure prepared for the sake of the farm, nor can he furnish cartings to others. C. I. 1650.

But that no agreement was made concerning the fruits owed does not excuse Isidorus. For, another agreement failing, by the law itself all fruits are to be divided equally between owner and tenant. C. I. 1661. Isidorus likewise acts unjustly by throwing back upon the owner all damage from drought and another similar case. Damage of this sort is common. "Superior force ... ought not to be damaging to the lessee, if, more than is tolerable, the fruits have been harmed; otherwise the tenant ought to bear moderate damage with an equal mind, he from whom immoderate profit is not taken away. But it appears that we say this concerning that tenant who leased for counted money; otherwise the share-tenant, as if by the right of partnership, shares both damage and profit with the owner of the farm." L. *Si merces* 25. § 6. *Locati* ff. The same is the disposition of C. I. 1648. - I. M. 1203, 1211-1213.

9. Basilius leases one hundred sheep to Nicostratus, no determined time being set, so that both may draw profit from them, Nicostratus contributing work, namely custody and food, and care for capturing profit from them. Meanwhile several sheep die from illness; many others, lest they die, are sold by Nicostratus. Wherefore, after three years, Basilius dissolves the lease, and demands from Nicostratus one hundred sheep, with part of the profit, namely half. But Nicostratus refuses to give anything, but consents to give only half part of the sheep which remain.

Q. What as to the case?

R. The lease of animals, or rather partnership, can be entered into in two ways, either for the sake of cultivating some field, or for the sake of capturing profit from them, as in the case. C. I. 1665, 1666; C. G. 1800, 1801. A partnership of this sort is governed by particular agreements; these failing, by the custom of places; and this failing, it is governed by laws. C. I. 1665, 1668; C. G. 1800, 1803. - Moreover, from the cited Codes, Italian and French, the animals must be appraised at the beginning of the partnership itself; but when appraised, they pass into the right of the other partner, but they do not pass into his ownership, nor regularly do they pass into his risk. C. I. 1670, 1686, 1688, 1695; C. G. 1805, 1820, 1822, 1830. - Therefore neither he who furnishes the herd, or lessor, nor he who receives it, or lessee, can dispose of the animals, whether they pertain to the very capital of the partnership, or pertain to its increase, the other being unwilling. C. I. 1678,

1686, 1895; C. G. 1812, 1820, 1830. But those things which perish by chance perish for the owner alone, namely the lessor, from C. I. 1672, 1673, 1675; Lig. 909. But from C. G. 1807, 1808, 1810, if the whole flock perishes without fault of the lessee, it perishes for the lessor; but if only a part, the damage is common to both. The partnership ended, they are appraised again, and as many animals are owed to the lessor as equal the price of the animals contributed at the beginning of the partnership. C. I. 1683, 1686, 1692, 1695; C. G. 1817, 1820, 1830. But those animals must be deducted which perished for the lessor alone; and if those which survive are not enough, the damage will be his. C. I. 1683. But from C. G. 1817, account of the damage must be had by the two parties, according to that which was just now noted concerning such damage.

Hence it is plain that Nicostratus acted illicitly and unjustly by selling several sheep. He ought not to have done this without the consent of Basilius. But as to the dead sheep, if this happened by accidental case without his fault, the whole damage, in the case, belongs to Basilius. But if his fault intervened, Nicostratus is held concerning the damage. The lessee is held to employ the diligence of a good father of a family. C. I. 1671, 1672; C. G. 1806, 1807; Lig. 909.

As to profit, the partnership of animals for the sake of making profit from them is of one kind simple, of another from equal portions. This latter is that by which each contracting party furnishes the herd from half part, and one of them furnishes work besides. But the former is that by which one contributes the herd, the other the work; and such is the partnership of Basilius and Nicostratus in the case. C. I. 1669, 1684; C. G. 1804, 1818. - Moreover, in each of these partnerships, simple and from equal portions, it cannot be agreed: 1. That the lessee furnish the accidental risk of the capital, that is, of the whole capital from C. G. 1811; beyond half from C. I. 1677; indeed not even below half, unless due compensation is furnished to the lessee, or assurance intervenes. Lig. 909; I. M. 1225, 1226. - 2. That the lessee participate more in the damage than in the profit. C. I. 1677; C. G. 1811; Lig. 909; I. M. 1225, 1226. - 3. That, the partnership having ended, the lessor perceive something for himself besides the animals contributed. C. I. 1677; C. G. 1811; Lig. l. c.; I. M. l. c. - Any similar agreement is void. C. I., C. G. aa. cc. - If no special agreement was made, milk, manure, and whatever work the animals furnish, belong to the lessee; but the hair and whatever accrues to the animals, as offspring and increase of price, are common to the lessor and lessee. C. I. 1668, 1669, 1676, 1686; C. G. 1803, 1804, 1811, 1820. Each partnership ends in three years; and when this has been completed, if, without fault of the lessee, less survives than the lessor contributed, the loss will be the lessor's; but if more, the profit will be common to each pro rata. C. I. 1681, 1683, 1686; C. G. 1815, 1817, 1820.

Therefore Nicostratus, if there was profit, cannot deny half part of it to Basilius, and as many heads must be separated for him as equal the price of the things contributed. But if the animals do not suffice, Nicostratus is held to supply the price from the sheep which he sold without any right, and from the milk, manure, and labor of the animals received by him, and likewise from other profit received, or even from other proper goods, up to a just compensation of the damage inflicted. Nor in any way can he keep for himself half part of the animals, since the partnership was simple, not from equal parts. - I. M. 1203.

10. Ludovicus hands over very many sheep, oxen, cows, and horses to his tenant under the following conditions, namely that he himself have the greater part of the milk and wool, and likewise the greater part of the profit, but that the tenant use the animals handed over for the cultivation of the farm.

Q. 1. Of how many kinds is the partnership of animals for the sake of cultivating some field? - 2. What concerning the agreement in the case?

R. To the 1st. The partnership of animals which is contracted for the sake of cultivating some field is contracted either with a simple lessee of a field or with a share-tenant.

That which is entered into with a lessee has this proper to itself, that it does not transfer ownership of the animals to the lessee, but does transfer risk. Wherefore the lessee is held even for the accidental case of the whole flock, unless something else has been agreed. But on the contrary, unless a contrary pact is present, every profit belongs to the lessee, except manure, which must serve the leased fields. But when the partnership has ended, the lessor receives all animals of the same value which he had contributed; if anything is lacking, the lessee must supply it; but if anything remains over, it belongs to the lessee. C. I. 1687-1692; C. G. 1821-1826.

But the partnership which is contracted with a share-tenant is governed by the same laws as the simple partnership, concerning which in the preceding case. Nevertheless it can be agreed that the lessor perceive half part of the milk; that the tenant sell to the lessor part of his wool for less; that he perceive the greater part of the profit. C. I. 1693-1695; C. G. 1827-1830.

To the 2nd. The partnership of Ludovicus with the tenant is a partnership with a share-tenant, not with a simple tenant or lessee. Moreover, Ludovicus can indeed, by the very disposition of the law, receive the greater part of the profit from the animals handed over for the cultivation of the farm; but he can still receive the greater part of the wool, due compensation nevertheless being made, since by law it can be agreed that the tenant sell to him part of his wool for less. Likewise he can receive the greater part of the milk, if sufficient compensation is likewise made, so that justice is preserved.

11. Geraldus hands over one hundred sheep to Tiburtius, an appraisal of them having been made, and with that agreement that, the partnership being ended, one hundred sheep of the same value be restored to him; and, during the partnership, Tiburtius pay one lira yearly for each sheep; but the remaining profit, whether greater or less, will belong to Tiburtius himself.

Q. What as to the case?

R. Nothing unjust seems to be present in the preceding contract; for in reality it is a triple contract or contract of partnership, in which there is assurance of the capital and assurance of profit. Nor indeed does one lira to be paid yearly for each sheep seem excessive, since Tiburtius receives milk, wool, manure, and every increase. Wherefore compensation made to him for the burden imposed seems sufficient. I. M. 1226, 1239, 1240; Less. l. 2. c. 25. d. 3.

78. On Gaming, on Suretyship, on Transaction

1. Philippus plays cards with Iosephus, most skilled in the game, although he himself knows his own lack of skill, nor is Iosephus ignorant of it. Nevertheless he plays daily, and daily loses now four, five lire; now nine, ten lire.

2. Ioannes, playing cards with Iacobus, lost fifty lire, which he paid, ignorant of the civil laws, which concede no action.

Hence he thinks of reclaiming from Iacobus what he paid, and secretly compensating himself, if Iacobus refuses to return what was paid.

Q. What as to the case?

R. 1. Neither is Philippus held to pay the money promised in the game, nor can Iosephus receive it. The reason is that, since in the case one is subject to no danger of damage because of his skill, and because of the other's lack of skill, there is lacking, as it were, the thing which is bought by a price in a game, namely the uncertain hope of profit with the danger of damage on both sides. Nor is it valid to say that Philippus prudently and knowingly plays, knowing his own lack of skill, because the thing is still lacking, just as even if someone knowingly buys glass, but buys it as a precious gem, the thing is lacking, and there is no sale. But if Iosephus had sufficiently forewarned Philippus, and nevertheless he obstinately wished to play, restitution would not have to be urged in practice,

because there would be absolutely no deceit on the part of Iosephus, but Philippus, forewarned and still playing, is judged spontaneously to renounce his right. I. M. 1247, 1350; G. 1028.

2. Ioannes cannot reclaim from Iacobus what was paid, nor consequently can he compensate himself in any way. The reason is that, although from games no action is given by the laws, nevertheless no reclaiming of what was paid is conceded. - And hence it is plain that one is held per se to pay what he lost in a game. For the contract is void neither by natural law nor by the positive law itself. - But what if Ioannes is a son under paternal power? In such a case reclaiming is conceded to him. I. M. 1247, 1249, 1251; G. 1021, 1024.

3. Fidelis made suretyship for Felix. Unhappy Felix is compelled to make a cession of goods. Before this happened, Fidelis admonishes the creditor of Felix to constitute a mortgage over his goods, and thus render his credit secure. But when the creditor neglected to do this, and Felix has now ceded all his goods, he now demands payment from Fidelis. Is Fidelis held to pay?

R. Negatively. For, since the creditor was admonished at an opportune time concerning the unstable state of Felix, he could obtain his credit through a mortgage. Since by his own fault he neglected to do this, he himself is the cause of his own damage. Besides, the surety is not held to paying except subsidiarily, in default of the principal debtor; namely, if he does not pay, after first being pursued by the creditor, when the debt is already mature, C. I. 1907; C. G. 2021; and when the debt is not yet mature, if by the act of the creditor himself there can no longer be place for subrogation into the mortgages and privileges in favor of the surety himself. C. I. 1928; C. G. 2037.

4. Azor and Paulinus were disputing about the ownership of a certain house, and the lawsuit was being conducted in the tribunals for several years with great expenses for each. Finally, by mutual consent, they determine to cease from the lawsuit, and that Azor keep for himself the upper part of the house, Paulinus the lower. This private transaction having been made, Azor, looking through the old writings of his family, finds an authentic contract of sale of the house, by which it was established that the father of Azor had bought the house from the father of Paulinus, and that the whole price had been paid to him.

Q. Can Paulinus keep the part of the house?

R. Negatively. For from C. I. 1777, a transaction is null when it regards only one object, and a new document found proves that one or the other party has no right over the same object. From C. G. 2057, a transaction of this sort is also null. For truly it is not reasonably presumed that the parties wish to consent to a transaction even in the case in which there is present a certain and evident document and right proving one of the parties. The transaction then would not truly be founded upon a doubtful matter, but upon ignorance, or upon error concerning a thing altogether certain. I. M. 1283; G. 962.

79. On Theft

1. Ioannes Iacobus, without any scruple, carries off the goods of another, saying that God alone is the Lord of all things, and that God created other things on account of man, namely on account of all men. Wherefore there is no property, but all things are common.

Q. What as to the case?

R. 1. Exterior things can be considered in two ways: in one way as to their nature, which is not subject to human power, but only to divine power, to which all things obey at a nod. In another way as to the use of the thing itself; and thus man has natural dominion of exterior things, because through reason and will he can use exterior things for his own utility, as if made on account of himself. For the more imperfect are always on account of the more perfect. And thus it is plain that, although God is the Lord of all things, nevertheless this does not exclude dominion and property of things in man. For thence it follows only that God alone has dominion over exterior things as to their natures, that God alone has principal dominion of all things. But God himself ordered, according to his providence, certain things to the bodily sustenance of man; and on account of this man has natural dominion of things as to the power of using them. For this is dominion, and nothing else: The right or faculty of using one's own thing for any use permitted by law, and this for one's own advantage. S. Th. 2.2. q. 66. a. 1; I. M. 838, 866, 867.

2. But although exterior things were created on account of man, from this nevertheless it does not follow that man also does not have dominion of things; indeed, the contrary follows. For if they are on account of man, these goods are man's, although they are not principally his, as is gathered from what has just been said. Moreover, although exterior things were created on account of man, from this nevertheless it does not follow that all things are to be possessed in common, and that nothing is to be possessed as proper; but from this it follows only that the distinction of possessions was not made naturally, but was naturally superadded to natural law, rational nature itself inclining and impelling toward that division and individual appropriation. First indeed, because each one is naturally more solicitous in procuring something which pertains to himself alone, than that which is common to all or to many, because each one, fleeing labor, leaves to others that which pertains to others. Secondly, because human affairs are treated in a more ordered way, if each has his own care of procuring some thing incumbent on him. But there would be confusion if anyone indiscriminately procured anything. Thirdly, because by this the state of men is preserved more peacefully, while each one is content with his own thing. S. Th. 2.2. q. 66. a. 2.

3. Ioannes Iacobus, therefore, a communist, is a true thief, and is held to restitution of all the things which he carried off. For to restore what has been unjustly taken away is of necessity of salvation, since to preserve justice is of necessity of salvation, and to restore what has been unjustly taken away is an act of commutative justice. S. Th. 2.2. q. 62. a. 1, 2.

2. Gordiana, a very rich matron in Italy, orders Veronica the maidservant to send all the linens of the house to Paris, that they may be more carefully cleansed, cleaned, and repaired. Veronica pretends that she is obeying the mistress exactly. But she hands over the linens to be cleaned and repaired to her sister, who cleans and repairs all things as carefully and exquisitely as

would be done at Paris. Hence Veronica keeps for herself the excess of money which she would have had to spend.

Q. 1. What is the proper malice of theft? - 2. What as to the case?

R. To the 1st. "It must be said that three things concur for the ratio of theft; the first of which belongs to it insofar as it is contrary to justice, which gives to each one what is his, and from this it belongs to it that it usurps what belongs to another. But the second pertains to the ratio of theft, insofar as it is distinguished from sins which are against the person, such as from homicide and adultery; and according to this it belongs to theft that it be concerning a possessed thing. For if someone takes that which belongs to another, not as a possession, but as a part, as if he amputates a member, or as a connected person, as if he carries off a daughter or wife, it does not properly have the ratio of theft. The third difference is that which completes the ratio of theft, namely that what belongs to another be usurped secretly; and according to this the proper ratio of theft is that it is a secret taking of another's thing.... Concealment sometimes indeed is the cause of sin, for example, when someone uses concealment for sinning, as happens in fraud and deceit; and in this way it does not diminish, but constitutes the species of sin; and thus it is in theft. In another way concealment is a simple circumstance of sin; and thus it diminishes the sin, both because it is a sign of shame, and because it removes scandal." S. Th. 2.2. q. 66. a. 3; I. M. 1289.

To the 2nd. Veronica is guilty of theft. For she secretly usurps another's thing. That excess of money is not hers, but the mistress's. For from the mistress she receives money for a determined end, not for another. Therefore the money not applied to this end remains proper to the mistress. How could the maidservant, not applying money to this end, against the manifest will of the mistress, make it her own? Wherefore that exceeding money must be restored to the mistress. - But as to the linens to be sent to Paris, Veronica can simply obey the mistress and send the linens to Paris. Nevertheless she is not held to obey in a thing so insane, especially since, as appears from the case, the mistress seems altogether content as to that cleanliness and repair of the linens. But Veronica, then sparing money, spares it for the mistress herself. G. 569, 570.

3. Placidus, a servant in the house of the king, steals 40 lire. At Easter time he confesses his sin, and when he himself had shown difficulty concerning restitution, the confessor absolved him, because, he says, those are not lacking who assign this as grave matter with respect to a king, as is to be seen in Scav. ed. 12.ª Mediol. 1874. l. 2. n. 697. note.

Q. What as to the case?

R. Placidus could not be absolved without the obligation of restoring being imposed on him, since from elsewhere he was excused by no other legitimate cause. For that sum is not light, but grave, insofar as it is matter of theft. With respect to a king, relative matter is not so much to be attended to as absolute matter; since relative matter, as commonly happens as to kings and ordinaries, would overstep the limits. For otherwise thieves stealing from kings could easily grow so bold that they would not sin mortally, which is repugnant to the public good. For truly then thieves could do the same as to private persons who are very rich; and they could do the same still more in public Administrations, indeed also in private Administrations of Commercial Companies. Nor indeed can any probability be reconciled to that opinion from the authority of Scavini, for the learned theologian

holds that quantity as too exorbitant. Cf. *Commentarios Theologico-Morales*, Commentar. Octav. *de Materia gravi in furto*.

4. "Whether money which is withdrawn from the priests of idols who are converted, when abandoning pagan temples, in order to use the same to procure their existence, has the quality and character of a stolen thing.

R. According to those things which are proposed, it is not lawful; for nothing is brought forward which can excuse the guilt of theft in the case of which there is question." S. C. de P. F. 21 Jan. 1788; *Collectan.* n. 2109.

80. Restitution from Unjust Acceptance and from a Thing Received

1. Gervasius, supreme Minister of the interior order in a kingdom, knows well that from his weak and negligent manner of acting many damages have come to private persons on account of public robbers and highwaymen, and likewise many damages have come to the Society itself and to several civil Communities, on account of the unjust administration of public affairs, and especially on account of unjust taxes, by which certain particular Communities were overburdened.

Nevertheless he himself thinks that in truth he is not bound to any restitution, because, he says, with my conscience as witness, I have killed no one, and I have stolen nothing, nor have I unjustly received anything from anyone, or even from the Government.

Q. 1. Whence does the obligation of restitution arise? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1319 seqq. — To the 2nd. Gervasius, on account of grave negligence in preventing delicts, in punishing crimes, in watching and prescribing the due ordinances to be observed, certainly was the cause why private persons and Communities suffered grave damages. Wherefore he is certainly held to restitution. For he is guilty of neglected office and of a violated contract, by which he implicitly obligated himself to prevent damages to his subjects. As to damage inflicted on private persons, restitution must be made to those private persons themselves. As to damage inflicted on Communities, restitution must be made to the Communities themselves.

Gervasius is likewise guilty by reason of unjust cooperation toward injurious acceptance. For someone is held to restitution not only by reason of the alien thing which he accepted, but also by reason of the injurious acceptance. And therefore whoever is the cause of an unjust acceptance is held to restitution. Now Gervasius was the cause of that acceptance, both directly, by the iniquitous and unjust administration of public affairs, and indirectly, by not impeding it when he could and ought to have done so. And thus St. Thomas, 2.2. q. 62. a. 7, says: To restitution “he is held who does not oppose when he is bound to oppose; as princes, who are bound to keep justice in the land, if through their defect robbers increase, are held to restitution, because the revenues which they have are, as it were, stipends instituted for this, that they preserve justice in the land.”

Gervasius is besides guilty of rapine, which to the malice of theft adds the malice of violence and of personal injury. S. Thom. 2.2. q. 66. a. 5.9. Rapine indeed is had by coercion brought to bear for paying unjust taxes, and for carrying out other unjust laws, e.g., usurping ecclesiastical goods, etc.

Appositely the same Angelic Doctor, in the cited place, a. 8: "It must be said that rapine imports a certain violence and coercion, by which, contrary to justice, that which is his own is taken away from someone. But in the society of men no one has coercion except through public power; and therefore whoever by violence takes something away from another, if he is a private person, not using public power, acts illicitly and commits rapine, as is plain in robbers. But to princes public power is committed for this, that they be guardians of justice; and therefore it is not lawful for them to use violence and coercion except according to the tenor of justice: and this either by fighting against enemies, or by punishing citizens who are evildoers; and that which is taken away by such violence does not have the character of rapine, since it is not contrary to justice. But if, contrary to justice, some persons through public power violently take away the things of others, they act illicitly, and commit rapine, and are held to restitution.... If Princes exact from subjects that which is owed them according to justice for preserving the common good, even if violence is employed, it is not rapine. But if Princes unduly extort something by violence, it is rapine, just as also robbery.... Whence they are held to restitution, just as robbers are; and they sin so much more gravely than robbers, as they act more dangerously and more commonly against public justice, whose guardians they have been placed." — I. M. 1320, 1323.

2. Caietanus, the servant of a priest, steals from his master one hundred lire, enclosed in a certain schedule, upon which was written: alms for 50 Masses, which in the months of November and December must be celebrated for the deceased Lord Eligius. Caietanus hid the aforesaid sum in a certain secret place. Then, seeking it, he no longer found it.

Q. 1. Must restitution be made from unjust acceptance? — 2. Must Caietanus restore the one hundred lire to his master, or is it enough that he have 50 Masses celebrated by some priest in the aforesaid months, with an alms of 100 lire given?

R. To the 1st. Affirmatively. "The very acceptance of another's thing can stand in three ways. For sometimes it is injurious, namely existing against the will of him who is the owner of the thing, as is plain in theft and rapine; and then he is held to restitution, not only by reason of the thing, but also by reason of the injurious action, even if the thing does not remain with him. For just as he who strikes someone is held to recompense the injury to the one who suffered it, although nothing remains with him, so also he who steals or plunders is held to recompense the damage inflicted, even if he has nothing from it; and further he ought to be punished for the injury inflicted. — In another way someone accepts the thing of another for his own utility, without injury, namely with the will of him whose thing it is, as is plain in loans for consumption; and then he who has accepted is held to restitution of that which he accepted, not only by reason of the thing, but also by reason of the acceptance, even if he has lost the thing; for he is held to recompense him who did a favor, which will not be done if by this he incurs damage. — In a third way someone accepts the thing of another without injury, not for his own utility, as is plain in deposits, and therefore he who has so accepted is held in nothing by reason of the acceptance; indeed, rather, by accepting he renders service. But he is held by reason of the thing. And on account of this, if the thing is taken away from him without his fault, he is not held to restitution; but it would be otherwise if through his great fault he lost the thing deposited." S. Th. 2.2. q. 62. a. 6; I. M. 1327.

To the 2nd. From what was said in the response to the 1st, it is plain that Caietanus is altogether held to restitution, although he no longer has the one hundred stolen lire, but has lost them, or another has stolen them. "And therefore," the Angelic Doctor proceeds in the cited place, ad 1, "although he who took the thing does not have what he accepted, but it has been transferred to another, because nevertheless the other is deprived of his thing, he is held to restitution to him, both he who took the thing by reason of the injurious action, and he who has the thing by reason of the thing itself." But it is not enough that he himself have the aforesaid Masses celebrated, but he must restore the aforesaid stipend of the Masses to his master; otherwise there would not be restitution. "Through restitution there is made a reduction to the equality of commutative justice, which consists in the equalizing of things. But an equalizing of things of this sort could not be made unless, to him who has less than what is his own, that which is lacking were supplied. And for this supplying to be made it is necessary that restitution be made to him from whom it was accepted." S. Th. 2.2. q. 62. a. 5.

3. A certain Bonze, prepared to bid farewell to the errors of ethnic superstition and to give his name to the holy Catholic Church, asks that it be permitted to him to retain the things which he had previously received in the ethnic office which he exercised, and the things which he had acquired in the exercise of the medical art.

R. He is not to be disturbed, provided certain injustice has not intervened from elsewhere. And indeed no doubt is to be raised as to the emoluments of the medical art, since they hold the place of wages. Likewise, the things which the Bonze sought for himself from the priestly office among the pagans, although they flowed from a superstitious source, nevertheless seem to have come to him legitimately, as things which were proper to the pagan people, and by its consent attributed to its priests in place of an honorarium." Provided certain injustice has not intervened from elsewhere; for justice, proceeding from the law of nature itself, obtains force among all peoples everywhere. Therefore if there are things which the Bonze knows certainly that he unjustly received, whether in the exercise of the medical art or of the priestly office, it is necessary that he restore them to the owner, or to his heir; or, if both are uncertain, they are to be distributed to the poor. S. O. 14 Jan. 1846; *Collectan.* S. C. de P. F. n. 2117.

4. Hesperus, having Elisa, a daughter of marriageable age, whom he is unable to dower, furtively stole from Heraclitus one thousand lire, with which he was easily able to join her in marriage with Gensericus. After some years from the marriage, Gensericus learns that the dowry brought to him by his wife had all been taken from Heraclitus by thefts.

Q. 1. Must restitution always be made from another's thing? — 2. What must be done in the Case?

R. To the 1st. Affirmatively. "By reason of the thing he is held to restore it so long as he has it with him; because that which he has beyond that which is his own must be taken from him and given to him to whom it is lacking, according to the form of commutative justice." S. Th. 2.2. q. 62. a. 6; I. M. 1331 seqq.

To the 2nd. "If the spouse still preserves the dowry distinguishable from other monies, he must restore it, unless it has been prescribed in good faith, for every thing cries out to its owner; and the spouse must be numbered among those who, thinking they were marrying a rich woman, married a

poor one. But if it was in good faith mixed by him with his own goods, similar in quality and greater in quantity, so that it cannot be separated, he is held to nothing; because by Common Law the dowry is considered morally consumed, Gloss on L. 78 ff. *de Solut*. Nor should you object: this man is held to that in which he has become richer; for since the dowry was given to him for sustaining the burdens of marriage, and he perceived no profit for himself from it, he has been made richer in nothing. Sporer, Croix. There are nevertheless some who wish that, standing in the law of equity, something to be restored ought to be cared for by the spouses. Certainly Hesperus the father would always be held for the theft, so long as he was able; for he dowered his daughter from the goods of another. Liguori l. 3. n. 612." Scav. l. 2. n. 751.

But in truth not only from the law of equity, but also from strict justice, the spouse is held to restitution, even if that stolen money has already been mixed by him with his own money in a greater quantity. For although by the more recent Law the whole heap is his, nevertheless he has the obligation of rendering the owner of the stolen money unharmed, by reason of his thing, which he equivalently has. I. M. 907. Nor truly can anything else be drawn from the cited place of St. Alphonsus.

81. Restitution from Profit without Cause

1. Pamelius buys an ox, which he sells to Lucas for a higher price. But behold, a little later he learns that the ox belongs to Ioannes. He likewise buys wheat in good faith. He keeps it for a brief time; for soon the price of wheat notably increases, and he sells it with great profit. But then he learns that that wheat is stolen and belongs to Caius.

Q. What as to the Case?

R. Pamelius, apart from eviction, concerning which nothing is had in the Case, probably can retain the price of the ox, and the profit made in its sale. For the price of the ox, since it is not the ox itself, does not pertain to the owner of the ox; and to him the ox and the price of the ox cannot both pertain at the same time. But the profit made in this sale has not been made unjustly, since it was made only on the occasion of another's thing from his own industry or commerce. — The same seems to be said concerning the price of the wheat, and concerning the profit made.

Nevertheless Fr. Gury, 600, 601, denies the parity, saying: "that the value of the ox had not grown in itself, and therefore the seller could attribute the profit obtained to his own skill. But in the present case the value of the wheat grew from common estimation. Therefore the profit coming from resale is in no way to be attributed to the seller's skill. Therefore Pamelius was made richer from that profit independently of his own industry. Therefore he must restore it to the owner."

But in truth the whole industry in the sale of the ox was nothing other than this, namely that Pamelius, using the good and favorable occasion of a buyer, sold the ox. The industry in the sale of the wheat is the same: instead of consuming it at once, or selling it, he keeps it, and then, using the good and favorable occasion of the increased price of wheat, he sells it. Next, if that profit does not truly come from industry or commerce opportunely made by Pamelius, does it come from the wheat itself? Certainly not. If Pamelius had not sold the wheat, or if he had sold it when it was being sold

for less, certainly there would have been no profit. Therefore that profit was not the fruit of the wheat, but the fruit of the sale, and so of the work and industry of Pamelius.

But in this sale of wheat there certainly was no singular and extraordinary industry. — Indeed that is of no force. For that there was not present a singular and extraordinary industry does not remove the fact that the work and industry of the person were truly present. And was a singular and extraordinary industry present in the sale of the ox? — Besides, if Pamelius probably can retain the price of the resale of the wheat, as Fr. Gury himself has at 601, he can probably retain also that profit, or excess of price in the resale. For he certainly cannot retain the price by any title other than by title of the contract of sale made in good faith, no eviction truly intervening. But by force of that sale Pamelius licitly and justly acquired ownership of that price, not only of part of the price but of the whole price; and he will be able licitly and justly to retain it until that contract is rescinded by eviction. I. M. 1339.

Fr. Gury, 606, proposes this other case: "Pancratius in the best faith bought from a certain traveler a horse at the price of 300 francs. But after a few days, behold, by good fortune, that Bucephalus, since it was of female sex, brought forth a pretty new foal for its master. Thrice-blessed Pancratius, having kept the foal, sold the mother to Lubinus with a profit of 30 francs. The matter had proceeded very well, when from an unfortunate message he learned that the horse was stolen, and belonged to Bernard.... What is the law?" The same Fr. Gury responds: "In the case of eviction, Pancratius must refund the whole price accepted to the evicted buyer, because then the contract is altogether dissolved. But let him have recourse against his own seller, if he can find him. But what of the foal? By Roman Law, it must be returned to the owner of the horse. For a thing fructifies for the owner; and the offspring follows the womb. But by Gallic Law (and it is the same by Italian Law) it can be retained by the possessor, since the thing alone, the fruits excluded, must be returned. — Outside the case of eviction, he can at least probably keep both the 300 francs with which he bought the horse, because he does not have the thing, nor has he been made richer from it, and the profit of 30 francs, which he acquired by reselling the animal, as a fruit of his industry. But what again of the foal? By Natural and Roman Law the foal cries out to the mother and to the mother's owner. But by Gallic Law (as also by Italian Law) it can be kept by the possessor."

Now, what indeed was the industry of Pancratius in selling the horse, so that those 30 francs are fruits of the industry of Pancratius? It was nothing other than this, that, with a good and favorable occasion offered and taken for selling the horse with profit, he sold it. For a horse which is worth 300 is also worth 330, and with this latitude of price a horse is accustomed to be bought and sold. Wherefore it could well be said with Fr. Gury against Pamelius, that the profit coming from resale is in no way to be attributed to the seller's skill. But certainly that profit must be attributed to the work and industry of Pancratius, as in the case of Pamelius: by this very fact, that that profit comes from resale. — Besides, if in the case of eviction, by Gallic and Italian Law, Pancratius can retain the foal for himself, therefore a fortiori Pamelius, outside the case of eviction, will be able to retain for himself the profit perceived. And if again by Gallic and Italian Law, outside the case of eviction, Pancratius can keep the foal for himself, much more Pamelius can keep the aforesaid profit for himself. For the foal is a natural fruit in the case of another's thing, and that profit is only an industrial and civil fruit. Nor is it valid to say that Pamelius has been made richer independently of his own industry. For first, Pamelius has not been made richer independently of his own industry, as

has already been proved. Besides, has not Pancratius also been made richer independently of his own industry? Moreover, as Pancratius, so also Pamelius indeed has been made richer, but not illicitly nor unjustly. And while Pancratius truly has been made richer from another's thing, Pamelius has been made richer, but only on the occasion of another's thing. Wherefore, as Pancratius, so Pamelius does not seem to be disturbed.

Fr. Gury, n. 612, proposes another case: "Zacharias stole 100 gold coins from Carolus. But since he is a man by no means unskilled, he employed them so prosperously in commerce that he perceived a notable profit from them. Q. 1. Is Zacharias held to restore the profit perceived from the stolen money? 2. What if he had placed this money at loan, and had received interest from it?" Fr. Gury responds in the same place: "To the 1st. Zacharias is certainly held to restore that whole profit, if the owner suffered an equal damage, e.g., because he also would have placed his own money in commerce, etc.; and this is presumed as often as the injured owner is a merchant, or is accustomed to employ money in various businesses. Otherwise Zacharias does not seem bound to restitution of that profit, perceived from his own dealing, because it can be called an industrial fruit. — To the 2nd. Also in this hypothesis one must attend to the damage which the injured owner is presumed to have undergone from lack of the money, and that damage is to be repaired. Otherwise the thief does not seem to be urged to restitution of the profit perceived, because it can be held as a fruit of industry."

Now there is industry as much in giving money as a loan as in the sale of some thing. Indeed there is greater industry in the sale of a thing, so that someone may perceive profit by selling it for more, than in giving a loan, so that from it he may perceive legal interest. Therefore if Zacharias, a possessor in bad faith, is not to be disturbed as to the profit perceived from stolen money given as a loan, neither does Pamelius, a possessor in good faith, seem to be disturbed as to the profit perceived from a sale.

2. Callixtus, a goldsmith, in good faith bought for 100 lire a certain mass of melted silver, from which he made a chalice, which afterward he sold to a certain monastery for 150 lire. But soon he learned certainly that that silver had been furtively taken away from the same monastery to which he had sold the chalice.

Q. 1. Is Callixtus held to anything toward the monastery? — 2. Can the Superior of the monastery, the matter being known, reclaim the price paid, or refuse the price not yet paid? — 3. What if the chalice itself in specie had been stolen from the monastery, bought in good faith by Callixtus, and sold to the monastery for a higher price, and recognized by the Superior, whether before or after the payment of the price?

R. To the 1st. Callixtus is held to absolutely nothing toward the monastery.

For he is not held from the thing accepted, which he does not have, nor from unjust acceptance, toward which he cooperated in no way, nor from the fact that he has been made richer from another's thing; for he has not been made richer unjustly from another's thing, but he has justly been made richer on the occasion of another's thing from his own labor and industry. G. 603; I. M. 1341.

To the 2nd. The Superior of the monastery cannot reclaim from Callixtus the price paid. For Callixtus, the contract of sale having already been perfected, legitimately made the price accepted his own; and so that price is no longer the monastery's. I. M. 1339, 1341. Nevertheless the superior is

not held to pay the whole price of the chalice not yet paid, but is held to refund the price of the labor and art to the goldsmith; for specification intervened, made in good faith. I. M. 906; G. 604.

To the 3rd. 1. Payment having been made, the goldsmith probably can retain the whole price. For the price accepted is his own by force of the contract of sale already perfectly made, unless, eviction intervening, that contract is rescinded. But the profit perceived, if he sold the chalice for a higher price, is also his own; because, the aforesaid contract of sale standing, the whole price accepted is his, and because the aforesaid profit or excess of price in the sale made of the chalice is the fruit of his industry and commerce. I. M. 1339, 1341; G. 605.

2. But before the payment of the price, the contract of sale not yet being perfected, the superior is not held to pay the price of the chalice. For one's own thing is not bought, nor is anyone held to pay the price of his own thing which he has, in whatever way he has it, unless in a particular case some special disposition of law is present, which does not obtain in the present case. I. M. 1131, 1343; G. 605.

3. Palemon, in order to feed his wife, contracted many debts from loan, without having whence he might pay. After his death, the wife asks whether she herself, from her own goods, is held to pay the debts made by the husband for her.

Q. What must be answered to the wife?

R. The authors of the *Cases of Conscience of the Diocese of Bologna,* in the year 1778, month of November, Case 1, more probably affirm that the wife is held to pay the aforesaid debts of the husband. "An indigent husband, although he is held by a radical obligation to feed his wife, nevertheless while he is impotent he is not held by an actual obligation; for no one is held to the impossible, from L. *Etiam*, L. *Maritum* ff. *Solut. Matrim.* Therefore, if in order to feed her he contracted debts, the wife, for whose utility they were contracted, will be held to pay, if the husband is not solvent. For if someone accepted another's thing and is not solvent, an action is equally given against him to whom the thing itself came, not indeed from an onerous cause, but from a lucrative cause, L. *Eum servum*, and L. *Si et me et Titium* ff. *Si cert. petat.* Next, it is unjust that someone be enriched from the things of others, and he who from another's thing has been made richer is held to restore that in which he has been made richer. L. 2. § *Aequissimum* ff. *ad L. Rhod. de Iactu,* where it is said that, if, while a ship is being tossed by waves, a jettison of merchandise has been made, the detriment ought to be common also to those whose goods by reason of that jettison were saved. But in the Case the wife has been made richer from the monies accepted as a loan by the husband; for, the husband being impotent, the wife herself is held to feed herself. Therefore, if she has been fed from those loans, she spared her own things, and has been made richer. Add that by natural law the wife herself is held to feed not only herself, but also her indigent husband. Therefore the debt contracted by the poor husband for feeding the wife can truly be called the debt of the wife herself; and so, the husband being unable to pay, she herself is held to pay. Lastly, although from the whole title ff. *ad S. C. Macedon.* the father is not held to pay a loan contracted by a son under paternal power, nevertheless, if that loan has been turned to the utility of the father, or to a thing to which the father was held, he himself will be held to restore, L. *Sed Iulian.* 9. § *Proinde* ff. e. t.; Cap. *Quod quibusdam de Solut.*, C. *Ad hoc* e. t.; L. 1. ff. *de Condict. indeb.*

Then truly the cited authors note two things: "1. How much is the wife held to pay in the Case? And it is necessary to distinguish. For either at the time when the husband was poor, the wife also was destitute, or not. If the first, when riches afterward come to her, she will be held to pay only that part of the debt which was consumed by her, that is, pro rata corresponding to the food for herself, because nothing else was truly turned to her utility. But if she was rich, the wife will be held to pay the whole debts. For, while she can, she herself is held by the right of natural conjunction to feed her indigent husband and her children. Whence the whole debt was contracted for her utility, or for supplying her actual obligation.

2. It must be noted that the wife is by no means obligated to those debts, if the husband, although he dies unequal to paying, nevertheless was able to pay at the time when he contracted the debts. For then, since he was actually held to feed his wife, the wife perceived no advantage from another's money. Likewise she will not be held if the husband, after debts contracted in poverty, his faculties having increased, was made solvent. For since with the husband's riches supervening his obligation revives, every reason in the wife, whether of utility or of equity, that she pay, ceases."

Sanchez, *de Matrim.* l. 9. d. 4. n. 29, on the contrary more probably denies that the wife is held to pay the aforesaid debts of the husband. At n. 28 Sanchez proposes the question thus: "Whether, when the marriage has been dissolved, no goods of the husband remaining, the wife is held to pay from dotal goods the debts contracted by the husband for feeding her and the family, as for paying the wages of servants, the rent of the house, clothing and food of the family? And similarly, whether the children can be sued, and are held to pay the loan accepted by the indigent father for their food? For the decision and reason of both questions is altogether the same." The first opinion affirming having been related at the cited n. 28, then in the following n. 29 he adds these things: "But although this opinion is sufficiently probable, the contrary pleases me more, namely that neither the wife nor the children are held to pay those debts contracted by the husband or father from their own goods. To prove this I premise that in a poor husband the obligation of feeding wife and children is not altogether extinguished, but only suspended for the time of the poverty excusing him; just as any debtor by reason of poverty is not wholly released from paying a debt, but that obligation is only suspended, and he is excused from payment while inability by reason of poverty lasts. This is plainly evident from this; for no one will doubt that wife and children are by no means held to those debts contracted by an indigent husband for their food, if the faculties of the husband in the course of time so increase that he is able to pay. But if by reason of poverty that obligation had been altogether extinguished, once the faculties had been increased it would by no means revive. For an obligation once extinguished does not revive. L. *Cum ex causa* C. *de Remis. pign.*

This having been premised, our opinion is proved thus. If Peter, that he may satisfy his creditors, contracts a great debt, thinking that afterward he will be able to pay it, although the contrary happens, no one will say that the creditors who were satisfied by that loan, and to whose utility it yielded, are held to the later creditors who gave those monies on loan to Peter. Because these later creditors entered into no contract with the prior ones, and truly through the loan they transferred ownership to Peter, and Peter as true owner could satisfy his debts from that loan, although by reason of poverty he was excused from paying them. Similarly, therefore, although an indigent husband by reason of inability is exempted, or rather excused for that time from the burden of feeding wife and

children, and is not held to burden himself with debt, by which he may answer to this obligation; nevertheless, if he truly burdened himself, and thus fed them, he fulfilled a true obligation suspended by reason of inability. Nor will that money be said to have been turned to the utility of the wife and children, to which the father was truly not held; nor will wife and children truly be said to have been made more wealthy, and to have received from a lucrative cause (and from the liberality of the husband), but rather from an onerous cause (namely as a thing owed to them), since truly they received a debt owed to them; and therefore they will by no means be constrained to pay that loan. And it is confirmed, because although the wife was rich at the time of the loan accepted by the poor husband, she was not held directly to the food of husband and children, but in subsidy, namely, if the husband were not seeking elsewhere the monies by which he might supply necessities; and since he had now sought them, accepting a loan, the wife was relieved by him from that burden, and the money was not given on loan to her, nor received in her name; therefore she will not be held to pay it.

Secondly it is proved from L. *Non adversus* 15. C. *Si certum petat*, and L. *Eum cui* 13. C. *de Action. et oblig.*, there: *Him to whom you have given money as a loan, you ought to urge to payment by the competent action. For against business-agents, whom you allege to have taken monies from merchandise from your debtor, you have no action.* From these texts it is evident that this action of reclaiming a loan is personal, and therefore competent against the debtor alone, to whom it was given; since ownership has truly been transferred to him, and in the manner of a true owner he could dispose of it....

Nor do the arguments of the contrary opinion stand in the way, because, from what has been said, it is evident that wife and children have from an onerous cause, and that loan is not said to have been turned to their utility."

But Lugo, *de Iust. et Iur.* d. 20. n. 127 seqq., has these things to the point:

"From what has been said it can now first be inferred what must be said concerning the wife of a debtor or usurer who cannot pay his creditors, concerning whom Sylvester says that she must restore whatever she consumes from the goods of the husband. Others nevertheless concede that she can consume, without obligation of restoring, the things which are necessary to her for life and for the preservation of status. Both because the husband owes food to his wife no less than he owes it to other creditors, and because the creditors ought to be content that the debtor in such necessity defer or omit payment in order to feed his own wife. Note, however, first, if the things which the husband has were still in their proper species the goods of another, the wife could not consume them, except in the case in which it would be lawful because of necessity to usurp the things of another, and with the same conditions and limitations with which the usurpation of another's thing is lawful. Note, secondly, if the wife could, with her dowry received by herself, or with her own goods, or in another honest way, feed herself, she could not accept from the goods of the husband to the prejudice of creditors; nevertheless she ought not to be compelled to serve or work for a living, when this would be done with dishonor.

It is inferred secondly that the same must be said concerning children, who also can licitly accept from the father, even one unable to pay his debts, the things which in the same way are necessary to them for the sustaining of life and status, because the father also owes them necessary food."

And St. Alphonsus, l. 3. n. 354: "Whether a wife, her husband having died, is held from dotal goods to pay debts contracted for feeding the family? The first opinion affirms, if the man was poor while he contracted the debts, otherwise if he was wealthy, because a poor man was not held to feed his wife; therefore she herself is held to pay what was turned to her utility. But the second, more probable opinion denies this, whether the man was poor or wealthy. The reason is that the action of creditors for reclaiming the loan made is personal, namely only against the husband; and although in the husband by reason of poverty the obligation of feeding the wife was suspended, nevertheless it was not extinguished; wherefore, if he fed her from a loan, he furnished his own debt."

Therefore, with this variety of opinions standing, it does not seem that the wife of Palemon can be obligated to restitution. And this is consonant not only with Roman Law, but also with the more recent Law. For if, while marriage is standing, a woman contracts a debt or any obligation whatever, the dotal goods also certainly become liable to creditors after the marriage has been dissolved, from the Italian Code 1407 (otherwise from the Gallic Code). But in the Case the wife contracted neither a debt nor any obligation, but only the husband; nor truly did the husband contract the aforesaid debts, in the Case, in the name of the wife, or with the wife at least knowing and consenting. — I. M. 677, 679.

82. Restitution from Damage and Cooperation

1. Gastonius had made a testament in favor of Fabianus, his nephew. But Florianus, his other nephew, learning this, reports to Gastonius that Fabianus had often spoken badly of him. Gastonius, hearing these things, his testament having been torn up, instituted Florianus himself as his heir, and a little afterward departed from the living.

Q. 1. Does an obligation of restitution arise from unjust damage? — 2. What as to the Case?

R. To the 1st. Affirmatively. For whoever damages someone really takes away from him that in which he damages him. And therefore he is held to restitution of that thing taken away, whether this thing has come to the one causing damage or not. For restitution is not principally ordained to this, that he who has more than he ought should cease to have it, but to this, that to him who has less than he ought, it be supplied. S. Th. 2.2. q. 62. a. 4, 6 ad 1; I. M. 1357 seqq.

To the 2nd. Florianus must restore the inheritance to Fabianus, if, in reporting those evil words, he committed calumny or detraction. For then Florianus impeded Fabianus from certainly obtaining the inheritance by an illicit and unjust means. But otherwise it would have to be said, if Fabianus [printed: Fabianus; sense requires Florianus] with truth and from a reasonable and grave cause had manifested those grave sins of Fabianus, by which Gastonius then judged him unworthy of the inheritance. G. 635; I. M. 1367.

But what if Florianus had simply persuaded Gastonius, yet from hatred toward Fabianus, not to leave the inheritance to Fabianus? Probably then he would be held to nothing. For that persuasion without force, without lie, without deceit and fraud, although it would have been against charity by reason of hatred, nevertheless would not have been against justice. G. 638; I. M. 1368.

2. Ranulfus had instituted Laelius as universal heir. Lying in extreme illness, Ranulfus calls Laelius and asks him to summon a notary. Laelius, fearing that Ranulfus might wish to change his last will to his prejudice, answers Ranulfus that all things had been altogether well done by him; but that it would now be better if, rather than think about death and the testament, he thought about recovering health. Ranulfus acquiesced, and after three weeks he died.

Q. 1. How much must be restored from damage? — 2. What as to the Case?

R. To the 1st. "Someone is damaged in two ways: in one way, because that which he actually had is taken away from him; and such damage must always be restored according to an equal recompense, as if someone damages another by tearing down his house, he is held to as much as the house is worth. In another way, if he damages someone by impeding him from obtaining what was on the way to being had; and such damage need not be recompensed equally, because it is less to have something virtually than to have it actually. But he who is on the way to obtaining something has that only according to virtue or potency, and therefore, if it were rendered to him so that he would have this actually, there would be restored to him what was taken away, not simply, but multiplied; which is not of the necessity of restitution. Nevertheless he is held to make some recompense, according to the condition of persons and of affairs." S. Th. 2.2. q. 62. a. 4.

For that which is not yet had actually, but only virtually, can still be impeded in many ways. Wherefore the value of each is not the same. But for determining this value, the conditions of persons and of affairs must be attended to; whence the hope of the thing to be had is not always established as the same, but as greater or less, as can be seen in relation to a future harvest, e.g., in him who has not yet scattered seed in the field, or has already scattered it, or the harvest is now near maturity, or the harvest is now mature and soon to be gathered. And therefore, consequently, the value of the aforesaid hope is not the same. I. M. 1359.

To the 2nd. It indeed does not appear from the Case that Laelius acted illicitly, whether against justice or even against charity. For he used no illicit and unjust means for averting Ranulfus from making any change. Nor truly did he act from any hatred against someone, but he wished only to consult his own good; and charity does not obligate someone to consult the good of others rather than his own, or to consult the good of others with notable detriment to himself. Besides, Ranulfus signified no will in particular why he wanted the notary to be called. And if in truth he had the will of changing something in the testament, he withdrew from that will, since he altogether acquiesced in the response of Laelius, nor during three whole weeks did he speak any more of calling the notary, or of making some change in the testament.

But what? if Ranulfus had signified the will of adding some legacy in the testament in favor of some determinate person, and Laelius had promised that he would soon call the notary with the intention of not calling him, and afterward did not in fact call him; or if he had said, lying, that it was impossible for the notary to come. In such a case Laelius would have impeded Ranulfus from making the legacy by fraud, by a feigned promise, and by a damaging lie. Wherefore he would be held on this head to restitution or reparation of the damage. But since there still would not be altogether certain evidence concerning the will of Ranulfus, restitution would have to be made only pro rata of the hope. For the legatee as yet had no right to the legacy itself; nevertheless he had a right not to be fraudulently impeded from obtaining the legacy. It would be very difficult in practice to assign the

quantity, if Ranulfus himself had not declared the quantity of the legacy to be constituted. But if he had declared that quantity, it seems sufficient if he restore half the part. And if Ranulfus had signified the will of a legacy, and had also declared its quantity, but had not manifested the person, then the aforesaid restitution would have to be made to the poor, or to pious causes. G. 636, 637, 853.

3. "Whether a Christian faithful who knowingly and willingly destroys and ruins the walls, doors, and implements of a temple, and for that cause is captured by the pagans, ought or can repair the damage, at least under another title? — R. He is held to restitution, by title of justice." S. I. C. 21 Sept. 1842.

4. Hircinus killed Beraldus. The family of Beraldus abounds in many riches. Nevertheless the confessor of Hircinus obligates him to restitution both toward the nearer connections of Beraldus and toward the more remote relatives.

For he says that Hircinus [is bound] in place of Beraldus to furnish support to this man's blood-relatives.

5. Iacobus killed Marcus, who brought no help to his family, but on the contrary impoverished it by his vices. Nevertheless the confessor of Iacobus obligates him to restitution, because, he says, Iacobus could have returned to better fruit and helped his family.

6. Ubaldus challenged Sabianus to a duel; and, the duel having followed, he was unhappily killed by Sabianus, leaving in extreme misery his mother, wife, and children, whom he himself was sustaining.

Q. What as to the Cases?

R. 1. Since the family of Beraldus, and his nearer blood-relatives, namely his wife, parents, and children, can easily provide for themselves, Hircinus seems to be excused from restitution toward them. For the homicide is obligated to restitution toward nearer relatives only insofar as relatives of this sort are considered one and the same person with the deceased, and have the right, from strict piety, to be sustained by the deceased; and consequently the deceased in turn could and ought to have sustained them. Whence it also is that Hircinus is not held to restitution toward the other more remote relatives. For as to these, if they undergo any damage, the homicide is their cause only remotely and by accident. Therefore the reasoning of the confessor rather proves the contrary in the Case. G. 733, 734; I. M. 1373.

2. Iacobus does not seem, in the Case, to be held to any restitution: for in fact he inflicted no damage as to the goods of the family. Indeed, on the contrary, he prevented a greater damage of goods. But the hope of the conversion of Marcus appears altogether slight, since rather the presumption in itself is contrary, namely that Marcus would have continued, as he did before, in wasting the goods of the family. Wherefore no certain obligation of restitution can be imposed for damages so uncertain and remote. G. 735, 736; I. M. 1373.

3. Sabianus is probably not held to the compensation of damages. For first, Ubaldus by his own consent placed the whole necessary and sufficient cause of his own damages, namely by

consenting that his adversary act against him as much as he can, even by killing him. Therefore he implicitly consents also to temporal damages, if any perhaps he himself is to suffer from the wound received, and consequently he is judged to remit the obligation of repairing these damages. No injury is done to one knowing and willing, when a right can be remitted. But a duelist can well remit temporal goods, and renounce his right in order that damages inflicted on him be repaired by the other.

Besides, for the same reason, because Ubaldus by his own consent placed the whole necessary and sufficient cause of the damages which were inflicted on his own relatives, neither is Sabianus probably held, as to them, to compensate the damages. For this consent of Ubaldus standing, every reason of injury and injustice done by Sabianus to the aforesaid relatives ceases; and so there will no longer be any obligation from justice to compensate the aforesaid damages.

For a killer is held to the compensation of damages in relation to the nearer relatives of the one killed because he himself, from his unjust action, by killing, e.g., the father, is the cause per se of those damages. Wherefore this right of the nearer relatives is not founded in the obligation which the father, e.g., had of feeding children and wife, but in the injury by which through force the killer impeded that which the children and wife would have had from the living father; which injury gives to the children a right of justice to having that which they would have had from the father without such obligation of justice, but from piety only. Whence the right to that compensation is not acquired by the one killed himself, nor is it derived from him into others, but is immediately acquired by those others, whose individual right has been injured, and to whom individually an injury has been inflicted. And thus the father cannot dispose of this injured right of others, nor remit the obligation of compensation. "You have a very good example of this doctrine when by force or deceit you impede Peter from conferring a benefice upon Paul, in which case afterward you are held to restore to Paul as much as that hope is worth; and this debt indeed cannot be condoned by Peter, whom you impeded, but by Paul, concerning whose damage there is question." Lugo d. 11. n. 63, 64.

Hence in the case of a duel, the obligation of damages ceases also as to others. For in relation to these, the action of the killer is no longer unjust, that is, impeding by force their support or emoluments. For by this very fact, that the one killed himself consents to his own killing, the killer now does not impede by force the support or emoluments of others, but from the consent and will of him from whom they would have had the emoluments, and who consequently by his own consent places the whole necessary and sufficient cause of their damages, thus impeding by his own consent the reason of violence and injustice in the killer as to the damages that are to follow to the relatives. But when the reason of violence has been taken away, the root of the obligation of restitution of damages ceases, which is the violence by which the killer impedes the emoluments of others. Wherefore the killer then sins only insofar as he cooperates, e.g., with a father who, notwithstanding that debt of feeding his own, wishes to be killed with damage to them; and since this in the father is not against justice, neither is it in the cooperator, in order to them, but only against charity and piety. It would consequently be otherwise if the one killed were held toward others from justice, and not only from charity or piety. Lugo d. 11. n. 71, 72; G. 735, 736; I. M. 1373, 1375.

7. Carpophorus contracted very many debts because of extraordinary luxury and rather frequent banquets, to which Bertha his wife cooperated not a little. But behold, the husband being

seized by sudden death, the creditors immediately came together from every side to the widow Bertha, who received nothing from her husband, since he left nothing after his death except debts. Wherefore, pressed by these straits, Bertha asks her confessor whether she is held from her own goods to pay the aforesaid debts.

Q. 1. Does an obligation of restitution arise from cooperation? — 2. What as to the Case?

R. To the 1st. Affirmatively. Since "to restore imports the rendering of that thing which has been unjustly taken away, for thus by its repeated presentation equality is repaired," S. Th. 2.2. q. 62. a. 2, whoever is either directly or indirectly the cause of an unjust acceptance is held to restitution. "Directly indeed when someone induces another to accepting, and this indeed in three ways: first, from the side of the acceptance, by moving him to the acceptance itself, which indeed happens by commanding, counseling, expressly consenting, and praising someone as if strenuous because he accepted another's things; in another way, from the side of the one accepting, namely because he receives him, or in whatever way bears help to him; in a third way, from the side of the thing accepted, namely because he is a participant in the theft or rapine, as a companion of the evil deed. But indirectly, when someone does not impede, although he can and ought to impede; either because he withholds a precept or counsel which would impede the theft or rapine; or because he withholds his help, by which he could oppose; or because he conceals after the deed; which things are comprised in these verses: Command, Counsel, Consent, Flatterer, Recourse, Participant, Silent, Not opposing, Not manifesting." S. Th. 2.2. q. 62. a. 6.

To the 2nd. From the fact that Bertha merely cooperated with the extraordinary luxury by which her husband was living, and by which consequently he wanted the whole family to live, by complying with her husband, and also consequently by delighting herself and taking pleasure in the display of such luxury, Bertha does not seem obligated to restitution in place of her husband. For in this mode of acting there does not appear efficacious and unjust cooperation toward contracting those debts. In truth, the obligation of restoring is personal and real. Insofar as personal, it obligates the one causing damage himself, and his cooperators. But insofar as real, it affects the thing taken away by theft. But Bertha, just as she was not cooperating in cause with the debts contracted by her husband, so she accepted nothing from her husband. But if Bertha had induced her husband to contract those debts; or even if she herself had induced her husband to the aforesaid luxury, knowing well that his fortune did not suffice for such a manner of living, and consequently that he had to contract debts which he himself was unequal to paying, then indeed Bertha would have cooperated efficaciously and unjustly toward them, and so would be held to pay those debts from her own goods. G. 385; La-Croix l. 3. p. 2. n. 381.

83. Restitution from Contract and from Law

1. Crepinius, a son under paternal power, by feasts, drinkings, games, held in a tavern with many other unruly youths, contracts many debts with Medardus the tavern-keeper. Grifinus gives surety for Crepinius. Hence, when Medardus could obtain payment of the debts neither from Crepinius nor from his father, he demands it from Grifinus.

Q. 1. Does an obligation of restitution arise from contract? — 2. What as to the Case?

R. To the 1st. Affirmatively. For this is deduced from the very notion of restitution. For through a contract another already has either a right in a thing or a right to a thing.

And if through restitution that which is his own must be rendered to another, it is plain that restitution must be made not only when another's thing is held against the other's will, as in theft and rapine, but also when it is held through his will, as in a loan for consumption or a deposit, or another contract. S. Th. 2.2. q. 62. a. 1.

To the 2nd. Since the debts contracted by Crepinius, a son under paternal power, did not yield to his advantage and utility, but to his damage and grave harm, Crepinius can invoke the sentence of a judge and not pay the debts. Let Medardus impute it to himself and to his own fraud that he contracted with a son under paternal power, supplying to him the occasion of so many vices. I. M. 667, 953. Nor truly is the father of Crepinius held to paying the debts. For he furnished no consent in contracting those debts; and so he is held neither by positive law nor by natural law. Nor is the father of Crepinius held to paying those debts if he himself administers the son's goods. For the son himself cannot reclaim those goods except after majority, and the son then will be able to invoke the sentence of the judge. G. 586, 287, 771. — Grifinus is nevertheless held to paying the aforesaid debts by reason of the suretyship made. For although it was made for a minor, nevertheless it is valid both by natural law and by positive law. I. M. 1266.

2. Benignus, a bishop, administrator of a pious legacy of Masses, prudently doubting nothing concerning restitution, gave to Fidelis, a most faithful parish priest, as a loan the sum of 10,000 lire. After a week Fidelis suddenly dies. The sum lent is not found, nor any document of it; whence the heirs do not acknowledge it. Nor truly can Benignus bring forward any document. For on the same night on which Fidelis was dying, robbers carried away with them from the episcopal palace the chest with the money and papers of the whole episcopal administration. Did Benignus commit theft, and is he held to restitution?

R. To the 1st. Benignus did not commit theft. For theft is the hidden taking away of another's thing, the owner being reasonably unwilling. But there was no hidden offering [printed: *oblatio*] of another's thing, nor could the owner in that loan be reasonably unwilling, since no danger in it was prudently foreseen, and since Benignus certainly had to invest that money in some way, so that from the fruits Masses would be celebrated.

To the 2nd. Certainly all theological fault was lacking in Benignus. Wherefore from this head he would certainly be held to nothing. By reason of administration and quasi-contract he would indeed be held from juridical fault to restitution or compensation. But before the sentence of a judge, and in the forum of conscience, the matter is at least controverted among the doctors, and so the obligation is doubtful, and practically none. Besides, juridical fault is not established in the Case; for the loss of that sum is in truth owed to no negligence, but to a fortuitous event. Wherefore Benignus is held to nothing. The thing perishes to its owner. Nevertheless, since there is question of the celebration of Masses, and compensation as to them can easily be made through the Supreme Pontiff, supplying from the treasury of the Church, it seems that it should indeed be sought from the Supreme Pontiff. — I. M. 1072, 1077, 1118, 1389, 1393.

3. Durandus by a defamatory pamphlet defamed Guibertus the advocate. Recourse having been made to the judge, Guibertus obtained a sentence fully favoring him, and condemning Durandus to pay 50,000 lire to the same Guibertus as compensation for injured reputation and for repairing the damage inflicted. Durandus refuses to pay this sum, saying that the sentence is unjust and does not obligate him in conscience, because reputation is not compensated by money; because the damage inflicted on Guibertus, a middling lawyer, cannot be estimated as so much; because finally he himself took nothing away from Guibertus.

Q. What as to the Case?

R. Durandus is held to pay the whole sum of 50,000 lire to Guibertus by force of the just sentence of the judge. Although it is controverted whether, by the rigor of strict commutative justice, compensation is given between goods of a diverse order, e.g., between reputation and money, because between diverse goods there cannot be an equalizing of thing to thing; nevertheless there is no doubt that the aforesaid recompense can be given, by reason at least of natural equity, and by reason of a penalty inflicted by the legitimate authority of the judge. Wherefore from this head there is no doubt that the sentence of the judge was altogether just and obligating in conscience. I. M. 1324. "It must be said," says S. Th. 2.2. q. 62. a. 2 ad 1, "that in those things in which an equivalent cannot be recompensed, it suffices that there be recompensed there what is possible.... And therefore when that which has been taken away is not restorable by something equal, recompense such as is possible must be made; as when someone has taken away a limb from someone, he ought to recompense him either in money, or in some honor, the condition of both persons being considered, according to the judgment of a good man." And in the same place, ad 2, "It must be said," says the Holy Doctor, "that someone can take away reputation from another in three ways. In one way by speaking truth and justly, as when someone reveals someone's crime, with due order being observed; and then he is not held to restitution of reputation. In another way by speaking falsely and unjustly; and then he is held to restore reputation by confessing that he spoke falsely. In a third way by speaking truth, but unjustly, as when someone reveals the crime of another against due order; and then he is held to restitution of reputation as much as he can, nevertheless without a lie, as by saying that he spoke badly, or that he unjustly defamed him; or if he cannot restore reputation, he ought otherwise to recompense him." Wherefore again the sentence of the judge from this head must be held as altogether just and obligating.

Nor truly is Durandus's other reason valid, namely that the reputation of Guibertus cannot be estimated as so much. For first, judgment in this matter certainly does not pertain to Durandus, but to the judge. Besides, although the aforesaid reputation of Guibertus perhaps is not to be estimated as so much in itself, nevertheless after the sentence of the judge Durandus is held to recompense and pay so much. For,

"when someone unjustly accepts another's thing, two things are to be considered there; one of which is the inequality on the part of the thing, which sometimes is without injustice, as is plain in loans for consumption; but the other is the fault of injustice, which can be present even with equality of the thing, as when someone intends to inflict violence, but does not prevail. Therefore as to the first, a remedy is applied through restitution, insofar as equality is repaired through it; for which it suffices that he restore as much as he had of another's. But as to the fault, a remedy is applied through a penalty, the infliction of which pertains to the judge; and therefore, before he is condemned by a

judge, he is not held to restore more than he accepted; but after he has been condemned, he is held to pay the penalty." S. Th. 2.2. q. 62. a. 3. Therefore the judge, by condemning, can justly command that something more be paid in place of amends or penalty, which nevertheless was not owed before someone was condemned. S. Th. l. c. ad 3. Therefore the sentence of the judge in the Case is just also from this other head, and obligating in conscience, although it is true that in itself the reputation of a middling advocate is not worth so much.

Finally, that which Durandus asserts in the last place is also false, namely that he himself took nothing away. He certainly took away reputation; and, reputation having been taken away, he inflicted damage, and grave damage, on Guibertus. But whoever damages someone takes away from him that in which he damages him; and damage unjustly inflicted must be compensated from strict justice.

4. Ioannes in France legitimately contracted marriage in the face of the Church with Ioanna, from whom he had one only son, to whom by testament he left his whole rich inheritance. After the death of Ioannes it is learned that his marriage with Ioanna had been null, on account of the fourth degree of consanguinity, which nevertheless had always previously been unknown by both spouses. Hence the blood-relatives of Ioannes, in order that they themselves may receive the inheritance, strive altogether to exclude from it the only son of Ioannes, as illegitimate and born from an invalid contract of marriage.

Q. What as to the Case?

R. Since the marriage of Ioannes and Ioanna, although invalid, nevertheless was contracted in good faith and indeed by both spouses, both by Canon Law and by Civil Law the offspring is held as legitimate, and so has every right to the paternal inheritance, nor can he be driven away from it. And this is valid even if before the death of Ioannes himself the marriage had been declared null. But the offspring succeeds in the Case as altogether legitimate, by hereditary right, into the paternal goods, indeed even into the goods of the collateral relatives of the father or mother. C. *Cum inter* 2. *Qui filii sint legitimi*; French Civil Code art. 201, 202; Schmalzgr. l. 4. tit. 17. n. 11 seqq.; Toullier *Il Dir. Civ. Franc.* l. 1. tit. 5. n. 666.

84. To Whom Restitution Must Be Made

1. Audifacius, passing through a field, from an evil intention of harming others set fire to a crop. Converted to better fruit, he now does not know whose crop that was, nor can he learn it, since he was then altogether ignorant of the roads and places through which he was passing, nor afterward did he hear anything about that fire.

Q. What as to the Case?

R. Audifacius, as an unjust damager, is held to restore. The fact that by reason of the inability in which he is placed he cannot know the one damaged does not therefore excuse him from restitution; but restitution must be made to pious causes or to the poor. "It must be said," says S. Th. 2.2. q. 62. a. 5, "that through restitution there is made a reduction to the equality of commutative justice, which consists in the equalizing of things. But an equalizing of things of this sort could not be made unless, to him who has less than what is his own, that which is lacking were supplied. And for this supplying

to be made, it is necessary that restitution be made to him from whom it was accepted.... But if he to whom restitution must be made is altogether unknown, a man must restore, according as he can, by giving in alms for his salvation, whether he is dead or alive, with diligent inquiry nevertheless first having been made concerning the person to whom restitution is to be made. But if he to whom restitution must be made is dead, it must be restored to his heir, who is counted as, in a certain way, one person with him. But if he is very distant, that which is owed to him must be transmitted to him, and especially if it is a thing of great value and can conveniently be transmitted; otherwise it must be deposited in some safe place, so that it may be preserved for him, and the owner notified." Cf. I. M. 1420 seqq.; G. 588-590.

2. "In the ninth doubt Your Lordship implores a norm concerning the conduct to be observed with penitents who have stolen from the Turks, and cannot make restitution without danger of life, since the Turks always wish to know the name of the thief. Concerning this matter the Sacred Congregation has decreed that Your Lordship should adhere to the opinion of good authors, who teach that, when restitution of things stolen cannot be effected to their owner, not even through the confessors, and on the other hand the guilty person cannot retain the thing badly taken, the value of the things stolen must be distributed *to pious causes, or among the poor*." S. C. de P. F. 26 Sept. 1840; *Collectan.* n. 2113.

3. "1. Concerning restitution of another's goods made in alms, although the priest and the penitent do not ignore the true owner, the Pro-vicar asks whether the confessor can leave in good faith the penitent who believes he has restored, and whether the priest can make the said restitution with alms received from others instead of from the penitent.

2. In the mountains there are some temples of idols not inhabited by the priests, but attached to nearby monasteries. In so many temples the gentiles are accustomed to leave offerings of grain or money, which afterward the Bonzes of that monastery come to collect. Some Christians, with the sole end of taking those offerings for themselves, go there with an appearance of devotion to visit them. Are they guilty of theft? And being so, to whom are they obligated to restore?

R. To the 1st. Let him consult theologians, and especially Antoine, *Theol. Moral. De Iust. et Iure*, ch. 3, part 2, q. 21, resp. 1, at the end, as regards the first part of the doubt. But as regards the second, he can, unless he who gave the alms prescribed the manner in which it was to be distributed.

To the 2nd. They are guilty of simulated superstition and of theft; and restitution must be made to the priests of the temple." S. C. de P. F.; *Collectan.* n. 2110.

Moreover Antoine has these things in the cited place: "If before diligent inquiry you have spent uncertain goods or debts upon the poor, you are still held to restore to the owner when he appears.... Because you have done injury to the true owner, who has the right that his goods not be alienated when diligent inquiry has been omitted, and because it is your fault that you did not find the owner so that the goods might be returned to him, when they could be returned. If nevertheless the thing

still exists with the poor person or the pious place, this one is held to restore; because he who gave could not transfer ownership, which therefore remains with the owner."

4. Seius many times in his life practiced usuries. But dying, led by repentance, he left an estate to his son, so that from its sale he might restore the usuries unduly received. Their sum was 3,000 lire; but since by the will of Seius the sale of the estate could not take place except after the death of the mother, which happened after ten years, hence the son of Seius asks whether he must also restore interest. Moreover the creditors are forty or fifty, and perhaps more on account of their heirs, and it would be very difficult to find them; nor would this be done without danger of infamy for the whole family, which is held in great honor, nor without danger of scandal, since the persons to be employed in that matter would not preserve the secret, nor could they be trusted to hand the money to the creditors. But to defer restitution longer would be a grave damage to him, and very many years perhaps would pass before he could sell the house, while he himself inwardly would be pressed by continual straits of conscience. Hence the son of Seius also asks whether he can simply hand over the aforesaid estate to some pious cause.

R. The son as heir is in no way held to pay legal interest beyond the usuries themselves unduly received. For interest is owed only from a contract, which was not present, or from judicial petition, which also was not present. Nor truly is he held to pay that interest from the damage of the creditors themselves which followed, for it is not established concerning this damage as following in reality; since rather the contrary is presumed, because, perhaps to avert damage, they spontaneously chose to accept a loan with usuries also to be paid, and perhaps in order to perceive a greater profit from it. Nor finally would that interest have to be paid from delay of payment on the part of the son himself as heir, since it had previously been impossible for him to sell the house from which, once sold, he had to restore the undue usuries, or to dispose of it in any way. But as to making the restitution itself, he can well make it to pious causes, or to the Church or to another pious Institute. For the danger of infamy standing, which would follow for the whole family; the danger of scandal standing, which would be had if an investigation of the creditors were made; the danger also standing of losing the money to be restored, without its in fact coming to the hands of the creditors; and finally the grave damage to be undergone by deferring restitution standing, there is present a sufficient excuse from making restitution to the creditors themselves; whence, according to the common opinion of the doctors, it can be made to the poor or to pious causes in place of the creditors.

But so that the solution may be more certain as to both things, both as to interest not to be paid and as to the house to be assigned to a pious cause, Pontifical authority could most fittingly be invoked here, so that each may be confirmed by way of composition; namely by remitting to the son as heir the obligation of restitution of interest, if perhaps there is any, and by assigning to the Church or to another pious Institute the aforesaid house in compensation for the usuries unduly received.

In truth, the Doctors commonly acknowledge in the Supreme Pontiff a faculty of composition not only as to ecclesiastical goods, but also as to profane goods, when the creditors of the debt are uncertain; by force of this faculty one part of the debt is remitted and the other part is applied to some pious cause. The foundation and reason of this power is that, on account of the excellence of the pious cause, and on account of the fragility of men and the danger of restitution not being made,

and for preventing the sins of subjects, it is judged equally or more good in order to the common spiritual utility than if the whole obligation of restitution were left to the debtors. Lugo, *de Iust. et Iure* d. 21. n. 92.

That is to say, this pertains to the Supreme Pontiff, either on account of high dominion as to ecclesiastical goods, which is in his possession; or, as to profane goods, insofar as he can indirectly govern temporal things, when this is necessary for the spiritual good. Lugo, l. c. n. 107.

Moreover, Composition is admitted not only when the creditors are uncertain, but also when because of their absence and distance the debtor is excused from restitution. For these two cases are altogether equated, because in each case the restitution which would have to be made would have to be made to the poor or to pious causes, in place of the owner to whom restitution cannot be made. And thus in each aforesaid Case composition can be made through the Bull of the Crusade, Lugo l. c. n. 139.

For Composition is admitted for any thing whatever badly had in whatever way, while those to whom restitution legitimately ought and can be made cannot be known. But in that case of absence and distance, although the creditor is known, restitution nevertheless ought not and cannot be made to him, and so the matter stands the same as with an uncertain owner, because the owner is truly not known, namely he to whom restitution ought and can be made. Lugo l. c. n. 139.

Now, just as the case of the absence and distance of the owner is equated, as to composition, with the case of an uncertain owner, so also the case of impossibility of restitution from the uncertain effect of it if it is made, and also from the scandal and infamy which would follow from it, is equated with the case of impossibility of restitution from the absence and distance of the owner, since also in this case of impossibility of restitution to be made from a delict, it must be made to the poor or to pious causes, whether by human law alone or also by natural law, as the doctors more truly hand down. Lugo, l. c. n. 91.

Hence it is plain that in the proposed Case there is present in the Supreme Pontiff the faculty of Composition, by sanctioning, for the greater tranquillity of conscience of that son as heir, that he restore to his Church or to a pious cause. For the owner is uncertain in altogether the same way as in other cases. Although he is known, nevertheless restitution ought not and cannot be made to him; which consequently, with composition intervening by the authority of the Supreme Pontiff, can well be made to a pious cause, and by it at the same time the son of Seius is fully freed from any other obligation which he perhaps has, whether as to interest, or even as to the very usuries badly received by his father.

85. Various Circumstances of Restitution

1. Forbinus stole a huge quantity of wine, then of the value of 1000 lire, which its owner was going to keep so that he might sell it in the month of May, hoping to be able to sell it for 1200 lire. Forbinus kept the wine until the month of November, and then, the price of wine having increased, sold it for 1400 lire.

Q. 1. How much must be restored? — 2. How much must Forbinus now restore?

R. To the 1st. Cf. I. M. 1424 seqq. — To the 2nd. Forbinus must now restore 1400 lire. For since he no longer has the wine, he must restore its equivalent, which is the aforesaid price. For then, when he sold the wine, just as the wine, so the price of the wine pertained to the owner of the wine, and Forbinus then had the obligation of restoring the wine, and so of restoring it according to the value which it then had. Because just as the wine, so the wine according to its increased value pertained to its owner. Therefore that obligation, the sale of the wine having been made, did not cease, but remained even after the sale. Therefore Sabinus [printed: Sabinus; sense requires Forbinus] is held to restore the whole price accepted. Besides, if Forbinus in the month of November had restored the wine, as he ought, to its owner, this owner, who wished to sell the wine in the month of May, then hoping for a profit of 1200 lire, would certainly then have sold it, and would then have obtained a profit not of 200 lire, but of 400 lire. Therefore, if Forbinus does not restore 1400 lire, but restores either only 1000 lire, or at least 1200 lire, he does not restore to the owner of the wine the whole of that which is his, nor does he render him unharmed by reason of ceasing profit. I. M. 1346, 1424; G. 616.

Nor is it valid here to object that that excess is the fruit of his own industry, by reason of the sale made. For just as knowingly to accept another's thing is an injurious action against justice, so also knowingly to detain another's thing is against justice, and so too knowingly to sell another's thing is an injurious action against justice. Wherefore in the Case someone would truly become unjustly rich from another's thing, with the injury of another, by unjustly impeding another's profit. Therefore that whole price, since in the Case it is nothing except the fruit of a merely unjust sale, is owed to the owner of the thing.

2. Tetradius, Nicodemus, and Carolus stole 6,000 lire from Hector. Tetradius, repenting of the deed, while Nicodemus and Carolus were unwilling to restore, restored the whole sum of 6,000 lire to Hector. Carolus having died, Nicodemus, rather late converted to better fruit, asks his confessor to whom and how much must be restored.

Q. 1. In what order must restitution be made? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1429 seqq. — To the 2nd. Since Tetradius, Nicodemus, and Carolus, by common consent, as is deduced from the Case, stole the aforesaid sum together, they are held to restitution *in solidum*. I. M. 1425 seqq. Wherefore, Nicodemus and Carolus being unwilling to restore, Tetradius was held to restitution of the whole sum toward Hector; and so he did well by restoring it all to Hector. Complete restitution having been made by Tetradius, Nicodemus and Carolus are no longer held to restore to the same Hector, but they are held to render Tetradius unharmed, by restoring to him what they themselves should have paid to Hector, namely each one of them ought to restore to Tetradius the sum of 2,000 lire. "Because restitution is principally ordained to removing damage from him from whom something has been unjustly taken away, therefore after sufficient restitution has been made to him by one, the others are not held to restore further to him, but rather to make reimbursement to him who restored, who nevertheless can condone." S. Th. 2.2. q. 62. a. 6 ad 3. "When one restores to him who suffered damage, another is not held to restore to the same one. But those who are principal in the deed, and to whom the thing came, are held to restore to others who restored." S. Th. 2.2. q. 62. a. 7 ad 2.

Moreover Nicodemus must restore to Tetradius the sum of 3,000 lire. For if the three thieves wished to restore, each would restore his own part, namely the sum of 2,000 lire. But since Carolus previously was unwilling to restore, and now can no longer restore, because he is dead, and from another source each one is held to restitution *in solidum*, hence it happens that the whole damage inflicted by the three must be compensated by two only, namely by Tetradius and Nicodemus; and so each one is held to half part of the damage, namely to restoring 3,000 lire. But the whole damage was compensated by Tetradius, and therefore he himself suffered damage. Therefore the damage must now be compensated to him, and compensated for the half part of the whole damage previously inflicted, since Carolus was unwilling to restore, and now can no longer restore.

3. A certain unknown pilgrim asked Augustine, a priest, to celebrate 50 Masses according to his intention, at the same time handing to him a folded banknote, saying, behold for you a slight stipend of 100 lire. But after that pilgrim had now departed, Augustine, unfolding the banknote, sees that there is not one note of 100 lire, but two. Since it was impossible for Augustine to find the pilgrim so that he might restore to him one hundred lire, he retained them for himself, and instead of celebrating 50 Masses, he celebrated 100 Masses for the pilgrim.

Q. 1. How must restitution be made? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1447 seqq. — To the 2nd. There does not seem to be doubt that the pilgrim erred by handing over 200 lire for 100 lire, which he offered to the priest for the celebration of Masses. Wherefore the other 100 lire must be restored to the pilgrim. But since it was impossible to find the pilgrim and to make restitution to him of the 100 lire, Augustine seems to have satisfied his obligation altogether sufficiently by celebration of another 50 Masses. For first, those 100 lire could well be held as a lost thing, and Augustine consequently could simply retain them for himself, the impossibility of finding the pilgrim standing. Besides, they could be distributed in alms of the poor and in pious causes. Finally, since in the Case an equivalent cannot be recompensed, it suffices that what is possible be recompensed. Moreover, in the Case compensation is possible by celebration of Masses, which, from the petition made for the other 50 Masses, will certainly be according to the intention of that same pilgrim, reasonably altogether presumed. In truth, when someone has stolen, e.g., a horse, and the horse dies by his fault, since he can no longer restore the horse, it suffices that he restore the price of the horse, or compensate the horse taken away by another equivalent thing. Why therefore in the Case, since restitution of 100 lire is not possible, can that restitution not be made in the one possible mode, namely by the celebration of Masses? I. M. 890, 893, 1447; G. 710, 715; S. Th. 2.2. q. 62. a. 2 ad 1, ad 2; a. 5 ad 3.

4. Octavius received gratuitously and entirely as a loan from Curtius a huge sum of money, to be restored after two years. Meanwhile Curtius dies, and, the two-year period having elapsed, his natural heirs do not demand restitution of the aforesaid sum from Octavius, since they are ignorant of the aforesaid contract of loan. But Octavius has parents placed in grave necessity, whom in the present he could no longer sustain if he restored the aforesaid sum. Wherefore he asks his confessor whether he can defer restitution.

Q. 1. When must restitution be made? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1455 seqq. — To the 2nd. Octavius seems able to defer restitution, by reason of the grave necessity in which his parents are placed, and which, restitution having been made, would be changed into extreme necessity. For this reason is sufficient for delaying restitution. Nor truly from the Case does it appear that the heirs of Curtius are placed in the same necessity, as is drawn from the very fact that Curtius gratuitously and entirely gave that huge sum as a loan to Octavius. I. M. 1464. "When someone cannot restore at once, the very inability absolves him from making restitution at that instant; just as also he is totally absolved from restitution if he is altogether unable." S. Th. 2.2. q. 63. a. 8 ad 2. "It must be said that someone ought to satisfy, from that which is proper to himself, rather his parents, or those from whom he accepted greater benefits; but one ought not recompense a benefactor from another's goods; which would happen if what he owes to one he restored to another; unless perhaps in a case of extreme necessity, in which someone could and ought even to take away another's goods, in order to help his father." — I. M. 1455, 1459; Lugo d. 20. n. 127, 128.

5. Seius owes to Philippus, from a contract of sale, a huge sum of money. The constituted day of payment has now elapsed, and Seius begins to pay the aforesaid sum by parts, saying to Philippus that he cannot now restore it all at once. But the reason is not that he himself is unable to make full restitution, but because from the aforesaid money he himself perceives an emolument. — Does he act rightly?

R. Negatively, unless the consent of Philippus accedes. For the constituted day of payment having elapsed, the obligation now urges of no longer retaining another's thing. Nor truly does the reason brought forward help, because he perceives an emolument from the money. For since that money is now owed to another, just as it is no longer lawful to retain it, so neither is it any longer lawful to perceive an emolument from it. Otherwise Seius could for this reason indefinitely defer the payment of the money, and since he now has the thing bought, whose fruits he himself now perceives, he would at the same time retain its price and perceive all its advantage, which certainly is against justice. If this reason of perceiving an emolument sufficed for deferring the restitution of money or of another alien thing, even a thief for the same motive could retain with himself at least for a time a notable sum of money, gradually restoring it by parts; which is altogether foreign to the truth. *Casus Consc. Bonon. Dioec.* year 1759, month of August, Case 3; I. M. 1132, 1455.

86. On Causes Excusing from Restitution

1. A steward, who repeatedly stole many things, and indeed notably, from a rich master, since he cannot restore without inconvenience, is admonished by the confessor to seek condonation from the master. But the steward, hoping that the wife of the master would be kinder, approaches her and generally asks that if he has consumed anything from the things of the master for his own utility, she would be willing to condone it; and she willingly assents.

Q. 1. What are the causes excusing from restitution? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1459 seqq. — To the 2nd. Since the Case is instituted concerning a steward who, although he suffers inconvenience in making restitution, is nevertheless not unable, the whole reason which will be able to excuse him from the burden of restitution must be drawn from the

validity of the condonation. But for this condonation to be valid, it is required that the person who condones the debt be of her own right, and have the faculty of giving, since the condonation of a debt is a certain species of donation, and so that she be owner of the thing which she intends to give. It is required besides that the remission be altogether free and voluntary, i.e., not violent, not extorted by fear and fraud; because fraud and fear, and whatever can bring some violence, removes the character of the free and voluntary.

Now in truth the first condition is lacking in the Case, because the steward stole many things, and indeed notably, from the master; but he did not obtain condonation from the master, but from his wife, who, not having ownership over those goods, did not have the right of condoning. The second condition also is lacking, because, if he did not extort this condonation by fraud and deceit, he nevertheless obtained it, although in good faith, from error and ignorance. For he did not manifest the true debt, but used that manner of speaking which would seem to insinuate that he was rather asking remission of those things which he could inadvertently have consumed with his family, than asking remission in the way fearful stewards are accustomed to ask. But this very thing ought to have been shown by the facility of the wife in remitting, which seemed to insinuate that she wished to exempt him rather from a scruple than from a grave debt. *Cas. Consc. Bonon. Dioec.* tom. 3, p. 116, year 1770, month of July, Case 3; I. M. 1460.

2. Petrus, a merchant, when his affairs were going badly, sought from his very rich brother Paulus as a loan the sum of 50,000 lire. Paulus, who loved his brother very much, willingly gave it; indeed, he sought no legal interest from it. Petrus trades with that money, and in the space of ten years recovers his whole patrimony. But Paulus, rejoicing over the prosperous affairs of his brother, never sought from him restitution of the money lent. Petrus dies first, and after a year Paulus dies. The son of Paulus, universal heir, then seeks from the sons of Petrus restitution of the said money; and, when he could obtain nothing, he has recourse to occult compensation.

Q. 1. What are the rights and obligations of heirs? — 2. What is occult compensation, and is it lawful? What is its distinction from legal compensation? — 3. What as to the Case?

R. To the 1st. As regards the rights of heirs, heirs succeed into the same rights of the testators. For they represent the person of the testator. But as regards obligations, as often as the testament was perfect and just, and not invalidated, the will of the deceased is most religiously to be guarded. That is to say, the wills of testators are like laws, from which it is lawful for the Prince alone to derogate for a just and necessary cause. Hence the heir is altogether held to fulfill legacies, whether pious or profane. Just; what if the work which the testator wished to be done is illicit? And if it is substantially illicit, e.g., for sustaining a Masonic sect, it will be as not written. But if it is illicit accidentally, e.g., for spectacles or public games which are prohibited in that city, it is unjust that this yield to the profit of the heirs, and therefore it must be converted to another work. — What if the will of the testator is irrational and useless? As an irrational and useless law is not to be observed, so also the irrational and useless will of the testator is not to be observed, e.g., if he ordered that he be buried in the most precious garments which he left. — Heirs are besides held to pay the debts of the deceased, namely those which really affect the inheritance accepted; and if there are several heirs, each one is held for that part by which he is heir, unless perhaps the testator, the legitimate portion of each being saved, ordered otherwise. Whence, if one afterward becomes unable to pay, the others

are not burdened. But if the thing owed was some indivisible thing, say a watch, or if the obligation is hypothecary or solidary, then for these indeed he is held to the creditor who possesses the thing or things obligated as pledge, or whom the creditor chooses; but if he pays more than his own part, he reclaims from the co-heirs, and if one is not solvent, this yields to the damage of all. — D'Annib. p. 2. n. 348, 365, 396; I. M. 972, 978, 1052.

To the 2nd. Occult compensation is that by which a creditor, in order to recover that which is owed to him, subtracts something from his debtor, or does not return what he himself owes to him. No one doubts that it is lawful, provided that 1. it be done with justice preserved, and so it is necessary that something truly already be owed, and that this debt be altogether certain. 2. That it be done without anyone's damage and injury, and so it must be done in the proper thing of the debtor, and one not liable to the right of another, and of the same kind, unless perhaps it cannot conveniently be done in a thing of this sort. For just as it is not lawful for the debtor to pay one thing for another, so also it is not lawful for the creditor to extort one thing for another. 3. That it be done from a just cause, namely if the creditor either cannot vindicate his thing in any way, or not except with grave inconvenience. But this, speaking per se, is slight, because only legal justice is inverted. — D'Annib. p. 2. n. 255; I. M. 1471 seqq.

Occult compensation is distinguished from legal compensation, which is the contribution of debt and credit with each other by the very power of law; and therefore by the law itself it removes or diminishes the debt, even if the creditor is unaware or unwilling, unless someone previously renounced compensation. But since this compensation is from the power of law, it has place only when the conditions of law have been verified. These are: 1. that each debt be of those things of which one can function in place of the other; 2. that each debt can equally be demanded; 3. that each debt is equally liquid, or can be liquidated immediately. — But compensation cannot be objected against one reclaiming a thing taken away from him by injury, or loaned for use, or deposited, or owed because of support, not liable to sequestration. — D'Annib. p. 2. n. 323; I. M. 966, 1471.

R. To the 3rd. The sons of Petrus seem to be held to nothing, and so the son of Paulus has recourse unjustly to occult compensation. For since the creditor, in the Case, was most closely joined by blood to the debtor, as a brother; since he first willingly gave the sum of money to his dearest brother placed in necessity, and sought no legal interest from it; nor did he ever desire it through very many years, even after the death of Petrus; and since, when Petrus had now recovered his own patrimony, when the occasion was very favorable for seeking back the money, Paulus expressed not a desire for his money, but only joy over the prosperity of his brother; it is altogether reasonably presumed either that Paulus in truth did not give that sum of money to Petrus as a loan, but simply gave it, or at least it is presumed that he remitted it. This is confirmed from L. *Procula* 26. *de Probation. et Praesumption.*: "Procula wished after the death of her brother to compensate, in an account with the heirs, a fideicommissum of a large quantity owed to her by her brother; but on the other side it was alleged that this had never been desired from the brother while he lived, since from various causes the account of Procula had often paid monies into the account of the brother. The Divine Commodus, when he took cognizance concerning that business, did not admit the compensation, as if the fideicommissum had tacitly been remitted to the brother." — I. M. 1460.

3. Arnaldus several times and in vain sought from Marianus ten gold coins owed to him. Meanwhile the daughter of Arnaldus is received into the house of Marianus, that she may

serve; and she, knowing the matter, approaches the confessor, asking whether she can satisfy the credit of her father by occult compensation from the goods of Marianus. The confessor responds that she can. — Does he respond rightly?

R. He would indeed have responded more rightly that she cannot. For the Doctors, permitting occult compensation, commonly speak of the creditor himself, not of another inserting himself into it. For the matter is full of danger, since the conditions for compensation are various, and the reasons of them depend very much upon the conscience of another. *Casus Consc. Bonon. Dioec.* tom. 4, p. 91, year 1779, month of December; I. M. 1473. But since there is question of the very daughter of Arnaldus, and of a case not very involved, as it is proposed, if the debt is truly certain, and its payment cannot otherwise be obtained, after the fact the confessor and the daughter of Arnaldus do not seem to be disturbed. For she did not usurp another's thing, but that which will be proper to her father, which must be rendered to the father at once, lest perhaps the father himself compensate himself again. I. M. 1472, 1473.

4. Lucas, a servant, from mere inadvertence, and notwithstanding his habitual diligence, broke a precious crystal vessel. The master, knowing the matter, subtracted the stipend of the whole year from him. Lucas, able to effect nothing so that he might recover the stipend, compensates himself secretly. — By right?

R. Lucas does not seem to be disturbed. For on account of the broken crystal vessel he is held to nothing; and so he can compensate himself secretly, since he cannot do this in any other way. He is indeed not held to repairing that damage either from the sentence of a judge, or from the obligation of conscience. For the former was not present, and the latter is not present, all theological fault being lacking. I. M. 1358, 1472, 1473; G. 575.

On the Eighth Precept of the Decalogue

87. Suspicion, Detraction, Whispering

1. Anastasius, greatly desiring to think and judge well of all, experiences on the contrary in himself a continual inclination to judging badly of others. And this is altogether vehement when evil indications appear, which, although absolutely they could be taken in a good sense, nevertheless he is inclined to take them in a bad sense from a certain judgment which spontaneously arises in his mind, namely that matters are not to be considered speculatively and in the abstract, but practically and in the concrete, not according to the possibility of the same matters, but according to the depraved nature of men.

Q. What as to the Case?

R. Anastasius does not seem to be accused of grave sin; since he does not form a rash judgment concerning persons, but only has some suspicion, which, with attention to the subjective disposition of Anastasius deliberately to think and judge well of all, is rather indeliberate than at least fully voluntary. Besides, the aforesaid suspicion of Anastasius in particular cases does not seem altogether rash, since it arises from those evil indications. Nor truly, speaking per se, is suspicion a mortal sin.

For "in those things which are mortal sins from their genus, imperfect movements are not mortal sins, but venial. For adultery is mortal, namely when the will is complete, but not when it is incomplete; for not every movement of concupiscence is a mortal sin. But judgment is twofold, concerning things and concerning persons. Judgment concerning things is always a mortal sin, say to say that giving alms is evil. But judgment concerning persons, although sometimes it is false, nevertheless is not always a sin, except when it is altogether rash.... But when from a slight matter a firm judgment proceeds in the heart, sometimes it is a mortal sin, because it is with contempt of neighbor; but suspicion is something imperfect in the genus of judgment, and therefore is an imperfect movement, and therefore it is not mortal from its genus; although if it is done from hatred, it will sometimes be mortal." S. Th. Quodl. 12. a. 34. But Anastasius is far from hatred. Therefore he is by no means to be disturbed as guilty of grave sin. — S. Th. 2.2. q. 60. a. 3; I. M. 1483.

Nevertheless that judgment of Anastasius, which spontaneously arises in his mind, is certainly not the right rule of judging, in doubt, concerning the malice of others. For from this very thing, that someone has an evil opinion concerning another without sufficient cause, he unduly contemns him, and consequently affects him with injury. But no one ought to contemn another, or inflict any harm whatever, without a sufficient compelling cause. And therefore where manifest indications do not appear concerning the malice of someone, we ought to hold him as good, by interpreting what is doubtful in the better part. But it would be otherwise if there were question of applying a remedy to some evil: for then, in order that the remedy be applied more safely, it is expedient that that which is worse be supposed, because a remedy which is efficacious against a greater evil is much more efficacious against a lesser evil. But to suppose is not determinately and definitively to judge evil concerning others. S. Th. 2.2. q. 60. a. 3, 4; I. M. 1485.

2. Aquilinus, in order often to excite the languishing conversation of friends, narrates the sayings and deeds of some persons, whence grave detraction against the reputation of others follows; but since he himself does not intend that, nor, as he himself says, does he narrate these things from an evil mind, he thinks himself at least immune from grave sin. But he has contracted so strong a habit of detracting from the reputation of others that sometimes he scarcely even adverts that the things which he reports can bring grave harm to others.

Q. What as to the Case?

R. Aquilinus is guilty of detraction at least in cause. For it is evident that he himself sufficiently knows the depraved habit contracted, which he ought to strive efficaciously to uproot. By reason of actual inadvertence he can sometimes be excused from actual grave fault. For detraction can easily be venial not only on account of lightness of matter, or slight damage inflicted on the neighbor, but also on account of defect of sufficient advertence, on account of the sudden impulse of passion.

"Sins of speech," says S. Th. 2.2. q. 73. a. 3, "have some lightness, insofar as they easily proceed from a slip of the tongue without great premeditation." But Aquilinus is not to be excused from grave sin from the fact that without the intention of harming others, but from mere lightness of mind, he gravely detracts from others. For it makes no difference that detraction is not directly intended; it suffices that it is implicitly willed, namely if those things are advertently said from which detraction arises.

3. Guido constantly speaks about Iulius, and constantly reports his slight defects, which he sometimes exaggerates, at one time adverting that what he says is not true, at another almost inadvertently from his very slippery loquacity. Nevertheless Guido thinks himself immune at least from mortal sin, because in truth he says and manifests only slight things, and this seems to him to be done by himself without a malicious mind. — Does Guido sin gravely?

R. It can easily happen that Guido sins gravely. For by this very fact, that Guido reflexively considers his manner of speaking, whence he thinks himself at least immune from grave sin, that Iulius, concerning whom he speaks so easily and freely, does not seem to be any common person whatever, but a person of some note, and to whom perhaps grave damage can thereby be brought. Wherefore, for rendering a definitive judgment, it is necessary that Guido expose the personal conditions of Iulius. For if grave harm is brought to Iulius as to reputation, or even as to temporal goods from that manner of speaking, there is no doubt that Guido sins gravely both against charity and against justice. That he himself does not speak thus from a malicious mind does not of itself excuse from grave sin, objectively speaking, just as it does not impede real grave damage. Therefore Guido perhaps could then be excused from grave sin, but only on account of his subjective ignorance and some good faith. Nevertheless, without doubt, if in truth he gravely injures the reputation of Iulius and brings him some other grave damage, he himself is placed in a grave illusion. G. 427, 428; I. M. 1487, 1488.

4. Menander, a servant, was dismissed by his master Balduinus because of a hidden theft. When Lord Martinus wished to take Menander as a servant in his house, he asks Balduinus whether Menander is honest and faithful. Balduinus then opens to him the reason on account of which he dismissed him.

Q. What as to the Case?

R. Balduinus could, without detraction, manifest the theft of Menander to Martinus. There was present a grave and sufficient reason for such manifestation, namely the grave damage of Martinus to be averted. In truth, the grave defects of others and grave sins can generally be manifested to some person, if this is done from a grave reason of averting grave damage, whether temporal or spiritual, from some community, or family, or private person. For then those whose defects and sins are revealed no longer have a right that they not be uncovered with the damage of others. Others also have a right, and a prevailing one, to avert damage of this sort from themselves; to whose right in the Case the right to one's own reputation yields, for this right cannot exist with the injury of others.

Hence also a maidservant, e.g., who has left a master depraved in morals and dangerous to maids, can warn another maid who, ignorant of the matter and in good faith, is arranging to devote her services to the same master. Hence also generally someone can reveal the defects and sins of another by reason of grave damage of his own or of another to be impeded, although in this way a marriage is impeded, or the obtaining of an inheritance, or the obtaining of another benefice. — I. M. 1494; G. 426, 427.

5. Alexius, whatever evil he hears concerning others, in familiar conversation with his friends and companions, is accustomed at once to report to others. Hence it happens that discords and dissensions arise among friends and companions, and since no one dares to manifest to others the cause of his own displeasure, Alexius easily enjoys the friendship and confidence of all, and dominates all despotically. Alexius, adverting his own malice, often confesses that he has detracted from the reputation of his neighbor, nevertheless adding that the matter was of little importance, and was done rather for the sake of laughter and jest than with a malicious mind. Whence, easily receiving absolution, he frequently receives the sacraments of penance and the Eucharist.

Q. What as to the Case?

R. Alexius is to be numbered among whisperers, an abominable race of men, since secretly they sow discords among brothers and friends. How many evils whisperers cause in families, in colleges, in seminaries, in religious communities, cannot easily be said. A whisperer and a double-tongued man is accursed; for he will disturb many who have peace. Eccli. 28:15. But Alexius, speaking per se, does not sufficiently confess his sin, or rather his continual sins. For the sin is not light, but grave, although perhaps the matter of detraction is light, by reason, namely, of the depraved effect gravely evil and harmful, i.e., of the grave displeasure engendered in the souls of his friends and brothers against friends and brothers, and of grave dissension and discord arisen among them. Alexius perhaps deceives himself in this so grave and delicate matter; but a prudent confessor ought not be content with so superficial a confession. Nor truly does Alexius sufficiently explain his sin by saying that he detracted from the reputation of his neighbor. For whispering is of a diverse species and graver than detraction. S. Th. 2.2. q. 74. a. 2; I. M. 1486.

88. Mental Restriction, Secret

1. Magdalena, a wife, is accused by her own husband concerning adultery altogether hidden, so that he can institute divorce before a judge and enter another marriage. Hence Magdalena asks her confessor whether she is held to confess her sin in court. The confessor responds that she can deny that she committed adultery.

Q. What as to the Case?

R. "It must be said that concerning this a distinction must be made. For if the adultery is altogether hidden, she ought not to confess her sin in court, nor ought an oath concerning speaking the truth to be demanded from her, because hidden things are reserved to the divine judgment alone; according to that saying, 1 Cor. 4:5: *Do not judge before the time, until the Lord comes, who will illuminate the hidden things of darkness.* But when infamy proceeds from adultery, or some evident signs appear which can cause vehement suspicion, or when it has been half-proved, then an oath concerning speaking the truth ought to be demanded from her, and she herself is held to confess the truth." S. Th. Quodl. 5. a. 16. Therefore, since in the Case there is question of adultery altogether hidden, Magdalena can, by mental restriction, deny it, saying, I did not commit adultery, and understanding, which I am held to confess in court. For the response is of itself to be understood according to the question made. But a question made by a judge concerning adultery is evidently a question concerning adultery about which he himself can ask and render sentence, and which consequently the guilty woman is held to confess in court. I. M. 1530, 1535; G. 418, 419.

2. Galenus, a most skilled physician, knew a most powerful herb for checking the flow of blood. He communicated the secret only to Laelius, his dearest friend, under the latter's promise of keeping the same secret. Galenus having died, Laelius, who alone knows the secret, would like to manifest the secret for public utility; and he proposes the doubt to his confessor.

Q. Can Laelius, in the Case, manifest the secret?

R. It seems that Laelius can manifest the aforesaid secret. The reason is that from that manifestation no damage at all can come to Galenus, indeed good can come, namely praise and honor for him. Nor truly can damage of this sort come to any other, since Laelius alone knows the secret. Whence, communication of that secret having been made to him by Galenus, he himself is now the absolute owner of this secret. Besides, the secret is altogether useful to the common good of others. Wherefore it would rather seem to be against charity not to communicate a salutary remedy to all. This is confirmed by the authority of St. Thomas. For the Angelic Doctor, Quodl. 12. a. 21, raises the question: "Whether one receiving the teaching of some experiment under an oath not to communicate it is held to observe the oath"; and he responds: "One thing must be said here simply, and another in the Case. Speaking simply, he is not held, but he acted badly by swearing. An oath loses force not only when the oath is illicit, but also when he swears to worse things; because an obligating oath ought to have judgment, justice, and truth. But even if I sometimes swear something which it is lawful for me not to do, say, not to go to church, nevertheless it is not lawful to swear (forever), because although it is lawful for me for some time to do or omit this good, which is to go to church, nevertheless it is not lawful for me to interpose an oath and to harden my soul toward not doing some good, because this is to act against the Holy Spirit. And therefore an oath against everything which is of the genus of good things is illicit and not to be observed. Nevertheless, in the Case, he is held to observe it, say if that man or another sufficient physician were present and were

prepared to cure and to use that experiment for the bodily health of others." Scavini, ed. 12, Milan 1874, l. 2. n. 229, speaking of an oath of keeping a secret concerning the art of making some medicine, of healing some infirmities, says: "Notwithstanding the oath, you are held from charity to reveal it, if otherwise someone would undergo grave danger of death, or if the art would therefore die with him, with harm to the commonwealth, and the sick cannot otherwise be healed, since an oath is not for damage."

3. Eustachius, under the strictest promise of secrecy, manifested to Hilarius that Amalia, his daughter, was spurious. Moreover Hilarius in his own mind had proposed to marry Amalia; but, her condition having been learned, he altogether changed his mind and married another.

Q. What as to the Case?

R. Hilarius used his own right, nor did he act illicitly in any way. A secret is, as it were, another's thing, and consequently of itself it is not lawful to explore or extort it. For that would be, as it were, to snatch his own thing from the owner, although someone proposes to himself not to reveal the secret to others. But after someone has in whatever way naturally learned a secret, that knowledge has now been made his own, and he is not prohibited from using it without any unjust damage to another. Hence, if the secret is some invention of art or science, I can use it, if utility follows for me and no damage follows for another; indeed also, according to Lessius, if some damage to another follows, because that knowledge is mine. If the secret regards some fact, someone can then use it, namely by doing those things to which he already had a right before the knowledge was accepted; for after the knowledge has been accepted, he does not lose the right, as, e.g., if someone seeks a benefice or office which he has learned to be vacant, or buys a field in which he has learned that a treasure lies hidden. Less. l. 2. c. 12. n. 131.

4. Sempronius had written his wife as heir in usufruct, with the burden added that she furnish support to Caius and to Titia, his mother; but in ownership he had named Caius himself as heir, and if he should die without offspring, he had substituted the sons of his niece Bertha, from his sister, who, the testament excluded, by law would have succeeded to the inheritance of her maternal uncle. After the death of the testator, Bertha pressed in civil judgment for the nullity of the testament, since he had called an adulterine son to the inheritance, namely Caius himself, as she said, born from Titia at a time when marriage with his wife was standing. But truly, since the arguments deduced for proving this did not exceed the limit of mere conjecture, and Bertha had declared that in the episcopal Chancery and in the baptismal parish archive documents existed by which the true status of Caius, as she contended, would be placed in clear light, the presiding judge asked the bishop that he exhibit the mentioned documents.

Q. Could the bishop manifest and hand over the commemorated documents?

R. Negatively, as is evident from the Response of the S. C. EE. et RR. 25 Feb. 1842, Bizzarri *Collectan.* ed. 1855, p. 101. But the reason is that it is especially of the public good that the things which are committed to some person established in some ministry by reason of office, it be unlawful to publish and manifest; for otherwise it would be done with the faith owed to public authority, especially of the Church; for no one would any longer be found who would entrust himself to the same. And thus the Civil Laws themselves exempt Advocates, Physicians, Surgeons, and other professionals from giving

testimony concerning those things which become known to them by reason of profession. Nor truly could the bishop or pastor have exhibited the aforesaid documents, entrusted to his faith, from the fact that Bertha already knew the tenor of the documents from the rumor of the crowd. For if truth is obligated to guarding a secret, it cannot confirm public report and rumor, often doubtful and uncertain, by its assent and its affirmation, and render it undoubted and certain. For then it would already be done against the law of secrecy. And although perhaps Bertha knew the matter certainly from the corrupted faith of officials, and so from a shameful and unjust fact, nevertheless to continue and confirm baseness and injustice is altogether illicit. Nor truly is he to be heard in court who alleges his own baseness. Whence Bertha could acquire no right from this to the exhibition of the aforesaid documents.

5. Lucianus, by a fortuitous event, received letters directed to Lucius. Recognizing the handwriting of Rufinus, by whom many damages had already been inflicted on him, and fearing lest those letters contain something against him, whence Lucius, his friend and a powerful man, could be turned away from his friendship, he at once opens and reads the letters, and in them he in fact finds several calumnies asserted against him. Hence, saying nothing about the letters received, by opportune means he forestalls the mind of Lucius, and easily frees himself from every evil machination of Rufinus.

Q. What as to the Case?

R. Lucianus licitly read the letters in the Case. For he did this not with the intention of prejudicing the right of another, but with the intention of averting from himself an unjust burden threatening him, judging probably, indeed morally certainly, that the aforesaid letters had been written to his prejudice. But it is lawful to read another's letters, just as it is lawful to manifest a natural secret, for forestalling unjust damage to be inflicted on oneself or on another. Elbel 616; I. M. 1545.

But what if Lucianus had deceitfully stolen the letters beforehand: could he still use them for removing from himself the grave danger of damage which he first learned from the letters themselves was threatening him, or which he otherwise knows to threaten him? Generally it is not lawful to use another's letters deceitfully stolen, especially if damage to that other follows from it. The reason is that no one can continue in sin and in injustice. But if someone uses that knowledge, unjustly acquired, for driving away from himself grave and unjust damage, that is not illicit. It is lawful in those very circumstances in which someone licitly reveals another's sin and reads another's letters. For just as someone would now licitly acquire that knowledge and licitly use it, so now he can licitly use knowledge already acquired, although its acquisition was unjust in the beginning. I. M. 1494, 1495, 1545; G. 429, 430, 440-442.

On the Precepts of the Church

89. On Tithes, on the Institution of Feasts

1. The law of abolition of tithes having been proclaimed, Ambrosius the pastor remains uncertain whether he can receive the pension assigned to him by the Government as compensation; and insofar as he can receive this pension, whether he can at the same time receive the tithes of those parishioners who still voluntarily offer them.

Q. What as to the Case?

R. Ambrosius seems able to receive the pension assigned by the Government, by title of compensation by reason of damage on account of the abolition of tithes made by that Government. Likewise Ambrosius seems able still to receive the tithes voluntarily offered to him by good parishioners who still wish to fulfill this obligation. For on account of the abolition of tithes they are not exempted from the obligation of paying tithes; nor consequently does the pastor lose the right of receiving them, if they are offered. This is confirmed from Resp. S. Poenit. 1860: "They can, according to the oracle of the Most Holy Lord, by title of mere compensation for damage inflicted on them by the Government on account of the impeded exaction of tithes, receive the pensions assigned by the Government; first having been made, either by the Ordinary of the place in common, or by any one of the said pastors or ecclesiastics in particular, a protestation that by a perception of this sort the abolition of tithes made by the Government is in no way recognized or approved; and the debtors of the same tithes having been cautiously admonished that they are not, by force of the law passed by the Government, freed from the burden of paying the same." Scav. l. 4. n. 237; I. M. 1548.

2. A certain bishop, in order to foster the devotion and piety of his people, in the visitation of the diocese constituted in individual cities and towns a feast day to be celebrated in honor of the Saint, Patron of the place. But he established two feast days to be celebrated in the whole diocese, namely in honor of the Saint, Patron of the whole diocese, and in honor of the Saint, titular of the Cathedral Church.

Q. What as to the Case?

R. Bishops can institute some feast in honor of Saints, not Blesseds, at least with the consent of clergy and people, which is judged sufficiently present if they do not contradict, from C. *Conquestus* 5. *de Feriis*. Nevertheless Urban VIII, C. *Universa*, 15 Sept. 1641, admonishes bishops not to be easily induced to instituting new feasts, but that they should strive to abstain. Lig. l. 3. n. 266. Moreover by the aforesaid [Constitution] of Bl. Urban VIII it is conceded that the feast be celebrated "of one of the more principal Patrons in any Kingdom or Province, and likewise of another more principal one in any city, town, or village, where it happens that these Patrons are had and venerated." *Enchir. Mor.* 1551. But today it is not lawful to choose Patrons except Saints, not Blesseds, and except with the consent of the people and clergy and bishop, and except the cause be brought forward and examined in the S. R. C. Therefore it will be lawful for the bishop, with the consent of clergy and people, to add

the feast of the Patron, not of the Titular, or of one of the principal Patrons, both of the diocese and of each place. S. R. C. 23 Jun. 1703, *Concordiae*; Ferraris v. *Festa* n. 2 seqq., 141; I. M. 1550.

90. Annual Confession, Paschal Communion

1. Antoninus in paschal time confesses his sins, although he had made sacramental confession only in the paschal time of the preceding year. In the present confession he confesses only venial sins; then he accuses a doubtful mortal sin, and forgets a certain grave sin.

Q. Is he held to confess again?

Resp. 1. Antoninus satisfied the precept of annual confession, confession having been made in the paschal time of the preceding and following year. For there are various opinions concerning the year to be computed as to this precept. Among others this also is present, that the year is computed from Easter to Easter, because this is considered the ecclesiastical year, and more conformable to the custom of the Church. The faithful, especially those who confess their sins only once in a year, are accustomed to make confession in paschal time, by a custom approved by Trent, sess. 14, c. 5, so that they may prepare themselves for paschal communion. I. M. 1558.

2. Antoninus does not seem to be held to repeating confession. For, 1. by confession of venial sins he probably satisfied the precept of annual confession. For although the common opinion holds that by this precept the Church imposes only the confession of mortal sins, nevertheless there are grave authors who judge that this precept also embraces the confession of venials only, if someone has committed no grave sin. S. Th. 4. d. 16. q. 2. a. 2; d. 17. q. 3. a. 1; Suppl. q. 6. a. 3; q. 8. a. 5 ad 4; Bened. XIV, Inst. 18. n. 2-4. Besides, he also probably satisfied the precept of annual confession by confessing a doubtful mortal sin. For many and grave authors teach that an obligation is present of confessing doubtful sins. "Here truly," says Lugo, *de Sacr. poenit*. d. 15. n. 169, "he has already once fulfilled the precept of the Church and of Christ in the same year; for the precept of Christ, although it is not of confessing venials, nevertheless is of confessing not only certain grave sins, but also doubtful ones. Therefore that precept has been fulfilled by confessing those doubtful sins which he then had." And La-Croix, l. 6. p. 2. n. 2041: "He who at least once during the year has confessed a doubtful mortal sin with venials satisfies, and is not held to confess again, although afterward he falls into a certain mortal sin; because there was an obligation of confessing that doubtful sin. Therefore he placed matter of the precept." Cf. S. Alph. l. 6. n. 473 seqq. But that Antoninus forgot a grave sin does not impede that he has already sufficiently satisfied the precept of the Church of annual confession. Wherefore he is indeed held to accuse that sin in the next confession, but he is not held to a repeated confession, so that satisfaction may be made to the precept of annual confession of the present year, since he has already satisfied this precept. I. M. 1554, 1556.

2. Hedvigis, a woman lying sick with a grave illness, received sacred Viaticum on Palm Sunday. But, since after a few days she almost entirely recovered, she asks her confessor whether she is held to go out of the house, so that she may satisfy the precept of paschal communion.

3. Emporius, a merchant, since by reason of commerce he is found outside his own parish during paschal time, asks his confessor whether he can receive paschal communion in the place where he presently is, or whether he ought to return to his own parish.

Q. What as to the Cases?

R. Hedvigis does not seem to be obligated to repeated communion. For although she received communion by way of Viaticum, nevertheless she truly received communion in paschal time, and, as is supposed, she received it from the pastor or his delegate, and in a public manner; whence she adequately satisfied the end of the law, which is public edification and submission to one's proper pastor. G. 453.

Emporius is not held to return to his own parish unless he can do so easily. He can then receive communion in the place where he is. For pilgrims satisfy this precept by receiving communion where they are staying during paschal time. I. M. 1566; G. 454.

91. On Abstinence and Fasting

1. Cornelius, staying at Rome for the sake of a pious pilgrimage to the thresholds of the Apostles, eats meats on Saturdays. For he asked a confessor, who responded that he could do that very thing, as in his own country, in which abstinence is not observed on Saturdays, because he is a pilgrim. For the law of abstinence on Saturday is not universal per se, but particular to places.

Q. 1. What is the obligation of the law of abstinence? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1571 seqq. — To the 2nd. Cornelius seems to be held to observing abstinence at Rome on Saturdays. This is drawn first from the custom itself which prevails at Rome; for pilgrims are accustomed either to seek this faculty, or to observe abstinence as others do. And very recently, on the occasion of the jubilee feast of the Supreme Pontiff, an indult was conceded to pilgrims by the same Supreme Pontiff, namely that they could at Rome follow the customs of their fatherlands as to abstinence. Besides, this law of Saturday abstinence seems per se rather universal than particular to places. Benedict XIV, *de Syn.* l. 1. c. 5. n. 2, 3, 5, has these things: "Already from the fourth century the Saturday day was numbered in the Roman Church among days of hunger.... Most, though not all, Western Churches indeed followed the use of the Roman Church.... But we admit this as probable, namely that discipline of the Roman Church of this sort never penetrated Spain.... Moreover, because no one willingly sustains for long a yoke from which he sees others everywhere withdrawn, from this variety of discipline it finally happened that the custom of consecrating the Saturday day by fasting gradually failed in the whole West.... Hence the opinion commonly prevailed among the doctors that it is lawful on Saturday to eat meats wherever their use has not been forbidden by received custom." From these things it is drawn that the law per se was general in the Western Church, from the use of the Roman Church and from general custom, but that in particular places it was derogated by particular customs. Hence Clemens Marc., Inst. Mor. v. 1. n. 1244, says: "The ecclesiastical precept of abstaining from meats urges under grave obligation, besides days of fast, 1. on the sixth feria of any week in the whole Church.... 2. on Saturday, in most places of the Latin Church by customary law. Excepted, besides Greece, are the kingdoms of Spain. Likewise, in some dioceses of Gaul and Belgium, the Saturdays occurring between the Nativity of the Lord and the Purification of the Blessed

Virgin Mary are excepted." And this can be confirmed from the Rescript of Pius IX in the year 1868, by which he refused to concede for America a general and perpetual dispensation, but ordered the individual bishops, the reasons having been set forth, to ask for a temporary Indult.

Finally, the preceding resolution and doctrine can be confirmed from the following Resolution of the Holy Office, 13 March 1727, *Collect.* S. C. de P. F. n. 2050: "1. Is it lawful for Greeks staying at Rome, at least for avoiding scandal, to eat meats on Saturday? — 2. Is it lawful for Greeks to have Latins in their service, and on Saturday to give them meats to eat? — 3. Is it lawful for Greeks on the aforesaid day to present meats to be eaten to Latin boys and youths who are not assigned to their service? — R. To the 1st. It is not lawful, and the Instruction of Clement VIII is to be observed, in which it is thus had: The use of meats on Saturday is to be tolerated among the Greeks, where it can be done without scandal, but in their own places and among them only. — To the 2nd and 3rd. Latin servants of Greeks are held to observe the Latin rite, and therefore Greeks sin by placing forbidden foods before servants at a time at which they ought to abstain from them."

2. Xaverius, a missionary in places of infidels, remains very uncertain whether neoconverts to the faith are held by the law of fasting, and so whether he himself ought to manifest it to them. For he fears lest the recent faithful transgress it, and an occasion be given to others by which they are turned away from the faith.

Q. 1. What is the obligation of the law of fasting? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1578 seqq. — To the 2nd. Positive ecclesiastical law concerning abstinence and concerning fasting absolutely obligates, even in mission places, infidels already converted to the faith. But with attention to the quality of regions and persons, there can more easily be place for dispensation. Wherefore ecclesiastical law concerning abstinence and concerning fasting must be notified by the missionary as obligatory under mortal sin. Nevertheless the missionary can at the same time explain the causes on account of which the faithful are excused from the observance of the precepts. But with attention to the infirmity and necessity of persons, the missionary will be able to seek due dispensation from the Holy See, or due faculty, so that he himself can dispense in particular cases, if he does not already have it. But let him note that the faculty of dispensing in abstinence and fasts is conceded to missionaries in such a way that they cannot use it except in particular cases and for just causes. S. C. de P. F. 12 Sept. 1645; 2 Aug. 1781; S. O. 23 March 1656; *Collectan.* S. C. de P. F. n. 2046, 2047, 2059, 2080.

3. Basilius, a monk, does not observe the fast on the vigil of St. John the Baptist. For he says it is a particular fast of the diocese prescribed by the bishop, which regulars are not held to observe. Does he act rightly?

R. Basilius is deceived, and, prescinding from other reasons already set forth above, Cf. n. 16, par. 5, p. 37, he is altogether held to the fast on the aforesaid day, because that fast is not a particular precept in that diocese, but is to be observed from universal law still prevailing in that diocese. And indeed the doctors commonly count such a fast among others to be observed from universal law. And thus Tamburini, tr. 4, *de Quarto Ecclesiae praecepto*, c. 9, n. 8, among other vigils on which the faithful are obligated to fast, also counts the vigil of St. John the Baptist. The same is had in La-Croix, l. 3. p. 2. n. 1273.

And it is confirmed from the Brief of Urban VIII, *Cum evenire*, 13 Oct. 1638, *Decr. Auth.* S. R. C. n. 657, by which it is established that if the feast of Corpus Christi falls on the vigil of St. John the Baptist, the fast is to be made on the day before the feast of Corpus Christi.

4. Carolus, staying in a place where, from received custom, coots are permitted on days of abstinence, asks his confessor whether on days of Lenten fast, when meats are conceded by Indult, he can eat meats and coot at the same time.

Q. 1. What is the law of mixing foods? — 2. What as to the Case?

R. To the 1st. Cf. I. M. 1607, 1626. To the 2nd. Carolus does not seem able to eat meats and coot at the same time. For in the place in which he lives, coot is held as fish, and therefore is permitted on days of abstinence. And thus from the Declaration of the Sacred Penitentiary, 16 Jan. 1834, marine shellfish, although commonly they are not called fish, nor are they fish, nevertheless one cannot eat them together with meats. For the same reason snails and frogs, although they are not fish, since they are eaten in the manner of fish, are prohibited when the use of meats is prohibited, and then by indult are permitted. G. 489; Scav. l. 1. n. 404. Therefore the same seems to be said concerning coots, when they are eaten in the manner of fish. Otherwise it would follow that, in that place, on a day of abstinence and fast within the year coots are eaten because they are eaten in the manner of fish; but on another day of Lenten fast, meats being permitted by Indult, coots are eaten together with meats because they are eaten in the manner of meats. Moreover, if in that place they are held and eaten as fish, it follows that they are always to be held and eaten as fish, and not at the pleasure of each one.

But is it lawful in the aforesaid place to eat coot on a day of abstinence and fast? If truly a proven custom is present there, as is asserted in the Case, it does not seem illicit. But the custom must be called proven which has been received among pious and upright men. Bened. XIV, *de Syn.* l. 11. c. 5. n. 10-12. But prescinding from custom, is it lawful per se to eat coot on days of abstinence? There are not lacking those who affirm this, and they rely 1. on the fact that it is an aquatic bird; 2. on the Indult conceded to the Religious of the Order of Minims of St. Francis of Paola, S. C. Reg. Disc. 22 Feb. 1804. For it does not seem that coot meats were conceded to the said Religious, to whom meats are altogether forbidden. But, the doubt standing: "Whether the aquatic bird whose name is coot is to be reckoned among fish, and it is lawful to feed upon it on those days on which meats are forbidden"; and likewise "the perplexity standing by which their consciences (of the religious) were troubled concerning this matter," whence the same religious "offered a supplication to Pius VII that it be conceded to them to be able to use that food freely"; the Most Holy One, the narrated things being true, benignly assented for the grace according to the things sought, the Constitutions of the Order and all other things notwithstanding: namely, he conceded the grace for all security of conscience and as a precaution, in that doubt, as not rarely happens. Whence at least it is not certain concerning the prohibition of coot. But the more common opinion holds that coot is prohibited per se. The reason is that coot, which is an aquatic hen, has meats similar to the meats of terrestrial birds, which are prohibited; it has nutritive force, as other bird meats do, whence meats of this sort are also more conformed to the human body. S. Th. 2.2. q. 147. a. 8; I. M. 1572.

5. Aurelius, on days of fasting, when the Indult for meats has been conceded, eats fish together with meat broth, meats together with fish broth, fish together with a pastry seasoned with

small bits of meat, meats together with a dumpling seasoned with small fish dried by salt and crushed into little pieces, fish together with meat gelatin. — Does he act rightly?

R. Aurelius does not seem to be disturbed from the fact that he eats fish together with meat broth, or meats with fish broth. For broth, whether of meat or of fish, is not meat or fish; and so it cannot be said that he mixes lawful and unlawful dishes, that he uses meats themselves and fish at the same time.

But Aurelius cannot eat fish together with pastry seasoned with small bits of meat, nor meats together with a dumpling seasoned with little fish dried by salt and crushed into little pieces. For in that way, on the contrary, he truly eats meats and fish together. That that meat has been cut into small bits, and that the fish have been crushed into little pieces, does not therefore make them cease truly to be meats and fish. Nor truly, in the Case, do they properly stand in the manner of seasoning, but they truly stand in the manner of another substance which enters into the confection of that pastry and dumpling. And if that pastry and dumpling were made within wholly from meat, or wholly from fish, would it not certainly be meat and fish? and would he who ate them together with fish or with meat not eat meats and fish at the same time? It is certainly the same if the pastry were made only partially and from a smaller part, or by far a smaller part, from meats, and the dumpling from fish cut into little pieces, or minced meat were made.

Nor likewise can Aurelius eat fish with gelatin. For gelatin is true meat, and retains the whole substance of meat, although accidentally as to form it has been changed. Together with fish nothing is lawful except broth from meat and seasonings from meat, just as together with meat broth from fish or seasonings from fish are lawful. Moreover gelatin has neither the character of broth nor the character of seasoning, but is a true dish by itself; and in the Case it certainly is constituted not from fish, but from meat; and so it is an unlawful dish together with fish on a day of fast.

6. "Bertoldus, a father of a family, for a just cause, is by name dispensed from the law of abstinence for the time of the occurring Lent. This being known, his wife orders the maidservant to prepare meats indeed for the husband, but fasting foods for herself, the children, and the other members of the household. What is this? exclaims Bertoldus, muttering. I am dispensed, and I wish the whole family to use my privilege. But the anxious wife asks the confessor whether she can comply.

Q. Can in fact the whole family feed upon meats in the aforesaid case?

R. Affirmatively. It is evident from Resp. Poenit. 16 Jan. 1834. For it had thus been asked: Whether, when a father of a family, who is dispensed from the law of abstinence from meats during Lent, cannot or does not wish foods of each kind to be prepared, his children or household members can eat meats? The Sacred Penitentiary responded: That persons who are in the power of the father of a family, to whom legitimate faculty of eating meats has been granted, can be permitted to use the foods indulged to the father of the family, with the condition added of not mixing lawful and forbidden dishes, and of one meal in the day, for those who are held to fast." Thus Fr. Gury, 497.

But from the Responses of the same Sacred Penitentiary something altogether different must be said in the Case, and one must stand not by the will of Bertoldus, but by the interpretation of his wife.

For neither the wife, nor the children, nor the other household members of Bertoldus are in truth placed in inability to observe abstinence; but, on the contrary, they can observe it well.

In truth, when the same Sacred Penitentiary was asked whether fathers of families, when there is in the family someone dispensed from the law of abstinence from meats, can extend the dispensation indiscriminately to all from the family, it responded, 10 Jan. 1834: "Infirmity, and any other reasonable impediment whatever, by counsel of each physician, but not gluttony, avarice, or generally an economy of expenses, can exempt from the precept of abstinence on days of hunger." And to the question: "Whether the reason on account of which sons under paternal power can use forbidden foods presented by the father of the family is their physical or moral inability to observe the precept, or rather the indult which the father of the family enjoys"; it responded, 29 Dec. 1862: The reason of the permission concerning which there is speech in the proposed question is not the indult of the father of the family, but the inability in which the sons under paternal power are placed of observing the precept." Cf. *Enchir. Mor.* 1616.

7. Xaverius, a Spaniard, is staying at Rome to conduct his various businesses; and there he must remain for four or five months, returning to Spain after the aforesaid time. Meanwhile he eats meats, and also eggs and dairy products, on days of abstinence and fast. For he has the Bull of the Crusade, and at Rome he is only a pilgrim.

Q. 1. What is the Bull of the Crusade? — 2. What are the graces and indults of the aforesaid Bull? — 3. Does Xaverius act rightly?

R. To the 1st. The Crusade is a Bull first conceded to the Spaniards, on account of the assault on infidels, in the year 1509 by Julius II, and was then amplified by other Pontiffs, but especially by Gregory XIII. This was also conceded by St. Pius V in the year 1569 to the Neapolitans for repelling pirates. This Bull, from its prorogation repeated many times by the Supreme Pontiffs, still prevails, although that first reason of concession has ceased, both in Spain and in the ancient kingdom of the Sicilies; and alms are expended for other pious causes.

To the 2nd. 1. The graces and indults of the aforesaid Bull, which are conceded to all the Christian faithful who dwell in the whole Spanish territory, or who come into it within the year from the publication of the Bull, who distribute alms for pious ends, and accept the Summary of the same Bull, Cf. the Summary of the same Bull, title and paragraph *First*, are the following:

1. Several Indulgences are conceded, both partial and plenary, which are related in the same Summary.

2. It is conceded that twice, namely once in life and once in death, they can choose any confessor approved by the Ordinary, and receive from him in the forum of conscience absolution from any sins and censures reserved to any Ordinary, and also to the Apostolic See, except the crime of heresy, and as to ecclesiastics except the censure of which the Constitution of Benedict XIV *Sacramentum Poenitentiae* treats, a salutary penance having been imposed, satisfaction having been made to the party, and other things enjoined which by law are to be enjoined. Cf. the cited Summary, par. *So that*.

3. It is conceded that by the same confessor simple vows can be commuted into other pious works and some alms, except vows of chastity, religion, and ultramarine pilgrimage. Cf. the cited Summary, par. *So that*.

4. It is conceded to the aforesaid Christian faithful that even in time of Interdict, provided that they themselves did not give cause to it, or that it did not stand by them that it not be removed, and faculty having been had for this from the Commissary General, even for an hour before day begins to dawn and for an hour after noon, within the said year, they can celebrate, if they are priests, or cause Masses and other divine offices to be celebrated in their own presence, and in the presence of their families and household members and blood-relatives, with doors closed, bells not rung, and excommunicates and specially interdicted persons excluded; and receive the Eucharist and other sacraments, except on Easter Day, both in churches in which, during the Interdict, other divine offices were in any way permitted to be celebrated, and in a private Oratory deputed only for divine worship, visited and designated by the Ordinary; and they can be present at divine services during the time of Interdict. Nevertheless on him who has used a private Oratory for the aforesaid use, it is imposed that as often as he has done this, he pour forth some prayers to God for the prosperity of the Church, the extirpation of heresies, the propagation of the faith, and the peace and concord of Christian Princes. Likewise, that bodies of the dead, unless they died bound by the bond of excommunication, can be buried with moderate funeral pomp at the same time of Interdict. Cf. the cited Summary, par. *Likewise to those named above*.

5. It is conceded that, during the aforesaid year from the publication of the Bull, and while dwelling in the aforesaid Spanish territory, not outside it, they can eat meats, by counsel of each physician, if necessity, or weak health of body, or any other cause should demand it, during the fasts of the whole year, even Lenten ones, and at the same time at will eggs and dairy products, so that those who are held to fast satisfy the fast by eating meats and by observing in the rest the law of fasting. In this indult are included religious of any Military Order; but from it are excepted Patriarchs, Archbishops, Bishops, inferior Prelates, regular ecclesiastical persons, namely priests, and secular priests, unless they are now sixty years of age; and outside Lenten time all these can use the same Indult as to eggs and dairy products. Cf. cited Summary, par. *And likewise during*. Wherefore the aforesaid excepted persons, namely Patriarchs, Archbishops, etc., are excepted from the Indult only of dairy products and only during Lenten time, but not from eating meats by counsel of each physician and from a just cause.

And here it must be noted: 1. From ancient custom and from the general concession of Pius VI, it is permitted in Spain to eat meats on Saturdays. Cf. Bened. XIV, *de Syn.* l. 11. c. 5.

2. Besides the Bull of the Crusade, another Indult is present in Spain, namely the Indult of Dairy Products, by which the Commissary of the Bull of the Crusade extends the same indult of dairy products, conceded to the rest of the Christian faithful in the Bull of the Crusade, to the persons excepted in the same Bull. But these persons must accept the Summary of the same Indult of dairy products and give the taxed alms. Nevertheless in this extension the exception

of Holy Week is placed by the Commissary; and so that extension is restricted only to the preceding Lenten time.

3. Likewise another indult is present in Spain, namely the Indult of Meats, by which it is conceded to all Christian faithful of each sex, secular and ecclesiastical, even religious, except those who are bound to abstinence by vow, that they can eat wholesome meats, and so also eggs and dairy products, on all days, except Ash Wednesday, the sixth ferias of Lent, the fourth, fifth, sixth ferias and Saturday of Holy Week, the vigils of the Nativity of the Lord, Pentecost, the Assumption of the Blessed Virgin Mary, and of the Holy Apostles Peter and Paul; and except also, for those who are of the clergy, or for priests, the second and third ferias of Holy Week. But the Summary of the Indult must be received, and the taxed alms must be paid, and at the same time the Bull of the Crusade must be received; and for ecclesiastics the Indult of Dairy Products must also be received, namely so that they can use them during Lenten time, if they have not yet completed their sixtieth year of age. Cf. the Summary of the same Indult. — Therefore on those excepted days, by force of the Indult of Meats, it is not lawful to eat meats, or eggs and dairy products by force of the Bull of the Crusade and by force of the Indult of Dairy Products, as they are permitted in that Bull and in this Indult. Cf. here par. 5, *It is conceded*, and par. 2, *Besides*.

4. The poor, in place of alms, are held only to pour forth some prayers according to the intention of the Supreme Pontiff, so that they may enjoy the Indult of Meats, and, as it seems, also the Bull of the Crusade. For in the Brief of Pius IX, 20 April 1866, the burden of a double alms is imposed only on the rich.

5. Someone can twice in any year take up the Summary of the Bull of the Crusade, the taxed alms being given for each one, and he will then be able to enjoy the aforesaid graces twice in the year. Cf. cited Summary, par. *Likewise it is conceded similarly*.

6. Other graces are conferred on the Commissary General himself, namely of dispensing from irregularity contracted because of a violated censure, and from other certain irregularities arising from delict; of revalidating the titles of benefices received with the same irregularity, but not of all; of celebration of Mass one hour before dawn and one hour after noon; of making composition as to restitution; of dispensing over the hidden impediment of affinity from illicit intercourse. Cf. Summary *And to us and the Commissary General* seqq.; — M. E. v. 1. p. 2. p. 181; p. 3. p. 88; v. 8. p. 1. p. 275 seqq.

To the 3rd. Xaverius the Spaniard acts illicitly at Rome by eating meats, eggs, and dairy products on prohibited days of abstinence and fast. For the Bull of the Crusade is not a personal indult, but local, as is expressly provided in the Summary itself of the Bull. And it is confirmed from Resp. S. O. 22 June 1897, *Acta S. Sed.* v. 30. p. 286 seq. The same would have to be said of Xaverius if he were Neapolitan, as is also clearly asserted in the Instruction of the same Indult recently published again. Cf. cited *Monitore* v. 8. p. 1. p. 275 seqq.

8. Ignatius, a Spaniard, took up only the Bull of the Crusade, without also taking up the Indult of Meats, and he uses it by eating meats and dairy products. — Does he act rightly?

R. The Bull of the Crusade, as also the Indult of Dairy Products, is valid, and one can use it although he does not have the Indult of Meats. But this Indult is not valid for those who can give the taxed alms and who cannot use it if they do not have the Bull of the Crusade, and, if they are ecclesiastics, the Indult of Dairy Products, as is openly evident from the Summary of the Indult of Meats. Wherefore Ignatius does not seem to be disturbed, provided nevertheless that he does not transgress the limits of the concession of the Bull of the Crusade. For by the Bull of the Crusade of 4 Dec. 1877 it is conceded to the Christian faithful that "both on Lenten days and on the other days of that year on which the use of meats, eggs, and dairy products is prohibited, they may freely and licitly be able to use and feed upon the same eggs and dairy products, and also meats, nevertheless by counsel of each physician, if necessity, or infirm bodily health, or any other indigence has required it, the law of fasting being observed, of course, in the rest." Here it appears that a certain restriction is placed for meats, of necessity, infirm health, another indigence, and counsel of each physician; but no restriction of necessity or of another cause is placed for eggs and dairy products; the law of fasting being observed in the rest, namely of one meal with the morning little piece and the evening collation.

9. Paschalis, a fifty-year-old Neapolitan priest, by force of the Bull of the Crusade, and by force of the Response of the Sacred Penitentiary, 16 Jan. 1834, Cf. *Enchir. Mor.* 1572, on days of fasting uses melted lard by way of seasoning also in the evening little refection. Likewise he feeds upon eggs and dairy products even in Holy Week. — Does he act rightly?

R. In the cited Response of the Sacred Penitentiary it is indeed said that those who are held to fasting can licitly use seasonings permitted in the Indult also in the evening refection. Nevertheless in the same Response a restriction is placed, namely: provided that in the Indult there has not been placed the restriction that those seasonings can be employed at the one meal. Moreover this restriction is had in C. *Catholicae Ecclesiae* of Pius VI, 21 Nov. 1777, by which the use of eggs and dairy products is conceded to the Neapolitan Provinces at only one meal in the day. Likewise in the same Constitution there is conceded the faculty, for all days of Lent, of using eggs and dairy products, even in Holy Week, but from this last concession are excepted Archbishops, Bishops, Prelates, religious, and secular priests, unless they have completed their sixtieth year of age. But to priests, whether regular or secular, who have now completed the aforesaid age, the use of the aforesaid foods is conceded even on Palm Sunday and through Holy Week. Nor truly have these things been revoked, but rather confirmed through another Constitution, *Quamvis Pastoralis*, 20 Nov. 1778. Wherefore Paschalis does not act rightly as to either matter.

It is confirmed from the more recent Instruction which is had in M. E. v. 8. p. 1. p. 275 seqq., par. III. These things as to the present matter: "As to the privilege of using eggs, dairy products, and lard, which is used by way of seasoning, it is very well known: 1. That the faithful can avail themselves of such privilege on all days of the year, without any exception, provided that they dwell in the territory of the provinces of Naples; so that if they go out from that territory and go to dwell elsewhere, even for a brief time, they will not be able to enjoy this concession; but on the days of Lent, except Sundays, as also on all other days of fast, the use of the said foods is not permitted to them except only once a day, that is, at the one meal, whenever, either by reason of age or of another excusing cause, they do not remain exempt from fasting as to the one meal. 2. That priests and professed religious of either sex will at present also be able to enjoy such privilege, except Holy Week for those

who have not completed the age of 60 years, beginning from Palm Sunday; however, those religious who by their own Institute are obligated to perpetual Lent will on no day of the year be able to avail themselves of such concession."

But it must here be noted that from the Declaration of the Commissary of the same Bull of the Crusade, His Eminence Cardinal Zurlo, one can use swine fat for seasoning, of whatever species it may be, *lardo*, *lardello*, *sugna*; likewise from the Declaration of His Eminence Archbishop Philippus Iudicis Caracciolo it is lawful also to use the fat of a young bull, *rognonata*, namely by way of seasoning. M. E. v. 9. p. 1. p. 257; p. 2. p. 18. Cf. *Enchir. Morale* 1626, and in the same place *on Seasonings on days of abstinence and fasting*, 1572.

On the Particular Obligations of Laymen

92. On the Provincial Prefect, on Judges, on the Mayor

1. To Ferdinandus, a most pious man, prefect of a province, there was committed the execution of the Decree that religious families be expelled from that same province over which he presides. But if he refused to execute it, he himself would have to resign from office, and another prefect, altogether wicked, would be substituted in his place, who certainly will immediately, and more harshly, execute that Decree.

Q. Can Ferdinandus execute the aforesaid Decree, by commanding that even by military force, where there is need, religious be expelled from their own houses?

R. Negatively. For 1. it does not seem that, in circumstances of this sort, the Church yields its right, of the free existence of religious Orders and of ecclesiastical immunity. 2. It indeed does not appear how a most pious man can command the execution of so iniquitous and unjust a Decree without public scandal. 3. If that reason, which is the principal one, of resigning the office, were valid for a prefect on whom the burden of execution of the Decree falls, then it would also have to be said that the supreme minister of the Government himself, issuing such a Decree, would be excused, if otherwise he would have to yield his office. For if that mandate of execution is iniquitous, unjust, and scandalous, much more is the Decree itself iniquitous, unjust, and scandalous. Moreover there is no one who will ever excuse the supreme minister of the Government by that reason, that otherwise he would have to yield his office. Otherwise, now by similar Decrees he could with impunity attack any other right of the Church, which directly yields to public damage of Religion: for any minister who refused to sign Decrees of this sort would certainly be forced to resign his office. But that another is not lacking who would perform this evil and worse cannot render lawful that which is intrinsically illicit, by reason of scandal, by reason of hatred against Religion, by reason of injury against the legitimate liberty of the Church, the Church indeed being reasonably unwilling and contradicting.

2. Festus, a pastor, on account of a grave and urgent cause of death, joined in marriage Caius and Sempronia, concubinaries, although they had not previously contracted civil marriage before the civil magistrate. Festus is accused, as guilty of a violated law, before a judge, an excellent man and fervent Catholic. Hence the judge, very doubtful, approaches his confessor, asking from him whether he ought to resign his office, or whether he can render a condemnatory sentence against the pastor.

Q. What as to the Case?

R. The judge must first take care in every way to absolve the pastor in the case, and declare him innocent. For the pastor acted legitimately per se. Indeed he acted legitimately even with that law of precedence of civil marriage standing. For a law is subject to legitimate epikeia, and in the Case legitimate epikeia appears. If in no way can the judge render a sentence for the pastor, nor can he himself decline the judgment, he does not then seem to be held to yield his office. For although there is question of a law altogether harsh and unjust, nevertheless the matter is not intrinsically evil, and,

where it cannot be done otherwise, it is tolerated; and so neither is it intrinsically evil to commit it to execution. Nor likewise is it intrinsically evil to condemn the pastor to some monetary fine, e.g., in the Case, precisely on account of the law not observed, prescinding from the aforesaid epikeia which civil law and the practice of the forum do not admit. For then one altogether innocent is not condemned, at least according to the appearance and form of the judgment, but one guilty of a violated law, namely according to the presumption of the external forum and according to the things brought forward and proved. But the pastor, on account of a greater harm both of the judge and of the community, if another wicked judge would have to be substituted, is reasonably judged to yield his own right as to the aforesaid fine to be paid. Wherefore in the Case the grave harm of the judge, who otherwise would have to resign office, and at the same time the grave harm of the community, which would certainly be present if a wicked judge were substituted, seems to prevail. But the judge must take care in the Case to decree as small a fine as possible, and in the preliminary considerations of the sentence to remove any insinuation injurious against the pastor, so that both every scandal may be removed, and the sentence itself may sufficiently be understood to yield only to the rigor of the law, which does not admit legitimate epikeia from elsewhere. — I. M. 19.

3. Augustinus and Dominicus, confessors, without any scruple absolve all judges who render a sentence of divorce, according to the more recent laws, in matrimonial causes. For they say that here there is no question of a thing intrinsically illicit, but only positively prohibited by the Church; and positive laws do not obligate with great inconvenience. Besides, the judge does nothing else except merely declare the law, which is an act indifferent of itself. Wherefore the cooperation of the judge toward the sin of the parties is merely material, which is lawful for a grave cause. Besides, the judge can well admonish the parties either privately, or even in the Considerations of the sentence, concerning the real indissolubility of marriage. Whence the aforesaid sentence will be nothing except a certain mere permission and denial of civil action; and in truth it regards nothing except the civil effects of marriage; and it in no way touches the sacrament of marriage itself, but only the civil contract of marriage.

Q. What as to the Case?

R. Augustinus and Dominicus are deceived. For there is question of a thing intrinsically illicit, by natural and divine right, and not only by ecclesiastical right. For divorce from the bond of matrimony, according to the more recent laws, is opposed to natural and divine right. Besides, the judge rendering sentence does not merely declare the law, but declares authoritatively and practically, so that from that sen- tence civil rights and civil obligations flow, which, speaking per se, have force also in the forum of conscience, namely when that sentence is legitimate and just. Therefore the cooperation of the judge toward the aforesaid divorce in the Case is not merely material, but formal; nor remote, but proximate, since it itself is what gives the parties the faculty of divorce. But that the judge admonishes the parties privately, or even in the Considerations of the following sentence, does not change the intrinsic nature of that sentence, but rather shows its illicitness more. A sentence of this sort is not a mere permission and denial of civil action, since that sentence makes a civil right or civil power, namely according to that iniquitous law of divorce, of contracting other marriages, so that he who is bound by this second marriage must be held by the judge himself, not as an adulterer, but as one legitimately bound by civil marriage. Lastly, it is altogether most false that that sentence regards only the civil effects of marriage, since otherwise the law of divorce would have been

altogether useless; for those effects were already governed by the law of civil marriage. Therefore, as that law of divorce regards divorce itself from the bond, so consequently does the sentence of divorce delivered by the judge by force of that law. It is one thing indeed that that sentence regards only civil effects, which is false; another, that the civil effects, where that law now prevails, depend on that sentence, so that unless the sentence of divorce is first obtained, there cannot be had separation of bodies and goods. Lastly, it is plain that, since the aforesaid law and sentence touches divorce from the bond itself, in reality they do not touch only the civil contract of marriage, but most truly the sacrament of marriage itself.

And indeed, if what is asserted were true, namely that that sentence of divorce regards only the civil effects of marriage, then either the Holy Office or the Sacred Penitentiary, from whom it has been sought very often, would have permitted at least spouses to invoke that sentence of civil divorce, in the case of avoiding very grave damage; and, on the contrary, the response has always been: It is not lawful. Cf. Ferraris, *Supplementum*, v. *Divortium*, Commentary on the Sentence of Divorce to be rendered by a lay judge as to the bond of matrimony.

4. Armandus and Armanda, spouses, since they could not obtain a sentence of divorce in Italy because of the absence of such a law in Italy, go to France; there they first obtain naturalization, or civil status, and then in court they obtain a sentence of divorce. Having returned to Italy, they ask in court that the judge in Italy confirm the sentence rendered in France. — Can the aforesaid judge in Italy confirm that French sentence?

R. In the negative. In no way can the judge in Italy furnish this, either by natural law or by positive civil law. Concerning natural law, cf. here n. 3.

As regards civil law, it is easily proved, because from C. I. 56, 148, one bound by marriage cannot contract another marriage, and marriage ceases only by the death of the spouse. But one independent State cannot impose upon another State, likewise independent, its own law permitting an act prohibited in that State, when that act regards natural and public honesty, good morals, and public order, as the indissolubility of marriage is. Hence it is that whether Armandus and Armanda are Italians, or are also French, that sentence of divorce pronounced by a French judge cannot be held ratified by an Italian judge. It is added in the Case that there is open fraud against the law, and no one's own fraud ought to patronize him.

5. The ship *William Brown*, directed from the port of Liverpool to Philadelphia, suffered shipwreck in the month of June in the year 1841. Many sailors and many travelers were saved in a small boat. But since the sea was stormy, in order to lighten the boat, which otherwise they feared would sink, the sailors cast the travelers into the sea. The matter then having been brought before a judge, the accused were acquitted in court, since otherwise all would certainly have perished.

It is asked: What must be judged concerning the sentence of the judge in the Case?

R. It was certainly in no way lawful for the sailors to cast the travelers into the sea. For this in fact was nothing else than to kill innocent men by private authority. But the fact that all otherwise would have perished does not make their homicide honorable, since the death of all would then have

happened only by a natural misfortune, which certainly they could not prevent by the death of some. Therefore the sentence of the judge, wholly absolving the sailors as not guilty of homicide, was not legitimate. In the Case the judge ought indeed to have condemned the sailors as true homicides, but to a punishment milder than the ordinary one, on account of the grave circumstance of the shipwreck of all, which in the case certainly attenuated the offense. It would certainly have been wholly another thing if, in that danger, lest all should perish, some should have cast themselves into the sea, lest the boat be sunk by the multitude. For this "is not directly to kill oneself, but to expose oneself to danger, so as to be overcome by the weight of the body pressed down by the waves." Thus Lessius writes about one who permits to another the plank occupied by himself, *de Iust. et Iur.* l. 2, c. 9, d. 6, n. 31: "In a shipwreck," he says, "you can permit to another a plank not yet occupied by you, indeed even one occupied, and commit yourself to the waves, even if there is no hope of escaping, as Victoria and Peter Navarrus teach; for this is not directly to kill oneself, but to expose oneself to danger, so as to be overcome by the weight of the body pressed down by the waves. Here note that he who first occupied the thing in such an event is not held to admit another, but can hinder him, unless it is sufficient for both; if they occupied it at the same time, it must be decided by lot, unless one wishes voluntarily to yield to the other." Kenrick, *Theol. Mor.*, Mechlin, 1890, tr. 3, c. 9, nn. 111, 134.

6. Gerulfas, a mayor, assists at the civil marriage of two betrothed persons who both are bound by a previous marriage, but have already been separated from their own spouses by sentence of divorce according to the law in force. Gerulfas contends that he himself can licitly do this, because his assistance is merely a certain civil ceremony.

It is asked: What as to the Case?

R. Gerulfas acts wholly illicitly. For his presence is not a merely civil ceremony; but it is a certain solemnity of law, furnishing civil authority, in the particular Case set forth, to legal adultery, or to adultery contracted according to the norm of civil laws. This is further established from the Responses of the S. C. and of the S. Penitentiary. Cf. *Enchir. Mor.* 19. And, since the mayor, in the aforesaid Case, not only posits an intrinsically illicit act, but also one unjust against the prior legitimate wife and legitimate children, he is held to compensation for damages if the adulterer refuses to compensate them. For by that unjust act the mayor effectively influences those damages.

Nor indeed does it avail to object that civil marriage in the Case is not intrinsically illicit; whence it could at least be permitted in some very grave and very rare case. For civil marriage, since it is not true marriage, of itself does not hinder a man from fulfilling the obligations of the prior legitimate marriage. This is not true; for in order that in fact a man, for example, may return after a civil marriage to his legitimate wife, the consent of the other party is necessary. Therefore that civil marriage is an act of itself and by its nature legally sanctioning adultery against ecclesiastical and legitimate marriage. — Of a mayor of this sort it cannot be said, as is prescribed by the S. Penitentiary on 20 March 1855, that he does nothing against the sanctity of marriage and the necessity of contracting it before the Church. Of a mayor of this sort it cannot be said, as is held from the same S. Penitentiary, that he removes scandal, since on the contrary he confirms it by his own act.

7. Torquatus, a mayor, a fervent Catholic, assists at the civil marriage of Tullius and Tullia, whom he knows neither to have contracted canonical marriage previously, nor to wish to contract it

afterwards. Torquatus cannot deny his assistance; for otherwise he will be liable both to a grave fine and to deposition from office.

It is asked: What as to the Case?

R. Torquatus, in the Case, can assist at the aforesaid marriage. For to the aforesaid case the S. Penitentiary, 20 March 1855, responded: "That it can be tolerated, provided that civil officials in drawing up acts of this sort intend to exercise a merely civil ceremony, and do nothing or advise nothing against the sanctity of marriage and the necessity of contracting it before the Church; rather, that they exhort them to contract it before the Church itself; having before their eyes the most holy laws of our Religion, and the letters of Benedict XIV, *Redditae sunt nobis*, concerning which, for removing scandal, they should admonish the contracting parties. But as regards cases in which it appears that the faithful, approaching the civil ceremony, are ill-disposed, and will not celebrate before the Church the marriage which regularly ought to have been premised, but will remain in concubinage under the pretext of a civil contract, the officials themselves are to be directed according to the rules handed down by approved authors, and especially by St. Alphonsus, l. 2, tr. 3, c. 2, dub. 5, art. 3, concerning cooperation." Moreover in the aforesaid letters Benedict XIV teaches that, when Catholics present themselves to the civil magistrate, they exercise a merely civil act, and that marriage must be celebrated before a Catholic minister and two witnesses; otherwise they will never be legitimate spouses, nor ever legitimate offspring.

Now St. Alphonsus teaches this concerning cooperation in the place cited: "It must be said that that cooperation is formal which concurs with the evil will of another and cannot be without sin; but that is material which concurs only with the evil action of another, apart from the intention of the cooperator. And this is licit when the action of itself is good and indifferent, and when there is present a just cause proportionate to the gravity of the sin of the other and to the proximity of the concurrence which is furnished for the execution of the sin." Cf. I. M. v. 1, 440. Moreover Torquatus the mayor does not cooperate formally in the case with the depraved will of Tullius and Tullia, either by intention, as is supposed, or by action; for the act of the mayor is, in the Case, a merely civil ceremony, furnishing of itself force to a marriage contracted or to be contracted, as to civil effects. For by civil law those things can be ordered and administered which marriages of themselves bring in the civil order, the marriage itself being left untouched, which among Christians is governed by the laws of the Church. But that Tullius and Tullia have neither previously contracted marriage, nor wish afterwards to contract marriage, is only from their depraved will. The cooperation of the mayor is merely material, by an act, as appears, not only indifferent, but of itself honorable and licit, which the aforesaid betrothed persons abuse only from their own malice. Nor indeed is a just and proportionate cause lacking, such as certainly is both the grave fine to which the mayor would otherwise be subjected, and his deposition from office, which would redound to the grave private harm of the mayor himself and to the common harm of society itself; because otherwise honorable and religious public officials would, to the public harm, be replaced by depraved and unjust officials.

93. On Advocates and Notaries

1. Hipparcus, an advocate, undertook the defense of the case of a certain noble man, who, besides the ordinary honorarium, promised him besides a thousand lire, if he should obtain victory.

Hipparcus without delay defended the case and in fact obtained victory with great applause.

It is asked: Can Hipparcus licitly receive, besides the ordinary honorarium, the thousand lire promised to him?

R. In the affirmative. For first, that extraordinary stipend is not demanded by the advocate, but is promised to him spontaneously. But no one is held to refuse what is spontaneously offered to him by others. Besides, since the advocate obtained the case with great applause, he must have applied extraordinary study and diligence; or at least he must be an advocate of no ordinary talent and name, and under this head he could also have received and demanded a non-ordinary stipend in comparison with other common advocates. Indeed, even for the victory alone he could have received and demanded a stipend beyond the customary one, even prescinding from his extraordinary study and diligence, from his name and reputation. The reason is, first, because if, with all circumstances considered, success had appeared very doubtful, so that equality between hope and fear was preserved, then the contract would have been aleatory in part. Gury observes this well, n. 9. A further reason is that, once victory has been obtained, the advocate furnishes to his client a thing most useful and estimable by price. Wherefore it is not true what the same Gury has in the place cited, namely that the advocate "cannot demand a stipend beyond the customary one, even for the case in which he is to obtain the cause. For victory adds nothing to his labor and cares, nor does he receive payment for victory, but for study and diligence. Therefore what he receives for victory obtained he receives unjustly, and he must restore it." Certainly victory adds much to the work and labor of the advocate. It is victory which makes his work and labor truly useful and most estimable by price; victory is intimately connected with the defense itself. I. M. 40.

2. Homobonus, a Catholic notary, is compelled by reason of his office, under penalty of prison, to draw up the deed of sale and purchase of a certain house and small garden annexed, formerly the Convent of the Capuchin Fathers. A certain Tiburtius bought the house and garden from the State Domain, and now sells the aforesaid Convent to a certain Curtius. Homobonus anxiously asks his confessor whether he can draw up an act of this sort.

It is asked: What as to the Case?

R. It seems that Homobonus can draw up the aforesaid act. For certainly the matter, on the part of the notary himself, is not intrinsically evil; since Tiburtius and Curtius can very well seek due pardon in this matter, if they wish, from the Apostolic See. Besides, there is not question of a direct spoliation of the Church; since indeed the aforesaid goods, already usurped by the Government, have been sold. Rather, there is question of the mere transmission of the same goods from one possessor to another; and so that act of the notary is not as if consummating and perfecting the unjust spoliation, which has already been perfected; nor does he in any way confirm or increase it by transmission of possession, just as also the notary refusing to draw up the act does not remove or weaken it; for there will not be lacking another wicked notary who will draw up the act. Lastly, if there is still any difficulty, certainly in the Case the presumed consent of the Church is not lacking. For if, in a similar case, as regards the goods of private persons, the reasonably presumed consent of the owner is not lacking on account of the grave private harm to the notary and the grave injury to society, much more will the presumed consent of the Church not be lacking in the Case. It is certainly expedient to seek this explicitly, on account of public edification. But it is easily granted on

account of the reasons already brought forward. — Cf. Gennari, *Consultaz. Morali* etc., p. 1, Cons. 16; I. M. 19.

3. Rutilius, a notary, clearly notices that in the contract of sale of a certain house the true price is not declared by the contracting parties, but a lesser one, namely so that they may pay less tax. Rutilius completes the deed and enters the aforesaid price in it.

It is asked: What as to the Case?

R. Rutilius does not seem to be disturbed. For he himself is not placed in charge of taxes, but is a public official appointed for drawing up acts. Besides, the contracting parties themselves probably do not sin against justice. For the act to be drawn up is only for confirming the contract and furnishing security for the thing in case of eviction, or of another judicial suit. Wherefore there is no obligation of conscience to declare the true price by force of that act to be drawn up. Nor indeed is there present an obligation, by force of the imposed tax, to declare spontaneously the true price of the thing, since the practice now is that taxes are not paid unless they are demanded. Nevertheless, there is an obligation to pay the fine, if the matter is detected, and not to tell a lie. — G. v. 1, nn. 744–756; v. 2, n. 23; I. M. v. 1, n. 232.

94. On Witnesses and on the Accused

1. Barbantius, a priest of most unimpaired reputation, visiting on a certain occasion Armanda, a married woman of excellent reputation, sinned with her. By a fortuitous chance Melchior, a man of corrupt morals, saw them; he immediately reported the matter to Armanda's husband, and then testified to the same in court, with great scandal of the city.

It is asked: What as to the Case?

R. Fr. Gury raises the question: Is a witness held to reveal an altogether occult crime? and he responds, n. 19: "More probably in the negative by Common Law, if the witness is wholly certain that the crime is known to himself alone; because for condemning the accused two witnesses are necessarily required. Hence the axiom: one witness, no witness. But otherwise one must speak according to French Law, or another similar law, by which one witness can suffice for the condemnation of the accused, and nothing else is required from the jurors except that they assert that they have an intimate conviction of the fact, without their needing to prove their sentence."

But from the fact that the jurors are not held to prove their sentence, and that it suffices that they have an intimate conviction of the fact, it does not follow that a witness is held, or even is able, to reveal an altogether occult crime. Indeed rather the contrary follows. For jurors do not pronounce their sentence independently of the trial, but after they have been present in court for the whole discussion of the case and the examination of witnesses; whence the crime is already supposed by that very fact to be publicized, at least half-proven, or certainly at least producing great suspicion of itself, and indeed from knowledge of facts already public in themselves. Wherefore from the sentence of jurors, to be pronounced according to intimate conviction, nothing indeed is drawn for that resolution, but rather the contrary. Nor indeed does that other thing prove anything better, namely that by more recent Law one witness suffices; for one thing is that one witness can make full proof

even in court, another thing, altogether diverse, that therefore a witness can also reveal an altogether occult crime. There is no necessity for such an interpretation, which, since of itself it is not consonant with Natural Law, consequently is not to be asserted without a manifest declaration of the law itself. Cf. I. M. 70. And in the proposed case and in similar ones, the very grave disadvantages of this opinion easily appear.

Therefore it does not seem that Melchior is held, indeed even that he can, reveal that most occult crime either to the husband of Armanda, with so great harm and infamy of Armanda herself and of Barbantius; or even to the judge, with so great public scandal. Nor indeed in the Case is there question of a crime impending and to be avoided, and to be prevented in the future; for, as is clear from the exposition of the Case, that offense was committed wholly in passing, nor is there any indication of future danger, which otherwise would have to be met by other means altogether honorable and useful.

2. "Alexius promises by oath to Marcus that he will never manifest to anyone either the homicide which, while he saw and was not seen, Marcus had secretly perpetrated, or the theft which, an agreement having been made concerning the keeping of secrecy, Marcus had confided to his ear.

It is asked: Can Alexius, summoned by the judge, give testimony?

R. A promise supervening upon knowledge of a secret known from elsewhere does not oblige to secrecy in those cases in which, the promise being excluded, one would be obliged to manifest the secret. The matter becomes clear by an example. You have caught Peter in the very act of crime. The public report of the crime having spread, or half-proof of the crime already having been had, the judge calls you and legitimately asks what is known to you concerning an offense of this sort. There is no doubt that you ought to affirm that it is established concerning that offense, and you would sin gravely if you denied it. Therefore the very same thing will be of right, even if you promised, indeed even swore, that you would keep that offense secret forever; indeed even if you swore that you would not betray it even to the judge, because a promise, even one confirmed by oath, cannot bind anyone to anything illicit; but it is illicit not to obey a judge legitimately asking; therefore, the promise notwithstanding, rashly fortified by oath, you must manifest the offense, in order that you may obey. Certainly faith even sworn, supervening upon knowledge already had of a thing, cannot prevent either the judge from examining witnesses about the offense, or witnesses from deposing about the offense before the judge legitimately examining them, and by privative right, especially since this obligation of deposing arises as soon as knowledge of the offense is had....

Since these things are so, you see that our Alexius, who, with the religion of an oath interposed, had promised Marcus in the species of the Case that he would never manifest to anyone the homicide which Marcus himself had perpetrated while Alexius was watching, could not so bind himself that, when legitimately summoned by the judge, he ought or could conceal the homicide.... And apply this manner of speaking to the case also in which Marcus had called Alexius as a companion of the homicide, pledge of secrecy having been given and accepted with an oath; because a secret of this sort is not properly committed, but would be contained within the mere bounds of a promise, since Alexius himself had received knowledge of the matter not from communication made to him by Marcus, but from the fact with his own eyes....

A secret is then truly said to be committed when we cannot obtain secret knowledge of the thing from elsewhere than from the free manifestation of the thing which another makes to us, depositing the thing in our trust, so to speak, under this inviolable law, that, deposited forever in the chest of the heart, pressed under deep silence, it be guarded; by which law the obligation of secrecy increases to such a degree that not even in cases in which otherwise you would be bound ought you or can you manifest it, unless the manifestation is for avoiding some harm of the commonwealth, or even of some private person, as the Angelic Master teaches, 2.2, q. 70, a. 1, ad 2....

Now since the theft of which there is question in the species of the Case does not pertain to that kind of things which, as soon as they have come to our knowledge, we are immediately held to manifest: for I suppose that it pertains neither to the harm of the commonwealth nor to the harm of anyone else, if it is retained occult (the matter will so happen if you suppose, for example, that a horse taken by theft has perished, and that Marcus is unable to pay, or that he has been induced by the counsel of Alexius to restore the horse); it follows from the unshaken principle of St. Thomas that Alexius, asked by the judge whether he knows anything about the theft of Marcus, can and ought freely to answer that he knows nothing about it; lest, if he affirms that he knows, he break the faith which by natural law he is compelled to keep intact and safe toward Marcus." Ithur., Cas. 37, nn. 8–11.

Thus indeed, if there is question of a theft committed in passing by some person and with the circumstances set forth. But, practically speaking, in the proposed Case the matter would have to be weighed seriously; since there is question of Marcus as at once a homicide and a thief. Wherefore it may well be that Marcus is a thief by profession, and is disposed to continue thefts with danger also of another homicide; and in such a case, notwithstanding the committed secret, since at least a most grave harm to private persons impending in the future is verified, he would absolutely have to be denounced to the judge, which otherwise the same Ithur. then affirms in the following numbers. Cf. n. 32.

Besides, in the proposed Case, since Alexius has already been summoned by the judge, and the judge asks him both about the homicide and about the theft, it seems that in truth both crimes of Marcus, not only the homicide but also the theft, have already been spread by public report. Moreover the same Ithur. afterwards, n. 24, gives these warnings as regards theft committed to another under the law of secrecy: "But I speak of a secret which can be guarded without sin, and which cannot be disclosed without injury to natural right; and in cases of this sort of urgent necessity I persist in stoutly defending that one ought to conduct himself with the judge just as if he did not know what he does indeed know, but under that inviolable law of the committed secret, that he himself knows it, but no one besides him." Moreover when the matter is spread abroad and publicly known, it has already ceased to be secret; and therefore an obligation of secrecy can no longer be given; for since that obligation is an obligation toward a secret, it perseveres only so long as the thing remains secret or occult. — Cf. I. M. v. 1, n. 1536 seqq.

3. Albert having died without necessary heirs, two of his nephews were claiming the whole inheritance. But behold Laelius produces a holograph testament, by which the whole inheritance of Albert is to be divided between himself and his brother Narcissus. Hence a suit arises between Laelius and the nephews of Albert, who assert that the testament is false. Narcissus, knowing that his brother had in truth made a false testament, approaches a confessor, asking from him whether he can deny it in court, since he has been cited in it and,

an oath having been interposed, he is compelled to tell the truth; but once it is manifested, there is grave danger that his brother, and perhaps even he himself, will be condemned to most grave penalties besides the public infamy which certainly will result from it.

It is asked: What as to the Case?

R. The Case certainly, practically, is not without grave difficulty. But since there is question of a civil case and not of a criminal case, although this latter may afterwards take place; since there is question of grave harm to the neighbor impending and to be inflicted, and of an offense to be consummated, Narcissus certainly cannot deny the truth and affirm falsity, especially with an oath interposed. Wherefore, that he may free himself from grave difficulty of fact, let him persuade his brother to compose the matter amicably with the nephews of Albert, asking them to be willing to desist from the prosecution of the case before the tribunal, and by yielding the whole inheritance at once to those to whom it belongs, under any specious pretext, lest he defame himself.

4. Tiburtius, a public robber of the roads, who committed many thefts and homicides, was condemned to prison for thirty years. Mauritius, his intimate friend, persuades him to flight; indeed he supplies to him a file and a chisel, so that he can break the bars of the window and leap out of it into the public road, where Mauritius, with a gun, observing by night the outcome of the matter, is ready to defend Tiburtius against the guards of the prison. The matter succeeded altogether well, and the two friends wander free through the Roman Campagna.

It is asked: What as to the Case?

R. That it is licit for the accused to flee, if he obtains a good opportunity, is admitted almost commonly. For all penalties are in fact established by law and decreed by the judge in such a way that they are to be inflicted by ministers of justice. Wherefore an accused person cannot be condemned who, the right of another remaining uninjured, withdraws himself, provided however that he does not employ violence and does not disturb public order. Moreover, although in the case there is no question of the penalty of death, nevertheless there is question of a most grave penalty. Since no one is understood willingly to suffer a penalty of this sort, the accused sins not only not by fleeing, but even by breaking the prison and by using deceit and moderate force, by which he may consult for himself, without a lie and without grave harm to others. Wherefore as regards Tiburtius, speaking of itself, he does not seem to be disturbed for fleeing from prison and therefore breaking the bars of the window.

Nevertheless, the same does not seem to be said of Mauritius persuading flight and supplying the instruments necessary for it. If there were question of another accused person, Mauritius also would not have to be disturbed, from the general doctrine that, if flight is licit for the accused, consequently it is licit for others to advise him to do what is licit for him, and to furnish assistance to one using his own right. But since in the Case there is question of a public robber of the roads, whose flight will certainly be pernicious to the public good, it is certainly not licit for Mauritius to persuade flight, and much less to supply the instruments for it. But what Mauritius does, namely that with a gun in the public road he observes the outcome of the matter, ready to defend Tiburtius against the guards of

the prison, is wholly illicit, since neither is it licit for Tiburtius himself to inflict violence upon the legitimate ministers of justice, and to kill or wound them. St. Alphonsus, l. 4, nn. 281–283.

95. On the Physician

Marcus and Marcellinus, brothers, the one growing blind and the other somewhat deaf, consult Fulberius the physician for an entire year, with no profit, but with great expense. Both brothers complain about this matter to Fulberius, but Fulberius replies that the progress of the cure was altogether great, since he prevented the infirmity from increasing. Besides, he says, there is no other remedy for either, for a perfect cure, except to attempt a surgical operation for both.

It is asked: 1.º What must be judged concerning Fulberius? — 2.º Can Marcus and Marcellinus subject themselves to that surgical operation?

R. To the 1st: Fulberius indeed is not to be disturbed because of the multiplied consultations and consequently because of the honorarium received, if in fact he prevented the infirmity from increasing. For there is no doubt that there are infirmities wholly incurable by human remedies. Therefore if Fulberius, since he truly could not expel the infirmity, prevented its progress and increase, he did not effect a useless cure, but on the contrary a very useful one. But unless Fulberius rightly knows the infirmity, and also knows remedies useful for curing it, it is necessary that he send the sick persons to a more skilled physician. And he is wholly held to do this especially as regards that surgical operation, unless he himself is truly skilled in operations of this sort.

To the 2nd: In order that a useful response be given to Marcus and Marcellinus, it is necessary that they themselves ask Fulberius about the outcome of that operation. If Fulberius is truly skilled, if the outcome of that operation will certainly be profitable, if at least that operation can be performed without danger of greater harm, then certainly there is no difficulty, and Marcus and Marcellinus, if they wish, can subject themselves to that surgical operation. But if the good outcome of such an operation is scarcely probable, or although probability of a good outcome is not lacking, nevertheless danger is present, as in fact not rarely happens, that Marcus after the operation remain wholly blind and Marcellinus wholly deaf, then indeed it would not be prudent to subject oneself to an operation of this sort.

96. On Workmen

1. Titius, a carpenter, very often ceases from daily labor, because labor greatly displeases him, although he has strong powers. Hence he often indulges in leisure, and is content to sustain himself very sparingly; and, when he has nothing by which he may be sustained, he prefers asking alms along the public ways, or stealing the things of others, to labor.

It is asked: What as to the Case?

R. Titius cannot be excused from sin. For the obligation of labor is present for him, both from the necessary providence to be had for himself, so that by a licit means he may procure for himself those things which are necessary for an honorable support of life, and for avoiding leisure, which is the occasion of so many sins.

The Angelic Doctor says aptly: "Judgment concerning each thing must be taken according to the end to which it is ordered. Now manual labor is found to be useful for three things. First, for removing leisure; whence Jerome to Rusticus the Monk: always do some work, that the devil may find you occupied.... Secondly, for taming the body; whence in 2 Cor. 6:5 it is joined with other mortifications of the flesh, where it is said: *In labors*, namely of works, because he worked with his own hands, and he adds: *in watchings and fastings*, etc. Thirdly, it is ordered to seeking livelihood, Acts 20:34: *To those things which were necessary for me and for those who were with me, these hands ministered.*

"If therefore manual labor is considered according as it is ordered to removing leisure or to taming the body, in this way there is the same judgment concerning manual labor and concerning other exercises ordered to the same things. For it is not necessary that leisure be removed by this or that occupation; but for removing leisure it suffices that one withdraw from leisure by any licit occupation; and thus the occupation of manual labor is not in precept, this end being considered.

"And the reason is similar concerning manual labor according as it is ordered to taming the body; because by many exercises the body can be tamed, such as watchings, fastings, and many things of this sort. Whence none of them, insofar as it is ordered to such an end, is in precept specifically, although in general it is in precept to tame the body by some exercise by which deadly concupiscences are restrained.

"But according as it is ordered to seeking livelihood, in this way it seems to be in precept; whence it is said in 1 Thess. 4:2: *Work with your hands, as we have commanded you*; and not only in precept of positive law, but also of natural law. For those things are of the natural law to which man is inclined from his natural things. But as is evident from the very disposition of the body, man has a natural ordering to manual work, on account of which it is said, Job 5:7: *Man is born to labor, and the bird to flying*. But since nature has sufficiently provided other animals in those things which pertain to the sustaining of their life, in foods and arms and coverings, it has not provided man in these things, because he himself is endowed with reason, by which he will be able to provide for himself in all the aforesaid things; whence in place of all the aforesaid things there will be for him a hand, suitable for diverse works, by which he may carry out the conceptions of reason by diverse arts.

"It must be known, however, that the precept of the natural law is twofold. One is ordered to removing the defect of one individual person, either spiritual, as concerning the acts of the virtues, or bodily, as the precept which the Lord gave to man, Gen. 2:16: *Of every tree that is in paradise, eat*, etc. But another is ordered to removing the defect of the whole species, as that which is said in Gen. 1:28: *Increase and multiply, and fill the earth*; for in this is prescribed the act of generation, by which nature is preserved and multiplied.

"But there is this difference between these two kinds of precepts: that each one is held individually to observe the first precept of the natural law; but each one is not held individually to the second precept. For in those things which pertain to the species, all men are to be counted as if one man; for by participation in the species many men are one man. But just as one man has diverse members, by which he is occupied in diverse offices ordered to removing his own defect, which cannot all be exercised by one member, as the eye sees for the whole body and the foot carries the whole body; so it is fitting in those things which pertain to the whole species. For one man would not suffice for exercising all things which human society needs; and therefore it is fitting that diverse men be occupied in diverse offices, as is said in Rom. 12:4.... And this diversification of men in diverse offices

happens first from divine providence, which so distributes the states of men that nothing necessary for life is ever found to be lacking; secondly also from natural causes, from which it happens that in diverse men there are diverse inclinations to diverse offices or to diverse modes of living.

"Because therefore by manual labor someone can assist both his own defect and another's, since one man cannot be sufficient for himself in all things but needs another's assistance, it is clear that the precept concerning manual labor is in some way contained under both kinds of the aforesaid precepts. For insofar as by the manual labor of one man assistance is given to the necessities of others, it thus pertains to the second kind of natural precepts; but insofar as someone by this assists his own necessities, it pertains to the first kind, as the precept concerning eating. But a precept which is ordered to removing a bodily defect does not oblige except when the defect exists; whence if there were someone who could live without food, he would not be obliged by the precept concerning eating. Thus therefore the precept concerning manual labor does not oblige someone individually, according as it is ordered to removing a common defect in some way, nor according as it is ordered to removing his own defect, unless the defect exists. And therefore he who has that by which he can live licitly is not held to work with his hands; but he who does not have the means by which he may otherwise live, or unless he acquire livelihood by some illicit business, is held to labor with his hands. And this is clear from the Apostle in three places, where he gives a precept concerning the working of hands. First, at Eph. 4:28, where, by prohibiting theft, he enjoins the working of hands: *He who was stealing, let him now not steal, but rather let him labor with his hands.* Secondly, in 1 Thess. 4:2, where he prescribes manual labor by prohibiting covetousness of the things of others: *Work*, he says, *with your hands, as we have commanded you, that you may walk honorably toward those who are outside, and desire nothing of anyone.* Thirdly, in 2 Thess. 3:2, where he prescribes the working of hands by prohibiting base businesses by which some were seeking livelihood: *We hear*, he says, *that some among you walk restlessly, doing nothing, but acting curiously.* The Gloss: *Those who with foul care provide necessities for themselves*; and he adds: *But those who are of this sort, we denounce and beseech in the Lord Jesus Christ, that working with silence they eat their own bread.*

"It must also be known that, just as sight is chief among the other senses, by reason of which all the other senses receive the name of sight...., so the hand, because it is necessary for very many works, is called the organ of organs.... And therefore by manual operation is understood not only what is done by the hands, but by any bodily instrument whatever; and briefly, whatever office a man does, by which he can licitly acquire livelihood, is comprehended under manual labor. For it does not seem reasonable that masters of mechanical art can live from their art, and masters of the liberal arts cannot live from their art. Similarly also advocates can live from the patronage which they furnish in cases; and it is similar concerning all other licit occupations. Therefore, because it is a precept, but does not oblige all, therefore etc." St. Thomas, *Quodl.* 7, a. 17.

2. Lucretius the sculptor, an agreement having been made and a price fixed, promised Fulgentius the pastor that he would make a statue of St. Anthony. Since afterwards several other statues, and at a higher price, were committed to him by others to be made, he omitted making the statue of St. Anthony. But when Fulgentius complained, then Lucretius committed the statue to his friend Caius to be made.

It is asked: What as to the Case?

R. When an obligation consists in doing something and the debtor by contract does not do it, he is held to reparation of damages, and the creditor also has power to petition the judge that it be done at the expense of the debtor. C. I. 1218, 1220; C. G. 1142, 1144. But the debtor is permitted to furnish even through another those things which he owes, unless it matters to the creditor that it be done by him himself. C. I. 1239; C. G. 1237. Hence, if grave damage is present to Fulgentius because of the statue of St. Anthony not made, and it gravely matters to Fulgentius that that statue be made only by Lucretius, Lucretius, omitting to make it, sins gravely, because he fails faith in a grave matter, and is held to reparation of damages. C. I. 1218; C. G. 1142.

On the Particular Obligations of Clerics

97. On the Holy Life of Clerics

1. Ambrosius, a bishop, for reforming the morals of many from the clergy of his diocese, established the following things in the diocesan statutes, first promulgated by him: 1.º That clerics initiated in sacred orders and all beneficed clerics and religious clerics should not omit wearing the crown. — 2.º Under penalty of suspension incurred by the fact itself, he prohibited the same from omitting the cassock after sunset, even a single time. — 3.º He prohibited parish priests and other clerics constituted in sacred orders, whether seculars or regulars, from living alone with a maidservant who has not reached the fortieth year, adding that he prohibited this under grave obligation. — 4.º Having built and founded at his own expense a house of exercises, he prescribed that all clerics, whether seculars or regulars, should every three years perform exercises there for the space of eight days, with no payment, however, made for food, lodging, and other necessary things, but with a fine of five lire to be paid by transgressors. Now Rusticus, a parish priest in the country, since he himself has been the only cleric in his parish for many years, and there are not there distinguished families or persons, but simple farmers; since besides he is still far from cities on account of the absence of a railway, and finally the place is mountainous and cold, thinks that by legitimate epikeia he is exempted from the 1st, 2nd, and 4th statute. Moreover he thinks himself free by every right from the 3rd statute, although he has with him a woman not yet forty years old, who serves him in domestic matters; for he says that she is not a maidservant, but his blood-relative, although in a more remote degree.

It is asked: What as to the Case?

R. The bishop could rightly enact those statutes. For the bishop, as endowed with true power of jurisdiction in his diocese and over the clergy of his diocese and over the priests themselves, can establish those ecclesiastical laws which regard the right government and good of souls, provided however they are not opposed to common law. Cap. *Institutionis* 7, Cap. *Ecclesiasticae* 12, caus. 25, q. 2; Cap. *Quod super his* 9, de *Maiorit. et obedientia*; S. C. in Asc. 11 July 1767, § 4; Reiff., tit. 2, lib. 1, Decret. n. 69; Benedict XIV, *de Syn. dioec.*, l. 13, c. 1, n. 3; Bouix, *de Episc.*, v. 2, c. 5. But those statutes are not opposed to common law, as is clear to all as regards the tonsure or crown, clerical habit, and cohabitation with women. Cf. I. M. 100–103, 181.

And these things in general. Let us now weigh each statute in particular. The first Statute does not seem to bring with it of itself a grave obligation, since that grave obligation is neither declared nor confirmed by a grave sanction. Both are present in the other Statutes. Therefore that diverse manner of speaking indeed shows that the bishop strongly wishes all those clerics to wear the tonsure or crown, but that in this matter he does not impose a grave obligation, beyond that which is otherwise present from common law. A difficulty can be raised as regards religious, whether the bishop could legitimately establish the same thing for secular and regular clerics. He certainly could do this as regards religious who are not exempt; and this is clear. But could he do the same as regards exempt

religious themselves? It is answered that he indeed could not do this directly, by reason of the very privilege of exemption. For this matter is not excepted from such a privilege, as are many others, in which regulars even though exempt are subjected to the jurisdiction, either ordinary or delegated, of bishops. If therefore regulars are exempt from episcopal jurisdiction, certainly the bishop cannot directly touch them by his jurisdiction with a precept or law or even a simple statute. Nevertheless the bishop could do this indirectly, insofar, namely, as although he cannot prescribe, he can nevertheless punish. For regulars, even exempt, are subject to bishops if they dwell and offend outside the cloisters, so that they can be visited, punished, and corrected by the Ordinary of the place, as delegated by the Apostolic See over this matter according to the canonical sanctions. Trent, sess. 6, de R., c. 3. It is said: if they dwell and offend outside the cloisters; for if they dwell within the cloisters and notoriously offend outside them with scandal of the people, they must be punished by their superior, and only in the case of negligence of the regular superior can they be punished by the bishop himself, as is held from the same Trent, sess. 25, de R., c. 14, and from the Motu proprio of Benedict XIII, 26 March 1729. But a regular not wearing the clerical crown or monastic crown through the city is one offending outside the cloisters. This is confirmed from S. C. EE. in Andrien., 15 Dec. 1584, and in Ravennaten., 12 Sept. 1594, apud Monacel., tom. 1, tit. 6, Formul. 20, n. 131; Ferraris, v. *Regulares*, art. 2, n. 48, whence it is held that regulars walking through the city and places without a companion, or by night, or indecently clothed and without due religious modesty, can be committed by the bishop to prisons as offending outside the cloisters, the form of Trent, sess. 25, c. 14, de R. R., nevertheless being observed. — "But if regulars offend within the cloisters, let the bishop admonish the regular superior, and insofar as he himself does not provide, let him have recourse to the Congregation of Bishops and Regulars." S. C. EE. et RR., 26 March 1897.

The second statute concerning habit brings with it a grave obligation; for this is drawn from the grave penalty of suspension, which is added. But can the bishop establish this penalty? It must be altogether affirmed from Trent, sess. 14, c. 6, de R., which explicitly grants this power to bishops. But as regards regulars, the same must be said as in the preceding statute.

The third statute concerning cohabitation with women brings a grave obligation, as is explicitly stated in the very enunciation. The matter is grave of itself, and not without scandal, if one cohabits with some young woman. As regards regulars, the matter is clear from what was said in the first statute. Only this must be noted: that regulars of this sort, living alone with women, are already dwelling and offending outside the cloisters.

Finally the fourth statute, by which the bishop orders the priests of his diocese to perform sacred exercises, neither exceeds the limits of ordinary episcopal power, nor is opposed to common law, but on the contrary is very much conformed to it, as is clear from the Encyclical Letter to all the Ordinaries of Italy, 1 Feb. 1710; Lucidi, *de Visit.*, v. 3, p. 381 seqq., 3rd ed. It is confirmed from the response of S. C. C., 20 Sept. 1878, A. S. S., v. 12, p. 612. But it does not seem that the bishop can also bind exempt regulars. For those things which pertain to the observance of regular discipline are not subject to the jurisdiction or correction of the bishop. Moreover to perform spiritual exercises is a thing which pertains to regular observance and discipline, especially if it is noted that exercises of this sort would have to be performed outside the monastery, in a house built and founded by that bishop. The regular parish priests themselves, in those things which pertain to regular observance, are exempt from the bishop's jurisdiction, visitation, and correction. Benedict XIV, C. *Firmandis*, VIII

Id. Nov. 1744, pars. 8, 10; C. *Apostolicum ministerium*, 30 May 1753, par. 15. But does a statute of this sort bring a grave obligation? It seems it must be denied from the light penalty added, a fine of 5 lire.

Now the excuses of Rusticus cannot be approved. On account of a mountainous and cold place he is not dispensed from the tonsure or crown. Let him use a square cap and skullcap; and he will suffer no inconvenience from the inclemency of the air. That his parishioners are simple farmers and not noble citizens does not therefore dispense him from wearing the cassock outside the house, especially at night-time. Indeed, for guarding against many dangers and inconveniences, the lower in condition the parishioners are, the more necessary is greater exterior decorum in the parish priest. And exterior decorum of this sort is also necessary so that simple farmers may hold the parish priest in a certain greater veneration and show him greater reverence, owed to the priestly degree and apostolic ministry. That he is the only cleric in the parish, and the distance and difficulty of the journey, do not excuse him from the spiritual exercises, to be performed only every three years. Perhaps he himself undertakes other longer and more difficult journeys. Therefore let him ask a vicar from the bishop for the time of absence, let him call some nearer priest, and let him go to the episcopal city to perform the exercises, at least every three years according to the episcopal statute. Nor indeed will great expenses have to be made by him, since everything is furnished gratuitously during the whole time of the exercises. Although the railway is lacking, certainly other public carriages will not be lacking, which will carry him, even at modest expense, into the episcopal city. But although in full rigor he does not seem to act against the third statute, namely against the written letter, for by maidservant an outside person is ordinarily understood; nevertheless one must see carefully, lest, the circumstances considered, the association of that blood-relative in fact be a scandal to him and to others, and gravely harm his own reputation and good estimation, which all parishioners ought to have as very good concerning their parish priest. Let him set forth his case to the most reverend bishop.

2. Arcontius, a priest, suffering grave temptations against chastity, of which he previously was altogether free, fell into many sins against the same virtue; nevertheless he does not think that he commits sacrilege, first because, he says, ecclesiastical celibacy is to be observed not from a vow, but from mere ecclesiastical law; but positive human laws do not oblige with grave inconvenience. Secondly, because, although there is a vow, its obligation nevertheless ceases on account of changed circumstances of things, and on account of a supervening grave inconvenience which, if it had been foreseen, the vow would not have been emitted.

It is asked: What as to the Case?

R. Arcontius is egregiously deceived in all things. He errs first when saying that ecclesiastical celibacy does not oblige except from mere ecclesiastical law, namely with no vow intervening. This is openly opposed to C. *Quod votum* un., de *Voto et Voti Redempt.*, and Benedict XIV, C. *Inter praeteritos*, par. 1, 3 Dec. 1749.

He errs secondly, when he thinks that he does not commit sacrilege because celibacy is to be observed not from a vow, but only by force of ecclesiastical law itself. For 1.º since that law rests upon a motive of religion, its transgression is sacrilege, at least broadly such. 2.º Since, according to the opinion of all, that law solemnly consecrates the person himself to God by the public authority of the Church, its transgression is also sacrilege strictly and properly such.

He errs thirdly, when he thinks that on account of the grave temptations which he experiences he is not held by that law, since positive human laws do not oblige with grave inconvenience. This is not true, when there is question of a law depending upon the proper and free consent of the will, as this law is. Thus enclosure is prescribed to nuns, which certainly is a most grave thing; but it is free to nuns to enter religion, just as it is free to clerics to be initiated in sacred orders.

He errs fourthly, thinking that the vow of chastity ceases on account of changed difficulties of things. For generally the difficulty of observing chastity is intrinsic to chastity itself; it is for all. And only some special difficulty can be had for someone, but for him who is unwilling to use the necessary means, as especially prayer and flight from occasions. Since therefore that special difficulty is voluntary, namely depending upon the will, the matter is evident that on account of it the vow cannot cease; for otherwise the vow would cease on account of its voluntary violation, which cannot be. Hence it does not avail to say that such a difficulty was not foreseen; for although this difficulty was not foreseen, since it is from the will, it can always cease by the will, if one seriously wishes to apply the due remedies. Likewise a special difficulty can be had independently of one's own negligence, on account of merely subjective circumstances of temperament. But neither does this special difficulty exempt from the vow of chastity. For first, if there is question of a vow of chastity generally, even of a simple vow of chastity outside Religion, this always remains firm, even if one is agitated by unusual and unforeseen impulses of the flesh; for speaking of itself, this difficulty is foreseen at least confusedly, since in fact it is neither extrinsic to this matter nor altogether rare, insofar as those who vow chastity, even the more holy and pure, ordinarily speaking, at least at some time in life experience this difficulty. Besides, there is added the grace of God, which is not denied to him who does what is in him; and if anyone freely cooperates with it, certainly there will be no danger of incontinence, and that special difficulty of resisting temptations is diminished. Wherefore the Council of Trent, sess. 24, c. 9, condemns those who assert that "all who do not feel that they have the gift of chastity, even if they have vowed it, can contract marriage; since God does not deny this to those rightly asking, nor permit us to be tempted above that which we can bear." But here it must be noted that, if notable difficulty and change did not proceed directly and from within the vow of chastity itself, but only indirectly and from without, for example, if a woman who had emitted a vow of chastity had been oppressed by force by another, and therefore unless she married would be in a most miserable condition, there are some who hold that the vow of chastity then is extinguished. For this circumstance is not included in any way in that matter, nor could it in any way have been foreseen. If it had been foreseen, certainly the vow would not have been emitted. But vows, special conditions being excluded, of themselves do not oblige beyond that which here and now was promised by the one vowing. But what has been said concerning the firmness of a simple vow of chastity, notwithstanding grave temptations afterwards arising, much more holds of solemn vows, validly emitted in religious profession or in the reception of orders, which are always valid, whatever notable circumstance supervenes. For the religious and ecclesiastic in this case is not considered as a private person for whom it would then be better not to be bound by vow, but as a part of the community of the Church, for whom it is fitting to postpone private good; otherwise, as is clear, how many inconveniences, how many scandals and disturbances! The same must be said by the same reason of the common good concerning simple vows which are emitted by men or women in some Congregations, especially if an oath of perseverance is added; for then an explicit onerous contract intervenes. Wherefore, just as the Congregation cannot dismiss a student on account of supervening

circumstances, except circumstances of crimes, so neither can the student on account of those same circumstances desert the Congregation. — Scavini, l. 2, n. 64, ed. Milan, 1874; Gury, v. 1, n. 311; La-Croix, l. 3, p. 1, n. 481; I. M. v. 1, n. 575.

3. Pomponius, a parish priest, very pious and good, used to have spiritual conferences with a certain very pious and good woman. The friendship from spiritual degenerated into sensual, and gradually became wholly carnal. To remove every scandal before it should arise, he went away into a distant region where the Council of Trent as regards clandestine marriages has not been promulgated. That woman went away with him, because she was publicly held as his sister. Since the aforesaid parish priest was not lacking in talent and art, he soon became familiar to the bishop, and vicar general of the whole diocese, enjoying among all, both he himself and his reputed sister, public reputation and estimation of piety and sanctity. Placed in these circumstances of things, greatly fearing for his soul and that of the woman, he contracts marriage with her, persuading her that he had sought and obtained Apostolic dispensation, but deceiving himself, on account of so great a difficulty of the matter and on account of the scandal which otherwise would be present, that by legitimate epikeia he was exempt from the ecclesiastical law of celibacy, and consequently had been able to contract both licitly and validly.

It is asked: What as to the Case?

R. The legitimate epikeia of Pomponius, parish priest and afterwards vicar general, is null; for there is no scandal except one altogether voluntary, namely depending upon his free will. For first, as is clear, there is no necessity of sinning with that woman. The whole sin depends upon his depraved will. Besides, he can very well be separated from that woman in residence, although she is publicly held as his sister, by simulating some pretext; and because she is publicly held as his sister, the separation is still easier, and there can be no scandal. Moreover, since he went to a distant region to sin, which that woman similarly did, why now should he not undertake another journey, for example to Rome, in order to convert himself sincerely to God? It will be easy for him to declare to that woman that he did not obtain Apostolic dispensation; perhaps she never even persuaded herself of this, since the matter is so foreign to practice. And thus by his own example let him induce to sincere conversion that woman whom he himself perhaps first induced to sin, and let him repair the scandal given to her. Finally, as is clear from what has been said, here the reason principally considered is that of the state itself and of the common good. Wherefore, on account of a private inconvenience, although grave, the vow does not cease. Much less indeed does the diriment impediment cease, directly regarding the common good, on account of an inconvenience, although grave, in the particular case of a private person, and especially a voluntary one.

4. Titius, a young man, called into the lot of the Lord, having entered the diocesan seminary by the counsel of his confessor, there led for some years a life commendable for piety and purity of morals. But by evil fate, circumvented by the blandishments of a very bad fellow-resident, he contracted a base friendship with him and more than once miserably fell with him into sin of the flesh. Having then been assigned to another residence by reason of studies, he escaped indeed free from the occasion, but, still addicted to the base passion, often clings to depraved thoughts and secretly sins with himself. The master of piety, who used to receive the

confessions of the students in the seminary, exercises every diligence to draw Titius back from the depraved custom, but with no happy outcome. For while this man restrains himself for one or another week, then he returns again and again to sin from fragility.

Meanwhile the rector, according to the practice of the seminary, calls Titius, who had already completed the course of theology and recommended himself greatly by the exterior manner of his life, with other companions to receive the order of subdiaconate. Nevertheless the master of piety opposes and imposes on him a delay of ordination. But Titius, while according to custom he approaches him for confession, dissolved into tears, gives indubious signs of sincere sorrow and firm purpose, shows himself ready faithfully to execute all things which are proposed to him by the confessor, and asks him to concede to him to approach the subdiaconate, lest otherwise he incur great infamy among his companions and family, since the delay of ordination could be made honorable by no reason. The master of piety, at first uncertain, hesitates; but then shows himself ready to gratify Titius. Indeed, as he reasons with himself, the vice of impurity is not a crime from which irregularity is induced; and if Titius, on account of indubious signs of sorrow and purpose, can be absolved, he can also be admitted to Sacred Orders, since for duly receiving the sacrament of Order, as a sacrament of the living, no more is required than the state of grace. Hence he bestows upon Titius the benefit of absolution and permits him to be promoted.

It is asked: 1.º What dispositions are required in the subject for licitly and fruitfully receiving Sacred Orders? — 2.º Whether absolution is to be denied to a cleric habituated in sins of lust, who wishes to approach Sacred Orders without a preceding trial of continence? — 3.º Whether the master of piety conducted himself rightly with Titius, and reasoned rightly?

Resp. To the 1st: In order that sacred Orders be received licitly and fruitfully, there is need 1.º of divine vocation. This is commonly asserted by the doctors and is founded in the words of the Apostle to Hebr. c. 5, v. 4: “Nor does anyone take honor to himself, but he who is called by God as Aaron.” Hence the Roman Catechism, *de Ord.*, n. 4, after it has stated who are to be judged to approach Sacred Orders wrongly, finally concludes: “But they are deservedly said to enter the Church by the door, who, legitimately called by God, undertake ecclesiastical offices for the sake of this one thing, that they may serve the honor of God.” But the reason of this divine vocation is that no one can spontaneously undertake an office and duty to be exercised, unless he has aptitude for it. But aptitude for divine ecclesiastical offices and duties is especially from divine grace. And this certainly will not be lacking to those whom God himself calls into his lot.

2.º There is need of the mind of becoming a cleric, namely of committing oneself to the service and worship of God. Hence the Council of Trent, sess. 23, c. 4, de Reformat., says that those are not to be initiated “concerning whom there is not a probable conjecture that they have chosen this kind of life not by the fraud of fleeing secular judgment, but that they may furnish faithful worship to God.”

3.º “It is necessary to have a good testimony from those who are outside”; 1 Tim. c. 3, v. 7. For this reason the Council of Trent, sess. 23, c. 5, de Reformat., prescribes that “those who are to be assumed to each of the major Orders should approach the bishop a month before ordination; and he should commit to the parish priest or to another, to whom it shall seem more expedient, that, the names and desire of those who wish to be promoted having been publicly set forth in the Church, he should diligently inquire from trustworthy persons concerning the birth, age, morals, and life of the

ordinands themselves; and that he should transmit to the bishop himself as soon as possible testimonial letters containing the inquiry made."

4.º Suitable doctrine is required, which is various for various Orders. This is openly clear from the Council of Trent, sess. 23, cc. 4, 11, 13, 14, de Reformat. For how indeed could ministers of the Church teach others those things which are necessary for salvation, and rightly administer the sacraments for their office, unless they had the knowledge necessary for this?

5.º Integrity of life is required. Wherefore negative sanctity and immunity from sin is required, and therefore the state of grace, since order is a sacrament of the living. Consequently immunity is required not only from censure, but also from irregularity, whether strictly or broadly such. Indeed from various decrees of both the S. C. of the Holy Office and the S. C. of Bishops and Regulars it is required at present that those to be initiated in sacred Orders be free from military service. And by the same reason of required sanctity, especially before sacred Orders, Spiritual Exercises are premised. — But besides negative sanctity, positive sanctity also is required. For this reason, besides Confirmation there is demanded a life altogether proved, not by an ordinary and common manner of living honorably, but altogether above it; not of any sort whatever, but excellent, as the Angelic Doctor says, Suppl. q. 35, a. 1, ad 3.

Concerning this eminent sanctity there is a question among the doctors. But to me it is altogether wonderful that such a question can exist in so evident a matter. Let us omit the doctors, because in this way we would always be occupied among opinions, and let us dwell only in the doctrine of the Council of Trent. Therefore let us see whether from the Council of Trent only immunity from sin suffices, or whether besides true sanctity of life, and indeed eminent sanctity, is required. Certainly this sanctity is manifestly carried before it by all those examinations to be made by the bishop. Sess. 23, cc. 5, 7, 13, de Ref. And if someone is to be ordained by another bishop, the Tridentine Synod prescribes in the same place, c. 8, that "his probity and morals be commended by the testimony of his Ordinary." Testimonial letters, however, must be given for receiving orders, and not generally. S. C. C., 8 Aug. 1733.

But positive sanctity, and indeed conspicuous sanctity, the Council of Trent expressly requires in the ordinands in the cited places. For first, concerning those to be initiated with first tonsure, it says that there must be concerning them a probable conjecture that they will furnish faithful worship to God, c. 4. As regards those to be promoted to minor Orders, the Council wishes in them an ascent from degree to degree, so that in them, with age, merit of life and doctrine may increase more: which both the example of good morals and assiduous ministry in the Church, and greater reverence toward presbyters and the superior orders, and more frequent than before Communion of the Body of Christ, will especially approve, c. 11. As regards those to be promoted to major Orders, it wishes that only those be ordained whose proved life is old age, who hope, with God as author, that they can contain themselves, cc. 12, 13. Lastly, as regards those to be assumed to the presbyterate, still graver are the words of the Council. Let those, it says, who have conducted themselves piously and faithfully in the ministries already passed, and are assumed to the order of presbyterate, have a good testimony... and be so CONSPICUOUS in piety and chaste morals that a distinguished example of good works and admonitions of life can be expected from them, c. 14.

But the reason is taken from the very dignity and ministry of the priest, who, as the Roman Catechism, *de Ord.*, n. 5 says, "separated from the rest of the people, exercises himself in a ministry

by far the greatest and most excellent of all." The same Roman Catechism, in the cited place, n. 2, professedly declares the excellence of this dignity and ministry. "For," it says, "since bishops and priests are, as it were, interpreters of God and certain messengers, who in his name teach men the divine law and precepts of life, and bear the person of God himself on earth, it is clear that their function is one than which none greater can be thought." Therefore, as they are more excellent than all others of the people in dignity and ministry, so also they ought to surpass the rest of the people in honesty of morals and sanctity of life.

Wherefore the same Council of Trent, sess. 22, c. 1, de Ref., speaking of the life and honesty of clerics, says: "There is nothing which more continually instructs others to piety and the worship of God than the life and example of those who have dedicated themselves to the divine ministry. For since they are lifted from the things of the world to a higher place, the rest cast their eyes upon them as upon a mirror, and from them take what they imitate. For this reason it is altogether fitting that clerics, called into the lot of the Lord, so compose their life and all their morals, that in habit, gesture, gait, speech, and all other things, they show forth nothing except what is grave, moderate, and full of religion; that they avoid even light offenses, which in them would be greatest, so that their actions may bring veneration to all." And the Plenary Council of Latin America, n. 658, unhesitatingly affirms that those who have given their name to the clerical militia "ought to shine with the adornment of all virtues and especially with the highest piety."

And this eminent honesty of morals and sanctity of life ought especially to shine forth in perfect observance of continence and chastity. Whence before all things a priest ought to be modest, continent, 2 Tim. c. 3, vv. 2, 8. And, as the cited Plenary Council of Latin America, n. 644, says, chastity "is the proper and angelic ornament of the priestly order."

To the 2nd: An affirmative response to the second question is a necessary corollary of the response already given to the first question. Concerning a cleric habituated in base sin and with the habit not yet extirpated, it certainly cannot be said that his life is proved, that his proved life is old age, nor certainly does a reasonable hope shine that he will be modest and continent. He is not conspicuous in chaste morals; nor can it reasonably be hoped that he will be conspicuous in the future. How therefore can ascent to sacred Orders prudently be permitted to a cleric of this sort, habituated in base sin, the habit of vice not yet changed into a habit of virtue? "No one," says Innocent III in the Decretal *A multis* 9, de *Aetate et qualit. et ord. praefic.*, "should be permitted to approach Sacred Order, unless he exists either a virgin or of proved chastity." The aforesaid cleric certainly does not exist of proved chastity.

And hence it is clear why, although one habituated in base sin, if he has sincere sorrow and purpose, can be absolved, he can no longer be absolved if he wishes to be promoted to sacred Orders; namely, because he does not exist of proved chastity. Therefore it is altogether necessary that a serious trial of chastity to be observed should precede.

Indeed, an experiment of this sort can be supplied by some extraordinary grace of compunction, concerning which valid conjectures are available to the confessor. For by that more fervent penitence and contrition of soul a reasonable hope certainly shines that a cleric of this sort, constant in his purpose, will be chaste and modest. But because sincere and true conversions of this sort, extraordinary ones, are rare, and cannot always be discerned from their exterior signs even with evident certainty, hence the confessor must proceed cautiously in this matter. Wherefore no other

counsel can be furnished to that confessor than that he diligently inspect and maturely weigh all the circumstances of the person, things, and cases, and implore with earnest prayers the help of Divine Light in so grave a matter. Benedict XIV, *de Syn.*, l. 11, c. 2, n. 18.

And nevertheless "the confessor must strive with every effort to render persuaded one of this sort to be initiated, although extraordinarily compunct, that he defer receiving Orders, until by the proof of some notable delay he shows himself more purged from the crimes committed." Thus St. Alphonsus, l. 6, n. 77, where he concludes the Dissertation concerning this matter in these very grave words: "Moreover I confess that great caution must be applied in absolving clerics of this sort, who, scarcely emerged from the filth of vices, desire to ascend to the ministry of the Altar; for no one doubts that frequently a bad outcome of these men is deplored, not without the greatest detriment of the Church and ruin of peoples."

To the 3rd: As regards the third question, it must be noted first of all that when Titius entered the diocesan seminary he was not only a good but an excellent young man, since it is said that there he led for some years a life commendable for piety and purity of morals. But he was corrupted by the companionship of a very bad fellow-resident. Indeed the master of piety, who used to receive the confessions of the students in the seminary, did very well to exercise every diligence that he might draw Titius back from the depraved custom. But he certainly ought also to have acted, and perhaps did act, so that that destructive student would be denounced to the Rector of the seminary, so that he would immediately be expelled from the seminary. Likewise the master of piety acted well when he imposed upon Titius a delay of Ordination. For Titius was found precisely in that miserable condition of a cleric habituated in the sin of lust, and habituated already for several years, without any preceding trial of continence. The same master of piety is likewise to be praised when afterwards he hesitates uncertainly concerning imparting absolution to Titius on account of those graver circumstances in which Titius is found. For from this it appears that the aforesaid master had the gravity and difficulty of the matter well known.

And as regards the fact of absolution having been imparted, the master of piety certainly cannot be absolutely reprehended, if the Case is considered speculatively and as it lies. For on the one hand, as is said in the Case, Titius, dissolved into tears, gives indubious signs of sincere sorrow and firm purpose, showing himself ready faithfully to execute all things which are proposed to him by the confessor. On the other hand, it is affirmed in the Case that Titius otherwise would incur great infamy among his companions and family, since the delay of ordination could be made honorable by no reason. For if Titius shows altogether indubious signs of sorrow and purpose, truly ready to execute all necessary means in order that he may live chastely, what more can be required from him, so that a reasonable hope is present that, with God as author, he will lead a chaste life hereafter? If besides infamy would truly follow from the delay of Ordination, neither would St. Alphonsus himself make any difficulty in granting absolution. The Holy Doctor, in the cited place, after affirming that absolution must be deferred, even for an extraordinarily compunct cleric, if the cleric wishes to be Ordained immediately, so that by the trial of time he may show himself more purged from the crimes committed and be more firmly proved; soon excepts the case of infamy to follow: "Provided however," he says, "I except, that he himself from this delay of Ordination is not to undergo a mark, or proximate danger of infamy."

Hence, practically speaking, it is indeed difficult to reprehend the master of piety, if in truth he was deceived. Nevertheless, if he himself had applied greater severity and had delayed the Ordination of Titius altogether to another time, after the chastity of Titius already proved by fact, and so that Titius himself might better apprehend the immense gravity of the matter, that master, truly a master of piety, would be fully approved and praised by me. For practically speaking, that solemn affirmation of Titius, and without any restriction, of following the counsels of the confessor, even those poured-out tears of Titius, in those straits of proximate Ordination already prepared and expected, can easily be suspect. But the infamy is rather apparent than real, since there can always be some honorable cause of the delay of Ordination, and the true cause can always be concealed under at least some pretext. "Then it will be necessary," says Benedict XIV in the cited place, "and this certainly will not be very difficult for a prudent confessor, to place before the eyes of an Ordinand of this sort not only that eternal salvation ought to be preferred to any human respect, but also that there is nothing of infamy in this, if someone says and acknowledges that he wishes to think more maturely about entering an institute of life of this sort, which carries with it graver burdens, and which, once undertaken, will necessarily have to be observed through the whole life."

Finally, as regards the reasons by which the master of piety was moved to granting absolution and permitting proximate Ordination, the first of them, that the vice of impurity is not a crime from which irregularity is induced, is of no moment. For although the vice of impurity, taken generally and of itself, does not induce irregularity properly such, or a canonical impediment, nevertheless it certainly induces irregularity in a broad signification, or unworthiness and unsuitability for receiving sacred Orders. And this unworthiness and unsuitability certainly suffices that someone be removed from sacred Orders.

Nor is the other reason better, that Order is a sacrament of the living, for the due receiving of which no more is required than the state of grace. For Order is indeed a sacrament of the living, but it is a sacrament which confers the most excellent power, the most noble dignity, and the most divine office; for the execution of which no one is apt and suitable, as St. Dionysius says apud St. Thomas, Suppl. q. 36, a. 1, "unless according to his whole habit he has been made God-formed and most like to God."

98. On the Divine Office

1. Benedictus, a beneficed cleric and organist of the Cathedral Church, when he plays the organ so that, in the chant of the divine office, he may respond to the versicles which the whole choir sings, does not himself alternately sing the versicles, nor pronounce them in a low voice, but only plays the organ, saying that the sound of the organ responds to the chant of the choir. And since he himself plays the organ, he thinks that he sufficiently and altogether satisfies the obligation of the divine office.

It is asked: What as to the Case?

R. Benedictus does not satisfy the obligation of the divine office. For he in truth neither sings nor recites the divine office, but plays the organ, which is neither to sing nor to recite the divine office. St. Alphonsus, n. 143, reports that Soto, Navarrus, Aragon, and Rodriguez teach that he satisfies the obligation of the divine office "who responds alternately to the choir by playing the organ, without

uttering the versicle of his own part." Busembaum, n. 156, also seems to favor this opinion. But the Holy Doctor immediately adds: "But I do not acquiesce in this, since Bonacina rightly teaches that the office is then not recited integrally, because the organ does not utter words." Whence it is drawn that in the proposed Case Benedictus in no way recites the office. But the choir does not recite it integrally.

This is confirmed from the *Caeremoniale Episcoporum*, l. 1, c. 28, n. 7, where it is said: "If in some places it were customary for organs to be played even during the canonical hours, or some of them, as is the hour of terce... such a custom can be preserved; but it must be noted that whenever by the organ something is represented as being sung, or responded alternately to the versicles of hymns or canticles, by someone from the choir in an intelligible voice that must be pronounced which is to be responded by the organ. And it would be laudable that some cantor, together with the organ, should sing the same thing in a clear voice." I. M. 222.

2. Salvianus, a priest and very learned, from involuntary distraction, in place of the hour of none, recited the hour of sext twice. After he noticed the error and considered the matter much, he omitted to recite none.

It is asked: What as to the Case?

R. Salvianus is a learned man, and before he determined himself to omit none, he considered the matter much. Therefore let us see what reason there could have been by which he was moved to form for himself a judgment concerning the absence of obligation to recite none in the Case.

Now, that the aforesaid reason may be explained, it must be premised that in the divine office there are two things, quantity and quality, and thus "to omit," says La-Croix, l. 4, n. 1203, "the whole of vespers on Holy Saturday is commonly judged mortal, not on account of quantity, but quality, because namely they are an entire hour and contain a great mystery; nevertheless in this instance Bonaespe, Marchant, Pellizarius, Tamburinus, and others apud Gobat probably think it is only venial, because they are a small prayer." And St. Alphonsus, l. 4, n. 147, says: "Elbel and Croix, with Marchant, Pellizarius, Tamburinus, and others, by reason of the smallness of the matter, probably say that he would not sin gravely who omitted the whole vespers of Holy Saturday." Fr. Gury, *Comp.*, n. 52, notes the same discrepancy of opinions as regards vespers of Holy Saturday, according as in them quantity or quality is attended to. — Besides, as regards the question whether it is a mortal sin to exchange the office of the day for another briefer one, St. Ligorius, in the cited place, n. 162, q. 3, brings four opinions. The first absolutely denies that it is a mortal sin, and brings this reason: "because for fulfilling the precept of the office it suffices that it be fulfilled in substance, and this is done when the seven hours are said." St. Alphonsus confesses that he formerly adhered to this opinion; "but now," he says, "I judge more truly that it cannot be sustained, because when a notably shorter office is recited, then that office is not fulfilled either in its form or in equivalent substance." Nevertheless, according to the same Holy Doctor, and according to what Fr. Gury teaches, *Comp.*, n. 73, one satisfies the obligation if due compensation is made, for example, by reciting nine psalms, if the office of a Saint has been said in place of the office of a Sunday. Cf. La-Croix, l. 4, n. 1250. But the second opinion as regards the proposed question holds that he who changes an unequal or almost equal office does not sin gravely. The reason is, "because the Pontiff in assigning the specific form for

the recitation of the breviary looked rather to quantity as the substantial form than to the quality of the office, which is an accidental form, or manner of reciting."

Now theologians most commonly agree that the omission of one whole little hour, or of a quantity equivalent to one little hour, is necessary and sufficient matter of grave sin. He who by error said the hour of sext twice and then omits the hour of none, although he omits the hour as to quality, nevertheless does not omit it as to quantity, at least equivalently. But since the quality of one hour in relation to the whole office is accidental and slight matter, as is clear from what has been said regarding the omission of vespers of Holy Saturday, the grave sin would be only by reason of quantity. But this is equivalently compensated, as it is compensated in the case in which someone has said a notably shorter office. Therefore.

Thus perhaps Salvianus reasoned. Nevertheless it seems more true that he was gravely obliged to the recitation of the hour of none. For he did not satisfy the obligation of the divine office as to form and as to quantity together, in grave matter. For it cannot truly be said that he recited none, but that he recited sext twice, which is quite different. Wherefore, although office for office is valid, because the form and quantity of the divine office is preserved, and there is error only as to the quality of the office of one Saint, for example, for another Saint; nevertheless hour for hour is not valid. For by that very fact form and quantity are lacking, since the hour is omitted. Nor indeed can it be sufficiently supplied by another hour. For in the very fact that that hour itself is lacking, the quantity of that hour cannot be supplied. It is certainly another thing when there is question of vespers of Holy Saturday, for then, because of the smallness of the prayer, the omission of that whole hour constitutes a small omission. Likewise when a shorter office has been recited for another longer one; the integral form of the office has already been preserved, and the quantity can well be supplied by reciting the psalms of the other omitted office. But in the Case this cannot be verified, for one hour would be supplied by another hour of the same office; and since one hour is grave matter, excepting vespers of Holy Saturday, there would already be had a grave alteration as to the form and quantity together of the divine office. Otherwise why could not one nocturn be recited twice, three times, for the first, second, and third nocturn; twice prime or twice lauds for lauds and prime, and so forth?

3. Fabianus, a priest, since he was rather tired from a delayed celebration of Mass and from a sermon given to the people, began to recite the little morning hours. But when the hour of none had been begun, he was called to dinner; and lest others should have to wait for him, and he himself had already waited a long time, he at once completed none by a shorter way, namely by reciting those things which precede and follow, and by omitting the three intermediate parts of Psalm 118.

It is asked: What as to the Case?

R. Theologians in this matter have established, some too great, others too small, matter for having a grave transgression in the recitation of the divine office, as may be seen apud Busembaum and St. Alphonsus, l. 4, nn. 146, 147, and La-Croix, l. 4, n. 1202. But the opinion has now become most common, as Fr. Gury affirms, *Comp.*, n. 51, requiring the omission of one little hour or of a quantity equivalent to it. Now this opinion must be taken altogether strictly for the omission of one entire hour, and thus Fr. Gury, in the cited place, openly says: "if someone does not omit some hour altogether integrally, he can be excused from grave sin, because more probably it is light to omit less

than an integral hour." St. Alphonsus, in the cited place, cites several theologians for the same opinion, and says: "they probably say that it is light matter to omit less than an integral little hour"; but afterwards from his own opinion he says: "that universally is judged small matter which does not reach the quantity of one integral hour." And La-Croix, l. 4, n. 1202, has these things to the matter of which we are treating: "if you omit less than a whole little hour, you do not sin mortally. If however you recite only a small part of one little hour, for example, these five words: *Deus in adiutorium meum intende*, you are judged to neglect the whole, and therefore you sin mortally, because so little is reputed as nothing."

But d'Annibale, *Summ.*, 3rd ed., p. 3, n. 147, says: "if someone has read some small thing of a little hour, say the hymn, chapter, responsories, and prayer, the rest being omitted, it will be just as if he had omitted the whole, La-Croix IV, 1202." At first sight the distinguished D'Annibale seems to hold as small and almost as nothing all those things together: the hymn, chapter, responsories, and prayer. But since he cites La-Croix, and, as is clear from his words just reported, La-Croix holds as small and almost as nothing only those five words, it must be said that D'Annibale understood as small only the hymn, or chapter, or responsories, or prayer; although the sense is somewhat obscure on account of the particle "and" placed at the end.

Wherefore to the proposed question it seems it can be answered that Fabianus was immune at least from grave fault. For he recited a part of the little hour which was not altogether slight, such that it could be held almost as nothing. For this nearly equals one part of Psalm 118, which is recited in that hour, namely sixteen versicles, so that Fabianus recited almost a fourth part of the whole hour. I. M. 114.

4. Geminianus, by dispensation parish priest of two parishes, is always uncertain whether he ought to recite a double office or only one. Likewise he is often uncertain what office he ought to recite, since those two parishes have some proper offices, but different ones.

It is asked: What as to the Case?

R. Geminianus, "because he owes praises to God as one man, it suffices that he say the office once according to the custom of one of the churches of which he is a cleric. But concerning the choice of office it seems reasonably that he ought to say the office of that church in which he has the greater rank; for example, if in one he is dean and in the other a simple canon, he ought to say the office of the church in which he is dean. But if in each church he were a simple canon, he ought to say the office of the more dignified church, although perhaps in the lesser church he has a richer prebend; because temporal things are of no moment compared with spiritual things. But if both churches are of equal dignity, he can choose whichever office he prefers, if he is absent from each church; but if he is present in one of them, he ought to conform himself to those with whom he lives." St. Thomas, *Quodl.* 1, a. 13.

5. Nemesius, a priest, on a certain Saturday, after the first nocturn of Sunday matins had been said toward night, was called to a sick person, and on Sunday he said the remaining nocturns, without repeating the first.

It is asked: Did Nemesius sin gravely in the Case, and ought he to have repeated matins?

R. In the negative. The reason is that he satisfied the substance of the precept, since he completed the office at the due time. Therefore Nemesius is to be excused from mortal sin, although he interposed the whole night between one nocturn and the next. Indeed he is free even from venial fault, since he did this from a just cause, or from an office of charity, namely so that he might aid the sick person. G. 51; I. M. 143.

6. Felix, a beneficed cleric, assisting at choir, very often does not understand those things which are sung by the other part of the choir; but he hears only confused chant, by no means distinguishing and understanding the words. Hence he is very anxious whether he satisfies the obligation of the divine office.

R. Felix satisfies the obligation of the divine office. For the difficulty by which he is disturbed follows from the very manner of singing the divine hours. For unless someone holds the whole office by memory, or unless he reads while the other part of the choir sings, it very often happens that someone, although he attends and wishes to understand all things well, does not distinguish or understand the words. Moreover those who by obligation assist at choir certainly are not held to learn the office by memory, nor, while the other part of the choir sings, are they themselves held to read that part; but it suffices that they hear the chant and attend as much as they can. The same holds concerning the recitation of the office with a companion. "He satisfies his obligation who does not understand his companion, because there is no obligation of understanding, but of reciting his own part and hearing the other. Otherwise nuns and also many religious not understanding the Latin tongue would not satisfy." G. 52; St. Alphonsus, 163; I. M. 111.

7. Sebastianus, a mountain parish priest, reciting the office privately, indeed makes all the commemorations in the suffrages which are found in the breviary before compline; but he omits all other commemorations, namely of the Titular of the Church, of the Patron of the Parish, of the Titular of the Cathedral Church, of the Patron of the Diocese, and of the Patron of the whole Kingdom. Callixtus, his vicar, contends that all these commemorations must be made, because they are found indicated in the diocesan Calendar, which must altogether be stood by. But Sebastianus constantly answers that they are not found in the Roman breviary approved by St. Pius V, which rather must be stood by.

It is asked: What as to the Case?

R. Sebastianus does not act rightly, omitting the commemoration of the Titular of the Church. For this is clear from the rubric itself of the breviary, in which it is said: "the commemoration of the Patron or Titular of the Church is added." Of the Patron, if the Church has a Patron, namely the Blessed Virgin Mary or some Saint who exercises his patronage. Of the Titular, if the Church is dedicated to some divine Mystery, which, properly speaking, does not exercise patronage; and therefore it is said "of the Patron or Titular of the Church," and it is not said "of the Patron and of the Titular of the Church." Of the Church, i.e., of the proper Church; not of the Cathedral Church; of the proper Church, namely, to whose service one is attached by any canonical title whatever, provided that the church is public, even if not consecrated. Besides the commemoration of the Title or Patron of the Church, and as regards Regulars, of their proper Founder, no commemoration of the Patron of the place or Diocese, Province, or Kingdom is to be made by force of the rubric, unless a contrary

custom is in force. Thus from the General Decree of the S. R. C., 27 June 1899. Whence it is also clear that by force of the rubric no commemoration of the Titular of the Cathedral Church is to be made besides the commemoration of the Titular of one's proper Church. Wherefore Sebastianus the parish priest is indeed held to make the commemoration of the Patron or Titular of his proper Church. But as regards the others, one must see not whether they are found indicated in the diocesan Calendar, but whether a legitimate custom is present. It must be affirmed in the Case, if in the diocesan Calendar they are not now indicated for the first time, but have constantly been prescribed previously.

Here it must be noted that "the Titular, or Patron of a Church, is said to be he under whose name or title the Church was founded, and from whom it is named. But the Patron of a place properly is he whom a certain city, diocese, province, kingdom, etc., has chosen for itself as a singular patron before God, the rules being observed in his election." S. R. C., 9 May 1857, Briocen., n. 3048; *Collectan.* S. C. de P. F., nn. 1932, 1934, 1937, 1938.

8. Bishop H., besides the cathedral, has other churches from which he receives some fruit for his support. Must he himself, when the suffrages of the Saints are to be done, add a commemoration of their Titulars; or does the commemoration only of the Titular of his own cathedral suffice?

R. He is held only to the commemoration of the Titular of the cathedral church. S. R. C., 16 Apr. 1886, Halif., ad 2.

9. Missionary H. A. has other churches committed to his care, besides the principal one. Must he make the commemoration of the Titulars of all of them?

R. He is held to the commemoration only of the Titular of the more dignified church, or of the church at which he must reside. S. R. C., 16 Apr. 1886, Halif., ad 2.

10. Anastasius, a beneficed cleric, very liable to wandering of mind and distraction, in the recitation of the breviary often, when he is at the end of the recitation of lauds, of the hour of none, or of compline, does not remember whether he has said the things which precede. Hence he is often very anxious whether he ought to repeat the recitation, and he begins also to be anxious whether he ought to restore the fruits of the benefice.

It is asked: What as to the Case?

R. There is a twofold opinion of theologians in this matter. The first opinion asserts that for fulfilling the obligation of the divine office there is required and sufficient, besides intention, internal, virtual attention, whether it is to God, or to the sense of the words, or even to the words alone with at least some confused attention to God. But internal virtual attention is that which remains from actual attention as long as it is not revoked expressly or tacitly by voluntary distraction, or by an action incompatible with due attention. Whence although you are involuntarily distracted, nevertheless you attend virtually if in general you intended to say the office in the customary way, or with the mind of praising God, or of satisfying your duty, and if consequently you recite with at least some confused apprehension and purpose of doing the customary work. The supporters of this opinion diligently

note that, in order that someone be said not to satisfy the office, it is required not only that someone voluntarily distract himself, but also that he fully notice that he is distracted. For an intention previously conceived with full deliberation does not cease to exist, unless it is retracted with another full advertence. The other opinion asserts that for fulfilling the obligation of the divine office external attention is required and sufficient. But external attention is had when no action incompatible with interior attention is placed, such as writing, reading, etc. The first opinion is more common and more probable; but the second opinion, both on account of the authority of many and very grave doctors, and on account of a reason resting on foundations not slight, is sufficiently probable and is held as such by Busembaum, l. 4, n. 7, and by St. Alphonsus, l. 4, n. 177. "Whence," says the Holy Doctor, "I would not dare to condemn to restitution a beneficed cleric who in good faith had recited the office with voluntary distraction, and likewise in good faith had received the fruits." Cf. also concerning this question Sylvius, op. t. 5, Oratio 13, concerning attention to the canonical hours; D'Annibale, 3rd ed., p. 3, n. 149; I. M. n. 165. — But the reason of the first opinion is: because prayer pertains to worship, and exterior worship without interior worship is a lie. Besides, because prayer is the ascent of the mind to God. The reason of the second opinion is that prayer is petition; but only intention and words are necessary for petition. Otherwise, if internal attention were also necessary for the substance of prayer, there would be no prayer if someone were unwillingly distracted, which no one affirms; nor would the sacrament of extreme unction be confected, whose form is deprecatory. And these reasons are very grave. Hence Anastasius, concerning whom the Case is concerned, ought to be anxious about nothing. For first, since he finds himself at the end of some hour, he can presume that he said that whole hour. Moreover, since he himself is anxious concerning the recitation of the office, and is often anxious, it does not seem that he recites without any internal attention. And although he does not have this, it does not seem that he certainly lacks even external attention. Wherefore he ought neither to repeat the recitation, nor to restore the fruits of the benefice, which, since he has already received them in good faith, the condition of the possessor is the better. Giribaldi, 183–185.

11. Pancratius, a beneficed cleric, knowingly and willingly distracted in mind, recites the office several times. Moreover, always and legitimately dispensed from choir, he recites matins and lauds of the following day on the preceding evening around the second hour. He is now greatly disturbed whether he has committed grave sin, and he is disturbed still more because, notwithstanding such anxiety of conscience, he does not restore the fruits. Hence he approaches a confessor and manifests to him the distresses of his soul, so that he may have peace. But his distresses increase; for the confessor pronounces that he has sinned gravely always in the individual cases, and besides that he is held to restitution, because from St. Alphonsus, l. 4, n. 158, possession of any thing cannot be begun except with certitude of right.

It is asked: What as to the Case?

R. Recitation of the divine office is a human act, and therefore is not had without intention; whence it is altogether necessary that someone recite it knowingly and willingly. But from the fact that someone is distracted in recitation, attention indeed vanishes, but intention is not impeded. Attention is also necessary for the recitation of the divine office, because it is prayer. But it suffices that it be external attention; for the precept of internal attention is certainly not established, since the doctors greatly dispute concerning it. Wherefore, if someone recites the divine office knowingly and willingly while distracted in mind, he sufficiently satisfies his obligation, if otherwise at least

external attention is not lacking. Therefore Pancratius, reciting the divine office while distracted, is immune from grave sin, and so the confessor did not pronounce sentence well in this matter.

Many and approved doctors hold that matins and lauds can begin at the second hour, and many doctors also who adhere to the contrary opinion think it probable. Therefore Pancratius, even in this recitation, is probably not guilty of grave sin. Whence the confessor did not pronounce sentence well in this either.

But the confessor erred altogether in imposing restoration of fruits upon Pancratius. For Pancratius is disturbed only after the fact, and so he received the fruits in good faith, in which Case, from the very opinion of St. Alphonsus, he would not be held to restore the fruits. Indeed St. Alphonsus, in the cited place, treats the question concerning a beneficed cleric: whether, when he cannot recite the office alone, he is held to hire a companion from the fruits of the benefice. He brings two opinions, the affirmative and the negative. And then he immediately adds: "each opinion is probable; hence I say that if such a beneficed cleric omitted the office because he did not employ a companion, and received the fruits in good faith, he can retain them, because the condition of the possessor is the better. Otherwise, if he has not yet received them, but relying on the probability of this second opinion wishes to receive them, because possession of any thing cannot be begun except with certitude of right." But even if Pancratius has not received the fruits, he can certainly receive them; for only he who omits to recite the hours does not make the fruits his own. But Pancratius certainly recited the hours. Moreover, the general principle established by the Holy Doctor has its exceptions. Certainly someone cannot begin possession of some thing with probability of right by despoiling another who is in legitimate possession of the thing. But if another does not possess the thing, or does not possess it legitimately, his possession can indeed be begun with probability of right. For if that possession can be continued with such probability of right, why also can it not be begun, since possession consists not in right but in fact, and is always the same after it has been entered upon and when it is entered upon? Moreover, good, doubtful, or bad faith does not change the truth of a thing. Wherefore even when possession has been begun with doubtful or bad faith, if afterwards the error is established, someone, having rightly formed conscience for himself, will be able to retain the thing. And thus, if two buy a thing, one of whom thinks it is the seller's, the other that it is not the seller's, if afterwards Titius appears affirming that it is his, but by no means proving this, the buyer's bad faith certainly grants or adds no right to Titius, just as the good faith of the other buyer takes away no right from Titius. Whence, if in truth that thing was the seller's, both buyers can altogether retain it, and, once the error is known, the other buyer must change only his own opinion and rightly form conscience for himself. Likewise he who contracted marriage with a doubtful impediment, after the matter has been explored in vain, can licitly render and seek the debt. Ligorius, l. 6, n. 906; I. M. 1032. He who received moderate gain from a loan with doubtful or bad faith, provided he is prepared to stand by the mandates of the Church, ought not to be disturbed. S. Penitentiary, 16 Jan. 1837. He who, thinking with bad or doubtful faith that he is irregular, accepted an ecclesiastical benefice, makes the fruits his own. Ligorius, l. 7, n. 347. He who takes a gem found on the seashore, doubting whether it belongs to no one, or has been abandoned, or has been lost, after useless investigation, no one appearing, makes it his own. And, if someone appears, but does not prove that it was lost by him, still the former justly and legitimately retains it. Namely, bad or doubtful faith in these cases takes away nothing of right. Whence, if in good faith someone justly and legitimately retains, in the same case, even with bad and doubtful faith, this afterwards removed, he justly and legitimately

retains. Besides, although the reason brought forward were universally true, nevertheless it has no place in the proposed case: for the beneficed cleric receives the fruits of the benefice with certitude of right; for the benefice itself, which he possesses, gives a certain right to receiving the fruits. But one omitting the office does not make the fruits his own; but let it be shown that Pancratius omitted the office.

12. Eustachius, a priest, on the day of the Commemoration of all the Faithful Departed, is invited by the Prefect of the Confraternity of the Most Holy Rosary to sing the office in the chapel of the cemetery of Campo Verano together with other ecclesiastics and members of the Confraternity. Eustachius sings with the others the Office of the Dead and receives a rich stipend. But he does not privately recite another office on that day, thinking that by that same office sung in the chapel of the cemetery, notwithstanding the rich stipend received for it, he can also satisfy the obligation which he has of reciting it as one initiated in sacred orders from the common law of the Church.

It is asked: What as to the Case?

R. Eustachius does not seem to be disturbed. For from the common law of the Church, as one initiated in sacred orders, he was held on that day to recite the Office of the Dead. But he recited this office; nor was he held to recite it twice. But whether he sang it in choir together with others, or in the chapel of the cemetery, this certainly does not impede satisfaction of the law. Nor does the fact that he received a stipend impede it. For first, if he received the stipend for the inconvenience of the journey and the labor of singing, this certainly does not impede the satisfaction of the common obligation, since it is something altogether extrinsic to the recitation itself of the office. If likewise he received the stipend for the office itself and its application for the Dead of that Confraternity, neither does this impede the satisfaction of the common obligation of reciting the office for him who is initiated in sacred orders. For a priest celebrating Mass on Sunday for a stipend received so that he may celebrate on that day is not therefore afterwards required to hear another Mass. And a beneficed cleric who is at the same time constituted in sacred orders, although he is held to the divine office by a double title and receives the fruits of the benefice, is nevertheless held to recite only one office.

13. Aurelius, occupied with theological studies, so that he may prepare himself for receiving the theological doctorate, asks a dispensation from the Vicar General from the canonical hours for a week. The Vicar grants it without any difficulty, and Aurelius uses it without any scruple.

It is asked: What as to the Case?

R. St. Alphonsus, l. 4, n. 156, speaking of those who are excused from the recitation of the canonical hours by a just impediment, also enumerates those "who by office must attend public theses; likewise those having a public lecture for acquiring a Chair or Doctorate, if the occupation were of the whole day and could not be deferred without harm to oneself or others; likewise students who must on some day defend an Act (Theological or Philosophical).... But if all these without great difficulty can anticipate or postpone the recitation, to this they are indeed held; whence... it will happen very rarely that they will be able to omit such an office without fault." D'Annibale, 3rd ed., p. 3, n. 152, likewise affirms excuse from the recitation of the divine office from the fact that someone must "devote himself to study, not indeed ordinary, but from an extraordinary and grave cause, for example, for

making an examination or for publicly reading." Hence Aurelius, if in truth during those few days he must devote himself to study, and therefore cannot recite the breviary, if he does not have a just impediment so that he may be excused, certainly has a legitimate reason for asking and obtaining a dispensation. But whether the Vicar General legitimately granted the dispensation is a matter which depends on the faculties granted to him by the bishop. If he has a special mandate from the bishop, then certainly, as in the law of fasting, so also in the recitation of the breviary, he will be able to dispense. St. Alphonsus, l. 3, n. 1032; l. 4, n. 159. But since the Vicar General in the Case granted the dispensation without any difficulty, it must altogether be presumed that he did not lack that special mandate.

14. The superior of a religious institute permits his students to separate in choir the recitation of matins from lauds, so that matins is anticipated on the preceding day in the first evening hours, and lauds is recited very early in the morning. He himself thinks that this can well be done. For those students, since during the night they must rise by turn, cannot rise at midnight for reciting matins with lauds. — Is it rightly done?

R. In the negative. Nor did the S. R. C., 11 March 1871, n. 3241, wish to grant an indult concerning this matter.

15. The nuns of the Visitation believe that they are gravely obliged to the recitation of the little office of the Blessed Virgin Mary, since in their Institute that opinion has been constant, and consequently the custom of reciting that office; which opinion and custom had its origin from the beginning of the foundation of the Institute itself. — Is the opinion of the nuns true?

R. In the negative. The reason is that generally nuns of simple vows only are in no way held under grave obligation to the recitation of the divine office, as is clear from the Response of the S. C. EE. et RR., 19 Apr. 1844. Cf. E. M. 107. Nor indeed can they be held by force of the special Constitutions of the aforesaid Institute; for Constitutions of this sort do not of themselves oblige to sin, Const. 49. But custom has no force in the Case; for it was introduced from an error of a grave preexisting obligation. Wherefore it could not introduce a grave obligation. I. M. 190. — M. E. v. 12, p. 270.

99. On Commerce and Trading

1. "An Apostolic Vicar (Kouytcheou) deposits money sent to him with a certain merchant dwelling in his province, and from time to time takes and spends part of that money as necessities require; and thus at the end of the year more or less money remains in the hands of the merchant, who uses that money in order to exercise his commerce, and receives profit from it, and wonders that the Apostolic Vicar receives no part of the profit accruing.

The Apostolic Vicar asks that it be lawful for him to enter into partnership with that merchant, so that he may be a participant of profit or loss, according to the proportion of the money deposited by the Apostolic Vicar with the aforesaid merchant.

R. As regards entering into partnership, in the negative; and let the Apostolic Vicar of Kouytcheou consult Benedict XIV in his Constitution *Apostolicae Servitutis*, and *de Syn. dioeces.*, l. 10, c. 3, and let

the Decree of 13 Aug. 1834 be given, namely: That missionaries, etc., can consult for the security of subsidies owed to them and for the good of the mission itself by receiving by way of exchange goods bought with money owed to them, and selling the same goods brought to them, and making their own the price to be drawn from the sale of the same." S. O., 29 Jan. 1851, A. S. S., v. 24, p. 707.

2. Caesar, a priest, gives an immense sum of money to his brother Caesarinus, so that he may open a shop for selling medals, sacred images, rosaries, and other objects of devotion. Caesarinus alone gives his name to the shop and manages the care of the business. But at the end of the year he gives to Caesar an account of receipts and expenditures, and with him divides the profit, the proportion being observed between the money of his brother and his own work. — Does Caesar act licitly?

R. In the negative. For he truly exercises trading through an interposed person, prohibited by Benedict XIV, Const. *Apostolicae servitutis*, 25 Feb. 1741, and by Clement XIII, Const. *Num primum*, 27 Sept. 1759. Cf. Benedict XIV, *de Syn.*, l. 9, c. 9, nn. 4, 5.

3. Bernardus, rector of a seminary, buys grain in twice the quantity which he needs for a year. For he says: The price of grain is now, beyond custom, very low; after six months it will be very high, and then I will sell the surplus with profit. But if I foresee that next year the price is to be increased, then I will keep what remains for the future year. — Is this rightly done?

R. If he buys with the direct intention of selling more dearly, he acts illicitly; for it is an act of true trading. But if he buys on account of the danger which can occur next year, so that he may provide for the household affairs of the seminary, and, that danger ceasing, afterwards resells the surplus, he acts licitly; for it is not an act of trading, but of domestic economy. Cf. Lugo, *de Iust. et Iure*, d. 26, s. 3, n. 32.

4. Olivarius, a priest, seeing that the value in Europe of notes of the banking market of South America is always diminishing greatly day by day, writes to his friend dwelling in South America, who owes him two thousand lire, that he should spend them in buying goods of that region, which afterwards he should send to him. For by selling these goods himself in Europe, he will be able without detriment, and perhaps even with profit, to recover his whole money. — Does Olivarius act licitly?

R. In the affirmative. For he does not intend profit by buying cheaper so that he may afterwards sell dearer, but the recovery of his own money without detriment. Cf. Lugo, *de Iust. et Iure*, d. 26, s. 4, n. 33.

5. Onuphrius, a priest, lends money to his brother Angelus. Onuphrius receives annual profit according to the legal rate. But Angelus expends it in trading. — Does Onuphrius act licitly?

R. In the affirmative. For he himself is not the trader, but his brother. He himself is a simple lender of money, which is not prohibited to him.

6. "You have set forth to the S. C. de P. F. that entrance into those regions of Tibet, whether subject to the great Lama, is altogether forbidden, under penalty of expulsion, to all foreigners,

and especially Europeans, unless for the cause of trading. Your Amplitude understanding this, fearing lest the Apostolic mandate which you have undertaken, namely of evangelizing that savage and superstitious people still sitting in darkness and in the shadow of death, should remain incomplete, since no other means, as you assert, was available: you thought it opportune to enter the borders of that kingdom as a trader, under which pretext you contend that you would propagate the Catholic faith more easily and safely. Wherefore, in order to avert from the minds of the infidels every suspicion concerning the true state and condition of Your Amplitude and of the other companions, you strive to demonstrate to them not only by words that all of you are nothing else than a certain society of merchants devoted to earthly profits; but so that they may be further confirmed in an opinion of this sort, it pleased you to establish here and there some storehouses or shops for keeping and selling goods; and, what is remarkable, to have completed all these things without consulting the Apostolic See, to which at last you had recourse, that you might be instructed concerning the liceity of the aforesaid trading. The Eminent and Reverend Fathers of the Congregation of the Supreme Inquisition, your requests having been seriously and maturely weighed, responded: that it is not lawful under any title for missionaries to exercise commerce.

"And certainly, although it is known to the Eminent Fathers that Your Amplitude was moved from zeal with which you burn for propagating the Catholic faith, nevertheless it ought to be clear to you that the sanctions of the Sacred Canons, the Decrees also of universal Councils, Apostolic Constitutions, and the responses of the Sacred Congregations to the requests of Apostolic Vicars are altogether contrary to your aforesaid manner of acting; nor can the goodness of the end legitimize illicit means for obtaining the same, for evils are not to be done that goods may come. Besides, the divine Religion of Christ must not be propagated by fictions and simulations, as heretics try to propagate their venerated dogmas. For our Lord Savior, about to convert the human race, sending his Apostles and Disciples, said to them: *Going into the whole world, preach the Gospel to every creature. Teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit. Behold, I send you as lambs among wolves. Be therefore prudent as serpents and simple as doves.* These are divine admonitions, for faithfully executing which preachers of the Gospel ought to apply all efforts. Although the pretext of commerce seems to you most apt for propagating the faith, nevertheless it must never be applied in the conversion of souls, as indecent and very unbecoming to apostolic men, after the example of Christ and the Apostles, who never used these fictions, by which they would seem to serve God and mammon at the same time. For examples are not lacking in which infidels, as soon as they see those who say that they are ministers and legates of the Most High God devoted to temporal affairs, despise the same, thinking that they use the pretext of religion in order to emerge from the straits of poverty. In this way they everywhere lose that veneration and love which they need before other things for gaining souls to God, and acquire for themselves the ignoble name rather of merchants of monies than of curators of souls.

"Therefore, lest you seem to contradict not only the sanctions of the Sacred Canons, but also the Apostolic Constitutions (of Urban VIII, *Ex debito Pastoralis officii*, 22 Feb. 1633; of Clement IX, *Sollicitudo Pastoralis Officii*, 17 June 1669; of Benedict XIV, *Apostolicae servitutis*, 23 February 1751; of Clement XIII in his Encyclical *Cum primum*, 16 Sept. 1759; and of Pius VI in the response to the Archbishop of Theodosiopolis, 18 March 1782), it is necessary that you abstain in the future from the

exercise of commerce, whether through yourself or through others, directly or under any title or color, lest you remain entangled in the most grave penalties laid down in the Sacred Canons and especially in the above-cited Constitutions.

"These things having been premised, do not wonder if you sometimes understand that the S. C. has more often dispensed with some persons from the prohibition of trading of this sort. For all concessions made by the aforesaid S. C. de P. F. to some Apostolic Vicar, or to Chinese priests lacking ecclesiastical patrimony, regard only certain particular cases, indeed most urgent ones. But concessions of this sort were never made so that missionaries could use the exercise of commerce as a means for propagating the Catholic faith, as Your Amplitude greatly desires to obtain.

"Therefore, any trading whatever being excluded, you are able to permit only medicinal substances, to be furnished for the use of the sick gratuitously, or at least without any profit, by missionaries skilled in this art. In the rest, strive that, in the more prudent and better way that you can, the poor who have chosen a dwelling for themselves around the hospices of the missionaries may be evangelized; and as for their children who attend the schools of the aforesaid missionaries, take care that with human letters they may also be imbued with the rudiments of the Catholic religion. These foundations having been laid beforehand, the edifice of religion, with God helping, will rise to the highest things; for *neither he who plants is anything, nor he who waters, but God who gives the increase."* S. C. de P. F., 4 Feb. 1860, to the Apostolic Vicar of Lahassa.

100. On the Alienation of Ecclesiastical Goods

1. A certain monastery resolved to sell a certain house, which it possessed, to another monastery, which offered the price of 20,000 *libellae*. The negotiations of the contract had already been completed, and the Apostolic Beneplacitum was being awaited, so that the contract might be consigned to a lawful instrument and perfected. And therefore neither had the money been handed over, nor had possession of the house been handed over. Meanwhile the chapter of the cathedral church offered to the owner monastery the price of 25,000 *libellae*, and, the Apostolic permission having immediately been sought and obtained, it handed over the price and took possession of the house, the other monastery protesting.

Question. What is to be said in the case?

R. The later contract of the monastery with the chapter was valid and licit. It was valid, because the prior contract with the other monastery had not yet truly been a perfected and consummated contract, but only the negotiation of a contract. Negotiations concerning some contract are not the contract itself. Moreover, the purchase and sale in the case had certainly not been perfected, since, in order that it might be perfected, the Apostolic Beneplacitum to be obtained was being awaited, and the instrument had to be drawn up, not so that the contract might be perfected merely accidentally as to its form, but so that it might be perfected as to its substance. For, as is clear from the Extravagant *Ambitiosae, de reb. Eccl. non alienand.*, renewed by the Constitution *Apostolicae Sedis*, no private contract of parties has firm value in this matter before the Apostolic Beneplacitum accedes to it.

It was licit, however, insofar as, namely, 1. no damage thereby came to the other monastery, concerning which there is nothing in the case; and insofar as 2. the other monastery, when the matter had become known, was unwilling to offer an equal price by first increasing its own. For by natural

equity, while negotiations concerning a contract are still being had, and the contract is not yet absolute and perfected, the buyer cannot demand that the seller neglect his own notable advantage by putting after it a better opportunity of selling the thing at a much dearer price. Cf. S. C. EE. et RR., 30 April 1869, *A. S. S.*, vol. 5, p. 362 ff.

Concerning Beneficed Clerics

101. On Benefices in General

1. A parish being vacant for nine months, without the Bishop, the Ordinary of the place, conferring it upon anyone, the Archbishop, in order to supply his negligence, confers it as devolved to himself. — Does he do this by right?

R. In the negative. For inferior collators must confer benefices within six months; otherwise the collation for that turn is devolved to the immediate superior. Wherefore, if the Bishop is negligent in the collation of a benefice, it is devolved to the Metropolitan, c. 2, *de Concess. Praeb.*, c. 41, *de Election.*, Riganti on Rule 9, § 3, n. 133. But exempt churches, parishes, and benefices resigned into the hands of the Ordinary are excepted. These are immediately devolved to the Roman Pontiff.

Within six months; but if they are parochial benefices reserved to the Holy See, Bishops are bound, within four months from the day of vacancy, to indicate to the same Holy See the more suitable persons; and, if they are of the right of patronage, they cannot defer institution beyond two months from the day of presentation. Otherwise the complete disposition of them remains reserved to the Holy See, yet with the faculty granted to the patron, if the parochial benefice is of the right of patronage, "for obtaining institution, to have recourse to the Metropolitan or the nearer Ordinary, or to the Apostolic See." St. Pius V, Constitution *In conferendis*, 18 March 1567, § 4; D'Annibale, ed. 3, pt. 3, nn. 31, 35.

2. A benefice being vacant, its patron, for the space of a month as it passed, neglects to present a candidate to the Bishop. The Bishop then freely confers the benefice within a month. But the patron protests. Does he do so by right?

R. By right. For if a lay patron presents no one within the space of four months after the vacancy of the benefice, and an ecclesiastical patron within the space of six months, the benefice is conferred absolutely by the prelate, by devolved right. The Bishop, however, can, from the devolution made to him, prolong the time for conferring the benefice for six months. But in the case only a month had elapsed. Therefore the patron protests by right. Riganti on Rule 42; D'Annibale, ed. 3, pt. 3, n. 30.

Except, however—and perhaps the case was such—if the benefice became vacant by resignation. For if the resignation was not made into the hand of the Pontiff, he who accepted it, namely the Ordinary of the place, must either reject it or confer the benefice, whatever it may be, even one of lay patronage, within a month, although it became vacant in a pontifical month, provided only that it is not reserved under another head. But he upon whom the benefice has been conferred must take possession of it within three months from the day of collation. And if either the collator delays provision, or the one provided delays possession, in the former case the provision is devolved to the Holy See; in the latter the benefice is vacant by that very fact. Gregory XIII, Constitution *Humano vix iudicio*, 5 January 1584, § 7; D'Annibale, loc. cit., n. 58.

3. Bishop A., in good faith, conferred a benefice upon a certain cleric in a pontifical month, namely, one in which the collation of the benefice was reserved to the Holy See. After six years the error is detected. Must the cleric restore the fruits received and leave the benefice?

R. In the negative. For the collation or institution of a benefice, although it was invalid, can nevertheless be ratified by possession for three years from Rule 36 of the Apostolic Chancery, which is entitled *De Triennali*. This ratification rests 1. upon a colored title of collation or institution made by Apostolic or ordinary power. Wherefore it does not profit those who do not have this title; for example, if someone received a benefice not from the Bishop but from the capitular vicar, or did not leave a benefice received and vacant because an order had not been received in its time. It rests 2. upon peaceful possession. Wherefore again it does not profit those who begin possession by force, or who suffer controversy during the three-year period. But whether good faith is also required, as in prescription, some affirm, because no prescription is given without good faith; others deny, because the rule concerning triennial possession does not require it.

Moreover, from the rule of triennial possession are excepted beneficed clerics entering simoniacally by real and mutually completed simony, and those intruded into benefices reserved in the Body of the Law, that is, vacated in the Curia by death, and also parochial benefices against or outside the Tridentine form. St. Pius V, Constitution *In conferendis*; Riganti on Rule 36, Pal. tr. 13, d. 2, p. 33, n. 10; La Croix, bk. 4, n. 712; Lugo, *de Iust.*, d. 7, nn. 113, 126; D'Annibale, ed. 3, pt. 3, nn. 48, 49, 50.

Now in the proposed case a colored title of collation was not lacking; for the benefice was conferred by the Ordinary, namely by him in whom resides the ordinary power of conferring benefices. The cleric's possession was consequently peaceful, continuous, complete, as appears from the case itself, since that defect was detected only after six years. Nor, in the proposed case, was there a simoniacal entrance, nor was there question of a benefice vacant in the Curia by death, nor of a parochial benefice. Therefore the aforesaid cleric is wholly favored, as by a prescription, by the Rule *De Triennali* in both fora.

4. From the most recent convention entered into between the Holy See and the Spanish Government in the year 1851, it was sanctioned that the right of presenting certain canons to cathedral churches should belong to the civil power. But it sometimes happened that canons thus presented by the Government lacked the qualities required by law. It is most evident then that the Ordinary can in no way confer institution and canonical collation of the benefice upon such men. But juridical proof of unworthiness is often very difficult, both because occult delicts are involved, and because graver crimes cannot be brought forward in a public judgment without disgrace to the ecclesiastical order and scandal to the people.

Question. 1. Whether and how the Ordinary can proceed in the case *ex informata conscientia*, and thus, the unworthiness of the elect having been made manifest, deny canonical collation of the benefice. — 2. Whether it is lawful for the Bishop to proceed economically in the case. — 3. Whether from a sentence given in the economical process there is an appeal to the Metropolitan in the case.

R. To the first: in the negative. To the second and third: in the affirmative, according to the form of the Instruction of the Sacred Congregation of Bishops and Regulars, 1880; Sacred Congregation of the Council, 9 April 1892. The reason is that, since according to the present discipline Bishops cannot inflict this censure in perpetuity, and, once institution has been denied to a cleric presented by a patron, that penalty would become perpetual as regards exclusion from the benefice, therefore there is need of a summary process according to the cited Instruction. I. M. 1125; M. E., vol. 7, pt. 2, p. 75; E. M. 8.

5. A beneficed cleric having been translated to another benefice, while the fruits of the benefice were already hanging, mature but not yet received, a question was moved between him and his successor, whether those hanging fruits, still to be received, belonged to the present beneficed cleric, or rather to the predecessor, and whether they were to be divided between them.

R. This matter is greatly controverted among doctors. Therefore let the case, with all its circumstances, be set forth to the Sacred Congregation, so that it may be defined by it. *A. S. S.*, vol. 16, p. 79; M. E., vol. 12, p. 317 ff.

But if there were question not of a beneficed cleric translated, but of one deceased, the aforesaid fruits certainly belong to the successor, from the Constitution of Julius III, *Cum sicut*, 26 June 1550, confirmed by the Constitution of Urban VIII, *Aeternus rerum conditor*.

6. Osius founded a chaplaincy in a parish church under this resolutive condition: that if by some civil law, or from any other cause whatever, it should be suppressed, the goods would return to the heirs. Now a law was in fact passed for the suppression of ecclesiastical benefices; whence the aforesaid chaplaincy was also in fact suppressed. Hence the heirs of Osius reclaim the goods of the chaplaincy, and do not intend to fulfill the pious burdens annexed to it.

Question. 1. What is a chaplaincy? — 2. What is an ecclesiastical and a lay chaplaincy? — 3. What is to be said in the case?

R. A chaplaincy is the temporal or perpetual right of receiving revenues from goods for the temporal or perpetual celebration of Masses at a certain altar or oratory. If they have been founded with the intervention and authority of the Ordinary, they are ecclesiastical; if without his intervention and authority, they are lay. Ecclesiastical chaplaincies, if they are conferred in perpetuity by the Bishop, are true benefices, and collative. But if they are conferred at the will and discretion of the Bishop, they are called manual benefices. As regards lay chaplaincies, although they must be conferred upon clerics, and these are irremovable, the Bishop cannot involve himself in conferring them, and one must stand by the dispositions of the founder or of the heirs. Schmalzgrueber, bk. 3, tit. 5, n. 8; D'Annibale, ed. 3, pt. 3, n. 71.

Now, since the chaplaincy in the case was founded expressly under the resolutive condition of a law of suppression, when the condition exists, the chaplaincy vanishes, and consequently the burdens annexed to it vanish. Wherefore, although the heirs of Osius can be asked and admonished that they be willing both to preserve the chaplaincy and to fulfill the pious burdens, nevertheless they cannot be obligated. *A. S. S.*, vol. 10, p. 89.

7. Seius, a beneficed cleric, left to his nephew a rich fortune, which he himself had acquired from the fruits of his benefice and from his industrious administration and economy. For five years Seius, although always asked, delayed paying a pension with which the benefice was burdened in favor of Ambrosius, a priest. The benefice has now been conferred upon Augustinus, a priest, from whom Ambrosius claims payment of the pension for the preceding five years, which he could never obtain from Seius. But Augustinus refuses to pay, saying that not he, but the nephew of Seius, is bound to that payment under the title of restitution.

Question. What is to be said in the case?

R. "The question is elegant," says D'Annibale, *Summ.*, pt. 3, n. 73, note 47, ed. 3, "who, when a beneficed cleric has died, must pay pensions perhaps unpaid by him: the heir, or the successor in the benefice? The far more common opinion burdens the latter, as in taxes from L. 7, *de Vectigal.* Others deny this, and more rightly, because a pension is part of the fruits, which the beneficed cleric, as if an associate, administered in his own name and in the name of the pensioner. Nor does the cited L. 7 stand in the way, because there the estates themselves are claimed, here the fruits; namely because the fisc has a tacit mortgage in the goods, L. 1, C. *In quibus causis pign.*" And indeed one must entirely stand by this opinion.

For first, the pension is to be paid each year by the beneficed cleric. Therefore the new beneficed cleric is bound only to pay the pension which corresponds to the fruits received in the first, second, and other years of his possession of the benefice, not of another's. Therefore no obligation has been imposed upon him of paying a pension owed by another beneficed cleric. With respect to the first and second beneficed cleric, the obligation of the possessor of the benefice is personal, not real. Furthermore, a pension is the right of receiving a certain part of the revenues or fruits from another's benefice, withdrawn for a time. Therefore a pension does not affect the benefice, but the fruits of the benefice. Therefore the aforesaid obligation, with respect to the first and second possessor of the annual fruits, is a real obligation; and accordingly those fruits pass from the first to the second possessor always bound to the third. Therefore the nephew of Seius, the present possessor of the aforesaid fruits, he alone is bound to restore the unpaid pensions.

That the nephew of Seius is truly the possessor of those fruits is gathered from the obvious sense of the exposition of the case. For that fortune acquired by Seius and left to him is said to have been constituted not only from the fruit of industrious administration and economy, but also from the revenues themselves of the benefice.

8. "Whether the sacristan of a rural church, where the Most Holy Sacrament of the Eucharist is always reserved, is bound to reside there, so that he may daily celebrate the most holy sacrifice of the Mass; or whether he can be absent for five or six days in any month, so that he may attend to other obligations in another church?"

R. "He is bound to residence and to daily celebration of Mass, either by himself or through another priest." S. R. C., 16 March 1833, Firmana.

9. Iofridus possesses a rich benefice. Since he has a probable hope that he will be promoted to the episcopate or the cardinalate, in which state he sees that he can bring much utility to the Church, he abstains from almost every alms, and reserves for himself the ecclesiastical fruits not necessary for his congruous sustenance, both for acquiring that higher state and for afterwards preserving it, once acquired, with due decorum.

Question. Does he do this licitly?

R. Illicitly. This is clear from the common authority of theologians, who raise the question whether there is an obligation of giving alms from those goods which one needs in order to acquire a better state; and they distinguish between a rich layman and a beneficiary. They indeed affirm that "a layman can keep from patrimonial goods for changing his own state or that of others. ... But Bishops and other ecclesiastics cannot from the goods of a benefice change a state to a higher one for themselves, or for relatives, or for friends, as Corduba well taught, because those goods are not given

except for congruous sustenance." Thus Vasquez, tract *de Eleemosyna*, c. 4, last dub., n. 14. Thus also Cardinal De Lugo, *Resp. Mor.*, bk. 5, d. 11, who, besides Vasquez, also cites Navarro and Malderus for this doctrine.

Except, however, the case which Cardinal de Lugo himself excepts, namely when those ecclesiastical fruits are not reserved for acquiring an episcopate or another ecclesiastical dignity, but this is to be accepted from elsewhere and proximately; and one lacks the money required for making the necessary expenses.

102. On Bishops

1. The Bishop of Parma, having instituted a universal heir, bequeathed to the Bishop of Parma *pro tempore* a cross with gems, a precious ring, and a pastoral staff; to the archpriest a cross with a gold chain; to the lord rector of the seminary a white chasuble; to the seminary of Parma one half of the sacred vestments, and the other half to the seminary of Berceto; to the Vicar General a silver chalice; to the secretary a precious stole. The Bishop testator says further that all the gold and silver utensils and sacred vestments were in his ownership, that is, either received by gift or acquired with his own money, by no means from the revenues of the Church. Moreover it is asserted that the deceased Bishop had spent in alms and other pious works during ten years more than he had received from the mensa in as many years. But the council of the Fabric of the cathedral church did not judge these legacies of the Bishop to be valid, thinking that the right of spoil belonged to itself over the whole sacred furnishing of the Bishop, or, as it is called, over the Bishop's chapel. Hence:

Question. Whether, and what, sacred furnishing was validly bequeathed by testament in the case?

R. "In the affirmative in all things and more." S. C. C., 19 January 1884. The reason is that by chapter 1, *de Testam.*, it has been granted to clerics to make a testament concerning all things which do not have the nature of ecclesiastical revenues. This is confirmed by chapter *Quia nos*, 9, same title; final chapter, *de Pecul. cler.*; Constitution of St. Pius V, *Romani Pontificis*, as Navarrus, *de spol. cler.*, § 1, n. 4; Bursatus, cons. 377, n. 28, § *Attamen*; Barbosa, bk. 3, c. 17, n. 62; Azor, *Inst. moral.*, t. 2, bk. 8, c. 3, p. 11; Panimolus, decis. 20, annotation 1, n. 11; Ventriglia, etc., teach. And this is certain today from the Constitution of Pius IX, *Quum illud*, 1 June 1847. For in it it is decreed that there are not owed to cathedral churches all those utensils which were procured with goods not belonging to the church, and which are not proved to have been given to the church.

Furthermore, certainly no one would say that faith can be denied to the affirmation of the Bishop. For there is question of a Bishop, and the Supreme Pontiff himself in his Constitution *Quum illud* wishes the deposition of Bishops in this matter to be admitted for truth. Moreover, that charity of the Bishop, which exceeded the revenues of the episcopal mensa, excludes the hypothesis that that sacred furnishing was bought with the revenue of the mensa, c. *Cum in officiis*, 7, *de Testam.*; cf. Ferraris, v. *Spolium*; and therefore it was exempt from spoil in favor of the Fabric of the Cathedral.

As regards spoil, however, it must be noted that clerics by Canon Law are deprived of the faculty of making a testament as regards the superfluous goods of their benefices; although they can make a testament concerning their patrimonial, industrial, and parsimonial goods. For while they live, they are bound by precept of the Church to expend the former upon pious works. cc. 1, 7, 8, 9, 12, *de Testam.* Now the superfluous goods of benefices left by a cleric were called spoils, which formerly

belonged to the church in which the cleric had obtained the benefice, from c. 7, *de Testam.* This discipline, set aside for some time, was restored to force by Trent, sess. 25, c. 1, *de R.*, and by several Roman Pontiffs. It was established, however, that the superfluous goods of benefices, concerning which clerics cannot make a testament, should yield and be applied by right of spoil to the Apostolic Camera. Also things acquired illicitly by clerics through trading are subjected to the penalty of spoil. Benedict XIV, Constitution *Apostolicae servitutis*, 25 February 1741; *Acta S. Sed.*, vol. 16, p. 460 ff.

2. A regular Bishop, gravely sick with an illness from which he afterwards died, several months before his death repeatedly said to his nephew, in whose house he was sick and who had deserved exceedingly well of the Bishop himself: "You are lord of all that I have; it displeases me that they are few," adding that he had some sum of money. Hence, two or three days before the death of the Bishop, the said nephew took from his chest, from the moneys which were found there, about a thousand scudi, no word having been made about this with the Bishop, whose remaining moneys and movable goods, after he had died, were taken under the name of spoil by the ministers of the Apostolic Camera.

Question. 1. Whether such a religious is exempted from the vow of poverty and is made true owner of ecclesiastical revenues like secular Bishops. — 2. Whether it is open to religious Bishops to make a testament concerning patrimonial goods, or goods acquired by their own industry, in the way in which this is lawful for secular Bishops. — 3. Whether the nephew of the Bishop could in safe conscience receive and retain those moneys.

R. To the first. The first opinion, which several theologians hold, affirms; and Sanchez says that it is probable, loc. cit., *in decal.*, c. 6, nn. 7, 13. The second opinion, which far more theologians hold, denies. Wherefore according to this opinion that religious Bishop is made only administrator of ecclesiastical revenues. Sanchez says that this opinion is most true, loc. cit., n. 8. "A regular Bishop," says Cardinal De Lugo, *Resp. Mor.*, bk. 5, dub. 1, n. 3, "although he has free administration of his revenues, nevertheless does not have ownership of them, according to the more common opinion." "A religious who becomes a Bishop," says St. Thomas, II-II, q. 88, a. 11, ad 4, "as he is not absolved from the vow of continence, so neither from the vow of poverty, because he ought to have nothing as his own, but as dispenser of the common goods of the Church; similarly also he is not absolved from the vow of obedience, but by accident he is not bound to obey if he has no superior, as neither is the abbot of a monastery, who nevertheless is not absolved from the vow of obedience."

To the second. Some affirm, because just as for making a donation in life the mere free administration of goods suffices, so also the same suffices for giving in death. Sanchez says that this opinion is probable, loc. cit., n. 10. But others, far more numerous, among whom is Sanchez himself, loc. cit., openly deny that it is open to them to make a testament. "The reason is that the paternal inheritance and whatever else a religious Bishop acquires from any source whatever, he acquires for his church with free administration only, as is clear from the single chapter, 18, q. 1. ... But administration is ended by death, from which the testament begins to have force. Therefore it is not open to him to dispose after death, which is done by testament." Sanchez, loc. cit. "A donation on account of death," says Cardinal De Lugo, loc. cit., n. 6, "can no more be made by a regular Bishop concerning goods quasi-patrimonial than concerning goods acquired from the fruits of the church, just as neither can a testament be made by him concerning any goods, even for pious causes, as we have reported above from the common opinion of the doctors with Thomas Sanchez." "To the third," says St. Thomas, II-

II, q. 185, a. 8, "it must be said that it is by accident that religious Bishops are not bound to obey the prelates of their religions.... But they can in no way have property. For they do not claim a paternal inheritance as their own, but as owed to the church.... But he can in no way make a testament, because only the dispensation of ecclesiastical things is committed to him, which ends with death, from which a testament begins to have force, etc." E. M. 252.

To the third. The difficulty in the case comes from the aforesaid words: "You are lord of all that I have; it displeases me that they are few," which do not seem to signify a present donation, or certainly do not seem to signify a donation *inter vivos*, but only a donation *mortis causa*. But this cannot be made by a regular Bishop, just as neither can a testament be made, even for pious causes, since this kind of disposition is forbidden to all regulars, even if they are Bishops, whether there is question of goods acquired from the fruits of the church, or of other goods quasi-patrimonial. I. M. 252, 281.

Nevertheless the aforesaid words probably contain a donation *inter vivos*, which the aforesaid Bishop could make, both from quasi-patrimonial goods, namely from stipends which the aforesaid Bishop truly received for personal labor, and also from the superfluous fruits of the church, since that nephew was poor, had several children, and had a marriageable daughter whom he could not place honorably in marriage. I. M., vol. 1, n. 870.

That those words contain a donation *inter vivos* made to the nephew can be proved first from the obvious and natural sense of those words, which otherwise would signify nothing. The proper sense of those words is this: I give you what is found at my home as mine, and I would wish that more things were found. Since, however, the aforesaid donation was made several months before death, there is no indication that it was made *mortis causa*. Moreover, although a donation is not presumed of itself, L. *Cum de indebito*, ff. *de Donationibus*, nevertheless when merits have preceded, a donation is presumed from the cause of remuneration, L. *Si vero non remunerandi*, par. *Inde Papinianus*, ff. *Mandati*. But extraordinary merits on the part of the nephew preceded in the case; for he is said to have deserved exceedingly well of the Bishop, and the Bishop was living and was sick in his house. Hence there certainly were not lacking many things done in favor of the Bishop. Besides, delicts are not to be presumed. And since a regular Bishop cannot give *mortis causa*, nor is the Bishop presumed to have been ignorant of this, he is to be presumed to have given in a wholly licit manner, which alone was the manner of giving *inter vivos*. Finally, as regards the nephew, since he certainly received that sum of 1,000 scudi in good faith, he cannot be despoiled of it, since in doubt the condition of the possessor is better. — Lugo, *Resp. Mor.*, bk. 5, d. 1.

3. The Bishop of Vilnius gave to a suffragan Bishop the faculty of exercising in the city and diocese of Vilnius whatever he himself could exercise, which faculty the suffragan Bishop used while the Bishop of Vilnius was living. But when this Bishop had died, the aforesaid suffragan Bishop doubted whether, by virtue of the aforesaid faculty, not revoked by the chapter and afterwards by the Bishop successor, without the new consent of the chapter and afterwards of the Bishop successor, he could still exercise pontificals and confer orders upon those having lawful dimissorial letters of their prelates, especially if the chapter, and afterwards the Bishop successor, saw this and did not contradict it.

Question. What is to be said in the case?

R. He could not. This is clear 1. from the negative response given to a similar question by the Sacred Congregation of Cardinals interpreting the Council of Trent, 22 February 1631, of which Cardinal De Lugo makes mention, *Resp. Mor.*, bk. 1, d. 32. — 2. From the fact that, although the common doctrine is that licenses and faculties granted by a predecessor without limitation endure after the death of the one granting until they are revoked by the successor, nevertheless this special license and faculty, in the case, includes a certain notion of dominion in another's house. But on account of the reverence which every guest owes to the lord in his own house, it is equitable that a guest in another's house not conduct himself as lord without the consent of the new lord, even though he had obtained that license from the predecessor; for reverence is personal, owed to the successor, which the predecessor cannot take away from him, even if he grants the amplest faculty that someone should conduct himself in his house as lord. Therefore. Lugo, loc. cit.

4. A Bishop, for certain and just causes, prohibited parish priests from permitting Masses to be celebrated in their churches by regulars, unless they had license from the Bishop. Did the Bishop act by right?

R. In the affirmative. Thus Cardinal Lugo, *Resp. Mor.*, bk. 5, dub. 25, who brings forward this twofold reason. The first reason is that the faculty of celebrating everywhere which regulars have does not give a right of compelling the lord, against his will, that they may celebrate in his house and in his oratory, which he has approved by the Bishop. Since, therefore, secular churches are under the dominion or free administration of the secular clergy, regulars do not seem to have the right that, against the will of the secular clergy, they may still celebrate in churches of this kind belonging to them. Wherefore the Bishop, who is the supreme parish priest in the whole diocese, does not inflict injury upon regulars if he is unwilling to lend his churches to regulars for celebrating.

The other reason is that religious themselves are not bound to admit into their churches for celebrating all secular clerics who may wish to celebrate there. Therefore there would be an odious inequality if that which secular clerics could not do in a church of regulars without their license, regulars could do in a secular church while the secular clergy resisted.

5. On the same night on which the Bishop of the diocese B. was dying, a canon, a major dignity of the cathedral church, died after several hours. The Vicar General of the deceased Bishop, continuing in the governance of the diocese before the capitular vicar was elected, conferred that dignity.

Question. 1. What is the jurisdiction of the Vicar General, and how long does it last? — 2. What is to be said in the case?

R. To the first. In those matters which are of jurisdiction, the Vicar General performs the office of the Bishop and uses his jurisdiction, even in the internal forum. In this matter the person of each is one and the same, and the tribunal of each is one. Hence, when the Bishop is removed by death, renunciation, translation, captivity, etc., every right and name of the vicar at once ceases; and when he is suspended, the jurisdiction of the vicar also is suspended. Clem. ult., *de Procurat.*; c. 1, *de Off. Vic.*, in 6.

Nevertheless the jurisdiction of the Vicar General does not extend 1. to extraordinary business, as would be the alienation of goods; 2. to those things which the Bishop is not easily presumed to grant, unless perhaps he is absent far away and for a long time, such as to confer benefices, to suppress, divide, or unite them, to give dimissorial letters to those to be ordained, to dispense in doubtful

matrimonial impediments; 3. to those things which pertain to the power of order, although the Vicar General has been consecrated Bishop. c. 3, *de Appell.*, in 6; c. 2, *de Const.*, in 6; c. 2, *de Consuet.*, in 6; c. ult., *de O. V.*, in 6; cc. 2, 3, same title; c. 81, *de R. I.*, in 6; c. 3, *de Temp. ord.*, in 6; Benedict XIV, *de Syn.*, 2, 8, 1; D'Annibale, ed. 3, pt. 1, n. 96.

To the second. Illicitly and invalidly did the Vicar General confer the benefice in the case, because by the death of the Bishop his whole jurisdiction ceased. Moreover, even if his jurisdiction had continued, the Vicar General does not have this power of conferring benefices, but the Bishop does, who confers them by his ordinary right. Without a special mandate the Vicar General cannot confer benefices, namely those which pertain to the free collation of the Bishop alone. Furthermore, the benefice to be conferred in the case was reserved to the Supreme Pontiff, both because it became vacant while the episcopal see was vacant, and because there was question of a major dignity of the cathedral church, provided its revenues exceeded ten gold aurei of the Camera. D'Annibale, ed. 3, pt. 3, nn. 32, 33.

103. On Canons

1. Iacobus, a canon, is indeed present in choir, but he does not discharge the office with the others by singing. For he hears the others of the other part of the choir; but the verses of his own part of the choir he recites in a low voice. Anxious about this practice of his, he asks whether he has sinned gravely, and whether he is bound to restore the fruits and distributions received.

Question. What is to be said in the case?

R. Roncaglia, tract 5, q. 2, c. 1, q. 6, has these things which pertain to our matter: "A beneficed cleric assigned to choir is bound so to sing, if he is not impeded by some cause, that he can be heard by the other part. Many oppose this obligation, since it is enough for him that that part of the choir in which he is found should speak in such a way that it may be heard by the other; for then all are judged to speak in that way, since they help one another by mutual communication. But this reason does not sufficiently convince me; for one assigned to choir, in order to satisfy his duty, and consequently to receive distributions, ought to serve the choir as such service requires; but the service of choir demands that one so recite that he can be heard by the other part. Besides, anyone assigned to the ministry of some community ought on his part to contribute to such ministry; but he certainly does not do this who says the canonical hours in such a way that he cannot be heard by his counterpart. From these reasons the common opinion is that he at least does not satisfy public recitation who recites in so low a voice that the matter stands as if he were reciting privately; and consequently he is to be deprived of distributions."

Bonacina teaches these things about the same question, d. 1, q. 3, p. 2, par. 1, n. 17: "I respond secondly that he who recites his own verses in a low voice, and attentively hears the others of the other choir, does not satisfy the due service of choir, although he satisfies the obligation of reciting the divine office, nor is he bound to repeat the office. The reason is that ecclesiastical revenues are given to canons so that they may serve and sing with the others, Clem. 1, *de Celebrat. missarum*, final chapter, dist. 92, where it is said that clerics deputed to a church ought to assemble in the church for the daily office of psalmody. But clerics are not deputed, nor are they accustomed to assemble, so that they may hear the rest, but so that they may sing psalms together; just as a laborer is not hired for

the vineyard so that he may stand by there, but so that he may apply his work in it; nor is a parish priest hired so that he may simply reside, but so that he may exercise the parochial burdens. Therefore they ought to sing psalms together; consequently he who recites his own verses in a low voice does not satisfy the duty of choir, although he attentively hears the others. ... Hence it follows that one reciting in a low voice, while the others sing, cannot receive distributions. The reason is both because distributions are conferred upon those singing and serving in choir, and because he who does not do what he ought does not receive what he ought; and because here he acts against commutative justice; therefore he is bound to restitution. ... I concede, however, that he can receive half the distributions, because he is not wholly lacking in his duty, since he is present at choir, recites the office in a low voice, and hears the rest. ... And in this way the words of the Constitution of Pius V, which begins *Ex proximo lateranensi*, are to be understood, in which it is decreed that a canon who does not sing psalms in choir, although he is present, loses the fruits which he would have gained if he had sung. The reason why they are to be understood in this way is both because he fulfills part of his duty, and therefore it does not seem fitting that he should lose all the fruits, and because in the aforesaid Constitution it is not said, 'he who does not sing psalms,' but 'he who, assigned to choir, is present with the others at all the canonical hours without reciting.'"

The Supreme Pontiff indeed absolutely denies the fruits and distributions to him who is present in choir but does not recite the office either in choir or outside choir. But if he recites the office outside choir, he indeed receives the fruits of the benefice; for a beneficed cleric privately reciting makes his fruits his own. If, however, he recites the office neither in choir nor outside choir, he loses the fruits and distributions. For by reason of the omission of the office he loses the fruits; by reason of absence from choir he suffers the loss of distributions. Hence, if someone in choir indeed recites his own part of the office but does not sing psalms, while he hears the others singing their own part, he does not lose the fruits, since this man is not of a worse condition than one who did not come to choir and recited privately. But he seems to gain distributions by half, says Bonacina; for although he does not sing psalms, nevertheless he is really present at choir, reciting the office and hearing the rest. But if he is present at choir and recites the office, yet recites the whole office in a low voice, then, although he gains the fruits of the benefice, nevertheless he loses all distributions, since that presence in choir is then wholly material; and as one simply not reciting, even if he is present at choir, nevertheless loses distributions, so also, although he recites the whole office, but privately, he loses distributions; for if in the one case that presence is not considered sufficient for gaining distributions, neither is it considered such in the other case.

So indeed according to Bonacina, loc. cit., and according to the cited Bull of St. Pius V. But St. Alphonsus, bk. 3, n. 675, contends that canons not present in choir, without a legitimate or just cause, by the fact itself and before any sentence lose both all distributions and also the fruits of the benefice; likewise that canons indeed present in choir, but not singing, also lose all distributions and fruits; and that those likewise present in choir, reciting the psalms in a low voice and hearing the other part, lose all distributions and are bound to restore the fruits of the prebend. The holy Doctor confirms this from the Constitution of Benedict XIV, *Cum semper oblatas*, and from the letter *Dilecte fili* to His Eminence Cardinal Delphinus, Patriarch of Aquileia.

Now then, canons absent from choir, even in time of vacations, do not gain distributions, unless by fiction of law they are judged present. They also do not gain distributions who are present at choir

but do not sing psalms, even if they recite the whole office in a low voice; indeed even if they recite only part in a low voice and hear another part in choir, for even in this case they do not sing psalms. So indeed from the cited Constitution and from the cited letter of Benedict XIV. But as regards the fruits of the prebend, those who are absent from choir, if they recite the office, must indeed restore the fruits of the prebend, but not before the sentence of a judge, and if they are absent beyond the conciliar months and without a legitimate or just cause. Nor is the contrary proved from the cited Constitution and cited letter of Benedict XIV. For the prescription of the Council of Trent, sess. 24, c. 12, *de R.*, is still in force in this matter. Cf. S. C. C., in Verulana, Residence, 6 June 1863. Wherefore the Constitution of Benedict XIV is to be understood of those prebends which consist of daily distributions. Cf. Barbosa, *de Canon. et Dignit.*, c. 20, n. 18; Lucidi, ed. 3, vol. 1, p. 322, n. 106. Hence even canons who are present at choir, but recite the office in a low voice and do not sing psalms, or even simply do not recite, are bound to restore the fruits of the prebend, but not before sentence, and only beyond the conciliar months. Cf. I. M. 219, 220, 221.

It must be noted here, 1., that a twofold kind of revenues has been established for canons: one from prebends, which is called by the name of fruits; the other from daily distributions. cc. 19, 27, *de Praeb.*, c. 10, Extr. Comm., same title. The former are given on account of the benefice itself or prebend, and therefore so that they may recite the canonical hours; the latter on account of presence, and consequently so that they may be present at choir. Cf. Lucidi, ed. 3, vol. 1, p. 286, n. 27 ff.; Trent, sess. 24, c. 3, *de R.*; sess. 22, c. 3, *de R.*; sess. 24, c. 12, *de R.* To these are added emoluments from anniversaries, from legacies, from public supplications, from lawful funerals, etc., which are commonly called distributions among those present. Cf. Benedict XIV, Notification 107, n. 7.

It must be noted, 2., that, the question concerning choir in order to gain fruits and distributions being set aside, but speaking of choir in general in order to satisfying the obligation of the divine office, whether those who recite the psalms in a low voice while hearing the other part satisfy it, according to the far more probable and more common opinion it must be affirmed. The reason is that, in order to satisfy the office in choir, it is not necessary that each one hear all the voices of the other part; for each part with the other constitutes one body, and they mutually communicate. L. 1, 3, n. 675; G. 127.

2. Three canons, brothers by blood, two of whom also carried out the parochial office, were unjustly and violently expelled from their own see by the demagogues of Italy, to which they could not return without danger of prison or life. During the whole time of absence they were deprived by the other canons of the emoluments which are called adventitious, namely those which arise from associations of the dead, anniversaries, public supplications, and other sacred functions. These emoluments, on account of the death of two canons, the four canons only who remained divided among themselves.

Question. What is to be said in the case?

R. Note beforehand: 1. All choral emoluments come, some from the prebend, but others from added pious legacies for Masses and other sacred functions to be performed. The question concerns the emoluments of this second kind; and these emoluments are likewise of a twofold species. For some are fixed from the perpetuity of legacies; others are uncertain and manual, which come from alms, or passing legacies, and other ways by the piety of the faithful. 2. There are legitimate causes of absence from choir which grant the right not only of receiving fruits and daily distributions, but also the other extraordinary distributions and all emoluments which derive from fixed offerings, if the special will

of the testator or giver does not stand in the way. Among causes of this kind is counted the absence of canons compelled by demagogues, during the necessity of that absence. For this forced absence is reduced to bodily necessity, which gives a right even to fixed emoluments, as the doctors teach according to c. *Consuetudinem*, single chapter, *de Cler. non resid.*, in 6, and as is clear from several responses of S. C. C. — I. M. 220.

Wherefore the response to the proposed question is that those absent canons gain all fixed offerings only, in which the special disposition of the testator or giver does not stand in the way, during the necessity of that absence; and that the other present canons, who unduly received the same emoluments of the absent, are bound to restitution of them. S. C. C., 8 July 1865; *A. S. S.*, vol. 2, p. 407 ff.; Lucidi, ed. 3, vol. 1, p. 304.

3. Theodorus, a canon, who was accustomed diligently to frequent choir, is absent from choir because of grave infirmity, although he is not on that account lying in bed. The other canons would wish to deprive him of the fruits of the prebend and of distributions.

Question. Do they do this by right?

R. In the negative. To a sick canon, during his infirmity, although he is not present at choir, all the fruits of his canonicate are owed, as also distributions, provided that before the infirmity he was accustomed to serve his church. S. C. C., 5 March 1667. And this is also clear from c. *Quum percussio*, 1, *de Cler. aegr.*, and it is the common opinion of the doctors. Schmalzgrueber, bk. 3, tit. 41, nn. 86, 87, 88; I. M. 220.

4. Iosephus, a canon, because of grave infirmity had to be absent from choir and from the diocese for two whole years. The Chapter, relying upon custom, during this whole time denied to him both benefice fruits and distributions. Did it do so by right?

R. In the negative. Wherefore both the daily distributions and the benefice fruits, of which the aforesaid canon was deprived, are to be restored in the case. S. C. C., 7 April 1900. The reason is that infirmity is a canonical cause of absence both from choir and from the place of the benefice. Wherefore a canon absent by reason of infirmity is bound neither to renunciation of the benefice nor to putting a substitute. S. C. C., in Piscien., 23 July 1764. And, although a canon in good health may be absent from choir and from the place of the benefice, and therefore lose the daily distributions, nevertheless he does not lose the fruits of the prebend before sentence and by the fact itself. I. M. 220. But the custom in the case, as unjust, is irrational and of no value. M. E., vol. 12, p. 340 ff.

5. Bonifacius, a penitentiary canon, on Saturday and Sunday and on the vigils of solemn feasts and on all feast days is in the confessional awaiting penitents, who are accustomed to confess on these days; but he does not always hear confessions, whence, while the other canons chant the office in choir, he often recites the office privately. On other days, however, Bonifacius is also in the confessional, hearing the long confessions of a few devout women, who come to him daily. The canons, who know the matter plainly, wish entirely to deprive Bonifacius of distributions. For they say that on Saturday, Sunday, and feast days, while the office is chanted in choir, there often are no penitents at that hour; and that those devout women, on other days, could well confess at another hour.

Question. Do they do this by right?

R. From the Council of Trent, sess. 24, c. 8, *de R.*, a penitentiary canon, while he hears confessions in the church, is meanwhile judged present in choir. The same is clear from the Decisions of S. C. C. while he is actually hearing confession. Benedict XIV, Instruction 107, n. 55. Wherefore Bonifacius cannot by right be deprived of distributions on those days on which he actually hears confessions. The question can only be about those days on which he does not hear confessions, but awaits penitents.

Now, if he recites the office privately in the confessional seat, while the other canons chant the office in choir, so that afterwards he may hear confessions more freely and conveniently, this certainly does not suffice for him to be considered present in choir and to gain distributions, as Barbosa teaches, cited by Benedict XIV, loc. cit. But if on certain determined days he sits in the confessional, indeed not actually hearing confessions, but awaiting penitents, with the mandate of the Bishop acceding, then he is judged present in choir and gains distributions, as is gathered from the Decision of S. C. C., 19 January 1646, M. E., vol. 9, pt. 2, p. 242. If finally, during the time of the office, he remains in the confessional, indeed not always actually hearing confessions, but awaiting those about to come who are accustomed to come, it seems altogether truer that he does not lose distributions.

For otherwise the purpose of the Council of Trent would be wholly frustrated. For in many places penitents are not accustomed themselves to call the confessor in the sacristy or in another place, but are accustomed to find him in the church in the confessional seat awaiting them; if they do not find him, they go away without confessing. And St. Alphonsus holds this, bk. 4, n. 131, and D'Annibale, ed. 3, pt. 3, n. 186, also adheres to this opinion as the truer one. Moreover, if in such a case, with the mandate of the Bishop acceding, the penitentiary canon is judged present in choir and gains distributions, the same seems to have place even without the mandate of the Bishop; the mandate certainly does not confer the right of absence, but only declares the case as corresponding to the purpose of the Tridentine law. Wherefore, if without any hallucination the matter is evident that penitents are truly accustomed to come on those days and at those hours, the penitentiary sitting in the confessional and awaiting them surely fulfills the purpose of the Council of Trent. And thus S. C. C., 24 January 1642, judged that "the penitentiary, when he is not impeded in the duty of confession, ought to be present at the divine offices." But impeded in the duty of confession is both he who actually hears confessions, and he who awaits penitents who are accustomed to come. Otherwise, to avoid every inconvenience in this matter, recourse should be had to the Bishop, who may declare when, the circumstances being considered, the duty of the penitentiary requires that he be present in the confessional seat, ready to await and invite penitents. *A. S. S.*, vol. 29, p. 498 ff.

6. "At the Cathedral Chapter of Città della Pieve, for many years now a usage has prevailed of omitting the recitation of the canonical hours of Sext and None in a choral voice after the conventual Mass, and of reciting them in a low voice during the time of the same Mass, for various reasons: 1. when the Bishop celebrates pontifically or is present at the solemn Mass in the pontifical throne; 2. when the service of choir is prolonged because of a longer Mass, or because of some extraordinary function; 3. in the times of Advent and Lent by reason of the sermon.

Question. 1. Whether a usage of this kind can continue, and insofar as in the negative; — 2. Whether it can continue by permission of the archdeacon, or, when he is absent, by permission of the older canon prefect of choir; and insofar as in the negative; — 3. Whether at least it can continue by permission of the Bishop?

R. In the negative to all; nor is satisfaction made to the obligation of choir through the private recitation just described of Sext and None during the time of the conventual Mass." S. R. C., 16 March 1833, n. 2699.

7. "In the Cathedral church of Oppido, up to the year 1838, on days prescribed by the rubric, the Little Office of the Blessed Virgin Mary, or of the Dead, or the Gradual Psalms, or the Penitential Psalms was customarily recited; but these have since been omitted. Since, however, an arbitrary omission of this kind has persevered even to these times, it is asked of S. R. C.:

Whether, considering the long space of almost 30 years, it is permitted to persevere in the omission set forth; or whether rather the laudable custom of saying these additions to the divine office must be resumed?

R. The ancient custom must entirely be resumed according to the decrees issued at other times, and especially in Alexandrina, 22 September 1827." S. R. C., 20 December 1864, n. 3129.

8. Ioannes Baptista, a canon, is assiduously present at choir and chants the canonical hours. But he is never present at the Chapter. For he says: I willingly renounce the right of suffrage. Likewise, in the council of the Bishop, he never expresses his opinion, saying: I know that it will be rejected by the Bishop.

Question. What is to be said in the case?

R. Ioannes Baptista, ordinarily not intervening in the Chapter, is not free from grave fault. Bonacina, *de Hor. Can.*, d. 2, q. 1, p. 2, n. 4. The reason is that the right of being present at the Chapter has annexed to it a grave obligation of administering and governing the goods of the Church, and of expediting other business of the Church. Ordinarily, and accordingly, he is excused 1. in the time of vacations, unless some most grave business to be treated is pressing; 2. if he is sometimes absent for a just cause, without graver detriment to the church; 3. when the business to be treated is altogether light. Bouix, *de Canonic.*, pt. 3, c. 6.

Likewise Ioannes Baptista is not free from fault when, having been asked by the Bishop in council, he keeps silent his own opinion. For since canons are the born counsellors of the Bishop, whenever the Bishop employs them in council, they are consequently bound to state their opinion, although afterwards the Bishop is free to depart from the counsel of the canons. Benedict XIV, *de Syn.*, bk. 13, c. 1, n. 7.

9. Ubaldus, in the concursus for the theological prebend, received the greatest number of votes. Likewise Victorinus, in the concursus for the penitentiary prebend, was declared first among all the approved. But the Bishop, in each concursus, as the more worthy and more suitable, chose two from those approved by the examiners, both of whom had obtained the lowest grade of approval, and conferred the prebends upon them. Hence Ubaldus and Victorinus protest; for they say that from the Constitution of Benedict XIII, he is to be chosen, and the theological and penitentiary prebend conferred upon him, who in the concursus has been declared by the examiners to be approved as more suitable.

Question. What is to be said in the case?

R. Among canons the theologian and the penitentiary are eminent. It belongs to the theologian canon to interpret Sacred Scripture. Trent, sess. 5, c. 1, *de R.*; Benedict XIV, *de Syn.*, bk. 13, c. 9, n. 17.

But the office of the penitentiary canon is to hear confessions. Trent, sess. 24, c. 8, *de R.*; Benedict XIV, *de Syn.*, bk. 3, c. 4, n. 3. Benedict XIII, Constitution *Pastoralis officii*, for Italy and the adjacent islands, prescribed the form of the concursus by which prebends of this kind are to be conferred. But it is wholly false what Ubaldus and Victorinus assert, namely that in the aforesaid Constitution it is defined that the one more worthy and more suitable is to be chosen by the examiners. For before those words, reported not altogether exactly by Ubaldus and Victorinus, these words are found, by which every doubt is removed. For it is prescribed that the aforesaid prebends be conferred upon the more suitable one declared in a formal concursus IN EXACTLY THAT WAY IN WHICH PAROCHIAL CHURCHES ARE CONFERRED. But the choice of the more worthy among the approved for parochial churches, upon whom the parochial church is conferred, pertains to the Bishop, and not to the examiners. Trent, sess. 24, c. 18, *de R.*; Benedict XIV, Constitution *Cum illud*, 14 December 1742. Therefore, if prebends of this kind are to be conferred in exactly that way in which parochial churches are conferred, the choice of the more worthy among the approved, in a formal concursus, pertains not to the examiners, but to the Bishop, and consequently the prebend is to be conferred upon him.

This is manifestly proved from several Decisions of S. C. C. in *A. S. S.*, vol. 2, p. 74 ff., p. 122 ff. It is confirmed from the reasoning of Cardinal Paulutius, cited by Riganti on Rule 1 of the Chancery, § 10, n. 31: "He who does not have the faculty of announcing the concursus cannot choose the more suitable one, since this choice is an integral part and, as it were, the closure of the whole concursus, which by the Council of Trent is attributed only to those who have the right of completing the concursus, as S. C. C. responded at another time, 1 December 1608." Therefore, since the examiners do not have this faculty of announcing the concursus, neither will they be able to choose the more suitable one; and accordingly this choice is proper to the Bishop.

104. On Parish Priests

1. Romaricus, a parish priest, often omits the sermon on Sundays and feast days, either because few hearers are present, or because sermons are held in neighboring churches. Hence also he almost never has a sermon to the people in the time of Lent, in the time of Advent, and on certain more solemn feasts, because there are several other distinguished preachers. — Does Romaricus act well?

R. Romaricus acts badly, and gravely fails in his office. Nor is he excused from the fact that the number of the people is small, Benedict XIV, Notification 10, n. 3; Lucidi, ed. 3, vol. 1, p. 429; or from the fact that sermons are held in other churches, Benedict XIII, Constitution *In supremo*, 13 September 1724. Hence he also sins gravely by omitting the sermon in the time of Lent and Advent because notable preachers are not lacking in several other churches. But if in the parish church itself during the time of Lent and Advent there were another preacher, and there were a custom that the parish priest abstains from the sermon, then, unless the Bishop commands otherwise, he can stand by the aforesaid custom. Lucidi, loc. cit., pp. 430, 431. Finally, Romaricus also does not satisfy his office by omitting the sermon on the more solemn feast days, unless he has obtained dispensation from the Bishop. S. C. C., 1 April 1876; I. M. 240; *Enchir. Mor.* 212.

2. Romanus, a parish priest, indeed has a sermon to the people on Sundays and feast days; but in reality his sermon is not a certain formal sermon, but rather a brief and familiar discourse to the parishioners about matters necessary for salvation. Hence Romanus in his sermon often omits the

explanation of the Gospel of the day. Likewise he also often omits teaching catechism to the children, saying that he is bound not to two sermons, but to one only. What is to be said of Romanus?

R. Romanus does not sin from the fact that he does not make a formal sermon. From Trent, sess. 5, c. 2, *de R.*, it suffices that he "feed the peoples committed to him, according to his own and their capacity, with salutary words." But in using a brief and familiar discourse, he acts well. For from Trent it is necessary, "with brevity and ease of speech," so that he may be understood, "to explain the admonitions of salvation, and insert the same into the hearts of all, and instruct them in the law of the Lord." Sess. 5, c. 2, *de R.*; sess. 24, cc. 4, 7, *de R.* Likewise, omitting the explanation of the Gospel in his sermons, he sins in nothing. For from the same Council of Trent, sess. 5, c. 2, *de R.*; sess. 24, c. 4, *de R.*; sess. 24, c. 7, *de R.*, it suffices to teach the people those things which it is necessary for all to know for salvation, and to announce the divine law and instruct them in it.

But the fact that Romanus omits teaching catechism to the children cannot be excused. For although he is not bound by an obligation of having two sermons to the people, nevertheless he is bound by a twofold obligation: one, that on feast days he have a discourse to the people about divine things; the other, that he instruct children and all the more ignorant in the rudiments of the divine law and of faith. Benedict XIV, Encyclical *Etsi minime*; I. M. 239, 241; *Enchir. Mor.* 212.

3. Innocentius, a parish priest, received an alms so that Mass with chant would be celebrated and the office of the dead would be chanted for the soul of Sempronius. The alms received is to be proportionately divided among the ministers and all priests and clerics assisting at the Mass and chanting the office. The parish priest assists at the Mass, and likewise assists at the office while it is being chanted, but he himself privately recites the canonical hours of the day, and has no part at all in the chant of the Mass, nor consequently does he chant the office of the dead together with the others. Nevertheless he retains the part of the alms corresponding to him, both for assistance at the Mass and for assistance at the office. — Did Innocentius act rightly?

R. As regards assistance at the Mass, while at the same time reciting the breviary of the day, Innocentius does not seem to be disturbed. For if the Mass is celebrated, if there are other appointed singers, it seems that satisfaction has already been sufficiently made to the intention of the one offering, nor does it seem necessary that the other assisting priests and clerics also assist at the whole Mass even by chant, unless this is expressly prescribed. But as regards the office, Innocentius did not satisfy the imposed obligation of chanting the office; and therefore he does not seem able to retain for himself the corresponding part of the alms, since under this head the alms was not given for mere assistance, but for the chant of the office. This is moreover clear from S. R. C., 9 May 1857, Petrocor., 11 March 1871.

4. In a rural parish a great bell of the parish church was to be blessed. All things had been prepared for the blessing, and the Bishop was expected for the following day, the solemn feast of the Patron of the place. But on the evening before, the parish priest received word that the Bishop, impeded by infirmity, could no longer come. Wherefore, the preparation already made standing, and because of the great concourse of people coming from neighboring places, and considering the solemnity of the feast, the parish priest judged that in the case, at least by lawful epikeia, he could bless the bell; and this in fact he did.

Question. What is to be said in the case?

R. The act of the parish priest cannot be approved. For there is question of a thing which, although only by ecclesiastical law, nevertheless is of the episcopal order. Wherefore it cannot be delegated to a simple priest even by the Bishop himself, but there is need of Pontifical faculty. For in the blessing of bells there is not had a certain simple blessing with lustral water, but in that blessing holy chrism and the oil of the infirm are employed, as is to be seen in the Pontifical. Indeed, if the Bishop has obtained an indult of delegating to others the faculty of blessing things pertaining to divine worship, things in which sacred unction is employed are always excepted from that faculty. Gardell. 4290. Hence it appears that the parish priest in the case exercised an altogether illicit and invalid act from defect of power. Nor indeed is there place for epikeia, since there is question not of mere liceity but of the validity of the act, on account of defect of the required power, which is not obtained by force of epikeia. But, with the Bishop's infirmity standing, it was easy in the opportune case to meet any inconvenience by warning the people and by substituting another pious and useful exercise for that function.

But whether Bishops can, without Pontifical indult, delegate to others the faculty of blessing sacred vestments is controverted. St. Alphonsus, bk. 6, n. 378, reports two opinions, then saying that he does not acquiesce in the affirmative opinion, since he has nowhere heard that Bishops have delegated a faculty of this kind to others. Benedict XIV, Notification 21, n. 9 ff., likewise says that the matter is still controverted, while at the same time asserting that the faculty of blessing sacred things in which sacred unction intervenes is altogether reserved to Bishops. And the same explicitly affirms in Notification 42, n. 38, concerning the blessing of bells, where he openly affirms: "It belongs to us to bless bells, and since we do not have the faculty of subdelegating this blessing, sacred unction being required in it, etc." Cf. S. R. C., 14 April 1885, Briocen.

5. Bishop B. obtained from S. R. C. an indult for the faculty of subdelegating for the blessing of that sacred furnishing in which sacred unction is not used. But since no formula is found for the blessing of priestly or Levitical vestment, except that which is found in the Pontifical, parish priest A. uses the blessing which is found in the Pontifical for any vestment. Does he act rightly?

R. In the negative. "Subdelegated priests should use the blessing which is read in the Roman Ritual." S. R. C., 16 March 1876, n. 3392.

6. Ioannes, a parish priest, accepted the office of administrative councillor of the Municipality, and wholly applies himself to administrative elections. Hence many complaints and grave scandals have arisen. After the Bishop had vainly warned him juridically three times, and paternally several times, he finally decreed his economical removal from the parish, and that he be transferred to another.

Question. What is to be said in the case?

R. The Bishop acted legitimately. For although a parish priest cannot be removed from his parish without canonical process and without a delict designated in law, Trent, sess. 21, c. 6, *de R.*, nevertheless his economical removal can be made either from the imperitia and unsuitability of the parish priest for governing the parish, or from grave hatred and aversion of the people, especially when the parish priest's manner of acting is such that it is a scandal to the people. For the utility of very many is to be preferred to the utility or will of one.

But once perpetual removal has been decreed, another benefice of equivalent revenue is to be conferred upon the parish priest, by way of permutation or translation. Thus from several

Resolutions of S. C. C., from c. *Quaesitum*, *de Rerum permutatione*, and c. *Scias*, 35, caus. q. 1; Reiffenstuel, tit. *de Rer. permut.*, n. 38; Schmalzgrueber, same title; M. E., vol. 9, pt. 2, p. 147; vol. 10, pt. 1, p. 4 ff.

7. Aurelius, a parish priest, is very often absent from the parish without legitimate permission, but so that he may attend to grave lawsuits in which he is involved because of debts contracted. Public report says that Aurelius rarely recites the breviary, and often is clothed in secular garments. Hence the Bishop, after a prior legitimate warning, first deprives Aurelius of the fruits of the benefice, which he distributes among the poor of the parish. Then, however, since no amendment followed, by one edict he cites Aurelius, and, canonical process having been instituted, deprives the same Aurelius of the parish. Aurelius protests sharply against the Bishop.

Question. What is to be said in the case?

R. From the Council of Trent, sess. 23, c. 1, *de R.*, a Bishop can proceed against parish priests and others having the care of souls and not residing, whether by subtraction of fruits, or by deprivation of the benefice, or by censures. Nevertheless he must first cite them by edict. If the Bishop wishes to proceed by deprivation of fruits, he is furthermore bound to observe the intervals and quantities prescribed as regards non-resident Bishops, sess. 6, c. 1, *de R*. Thus S. C. C. The reason is that, expressly as regards deprivation of fruits, those things which have been established against non-resident Bishops are to be applied to non-resident parish priests. Yet the Bishop can carry out deprivation of fruits without observing any intervals as regards the fruits which, on account of omitted residence, the parish priest did not make his own. Thus the same S. C. C.; and the reason is that truly, from the same Council of Trent, for the proportion of the time of absence, a non-resident parish priest does not make the fruits his own, nor, with safe conscience, "even when no declaration has followed, can he retain them for himself, but he is bound, either he himself, or, if he ceases, through the ecclesiastical superior, to spend them for the Fabric of the churches or for the poor of the place, with every convention or composition which is called for fruits badly received being prohibited, by which the aforesaid fruits would also be remitted to him, in whole or in part."

But if the Bishop wishes altogether to deprive the non-resident parish priest of the benefice, the Bishop is not bound to cite the parish priest by three edicts, but one suffices, with the assignment of a competent term. From executory decrees of the Bishop against non-resident parish priests, an appeal is not given with suspensive effect, but only with devolutive effect, since Trent, sess. 23, c. 1, *de R.*, says that execution cannot be suspended by appeal. Wherefore Aurelius under this head protests in vain against the Bishop.

Moreover, when after six months from obtaining the benefice, the beneficed cleric, having been legitimately admonished, contumaciously omits, at least twice for fifteen days, to recite the canonical hours, he can be deprived of the benefice by the Bishop, as is clear from § *Statuimus*, sess. 9 of Lateran V. For a benefice, as is said there, is given on account of the office. But since the Council says, "a legitimate warning preceding," one warning seems to suffice. Again Aurelius has nothing which he could bring against the Bishop also under this other head. Wherefore by right and deservedly he was deprived of the benefice, of which he is altogether unworthy. Cf. Suarez, bk. 4, *de Hor. canon.*, c. 29, n. 4.

Finally, in the Council of Trent, sess. 14, c. 6, *de R.*, it is openly said: "All ecclesiastical persons ... if after they have been warned by their Bishop, even by public edict, they have not worn an honorable clerical habit ... according to the ordinance and mandate of the same Bishop, can and ought to be coerced by suspension from orders, and from office and benefice, and from the fruits, revenues, and proceeds of their benefices; and also, if after once being corrected they offend again in this matter, even by deprivation of offices and benefices of this kind." Since, therefore, Aurelius was once legitimately warned, and amendment did not follow, also from this other grave and scandalous transgression he is altogether deprived of the benefice by right. Nor indeed has Aurelius anything which he can bring forward in his defense under this head, if he had previously been warned by public edict by the Bishop, and the Bishop had imposed upon him the ordinance and mandate of wearing the clerical habit.

On the Particular Obligations of Regulars

105. On the Religious State

1. Petrus and Paulus dispute between themselves concerning the more recent Institutes of Sisters. Petrus affirms that they are truly religious, as are Dominican nuns and Poor Clares. For nothing else is required for the true essence of the religious state than the profession of religious vows, in an Institute approved by the Church. Paulus, on the contrary, affirms that they are nothing except pious women. For they have often been so called by the Sacred Penitentiary itself, 26 November 1852. Indeed, for very many years the Sacred Congregation of Bishops and Regulars did not wish them to be called *Religiosae*, but Sisters. Moreover, these modern Institutes are wholly lacking solemn vows, without which the essence of the religious state cannot be had. Finally, the Church has never approved these more recent Institutes, but only tolerated them.

Question. 1. What is the Religious State? — 2. What is to be said in the case?

R. To the first. The religious state, considered as to its essence, is: A stable institute of life, approved by the Church for the faithful, who under a certain rule and common manner of living wish to tend to perfection through the three perpetual vows of poverty, chastity, and obedience, with a handing over of oneself made to God and accepted by Him.

The religious state, namely, taken strictly. For "it must be supposed," says Suarez, "according to the common usage of the Church, that the religious state, as if by antonomasia and in strict signification, is called the perfect state of monks or regulars, who totally consecrate and hand over themselves to God, by emitting the three vows concerning the three principal counsels, poverty, chastity, and obedience. Nevertheless, in a certain broader or more general meaning, the state of religion comprehends under itself other manners of living, in which men voluntarily offer themselves to divine worship and service, by obligating themselves to some observance of the counsels. And thus it comprehends, not only proper and complete religious, but also continent persons, who by the vow of chastity alone bind themselves specially to God. For thus the interpreters of canon law, in the rubric *de Regularibus*, teach that the name of religious or regular, taken strictly, signifies him who has professed the three substantial vows in an approved religion; but broadly it comprehends all who by some vow and special manner of living are consecrated to the service of God." *De Rel.*, tr. 7, bk. 2, c. 1, n. 1; Bouix, *de I. Reg.*, t. 1, p. 47.

A stable institute of life. For firmness or stability pertains to the essence of a state.

Approved by the Church. For it is of the essence of the religious state that it not be prohibited by the Church. And indeed it is of the essence of the religious state that it be a state of perfection. But as soon as it is prohibited, it is no longer a state of perfection, but rather of rebellion. Now there exists a law of the Church prohibiting the beginning and entrance of any religion not approved. Hence, by the very fact that a religious institute has not been approved by the Church, it must be held as prohibited by her, and therefore wholly invalid, namely lacking the essence of the religious state. This approval can be given only by the Apostolic See, as is clear from Canon Law. But today it has been introduced by custom that various Congregations are instituted by the approval of the

Bishop alone, which afterwards are praised and approved by the Church, first by a Decree of praise, then by a Decree of approval of the Institute, and by a Decree of approval of the Constitutions; and consequently these Congregations, if the other requisites are not lacking, can be held as containing those things which pertain to the intrinsic essence of the religious state.

To the intrinsic essence; for, in order that there be had the religious state or true religion in the Church, or in order that there be had the religious state according to canonical institution, it is not enough that the Institute be approved by the Church and at the same time the rules or Constitutions of the Institute be approved by the same Church; but it is required that the Institute be approved by the Church, and by that approval be constituted in the state of true religion, or of a religious order. "For if," says Benedict XIV, Constitution *Quamvis iusto*, prid. Kal. May 1749, § 13, "for the essence of the truly religious state it is required that a religion or order be established in such a state by confirmation of the Apostolic See, according to the canonical sanctions concerning which in c. un., *de Relig. dom.*, in 6, nor does it suffice to have obtained from the same Apostolic See only approval and confirmation of the rules which some society of men or women has prescribed for itself to observe; if the vows of poverty, obedience, and chastity emitted by the English Virgins according to the form of the rules approved by Clement XI cannot be said to be joined with express or tacit profession in some order approved by the Apostolic See in the state of true religion, as is said above, it clearly appears both that the state of the English Virgins is not the state of true religion, and that the vows which are made by them must be judged at most simple vows, not solemn, according to the paths of the Decretal of Pope Boniface VIII, which alone exists under the title *de Voto et voti redempt.* in 6." Cf. ibid., § 14.

Wherefore there is one and another approval of the Church in this matter. There is a certain inferior approval, by which an Institute is approved as an Institute of Clerics or Sisters, as a Pious Society, as a Religious Congregation. There is a fuller and more solemn approval by which an Institute is approved as a Religious Order, as a true Religion.

For the faithful; for religious neither necessarily pertain to the hierarchy of jurisdiction, nor to the hierarchy of order, but are, or can be, simple faithful in the Church, and therefore of either sex.

Under a certain rule; for the manner and grade of observing the evangelical counsels can be various, and this is determined by the rule.

And common manner of living. For although, if only the nature of the religious state is considered, common life does not pertain to its essence, nevertheless today common life is required by the Church, namely under one common head and under one approved rule. Cf. Bouix, pt. 2, s. 1, c. 2, par. 2, prop. 10.

Wish to tend to perfection. There is indeed a twofold state of life. One is of common life, which intends nothing other than the observance of the commandments of God; the other is of perfection, which adds the observance of the counsels. But perfection is in charity. For the perfection of any thing is had from the fact that it attains its proper end. The end of man is God, to whom we are united by charity. Now to exclude those things which are repugnant to charity, namely mortal sins, pertains to the state of common life. But to exclude those things which impede man from adhering totally to God pertains to the state of perfection. The former is proper to essential charity; the latter, to the perfection of charity. Wherefore the perfection of which there is question here is not in

essential charity as such, but in a certain peculiar grade of charity which surpasses the common charity of Christians. But this grade does not consist in some one or some transitory acts of charity, even if they are of great or greatest intensity, but in a mind so habitually prepared that man is proximately disposed to act easily and ordinarily according to the precepts and counsels of God, obstacles having been removed, so that he tends totally to God.

Tends. For the state of perfection is twofold: one is the state of perfection acquired; the other of perfection to be acquired. The former is proper to Bishops; the latter to religious. Bouix, pt. 1, s. 1.

Through the three perpetual vows of poverty, chastity, and obedience. For the state of perfection to be acquired is twofold: one incomplete or begun, the other complete. For the former the three principal evangelical counsels are not required; but some counsel suffices, whether it is one of those three principal ones, or another, for the counsels are very many in number. But for the latter the three evangelical counsels of poverty, chastity, and obedience are required and suffice. For through these three counsels all impediments of charity are removed, so that the affection of the mind is directed totally to God. But the religious state, strictly so called, is the complete state of perfection to be acquired. Now those counsels to be observed, in order that a state, and therefore stability, be had, must be strengthened by a vow, and that of itself perpetual.

Now, although those three vows must of themselves be perpetual, for this is required by the very nature of a state, nevertheless it is by no means truly required of itself that they be solemn, but it is enough that they be simple. This is openly clear from the Constitutions of Gregory XIII, *Quanto fructuosius* and *Ascendente Domino*, where it is established that those who in the Society of Jesus have emitted the three simple vows are true and proper religious.

The solemnity of vows is nothing other than a certain force added to them by the disposition of the Church, of constituting a religious properly and strictly such according to canonical institution, and of making certain acts of the religious concerning the matter of the same vows invalid or at least voidable, and of rendering the vows themselves wholly firm and stable. And that force is absolute, and not merely relative to the time during which the religious, free from the vows, is not dismissed by his superiors. Hence for the solemnity of vows not just any force of producing the aforesaid effects suffices; but that force must be absolute, that is, so perpetual and immutable that neither the religious nor even the religion itself can suspend or remove that force. But it is by no means required that that force cannot be removed by the Roman Pontiff; for that force is of ecclesiastical law, and therefore the Pope can dispense both from the effect of the solemnity of vows, the solemn vows remaining, and from the solemn vows themselves, and indeed validly, although no reasonable cause is present, with which, if it accedes, he will also dispense licitly. Bouix, t., p. 444 ff.; Decree of the Sacred Congregations for Extraordinary Ecclesiastical Affairs, 31 July 1878; *Revue des Sciences Ecclésiastiques*, 1879, p. 191.

Wherefore Busembaum very well says, bk. 3, n. 195, that a solemn vow "is that which is accepted as such by the Church. ... But simple is every other one, which does not have such solemnity." Therefore a solemn vow is a vow which has this annexed force; a simple vow is one which lacks that force. Consequently the solemnity of a vow is an all-embracing dependence and subjection and plenary approval and confirmation of the vow made by the Church herself, or by the Supreme Pontiff, as to the being of the vow, as to its force of constituting in the Church a truly religious state, and as to the other aforesaid effects of invalidation.

And hence it appears why the Church does not approve in the state of true Religion, or as Religions or truly religious Orders, except Institutes which have solemn vows. For these perfectly display the nature of state and the nature of perfection, since through them man altogether totally and immovably tends to God and adheres to Him. But since this is wanting in simple vows from the limited acceptance of the Church herself, namely not to all the aforesaid effects, therefore Institutes with only simple vows, but not solemn vows, are approved by the same Church as Pious Institutes and also as Religious Congregations, but not as true Religions and true Religious Orders. Indeed, the essence or substance of the state of perfection, and consequently of the religious state, is also found in these Institutes, but in an inferior grade, as compared with true Religions and Religious Orders. Hence the pupils of these Institutes are truly and properly religious, but less strictly than the pupils of true Religions and Orders. Less strictly, namely as regards the very essence of the religious state, and as regards canonical institution. But in order that there be had a Religious Congregation, it is not enough that the vows have been approved by the Apostolic See; but they must be approved in such a way that the vows which are emitted in such a Congregation are accepted by someone in the name of the Congregation or of the Apostolic See.

For in order to have a formal Religion of solemn vows, or to have a true Religious Congregation of simple vows, it is altogether required that the vows emitted in it be not private, but public, accepted in the name of the Church by a legitimate Superior. S. C. EE. et RR., 11 August 1889. If the vows are only private and accepted by no one, there is had only a pious Sodality, S. C. EE. et RR., 11 August 1889, or a secular Congregation, such as therefore is the Congregation of the Mission, Alexander VII, Brief *Ex Commissa*, 22 September 1655. I. M. 248.

With a handing over of oneself made to God. In the pronouncing of the three vows, considering their nature, there is had a total handing over of oneself to God. But this handing over of oneself, if the vows are solemn, is far more perfect and is truly a certain handing over and donation of oneself. But if the vows are simple, that handing over is less perfect, and is not an altogether total handing over of oneself; and since it is not altogether firm and immovable, it is rather a simple promise. Through the former handing over of oneself, made by authority of the Church, there is had a certain consecration of the person devoted and bound to God; but through the latter promise there is had rather a simple blessing of the person.

And accepted by Him; namely accepted by God through the Church and through proper superiors, because from the approval of the Church they receive this power and authority through the canonical approval itself of the Institute; "because God, according to ordinary providence, does not undertake the peculiar care of governing a private person immediately by Himself, nor does He need these sensible things so as to use them immediately and without the intervention of secondary causes. And therefore a donation thus made to God would either be vain and idle, or as if tempting God by demanding immediate rule from Him; and for that reason it does not please Him, nor is it immediately accepted by Him." Suarez, *de Relig.*, bk. 2, c. 4, nn. 7, 8; Bouix, pt. 1, s. 2.

R. To the second. That which Petrus says concerning the Sisters of the more recent Institutes, that they are true religious, taken simply, is simply true. For they themselves judge themselves to be such; all Bishops judge them to be such, as is clear from their testimonial letters for the approval of these Institutes; and the Supreme Pontiff himself holds them as such, as is gathered from several Briefs of Approval, in which those Sisters are praised and approved as Religious. But Petrus seems to say and

signify more. For he says that they are true Religious, as are Dominican nuns and Poor Clares. And this is false, since Dominican nuns and Poor Clares are not only truly, but also strictly Religious; for they have solemn vows, and consequently their Institute has been constituted and confirmed by the Church, as a Religion or Order in the truly and strictly Religious state, by the Approval of the Apostolic See. More recent Institutes, on the contrary, since they have only simple vows, are by no means approved and established by the Church in the state of strict and true Religion, although they are approved as Religious Institutes. That is, the Sisters of these Institutes are indeed Religious, but in an inferior grade, not in that superior and nobler grade in which nuns are truly and strictly religious. To the reason added by Petrus, the answer is that, in order that the essence of the religious state be had in some way, the profession of religious vows in an Institute approved by the Church indeed suffices; but for the essence of the religious state true and strictly such, there is altogether required the solemn profession of religious vows in an Institute approved by the Church in the state of true and strict Religion or Order.

But it is altogether false what Paulus says, that the Sisters of the more recent Institutes are nothing except pious women, and in no way are religious. When the Sacred Penitentiary, 26 November 1852, and at other times, called them pious women, it declared its mind more than sufficiently by denying of them that they were nuns strictly such, since they did not emit solemn vows. By that expression "pious women" it wished to deny this only, by no means that they were not even true religious. And if for several years the Sacred Congregation of Bishops and Regulars denied to these Sisters the denomination Religious, it did this only so as to deny them the character of Religious true and strictly such. Later, however, when the signification of the words had been better established, to these modern Institutes was conceded that denomination of Religious Institutes, and to their pupils the denomination Religious men and Religious women. And by the Decree of 11 August 1889, the Sacred Congregation openly recognizes in these modern Institutes true Religious Congregations, expressly distinguishing in the same Decree between formal Religions of solemn vows and true Religious Congregations of simple vows. Therefore without solemn vows there is not had the essence of the strictly religious state; but with merely simple vows the essence of the truly religious state is indeed had. Here note that that word "truly" is sometimes for increasing and restricting the signification, and is equivalent to "strictly," as in the cited Constitution of Benedict XIV; sometimes it is merely for determining the correct signification, as in the cited Decree. Finally, it is altogether false that the Church does not approve these more recent Institutes but merely tolerates them, as is openly clear from the same cited Decree, and as is proved by the very fact of the various Decrees of Approval, first by praising and then by positively approving.

2. "Cunegunda, a nun, determined with firm mind to avoid all mortal sins, but no venial sin. Nor does she make it a matter of conscience not to induce another companion to lie venially.

Question. 1. Whether for religious there is an obligation of tending to perfection? — 2. Does Cunegunda sin mortally in each case?

R. To the first. Cf. I. M. 249. — To the second. In the first case, they affirm who, with Sanchez, bk. 1, *in decalog.*, c. 5, and Bonacina, *de peccatis*, q. 3, p. 5, n. 13, contend that the will of committing, as the thing and occasion may allow, all venial sins, is not free from mortal sin. Many others deny this with Cajetan, Sylvester, Granados, Palão, Machado; to whom I myself willingly subscribe, led especially by this reason, that to commit in fact whatever venial sins occur is not mortal sin. And it pleases me to

confirm this by the authority of St. Thomas, I-II, q. 88, a. 4: all the venial sins in the world cannot have so much guilt as one mortal sin, which is precisely to say that even all venial sins do not make one mortal sin, nor are they equivalent to it. Therefore to will to commit them all is neither mortal, nor equivalent to mortal. The consequence holds, because the malice of the act is taken from the object; therefore, if to commit them all in fact, or to avoid none, does not involve mortal malice, neither does the will of committing them all, or of avoiding none, involve it.

Master Petrus de Tapia, Archbishop of Seville, says that the mortal malice which he contends a will of this kind involves must be drawn, not from the object, which he himself also admits is not infected according to itself with mortal gravity, but from the proximate danger of sinning lethally, which he judges to be contained in that universal will. Truly, either actually to commit all venial sins, precisely according to itself, brings with it such a proximate danger of sinning lethally, and then actually to commit all venial sins will be mortal, which is false, and the adversary himself denies it; or, precisely according to itself, it does not bring such a danger, and then neither can the will of committing them bring it, since an act morally takes its species from the object.

Convinced by this reason, others contend that venial sins so proximately dispose to mortal sins, that he who brings his mind to multiplying venial sins must be judged altogether to will to sin mortally. This response I undertake briefly to refute under multiple heads. And first, if we consult St. Thomas, cited q. 88, in one case alone can that which is venial from its genus become mortal: namely insofar as an end is constituted in it, or insofar as it is referred to mortal sin as to an end. But the will of committing all sins, but only venial sins, with the exclusion of all mortal sins, is borne toward venial sins insofar as these are contained within the limits of venial sins; so that consequently it neither constitutes in them the notion of an end, nor refers them to mortal sins. Therefore venial sins do not pass into mortal sin from that intention alone.

To these things, yield to me: where do you place that formal and proximate danger? Namely, in the collection of all venial sins? But all cannot be committed by one person. Namely, in some from the collection of all? But among some of these there is none which, if it is venial, would according to itself cast one sinning venially into this destructive danger. Besides, if all according to themselves imply this danger, then we are bound to avoid some of them, otherwise we would sin mortally; from which this other thing absurdly, yet necessarily, follows: that for eternal salvation it is not enough if someone observes all precepts obliging under mortal sin, but it is further required that he also observe those which oblige under venial sin. For all are bound under grave obligation to that which according to itself is necessary for avoiding mortal sins; therefore, if the avoidance of all venial sins is necessary in itself for avoiding mortal sin, all are bound to avoid some venial sin in order to attain eternal salvation. But if you say that this holds true by reason of danger, it remains that you define what venial sin in species someone can commit without falling into this danger, lest, if you affirm that by any venial sin in species one falls into this danger, you must swallow this absurdity: all venial sins, each and every one, by reason of this danger, are so many mortal sins.

I certainly think thus: as long as malice is confined within the bounds of light sin, it less affects and less strikes the mind of him whom the malice of the object is accustomed strongly to urge and terrify when it transcends to grave sin, so that consequently there can stand together both the will of committing all sins that are only venial and the detestation of any mortal sin whatever. Thus it is not wonderful if we know several who are little or not at all solicitous about avoiding venial sins, yet

shudder at the very name of mortal sin, much less flee its sight; whence they can join in the same seat of the will the intention of avoiding all mortal sins with the intention of committing all venial sins.

For answering objections, diligently observe first that these two things fight against each other: that a sin bring with it a formal danger, or a proximate danger, of sinning mortally, and that it be contained within the bounds of venial sin. Wherefore, if Cunegunda in the collection of venial sins apprehended some sin as bringing such danger with it, or if in practice she doubted whether it could bring this danger, she would without doubt sin mortally; and that intention of avoiding all mortal sins would destroy itself, just as it would destroy itself if she apprehended that this very intention of committing all venial sins induced a formal and proximate danger of sinning mortally. Observe moreover that, in order that that intention truly exclude every mortal sin, it ought to be such that she does not will to commit those venial sins which, if they are increased in number, grow into mortal sin, either by reason of matter, as several light thefts which, multiplied, finally constitute grave matter of theft, or by reason of effect, as moderate draughts of wine which, more often repeated, bring grave harm to health and cause drunkenness.

Finally, observe principally that a nun, by reason of her state, ought to tend toward perfection; nevertheless she is not therefore bound under mortal sin to avoid venial faults. For she sufficiently tends toward the perfection of her state if, besides the precepts gravely obliging every Christian, she also observes those things which gravely bind a religious under a special title. For it cannot happen that she observes the grave precepts which are either contained in the rule, or imposed by superiors, and by which she has bound herself by the bond of vows, without aspiring to the perfection proper to the religious state as much as is enough for avoiding mortal sin. And just as the other faithful, who also ought to aspire to the perfection proper to a Christian, are not said to sin gravely against an obligation of this kind as long as they commit only venial sins, so also religious, as long as they commit only venial sins, cannot be said to offend gravely against the perfection of their proper state. I would not deny that it can happen that those things which are judged venial in a secular person become mortal in a religious, indeed also in any ecclesiastic who ought to go before others by example, by reason of scandal; and thus certain scurrilous words and indecent trifles, which in the mouth of seculars lightly offend pious ears, in the mouth of a religious, or of anyone else dedicated to God by a special title, can easily in a certain way become blasphemies, which gravely strike the ears of hearers, not without great contempt and disgrace of the religious and ecclesiastical state. But if Cunegunda decided to commit sins of that kind, she would splendidly deceive herself if she thought that she willed no mortal sin.

Meanwhile let the priest inculcate this again and again to Cunegunda: that venial sins, although remotely, nevertheless certainly dispose to mortal sins, so that it is altogether to be feared lest venial sins little by little pave the way by which she may finally be hurled into the abyss of eternal damnation. “He who despises small things will fall little by little,” Ecclesiasticus 19. “Those who rush into the greatest things begin from the smallest,” St. Bernard. “Let him beware the fever of venial sins who wishes to avoid the death of graver sins.” Through venial sins the fervor of charity is diminished; and although God denies to no one, as long as he has lived both physically and morally, when the precept urges, sufficient graces by which, if he wills, he may be saved through fulfillment of the precept, nevertheless in punishment even of venial sins He can deny efficacious graces. Hence it

happens that, although he can, he does not will to be saved, since, succumbing to the weight of some grave temptation, he finally falls into mortal sin, to be assigned to eternal punishments. If the priest places these things before Cunegunda's eyes, she, the grace of God breathing upon her, will extend the will of avoiding mortal sins to venial sins, placing her eternal salvation more and more in safety.

Coming to the later case, Master Corradus, pt. 1, *Respons.*, Response 89, § *Sequitur*, with Master Soto as guide, teaches that it is graver to induce someone to one venial sin than to commit homicide, because it is a greater damage and a greater loss to commit one venial sin than is the death of the body; for which reason it is said that one must not sin venially even for the life of the whole world. Therefore, in the judgment of Master Corradus, Cunegunda, who induced her companion to lie lightly, is guilty of mortal sin. But I pronounce that she is to be absolved from mortal sin, with the Angelic teacher as guide, who, treating of scandal in II-II, q. 43, teaches in express words thus: If active scandal is per se, for example, when someone intends to lead another to sin, if indeed he intends to induce his neighbor to sin venially through an act of venial sin, it is a venial sin. I do not see what could be said more clearly against Corradus for Cunegunda.

But what if she did not induce the companion to that light lie in just any way, but with the direct design that the companion herself suffer that ruin which results from a light lie? Not even then would she sin mortally, according to the opinion of St. Thomas in IV, dist. 38, q. 2, a. 2, q. 3, where, treating of formal scandal, namely the special sin by which one intends to scandalize another, or by which one intends the harm of one's neighbor, he openly teaches that he sins only venially who intends to induce another to some venial sin. This seems hard to Father Vasquez, who judges that an intention of this kind of the spiritual ruin of one's neighbor, however light it is posited, is a mortal sin contrary to charity; and in this sense he thinks the opinion of Corradus and Soto true, because spiritual damage, if it is directly intended, gives a special malice to the act, and there is no doubt that this damage is greater than any temporal evil. Thus Father Vasquez, whose reasoning I cannot approve; because damage to one's neighbor, if it is grave, infects the act with mortal malice not only when it is directly intended, but also when it is indirectly intended, as no one denies. And therefore he becomes guilty of mortal fault who, compelled by no necessity, shoots an arrow at a wild beast, even if he does not directly intend it, provided he foresees that from it the killing of his neighbor, or some other grave evil, will follow. Wherefore either let Vasquez affirm with Corradus that he sins mortally against charity who in any way induces his neighbor into venial sin, from which spiritual ruin is certainly going to follow; or let him deny with the Angelic Doctor that he sins mortally who directly intends that spiritual ruin. It is added that the reason on which Father Vasquez relies, if it proves anything, proves that it is a mortal sin against charity, by which each one ought to love himself more than his neighbor; I say, that it is a mortal sin if someone himself sins venially, willing also in himself the light spiritual ruin which follows venial sin, and which certainly does not cease to be greater than any temporal damage from the fact that each one intends it for himself rather than for another. But the consequence seems absurd; therefore the principle from which it follows is also absurd.

But is not spiritual damage, if it is directly intended, a thing which gives the act a special malice? Either grave or light, I concede; necessarily grave, I deny, with St. Thomas openly supporting us. But is not the damage inflicted by venial fault truly greater than any other temporal loss?

Father Sanchez (*de Matrim.*, bk. 1, disp. 5, n. 25), with whom Fagundez agreed (*in Eccles. Praecept.*, precept 1, bk. 3, c. 8, n. 18), responds that, in judging the gravity of damage, spiritual is not to be compared with temporal, or temporal with spiritual, but spiritual with spiritual, and temporal with temporal. But that response, although true, does not remove the difficulty, unless an efficacious reason is given why spiritual damage ought not be compared with temporal, so that from that comparison we may weigh its gravity. Therefore this reason seems to me to be that the spiritual ruin inflicted on the soul by venial sin is free, since it could altogether be avoided by the very person who freely allows himself to be induced into venial sin, and furthermore can easily be repaired. Hence it is not wonderful if, although it is of a superior order and in itself a graver evil, nevertheless it is estimated less in relation to the subject than the evil of homicide, which is not free to the neighbor and is altogether irreparable. And truly, if the difficulty taken from the reason of greater evil in itself ought to terrify us, it would be a greater sin, even without express and direct intention of spiritual loss, to induce someone to venial sin than to kill, because the former is a greater detriment than killing; and it would be a greater sin to lie venially than to amputate one's own hand or another member of the body, which no one would say. Therefore let it stand that Cunegunda, in the species of the case, the nature of the thing being considered, did indeed sin, but venially, not mortally.

Unless perhaps accidentally she induced the companion to lie through an act of mortal sin, as if from hatred toward God or toward the companion herself, or if from envy of the perfection to which the companion was applying herself more zealously, she induced her by force or deceit to commit this or any other venial sin. For just as in the matter of money it can happen that a theft in itself most light, of one *iulius*, becomes a mortal sin by reason of grave harm inflicted upon a very poor man; and in the matter of reputation, although falsely to impute to someone that he is vain or a liar is light, it can become mortal by reason of infamy derived upon a religious man of good reputation and known probity; so, according to Cardinal de Lugo (*de Iust. et Iur.*, disp. 9, sect. 2, n. 20), if you induce a perfect and holy man by force or deceit into venial sins, by reason of the harm which you bring, you can be made guilty of mortal fault.

I admit that he whom you would induce to venial sin does not sin gravely; but neither does he sin gravely who throws his money into a river. Yet truly you would sin gravely if by force or deceit you induced him to throw his money into a river. Therefore, although Cunegunda's companion would not sin gravely in the case, you badly conclude from this that neither would Cunegunda sin gravely, when by force or deceit she would cast down, unwilling, from the state of most excellent perfection to which the companion is applying herself. Let priests take care to keep this doctrine before their eyes, so that they show themselves severe judges with those who are accustomed craftily to draw young people outstanding in purity and integrity of morals into vain and impure conversations; and even if I unwillingly permit that such conversations can be free from mortal fault, so that they are only venial, nevertheless "this very thing," says the cited Lugo, "is a grave harm which is inflicted upon these young people in that state and purity of life." And with stronger right and reason I would extend this to those who have undertaken the charge of imbuing young people of this kind with piety and doctrine." Ithur., case 35; I. M. 249, 250.

106. On the Novitiate and Profession

1. Caius, a novice, having obtained dismissal, put off the habit and the intention of remaining in religion. But at night, while still sleeping in the monastery, led by repentance, he asked again to be admitted into religion, which he immediately obtained.

Question. Was the novitiate interrupted in the case?

R. Many deny this because of the brevity of the time and the smallness of the matter; others more probably affirm it, because the continuity of the annual time according to the Council of Trent is no longer had. La Croix, bk. 4, n. 18. "But if Caius was not dismissed, although, having put off the habit and the intention of remaining, he hid in the monastery while awaiting an opportunity of going out, Suarez and Castropalaus rightly say against Diana that no interruption was made; as also not then, if the superior had wished first to dismiss him clothed in secular dress. For in these cases he is judged still to have remained in the order, since he was not dismissed by the will of the superiors; and at least by this there is not judged to be a full interruption, unless it was at the same time completed by actual departure." Thus La Croix, loc. cit., n. 20.

And Ferraris, v. *Annus probationis*, n. 10 ff.: "The year of probation or novitiate ought to be continuous, so that a novice interrupting the year of probation with the intention of deserting the religion, and going out, although for only two hours, is bound to begin the year of novitiate anew from the Decree of S. C. C. ... If, however, says Fagnanus, the novice had not gone out from the monastery, but with the intention of fleeing had hidden for a little while within the cloister, the year of probation would not on that account be judged interrupted. ... Indeed the year of novitiate is not interrupted even if the novice, retaining the habit, goes out secretly for the sake of hiding himself, provided that he has the intention of returning. And concerning one who remained for the space of twenty hours outside the monastery without the habit, S. C. EE. et RR., 11 August 1626, declared that it could be tolerated concerning departure with the habit and with the intention of returning." — I. M. 268, 269.

2. A certain novice, after nine months of novitiate, from the error of a physician thinking that he was laboring under a grave infirmity which rendered him unfit for the ministries and discipline of religion, was dismissed by the superiors. Nevertheless, a more accurate examination being applied, the error of the former physician appeared, and the young man was free from suspicion of such a disease; and therefore after six days he was again admitted to the novitiate.

Question. Was the novitiate interrupted in the case?

R. In the affirmative. For there is no doubt that interruption of the novitiate for six days interrupts the required continuation of the novitiate. It is added that, in the case, although from a false cause, that is, from the physician's error, the novice was truly dismissed by the superiors, and the dismissal was accepted by the novice, and therefore the novice went out from the religion. Wherefore, the dismissal given and accepted in the case, and the departure of the novice standing, the novitiate was altogether interrupted. Hence the aforesaid novice, having again entered religion, will not be able to be admitted to profession after three months; but it is necessary that he again begin the novitiate and complete an entire year of novitiate. Lugo, *Resp. Mor.*, bk. 4, d. 3; I. M. 269.

3. Benedictus, after six months of novitiate, is compelled to depart from religion because of military service. Three years having been spent in the military in a very praiseworthy manner, the master of

novices judges that Benedictus can be admitted to vows after another six months have elapsed, since, he says, with that necessity standing of a wholly involuntary departure, the year of novitiate has not been morally interrupted.

Question. What is to be said in the case?

R. It does not seem that the master of novices judges rightly. For although the departure of Benedictus was altogether necessary and compelled, and Benedictus conducted himself well and laudably during the whole three years of military service, nevertheless the year of novitiate is truly interrupted, and the novitiate is at present to be continued for an entire year. The reason is first, because that new condition of Benedictus in military service renders him altogether secular, and therefore the novitiate is altogether interrupted. For as surely in that new condition of a soldier the novitiate does not endure, nor is it continued, so neither consequently, with this new condition and notable change of state standing, can the novitiate afterwards be continued; rather it must be begun anew. Moreover, the space of three years is altogether notable, and morally speaking it truly cannot be said that the former six months of novitiate are continued with the later six months, that notable intervening space of time having elapsed. And each reason holds even if the military service had lasted for only one year. Likewise each reason remains wholly intact, although the departure in the case was not voluntary, and although Benedictus conducted himself very praiseworthily.

Indeed, from the common opinion, even a much shorter time in the present matter is held to be notable and sufficient for interruption of the novitiate. And thus Cardinal Lugo, *Resp. Mor.*, bk. 3, d. 2, n. 3, says: "although some judge that a brief interruption does no harm, nevertheless Suarez and Sanchez reject this, and in our case the matter is beyond controversy, since the interruption was for seven days, which is judged a small interruption by no one." And the same Cardinal Lugo, loc. cit., bk. 4, d. 2, n. 1, speaking of an interruption of six days, says, "there seems no doubt that in every opinion it interrupts the required continuation." The resolution of the case set forth can be confirmed from the resolution to the fifth doubt of the following case proposed by the praised Cardinal Lugo, loc. cit., bk. 3, d. 2.

4. "A certain novice, after 21 days from his entrance, having left the habit, departed with the intention of not returning; but when seven days had elapsed he returned, and, having again obtained the habit, pursued the novitiate. And when eleven months and ten days had elapsed, which with those 21 days made a whole year, in good faith he emitted profession, and afterwards remained in the order for fifteen other years. ... It was asked: 1. Whether the profession was valid? — 2. Whether at least afterwards tacit profession intervened? — 3. Since he doubts that the convent will not now easily give new consent, whether, without new consent being required, he can now ratify the first profession at least before the prelate and witnesses? — 4. What finally shall he do, so that he may profess validly? — 5. Whether for this it is necessary to put forward again an entire year of probation, or whether without a new year of novitiate the prior profession can be ratified immediately?

To the first. The response was that that profession without doubt was invalid ... since the interruption of the novitiate was for seven days, which is judged a small interruption by no one.

To the second. It also seems certain that that profession was not yet healed and made valid, because for the value of profession the positive consent of the one professing is required; for this it is necessary either that the one professing know the defect of the profession and will to bind himself

anew, or at least that he have a conditioned will, by which he says: if perhaps I am not truly professed, from now I will to bind myself anew. However, mere perseverance in religion, and the exercise of acts which professed do, does not suffice; for one who thinks that he is professed, by persevering in religion, does not will to profess, but to fulfill the profession which he thinks he has emitted.

To the third. Although Suarez says that in this case new consent is required on the part of the religion, knowing that the prior acceptance was invalid, which also Sanchez followed and confesses to be more probable, nevertheless the same Sanchez says that it is safe and probable that new knowledge and consent are not required on the part of the prelate or convent, as long as its prior consent was not revoked. ... And it seems to be gathered from the Council of Trent, sess. 25, c. 19, *de Reg.*, where after five years a protest against profession is not admitted, because at that time it is supposed to have been ratified, and therefore by the consent of the one professing alone, even without any new acceptance standing on the part of the religion. Therefore the religious in our case could embrace this opinion; this indeed would proceed well insofar as only the revalidation of profession is considered. Yet it can with difficulty be sustained in order to the novitiate, or to supplying a part of it, as will be clear from what is to be said.

To the fourth. It is clear from what has been said that this religious, by embracing this last opinion, can ratify the profession either alone or before the prelate or some witness; which ratification, as Suarez notes, ought to be made by some external sign, explicitly, or at least implicitly, signifying the will to bind himself, such as remaining in the habit and obedience with the intention of binding himself, which permanence endures for the time required for inducing tacit profession. ... Or, if according to the other opinion he wishes to have new consent of the prelate and convent, he may secretly disclose the whole matter to the prelate, and the prelate, the name of the petitioner being kept silent, may propose it to the convent; or he may seek a dispensation from the Pontiff for ratifying the profession. ... These things, however, proceed insofar as the discussion is about the revalidation of profession. But in our case there is a peculiar difficulty concerning the time of probation, as will be able to be clear from the response to the fifth point.

To the fifth. Therefore concerning repeating the novitiate it must be known that some think that the entire year of novitiate ought to be repeated, because the prior novitiate was morally interrupted by the invalid profession. Once it had been made, that religious already thought himself professed, and therefore he was not in probation; for probation requires the liberty of remaining or departing, which liberty he did not have while thinking himself professed. And although afterwards, when the defect of profession has become known, he begins now to have liberty and is constituted again in the state of novice, nevertheless this time is not continued with the prior novitiate, which was interrupted by the profession thought valid. Since therefore the year of probation ought to be continuous, the consequence is that an entire continuous year of probation ought to be made anew. Thus Suarez. He thinks it probable, however, that the preceding time can be counted, the days which are lacking to the year being afterwards added, because a moral interruption does not seem to occur, since the state and religious habit were always continued. ... He warns, however, that it is necessary that the defect of the past profession be known to the prelate himself and to others to whom it pertains to admit to profession, and this before the time of novitiate begins to be continued. ... For the same knowledge is

required on the part of each, so that the novice may prove the religion, and so that the religion itself may be able to prove the novice.

Yet it does not easily appear how consistently this was said by Father Suarez, who, as a reason of doubting against the obligation of manifesting it to the religion, objects the Tridentine Decree (sess. 25, c. 19, *de Reg.*, in which it is established that those are not to be heard who after five years allege the nullity of their profession because of force or fear, or because of defect of age, or something similar), in which, without a preceding manifestation of this kind, the profession is supposed to have been validly ratified in the subsequent five years. Yet to this objection he confesses that in that Decree the discussion is about alleged nullity of profession made through force and fear, or before due age, or something similar, that is, such causes that afterwards the profession could be tacitly ratified by the will of the religious himself, without new consent of the religion. And therefore our case is not comprehended, in which knowledge and will on the part of the religion itself were necessary, except only with a certain accommodation, so that even in these cases the religious is not heard after five years, except when the presumption of ratified profession ceases on the part of the religious and also on the part of the religion; or certainly he is not heard unless he wishes to prove that the profession could not have been ratified during that time, from whatever source this impossibility proceeded. And thus it seems to me that one must consistently speak." Lugo, loc. cit.

It must be noted here: 1. that Suarez, tom. 3, *de Relig.*, bk. 7, c. 1, n. 20, requires on the part of the monastery new knowledge and consent for accepting the ratification of invalid profession, precisely because he is speaking of profession invalid from a defect holding on the part of the religious professing and of the religion itself, namely when the year of probation was lacking. But when the defect holds only on the part of the one professing, and especially when the defect was because of fear, he expressly admits, nn. 6 ff., that new consent is not required on the part of the religion, because the prior consent always remains as long as it is not revoked. Cf. Lugo, *Resp. Mor.*, bk. 3, d. 16, n. 21.

2. Although some essential thing is lacking for the validity of profession, nevertheless if during the whole immediately following five years the professed, knowingly and willingly, did not protest, from Trent, sess. 25, c. 19, *de Reg.*, he is presumed to have had the profession ratified. He is presumed, namely by a presumption of law and concerning law, Benedict XIV, Constitution *Si datam*. But in the internal forum the truth is to be inspected. Suarez, *de Relig.*, tom. 3, bk. 7, c. 4, n. 6. For the Church cannot supply consent. Fagnanus on c. *Si quis*, n. 32, *de Regul.*

3. At present, for validly emitting solemn vows after simple vows, express profession is required; and therefore tacit profession has been altogether abrogated.

4. As regards the consent of the monastery at present, from the Decree of Pius IX, *Regulari disciplinae*, 25 January 1848, the conventual Chapter of the Convent or House must be convoked, "so that the capitulars may declare by secret votes whether the novice can be admitted to profession." Then an examination must be made by the Provincial and by at least three Provincial examiners, that "they may define whether the novice is furnished with the necessary qualities so that he can safely be admitted to profession." And the Superior General "can never permit the profession of a novice who has been rejected by the Provincial

examiners." Moreover, from the Decree of the same Pius IX, 7 February 1862, where there is question of admission to solemn profession, in the aforesaid Chapter those professed of simple vows do not have a voice. And "for admission to solemn vows after the completion of the three years of simple vows, the conventual Chapter indeed must be heard for the instruction of the mind of the superiors; but the Superior General, or his subdelegate, by no means will have to stand by the resolution of that Chapter." I. M. 268, 269, 277, 278.

5. Norbertus committed an occult homicide. Sincerely converted to God, he enters religion, remaining silent about the homicide committed. Hence, after simple vows have been completed, he then solemnly professes.

Question. Did Norbertus emit profession licitly and validly?

R. Norbertus indeed emitted simple and solemn vows illicitly and invalidly, if he entered a religion in which a homicide previously committed is a substantial impediment according to the Constitutions approved by the Apostolic See, as in fact it is in the Society of Jesus. *Exam.*, c. 2, § 2, 6; *Const.*, pt. 6, c. 3, § 4, and C.

But if he entered another religion in which an impediment of this kind is not had, he professed validly. For Sixtus V, by the Bulls of the year 1587 and of the following year, rendered homicides and others guilty of certain crimes incapable of religious profession. But Clement VIII in the year 1602 moderated the aforesaid Constitutions of Sixtus and restored the value of profession. Wherefore there is no doubt that the profession of Norbertus was valid.

But did Norbertus act illicitly by saying nothing about the occult homicide? He indeed acted illicitly, generally speaking, if some grave detriment could come to the religion from it. He also acted illicitly if, when interrogated by the prelates about impediments of this kind, he said nothing. For then fraud and deceit intervened in a grave matter. For it cannot be denied that homicide according to itself, even if it was not brought into judgment, even if it is altogether occult, is a matter of such moment that the religion could prudently be wholly unwilling to accept one who labors under such a defect. If finally Norbertus was incautiously not interrogated about this matter, perhaps he can be excused, because the aforesaid homicide is not of itself an invalidating impediment impeding entrance into religion and profession in it; and since it is altogether occult, Norbertus is not bound to defame himself, nor does grave damage seem thence to threaten the religion. Nevertheless it must not be denied that, although the homicide is occult, there always remains the danger that sometime it may be manifested with grave disgrace to the religion itself. Wherefore Norbertus will be able to be excused only when the circumstances are such that a danger of this kind is wholly improbable. — Lugo, *Resp. Mor.*, bk. 1, d. 1.

6. Euphemia, from grave fear of her father, well known to her relatives, entered religion and emitted solemn profession. But after some years Euphemia's father died. Then her relatives, in order that they might obtain the inheritance through her, protested against the validity of the profession. The Ordinary of the place, in order to take cognizance of the litigation that had been moved, sent to Euphemia his Vicar General with two witnesses, so that they might examine her. But Euphemia, lest she stir up scandals, told the Vicar General to abstain from any examination whatever, because she herself of her own accord yielded to any litigation, and "if before," she said, "I was not a nun, today I wish to be a nun."

Question. Is the aforesaid ratification of Euphemia's profession valid?

R. The ratification of Euphemia's profession could seem invalid, because profession, in order to be made validly, ought to be made into the hands of the abbess or of a prelate able to accept profession. But that ratification of Euphemia was not made into the hand of anyone able to accept it, but before a certain delegated judge, to whom it did not pertain to grant or accept profession. But in the case the ratification of profession did not need for its value some new acceptance, but only the consent of the same nun, wishing validly to profess. The reason is that for the value of the preceding profession, invalid because of fear, only the free consent of the nun herself professing was lacking; when that accedes at any time whatever, the profession becomes valid, even if the ratification is not made with a new solemnity into the hands of the abbess or prelate. Nor does this seem able to be denied, given the doctrine of the Council of Trent, sess. 25, c. 19, *de Reg.*, where, after five years have elapsed from the day of the profession made, a regular alleging the nullity of his profession because of fear is denied a hearing, because, namely, tacit ratification is presumed, and one sufficient for the value of profession, even without new solemnity or acceptance of the prelate or Chapter, whose acceptance had already preceded and was not revoked. How much more, therefore, in the case, will express ratification before a delegated judge and witnesses suffice?

But again the ratification in the case could seem invalid from those words of the nun: "if before I was not a nun, today I wish to be a nun." For those words do not seem to signify present profession, but the will and intention of ratifying the profession afterwards. But first, those words, in those circumstances in which there was question of examining the nullity of the profession, and in which they were uttered to impede this examination, cannot be understood in another sense except of profession to be revalidated in the present. Besides, those words, "today I wish to be a nun," signify the intention of ratifying the religious profession in the present. For the word "I wish," with another verb of the infinitive tense, e.g., "I wish to sell," "I wish to buy," can indeed signify only an intention disposed toward doing, but it can also signify the intention of doing in the present; and thus by the aforesaid words, "I wish to sell," "I wish to buy," the contract of sale and purchase can well be perfected in the present. Indeed, if to the verb "I wish" there is joined a verb signifying the very exercise and execution of the thing, then it signifies the intention of doing in the present, as, e.g., "I wish to have you as wife," because for having as wife marriage is necessarily presupposed. But that nun did not say, "I wish to make profession," but "I wish to be a nun," for which profession is necessarily presupposed. Nor could it be understood of a novice nun, since the doubt to be examined was not this, but whether she was a professed nun. Accordingly those words, "if before I was not a nun, today I wish to be a nun," signified nothing else than, "if up to now I have not been professed, now from this moment I wish to be professed." And that word "today" must also be weighed, opposed to the past time, "if before," by which the present ratification of the profession is openly manifested, as if she were saying: if up to this day I was not a nun, from this same day henceforth I wish to be a nun; by which locution a present will and consent is certainly signified. — Lugo, *Resp. Mor.*, bk. 3, d. 16; I. M. 277, 278.

7. Brother N., a cleric religious, petitioned for dispensation from the simple vows emitted on 6 March 1887, asserting that, because of weak health, he could not remain in the order. On 4 September 1888, the Sacred Congregation on Regular Discipline benignly granted the Father Minister General for the effect concerning which in the prayers; and he, on 8 September 1888, by these words, "We dispense,

and from every bond and obligation of the said vows we restore him free to secular life," committed the Rescript to execution. Meanwhile, however, on 4 September, Brother N. had written to the Minister General that, deceived by the devil, he had set forth a false cause in the petition, and that therefore he wished to die in the order, and he begged that the dispensation from simple vows not be intimated to him. The Provincial Minister heard his prayers, informed the Minister General of his repentance, and on 6 April 1890, the three years having elapsed, admitted him to solemn vows.

Question. Whether Brother N., notwithstanding his petition of 4 September, really was dispensed from simple vows by the Rescript of 4 September, or by its execution on 8 September 1888, and whether his solemn profession must be judged invalid?

R. In the negative as to each part. S. C. EE. et RR., 15 March 1892; M. E., vol. 7, pt. 2, p. 75.

8. Benedictus, his religious profession having been pronounced invalid, asks doubtfully whether at least now he is still bound by the vow of chastity. For the confessor told him so, namely that the solemn vow of chastity passed into a simple vow of chastity. But Benedictus, not greatly trusting that confessor, goes to another and sets forth his doubt to him, asking its solution.

R. When religious profession has been pronounced invalid, regulars return to their former state, as if profession had never been issued. Wherefore the solemn vow of chastity does not remain, nor does it pass into a simple vow of chastity. How indeed can a vow pass into a simple vow when it never existed? And, if there is question of profession of simple vows, not solemn vows, the vow of chastity simply is not, because it was not, whence that which never began cannot continue. The reason is that the acts of agents do not operate beyond their intention. But a restrictive clause is not accustomed to be added, nor can it be, when religious profession is declared null, e.g., from defect of consent or from defect of prior novitiate; for then no vow was truly present. That clause is accustomed to be added only as regards the vow of chastity, the vow of chastity remaining, when those vows are dispensed; for then the vow was present and consequently can remain. That confessor perhaps made a confusion between dispensation and declaration of invalid profession. I. M. 262.

9. A religious Provincial granted dispensation from simple vows emitted by a certain nun in a community under the rule which that religious himself professed. Hence the Bishop asked whether the said Provincial could validly dispense from the simple vows of the nuns of whom there is question.

R. The preceding case was proposed to the Sacred Congregation, and, a report on it having been made to the Supreme Pontiff, "His Holiness ordered that it be rescribed that the Father Provincial could not dispense from the aforesaid vows, although simple, emitted in the said monastery, according to the things handed down by Benedict XIV in the Bull *Convocatis*, 27 November 1749, § 32." Bizzarri, *Collectan.*, ed. 1885, p. 133.

Now Benedict XIV, loc. cit., has these things: "As regards vows, let them know that they [the Penitentiaries] must abstain from their commutation in those cases in which there is question of prejudice to a third party. Wherefore in that which pertains to vows, although simple, whether of perseverance, or others customarily emitted in some Congregation or Community and into vows obligatory accepted by a third party, let them not involve themselves."

Hence it appears that simple vows which are emitted in some Institute or Congregation or House approved by the Holy See are reserved to the same Holy See, because those vows are received by the Institute or by the Congregation or by the House, and they assume the nature of a contract and reciprocal obligation. Whence dispensation of those vows introduces prejudice to a third party, and therefore is to be granted only by the Supreme Pontiff.

From these things the distinction is clear between private simple vows, which are emitted privately and by which one is obligated to God alone, and public vows, which are accepted by an Institute or Congregation or House by the approval of the Church. By these vows one is obligated to God; and, the same vows having been made into the hands of the prelate, one is at the same time obligated to the Congregation, or Institute, or House. These vows properly constitute the religious state in the face of the Church. Hence Suarez, *de Relig.*, tr. 7, bk. 2, c. 9 ff., says: "For the proper bond of the religious state, when it is assumed in a religious community, besides the three substantial vows made immediately to God, a peculiar human obligation is necessary by way of a reciprocal pact, by which the man himself both gives himself to religion and is obligated, and in turn religion accepts him and is obligated to him ... for governing."

Moreover, the Supreme Pontiffs have granted to certain Superiors General the faculty of dispensing from these same vows only in the act of dismissal, as to the Superior General of the Congregation of the Passion, and to the Praepositus General of the Society of Jesus, in which, however, by the very fact that someone is dismissed, the simple vows emitted wholly cease. The faculty of dispensing, in the act of dismissal, from simple vows of this kind has generally also been given to the Superiors General of those Orders in which solemn vows are then emitted, although the same simple vows on the part of those vowing, if namely they themselves wish to depart, are reserved to the Supreme Pontiff. Cf. D'Annibale, *Summ.*, ed. 3, pt. 1, n. 103, note 7; Bizzarri, *Collect.*, ed. 1885, pp. 153–154. Yet the aforesaid acceptance of simple vows, and their public promise before the prelate, is not the only reason for the reservation of those vows; but there is also a special privilege by which, in order to prevent damages which could occur in some Congregation from too great facility of dispensing, the Holy See reserves the aforesaid vows to itself. And thus in the Congregation of the Mission, the simple vows which are emitted in it can be dispensed only by the Supreme Pontiff and by the Superior General from a special faculty, although "in the emission of those vows no one is present who accepts them, whether in the name of the Congregation, or of the Holy See, and in the name of the Roman Pontiff existing for the time." Benedict XIV, Brief *Quo magis*, 18 December 1742.

107. On Poverty, Chastity, and Obedience

1. Theodore, a religious, with a general permission of his superiors for spending money, applies to his own use money given to him for this purpose by friends; he spends some things upon objects not indeed necessary, yet useful or proper; other things, on the contrary, upon matters wholly superfluous and useless, and even sometimes unlawful. Hence it is asked:

Whether Theodore sins against the vow of poverty in these expenses?

Response. 1. An abundant use of things, provided it is had by permission of the superiors, is not of itself opposed to poverty. The reason is, first, because a poor man does not cease to be poor because at times he is somewhat more abundantly supplied by the charity and liberality of others; for he does

not use those more abundant things by his own right, nor does he cease habitually to suffer want of all things. The reason is, secondly, because religious poverty is not to be understood so strictly, according to the manner of certain very timid persons, that it contains only the use of things strictly necessary, with permission of the superior; otherwise there would be no end of scruples and anxieties. See Suarez, *De Religione*, tome 3, book 8, chapter 5, nos. 32, 33, and chapter 15, nos. 3, 4. Therefore Theodore is not to be disturbed with regard to things simply abundant beyond strict necessities, as far as concerns the vow of poverty. Nevertheless a fault can perhaps be present by reason of scandal, or danger of relaxing regular discipline; indeed, there can also be so notable and excessive an abundance as to bring an indecency upon the state of poverty contrary to the vow itself. St. Alphonsus, book 4, no. 30.

2. Expenses in things wholly useless and unlawful are plainly illicit. But whether the permission of the prelate for such uses is invalid in itself is a question of no small moment. The first and more common opinion affirms that it is; because the prelate is not the owner, but only the administrator, of the goods of the monastery, and therefore he cannot validly permit useless or unlawful expenses, since he has not this power either from religion or from the canons. The second opinion denies this; for otherwise these purchases would be invalid, and no law declares that they are invalid. St. Alphonsus adheres to the first opinion, but says that he does not dare to reject the second. And certainly the reason for the first opinion is not entirely demonstrative, at least when the question is not about goods of the monastery, but about things received from outsiders in order to be spent. See Suarez, *De Religione*, tome 3, book 8, chapter 5, no. 33; Lugo, *Responsa Moralia*, book 4, doubt 6, no. 8; Liguori, book 4, no. 28.

3. As concerns Theodore, he did not receive a faculty to spend money on useless and unlawful things, but only a general permission to spend money. St. Alphonsus asks: if a prelate grants to a religious a general permission to spend some sum at his pleasure, and the religious spends it on base and vain uses, whether the religious sins against poverty, and whether both he and the receiver are bound to restitution? The holy Doctor reports two opinions. The first affirms it, on account of the reason given above. The second denies it, because the fact that the superior is not the owner does not stand in the way. For, at least, the monastery is the owner in such a way that it can dispose of its goods for all uses; and in the case it is presumed to consent, lest the reputation of the subject, of the superior, and of the monastery itself be endangered. Lugo, after reporting this opinion, says:

> In truth, although the superior is a simple administrator, still no law is known by which his power is restricted to licit uses alone. For it must not be judged that the superior, when he gives a license, limits it only to licit uses; but, giving a general license, he removes the impediment which arose from the defect of license. In the same way, if the Pope dispenses with relatives so that they may marry, he does not merely grant that they may lawfully have the conjugal act, but he also removes the malice of incest; so that even if afterward they were to sin with one another outside the use of marriage, there would not be the malice of incest. Likewise, if the Pope dispenses with someone for eating meats, even if that man eats meats harmful to his health, he will sin against temperance, but not against the precept of fasting, which has been taken away by the dispensation.

Nevertheless St. Alphonsus says again that he embraces the first opinion, but does not dare to reject the second. Therefore we abstain from charging Theodore, in the proposed case, with a grave sin against the vow of poverty. See Lugo, *Responses*, as above; La Croix, book 4, no. 115.

2. Francis, a religious, hesitates whether he can ask the superior for permission to spend, in favor of a Marian Congregation of workers, whose Director he has been appointed by the superiors, various alms received for this purpose from devout persons, and the proceeds of various pious books which he has published. These expenditures would be necessary for promoting the Congregation. But it seems to him that he would thereby possess a peculium contrary to poverty.

Response. There is no reason why he should hesitate. This is, in fact, done even by holy religious, as we read concerning St. Francis de Hieronymo. Nor should Francis fear that he possesses a peculium, if he asks and obtains permission from the superior, and if he acts always dependently on him; much more, if he deposits the money with the superior for the destined pious use, and, as often as there is need, asks money from him.

For a peculium is properly that which individual religious have in order to provide for their necessities and useful needs. If they use this according to the need of the state of poverty, with the permission of the superior, and therefore by precarious use, that is, by a use revocable at the superior's will, it is not against the vow of poverty. See I.M. 288. But in the proposed case the money is not destined for the proper uses of Francis, but for a pious work plainly conformable to his Institute, as is evident from the fact that the superiors have appointed Francis director of that same Congregation. Therefore, since it is used in a pious work exercised by the Institute according to Constitutions approved by the Apostolic See, it is wholly outside the notion of a peculium.

3. Ferdinand, a religious, obtained from the superior permission to dispose of a sum of money. The following day that superior was removed from office, and another was appointed in his place. It is asked:

Whether Ferdinand is obliged to ask permission again?

Response. No. The permission given by the superior also regards the future time, when he will have been removed from the office of superior. For the power or grace once granted is complete and perfect. La Croix adds:

> Although a superior can licitly accept something for himself while he is superior, and can retain it after he has ceased to be superior, nevertheless he cannot spend it without the permission of the present superior; because he could delegate or entrust to others, not to himself, the power of spending for the following time, since there must be a distinction between the one delegating and the one delegated.

La Croix, book 4, no. 115.

4. Theodosius, a religious, while his parents were still living, before solemn profession renounced every present and future hereditary right in favor of his nephew Antonius. After the profession, his parents died intestate. The brothers of Theodosius, succeeding their parents, ask whether

in conscience they are bound to give a part of the inheritance to Theodosius, or whether they can retain it for themselves. For Theodosius claims the inheritance, invoking the modern laws which favor him, and he thinks of disposing of it in favor of another nephew, Augustinus. Antonius also claims the inheritance by virtue of the renunciation made in his favor. But the steward of the convent says that it is owed to the convent, which succeeds in place of the religious by the principle: "Whatever a monk acquires, he acquires not for himself, but for the monastery."

Response. 1. Theodosius invokes the modern laws in vain. For by solemn profession he was made canonically incapable of possessing anything. Nor can he recover this habilitas in a particular case by dispensation of a regular prelate, or even of a bishop. Therefore he cannot dispose of the paternal inheritance in favor of Augustinus, even with the permission of the superior or of the Ordinary; nor in any other way, even in favor of pious causes.

2. Antonius cannot claim the inheritance by reason of the renunciation made in his favor. For that renunciation has no force, since no one can give what is not, and will not be, his own. At the time when the renunciation was made, the inheritance did not belong to Theodosius, since his parents were still living; nor did it belong to him afterward, since a professed religious is incapable of being an heir. Therefore this inheritance was not included in the general renunciation of present and future goods and rights. It was not a present right, and neither was it a future one, since by reason of his incapacity it could not pertain to the professed man. Besides, either civil or canon law prohibits any disposition of an unopened inheritance in favor of a determinate third person, and makes it invalid.

3. The steward has no right, if by the Constitutions of the Order the convent is not capable of hereditary succession in place of the professed religious, as happens in the Society of Jesus, which does not succeed its professed members, nor are the professed capable of hereditary succession. In that case, the brothers of Theodosius claim the inheritance by right. But if the convent is capable of hereditary succession in place of the professed religious, the inheritance belongs to the convent, and the brothers of Theodosius have no right to it.

4. Cardinal Lugo, *Responsa Moralia*, doubt 5, no. 9, thinks otherwise. He concedes that it is impossible to renounce, by transferring to another and to the prejudice of another, namely the convent, a right which one does not yet have, nor ever will have, if the inheritance is not owed, for example, from a collateral relative. But he says that it is otherwise concerning the renunciation of the legitime; because, although the son does not actually possess it while the father is living, nevertheless he has a right to it, and it is owed to him. Therefore he says that he would not deny that the son could, before profession, renounce it in favor of another, to whom he now gives it. But this does not persuade us. For the son has no strict right to the legitime until the father dies, from the goods then left. Therefore, if the father dissipates the goods during life, although he sins, nevertheless he does not sin against commutative justice, nor is he bound to restitution. Furthermore, such a disposition of an unopened inheritance is prohibited and made invalid by positive law, even in the legitime. See I.M. 1034. Indeed Lugo himself, in the immediately preceding doubt 4, no. 7, says that if a novice or scholastic of the Society after the vows of the biennium renounces the inheritance of a living father in favor of a

relative, then if the parent dies and the one renouncing has already been professed, the inheritance does not pertain to the one in whose favor he renounced, unless it is otherwise left to him by intestacy or testament; rather, it is deferred to those who would have to succeed according to the testament or intestacy, because from the renunciation they could acquire no right to the inheritance deferred at that time.

5. John, a professed religious of the Society, before profession renounced, in favor of a certain college of the Society, all his present and future goods and rights. Afterward, when he was already professed, his brother left him a legacy; and a doubt arises whether this legacy is valid notwithstanding the profession, and whether it is acquired by the college in whose favor John had renounced, or by another college in which, at the time of his brother's death, John was permanently living.

Response. The universal clause of renunciation of all present and future goods and rights is usually added by notarial style, in order to signify the universality of the renunciation; nor is it without every effect. For if, between the renunciation and solemn profession, some goods and rights come to the religious, they are included under that clause. It is otherwise harmless, because it is conditional: if I shall have goods and rights in the future. But that condition cannot be verified after profession, since the professed man is incapable of having any good or right.

There is no doubt about the validity of the legacy. For the professed of the Society cannot be heirs, whether by testament or by intestacy; but they can be legatees. See Sanchez and Lugo. Thus, whether John had renounced or had not renounced, he remained capable of the legacy, although he could not be instituted heir.

But the legacy does not belong to the college in whose favor he had renounced before profession, but to that in which he was living when the legacy devolved. For, if there had been no renunciation, it is certain that the legacy would belong to the house or college in which he was living, according to the principle: whatever a monk acquires, he acquires for the monastery. And when it is said that the Society is not capable of succeeding its professed members, this is to be understood in this sense: that the goods of the professed do not pass by profession itself, by force of law, to the Society, but to the testamentary or intestate heirs. It is not to be understood as meaning that after profession the Society can acquire nothing through the professed. Therefore, if a devout person gives an alms to a professed religious, that alms is acquired wholly by the Society, or by the house and college in which he lives. Although the professed man cannot be heir, and if an inheritance devolved upon him the Society could not acquire it, nevertheless the same professed man is capable of a legacy, which he acquires not for himself, but for the Society, that is, for the house and college in which he is. Therefore, just as an alms given to a professed religious would not be acquired by the college in whose favor he made the renunciation before profession, so neither is the legacy acquired by it. For he cannot transfer to another what he does not have and to which he has no right. But he does not have, at the time when he renounces, things given to him afterward by donation or by legacy after profession, nor does he then have a right to them; nor does he have such a right after profession, since he is incapable of dominion and of right. The whole right, therefore, then belongs to the house and college in which he is. Therefore only this house and college acquires the thing given or left to him. Lugo, *Responsa Moralia*, book 4, doubt 5.

6. Pius, a testator, ordered that from his goods there be erected, in a parish church and at a fixed altar, a perpetual chaplaincy with the burden of daily Mass, the revenue assigned being 6,000 lire. Sempronius, a regular dispersed after the violent suppression of religious orders, in order to provide for his own support and that of another religious living with him in the same private house, asked for and obtained this chaplaincy from the bishop, although the parish priest was displeased.

Response. Sempronius acted by right. For first, a chaplaincy with a simple burden of Mass has the nature of a simple pious legacy, and, according to the Doctors, religious are not incapable of such chaplaincies. Indeed the Sacred Congregation of the Council, in *Meliten.*, decreed that with the authority of the superiors religious can obtain such chaplaincies not only in their own churches, but also in secular churches, 23 November 1694, 11 June 1695, and 1 December 1691. Moreover, in the Letters of the Sacred Penitentiary by which the faculties already granted to dispersed regulars are enlarged, paragraph 16 grants to solemnly professed regulars that they can legitimately obtain and retain in administration chaplaincies, or even one ecclesiastical benefice, whether residential or with cure of souls, with the consent and at the will of the Ordinary, with the superiors also agreeing; yet they are obliged to leave it immediately when they are recalled by their superiors to the cloisters. Finally, the resolution is made certain from the affirmative response of the Sacred Congregation of the Council, 21 August 1869, in *Acta Sanctae Sedis*, volume 5, page 82 and following.

7. Brother Francis of the Passion, a lay brother of the Congregation of Discalced Clerics of the Most Holy Cross and Passion of Our Lord Jesus Christ, before he emitted profession, renounced the usufruct of his goods conjointly to his parents, retaining for himself the right of ownership, as the Constitutions of the Society permit, chapter 13. His father having died, his mother survived with twin unmarried daughters, who were in want of all things. There were also two brothers who had withdrawn from the maternal home, and were placed in such a condition that they could support and nourish themselves and their family. Now these brothers were asking that the part of the usufruct which previously the father enjoyed should be granted to them; the mother, on the contrary, claimed it for herself.

Question 1. To whom does the aforesaid usufruct devolve: to the mother, to the sons, to the daughters, to all, or finally to Francis himself?

Question 2. To whom does the whole usufruct devolve when the mother also has died?

R. To the first question: the usufruct devolves to the mother by right of accretion. To the second question: the usufruct devolves to the owner himself, for the purpose of disposing of it according to the Constitutions. Thus S. C. EE. et RR., 15 September 1837, in Bizzarri, *Collect.*, p. 75, ed. 1885.

8. "Titius by testament established a certain and perpetual revenue for a chaplaincy in the Church of a professed house of the Society of Jesus; and he enjoins the chaplain, to be appointed for the time by the superiors of the Society, that, retaining for himself a determined sum, namely one suitable as an alms for the daily Mass to be celebrated, he should give what remains each year as an alms to the Church of the same professed house.

Question. Whether this is an obstacle to the poverty of the professed house, or of its Church?

R. It is not an obstacle, provided that there is in the hands of the Society no disposal of those revenues, and no civil right is acquired by the same Society for petitioning in court for annual alms of this kind.

All these things are had expressly in the Constitutions of the Society, part 6, chapter 2 and 1, § 6, where it is said thus: 'No one of the Society ought, nor can he, induce anyone to leave perpetual alms to houses or churches of the same Society; and if any should leave them of their own accord, let no civil right be acquired for petitioning for them in court. But when charity on account of God has moved them to this, then let them bestow them.' Again, that there can be no disposal of those revenues in the hands of the Society is had in the same chapter, § 2: 'No revenues can be held as applied to anyone, not even to the sacristy or the Fabric; nor in any other manner, so that there is in the hands of the Society any disposal of them.' And in the Declarations of the same chapter, letter B, these things are had: 'If one of the founders of houses or churches should wish to leave certain revenues for the use of the Fabric, provided that neither the disposition of them pertains to the Society, nor there is anything from which an action concerning them belongs to it, although it would be its care that the one to whom such a duty has been committed should do his office, and so in similar matters, this would not be alien to the poverty of the Society.' From these things the truth of this proposition is manifestly gathered: it is not against the poverty which the Constitutions of the Society require in professed houses and Churches, if these use revenues spontaneously established by benefactors, provided that the disposition of them is not in the hands of the Society, nor a right to petition for them in court.

"It is said, that the disposition ought not to be in the hands of the Society, so that care may be taken lest even colleges have revenues which they perpetually expend, whether from an obligation imposed by benefactors, or from a disposition left free to themselves, for the support of professed houses and their churches. For this is held to be against the poverty of the Society in canon 12 from decree 61 of the Seventh General Congregation. With this caution having been applied, the Society is now understood to have done whatever it can on its part for guarding the purity of its poverty against revenues spontaneously left for its benefit. It has rendered itself incapable of any right whatever in the revenues themselves; it has furthermore willed no right whatever for petitioning and exacting them. What remained for it to perform? Was it that it should not petition in any way whatever? or that it should not accept, when they were given each year? But these two things do not stand in the way of poverty. But you will say: they would be owed each year; therefore they would be like a true revenue. But the response is manifest: for they would not be owed from any right residing in the Society, but from the right of him who disposed of his goods. Thus, one who receives money from another, in order to distribute it to the poor, owes it to the poor, not from a right existing in the poor, but in the owner, especially since the poor either are incapable of right, or are unwilling to have that right. Rome, 26 June 1723. Christopher Rassler, Edward De Vitry, Antonius De Gaizenrode, John De Ulloa, John James Ghezrius." A copy of this Resolution is preserved in the Archive of the Father Procurator General of the Society of Jesus.

9. Boniface, a regular superior, whenever his subjects ask from him permission to give some alms to the poor, or to spend something on pious causes and on pious works proper to the Order, never exceeds the quantity of a few solidi. For he says that since religious are poor, they

cannot, whether in giving alms or in doing pious works, exceed the quantity proper to the poor.

Question. What is to be said to the Case?

R. Boniface's reason, considered in itself, is true if there is question of money and other things, in great quantity, to be expended for uses wholly superfluous, vain, and unlawful. Expenses of this kind in superfluous matters, in notable quantity, are opposed to the state of religious poverty. Hence it is that, although they are made with the superior's permission, this indeed not improbably prevents the religious from being a proprietor, since he usurps nothing without the consent of the superior; but it does not prevent there being an illicit use opposed to the vow of poverty. I say in notable quantity; otherwise the aforesaid expenditures, although unlawful from another source, are not specially opposed to poverty. Cf. Lugo, *De Iustitia et Iure*, d. 3, 127 ff., n. 134 ff.

But what things are called notably superfluous in this matter cannot be handed down by one general rule. For it depends on prudent judgment, with attention to the circumstances of persons, place, custom, and similar things. Hence, in an observant religion, it would be a grave sin against poverty to have, for example, gold or silver furnishings, silk garments, silk coverlets or ornaments of the bed, forty or thirty linen shirts for one's private use, etc. For these and similar things are not fitting, but gravely unbecoming to the state of poverty which an observant religion professes. Therefore a subject having these things, even with the superior's license, sins against the vow of poverty, not indeed because of defect of license, but because that vow is not only about not using any thing without the prelate's license, but also about preserving the state of a poor man, and not making expenditures which do not befit the poor. Lugo, loc. cit., n. 131, 183.

With these things premised, it is clear first that, although Boniface's reason is true considered generally, nevertheless it is applied erroneously by restricting the legitimate faculty of the superior and the legitimate use of the subject to a few solidi. Besides, it is also applied erroneously to the giving of alms and to the performing of other pious works. For these are not expenses and expenditures which are unbecoming to religious poverty. And as regards alms for the poor and needy, there is indeed no precept for religious, as there is for beneficiaries, that the superfluous be expended upon the poor and pious causes; but this is so because it is exceedingly clear that religious, who profess poverty, expend the superfluous in alms and other pious causes, which in fact is done by religious even very poor and most observant of poverty. Hence it is that they often feed even many poor daily, and build churches and Altars of great price, and establish public works of piety and mercy.

In this matter Boniface can take the rule, both for himself and for others, from the doctrine of Cardinal De Lugo, loc. cit., n. 129, 184, 185, 186, 188. 1. "A local prelate can grant a subject license for the whole of that sum which the prelate himself can spend; this is understood according to common law." 2. For a thing not to be judged superfluous and unbecoming to the state of poverty, the rule "ought not to be that the expenditures are made about necessary or pious things. For there can be a pious matter upon which expenditure is made, and yet it is not according to religious poverty ... Nor, on the contrary, is it required that the thing be necessary, in order that it can licitly be expended upon it; for it is enough if it is useful." 3. "The prelate is not the owner of the common goods, nor can he dispose of them as owner; but he is as it were a curator and steward, although he

can do something more than a mere curator or steward ... regarding the common goods of the convent, that is, regarding revenues and fruits," yet according to due prudence and the fittingness of the religious state. "But what expenditures are judged to be made prudently must be estimated from the circumstances, and the measure of revenues, necessity, burdens, usefulness, etc. There must also be considered what is according to the formal or interpretative will of the founders, who gave those goods to the convent for preserving, nourishing, and fostering religion; wherefore they can prudently be expended for those ends. From this, however, it does not follow that they cannot be expended except for the food of religious; for it also pertains to preserving and fostering the community that it be preserved with due decorum, honor, and esteem, for which it is sometimes necessary to spend on things pertaining to ornament and splendor, provided that all these things do not exceed the limits of the religious state." 4. "A regular prelate can, indeed must, give alms from the common goods, more or fewer according as greater or lesser necessity occurs; and this not only from superfluous things but even from necessary things ... A regular prelate can also, from other honest titles and causes, make some moderate donations from the common goods, whether from gratitude, or for conciliating seculars or outsiders; yet not for ostentation of liberality, and much less for enriching his own blood relatives, or on account of his own private regard, unless perhaps from private goods and moderately, as other subjects could with his license. But I speak always according to common law, and prescinding from the Bull of Clement VIII concerning the largition of gifts (afterward declared by Urban VIII) and from the statutes of individual religions, by which the faculty of prelates is customarily limited even in granting licenses ..." 5. "In those things which pertain to the food and clothing of subjects, the decency and obligation of religious poverty always being retained, the prelate ought to incline even more to liberality than to parsimony, since that saying of Bernard is most true: Where there is no abundance, there is no observance."

10. Boniface, before solemn profession, renounces all his goods in favor of his brother. But in that renunciation he reserves for himself a return into the goods renounced, if perhaps it should happen that he leaves the monastery, from whatever cause this may occur.

R. The aforesaid restriction cannot be attached in solemn profession of vows without a special faculty of the Sacred Congregation. For by the solemn vow of poverty a religious becomes incapable of the right of dominion or ownership. But by that restriction the religious in truth keeps for himself radical and direct dominion in his own goods. For without this dominion a return will be impossible; for example, if the renouncee, as absolute owner of them, alienates them. And if it is said that in reality he yields even this dominion, but only with the condition of return, and consequently with the condition for the renouncee of not alienating them, even so, and in any other similar manner, there is had a true right to the thing from strict justice; and the solemnly professed religious is deprived even of this right.

11. Titius, a secularized religious, by a Rescript of perpetual secularization, obtained a canonry in a cathedral church. Doubting about the validity of the collation, he asks:

1. Whether religious perpetually secularized, by a simple Rescript of perpetual secularization, have authority to accept and retain ecclesiastical benefices, whether residential, or even with care of souls, without habilitation from the Apostolic See?

2. Whether the institutions of parish priests and canons who are ex-religious, only perpetually secularized and not habilitated for benefices, are invalid, although performed in good faith?

3. Whether finally they themselves can remain in possession of the benefices as legitimate possessors?

"R. To the first: Negative. To the second: the investitures of which there is question in the Case are null in the root. To the third: Negative, and let them have recourse to the Holy See for sanation, revalidation, habilitation, and faculty." S. C. Reg. Disc., 31 January 1899, *M. E.*, vol. 12, p. 242.

12. Pachomius, a regular prelate, on the occasion of the solemn procession on the feast of the Most Holy Body of Christ, permits women to enter the cloisters of the monastery and to accompany the procession. He says that this can be done both by reason of custom and because it is expressly granted in the Constitution of St. Pius V.

Question. What is to be said to the Case?

R. Pachomius does not act rightly. This case has often been proposed to the Sacred Congregation of Rites, and it has always returned a negative response. And thus, with the use of women accompanying in the processions of regulars through the cloisters of monasteries having been set forth, on 30 September 1628, no. 506, the Sacred Congregation responded: "It is not licit, nor is it to be permitted, except by express license of the Apostolic See." And on 11 June 1629, no. 506, it responded: "The Decree made on 30 September 1628 is to be observed, since the revocatory Bull of Gregory XIII is present, and is later." But by the Decree *Urbis et Orbis*, 5 July 1631, no. 564, "the Most Eminent Lords, the Fathers, commanded: Let a prohibitive Decree be drawn up, after consultation with the Most Holy Lord, that women henceforth cannot, on occasion of any processions whatever, enter the enclosures of monasteries of regulars, and that under the same penalty are comprehended the regulars themselves permitting women to enter the enclosures of their monasteries." And on 24 November 1635, no. 627, the Sacred Congregation responded: "In no way is it licit for women to enter the enclosures of monasteries of regulars on the occasion of any processions whatever, notwithstanding any contrary custom whatever." The same is clear from many other Resolutions of the Sacred Congregation of Rites. Wherefore Pachomius legitimately invokes neither custom nor the Bull of St. Pius V.

13. Rufinus, the superior of a religious house in which schools are held for external pupils and for internal boarders, without any difficulty admits women into all the interior places of the whole house and into his own room itself; and the other fathers of the house do this also. Indeed, he even places women over the kitchen and the wardrobe; and if at any time the boarders fall ill, he permits mothers, sisters, and maidservants to remain day and night in the infirmary, which is common to the religious and to the students. For he says that canonical cloister obliges only Monks, Friars, and Canons Regular, and their Monasteries, Cenobia, and Convents, not Clerks Regular, to whom that Religious House belongs, and their Colleges, Boarding-schools, and Houses.

Question. What is to be said to the Case?

R. If the Religious House of which Rufinus is superior is truly a Religious House of Clerks Regular, who truly and properly are a Regular Order, Rufinus and all the women violating the cloister of regular men of this kind, as in the Case, incur the excommunication of article VII of the second series of the Constitution *Apostolicae Sedis*. The same excommunication is also incurred by those other fathers of the house admitting the aforesaid women within the cloister. It is otherwise, however, if it is a secular house and not religious, or if the house is of religious clerics of some Pious Congregation. But even in this hypothesis there is great imprudence on the part of Rufinus, and grave danger of scandal is present.

Nor does Rufinus's reason have any force. For St. Pius V, Constitution *Regularium personarum*, Constitution *Decet Romanum Pontificem*, Gregory XIII, Constitution *Ubi gratia*, and Benedict XIV, Constitution *Regulares disciplinae*, do not speak only of the cloister of monks, canons, and friars; but they also speak of the cloister of regular persons, of others professing regular life, of any other Regular Orders, EVEN MENDICANT, of men OF WHATSOEVER Orders, etc. Likewise they do not speak only of Abbots and Priors, but also of Provosts, of other Presidents, BY WHATEVER NAME THEY ARE CALLED, of other Superiors and persons BY WHATEVER NAME THEY ARE CALLED, etc.

Moreover, they adduce the general reason, and they draw it from religious quiet, which surely pertains to all religious orders, and not only to Monastic Orders; and from the disturbance of this quiet, because cloister has not been rightly observed, which disturbance indeed, as regards the dangers and scandals which it begets, does not pertain only to Monastic Orders, but also and much more to the Orders of Clerks Regular. For because in those Orders conversation with women is easier and more frequent, there is without doubt a far greater danger of scandal.

But although in the aforesaid Bulls monastery is the same as religious house, and the distinction which Rufinus makes in the present matter between monastery and house is a vain subtlety, nevertheless the Supreme Pontiffs do not speak only of monasteries, but they also speak of houses; indeed also of regular places, of the cloisters of a monastery and of regular places, of houses and places of men of any Orders whatever, etc. And, what is the principal point, the cited Supreme Pontiffs in the cited Constitutions openly speak of cloister which constitutes a part of the observance of regular discipline; and therefore they speak of cloister not only as proper to monastic men and monasteries, but as common to regular men and regular houses.

Hence, absolutely, entirely, and universally it is said in the Constitution *Apostolicae Sedis*, concerning Censures, of Pius IX, that women "violating the cloister of regular men, and Superiors or others admitting them," incur excommunication simply reserved to the Roman Pontiff. The aforesaid Constitution speaks universally of regular men. Who then would dare, after so clear a law, to make some exception of certain truly regular men? And so Joseph Pennacchi, in his Commentaries, in which he treated this matter most broadly, vol. 1, p. 778, raises the question: "who are indicated in the Constitution *Apostolicae Sedis* under the name of regular men?" And he responds: "With the greatest and most distinguished part of the Commentators we say that those Regulars are understood who belong to some Religious Order properly so called, and in it by solemn profession emit the three vows of poverty, chastity, and obedience." And Joseph D'Annibale, in his Commentary on the same Constitution, raising no doubt about this matter, says: "Regulars here also we take as those who

pronounce solemn vows; not those who are enrolled in Religious Congregations, nor Tertiaries, even if they live collegially." 4th ed., no. 127.

The preceding doctrine is confirmed from the Resolution of S. C. EE. et RR., 27 April 1883. There was question of the approval of certain modifications which the General Chapter of the Military Order, namely, of the Crucigers with the red star, had carried out, among which was the non-strict cloister of the hospital convent and parish, since in that Order there are hospitals for the poor and parishes or curacies. Now the Sacred Congregation was unwilling to approve those modifications, and ordered that "cloister be observed according to the sacred canons, the holy Council of Trent, and the Apostolic Constitutions." Cf. *Acta Sanctae Sedis*, vol. 16, p. 292.

14. Bernard, a religious, easily transgresses the rules and constitutions of his order, and has no scruple. For he says that they are not contained under religious obedience. Besides, he adds that they of themselves bind neither under grave nor under light sin, as is declared in the rules and constitutions themselves. But the aforesaid rules and constitutions are a mere counsel, and no one can be obligated to counsel.

Question. What is to be said to the Case?

R. Bernard is in error, and he acts altogether badly by so easily transgressing the rules and constitutions of his order. A religious is bound to obedience both from the vow and also from the pact implicitly entered into with the religion. By force of this pact he is bound to observe all things which are contained in the rules and constitutions, and which oblige under sin. In such a case the rules and constitutions are contained under religious obedience. But if the rules and constitutions of themselves do not oblige under sin, it does not therefore follow that one can transgress them freely without sin. For, practically speaking, by accident and from another source, fault is ordinarily not lacking in the aforesaid transgression. Nor does it follow that the rules and constitutions are a mere counsel. For although the rules and constitutions do not oblige in conscience immediately to doing or omitting that which is established in them, nevertheless they oblige mediately in conscience insofar as they subject the transgressor to some penalty, and insofar as they subject the religious to regular discipline, for observing and sustaining which in conscience one is obligated by natural law itself, by the very fact that he has entered religion, so that in it he may tend to perfection through regular discipline. — Suarez, *de Relig.*, tome 3, book 10, chapter 7, no. 16; I. M. 249, 250, 302.

15. St. Ignatius, in the sixth part of the Constitutions, chapter 1, declaration 6, speaking of obedience of the intellect, says that it is then rendered when the one who obeys "1. thinks the same thing as the one who commands; 2. and judges that what is commanded is well commanded." But now Theotimus, a religious, greatly fears lest at some time he himself lack this perfection of obedience, because, when in some particular case it is evident that the superior commands badly, although at least by a reflex judgment he himself thinks what the superior commands, insofar as he judges that nothing is better for him in the present than to obey, nevertheless he certainly cannot judge that that thing is well commanded.

Question. What is to be said to the Case?

R. There is no reason why Theotimus should be disturbed. For in the case his obedience is perfect. And St. Ignatius wholly excepts this case, and comprehends it in that express exception placed in the text itself, paragraph 1: "by a certain blind obedience denying every opinion and judgment of ours to the contrary; and this indeed in all things which are disposed by the superior, where it cannot be defined that SOME KIND OF SIN intervenes."

16. In a certain diocese there exists a house of a Religious Institute, recently approved by the Holy See, and having Constitutions approved by the same See, destined for the Christian education of orphan girls. The primary house of the Institute, in which the superior general of the whole Institute is accustomed to reside, is in another diocese. Now the bishop of the place where the aforesaid house exists requires from the local superior that she exhibit to him the books of revenues and expenses of the house, and that she render to him an account of the temporal administration of the goods. He requires besides that, when the orphan girls go out from that house, there be handed over to them a certain sufficient dowry in a designated sum of money and a determined quantity of furnishings. When the local and provincial superior refused to do either thing, the bishop required from the superior general that the local and provincial superior be removed from her office.

Question. What is to be said to the Case?

R. "As regards the burden imposed on the nuns of exhibiting the books of administration to the Ordinary, the aforesaid nuns cannot be bound to exhibit books of this kind, because the superiors of the individual houses render accounts each year to the superior general of the respective houses; after these have been approved by the Ordinary of the principal house, they are transmitted at the fixed times prescribed by the Constitutions to S. C. Episc. et Regular. But as regards the removal of the superior of the monastery and of the provincial superior, it is not possible to accede to the bishop's wishes; for since there is question of a matter which regards internal governance, one cannot proceed to the requested removal unless a formal inquiry concerning their manner of acting has preceded. Nor must one think otherwise concerning the obligation to be imposed on the nuns, namely, of handing over with furnishings some sum of money to the orphans and other girls about to go out from the monastery; for there is question of a burden to which they cannot be obligated, since they are bound to it neither by the Constitutions nor by custom." S. C. EE. et RR., 27 April 1894. Therefore the reason is one thing for monasteries of solemn vows, another for monasteries of more recent nuns. Monasteries of nuns of solemn vows are autonomous and independent from one another; but more recent institutes, which have a superior general and a principal house, are not so. The former indeed are subject to the vigilance of bishops as regards the administration of goods; the latter depend only on the superior general and on the Sacred Congregation of Bishops and Regulars. But although the more recent Institutes are subject to the Ordinaries of places according to the path of the sacred canons, according to the form which the Sacred Congregation itself is accustomed to use in approving these Institutes, nevertheless from this subjection there is excluded, as is fitting, the internal governance of those same Institutes. But removal from domestic offices, as also the transfer of the same nuns from one house to another, pertains altogether to their internal governance. Finally, that some sum of money by title of dowry be supplied to orphan girls about to depart from the pious house, together with furnishings, would certainly bring it about that the aforesaid girls would already presume to arrogate to themselves a right of this kind; and this would certainly be liable to many

inconveniences, and would be harmful to the institution of the pious work and to the girls themselves. Hence the Sacred Congregation again rejected the bishop's requests. S. C. EE. et RR., 27 March 1896, *A. S. S.*, vol. 28, p. 622 ff. Cf. Constitution *Conditae a Christo* of Leo XIII, VI Id. Dec. 1900.

On the Sacraments in General

108. On the Matter and Form of the Sacraments

1. Sidonius, a missionary, once conferred baptism with muddy water, once with water simply blessed. Likewise, he consecrated the Eucharist once in kneaded flour, once in bread made from the tuberous nightshade; once in wine growing sour, once in wine to which carbonate of lime had been mixed. He once administered Extreme Unction with chrism, once with the oil of catechumens.

Question. What is to be said to the Case?

R. Baptism conferred with muddy water is valid, because muddy water is true water and can still serve for its own use of washing. Yet it is illicit outside a case of necessity. For water to be used for baptism must be pure and consecrated. — I. M. 396–398; *Enchir. Moral.* 396.

Baptism conferred with water simply blessed, and not consecrated, is also valid, because true water is not lacking; but it is gravely illicit outside a case of necessity, because a very grave prescribed ceremony is omitted. I. M. 432. But as regards the liceity of blessed water in place of consecrated water, in a case of necessity, these Decrees are had: "Concerning the doubt set forth by the Capuchin missionary in the diocese of Trebigne ... whether baptism is conferred licitly with the use of blessed water, this Supreme Inquisition has been of the opinion that it is conferred validly, but that, in the absence of the font of water prepared for baptism, natural water must be used." S. O., 6 April 1741; S. C. de P. F., 17 April 1758. "If there is grave necessity, and if baptismal water cannot be consecrated, and if there is lack of holy oil, baptism can licitly be conferred even with blessed water alone. Nevertheless let missionaries beware lest they do this, unless there exists a true and grave cause to be discerned, as is altogether fitting, by the Ordinary of the place." S. O., 11 December 1250. "When baptismal water is not had, there must be used, when it can be done, blessed water according to the formula in the new editions and in the appendix of the Roman Ritual; otherwise natural water must be used." S. O., 22 June 1883. I. M. 432; *Enchir. Moral.* 432.

The Eucharist consecrated in kneaded flour is invalid. Kneaded flour, or raw bread, is neither bread in common acceptance, namely perfect bread, as bread is commonly understood, nor can it serve for the natural use of bread. Wherefore, although raw and baked bread have physically the same nature, nevertheless the common acceptance is not the same, nor is the use the same.

Likewise, the Eucharist consecrated in bread made from the tuberous nightshade, commonly potatoes, is invalid. For the bread which is the matter of the Eucharist is bread from wheat, namely common bread, as it is commonly accepted for common use.

But the Eucharist is validly consecrated in wine growing sour, if the wine has only some beginning of acridity; but it is lightly illicit. Likewise it is validly consecrated, but the consecration is gravely illicit, if the wine is already judged to have entered the limits of corruption, although it has not yet been substantially changed. But the consecration will be invalid if, for example, by contact with the air, it has already become vinegar, since then the wine is already substantially corrupted. I. M. 507.

Finally, the Eucharist consecrated from wine to which bicarbonate of lime has been mixed is invalidly consecrated if that carbonate has been mixed into the wine in such a quantity that the acids proper to the wine have been wholly destroyed by chemical composition. For then a substantial alteration of the wine is had. But it would have to be said otherwise if it had been mixed in slight quantity, so that acids still remain in the wine, especially tartaric, citric, acetic, and tannic acid.

Extreme Unction conferred with chrism and the oil of catechumens is indeed illicit outside a case of necessity; but it is only probably valid, and therefore, if conferred in a case of necessity, it must be repeated conditionally if this can be done. For in confirmation and extreme unction the matter must first be blessed, so that the sacrament may be valid; but it must be blessed by the proper minister, and each in its own rite. Nevertheless, if the matter has been blessed by the proper minister, but by another rite, to many it is probable that the sacrament is valid. Liguori, book 7, no. 163, doubt 2; no. 709, doubt 2; G. 146; I. M. 864; *Enchir. Moral.* 864.

It is worthwhile here to add what Benedict XIV has in Notification LXXVII concerning wine for Masses. "1. Once the better wine used to be kept for Masses: 'With diligent care the best wine must be sought,' said the great Pontiff Innocent III, book 4, chapter 30, *Mysteries of the Mass* ... And nowadays choice wines are used at tables and banquets, and the vilest wines are kept for the altar.

"2 ... Wine 'with the point,' which means wine which is beginning to turn sour and has not become vinegar, is not unsuitable and insufficient matter ... but it is indecent, and it is not used without sin ... Only that priest remains exempt from sin who is obliged to celebrate, and who has no authority to have the wine changed, as happens among regulars; in which circumstances, provided the wine has not become vinegar, but is simply 'with the point,' the sin is charged to the superior or the minister who has the duty of providing the wine for Mass ...

"3. Passing to half-wine, it is known to everyone that a kind of half-wine is made by taking the pure wine from the vat, leaving in it the stalks with some little must, for example about half a corba, and adding to it water in greater quantity, such as a corba and a half, and letting it boil for about twenty-four hours. This liquor, which among us is called half-wine, and in other places small-water wine, and in the Latin language *lora* or *lorea*, is insufficient and unsuitable matter ...

"5. Then another kind of half-wine is made, which is also called long wine, when, after the pure wine has been drawn off, and a greater quantity of must has been left in the vat, such as three or four corbe, water is added to it either in equal or in somewhat greater quantity, and sometimes with some old wine put into it ... and this kind of half-wine, or long wine ... the authors commonly conclude in stronger terms, is not decent matter, and that there is no place for using it in Mass, except in a case of hard necessity ..."

But, as is drawn from many authors cited by Benedict XIV in the following numbers 6 and 8, concerning the sufficiency of this wine as regards the validity of the sacrifice, judgment will have to be made from the quantity of water mixed in, from the greater or lesser pressing made of the grapes, and from the greater or lesser substance of wine. Wherefore, since the matter is doubtful, it will be wholly illicit to use such wine in the sacrifice of the Mass. Hence in number 7 Benedict XIV continues thus:

"7. And therefore, consistently with the opinion of all the aforesaid theologians, we ordain and will that in the sacristies, for Masses, the first wine be given, excluding any second or half-wine, even

though, according to the style of this our city and diocese, and of many others, in making the first wine a quantity of water is poured in; the first wine not ceasing by this infusion to be true wine and to be usual wine, as Passerini well notes in his Commentaries on the third part of St. Thomas, question 74, article 5, commentary 7, no. 10: If only so much water is used as is commonly accustomed to be used according to the custom of the country for this purpose, that it may be better boiled down or preserved, no sin is incurred from the use of such wine in consecration; and whatever may be the case about the reason alleged by him, for such a quantity is small and is converted into wine, certainly the other reason is good: and besides, such wine is the common and usual wine of the country. Quarti, on the Rubrics of the Missal, part 3, title 4, doubt 3: In some places wine is accustomed to be made with an infusion of water in the must, or in the clusters, before they are pressed out. It is asked whether it can validly and licitly be consecrated? I answer by distinguishing: if little water is poured into the must, it is certain that true wine is made; consequently it can be consecrated validly and licitly. It is proved, because it is usual wine, and in many places, where wine is customarily made in the said manner, scarcely any other is found. And speaking of these wines of ours of Bologna, Rosignoli notes in tome 15, *de Euchar.*, question 4, article 2, no. 6, where, after he had said that the true matter is wine from the vine substantially not corrupted or notably changed, he adds: For if they were altered precisely in some manner, as if they were heated, and even if they were moderately cooked, as is customarily done in Piceno and Umbria, if they were mixed with a moderate amount of water, as is accustomed to be done at Bologna, etc., certainly they would not cease to be matter fit for consecration."

The following decision of the Sacred Congregation also pertains to the matter: "In some regions of Spain there flourishes a very ancient custom by which many priests prepare for themselves wine for the sacrifice of the holy Mass, either by first evaporating the must by fire, or by drying grapes in the rays of the sun; this custom seems to be honored by the declaration of the Holy Office of 22 July 1706 concerning wine made from raisins. — Whether it is licit, for confecting the sacrifice of the holy Mass, to use wine obtained from must which before vinous fermentation has been condensed by fiery evaporation? — R. It is licit, provided that a boiling down of this kind does not exclude alcoholic fermentation, and that the fermentation itself can be obtained naturally and in fact is obtained." S. O., 7 August 1896.

2. Sabbas, a priest in Spain, when conferring baptism, sometimes used this form: *I have baptized thee in the name*, etc.; judging it to be altogether the best in the Case, since, after the words *I thee* had been uttered, he had already through distraction poured all the water on the head of the infant.

Question. What is to be said to the Case?

R. "Baptism conferred by a verb of the past tense to signify a past action, and not also the action which is exercised by the minister at the time when he baptizes with the invocation of the Most Holy Trinity and with washing, immersion, or sprinkling of natural water, is not true baptism. — If the one baptizing were to use a verb of the past tense to signify the act which is exercised by the minister himself when he baptizes, and the other requisites were present, it would be baptism, if among that nation or clergy there were a usage of taking that word of the past tense to signify a present action. — It is also baptism if, from ignorance of the language, by breaking the words, without the intention

of introducing error or heresy, someone utters the word of the past tense for the present, if there is such likeness between the word of the past and of the present that there is an easy slip from one word into the other, and prudent men commonly judge that the one baptizing supposed the word of the past tense to be corruptly uttered for the present, and, when the word has been uttered, conceive that the present action is sufficiently signified." S. C. de P. F., 27 March 1631, *Collect*. of the same Sacred Congregation, no. 519. Hence it is clear that the baptism conferred by Sabbas was invalid because of substantial corruption of the form. The action of pouring the water, already completed, when he was uttering the verb *I baptize*, was still, morally speaking, present, and it had to be signified by the present verb *I baptize*; otherwise, since according to the Roman Ritual the water is to be poured when the invocation of the three Persons is made, the minister ought not to say, *I baptize thee*, but *I shall baptize thee*. That is, the form essentially must signify the present action of baptizing, which is exercised here and now by the minister. I. M. 320, 413.

3. "The form of baptism of the schismatic Armenians having been reported, which is had in their Rituals as below, namely: *Now my hand baptizes in the name of the Father and of the Son and of the Holy Spirit*; or: *Now my hand baptizes in the name of the Father; now my hand baptizes in the name of the Son; now my hand baptizes in the name of the Holy Spirit*; the Sacred Congregation declared the said form of baptism to be true and legitimate." S. O., 8 September 1633, *Collect*. S. C. de P. F., no. 520. Certainly the form of baptism is valid when uttered in the present tense in a consecratory manner, whether indicative or imperative. — I. M. 326.

4. "Cornelius, a priest, was absolving a penitent after the confession had been completed. But after he had uttered the first words, *I absolve thee*, looking back he noticed that the penitent had already departed from the sacred tribunal; wherefore he called him back, saying: *What is this? Why did you not wait? Return and kneel until I have absolved you.* But when he had returned, the confessor added the remaining words, namely, *from thy sins*.

"Another time, when he was baptizing an infant, and had already said, *I baptize thee*, immediately turning to some boys who were talking, he interrupted the form, crying: *Be silent, chatterers; be silent, worst boys, absurd boys!* And afterward he proceeded: *in the name of the Father, and of the Son, and of the Spi* (here suddenly he sneezes and coughs) *rit Holy*.

Question. What is to be said to the Case?

R. 1. Cornelius absolved validly, because the interruption of the words and the interposition were not so great that the following words, *from thy sins*, would not be judged, in the moral estimation of men, to be joined with the preceding words, *I absolve thee*. Nevertheless, if he had repeated the words of absolution as a precaution under condition, he would not have been condemned. But why under condition? Because according to many doctors the words *I absolve thee* probably suffice for the form of absolution. Therefore probably the penitent was absolved before the interruption; therefore, if the words had been repeated, this would have had to be done under condition. Elbel, no. 13.

2. Cornelius likewise baptized validly; for the interruption vitiated the form only accidentally, because the sense is not taken away where only a small interruption of words is interposed, since it removes neither the intention of the speaker nor the understanding of the words, as St. Thomas says, part 3, question 60, article 8, ad 3. But the interruption was indeed brief,

whether in correcting and rebuking the boys, or even in coughing and sneezing. Therefore it can in no way stand in the way of the validity of baptism. Voit, no. 23.

3. Cornelius acted illicitly in calling back the penitent in this way, with the latter's annoyance and the scandal of others. It was by no means necessary to call him back, since he was certainly morally present. It would therefore have been enough to complete the form of absolution already begun, and no longer to think about the penitent.

4. He also acted illicitly in the baptism, and indeed of itself gravely, by reason of scandal or of grave injury inflicted upon the sacrament. For there was no such urgency that he should rebuke the boys in that way. Was there danger in delay, so that he could not first have completed the sacramental form? Voit, ibid." Thus Gury, 154, 155.

"A great interruption of words," says Lugo, d. 2, no. 111, "impedes the validity of the sacrament, because the sense of the sentence is taken away; but a moderate interruption does not impede it, because morally it is the same sentence, and this even if other words are interposed, as if someone says, *I baptize thee*, and, asking for water, says, *give water*, and immediately continues, *in the name of the Father*, etc. But how great and of what kind the interruption or interposition of words must be in order to take away the sense is a moral matter, and depends on the arbitration and judgment of prudent men." That is, that is prudently judged a great interruption which is prudently judged to take away the sense of the sentence. And St. Thomas, loc. cit.: "If there is so great an interruption of words that the intention of the one pronouncing is intercepted, the sense of the sacrament is taken away, and consequently its truth; but it is not taken away when the interruption is small, which does not remove the intention of the one uttering and the understanding of the words."

Now the resolution of Father Gury concerning absolution is not without difficulty. For first, if Cornelius absolved validly, as he simply affirms, because a small interruption was present and the understanding of the words remained entire with the intention of the one uttering them, how then could Cornelius repeat the absolution as a precaution? In order that it be said that Cornelius could have done this as a precaution, it is necessary that it be said that Cornelius probably did not absolve, and that probably the form was interrupted. Besides, if Cornelius ought to have repeated the absolution as a precaution, why is this same thing not asserted with more urgent reason concerning baptism? For the delay interposed between the words of the form of baptism and the words of absolution was almost the same. Therefore either in each case the form ought to have been repeated, or in neither. Finally, granted repetition of the form of absolution, it would then have had to be repeated under condition not only because the words *I absolve thee* alone probably suffice, but also because, since they probably do not suffice, the form in such an opinion would in the Case probably have been interrupted. Thus indeed it would have to be said consequently. But in truth, in each case, it plainly appears that the intention of the one pronouncing was not intercepted; on the contrary, it was continued by the continuation of the form, nor was the understanding of the words taken away in the Case; for any prudent man assisting at such an administration of the sacrament would well have understood the truth of the form. — I. M. 320, 748.

5. "Sidonius, a priest, while saying Mass, when he had come to the words of consecration of the bread, by a slip of the tongue or by distraction said: *This is the Chalice*, and immediately, noticing

the error, mentally retracted the word *Chalice*, and uttered the remaining part of the form, namely, *my Body*. Afterward he doubted whether he ought to have repeated the form, and even now, whether he is bound to celebrate another Mass for the stipend accepted.

Question. Was the consecration valid?

R. The matter can be subjected to controversy. At first sight, that form seems invalid, because these words convey no sense. It was not enough that the priest should correct the error mentally, or by intention remove the word *Chalice*, which had crept in by a slip of the tongue. For the words of the form must be taken materially, and they are worth only as much as they sound. But in the Case they sound nothing. Therefore they are worth nothing, that is, they signify nothing. Therefore the form had to be repeated.

"Nevertheless the reasons which can be adduced for the opposite opinion are by no means to be despised. For words are worth only as much as human usage bears. Now in human usage, if by a slip of the tongue an undue word flows from the mouth, it is immediately corrected by the change of the word alone, and the beginning of the sentence is not repeated. Therefore, when the undue word *Chalice* had been uttered, the form could sufficiently be corrected by the celebrant by changing only the undue word. Therefore the consecration was valid, at least probably, just as baptism conferred thus is valid: *I baptize thee in honor ... in the name of the Father and of the Son and of the Holy Spirit*. But because of the doubt, the priest ought to have repeated the form under condition. But when the sacred action had been completed, he ought not to have celebrated another for the stipend accepted. Indeed he would not have to celebrate another Mass even if that prior consecration were certainly invalid, because probably the consecration of one species suffices for the essence of the sacrifice. Thus La Croix, book 6, part 2, no. 15. Nevertheless the more common and more probable opinion holds that each consecration is required for the essence of the sacrifice. St. Liguori, 306." Thus Father Gury, 148, 149, 254.

But it must be noted first that if Sidonius only mentally retracted the word *Chalice*, so that externally the slip of the tongue and error could not be noted, then it seems absolutely more probable that the consecration was not valid. For when someone errs in some word and then corrects the word erroneously uttered, this appears externally, and the right sense of the proposition is understood by the hearers. But if someone, disguising the error committed, seriously continues the sentence by correcting the mistaken word, then the correction is not understood, and the erroneous or equivocal sentence remains among the hearers. Besides, it is indeed to be feared lest in the Case it be valid to say that the sacrifice probably was valid for excusing Sidonius from celebrating another Mass. For it does not appear clearly enough here that there is question of the right use of probabilism, since there is not question merely of the subjective liceity of an action, but also of the objective truth of the thing, namely, of the certain fruit of the sacrifice. This can be confirmed by the Response of the Holy Office, 27 January 1897. Cf. I. M., vol. 1, no. 116; *A. S. S.*, vol. 32, p. 562.

6. "Henry, a priest, driven by scruples even to madness, seems to himself never to express the words of consecration sufficiently. Wherefore he is accustomed to say them aloud, while those assisting at the sacred action wonder and are stunned, and he repeats the individual words three or four times in the following manner: *This, this, this is, is, is Body, Body, Body my, my, my*.

Question. What is to be judged concerning Henry?

R. Henry sinned of itself gravely by treating the form of the Eucharist so injuriously; by accident, however, by reason of madness, he will easily be excused from grave sin." Thus Father Gury, 158, saying nothing about the validity of such a form. But it is valid. "Thus Clericatus, *de Sacram. in gen.*, decision 8, no. 8. The reason is that that repetition of individual words did not take away the substantial sense of the form, as will easily appear to one weighing it well." Elbel, 14.

7. To Bishop Titius, after the solemn blessing of the baptismal font had been completed on Holy Saturday, an infant was brought to be baptized. But in conferring baptism it happened by chance that the bishop indeed uttered the words, *I baptize thee*, etc., yet did not at the same time pour the water, because through the forgetfulness of the sacristan it had not yet been put into the vessel. As soon as the master of ceremonies noticed this, he immediately filled the vessel with water taken from the sacred font, which the bishop poured on the head of the infant, the words of the form not having been repeated.

Another time the same Titius, when through the days of Pentecost in the same cathedral church he was administering the sacrament of confirmation to a multitude of boys, was so disturbed by the noise which the fall of a certain little boy caused, while he was in the act of anointing one of them with chrism, that he completed the anointing on his forehead, yet without uttering the words of the form. At the same time, having turned his face, he asked what had happened; and after he had received notice of the matter and had learned that the crowd excited by that noise had quieted down, he uttered the sacramental words, the anointing not having been repeated, then proceeding to confirm the others.

Question. What is to be said to the Case?

R. Concerning the validity of the baptism there does not seem to be room for doubt. For from the common and morally certain opinion, between the matter and form of baptism there suffices that moral union, namely that union by force of which the form truly signifies the present baptism or washing. Now this moral union is most certainly had when the minister pronounces the words of the form, *I baptize thee*, and yet has not yet poured the water, but will soon pour it at the invocation of the three Persons. Therefore by parity moral union is also had when that pouring immediately follows the very utterance of the form, or soon follows it, since any prudent man present well understands that that washing then corresponds to the form already uttered, *I baptize thee*, that it is done by force of this uttered form, and that it renders the same form objectively true. But now, since as soon as the master of ceremonies, in the Case, noticed the defect of the pouring of water, he immediately filled the vessel with water from the sacred font, which consequently the bishop poured on the head of the infant after the form had already been uttered, it is well gathered from this series of facts that between the said utterance of the form and the pouring of the water either no delay was interposed, or only a very brief delay; and that delay, if it was present, was certainly no other intermediate action which separated the matter from the form, but was only this action, which rather was a certain continuation between form and matter, namely, to take water from the sacred font, which then immediately the bishop poured on the head of the infant.

But the validity of the confirmation seems doubtful. For it does not seem that so brief a delay was interposed between matter and form as in the preceding case of baptism. For since the bishop, while

chrismating the boy, was disturbed by the sudden noise that had been made, whence he had not pronounced the form over him, and then, having turned toward the people, asked what had happened, and the fact was explained to him, and finally he learned that the crowd also, excited by that noise, had quieted down, and only after all these things uttered the words of the form, it appears more than sufficiently that between matter and form there was not an altogether brief delay, but on the contrary a rather notable one. Wherefore the sacrament in the Case seems to have been doubtful, and therefore to have had to be repeated under condition. — I. M. 322, 327.

8. "Parmenio, a parish priest, while baptizing an infant, distracted by the noise and tumult of some boys and by the cries of the one to be baptized, first pours the water in silence, and afterward hastens to utter the words of the form. Thereupon, anxious, he does not know whether he can or ought to repeat the baptism. Finally he resolves to omit the repetition; but not for this reason is he free from every anxiety.

Question. What is to be said to the Case?

R. Parmenio baptized validly according to the common opinion in St. Liguori, no. 9. The reason is that in baptism moral union seems to suffice, consisting in this: that the form at once follows the application of the matter, or immediately precedes it. Nevertheless, in practice, since several grave theologians contend that some simultaneity is required between matter and form, or that the pouring of the water is not completed before the form has been begun, or the form is not completed before the pouring has begun, baptism must be repeated if the matter was not carried out in this way. Hence Parmenio ought to have repeated the baptism, and he still ought to repeat it, under condition." Thus Father Gury, 142.

But this resolution does not seem to be free from some difficulty concerning the necessity and obligation which Father Gury asserts in the Case, of repeating baptism under condition. For from the Roman Ritual, *On the Baptism of Adults*, all indeed are to be baptized "concerning whom there is probable doubt whether they have been baptized." Likewise, from the Holy Office, 6 April 1859, no one is to be baptized again "unless there is probable doubt concerning the invalidity of baptism." Now probable doubt does not seem to be had in the Case. For there is question of a doctrine commonly admitted as morally certain, and admitted as such by Father Gury himself without any doubt in the preceding number 141, namely, concerning moral union between matter and form. For that union is required for this, that the signification of the matter be completed by the form, and that the form be altogether true when it is uttered. But this is had without physical union, by moral union only, namely when immediately after the matter has been applied the form is uttered; since then, when after the use of the matter the action of the minister still continues by the utterance of the form, the unity of the sacramental action appears altogether, and it is clear that the immediately following utterance of the form is referred to the preceding use of the matter. Otherwise it would be altogether necessary not only to pour the water while the form is pronounced, but to pour the water when that word of the form *I baptize*, which signifies that pouring, is pronounced. Wherefore, just as that pouring is morally united with the whole form in whatever part of the form it is made, so also it is still morally united with the whole form if it is made immediately before or immediately after, by reason of the continuation of one and the same action, considered according to its moral being, since that whole action is one only morally; physically, however, it is multiple. Nor indeed does St.

Alphonsus, no. 9, cited by Father Gury, insert any doubt about this matter. Although he explicitly mentions the opinion of some who require physical simultaneity between matter and form, nevertheless the holy Doctor himself simply affirms that moral simultaneity suffices from the common opinion, and he brings forward for this not a probable but a certain reason, because in a moral composite, such as a sacrament is, moral unity suffices. The holy Doctor feels and acknowledges the force of this reason, immediately saying: "and concerning this it seems one cannot doubt; for, as we just said concerning baptism, whenever the washing is not done while the word *I baptize* is actually uttered, the washing is not verified except through moral union. But this union will be just as moral if the washing is done immediately before the form is completed, as if it is done immediately after." Suarez, d. 2, s. 2, par. *Hinc*, asserts the same thing without doubt; he holds the opposite opinion as false and improbable. Nor indeed does an opinion become probable from the fact that some even grave theologian defends it, if he does not defend it by a grave reason. But the foundation of the opposite opinion, that for the truth of the form a greater simultaneity than merely moral is required, as is abundantly clear from what has been said, has no serious probability. There is added also that the opposite opinion "without cause casts great scruple upon the truth and certainty of the sacraments ... Whence Soto rightly objects that when a great multitude is to be baptized, as for example when the Apostles baptized three thousand men in one day, they did not so metaphysically attend that part of the matter should coexist with part of the form, but they did each morally." Suarez, ibid. Wherefore in no way does Parmenio seem to be bound to the reiteration of baptism, if it is truly established for him that he uttered the words of the form immediately after the pouring of the water.

9. "Callixtus, assistant to the parish priest, hearing the confession of Titius, who is gravely ill in bed, understands that he has offspring from a putative marriage with Bertha. In order to bring an efficacious remedy to so great an evil, he judges that that marriage must be renewed. Wherefore he asks Titius whether he accepts Bertha as true wife. Titius assents, and has his consent ratified before two witnesses who have been called. Bertha is called; Callixtus, with the witnesses, goes out to meet her as she comes, and says: *Titius accepts thee as true wife; do not thou also accept him as husband?* Bertha responds: *I accept*. When these things have been done, they hasten to go to Titius, but alas! they find him already destitute of his senses."

Question. What is to be said to the Case?

R. 1. As regards liceity, "both spouses and the witnesses ought to be present before the priest ... Nevertheless the priest does not seem to be condemnable, if he in reality feared that the time for waiting for Bertha's arrival would fail, as in reality it did fail."

2. But as regards validity, "the marriage of Titius and Bertha is valid, because sufficient moral union was present between the consent of each. For the consent of Titius was legitimately given before the vicar of the parish priest and suitable witnesses; and a little afterward the consent of Bertha also acceded before the same priest and the same witnesses. Therefore nothing is lacking for the validity of the marriage. For in marriage even a broad moral union suffices between the consent of the spouses, because marriage is entered into by way of contract. But in a contract it is by no means required that the consent of each contracting party be placed simultaneously. Nevertheless for the validity of this marriage, it must be supposed

that Titius preserved the use of reason up to the time when Bertha herself gave consent; otherwise the required union would be lacking, since the consent of the man would not morally persevere." Thus Father Gury, 143, 144.

But there is difficulty in this resolution. For in bilateral contracts, from the nature of the matter itself, it is required that the consent given be mutually known and accepted. Lugo, *de Iust. et Iur.*, d. 22, no. 27; I. M., vol. 1, no. 940. Nevertheless theologians are not lacking who think otherwise, and it can probably be maintained that reciprocal acceptance is not absolutely required in bilateral contracts. For by the very fact that someone gives his own consent to a contract, he also accepts the consent of the other if that other truly consents. Hence, when the other truly consents, the consent and acceptance of each are now had. Therefore the marriage of Titius with Bertha is probably valid; and consequently in practice one must stand in favor of the marriage, namely, in favor of the surviving widow and of the offspring received.

10. "Whether baptism conferred on infants with this condition is valid: *If thou wishest to be baptized, I baptize thee*, etc.; and what must be done toward those who, with such a condition having been attached, were baptized by certain women; namely, whether they are to be baptized again, either absolutely or conditionally?

R. That baptism conferred under the stated condition is valid; nevertheless, that condition must in the future be altogether omitted." S. O., 12 June 1850, *Collect.* S. C. de P. F., no. 527. — I. M. 327.

109. On the Minister of the Sacraments

1. Abundius, a priest, in the celebration of Mass, once uttered the words of consecration thus: *This is the Body of Christ; This is the chalice of the Blood of Christ*, etc. But he contended that this form was altogether legitimate, since it plainly and altogether explicitly signifies Christ's Body and Blood under the species of bread and wine.

Question. What is to be said to the Case?

R. The form which Abundius pronounced is void. For the principal minister of the sacraments is Christ himself; we are instruments. This is evident from the very form of consecration: *This is my Body.* Wherefore the instrumental minister of the sacraments confers the sacraments in the person of Christ, and by his power, not by his own. Hence, if from the form it appears that the principal minister is someone other than Christ, the form is invalid. But in the form of Abundius someone other than Christ himself appears to be the principal minister of the sacrament; and therefore that form is void. St. Thomas, part 3, question 64, article 9; Suarez, d. 59, s. 2, at the end; La Croix, book 6, part 1, no. 37; I. M. 337.

2. When Lucillus was about to celebrate Mass, his server offered him a smaller host, asking him afterward to give him holy communion. Lucillus assented, and, receiving the smaller host, placed it on the paten together with the larger one. But in the consecration of the smaller host, which had been placed on the corporal, he was altogether forgetful. When he had come to Communion, however, he was astounded on seeing two smaller hosts, one on the corporal and

the other outside the corporal. Doubting whether those two hosts were consecrated, he consumed them after the larger host, and left the server without communion.

Question. What is to be said to the Case?

R. There is no doubt that the smaller host placed on the corporal was later placed by Lucillus himself from the paten, on which it was together with the larger host, onto the corporal together with the same larger host after the Offertory. Nor is there any doubt that it was consecrated, because for confecting any sacrament a virtual intention suffices. But Lucillus had such an intention, who, assenting to the server asking for communion, received the host, placed it on the paten, and carried it to the altar, namely, that he might consecrate it. Since, moreover, that smaller host truly was present on the corporal at the time of consecration, it was certainly consecrated, and Lucillus could give communion to the server with it, notwithstanding the forgetfulness had at the time of consecration. Elbel, 40.

But what if Lucillus, while placing the host on the paten, had said within himself, "I will afterward make the intention of consecrating"? "Nevertheless, there is no doubt that it was consecrated and therefore to be offered to the layman. The reason is drawn from what has been said, because an explicit formal intention is not required, but an implicit intention suffices, or even one in the act exercised. But he had such an intention when, at the petition of the layman, he carried the host with him to the altar. Indeed, according to Laymann, Gobat, and Sporer, the priest is to be judged to have such an intention by this very fact, that he knows or in a rational manner adverts that hosts to be consecrated by him are brought to the altar by another. Therefore, a fortiori, if he himself knowingly carries it." Elbel, 41.

But the other host, which was found by Lucillus outside the corporal, with him being altogether unaware, was not consecrated, since no intention of consecrating it was present. I. M. 511. Nevertheless it is not to be put away with the other unconsecrated hosts, because perhaps it was joined with the other not only at the beginning of Mass, but even at the time of consecration, and by some accident, for example by the priest's maniple, was thrown outside the corporal. G. 160.

Wherefore Lucillus did badly by leaving the server without communion. He also acted badly by at once consuming the consecrated host and the unconsecrated host, or at least doubtfully consecrated host, after the larger host; because this is against the rubrics, where it is established that, if anything is to be consumed, it is to be done after the reception of the Blood. Besides, since the host was either unconsecrated or only doubtfully consecrated, by consuming it before the reception of the Blood he violated the natural fast. G. 161; I. M. 545.

3. Medericus, a priest about to hear confessions, has the intention of not absolving this time Marcus, a habitual sinner, although he seems to him sufficiently disposed, judging that delay of absolution for some brief time will be very useful to him. But Marcus, approaching in the midst of the crowd, is not recognized by Medericus; and since he truly appears disposed to receive absolution, he is absolved by Medericus. But immediately after the absolution has been given, he notices the error, and, in doubt, hesitates whether he ought to absolve him again, or warn him not to approach Communion.

Question. What is to be said to the Case?

R. The absolution in the Case is valid. The reason is that the predominant intention is the intention of absolving. For that is the predominant intention "which would be chosen if the incompatibility were known." St. Alphonsus, 24. But if this error had been foreseen and known, the intention which would be chosen in the Case would certainly be the intention of absolving; otherwise the penitent, departing unabsolved, could undergo most grave harm, since, not knowing that he had not been absolved, he could not suitably provide for himself. Therefore Medericus can abstain from repeating the absolution, and permit Marcus Communion. Nevertheless, where Medericus seriously doubted about his own intention, because, for example, he had absolutely determined that in no way did he wish to absolve Marcus, then he ought to have repeated the absolution conditionally. I. M. 327, 344, 345; G. 162.

4. Rambertus, a parish priest, suddenly seized by illness, immediately summoned Albert, his vicar, so that he might hear his confession, and among other things said: "For thirty years I baptized all the infants of this place, and thee thyself, but I fear invalidly. For, having been attached to an impious sect from youth, I soon came to this, that in my mind I had utterly said farewell to the Christian faith, holding it as an empty tale. But as often as I was called to administer the sacraments, so often, in order that I might preserve myself in office, I complied with the parishioners; nevertheless I thought that I would do nothing other than a ludicrous and wholly useless thing. Hence I was not so much a minister as rather a mocker of the sacraments." Having heard these things, Albert shudders, all the more because he had always seen Rambertus administering the sacraments with his face and the whole bearing of his body composed to devotion. But noticing that the same man was already at the point of death, he absolved him under condition.

Question. What is to be said to the Case?

R. There seems to be no doubt that Rambertus validly administered the sacraments. For although he lost the faith, and in administering the sacraments he himself judged that he did nothing except a ludicrous and useless thing, nevertheless for that reason the true intention of administering the sacraments, and of doing in them what the Church does, is not excluded. Otherwise the sacraments administered by infidels and heretics would have to be held invalid. Besides, that Rambertus truly had sufficient intention in the administration of the sacraments of doing what the Church does is proved from this: that not only did he conduct himself externally with devotion in the administration of the sacraments, but also in his own mind he wished to comply with his parishioners, and therefore he wished to administer to them the sacraments which they were asking for. Furthermore, since Rambertus, led by true repentance, sincerely confesses his sins and humbly accuses himself of sin against faith, he says nothing about defect of intention. For that phrase, *thinking that I would do nothing other than a ludicrous and useless thing*, pertains to the intellect and to defect of faith, but by no means to the will and to the intention of doing even a useless and ludicrous thing. Since the minister of the sacraments bears the person of Christ, nothing harms the sacrament if the minister has neither right faith nor upright morals, provided he applies the sacramental rite instituted by Christ and by it acts, as it were, as a mandatary according to the intention of the one commanding, having either explicitly or implicitly the intention of doing what Christ wills to be done, or at least what the Church does. Nor indeed is it required that even that which the Church intends to do be explicitly intended.

As regards Albert, it does not appear why he gave Rambertus absolution under condition. For Rambertus exhibited signs of sincere repentance. Therefore he could and ought to have been absolved simply. Perhaps Albert, hearing that confession and being greatly disturbed and confused, did not well understand the force of that word *thinking*, confusing the false opinion of the mind with the intention of the will, and judging that he himself was not baptized, or at least having a doubt about his own baptism and about the validity of his ordination. What then in such a Case would Albert have had to do, if Rambertus truly had not had the intention of administering the sacraments and of doing in them what the Church does?

The question can be raised concerning the Eucharist, extreme unction, penance, marriage, and baptism, which are the sacraments that Rambertus the parish priest administered. As regards the Eucharist, extreme unction, and penance, nothing would have to be done, nor could be done. Those sacraments would all have been invalidly administered, nor is there an evident way of supplying the defect. Yet as regards the Eucharist, it would have been invalidly administered if, namely, Rambertus himself had consecrated the hosts without having the intention of consecrating. As regards marriages, there is no difficulty, and therefore they are valid with respect to baptized parishioners, even in the notion of sacrament; for the parish priest is not the minister in the sacrament of marriage, and it suffices that the marriage be contracted before the parish priest and two witnesses, whatever may be the good or bad intention of the assisting parish priest. As regards baptism also, where the greater harm is if it is administered invalidly, there is also no doubt that in the hypothesis of defect of intention on the part of Rambertus, the parishioners baptized by him and Albert himself would all have been invalidly baptized. But can anything be done, so that parishioners thus invalidly baptized and Albert himself may be baptized again? As regards the other parishioners, it certainly does not appear how in practice this could be done without revealing the sacramental seal. With respect to someone, or even only to some persons in particular, perhaps they can be rebaptized so secretly that no suspicion arises from it. But as regards all, especially adults, when the parish priest had baptized invalidly for many years, and especially if the parish were large, morally speaking, it seems impossible that they could be rebaptized, and the sacramental secret of confession be preserved, and that great scandal would not arise from it. But as regards Albert himself, the matter is easier; he himself can go to another place where he is unknown, and, after the Case has been set forth to the Holy See, so that he may be dispensed from the ordinary formalities, he himself can secretly be rebaptized and initiated into sacred orders. In the meantime, however, under some pretext of illness, journey, etc., he must altogether abstain from the celebration of Mass and from every administration of the sacraments. Nor indeed in this manner of acting is there any revelation of the seal, nor annoyance of the penitent, nor hatred of the sacrament. But, unless time had been altogether lacking, and immediately after confession Rambertus had either been deprived of his senses or had died, before absolution Albert ought to have asked permission from him, that it might be lawful for him to use that knowledge, with his reputation preserved as far as could be done, to avert the common harm of so many souls, namely by procuring baptism for so many persons invalidly baptized, who consequently also invalidly received confirmation, order, and other sacraments. I. M. 858, 860; G. 197.

5. Cunibertus, who was fulfilling the office of vice-parish priest, after committing a most grave sin, approached confession only after three days. Asked by the confessor whether during that

time he had performed sacred ministries, he adds these things:

"I did indeed abstain from the celebration of Mass, and I only performed the office of the diaconate in a solemn Mass. At times, when the faithful asked, I ministered the Eucharist. Called to confer baptism on an infant who was being drawn from the womb of his dead mother, I was indeed prepared, because there was no question of the solemn administration of baptism. But I judged it better to entrust that to the surgeon, because, although he was a wicked man, nevertheless he was not a consecrated minister, but rather one of necessity. Nor do I deny that once or twice I conferred baptism and anointed a sick person with holy oil; but this was by order of the parish priest, and without there being time available for eliciting an act of contrition. All these things I indeed performed in the state of lethal sin; but I think that I did not sin gravely, since in each Case there is a probable opinion of theologians excluding grave fault."

Question. What is to be said to the Case?

R. Cunibertus, having performed the office of deacon in solemn Mass, probably did not sin mortally. For he did not confect the sacrament. I. M. 355. Ministering the Eucharist to the faithful he probably also did not sin, for the same reason. I. M. 353. "That a deacon and subdeacon," says Lugo, d. 8, nos. 152, 155, "ministering in the state of sin; which same thing holds a fortiori for clerics of minor orders; or a priest solemnly chanting the prayer or the chapter in choir; or a bishop consecrating a church or chalices, or blessing corporals and sacred ornaments; or a preacher preaching even solemnly, do not sin mortally; because, although all these are sacred actions, and therefore there is some irreverence in exercising them in the state of sin, nevertheless it is not so grave that it reaches lethal fault. Some of them, however, seem to contain at least venial fault ... That it is not a mortal sin if a parish priest in the state of sin assists at marriage; for he does not confect that sacrament, but assists as a public witness, essentially required so that the contracting parties can validly confect the sacrament. Thus also it seems not to be a mortal sin if a priest ministers the Eucharist to others ... because then the priest does not confect the sacrament, nor does he sanctify or give grace, but he locally applies the sacrament, which alone gives grace, in exactly the same way in which it would give it if it had been applied by a layman or by an insane person, or if the layman himself were to take it from the altar; and although that action of offering the sacrament is in some way holy, and in some way requires holiness of the minister, nevertheless not so gravely as the action by which the sacrament is confected, through which the minister sanctifies and causes grace."

But that Cunibertus in a case of necessity of baptism was prepared to minister it even in the state of mortal sin, because there was no question of the solemn administration of baptism, that is, of the confecting of a sacrament by office, can also be excused from mortal sin. I. M. 351. The reason is that it is not sufficiently clear whether the state of grace is required by office, or from the power of order, St. Thomas, part 3, question 64, article 6, ad 3, or from the holiness of the thing, Lugo, d. 8, no. 150; St. Alphonsus, book 6, nos. 32, 884. Likewise, as regards the fact that he committed baptism, in the aforesaid Case, to be ministered by the surgeon, although it is grave of itself, nevertheless Cunibertus seems excusable in that Case by reason of modesty and also of avoiding scandal, which could easily have been present. Roman Ritual, *de Min. Bapt.*, § 2; I. M. 425.

Lastly, that Cunibertus, when necessity was urgent, ministered baptism and extreme unction in the state of mortal sin, without first eliciting an act of contrition, speaking of itself, can also be excused

from mortal sin if there was only a very brief delay of time. The reason is "because, since the sacraments were instituted as a remedy of souls, it does not seem to be irreverence if, in that extreme necessity, in order that one's neighbor may be helped, it is ministered by a sinner. For, just as we were saying above, that in that Case it can be ministered with doubtful matter or power, because present necessity outweighs the precept of not confecting with doubt, so it seems one must say that that necessity outweighs the precept of not confecting except in the state of grace. For thus we see many things done about the person of a King or Prince in a case of necessity which, if they were done outside that necessity, would contain most grave irreverence. But this reason proves not only concerning baptism, but also concerning sacramental absolution, which can sometimes be judged necessary for a man unto salvation; nor can the priest prepare himself in that narrowness of time by an act of contrition; and the case can occur more frequently in absolution than in baptism." Lugo, d. 8, no. 151; I. M. 352. Speaking of itself; for, as regards the proposed Case, Cunibertus did not lack sufficient time for eliciting an act of contrition. For he could easily elicit it while he was going to minister baptism and extreme unction. Nor indeed is a longer delay of time required for eliciting contrition. For it is enough by the act of the will alone to detest sin as an offense of God, and to grieve over it, saying from the heart: *I have sinned against the Lord*, 1 Kings 15:24; 2 Kings 12:13. Nor is sensible sadness or grief needed. Nor certainly in such a case of necessity is the necessary help and grace of God lacking. Besides, since Cunibertus, from the office he has undertaken, often finds himself in necessity of ministering the sacraments, and certainly foreknows at least confusedly that this will sometime happen, he cannot be excused from grave sin at least in its cause. Roman Ritual, *On Those Things Which Are to Be Observed in the Administration of the Sacraments in General*; I. M. 352.

6. "In various regions ... Missals and Breviaries and also Liturgical Books are printed without the license or approval of the Ordinary ... It is supposed that in regions of this kind the Decree of the Council of Trent requiring the approval of books, and the Apostolic Constitutions of Clement VIII and Urban VIII, have not been received by usage, or have lost the force of obligation through contrary usage. Whether it is licit to buy books of this kind, printed without the required license of the Ordinary, to keep them in one's possession, and to use them in regions where the Decree of the Council of Trent and the above-mentioned Apostolic Constitutions are commonly observed?

"R. It is not licit, unless the Apostolic Constitutions have been observed." S. R. C., 16 March 1833, *Namurcen.*

7. Titius, who, when he first obtained the parish, applied himself with great zeal to the salvation of souls, in succeeding years declined not a little from his former fervor. For although he stands fairly assiduously at the tribunal of penance on the more solemn feasts, if on other days he is called to hear confessions, he shows himself morose toward those especially who are accustomed to approach the sacraments frequently, saying that excess even in spiritual things is vicious. But with regard to the sick who are gravely ill in bed, he conducts himself so that he hears their confessions as quickly as possible, offers viaticum and extreme unction to them, with the blessing in the article of death also given, and then commends them to the divine mercy, without returning to them any more.

When a certain contagious disease was raging within the boundaries of his parish, Titius, fearing for his own skin, took flight, yet leaving behind a suitable vicar. But ordered by the bishop, under threat of suspension, to return to the parish, he indeed obeys, but while he reserves for himself the care of the healthy, he leaves the assistance of the sick to the vicar.

Question. What is to be said to the Case?

R. Titius, showing himself morose as regards hearing confessions, except on the more solemn feasts, cannot be excused from grave sin. The reason is that he fails in a grave obligation of his office, and this in grave matter. And even if there is question of those who are accustomed to approach the sacraments frequently, whenever they reasonably ask to confess, it is grave to show himself morose very often toward them. For this redounds to the grave harm of the whole parish, and also to the grave harm of private persons, especially since it can easily happen that even those devout persons sometimes fall into grave sin and gravely need sacramental absolution. — I. M. 242, 360; Lugo, *de Poenit.*, d. 8, no. 1 ff.; St. Alphonsus, book 4, no. 127, par. *Hinc communiter*.

He also sins gravely as regards that practice of ministering the sacraments as quickly as possible to the sick, and then abandoning them. For the sick, once the sacraments have been received, do not always immediately die; rather, ordinarily they continue to live for some time still, and consequently they can still gravely need the ministry of the priest. Wherefore, even prescinding from the obligation of visiting the sick and giving assistance to the dying, according to the Roman Ritual, this practice of not returning any more to the sick who are in danger of death, after they have already once received the sacraments, can in no way be excused from grave sin. La Croix, book 3, part 1, no. 760.

Likewise there is no doubt that Titius also sinned gravely by abandoning his sheep and fleeing like a hireling, and indeed, as is drawn from the Case, without license asked and obtained from the bishop. The reason is that again he acted against his grave obligation, namely, of providing for the salvation of his flock, when it is especially in necessity. I. M. 207. Nor indeed does he satisfy his office by reserving to himself the care of the healthy, and leaving the assistance of the sick to the vicar. For this assistance pertains of itself and principally to the parish priest himself. It belongs to the vicar only to help him, and therefore the parish priest cannot cast off entirely from himself the fulfillment of his own offices, and remit those offices to the vicar to be fulfilled. And although, generally speaking, he is not prohibited from using coadjutors or vicars in those things which bring a greater inconvenience with them, such as going to the sick at night, preaching, teaching boys, hearing confessions, etc., nevertheless he ought to use them as coadjutors and associates; and therefore he himself also, when a just impediment ceases, must necessarily perform these things, especially if he has been requested; otherwise he is not without grave fault. — I. M. 230; La Croix, book 3, part 1, no. 754 ff.; book 6, part 1, no. 133 ff.; St. Alphonsus, loc. cit.; G. 169.

8. "Julian, a public sinner about to contract marriage, the banns having already been published, approaches the parish priest, who is hearing confessions, and declares that he does not wish to confess, but to simulate confession, so that he may please the bride. The parish priest denies that he will intervene in the marriage unless he has made a serious confession, since that sacrament requires the state of grace. Thereupon, when the parish priest had gone on to celebrate Mass, while he distributes communion to the faithful, behold, among the other communicants, he sees Julian himself standing there. What will he do? He hesitates, uncertain

... but soon, recalling the precept of the Lord, *Do not give what is holy to dogs*, he passes the man by. When Mass is finished, Julian, driven by anger, approaches the parish priest, assails him with imprecations, and threatens him with death unless he ministers the Eucharist to him and assists at his marriage. Terrified, the parish priest judges that the precept does not then urge, and he complies with Julian.

Question. What is to be said to the Case?

R. 1. The parish priest of himself acted rightly at first by denying his assistance at the marriage ... because a parish priest cannot assist at the marriage of those who are public sinners. The reason is: 1. because by natural law no one can cooperate in another's sin, even materially, except for a grave and proportionate cause; 2. because public sinners are unworthy to be admitted to the sacraments. Liguori, 54.

2. The parish priest could have assisted at the marriage of Julian in favor of the bride, if she had not been unworthy, because then he would have had sufficient reason for permitting his sin. Liguori, ibid.

3. He could assist at the marriage when impelled by fear of death, because the parish priest is not the minister of the sacrament, and besides he is excused from the sin of cooperation by a most grave reason. A parish priest can also be excused in a similar Case because of any other very grave inconveniences whatever, whether his own or those of the contracting parties, for example, lest they persevere in sin or in concubinage, etc. Liguori, ibid.

4. The parish priest acted rightly the first time by denying communion to Julian, because, as he himself says, holy things are not to be handed over to dogs, or to the unworthy. But Julian, a public sinner, with no prior penance and no reparation of scandal, is altogether unworthy. Therefore he had to be repelled from communion or passed over.

5. The parish priest afterward acted badly by ministering the Eucharist to Julian, compelled by fear of death. The reason is that any harm whatever cannot compensate for the supreme injury which in the Case comes upon the Most Holy Eucharist. Many contradict, however, with La Croix, book 6, part 1, no. 138, Gobat, Sporer, etc., provided that the sacrament is not sought in hatred of religion. Their reason is that, as they say, if the infamy of an occult sinner publicly asking for the sacrament excuses such administration and repairs the irreverence of the sacrament, why would death to be undergone by the minister not excuse? But the parity must be denied. For a priest cannot publicly deny communion to an occult sinner, not indeed for saving his reputation, but because of other most grave inconveniences which would follow from it, namely the scandals of others, who, although perhaps worthy, would be deterred from Holy Communion, fearing lest they be kept away by the priest out of hatred or imprudence. But these inconveniences are not had in a minister who by fear is compelled to minister communion to a public sinner. Indeed the minister who, in order to preserve reverence for the sacrament, exposed himself to danger of death, would be for edification to the people." G. 175–177; I. M. 365, 369, 372, 374.

9. Bertha is gravely ill in the house of Caius, a rich and unmarried man, who keeps her at home with great scandal of the neighborhood, not so much as a maidservant, as he asserted, but rather as a concubine. Titius the parish priest, who had several times vainly taken care to separate them from one another, is called so that he may at once bring viaticum to the sick woman. Astonished, he goes to Bertha's house, and first asks her whether she had already confessed. A certificate of confession made before a priest who did not enjoy the best reputation among the superiors is shown by the man himself, who was standing near the bed at the side of the sick woman. Titius asks those present to withdraw for a little while. The master refuses, and at the same time the sick woman responds that she asks this one thing: that she receive viaticum at once. Then the parish priest, with grave speech, asks them whether the confessor prescribed anything for the reparation of public scandal. The master and the woman, smiling, answer nothing. Titius tries to persuade Bertha to depart from that house, but in vain. He also takes care that Caius, at least during the danger of death, depart from the house, but in vain. Then, turning to Bertha, he begs her to bring the man to that counsel. But she says: "from this the judgments of the crowd will be confirmed." The parish priest adds indignantly: "and I will not bring viaticum," and having said these things he departs.

After some hours a servant runs to the parish priest, asking that he quickly bring viaticum to Bertha, who is now at the point of death. While Titius is about to enter Bertha's house, he is warned that she is already dead. Having heard this, he returns to the church with the Most Holy Sacrament.

Question. What is to be said to the Case?

R. Titius the parish priest is altogether to be praised because he took care several times to separate Caius and Bertha from one another. But he ought not to have ceased from the work begun, as from the Case he seems to have done, because of the lack of good effect. For what is not obtained from obstinate sinners who sin from passion on one day, with the dispositions of soul having been changed, especially when illness urges and the grace of God helps, is easily obtained on another day. Wherefore, on the contrary, Titius the parish priest would be blameworthy because during the illness he did not approach Bertha and waited to be called, when her death was already imminent. But Titius truly seems to have been ignorant of Bertha's illness; for, astonished, he goes to Bertha's house.

But he conducted himself altogether well in procuring that those present should withdraw; yet he ought at the same time to have taken care in every way that, first of all, the master Caius himself should withdraw. For it is an evident thing that his presence was going to be a huge obstacle to Bertha's sincere repentance. But given that there was already, as is affirmed in the Case, great scandal of the neighborhood, and that Caius and Bertha had together asked the parish priest to bring viaticum, Titius the parish priest indeed did well by seeking some reparation of public scandal. But seeing the bad dispositions both of Bertha and of Caius, since with smiles they answer that nothing of this kind had been done, instead of requiring from Bertha that she depart from the house of the master, and that the master himself depart from the house, he ought rather with all charity and zeal to have exhorted each of them to that reparation by another, more prudent manner, and especially to have exhorted Bertha, near to death, to sincere repentance, at the same time showing the ease of repentance and its salutary fruits of eternal life; for example, that, if it were possible, marriage should be celebrated, or, if that were not possible, that at least Bertha should detest her sins before him and signify her will of withdrawing from sin and of finally turning herself to God. Since nothing of this

kind was done, it was altogether impossible to administer viaticum to Caius's woman, showing signs of impenitence by laughter, without still greater scandal and without most grave irreverence of the sacrament.

Titius altogether imprudently asked Bertha to depart from the house of the master. In the most grave state of illness in which she was found, since she died after a few hours, this was morally impossible, nor was it absolutely necessary for the reparation of scandal. Still more imprudently he asked the master to depart from his own house, which also was morally impossible, nor was even this necessary to repair the scandal on the part of Bertha herself.

He acted altogether badly by indignantly denying viaticum and departing. Rather, in so urgent a necessity, he ought to have remained in the house and to have applied every effort to bringing Bertha to detest at least her sins, and to signify this detestation externally. Since Titius the parish priest came when summoned, Caius would not have thrown him out of the house; and by asking Caius to withdraw for so long, with constant and persevering charity and zeal, perhaps he would have obtained Bertha's conversion. But since Titius did not do this, but departed, after, on the contrary, Caius and Bertha had more than sufficiently confirmed, even in the present, by their manner of acting and responding, that they truly had hitherto lived in the state of sin, Titius certainly could not consent to the bringing and administration of viaticum.

From these things it is clear that Titius the parish priest also acted badly when, summoned after only some hours, after he had departed from Bertha's house, leaving her obstinate in sin, he returned to the house of Caius, intending to minister viaticum to the same Bertha. If he was publicly bringing viaticum, it does not appear how the manner of acting of Titius could have been made honorable because of the public scandal which certainly would have been present if, with no other sign of repentance having been given, Titius had ministered viaticum to her in the aforesaid state of things, as he seems to have been altogether prepared to do. For if Titius were asked by the neighbors, as was natural, he certainly could not respond that Bertha had given signs of repentance; and perhaps, departing indignantly from Bertha's house, he had already manifested her obstinacy to many and narrated the whole fact of the visitation. But if he was carrying viaticum secretly and returned to Bertha's house so that he might first try again her conversion and rightly dispose her for absolution and then for receiving viaticum, there is certainly no reason why Titius should be blamed; on the contrary, he would be worthy of praise this time.

But since Titius found Bertha already dead, can he give her ecclesiastical burial? Since there is no certainty concerning Bertha's final impenitence, Titius will be able to give her ecclesiastical burial. For in order that ecclesiastical burial can and must be denied to public sinners, it is necessary that they be manifest and public sinners who died without repentance. Roman Ritual, *Those to Whom It Is Not Lawful*, etc. Wherefore it is required not only that there be certainty concerning the sin, and that the sin be public, but also that there be certainty that they died without any sign of repentance. But in the Case Bertha had a certificate of confession made, although before a priest not of good reputation; and the parish priest was called to her twice, and the second time immediately before death. Wherefore Titius will be able to grant ecclesiastical burial to unhappy Bertha. — I. M. 365, 369, 1156 ff.; G. 721–724.

10. Titius the parish priest, hearing the confession of two persons who were soon about to contract marriage, receives from the man that he had sinned lethally many times and also on the preceding night with the bride; and likewise that he had stolen a grave sum of money, which nevertheless he refuses even to promise that he will restore. The parish priest, as he is unworthy of absolution, exhorts him to abstain from communion; but in vain. And so they agree that the consecrated particle is only to be moved near to his mouth and immediately put back into the pyx; and this was in fact done. Having made the sign of the cross, as is customary, Titius dismisses the unabsolved bridegroom.

Then the parish priest hears the confession of the bride, who says not a word about the shameful things committed with the bridegroom. From the conversation had, Titius knows that she could not have confessed to another. He prudently exhorts her, in undertaking the conjugal state, sincerely to manifest the sins of her past life; but nothing results from this. Wherefore, lest sacrilege occur, in place of the sacramental form he recites some prayers in a subdued voice. Besides, in saying Mass, he by no means intends to consecrate a particle separated from the others, and he gives it to the bride.

Question. What is to be said to the Case?

R. Simulation generally is the fictitious placing of a sign. Wherefore simulation of the sacraments is the fictitious placing of a sacramental sign: of matter, form, or sacramental action. Formal simulation of the sacraments is illicit, as any other formal simulation, because it is a lie of deed, when someone uses exterior signs, whether of things or of deeds, to signify that which is not. Besides, in that formal simulation of the sacraments there is irreverence toward the sacrament itself. Material simulation, for many, is not so intrinsically illicit that it is never lawful at least because of a most grave fear of death; nor consequently does it seem to them to have already been condemned by the Holy See. D'Annibale, 264. But in truth it is intrinsically illicit because of implicit irreverence toward the sacrament, and toward Jesus Christ, the Institutor of the sacraments; since this simulation is in no way necessary in such a way that that irreverence could be excused and cease from the necessity itself. I. M. 374. It was besides condemned in proposition 29 among others condemned by Innocent XI: *Urgent grave fear is a cause for simulating the administration of a sacrament*. For there was never a question about the liceity of formal simulation of the sacraments; rather, only material simulation of the sacraments was disputed among Catholic doctors, and the opinion of those who stood for the liceity of material simulation was condemned in that proposition. Besides, this is also drawn from the obvious sense of that proposition, since in it there is question of grave fear influencing the very exterior administration of a sacrament, or the very exterior sacramental rite or sacramental action. Since formal simulation depends only on the interior and direct intention of deceiving, which intention is hidden, that grave fear is not referred to that interior intention, but to the exterior action, which alone appears and is seen. Furthermore, Benedict XIV, in the Epistle *Postremo mense*, 28 February 1747, § 21, proposes the case that certain infidels were asking baptism for their children, namely that these might be freed from sicknesses and vexations of demons, also threatening Catholic priests with death. And it was resolved by the Holy Office that in such a case one cannot at least fictitiously baptize them, applying the matter of baptism without the due form, because baptism is the gate of the sacraments and a protestation of faith, nor can it be feigned in any way. Here it openly appears that there is question of material simulation, and the reasons adduced hold, with proportionate reason, also for other sacraments; for the other sacraments, if they are not the gate of the sacraments, as baptism is, are a

certain perfection and complement of baptism, or certainly all presuppose and pre-signify baptism, and are in their own way a protestation and profession of faith; whence neither can they be feigned in any way, just as faith can be feigned in no way. After reporting the case and its resolution, Benedict XIV cites the commemorated proposition condemned by Innocent XI, and therefore he himself evidently understands and interprets it not only in the sense of formal simulation, but also and especially in the sense of material simulation.

Titius the parish priest, making the sign of the cross over the bridegroom whom he dismisses unabsolved, performs no sacramental simulation, since the sign of the cross is neither a sacramental sign nor a sacramental action. Likewise he performs simply no simulation, for Titius had already suitably forewarned the aforesaid bridegroom concerning his unworthiness. Besides, Titius, agreeing with the bridegroom that, to preserve the seal of the sacrament and the reputation of the bridegroom, he should move the consecrated particle close to his mouth but immediately put it back into the pyx, commits no simulation of the sacrament. For to elevate the host over the bridegroom, and to form the sign of the cross over him, and then, instead of giving it to the same bridegroom to eat, to put it back into the pyx, is no sacramental sign and no sacramental action. Nor is there any simulation in this matter with respect to the bridegroom, for an agreement was made with him about this manner of acting. But with respect to others there is simulation in the broad sense, which, like mental restriction in the broad sense, is licit from some grave cause. — I. M. 375, 376.

Titius, hearing the confession of the bride and hearing in it no accusation of shameful sin committed with the bridegroom, indeed acts prudently by only exhorting the bride generally to manifest sincerely the sins of her past life, on occasion of the approaching marriage. Nevertheless he did not act rightly by not imparting absolution to that same bride. For in this tribunal of the sacrament of penance, the penitent is to be believed for herself and against herself. Besides, in such a case there would be use of knowledge from the bridegroom's confession, which certainly turns into hatred of the sacrament. For if the faithful knew that their confessions could bring spiritual or temporal harm upon others, this would certainly draw them back from sacramental confession. — I. M. 824; G. 768.

Likewise he does not act rightly by reciting prayers in a subdued voice in place of the sacramental form. Indeed, there is no simulation of the sacrament, for the recitation of those prayers is not a sacramental action, nor are those prayers part of the sacrament. Nevertheless, true and strict simulation is had, and therefore a true lie. For since the bride confesses rightly and exhibits no sign of indisposition for receiving absolution, and likewise since the confessor does not warn her about the omission of absolution, secretly to recite prayers over her and to bless her with the sacred sign of the cross, in these circumstances, can signify nothing other, nor can the penitent understand anything other, than that absolution is being imparted. *Casus Consc. Bonon. Dioec.*, year 1785, month of June, case 1.

Nor finally does he act rightly by offering to the aforesaid bride a particle separated from the others and by no means consecrated. For first he violates the seal of sacramental confession, since he abuses knowledge received through confession, both that of the bridegroom and that of the bride, in order to deny communion to the bride. Besides, the unconsecrated host is exposed to idolatry. — I. M. 376; G. 179.

110. On the Subject of the Sacraments

1. Philemon, a parish priest, is accustomed to give absolution, viaticum, and extreme unction to sick persons who are delirious, half-witted, insane, indeed also to drunkards in agony. — Does he act rightly?

R. Philemon could minister extreme unction to the aforesaid persons, excepting, however, those perpetually insane, as incapable. He could also minister viaticum to delirious and half-witted persons, provided the danger of irreverence is excluded; by no means, however, to drunkards in agony, because of the scandal which would follow from it. Finally, he could give absolution, but under condition, to all those to whom he ministered extreme unction. For although for absolution some confession and act of contrition or sorrow is required, nevertheless it is not certain that these are altogether lacking in them. I. M. 384, 565, 752, 753, 754; G. 182, 308.

2. Florian, a parish priest, called to Titius who is dying, after hearing his confession, offers him the sacred Eucharist, which he willingly receives. But when there was question of extreme unction, Titius refused to receive it, asserting that there was no danger of death. But when the parish priest noticed that he was now being deprived of his senses, he began to anoint him with sacred oil and continued, although the dying man, his eyes suddenly opened, seeing what was being done around him, showed his displeasure by agitation of his head.

Question. Did Florian validly and licitly minister extreme unction to Titius?

R. In the affirmative. For first, he validly ministered extreme unction; for Titius implicitly had the intention of receiving extreme unction by the very fact that he refused to receive it then, when it was being proposed to him by Florian, for this reason alone, that he thought there was still no danger of death. Besides, since Titius spontaneously confessed his sins and willingly received the sacred Eucharist, he certainly has the general will of dying in a Christian manner, and therefore also of receiving extreme unction when there is need. But this general will is altogether predominant in relation to the particular will to the contrary, which arose from error. But if Florian validly ministered extreme unction, he also licitly ministered it, because of the urgent necessity in which Titius was found. Elbel, 69, 70; G. 183.

3. Titius, a foreigner, while staying in a public inn, is seized by an unexpected illness and is placed in the proximate danger of life. The parish priest is called, and while he is about to impart absolution to him, already deprived of his senses, he is informed by a friend of the sick man, who unexpectedly is present, that he is Hebrew by religion. This man at the same time testifies that Titius nevertheless thought well of the Christian religion; indeed, that he had more than once heard him exclaiming: "I would willingly receive baptism, if I did not fear my father's indignation." Having heard these things, the parish priest confers baptism on him.

A little afterward the sick man returns to his senses, and, made certain concerning the conferral of baptism, ratifies it. Then, having arranged matters with his father, before the parish priest he proclaims himself a Catholic. But now the parish priest doubts whether Titius is to be baptized again.

Question. What is to be said to the Case?

R. The baptism of Titius seems invalid because of defect of intention, and therefore he is to be baptized again under condition. For that will of Titius to receive baptism, if he did not fear his father's indignation, is rather a certain wish than a true will and intention of receiving baptism. Indeed, since Titius, as is drawn from the Case, truly feared his father, and for that reason delayed receiving baptism, he in fact simply did not have the will of receiving baptism. Nor indeed from the Case can any indication be drawn either of the fear of his father's indignation having ceased, or of a strengthened and changed will concerning receiving baptism. But that Titius, having been made certain concerning the conferral of baptism, ratified it, could not make it valid; for subsequent ratification of a thing already done cannot supply the previous intention of a thing to be done, neither as to the very substance of the human act which was lacking, nor as to effects, if these in some way essentially depend on that act. Now, because the justification of adults, in the present order of divine providence, depends on their own will, with divine grace helping, so also the validity of the sacraments which work justifying grace depends on their own will and intention.

4. Riculfus, an infidel, by no means instructed in the faith and very rude, received baptism from grave fear. Afterward, however, spontaneously wishing to embrace the Christian religion, he approaches a missionary and manifests to him the baptism received under the aforesaid conditions. But the missionary hesitates, uncertain whether Riculfus ought to receive baptism again.

Question. Can Riculfus be baptized again?

R. From the fact that Riculfus, compelled by grave fear, received baptism, it does not follow from this that he was invalidly baptized, provided that he truly wished to receive baptism, because fear does not take away the voluntary. Benedict XIV, Constitution *Postremo mense*, § 49. As regards this intention, Riculfus is to be examined, since he is very rude; and "if the matter is in doubt, and it cannot be understood whether intention was lacking, or whether a sufficient intention was present or not, then the adult is to be retained and baptized under condition." Benedict XIV, loc. cit., § 51. But as regards faith, faith properly so called is indeed not necessary for the validity of baptism; nevertheless for its liceity it is necessary to know and believe those things which are necessary by necessity of means and precept. Wherefore, if Riculfus is to be rebaptized again under condition, he must first be duly instructed in the matters of faith. Cf. *Collectan.* S. C. de P. F., nos. 551, 552, 555.

On Baptism

111. On the Matter and Form of Baptism

1. "Sempronius, in wintertime, is accustomed to baptize infants with water somewhat warmed, or tepid." — Is this licit?

R. "Sempronius did not sin from the fact that in wintertime he baptized in water somewhat warmed. Thus Illsung, Babenstuber, and many others. The reason is that the sacrament ought not to harm the life of man, which was instituted for the restoration of life lost by the sin of Adam." Elbel, 15.

2. Dominic, in a case of necessity, baptizes a boy with a drink of tea. — Is the boy to be baptized again, if this can be done?

R. In the affirmative. For the matter is doubtful. Although that drink is made with a great quantity of water and a small quantity of the herb tea, nevertheless according to the moral estimation of men, a drink of this kind is not held to be, nor is it, natural water. Nevertheless, because only an accidental change of the water is had, the matter seems at least doubtfully sufficient, and therefore it is to be used in a case of necessity. — I. M. 397, 398.

3. A doubt was proposed by the Missionaries: "Whether in those kingdoms in which parents oppose the baptism of their children because of the opinion, in which idolaters sometimes are, that baptism makes them die, they can be baptized in danger of death by using water in which there have been placed some quintessences or strong odors, or else some drugs, such as saffron, or powder of some other kind, to induce a change in the natural color without altering its substance, and by making use of it as if it were a remedy, either in the manner of a shower by pouring the water over a part or over the head, or in the manner of a bath, or to wash or clean the child, or to refresh his eyes, or cleanse his wounds, or even by giving it to him to drink, or in some other manner by way of remedy, as if this actually were so; but above all principally to baptize him, pronouncing in a low voice the form of the sacrament."

The Holy Office, 8 November 1770, responded: "In the case of extreme and true necessity, in which the death of the child is imminent, and no other and more convenient occasion of visiting him can be given to the missionaries, and the parents are hostile to baptism ... in such a case the missionaries can, indeed must, use proximate and remote matter, although doubtful, since the help, although uncertain, toward the spiritual generation of the child must prevail over the danger of the invalidity of the sacrament. Hence, excepting the manner of giving baptism by way of drink ... which is certainly illicit, and baptism so conferred would be invalid; and excepting also the use of aromatic waters or essences, in which the substance of the water would be altered, all the other manners expressed ... can and must be employed in the case of the alleged extreme necessity, and not otherwise ... warning that in these cases they always take care that some portion of water flow over the head if possible, and, if in no way it can flow over the head, that it flow at least over some principal part of the body of the child. Furthermore, they make certain that in the case in which these

children, thus baptized with doubt about the validity of the sacrament, should recover health, the missionaries seek every better way to baptize them again *sub conditione* and to instruct them."

4. Anna, a midwife, is often in the necessity of baptizing newly born infants who are in danger of life. But because she fears lest she use a doubtful or less certain form of baptism, for greater security she takes care to utter it now in one way, now in another, and, as she thinks, in a better way, according as in various cases the fear of erring first suggests to her that it must be done. Hence, 1. sometimes she says: *I baptize thee in the name of God the Father, and of God the Son, and of God the Holy Spirit*. 2. Sometimes she says: *I baptize thee in the name of the almighty Father, and of the only-begotten Son, and of the Holy Spirit the Paraclete*. 3. Sometimes she says: *I baptize thee in the name of our Father, and of the Son, and of the Holy Spirit*. 4. Sometimes she says: *I baptize thee in the name of the Father, and of the Word, and of the Holy Spirit*. 5. Sometimes she says: *I baptize thee in the name of the Father, and of the Son, and of the Spirit*.

Question. What is to be said about the validity of the various forms which Anna used?

R. Concerning the first form, Father Gury, 191, says: "The form is doubtful, because the unity of the divine essence does not seem to be sufficiently expressed. Yet more probably it is valid, because the sense of the form is not essentially changed. But because of the controversy, the baptism is to be repeated." Elbel, 34, speaking of this same form, says: "It seems sufficiently certain that baptism conferred in this manner is valid, since both the Trinity of Persons is sufficiently expressed, and the unity of the divine essence by the little word *in the name*. Hence Gobat, tract 2, no. 721, says: I would not order one who had been washed thus to be dipped again, because neither authority nor reason permits calling it into doubt. Nevertheless all confess that this manner of baptizing is gravely illicit, since it is against the practice and prescription of the Church." Certainly St. Alphonsus in no. 108, cited by Father Gury, has nothing about this form. But in no. 111 he says absolutely: "Baptism is valid if words are added to the form which do not corrupt the sense; for example ... if someone were to say: *I baptize thee in the name of God the Father, who created thee*, etc." Now it is evident and certain that that addition *God* does not corrupt the form, and that it is understood in the expression of each Person. But the mystery of the unity of the divine nature, signified by the word *in the name*, remains altogether intact. Nor indeed from that repetition of the name of God does there follow a plurality of Gods, "because one and the same name can be named and invoked again and again without plurality; as it is truly said, the Father is God, the Son is God, and the Holy Spirit is God, and yet they cannot be called Gods." Suarez, d. 21, s. 3, par. *Sed quid*; La Croix, book 6, part 1, no. 34.

The second form, as the same St. Alphonsus has in the cited place, is valid. For nothing is added in it whence a substantial alteration is had. And St. Thomas, part 3, question 60, article 8, explicitly says: "If someone says: *I baptize thee in the name of God the almighty Father, and of his only-begotten Son, and of the Holy Spirit the Paraclete*, it will be true baptism." Cf. Lugo, d. 2, nos. 117, 125.

The third form seems doubtful. For the word *our* seems to take away the true sense of the form. For the word *Father* in the form of baptism is determined to signify only the Person of the Father, who is Father with respect to his only-begotten Son. But the added word *our* now determines another sense, namely it causes God the Creator to be signified without distinction of Persons. This also seems to be drawn from the Response of the Holy Office, 27 January 1892. Cf. *Collectan.* S. C. de P. F., no. 2160.

The fourth form seems valid. For the changing of the word *Son* into the word *Word* does not take away the true sense of the form. D'Annibale, no. 272, note 26, has it as valid, and Suarez, d. 21, s. 4, par. *Secunda sententia*, also has it as valid.

Finally, the fifth form is also valid. For the omission of that word *Holy* does not take away the sense of the form. For the word *Spirit*, which is imposed to signify the property of the third Person, namely passive spiration, which it signifies formally, sufficiently signifies the third Person. And thus also in Sacred Scripture the third Person is simply called Spirit, John 7:39. Suarez, d. 21, s. 4, par. *In hac re*; D'Annibale, no. 272, note 26; Liguori, 109, at the end.

5. Metrodorus, a parish priest, wishing to impose the name of a girl in the baptism itself and to dedicate her to the Blessed Virgin Mary, baptized her thus: *I baptize thee, Mary, in the name*, etc. — Licitly and validly?

R. Illicitly, because it is against the Ritual; validly, because the form is in no way substantially changed. The same is to be said if, from the same intention, the name is added in the vocative case after the word *Father*, if namely it is said: *I baptize thee in the name of the Father, Mary, and of the Son, and of the Holy Spirit*. For the form even in this Case is not substantially changed, neither from the nature of the thing, as is clear, nor from the intention of the agent. Indeed Cardinal De Lugo, d. 2, no. 107, says: "The form of baptism will be valid if, in place of those words, *I baptize thee*, it is said, *I baptize Peter*, although that word, Peter, is of itself equivocal for signifying this or that Peter."

6. Daniel, a secular man, baptizing a boy in necessity, although he used the customary form of baptism, nevertheless did not intend to baptize in the name of the divine Father, in the name of the divine Son, in the name of the divine Holy Spirit; but in the name of the father of that same boy, in the name of the firstborn son of the aforesaid father, in the name of the created spirit, namely the soul itself of the boy to be baptized.

Question. Did Daniel validly baptize?

R. "The baptism is null. The reason ... because for the valid confecting of the sacrament there is necessary a legitimate intention of the minister, namely of doing the sacrament, or at least of doing what the Church does, or what Christ instituted ... And although he used the legitimate form of baptism, nevertheless, because he did not use those words in the legitimate sense, but in a foreign sense, hence he effected nothing, just as a priest would effect nothing ... if, uttering these words, *This is my body*, he understood not the Body of Christ, but his own, proper to himself." Elbel, 35.

Appositely Lugo, d. 2, nos. 113–118, speaking of the form of baptism, says: "If the minister sins in the due intention of signifying, not wishing to signify the wise Father, but a Father who is not wise, then he would do nothing, not from defect of the words, but from defect of intention, just as if one consecrating did not have the intention of signifying the true presence of the Body of Christ by that word *is*, but only an improper presence and according to figure, he would not consecrate." When, however, on the part of intention there is present the intention of doing what Christ commanded, and there is at the same time an error in the mind, an error of this kind in no way stands in the way of the validity of the sacrament. For the error remains only in the mind; neither do the words signify it according to themselves, nor do they signify it from the intention of the one uttering them. For by

the very fact that someone has a sincere intention of doing what the Church does, he now wills by those words to signify that which Christ and the Church wish to signify. Wherefore it is required for the validity of the form “both that it signify that which Christ willed, as far as concerns the words, that is, that they be of themselves apt for signifying, and that they also signify that same thing on the part of the one uttering, who intends to signify this very thing; for without this there is no speech. For a parrot also utters words which of themselves signify something, and yet it does not speak, because it does not intend to signify that thing by the words. Similarly, therefore, in that case that form would not be a speech signifying, in the notion of speech, that which Christ willed, since the minister does not utter the words to signify that, but something else.”

112. On the Minister of Baptism

1. Symphorosa, the mother of a family, noticing that her newly born offspring is unexpectedly in great danger of life, breaks out into cries and wailings. Sigismund, her husband, runs up; the sons and servants arrive at the same time: "Quickly bring water," Sigismund cries, "that I may baptize the infant." But Marcus, Sigismund's son, says: "This office is mine, for I am a cleric, marked with all the minor orders, and a candidate of sacred theology." But the mother says: "Call the parish priest; since he is nearby, he will be here at once." Meanwhile Melania, the maidservant, pouring water upon the infant's head, pronounces the words of the form of baptism; and a little afterward the infant, now baptized, flies away to the citizens of heaven.

Quaer. What is to be said of the Case?

R. The parish priest ought to have been called, if he really could have been present at once, and baptism could have been deferred for a little while. But, as appears from the Case, the necessity was altogether urgent, and allowed no delay. In the absence of the parish priest, Marcus the cleric ought to have baptized. But that Melania baptized in the presence of Marcus, an inferior cleric, was not grave. That a layperson, generally speaking, baptizes in the presence of an inferior cleric, "Pal. says is no sin, since concerning this no divine or ecclesiastical precept is found. But others commonly and rightly teach that it is not mortal, because such a perversion of order does not seem so grave, since by force of order no one besides the priest and the deacon by commission is held to be specially deputed to baptize. On the other hand, it does not seem to be excused from venial fault, both because this seems to be some indecency, and because it is contrary to the prescription of the Roman Ritual." Lig. 117. But Melania seems to be excused even from venial fault in the Case, since in that confusion and contention of affairs, with the infant's danger imminent, she did well by at once resolving the question, by baptizing the infant so that his eternal salvation might be placed in safety. I. M. 425. 429., G. 199.

2. Daniel, a deacon, while the parish priest is absent for several days, from his presumed consent, solemnly baptizes a boy in the parish church. But the parish priest on returning accuses him of grave fault, because, the case of necessity being excluded, a deacon needs explicit delegation in order to baptize solemnly. Therefore he ought either to have awaited the parish priest or to have summoned another priest.

Quaer. What is to be said of the Case?

R. "Daniel the deacon sinned gravely by baptizing solemnly without delegation, or without necessity, because he usurped an act of parochial jurisdiction. Indeed, a deacon cannot be delegated by the parish priest to baptize solemnly except for some grave cause, because in the present discipline of the Church he is only an extraordinary minister. Daniel, moreover, by baptizing solemnly without delegation, incurred the penalty of irregularity because of the usurpation of an act of order for which he was not ordained. C. 1. de Cler. non ord. min." Thus Fr. Gury 200.

But in this resolution something seems to be less exact: namely, that a deacon is the extraordinary minister of baptism only by the discipline of the Church. Something also seems to be too severe: namely, that, while the parish priest was absent for several days, Daniel could not baptize, and needed the express delegation of the parish priest. For a deacon, by force of the order itself, is the extraordinary minister of baptism, and when grave necessity exists he can baptize even from a presumed commission. Nor, indeed, was grave necessity lacking in the Case, if in fact there was no other priest in the parish.

Indeed, in conferring the sacraments, the minister regularly needs the power of order and of jurisdiction. But by reason of order, there is a threefold grade of ministers. In the first are placed the bishops, who, as it were the princes of the Church, confer all the sacraments, but especially those with which some office is joined, namely confirmation and order. In the second are the presbyters, who, with these two excepted, confect the remaining sacraments. But there can be extraordinary ministers both of confirmation and of orders, which do not approach the Eucharist so closely. In the third are the deacons, "who administer baptism and the Eucharist only; and not always, but, since they are extraordinary ministers and supply the place of presbyters only in grave necessity, and by the command of the presbyters at least interpretative; but in extreme necessity it is lawful for them to minister these even against the will of the presbyters, from the interpretative command of the bishop or of the Church." D'Annib. 252. And St. Alph. 116 says: "The commission cannot be made to a deacon except because of great necessity, or the utility of the Church, for example if priests were not present, or unless there is a multitude of persons to be baptized, or unless the parish priest is gravely ill, or excommunicated, or otherwise occupied in hearing confessions or in preaching, as is gathered from Acts 6. 3."

But, that it may be explained more fully in what way a deacon, by force of order and by divine law, and not merely by ecclesiastical law, can be the extraordinary minister of solemn baptism, it is useful to report those things which Suarez has, d. 23. s. 2. par. penult. et ult., where he explains two differences in this matter between a deacon and inferior clerics. "One is absolute in relation to the solemn administration of baptism. For this, from a reasonable cause, can be committed to a deacon in a case of necessity; indeed, if necessity urges and a priest is absent, he can himself, by his own right, take up the ministry, as the Gloss teaches in C. Diaconos 13. dist. 93. But to inferiors it cannot be committed on account of any necessity; rather, when that necessity urges, they can baptize only privately... But this difference seems to have been established rather by ecclesiastical law than by divine law... Yet I do not doubt that, from a dispensation of the Supreme Pontiff, this solemn ministry can be committed to someone who is not a deacon... Yet I do not deny that this ecclesiastical ordinance is very consonant with divine law, and has some foundation in it, inasmuch as, from the intention of divine law, the deacon is ordained to this: that he be the special minister of the presbyter, so that the presbyter may both use his ministry in sacred things to be performed, and may also

commit to him some sacerdotal ministry for which the sacerdotal character is not absolutely necessary, when a legitimate cause is present. The most suitable example is in the distribution of the Lord's Body, which can be committed to a deacon, but not to a subdeacon... which indeed is consonant with divine law; nevertheless, absolutely, it has been instituted by ecclesiastical law. The second difference is in the private administration of baptism on account of necessity. For, first, it can more easily be committed to a deacon than to an inferior, because he is already in some way deputed to this by reason of his order; whence even in the presence of a priest there can be some cause sufficient for committing this ministry to a deacon, which is not sufficient for it to be committed to an inferior, as, for example, because of some more serious occupation, a priest could sometimes commit it to a deacon, but not to a subdeacon or inferior. Then... in the absence of superiors the deacon is to be preferred, as if by his own right, to all inferiors, so that an inversion of this order is not only indecent by reason of this sacrament, but is also a certain usurpation of another's right; but the order among the other persons inferior to a deacon is made only from a certain decency, not by reason of a right which any one of them has to minister this sacrament."

3. Olympius, a missionary, doubting concerning the dispositions of Laurianus, a catechumen, and, on account of peculiar circumstances, since he could in no way defer baptism, baptizes him under a condition, the condition namely having been conceived only in his mind: if Laurianus has faith, sincere sorrow, and purpose concerning his sins.

Quaer. Whether Olympius acted rightly?

R. Negatively. A condition, from the custom of the Church, is then only applied in baptism when there is room for doubting whether something was lacking, or is lacking, which is required for the value of the sacrament. Faith and penitence in the adult who is baptized are not required by necessity of the sacrament itself, but only for its fruit. Moreover, from this manner of acting a most grave inconvenience follows in the Case: namely, the nullity and deprivation of baptism, if the condition is not verified, for the whole time of life. Cf. Collectan. S. C. de P. F. n. 589. 648. 655., Catech. Roman. de Sacram. Bapt. n. 57.

4. Titius, the parish priest, while he is about to baptize an infant, is warned by the midwife that the same child, scarcely brought forth into the light, had been baptized by her. The child's father, Caius, who is present, denies this, since all who are of the family are altogether ignorant of a fact of this kind. But the woman adds that she baptized the boy, to whom death already seemed to be imminent, in the very bedroom of the mother, who was asleep after childbirth, where she was alone. Then the father says: I shall never believe this, nor, even if you had baptized, shall I ever be able to bring my mind to believe that you conferred baptism duly. Hence the parish priest questions the midwife about the manner of the sacrament conferred, and he observes that no defect had been present. Nevertheless the father urges more insistently that he wants his son to be baptized by the parish priest, because the midwife was commonly regarded as a rude woman and of doubtful reputation. Titius, knowing well that Caius is a powerful man in the little town, lest he have this man hostile to him, baptizes the little boy under condition, by which means the whole dispute was at once settled.

A little afterward Titius, having been called to confer the sacraments upon a certain sick man, is anxious about his manner of acting, fearing lest perhaps he has contracted irregularity.

Quaer. What is to be said of the Case?

R. Although through baptism conferred conditionally "the danger is avoided of rebaptizing him who has already once been legitimately baptized, nevertheless that is not therefore to be employed everywhere and rashly; but it will be permitted to use it only then when a prudent and probable doubt is present whether someone has been duly baptized, and, after diligent investigation has first been made, the truth of the matter could not become known." Benedict. XIV. de Syn. l. 7. c. 6. n. 2. Now, in truth, there does not seem to remain in the Case a prudent doubt about baptism, after the investigation of the matter has been made. For first, the midwife herself spontaneously affirms that baptism has already been conferred by her, and no reason is discovered which would move her thus to a false affirmation in a matter so grave. When the infant's father cries out against it from ignorance of the baptism conferred by her, the midwife duly explains the fact; and the explanation seemed so true to the father himself, resisting in that moment, that he opposed nothing as to the fact of the baptism conferred, but objected another difficulty concerning baptism duly conferred. But this difficulty also vanishes altogether from the investigation that was made. For the midwife explains the manner of the baptism conferred, and it is clear from this that there had in reality been no defect in the conferring of baptism. But the father of the infant, urging the matter, objects again that the midwife is rude and of doubtful reputation. That the midwife is rude, just as this does not prevent her from knowing well how to exercise her art, so also it does not prevent her from knowing how to baptize duly. For it concerns a very easy thing, a thing in which midwives are altogether accustomed to be skilled, a thing in which in fact the midwife, in the Case, although she were rude and very rude, was well instructed, as appears from the examination that was made. Nor, indeed, can any prudent doubt be present from the fact that she is of doubtful reputation. For first, if this alone sufficed for a prudent doubt, one would already have to doubt concerning all the other baptisms conferred by her; and certainly this was not the first baptism which she had ministered, since it concerns a midwife already exercising her art, and in reality well exercised in it, since she well perceived the danger of death in which the infant was found. Moreover, that doubtful reputation does not bear upon the matter; for what advantage for the midwife, or what utility of hers, would there be from a lie? No one is bad unless he is proved to be so. Indeed, rather, her constant affirmation before the very powerful father, to whom at last even the parish priest yields from fear, is an altogether grave and certain argument, morally speaking, concerning the truth of the affirmed conferral of baptism. Wherefore Titius does not act duly by baptizing the infant under condition, lest he have Caius hostile to him. And this very thing shows that Titius did not act rightly. For, since he himself was the judge and witness of the whole dispute between the midwife and Caius, and since he himself certainly knew the midwife well from another source, he was moved to repeat baptism only from fear of Caius; whence also afterward he feared that he had incurred irregularity. Therefore the baptism conferred, and conferred duly, seemed so certain to him!

"Indeed," says Bened. XIV. l. c. n. 4., "if midwives have been legitimately taught concerning the matter, form, and necessary intention in the minister of the sacrament... and they, in the special event in which they privately conferred baptism upon an infant in danger, being questioned by the same parish priest, testify that all things were duly employed by them which are required for validly

confecting the sacrament, surely no probable reason is present why baptism ought, or can licitly, be repeated under condition... Although from the attestation of several persons greater certainty of the thing done is certainly drawn, nevertheless the sacred canons hold the conferral of baptism to have been sufficiently proved by a single witness, especially if he testifies concerning his own deed, that is, if he affirms that it was legitimately administered by himself, and nothing occurs to the contrary which detracts from the credibility of his testimony, as is expressly decreed in Caus. 110. and 112. de Consecrat. dist. 4. and Cap. Nuper de Testibus." Cf. also Enchir. Moral. 466.-468. 896.

But as regards the irregularity which Titius fears that he has incurred, Benedict. XIV. l. c. n. 3. judges that those are not exempt from the irregularity inflicted by Alex. III. C. Ex litterarum de Apostat. et reiterantib. bapt. upon those repeating baptism, "who, on account of only an apprehended defect of the former baptism, and with no investigation of the truth having first been made, confer it again under condition upon those whom they certainly know to have already once before had it conferred." St. Alph. l. 7. n. 356 says: "One rebaptizing, or rebaptized, from fear, without intention, or under condition, even if it be done rashly and culpably, probably do not become irregular." Wherefore Titius will probably be able, from St. Alph., to be excused from irregularity. This irregularity more truly prohibits only the reception of orders; it does not prohibit the exercise of orders received. C. Ex litterarum de Apost. D'Annib. p. 1. n. 410. Cf. Collect. S. C. de P. F. n. 648. par. Quamobrem initio. Others, however, extend it also to the exercise of orders. Bened. XIV. Notif. 84. n. 14. seqq. Wherefore again Titius was able to minister the sacraments to the sick man. - I. M. 465. 1322.

5. "Sabellinus, a heretic, coming to the parish priest, asks to be instructed and admitted to the Catholic Church. But the parish priest, after instructing him, asks him about the baptism he has received, and cannot find a certain defect; hence he remains hesitating and uncertain whether he ought to rebaptize him under condition, which nevertheless he does, though not without great anxiety.

Quaer. What is to be said of the Case?

R. Sabellinus could and ought to be rebaptized, as the general custom of the Church bears; because it is known that heretics err rather often in conferring baptism; therefore heretics converted to the true faith are prudently and commonly accustomed to be rebaptized." Thus Fr. Gury 207.

As is clear from several Decisions and Instructions of the Sacred Congregations, heretics are not all rebaptized indiscriminately, but only those whose baptism, after a previous and diligent examination, is found to have been null or doubtfully valid; or also, if, according to the condition of times or places, after an investigation has been completed, nothing is discovered either for validity or for invalidity. Cf. Enchir. Moral. 468., Collectan. S. C. de P. F. n. 642. seqq.

6. Robertus, a missionary, occupied with many duties, because of lack of time and excessive fatigue, in the baptism of adults uses the ceremonies assigned in the Roman Ritual for children, whether those to be baptized are many or few. - Does Robertus act rightly?

R. Negatively. For the Holy Office, 12. Febr. 1851., answered the Vicar Apostolic of Korea, who was asking that it might be lawful for him without scruple to give baptism to adults in the aforesaid manner and for the aforesaid reasons: Let the Roman Ritual stand. And S. C. de P. F., 16. Jan. 1797.,

answered the Vicar Apostolic of Western Tonkin: "The prescription of the Roman Ritual is to be observed altogether, except in a case of necessity." Moreover, "the Most Holy Father, at the urging of the Vicar Apostolic of Western Tonkin, by Apostolic authority and indulgence, declared that the custom which was explained to be in force in Tonkin can be observed, namely, of using in baptizing adults the ceremonies prescribed for the baptism of infants, where reasonable necessity, or narrowness of time for fulfilling the other functions of the sacred ministry, or excessive fatigue of the missionaries, requires it." S. C. de P. F. 30. Jan. 1803. - Collectan. S. C. de P. F. n. 612. 613. 625.

7. "A priest who, while he blesses the baptismal font on Holy Saturday, cannot mix the holy oils into the blessed water, either because these are lacking to him or because of another legitimate cause: can he nevertheless bless the font on that day, deferring the mixing of the holy oils to another day; or, on the contrary, is he bound to omit the entire blessing of the font on that day?

R. Affirmatively to the first part; negatively to the second, and let the Decree of S. R. C. 12. Apr. 1755. in Lucana be communicated: Parish priests who could not receive the holy oils before the blessing of the font will later be able to put them into the water privately and separately." S. C. de P. F. 5. Mart. 1816.

But there is another Decree of the same S. R. C. in Oriolen., 23. Sept. 1837: 1. The blessing of the baptismal font on Holy Saturday must be done with the chrism and oil of the preceding year; nor is the infusion of the chrism and oil to be omitted until those recently consecrated are received. 2. In the meantime, infants also are to be anointed with the oil and chrism of the preceding year. 3. But when the new oils are received, the baptismal water blessed with the old oils ought not to be poured into the piscina; rather, it ought to be preserved, and the parish priest ought to use it until the blessing on the vigil of Pentecost, as in the Ritual.

Nor, in truth, is there opposition between Decree and Decree. And thus S. R. C., 12. Aug. 1854., established that "because of the diversity of circumstances, in practice either Decree (Lucana and Oriolen.) can be observed. For in Lucana it is supposed that in some fortuitous case the holy oils are delayed for a short time; and in Oriolen. it speaks of an every way impossibility of having the holy oils from one's own Cathedral or from the nearer Dioceses."

8. [printed as 7.] Sempronius, a faithful man, baptized his own son, whom he had from a pagan woman. Sempronius now wishes to enter marriage with the same woman, baptized.

Quaer. Whether the impediment of spiritual kinship stands in the way?

R. Negatively. For that impediment arises in the conferral of baptism between the one baptizing and the parents of the one baptized, when all are baptized. Cf. Sanchez de Matr. l. 7. d. 62. n. 11., d. 60. n. 14. 15. 16., La-Croix l. 6. p. 1. n. 368., Schmalzgr. l. 4. tit. 11. n. 28. seqq., 32. seqq.

113. On the Subject of Baptism

1. Landulphus, converted from infidelity to the Christian faith, confesses that he had indeed wished to receive baptism, but solely so that he might be aided by Christians, because he was

very poor, not so that he might truly embrace the Christian faith. And indeed Landulphus, after receiving baptism, was still for many years given over to pagan rites. He is now converted to a better way, and the uncertain missionary asks whether he is to be rebaptized.

R. Negatively. Three dispositions are required in an adult for receiving baptism duly, namely faith, penitence, and the intention of receiving it. But faith and penitence are required in an adult so that he may receive the sacrament licitly and may obtain the fruit of the sacrament. Intention, however, is necessary for obtaining it validly. Therefore, for the validity of baptism, the will of receiving baptism itself suffices, or of receiving what Christians receive, even under a certain confused aspect, even if for a private reason he believes that this whole thing is of no value or moment. Wherefore the will of the effect of baptism is by no means required. But Landulphus truly willed to receive baptism, although afterward he did not will to live according to the faith of baptism. Therefore he validly received baptism, and consequently is not to be rebaptized. Nor indeed did that motive, that he might be aided by the missionaries in his temporal necessity, impelling him to baptism, impede the true will of receiving baptism, since, on the contrary, that motive impelled him to receive baptism. And if fear, impelling one to baptism, does not take away the will of baptism, and the baptism is valid, as is gathered from C. Maiores 3. de Baptismo, much more is baptism valid in the Case, since it is received altogether voluntarily by Landulphus. Cf. Suarez de Sacr. q. 68. d. 24. s. 2., Instr. S. O. 6. Jun. 1860. Collectan. S. C. de P. F. n. 589., I. M. 460.

2. In a certain city, altogether Catholic, Peter and Petronilla, Christians and Catholics, but living altogether badly, neglect to make efforts that their offspring be baptized. Their maidservant Rosina, a fervent Catholic, and one who has already lived in this house for many years, warns Antoninus the parish priest of this. After the matter has been maturely weighed, and with the approval of the Ordinary having been obtained, the parish priest secretly baptizes the offspring, with the parents not knowing; and meanwhile he commends her to the same maidservant.

Quaer. Whether the parish priest acted well?

R. Since the case occurs in a region altogether Catholic, and consequently there is hope that that offspring will afterward be instructed in the true faith, and no scandal follows, the parish priest acts licitly. For the Church has full right over such offspring, and no reason is present why she should not use it for the greatest good of such offspring. Certainly those who live among Catholics in a Catholic city can easily be instructed in the Catholic religion, since almost everywhere they have before their eyes those things which pertain to the Catholic religion, and they often hear others speak and discourse about it, as, for example, at Rome, Naples, and other similar cities. But if the parents are negligent, there are not lacking, in cities of this kind, other persons, whether blood relatives or even strangers, such as male servants and maidservants, as in the Case, who can supply for the parents' sloth, and employ diligent care so that, gradually and without being noticed, they may imbue infants with the true doctrine of the Catholic faith, and may also stir them up to the very practice of the Catholic religion. And often the good disposition of the boys themselves also helps toward this, and the assisting grace of God is always at hand. Wherefore, since such seems to have been the Case of Antoninus the parish priest, his zeal seems worthy of praise; and, since meanwhile he commended that offspring to the fervent maidservant, this surely proves that he will also watch in the future for

the right and Catholic instruction of that offspring. And this resolution can be abundantly confirmed from the resolution of the following case. I. M. 464.

3. "Whether it is expedient, outside the case of death, to baptize the infants of the faithful, when, account being taken of the tepidity or of another evil manner of acting of the same parents, no probable hope shines forth that the said infants will afterward be instructed in the Christian religion?

R. Let the response of the Holy Office, 17. Sept. 1671., be given, and let it be written according to the Instruction: namely, since by this Sacred Congregation the opinion of the Sacred Congregation of the Holy Office had been requested: Whether infants of Turks can be baptized, when the father is a defector from the Christian religion, the mother is Christian, and although both ask baptism for the son, nevertheless there is doubt whether the father may wish to educate him in Mohammedan superstition? To this doubt, when the response had gone forth from the Holy Office: In the proposed case they ought to be baptized, from here the beginning must be taken of the prescribed Instruction to be drawn up, by which, from the given response, the way may be prepared for a certain fuller explanation of the proposed doubt.

Therefore it must be noted beforehand that one judgment is to be given concerning the case in which the danger of perversion of the infant to be baptized is so pressing that it is almost certain that afterward no help can be brought to him in any way, as when the infant is thereafter to remain in the power of infidel parents; another judgment is to be given concerning the case in which there is indeed some doubt, or even a just cause, for fearing perversion, yet in such a way that not every reason of suitable aid is lacking by which provision can opportunely be made for the danger which is foreseen. Certainly in the former case, in which there is discerned that kind of danger which is usually called proximate, that baptism cannot be conferred on the infant unless his life is in danger is clearly established from another response of the Holy Office, 3. March 1703., by which it was decreed: It is not lawful to confer baptism on infants who are children of infidels and are to remain in their power, excepting children who, being most gravely ill, are in danger of life. But as regards the latter case, it is immediately added: But it is lawful, if they are indeed children of barbarians, but already of the soldiers of Christ, provided that, when they have grown up, they are instructed concerning the precepts and mysteries of holy Religion, either by apostolic men dwelling there or by the parents themselves.

Thus, moreover, these two responses of the Holy Office which have been brought forward agree and consent with one another, so that one receives mutual light from the other. For in the first response given, although the father's defection from the Christian religion would bring no empty suspicion that he would wish to educate his son in the Mohammedan impiety which he had embraced, nevertheless, since the mother professed the Christian religion, and the father himself did not resist, in such a factual situation, which indeed carried before itself some doubt, but not likewise a sufficiently explored proximate danger of future perversion, the Sacred Congregation rightly judged that there was not sufficient cause why, on account of an uncertain event, it should repel the born infant from the benefit of obtaining the grace of baptism.

These things being duly weighed and known, the explanation of the doubt proposed by the Reverend Vicar Apostolic comes forth, as it were of its own accord. For whatever that may be which is called

the tepidity of the parents, or sluggishness and sloth in every practice of religion, or the stubbornness of another of the same parents in an evil manner of acting, there is surely no greater destruction threatening the education of the offspring from this than from an open defection of the father from Christian rites to Mohammedan impiety. On the other hand, from the practice of religion flourishing in those Apostolic Missions, there are supplied far more aids than from the Christian profession of one mother dwelling among Turks, by which, especially through the pious and diligent industry of the Pastors, the indolence of the parents can be supplied. And first of all, because of the supreme zeal with which the Apostolic Vicars and their ministers stand unanimous in those regions, laboring together in the same spirit for the Gospel of the Son of God, it can scarcely happen that, when they approach to celebrate holy baptism, there would be lacking the means of procuring such sponsors, by whom, when the reborn infants have begun to grow up, they may be taught concerning the precepts and mysteries of the Christian religion. But if it happens that afterward the miserable defection of many from the religion they received is to be lamented, partly, as is explained, from fear of persecutions, partly because of confession denied on account of scandals, who nevertheless now are said to be converted rather easily; partly because several are transferred into more remote regions, where priests rarely go by whom they may be visited; partly because of the voluntary cohabitation of very many with gentiles, by whom they are gradually depraved; partly finally because several, compelled to restitution of things badly acquired, prefer to desert faith rather than money: surely this entirely voluntary subsequent depravity is not of such force that one must distrust concerning the little ones who are offered individually for baptism, and not rather piously hope that those faithful, with God having mercy, will remain in that vocation to which they have been called by baptism through the kindness of the very God who has mercy. Indeed, the fact that it has also been noted that those who depart because the sacraments have been denied are converted rather easily plainly shows how much it has profited them to be baptized; for if they had not previously been baptized, perhaps they would have lain miserably forever in the darkness of idolatry. By this the pious confidence of the Pastors in the Lord ought to be increased all the more, that labor undertaken by them will not be empty, the more zealously they apply themselves to the conversion of others of every kind, preaching the word, being urgent in season and out of season, reproving, entreating, rebuking in all patience and doctrine.

Now, that we may return more nearly to the proposed doubt, from the decree given by order of the Sacred Congregation, it must be concluded with stronger reason that the consideration of the tepidity of faithful parents, or of another evil manner of acting of the same, does not stand in the way of their infants being able and obliged to be duly baptized, especially when the parents themselves request it, as in the proposed Case." S. C. de P. F. 31. Jan. 1796.

4. What must be done by a missionary who imprudently and inconsiderately baptized all the infants of his Mission whose fathers and mothers were still infidels.

R. He is bound, by himself or through others, as far as can be done, to instruct the children of infidels imprudently and inconsiderately baptized, when they have arrived at the use of reason, with the other missionaries also being warned, indeed even the bishop, insofar as there is need. S. O. 25. Jan. 1703. Collect. S. C. de P. F. n. 548.

5. Caia, a heretic, fearing lest her newly born son be baptized invalidly by a heretical minister, calls a Catholic priest so that he may be baptized duly by him. He flies there gladly and baptizes the infant by the Catholic rite. But immediately he begins to doubt whether he acted rightly. For Caia in no way intended to oblige herself to educate her son in the Catholic Religion. And much less could this be expected from her obstinate Protestant husband.

Quaer. Whether the priest could baptize the infant, as in the Case?

R. Negatively, except in the article of death. Thus, in a similar Case, the Holy Office answered, 26. Aug. 1885. Collect. S. C. de P. F. n. 595. For, in order that a Catholic minister may licitly offer baptism to the son of heretics, it is necessary that he conceive a probable hope that a boy of this kind, once baptized, can in his own time be instructed in the true faith. But if he can in no way have a moral hope of this kind, he ought certainly rather to abstain from baptism, supposing that the little child is not in extreme necessity, in which any other person can be baptized. S. C. de P. F. 3. Jan. 1777. n. IX. Enchir. Moral. 464., I. M. 464.

6. "1. Whether, on account of the danger that a daughter be handed over in marriage to a Muslim or heathen man, or to a simple polygamous Christian, baptism can be administered to girls, whether infants or adults, when otherwise they have the necessary dispositions for receiving it?

2. Whether, on account of the danger that slaves be sold to Muslim or heathen masters, with danger to the faith, baptism can be conferred on them in infancy and also in adult age, as long as their master does not swear the contrary?

R. As regards the first, a distinction must be made between infant girls and adult girls. The former, where nothing else stands in the way besides the danger of future marriages, can and ought most safely to be admitted to baptism; for it is not equitable that, on account of an uncertain event still very remote, they be repelled from the certain benefit of obtaining baptismal grace. But adult girls are either not yet nubile, or indeed already nubile but not yet promised in marriage, or already betrothed to infidel or polygamous men. In the first and in the second Case there is no reason why baptism should be denied or deferred, provided the aforesaid girls have the necessary dispositions, since the danger of entering invalid marriages with infidels, and of afterward remaining in them violently, is not certainly and proximately imminent, and can otherwise be removed in several ways. But in the third Case it is in no way expedient to baptize them before marriage, both because of the not slight difficulty of obtaining a legitimate dispensation, and because of the most grave danger that they may proceed to the marriage even if no place is given for dispensation, which certainly cannot be granted over impediments of natural law; therefore it will be better to defer baptism than to expose it to proximate profanation.

As regards the second doubt, it contains a greater difficulty concerning infants than concerning adults. For the foreseen danger of perversion prevents baptism from being conferred insofar as it can in no way be removed by opportune instructions. With this principle established, it follows that adult slaves of either sex who are duly disposed, and can be fortified beforehand with Christian instruction, are to be baptized, even if their master refuses to promise that he will never commit this act, namely, to sell them to infidels. Concerning slaves who are still infants, it is necessary to consider whether

they are liable to the danger of passing into the power of infidels after they have obtained adolescence, or before they have passed beyond the age of infancy. In the former hypothesis, whenever nothing else stands in the way of their baptism besides the above-mentioned danger and some hope shines forth of their Christian education, they are licitly washed in the sacred laver; and this is likewise licitly administered to them in the latter hypothesis, if they are either offered by Christian parents, or are found near death." S. O. 25. June 1866. Collect. S. C. de P. F. n. 591.

7. "An infidel woman married to a heretical man asks to be admitted to baptism. The husband does not stand in the way of her receiving it and professing the Catholic religion, though he himself is unwilling to become Catholic. It is asked how the Catholic missionary ought to conduct himself: Whether, by baptizing the woman, he should permit her to contract marriage with that heretical man before a non-Catholic minister? Whether, by denying her baptism, he should give her occasion to receive it from a heretical minister? Whether he should baptize her and join her in marriage with the heretical man, which evidently involves communication in divine things?

R.... In the proposed Case the missionary ought to teach the woman concerning the nullity of the prior marriage entered into in infidelity with the heretical man, who, as being subject through baptism to the laws of the Church, was detained by the impediment of disparity of cult; and if he finds her rightly disposed, he can admit her to baptism. With her, also, a dispensation can be given by one having the faculty for this, so that, after baptism, she may be able licitly to marry the same heretical man, if nothing else stands in the way. For, as regards the validity of the marriage, she would now contract it validly in the provinces of Quebec and Canada because of the extension of the Benedictine declaration made by Clement XIII on 4 November 1741. But nothing is discerned to prevent baptism being licitly conferred on the aforesaid woman, since, as is explained, she herself wishes to profess the Catholic religion, with her own husband consenting to this. Nor would an urgent cause be lacking for dispensing with her, so that she may marry the heretical man, whenever it would be prudently feared from the denial of the dispensation that she would either be turned away from receiving baptism, or would receive it from a non-Catholic minister, before whom she would likewise enter marriage; which must in no way be permitted. But it would not be forbidden for the Catholic parish priest to assist at a marriage of this kind. For by force of the grant of Apostolic dispensation it would become licit, and therefore also the presence of the parish priest would be licit. But, as Benedict XIV admonishes in de Syn. dioec. lib. 6. cap. 5. § 4., in those places and regions where marriages of this kind, namely of Catholics with heretics, are sometimes permitted to be contracted, it is altogether expedient that the bishop, for protecting the decorum of the Church, opportunely and prudently prescribe the rites to be observed in the celebration of those marriages. And first of all, the bishop should have before his eyes and, insofar as can be done, should take care that the practice of the Holy See be observed, and the rules which are usually prescribed by it when, for grave causes, it dispenses in marriages of this kind: namely, that the marriage be celebrated before the parish priest and witnesses outside the church, with the nuptial blessing omitted, and every sacred rite; that the Catholic party be most gravely admonished concerning the obligation which he or she has, and which never ceases for him or her, of taking care for the conversion of the spouse and the education of offspring of both sexes in the Catholic religion; and finally that the Catholic

education of the offspring also be brought into an agreement confirmed by oath." Instr. S. O. 16. Sept. 1824. to the bishop of Quebec.

On Confirmation

114. On the Matter and Form of Confirmation

1. Andrew, a Greek, doubts about the value of his confirmation. For when he was dwelling among Latins he heard from a certain Latin presbyter that the chrism of confirmation is confected only from olive oil and balsam. But when he himself was confirmed in Greece, he heard that sacred chrism is confected from several sweet-smelling materials.

Quaer. Whether Andrew was validly confirmed, if other sweet-smelling aromatics were mixed into the chrism?

R. Affirmatively. For in the Euchologion of the Greeks, or Ritual, or Sacerdotal and Pontifical, this Admonition is contained: "It must be known that although the Pontiffs of the Eastern Church, in confecting sacred chrism, customarily use several aromatics, nevertheless the necessary matter of the sacrament is oil and balsam, to which, according to the custom of the ancient Eastern Church, other kinds of aromatics are rightly admixed, if they are present according to the prescription. But if some of them are lacking, provided oil and balsam are present, holy chrism is altogether duly confected, as with things not necessary to the matter of chrism." Benedict XIV, C. Ex quo primum, 1 March 1756, § 44, reports the aforesaid Admonition; and in § 49 he says that it "pertains to holy chrism, which indeed is confected by the Greeks not only with oil and balsam, but with other aromatics also admixed. But in this part of the admonition anyone can see that a mixture of aromatics of this kind is not indeed forbidden, but only that this is taught to be held: that the matter of the sacrament consists in oil and balsam, and therefore, if any one of the other aromatics customarily admixed is lacking, nothing is lacking which is necessary for confecting sacred chrism." Therefore, because the Greeks mix other aromatics into chrism, the matter of confirmation does not thereby become unsuitable. Wherefore Andrew was validly and also licitly confirmed with the aforesaid chrism according to the rite of the Eastern Church.

2. Joseph holds that the imposition of hands does not pertain to the essential matter of confirmation. Indeed, he says, the Greek Church does not use the imposition of hands. Benedict XIV, C. Ex quo primum § 50. D'Annib. 279.

Quaer. What is to be said of the Case?

R. The imposition of hands is altogether essential to the sacrament of confirmation. For the Apostles themselves are read to have used it for conferring the Holy Spirit. Acts 18 and 19. Likewise, the Fathers testify concerning its continued use in the Church from the age of the Apostles. Nor indeed does the Greek Church dissent. For this essential imposition of hands is that which is annexed to chrismation, and the Greek Church itself certainly uses it in precisely the manner in which the Latin Church uses it. Hence Michael Palaeologus, in the profession of faith which in the year 1274 he sent to Gregory X, expressly says: "Another is the sacrament of confirmation, which bishops confer through the imposition of hands, by chrismating those reborn." Wherefore Benedict XIV, l. c., indeed excludes an imposition of hands distinct from chrismation, but by no means also one indistinct and

included in the chrismation itself. For through this the chrismation is made. But another imposition of hands is not necessary. Theol. Wirceburg. 142. seqq., I. M. 475. 476.

3. Joseph, a bishop, holds that in the form of confirmation only these words are substantial: I confirm you with the chrism of salvation. Hence in the administration of this sacrament he has no scruple if through inadvertence he omits the other words. For the former words signify the character, which the form is not accustomed to signify. But the Greek Church does not use the latter words. D'Annib. 280.

Quaer. What is to be said of the Case?

R. Joseph does not act rightly. For the common opinion holds that all the words of confirmation are necessary. Wherefore, by omitting the remaining words, he exposes the sacrament to danger of nullity. But the former words: I sign you with the sign of the cross, do not signify the character, but the sacramental action itself, or chrismation, just as in baptism the word baptize signifies the sacramental action itself, or ablution. But the latter words are not altogether lacking in the form of the Greeks. For, as in the form of the Latins those words indicate the cause conferring the fullness of spiritual strength, which is the Holy Trinity, and which is expressed when it is said: In the name of the Father, etc.; so in the form of the Greeks, through those words of the gift of the Holy Spirit, there is signified the grace strengthening one for confessing the faith bravely, and the cause of this, the Holy Spirit. Theol. Wirceburg. 178.-188., I. M. 481. 483.

115. On the Minister and Subject of Confirmation

1. Andrew, a Greek, confirmed by a Greek presbyter in Greece, since he is now staying in Italy, is uncertain about the validity of his confirmation, and asks whether he can be confirmed again by a Latin bishop.

Quaer. What is to be said of the Case?

R. Andrew cannot be confirmed again by a Latin bishop. For he was validly confirmed by a Greek presbyter. The ordinary minister of confirmation is indeed the bishop alone; and, from legitimate delegation, any presbyter. Trid. c. 7. c. 3., Benedict XIV, C. Eo quamvis § 8. This delegation is reserved to the Holy See. But whether it is reserved to the Holy See by ecclesiastical law only or by divine law is not equally certain. As may be seen in the Collectanea S. C. de P. F. n. 669. seqq., the faculty is granted to Vicars Apostolic of delegating simple presbyters to administer the sacrament of confirmation. But from the most remote antiquity Greek or Eastern presbyters confirm, in baptism itself, those whom they baptize. It is indubitable that confirmations of this kind are licit and valid where the Holy See has not later disapproved them, as among the Bulgarians, Italo-Greeks, etc. Benedict XIV, C. Anno vertente, 18 June 1759. They are ratified, moreover, even though they have been performed by schismatics. For, since they were as it were tolerated, after the Photian schism jurisdiction in this matter was not taken away. Cf. Collectan. S. C. de P. F. n. 674. seqq. It is likewise indubitable that Greeks validly confirm even outside baptism. Wherefore Andrew's confirmation is to be held as altogether valid. - D'Annib. 282., Theol. Virceburg. 195. seqq., Benedict XIV, de Syn. l. 7. c. 7.

2. John, a missionary, while giving spiritual exercises in one of his Christian communities, with a great crowd of Christians running together from every side, is called to confirm a little girl near death in a place rather distant, so that he would have to interrupt the mission to its great detriment.

Quaer. Whether John is bound to confirm the dying person, as in the Case?

R. Negatively. For the missionary, an extraordinary minister of confirmation by pontifical delegation, cannot be bound more than the bishop, the ordinary minister. Moreover, bishops are excused from confirming the dying where there is inconvenience. Cf. St. Alph. l. 6. n. 175., La-Croix. l. 6. p. 1. n. 388. 390.

3. Ernest, a missionary, administering the sacrament of confirmation by delegation of the Holy See, is accustomed to use a rochet, miter, pastoral staff, ring, and pectoral cross. Does he act rightly?

R. Ernest does not act rightly. If he is not marked with the episcopal character, or if at least the use of pontificals does not belong to him from a true and legitimate privilege, he ought to administer confirmation in church clothed in sacerdotal vestments, or at least clothed with alb and stole. But if he administers confirmation outside a church or oratory in private houses less solemnly, he should not omit using at least the stole, if he cannot have a surplice. S. C. de P. F. 23. Apr. 1774., 4 May 1774. Collectan. S. C. de P. F. n. 665.666.

4. "The triple sign of the cross which is made by the confirming bishop over the one confirmed, while he pronounces the words, in the name of the Father: ought it to be made with the thumb upon the forehead of the one confirmed, or simply with the hand, without contact with the forehead, over the person confirmed?

R. According to the Pontifical, while he anoints the forehead with chrism he ought to say: I sign you with the sign of the cross, making the sign upon the forehead itself with the thumb; and when this has been done, with the hand extended toward the one confirmed, he begins: In the name of the Father, etc., forming the sign of the cross three times in the customary manner." S. R. C. 7 May 1853. n. 3012.

5. "In the administration of the sacrament of confirmation nothing stands in the way of your committing the wiping away of the sacred chrism to acolytes, in the absence of a priest or of another constituted in sacred orders, since no general decree prohibits this, especially when necessity is urgent." From the Letters of S. C. de P. F. 20 May 1786 to the Vicar Apostolic of Eastern Tonkin.

6. Peter, a missionary, called to confirm a certain adolescent in some Christian community, seeing that there is no man there who may fulfill the office of sponsor, commands a virgin catechist to fulfill the office of sponsor-woman. - Does he act rightly?

R. In the administration of confirmation a sponsor is required, who ought to be one, confirmed, and of the same sex. But confirmation can licitly be conferred without a sponsor, if one is not available.

Wherefore Peter would have done better if he had administered confirmation with no sponsor employed. Cf. St. Alph. l. 6. n. 185. 187., Enchir. Moral. 494., I. M. 494. But could Peter himself not have performed the office of sponsor? To S. C. de P. F., 21 Sept. 1843, the doubt was proposed: "Whether it is lawful for priests who administer the sacrament of confirmation to act at the same time as sponsors"; and it answered: "It is not to be tolerated."

7. Anastasius, a missionary enjoying the faculty of administering confirmation, administers it to all infants in the place of the mission where he himself is staying, immediately after baptism. - Does he act rightly?

R. Anastasius, speaking per se, does not act rightly. This is clearly proved from the Constitution of Benedict XIV, Eo quamvis, 4 May 1745: "Although among the western Churches the simultaneous conferral of baptism and confirmation was sometimes established in custom, and this custom in former time had grown up in some dioceses... nevertheless, this custom having been entirely abrogated by the Roman Church, mother and teacher of the others, by the most prudent decrees of the Supreme Pontiffs it has been providently provided that the sacrament of confirmation be conferred on those reborn from the font of baptism only at that age in which the faithful, having put away the things that belonged to a child, would understand that baptism and confirmation differ from each other as much as, in natural life, generation differs from growth; and that they themselves had indeed been received into the militia through baptism, but through confirmation had been strengthened for battle and instructed by grace to bear contests." But a far lesser age is required for admitting persons to the sacrament of confirmation than for admitting them to first communion, as the Roman Catechism 18 hands down, and Benedict XIV, de Syn. l. 7. c. 10. n. 2. 3, teaches. S. C. C. 19 Nov. 1854., I. M. 489.

Nevertheless, sometimes confirmation can be conferred, for a just cause, even on those younger than seven years, as St. Charles hands down in Conc. Mediol. 5. tit. Quae ad Confirm. Sacr. pertinet: "If the bishop, because of some just and indeed necessary cause, should sometimes judge that it is to be ministered to a little child and infant who not only does not complete the age of years, but does not even reach it, let it not be forbidden." Cf. Cas. Bon. Dioec. year 1786. Month of Oct. Cas. 3.

8. Elodia, a matron rather careless about Christian duties, reached an advanced age without having received the sacrament of confirmation, although she had rather often had the opportunity of receiving it. Her confessor indeed several times induced her, when a new opportunity was given, to arm herself with so great a sacrament; nevertheless, he feared to urge her under grave obligation, lest, with the law neglected, she would thereby sin more gravely. And so it happened that the woman a little afterward died without the help of confirmation, though fortified with the other sacraments.

Quaer. What is to be said of the Case?

R. According to all, the sacrament of confirmation is not necessary by necessity of means. But whether it is necessary by necessity of precept is disputed. "It is a question," says D'Annib. 283., "whether this sacrament is necessary by necessity of precept; some deny it, others affirm it and think it is grave: therefore the law is doubtful." Cf. I. M. 490. "But while the controversy of theologians stands, Elodia was not to be urged under grave obligation to receive the sacrament of confirmation,

but only to be exhorted to this. Therefore the confessor acted rightly by abstaining from declaring a grave obligation. Indeed, even if the divine obligation were established, the confessor would still have acted prudently, since there was room for fear that the woman would not satisfy the declared obligation and would incur greater detriment of soul. For not all obligations by which the faithful are bound are always to be opened at once; rather, several are sometimes prudently to be passed over by the confessor, when it is foreseen that the penitent will not satisfy his duty." G. 246.

On the Eucharist

116. On the Matter and Form of the Eucharist

1. Donatus, a new priest, celebrating his first Mass, confected the Eucharist from bread indeed of wheat, baked by pure fire, but kneaded with rose-water; and from wine expressed from sour grapes, or not mature grapes, to which nevertheless sugar had been mixed, so that it altogether had the flavor of sweet wine.

Quaer. Whether Donatus consecrated validly?

R. As regards the bread kneaded with rose-water, the matter is doubtful, and therefore this species was doubtfully consecrated. In Rubr. de Defect. § 3. n. 2 it is said: "If it is made (the bread) from rose-water, or from another distillation, it is doubtful whether it is confected." But as regards the wine expressed from sour grapes or not mature grapes, from Rubr. de Defect. § 4. n. 1., the matter is altogether invalid, and therefore the sacrament was not confected. But the sugar mixed in could indeed have simulated the taste of wine, but could not make true wine.

2. "It was set forth by a Bishop of France that, since the wine of that place has an acid taste, due to an excess of tartaric acid, it is customarily sweetened with potassium tartrate, a salt which is extracted from the lees of wine, and which forms with the excess tartaric acid a potassium bitartrate that precipitates to the bottom of the cask. Meanwhile it was asked whether this wine so treated was lawful for Mass.

R. "It is not expedient." S. O. 9 May 1892. M. E. v. 7. p. 2. p. 204.

3. Paul, a missionary among Easterners, asks whether he can give communion to Easterners in his own Church of the Latin rite, and whether he can give them communion in unleavened bread.

4. Peter, likewise a missionary among Easterners, asks whether Latins can receive communion in the Churches of the Easterners, and whether they can receive communion in leavened bread.

Quaer. What answer is to be given to each missionary?

R. In the Letter of S. C. de P. F., 30 Apr. 1862, to the Apostolic Delegate of Egypt, these things are contained as regards the proposed questions: "The second doubt concerns the reception of the sacraments which the Easterners make in the Latin Churches, namely of penance and of the Eucharist... Regarding the sacrament of the Eucharist, it is fitting to distinguish the Easterners who, according to their own rite, use unleavened bread, from those who use leavened. For the former there is no prohibition, nor can the Eastern bishops forbid their own subjects to receive the Eucharist from Latin missionaries in their churches, it being well understood in cases in which parochial right does not enter. But for the others, that is, for those who, in Eucharistic matter, use leavened bread, it must first be noted that they also can receive holy communion in Latin churches, provided they receive it according to their own rite, and from national priests, as Benedict XIV teaches in the Encyclical

Allatae sunt, at numbers 33, 35, 36. Indeed, sometimes this is a necessity for those places where the Easterners do not have churches of their own rite. But it is another thing if the users of leavened bread wished to receive communion from the Latins in unleavened bread. Two rules have been established for the users of leavened bread: the first is that they cannot at their own choice communicate in unleavened bread when they have the opportunity of doing so in their own rite; the second is that when there occurs the difficulty of communicating in leavened bread, they can do so also in unleavened bread, not only in the article of death and to fulfill the Easter precept, but also in other cases, as is established in the pastoral instruction of Benedict XIV, Eo quamvis tempore § Neque etiam.

"In the third doubt the Latins are treated, that is, the users of unleavened bread. These can communicate in the Eastern churches in their own rite from priests who use unleavened bread, but they cannot without pontifical dispensation communicate in leavened bread, even though there should occur the difficulty of communicating in unleavened bread. The maxim is found established in the Constitution Etsi pastoralis of Benedict XIV, n. 12 of § VI, where it is said absolutely that Latin laypeople are altogether prohibited and forbidden to receive communion from Greek presbyters under the species of leavened bread. Consistently, the Holy Office and the Sacred Congregation of Propaganda have always prohibited the users of unleavened bread from communicating in leavened bread; and only in the cases in which there occurred the total lack of priests of their own rite, and of those of another rite in which consecration is made in unleavened bread, have they implored for them the pontifical dispensation, which, however, has not been granted except for the two cases of true necessity, namely of Viaticum and of the Easter precept." Collectan. S. C. de P. F. n. 735. I. M. 505.

But very recently, by the Decree of the same S. C. de P. F., 18 Aug. 1893, Monitore Ecclesiastico Conversano v. 8. p. 2., p. 79., "to all the faithful of whatever rite, whether Latin or Eastern, dwelling in places in which there is no church and priest of their own rite, the faculty is granted in the future by the Holy See of receiving Most Holy Communion, not only in the article of death and for fulfilling the Easter precept, but also at any time for the sake of devotion, according to the rite of the church existing in the aforesaid places, provided it is Catholic."

And in Blessed Leo XIII, Orientalium dignitas, the day before the Kalends of December 1894, these things are contained: "Where there is lacking a priest of their own rite to whom the Eastern Patriarch may entrust the spiritual administration of his own people, there let a parish priest of another rite undertake their care, one who uses the same species as they themselves, unleavened or leavened, for consecrating; those are to be preferred who use them in the Eastern rite. - But let the faithful have the faculty of communicating in either rite, not only in those places where no church nor priest of their own proper rite is available, as was decreed by the Sacred Council for propagating the Christian name on 18 Aug. 1893, but also where, because of the distance of their own church, they cannot approach it except with grave inconvenience; concerning this let the judgment belong to the Ordinaries. And let this remain fixed: that one who has communicated by another rite or on another day is not therefore to be judged to have changed rite, but in all other duties continues to remain attached to his own parish priest...

"For a woman of the Latin rite who has married a man of the Eastern rite, as also for an Eastern woman who has married a Latin, it will be intact that, on entering or during the marriage, she may

pass over to the rite of the husband; but when the marriage has been dissolved, there will be free power of resuming her own rite."

From these Documents the solution to be given to each missionary is clearly evident.

5. A Latin priest, in consecrating the bread, omitted the words which precede the consecration, who on the day before, etc. But a Greek priest, in consecrating the bread, omitted the words, which shall be given for you.

Quaer. Whether each consecration was valid?

R. Affirmatively. There are not lacking those who hold that those words who on the day before, etc., although they are not part of the form, nevertheless are necessarily required for the validity of the form. But this opinion, as Lugo says, d. 11. n. 39., is rejected by all. The altogether convincing reason is that the Fathers and Councils say that this sacrament is confected by the words of Christ, and not by others. But those words who on the day before, etc., are not the words of Christ, but of the Evangelist. Cf. Conc. Flor. Decr. pro Iacob. E. M. 521.

But although the Greeks add to the form of consecration of the bread those words, which shall be given for you, nevertheless these do not belong to the essence of the form. For, as the Roman Catechism says, n. 19., "we are taught by the holy Evangelists Matthew and Luke, and likewise by the Apostle, that this is the form: This is my Body. For it is written: While they were dining, Jesus took bread and blessed and broke it, and gave it to his disciples, and said: Take and eat, This is my Body. Since this form of consecration was indeed observed by Christ the Lord, the Catholic Church has perpetually used it." - Lugo d. 11. s. 3., D'Annib. 241. 387., I. M. 521. 524.

6. Laelius the sacristan warned Narcissus the priest, who was soon to celebrate, that he should wish to consecrate the small host already placed upon the altar. But at the time of the oblation, since he had not found the small host upon the altar, he made the oblation in the usual manner of the larger host, and consecrated it. But then, folding the Corporal, he found the small host, which had been placed under the Corporal.

Quaer. Whether the aforesaid small host was consecrated?

R. It seems that that small host was not consecrated. The reason is that, since Narcissus sought it upon the altar and did not find it, he seems already not to have had the intention of consecrating another host than the larger host. Wherefore he implicitly retracted the intention he had previously had. Moreover, those words, this and here, signify matter that is certain, present, and placed nearby. Wherefore, just as the consecration would be invalid if the matter were placed far away, for example, if it were more than 50 paces away, so also it would be invalid if the matter were not placed in sight, for example, if it were placed in a pyx kept in the tabernacle. Hence the consecration is also not valid if the host is placed under the corporal. - I. M. 510.

"For consecration it is required," says Castropal. punct. 6. num. 5., "that the matter to be consecrated be present to you, so that you can point it out by the pronoun this or here, and perceive it by sense; otherwise it will not be present to you in a moral and human manner. It does not stand in the way of this presence that it is contained in some vessel or linen cloth; for by reason of the container the content is present to you. It would be otherwise if bread or wine were placed behind a wall or a linen

cloth, because then by no sense can you point out that matter. And it is the same if the bread exists under a cloth, or in the tabernacle, because it does not exist there as in a container which can be perceived by sense. Thus Suar., Vazq., Bonac., Aegid. de Coninch., Paul. Laymann." La-Croix l. 6. p. 1. n. 443. 444., D'Annib. p. 3. n. 388.

7. Aloysius, lying ill with a grave disease, after sacramental confession had been completed, received Viaticum. As soon as the sacred host had descended into the stomach, Aloysius is seized by a sudden and unexpected vomiting, and casts out the sacred host, which appears intact. The physician is consulted, who declares the matter altogether accidental, and says that Aloysius can receive Viaticum again without any new danger of vomiting. Wherefore Aloysius and his parents ask the parish priest to be willing to minister the Most Holy Viaticum again after lunch.

Quaer. Whether the parish priest can minister the sacred Viaticum again in the Case?

R. Negatively. For it is contrary to the practice of the Church to minister sacred Viaticum twice in a day, and while the same danger of death remains, to the sick person. For Aloysius, notwithstanding the vomiting, truly received Viaticum. For it was altogether verified that he ate the Body of Christ. Wherefore he also received sacramental grace. I. M. 496. For the use of this sacrament is had in the eating of the Body of Christ; when this eating has been verified, the fruit of the sacrament is received, according to Christ's clear promise of grace to be given: He who eats the bread shall live forever. But eating in this sacrament must certainly be understood as in other foods, which certainly, in a human manner, are said to have been eaten not when they are only in the mouth or in the throat, but when they have already descended into the stomach, and are already judged to have been irrevocably swallowed. Cf. Lugo d. 12. s. 2.

117. On the Minister and Subject of the Eucharist

1. Xaverius, a parish priest, very occupied at Easter time in hearing confessions, commits communion to be distributed to the people to Stephen the deacon. For otherwise he himself would have to distribute it, not without inconvenience to the parishioners, whose confessions he would often have to defer to another day, since no other priest is present in that parish.

Quaer. Whether rightly?

R. Togni, Instruct. etc. p. 1. c. 6., seems to deny it. For although generally he first says that a deacon can administer the Eucharist by delegation in a case of necessity, nevertheless afterward he raises the question: "Can a deacon dispense the Eucharist when a presbyter is present?" And he answers: "By no means; for this is forbidden to him by Can. 15 of the Second Council of Arles and Can. 38 of the Fourth Council of Carthage." Likewise he raises the question: "Are the sick to be refreshed with the Eucharist by a deacon?" And he answers: "Negatively, except in a case of necessity, namely, if a priest is lacking and the sick man is in danger of life."

But these things are against the common doctrine; and therefore the proposed question must be answered: Affirmatively. For a deacon can, in grave necessity and by commission, distribute communion to the people, according to the common opinion of the doctors. I. M. 527. Pavone aptly

has these things, Spicilegio, dissert. 9. num. 208: "The deacon can touch the Eucharist when, serving the priest, he either exposes it in the Ostensorium, or replaces the particles in the pyx, or in need administers it to the people. The words of the Fourth Council of Carthage, A.D. 399, Can. 35, related Dist. 93. C. Praesente 18, are: Diaconus, praesente presbytero, eucharistiam... populo, si necessitas cogat, iussus eroget, 'Let the deacon, in the presence of the presbyter, if necessity compels, distribute the Eucharist to the people when ordered.' And earlier, in canon 14 of the Council of Nicaea, it was established concerning deacons that si non fuerit in praesenti vel episcopus, vel presbyter, tunc ipsi proferant, 'if neither bishop nor presbyter is present, then they themselves may bring it forth.' This canon is thus reported by Rufinus, priest of Aquileia: Si vero presbyter nullus sit in praesenti, tunc demum etiam ipsis licere dividere, 'But if no presbyter is present, then at last it is lawful also for them to distribute.' Conc. Nic. I. A.D. 325, apud Labbé in amplis. collect. Gelasius I spoke in the same way when writing to the Bishops of Lucania, Bruttium, and Sicily: deacons, he said, Sacri Corporis prorogationem sub conspectu Pontificis seu presbyteri, nisi his absentibus, ius non habeant exercendi, 'do not have the right of exercising the distribution of the Sacred Body in the sight of the Pontiff or presbyter, unless these are absent.' Labbé ibid. a. 492. Epist. 9. c. 8. Therefore, when the priest is present, the deacon, besides necessity, needs his commission in order to dispense the Eucharist; but when he is not present, necessity alone is enough. Then the priest can give him such a commission when he himself is impeded. Colet, speaking of the deacon, who cannot indiscriminately, says: ut quilibet sacerdos, sed tantum, vel absente sacerdote, vel, eo quidem praesente sed iustas ob necessitates, sacram synaxim dispensare potest, 'as any priest can, but only when the priest is absent, or when he is indeed present but because of just necessities, can he dispense the sacred synaxis.' Th. Mor. c. 5. de Min. euch. art. 2. And this, he continues to say, is lawful even in places where it has never before been practiced; because, since such commission was always given to deacons in the first centuries in the East and in the West, although this custom has ceased because of the multitude of priests, nevertheless when need occurs in the present time, the same commission can be given; potest enim Ecclesia quidquid olim potuit, 'for the Church can do whatever it once could.' And in order not to cause scandal to the people, who have not yet seen communion administered by deacons, it is necessary to instruct them that this is lawful. But what is the necessity that makes it lawful? When there is no commission of the priest, the only case of necessity would be the administration of Viaticum, which cannot be deferred until a priest comes; because although, as we have seen, the Council of Nicaea and Pope Gelasius permitted this without necessity, for the absence of the priest alone, nevertheless today, because of the change of discipline, all the sacred doctors restrict it to the said necessity. But when the said commission is present, the just cause is, as Suarez writes, quod sacerdos sit debilis vel infirmus, 'that the priest be weak or ill,' de Sacr. euch. d. 72. s. 1.; and according to the opinion of Leander adopted by Amort: Si sacerdos sit debilis, infirmus, aut aliis exercitiis impeditus, aut si non possit communicare tot homines, et non sit alius sacerdos, qui id velit vel commode possit efficere, 'If the priest is weak, ill, or impeded by other exercises, or if he cannot communicate so many people, and there is no other priest who would wish or could conveniently accomplish this.' Th. Mor. disp. 5. de Euch. § 6. quaest. unic. § 3. For example, says Cavalieri, si sacerdos sit occupatus in audiendis confessionibus, 'if the priest is occupied in hearing confessions.' To. 4. decr. 13. c. 4. n. 6."

Lugo, de Sacr. euch. d. 18. n. 27., says: "It is doubted secondly: whether in fact a priest can now commit to a deacon that he minister the Eucharist. The answer is that he can in necessity, which is

not restricted to the sole case of giving Viaticum to a dying person, but extends more broadly, as if the priest is impeded and cannot distribute the Eucharist to the people." Cf. also ibid. n. 2. seqq.

St. Alph., l. 6. n. 237. q. 1., says: "There is no doubt that a deacon can minister the Eucharist in necessity... They commonly say that grave necessity suffices, namely when no priest is present who can conveniently minister... In extreme necessity, when the priest is absent, the deacon will be able and will be bound to minister Viaticum, even without commission... When the deacon ministers the Eucharist, he ought to be clothed with surplice and transverse stole."

2. "Several times it has been asked of us whether a deacon can lawfully expose the Eucharist, not indeed by serving the priest, which is already known to be lawful, but by himself alone, as principal. This doubt is not read among the Moralists, but there is a very valid reason for resolving that it is not permitted to him to do this, except in the case in which every priest is lacking. For Diaconum enim oportet ministrare ad altare, 'it belongs to the deacon to minister at the altar,' says the Roman Pontifical; and later: Comministri et cooperatores estis Corporis et Sanguinis Domini, 'You are co-ministers and co-operators of the Body and Blood of the Lord.' Therefore, when priests are present, it belongs to them to act as principals, and to the deacons to assist them and to perform the part of co-ministers and co-operators. But in the absence of priests, they can indeed supply, and expose the Venerable Sacrament with their express or tacit commission. Thus, both when they expose it and when they administer it in communion, they ought to wear the stole hanging from the left shoulder and bound under the right. When communion is finished, they cannot give the usual blessing to the people, as the doctors warn; and if, when a priest is lacking, they make the exposition, they will not be able to bless the people with the Sacrament." Pavone, Spicilegio, diss. 9. c. 1. n. 209.

But the following Decision of S. R. C. is present:

"Can a deacon who, by mandate of his vicar, carries sacred Viaticum to the sick, make sprinklings of holy water, say Misereatur, Indulgentiam, sign the sick person or himself, say Dominus vobiscum with the prayer, and bless the sick person and those assisting with the Most Holy Sacrament?

R. If a presbyter is lacking, and with the concurrent license of the apostolic vicar, affirmatively in all." S. R. C. 14 Aug. 1853. n. 3074.

3. "Can a bishop by his own right grant the faculty of reserving the Most Holy Sacrament: 1. In churches or public chapels which do not enjoy a parochial title, even if they serve the utilities of the parish; 2. In public chapels of pious Communities, that is, those whose door opens onto a public street, or into an area communicating with a public street, and which are opened to all inhabitants; 3. In chapels or interior oratories of pious Communities, when they do not have a public chapel or oratory in the sense explained, as, for example, in seminaries.

R. An indult from the Holy See must be implored as regards all the requests." S. R. C. 8 March 1879. n. 3484., I. M. 549.

4. Sebastian, a parish priest, denies the Eucharist to all whom he himself judges to be of rather rude understanding. - Does he act rightly?

R. Negatively, "unless they are altogether incapable of this mystery." Clement IX, C. In excelsa, 13 Sept. 1669. But they will be capable where they discern spiritual food from bodily food. And this has place even if it is a question of ministering Viaticum, as is drawn from the following Decision of S. I. C.

"Whether Viaticum is to be administered to those neophytes who, in the article of death, having been baptized by Christians, are ignorant.

R. Viaticum is not to be administered to these neophytes unless they at least discern spiritual food from bodily food, by knowing and believing in the presence of Christ the Lord in the Sacred Host." S. O. 10 Apr. 1861.

5. Robertinus, a confessor, very rarely permits communion to his penitents outside Easter time; because, he says, penitents very rarely have that necessary preparation or devotion by which one ought to approach sacred communion. But he permits frequent communion to scarcely anyone, since there is scarcely anyone who is free not only from mortal sins, but even from venial sins.

Quaer. What is to be said about Robertinus's manner of acting?

R. Robertinus's manner of acting is altogether to be disapproved. The necessary preparation by which one can approach sacred communion is indeed that, and no other, concerning which the Apostle says: But let a man prove himself, and so let him eat of that bread and drink of the chalice; for he who eats and drinks unworthily eats and drinks judgment to himself.

The Council of Trent, sess. 13. cap. 7., says concerning this necessary preparation of the soul: Wherefore, to one wishing to communicate, that precept, namely of the Apostle, must be recalled: But let a man prove himself. But ecclesiastical custom declares that this proof is necessary: that no one conscious to himself of mortal sin, however contrite he may seem to himself, ought to approach the sacred Eucharist without sacramental confession having first been made. But in cap. 8 immediately following, it exhorts the faithful to receive that supersubstantial bread frequently. And finally, sess. 22, de Sacr. missae, cap. 6, it speaks thus: The holy Synod would indeed desire that in each Mass the faithful standing by should communicate, not only by spiritual affection, but also by sacramental reception of the Eucharist.

Therefore, if from these judgments of the Tridentine Fathers taken together we search out their mind thoroughly, we shall certainly have this as explored: that those indeed are to be removed altogether from the Eucharistic table who, oppressed by consciousness of mortal sin, are judged unworthy of so great and so singular a gift of God. Wherefore, if from indications of sorrow and from amendment of new life the confessor does not doubt that sacramental absolution can be imparted to his penitents, neither ought he to hesitate that the same are now sufficiently disposed for eating the Lord's bread. Nor indeed can such penitents, thus disposed and prepared, be repelled from sacred communion indiscriminately and without grave cause, namely, if they have been held worthy of the benefit of sacramental absolution. Indiscriminately and without grave cause; for, for those who are accustomed to commit grave sins, and who, since they have contracted disordered habits and are careless of their own salvation, easily slip afterward into graver crimes to be committed, the salutary remedy of medicinal severity can sometimes be applied.

Moreover, from the cited texts of Trent it is clear that the Tridentine Fathers persuade the faithful to frequent use of the Eucharist; indeed, that they desire that in each Mass the faithful standing by become participants from the Eucharistic table. But it would be altogether useless to exhort the faithful to frequent communion; and the daily communion of the same faithful could not only not be desired, but not even hoped for, if those alone were refreshed by the Eucharistic bread who were free from every stain even of lighter fault. Wherefore all those who are not yet free from venial sins are not indiscriminately to be barred from frequent communion.

If confessors diligently weigh these things, they will certainly see that the custom of those is not to be praised who, in order to permit communion to their penitents, demand, because of the dignity of the sacrament of the Eucharist, certain singular and scarcely to be hoped-for dispositions, and far greater ones than those which suffice for obtaining absolution in the sacrament of penance. - And as regards granting frequent communion, certainly greater devotion of the faithful is to be stirred up; they are to be more sharply inflamed to detestation of past crimes; and those inclined to venial sins are to be efficaciously stirred up to detestation also of these; then a certain hunger, as it were, and vehement desire for Eucharistic food is to be stirred up, so that with the greatest reverence and piety they can receive it. But just as the strength of the body is sustained by food itself, so the languor and infirmity of the soul is driven away and strengthened by this spiritual food by which we are fed. Whence Augustine says in Serm. de verb. Apost.: Daily you sin, daily receive. And if anyone attends diligently, he will discover that the opinion of all the Fathers who have written concerning this matter was the same. Catech. Roman. n. 60., Instr. S. C. de P. F. 19 Apr. 1784., Collectan. n. 719., Ferrar. Supp. v. Communio, Gennari Sulla Comun. freq. I. M. 579.

6. Aloysius, a priest, has already for a year been hearing the confessions of Stanislaus, a nine-year-old boy, commendable for keen intelligence and innocence of morals. Now Aloysius, after first obtaining the consent of the parents, leads him, duly imbued with the rudiments of faith and very desirous of receiving the Eucharist, to the parish priest, so that, after prior examination, he may admit him to first communion. Nevertheless the parish priest refuses because Stanislaus has not yet attained the legitimate age. For he has it as a custom not to admit boys to first communion unless they have at least reached twelve years, relying, as he himself says, both on the common practice of the other parish priests and also on the congruity of the matter itself, for which congruity he brings forward a twofold reason: namely, 1. because of the greater reverence for so great a sacrament; then 2. because of the more abundant fruit of the one receiving. But Aloysius, making little of the reasons brought forward by the parish priest, with the precept of Easter communion urging, administers the Eucharist to Stanislaus on Easter day itself. When the parish priest learns this, he has recourse to the bishop against Aloysius, as though Aloysius had usurped the privative right of parish priests. But the bishop, having been made more certain about the whole matter, proposes the case to be resolved by his vicar general.

Quaer. 1. What discretion is to be required in the present matter; and when do boys have this discretion? - 2. Whether admitting boys to first communion belongs exclusively to the parish priest? - 3. What is to be said of the Case?

R. To the first. The discretion required in the present matter is described thus in the Roman Catechism 57: namely, that the faithful "discern table from table, this sacred table from other profane tables, this heavenly bread from common bread. And this happens when we believe with certainty that the true Body and Blood of the Lord is present, whom the Angels adore in heaven, at whose nod the pillars of heaven tremble and fear, of whose glory heaven and earth are full. This, namely, is to discern the Body of the Lord, which the Apostle admonished." And the same Roman Catechism n. 62 says that it is not fitting to minister the Eucharist to boys not yet using reason, and it adds this reason: "For these neither know how to discern the sacred Eucharist from common and profane bread, nor can they bring piety of soul and religion to receiving it. And this also seems most alien from the institution of Christ the Lord. For he says, Take and eat; but it is sufficiently clear that infants are not suited to receive and eat." And the doctrine of the Sacred Congregations is the same; they require discretion by which one discerns spiritual food from bodily food, by knowing and believing in the presence of Christ the Lord in the Sacred Host. Cf. Enchir. Moral. 568.

Moreover, boys do not have this discretion immediately when they obtain the use of reason; for then they have the first discretion of good and evil, but they certainly do not have this more perfect discretion unless they first have obtained a more perfect use of reason and have been duly instructed in the matters of faith. When precisely, then, do they have this discretion? From the more common opinion of the doctors and from the general rule, boys are not obliged to communion before the ninth or tenth year of age; but beyond the twelfth year communion is not to be deferred for them. I. M. 560. Wherefore at this age, from the general rule, boys conveniently instructed certainly have the discretion required for communion. But this general rule certainly does not prevent boys in particular cases, by reason of a precocious development of the use of reason, and of better and more accurate instruction, from having, even before this age, sufficient discretion for receiving communion. And this age, as is clear, is varied in the aforesaid particular cases, according to the various circumstances.

To the second. In the first communion of boys, two things can be considered. The first is the communion itself; the other is that external ceremony which is customarily used in the first communion of boys. As regards the communion itself, two things can be attended to in it: one is admission to first communion, the other the place of first communion. Although admission to first communion can, in particular cases, pertain also to the parish priest, it certainly does not belong exclusively to the parish priest, nor does it belong to the parish priest per se and principally. For admission to first communion belongs per se to him to whom it belongs to judge concerning the sufficient instruction, and concerning the sufficient disposition of soul, of the boy for receiving first communion. And this judgment belongs per se and principally to the parents, to whom the education and due instruction of the boy belongs by force of paternal authority, and to the confessor, before whom the boy confesses his sins. And thus the judgment of Easter communion itself, whether someone ought to receive it or ought for a time to abstain from reception of this kind, belongs, from Cap. Omnis utriusque sexus, to one's own priest, that is, to the confessor. Benedict XIV, Inst. 18. n. 6. seqq., I. M. 560.

But as regards the place, no place is prescribed by common Law for first communion. A place in communion is not found determined in the Law except only for Easter communion. Benedict XIV, Inst. 18. n. 7. seqq. Therefore, if boys make first communion during Easter time and so that they may

satisfy the Easter precept, then certainly, speaking per se, that communion seems to be received in the parish church.

As regards the exterior ceremony of first communion and its solemn form, this indeed belongs to the parish priest by right and obligation together, because of the good of the parish itself, which he is bound to promote; but it is established by no general law that this exterior ceremony and solemn form belongs exclusively to the parish priest. Indeed, the contrary is positively established from the Declarations of the Sacred Congregations, since a public ceremony of this kind is asserted to be of exclusively parochial right only in those places where legitimate prescription and custom vindicates this for itself. Cf. Enchir. Moral. 560. And, if it does not belong to the parish priest by exclusive right to admit boys to first communion, and first communion is not per se to be received in the parish church, how can the exterior ceremony and solemnity, which accompanies the first communion of boys, belong to the parish priest by exclusive right?

To the third. The custom of the parish priest of not admitting to first communion unless the boys are twelve years old cannot be approved, and consequently, speaking per se, the common practice of the other parish priests cannot be approved. For if boys of this kind are duly disposed, already before this age, from the Lateran Council, C. Omnis utriusque sexus, they can and ought to approach the sacred synaxis; and if they are duly disposed, as is supposed, they will receive it with due reverence and with fitting fruit. From this it appears that the practice of the other parish priests invoked by the parish priest, and the twofold reason of congruity which he brings forward, have altogether no force.

But as regards Aloysius, in that he himself, Stanislaus's confessor, after first obtaining the parents' consent, admitted Stanislaus to first communion, he acted altogether rightly, following in this matter the doctrine of the Roman Catechism n. 63. But in that he himself privately gave communion to Stanislaus during Easter time, he also does not seem to be blameworthy; but then Stanislaus is bound to receive communion again in the parish church, since he is now bound by the precept of Easter communion in his own parish. Finally, because Aloysius gave communion to Stanislaus on Easter day itself, generally speaking, he seems blameworthy; since on Easter day it is commonly prohibited to distribute communion to the people in other churches besides parochial ones. I. M. 528. But in the Case there can be no difficulty concerning the exterior ceremony and solemn form; for this regards the first communion of several boys together. M. E. v. 10. p. 2. p. 22.

7. Leonard, a presbyter, returning from a journey with other friends, very fatigued, sits down at table at half past the eleventh hour of the night, so that he may be briefly refreshed. But while talking and eating with his friends, time flows by as quickly as possible, so that, astonished, he notices while drinking that midnight has already passed. Nevertheless, since on the following feast day he cannot omit Mass without offense to the people, he celebrates Mass without scruple.

Quaer. What is to be said of the Case?

R. "Leonard, who cannot omit Mass except with scandal or offense of the people, can probably celebrate, because it is better to avoid the greater evil, or scandal of the people; for it is a lesser evil to celebrate Mass than for the whole people to be offended with scandal, and to be deprived of Mass on such a day. Thus grave theologians against others. See La-Croix n. 582." Thus Fr. Gury 294. 299. 300., I. M. 595.

Nevertheless, the following Decision of the Holy Office, 2 Dec. 1874, must be attended to: "Whether, by reason of scandal or wonder, the second Mass after the first can ever be celebrated when the fast has already been broken? - R. Negatively." Collectan. S. C. de P. F. n. 793., E. M. 595.

8. Ferdinand, a missionary, doubts whether he can minister sacred communion by way of Viaticum to Francis when he is not fasting, concerning whose illness it is doubted whether it is mortal or not.

Quaer. What is to be said of the Case?

R. Ferdinand can minister Viaticum; for while that doubt stands, although Francis is not in the article of death, nevertheless he is in danger of death. For there is danger of death when there is a probable doubt, and death is often accustomed to happen in such a Case. But if the doubt is merely negative, because namely neither could a physician be questioned about the gravity of the disease, nor is the sick man himself or the missionary capable of forming a judgment, then Viaticum is still to be administered, and one must not proceed scrupulously in this matter, since in the Council of Constance, sess. 13, the sick are simply excepted from the law of fasting. St. Alph. l. 6. n. 285. dub. 3. in fine., I. M. 596. Indeed, often it cannot be established whether the disease is truly lethal or not; and then the Church, a pious mother, is rightly presumed to wish in such a doubt to favor the sick person, especially since daily experience establishes that many sick persons, beyond everyone's expectation, die without Viaticum. This has force especially when the sick person is far distant from the church, or when, in mission places, the missionary cannot return again to the sick person, because then he is exposed to the greater danger of dying without being refreshed by the sacraments. G. 306., Lig. H. A. 46.

118. Application of the Mass

1. "Whether a missionary can receive the alms of the Mass and apply it according to the mind or intention of a pagan offerer, who has as his purpose obtaining healing from illness, or liberation from prison and from the capital penalty which hangs over him?

R. "Affirmatively." S. C. de P. F. 11 March 1848., Cf. Enchirid. Moral. 368., I. M. 610.

2. In a certain religious community the father procurator was accustomed at the beginning of each month to distribute Mass intentions among the fathers dwelling in the same community. The same procurator received the stipends of these Masses abundantly, so that there were never lacking to him Masses to be distributed. Since at the beginning of some month a certain father forgot to go to the father procurator, and to ask from him new Masses to be celebrated, nevertheless he celebrated according to his intention. Hence the question was raised whether for that Mass the father procurator could retain a stipend from those already accepted, or whether a Mass had to be celebrated again.

R. It seems that the father procurator can retain the stipend for that Mass; nor does another seem to have to be celebrated. The reason is that that Mass was said for a certain and determinate intention. For that father knew both that the procurator had Masses with himself to be distributed, and that it

was his will that they be said by the fathers dwelling in that community. There is added the authority of Francis Sylvius, Op. tom. 5. Orat. 11., which is the first on anticipated Masses, Concl. 2. He resolves almost the same case, and says: "He who celebrates in anticipation according to the intention of one who is accustomed to have Masses to be commended to others, that is, before he has either been requested by him or has himself reminded him, does not act badly, and can receive the stipend from him without scruple." And for this same opinion he cites Reginald, Rodriguez, Fagundez, and Aragonius, who writes thus concerning the preceding assertion: Therefore these things are certain, and I judge that no one can doubt concerning them; in which way Peter Navarra also speaks, apud Sylv. l. c. - Claude La Croix affirms the same, l. 6. n. 220: "I can," he says, "apply a Mass for him whom I know in fact wishes to ask a Mass from me, although he has not yet asked. Except if I knew that he wished to ask for some effect toward which the sacrifice would not yet help"; and he cites Pasq. and Sylvius. - And below, answering the question: "Whether he satisfies who celebrates for him whom God knows will first give the stipend," after bringing forward doctors on each side he says: "It must be said with the common opinion that such an application is always made illicitly, and often also invalidly." Illicitly indeed because of the special prohibition made by Clement VIII; often invalidly, because often at that time the intention of the petitioner does not yet exist; indeed, often neither does the motive or cause of asking. And he adds, n. 222: "All the opposite things are in the chaplain of whom Burgh speaks. Nevertheless Vasq., Rayn., and Avers. admit that Mass can be read for one actually dead, for whom afterward a Mass will first be requested, with a stipend offered, because thus it is usefully offered for that determinate person, already in need and capable of the whole fruit." - G. 337. 345. 346., I. M. 618.

3. Benignus the confessor, having been requested by his penitent concerning the celebration of Mass for the soul of his mother, who had died the preceding night, with a rich stipend offered to him, indeed promised his penitent that he would celebrate Mass, but he refused to accept the stipend from him, and left it to him, saying: I will say the Mass all the same. But afterward, thinking that he had not received the stipend, he omitted to celebrate the Mass without any scruple. Another time the same Benignus did almost the same thing on a similar occasion, when a pious woman offered him a stipend for the celebration of Mass. He renounced the stipend, promising the Mass, but afterward celebrated the Mass in a second intention, because, he says, the Mass is of infinite value. Likewise, on another occasion, a certain noble man offered Benignus a thousand lire for the celebration of ten Masses. Benignus indeed promised the Masses, but not on this occasion either did he accept the stipend, and he asked that man to be willing rather to give that considerable sum as alms to some poor family. He then celebrated the Masses, but again in a second intention. Finally, Benignus is called to a dying man, who asked him what would be better, and also what he could do more usefully and fruitfully: whether namely to leave his inheritance to the poor, or to destine it to building a public church and to the celebration of Masses for his soul after death. Without hesitation Benignus answered: There is no doubt that it is better to leave your whole inheritance to be distributed among the poor, who are the living temple of the Holy Spirit, who represent the very Person of Christ.

Quaer. What is to be said of the Case?

R. Benignus in the first Case undoubtedly sinned. For he undertook from justice an obligation of celebrating Mass; for he promised that he would celebrate Mass in exactly the same way as if he had accepted the stipend. Also in the second Case Benignus sinned. For, voluntarily renouncing the stipend offered and at the same time promising the Mass, he is certainly understood to promise the same Mass which was requested with the stipend offered, which indeed is not satisfied by a Mass in a second intention. And there can be no doubt that if the matter as it is were manifested to that pious woman, she would rightly and deservedly think herself gravely deceived. To apply Mass in a second intention is, besides the primary intention of the application of the Mass, to make another application of the same Mass, according to the opinion that Mass can be applied indefinitely; which opinion is altogether less probable, and, if perhaps it is false, that application is null. Likewise, to apply in a second intention can be explained through a conditional application in substitution for the first, if perhaps this has no place. Thirdly, finally, to apply in a second intention can be equivalent to a certain special Memento. Hence also in the third Case Benignus sinned. For certainly, if that noble man had known Benignus's manner of acting, he would have gone to another priest for the celebration of the Masses, since he altogether intended it, and therefore was offering a wholly extraordinary stipend. Who indeed would not say that Benignus deceived that noble man in a very grave matter? Finally, Benignus did not answer rightly; for there can be no doubt that a work of Religion, such as the construction of a church, which is destined for the worship of God and for the public good of souls, likewise the celebration of Masses or the Eucharistic sacrifice, whose fruit redounds to the whole Church, and whence there is such glory of God that greater cannot exist in this world, are works more excellent and more useful and more fruitful than a work of corporal mercy, namely alms given to the poor. These works likewise are also more useful and fruitful for the soul of the deceased after death; since both the prayers of the faithful in that church and the sacrifice of the Masses can certainly have more worth before God for the suffrage of his soul than alms given to the poor. Hence, when there is room for moderation of pious legacies, because, for example, the revenues no longer suffice for all the prescribed works, first other pious works are deleted, and meanwhile the number of Masses is left intact. And if the number of Masses also must be restrained, and some are to be celebrated with chant, one must begin from these, so that the number of Masses may be diminished as little as possible. Benedict XIV, de Syn. l. 13. c. 25. n. 34.

4. Obligation of celebrating by reason of stipend - Lambertinus had accepted a stipend from Florimund for one hundred Masses to be celebrated. Since meanwhile other rich Mass stipends were offered to Lambertinus by others, Lambertinus accepted all these, and immediately celebrated the Masses. Hence he celebrated the aforesaid one hundred Masses over a space of six months.

Quaer. Whether Lambertinus celebrated the aforesaid one hundred Masses within the due space of time?

R. It seems that it must be affirmed, if Florimund indicated to Lambertinus no reason from which the aforesaid celebration would have to be urged more quickly, for example, if he had handed over a rich and extraordinary stipend, if it concerned a person very recently deceased, etc. A special reason of urgency being excluded, Lambertinus satisfied his obligation. For first, by celebrating one hundred Masses in the space of six months, he celebrates the accepted Masses almost continuously, for he celebrates them almost on alternate days. Nor does it seem that the one giving the alms can demand

more in the Case. Moreover, if for the obligation of one Mass a space of two months is commonly assigned, a greater space is certainly required when it is a question of several Masses. Wherefore, if it is a question of sixty Masses to be celebrated, a space at least twice as great seems to be granted, unless the offerer expressly declares otherwise. M. E. v. 1. p. 480., I. M. 624.

5. Martianus, having accepted a stipend for celebrating on a privileged altar, celebrated on another altar. But in order to gain a plenary indulgence for the deceased for whom he celebrated, after Mass he recited the prayer, En ego, o bone, etc.

Quaer. Whether Martianus is bound to perform another Mass on a privileged altar?

R. "More probably, negatively. The reason is that he who gave the stipend can seek nothing else than the privilege of the altar, or the plenary indulgence, since he has already obtained the Mass. But that indulgence can be bestowed upon the deceased even outside Mass, namely if the priest devoutly tries to apply some plenary indulgence to this deceased person, for example by traversing the Way of the Cross, or by reciting after Mass the prayer which begins: En ego, o bone et dulcissime Iesu, etc., and at the same time praying according to the intention of the Pontiff, etc." Thus Fr. Gury 344.

But, as is clear from the Responses of the Sacred Congregation of Indulgences, speaking per se, Martianus could not thus satisfy his obligation by celebrating on another non-privileged altar, and then gaining a plenary indulgence by the aforesaid prayer; rather, he ought to have celebrated on a privileged altar. Cf. Enchir. Mor. 629., I. M. 1380.

6. In a certain church a box was publicly set out near the door with this inscription: *Alms for Masses to be celebrated on the Altar of the Chapel of the miraculous image of the Blessed Virgin Mary.* Hence alms were collected daily from the box, and on the following day one Mass was celebrated at that Altar by the rector of the church, who took those alms for himself, whether they were more or fewer, but they always exceeded daily the sum of fifty lire.

It is asked: Whether the aforesaid rector acted rightly?

R. Negatively. For, as is clear from the obvious sense of that inscription, as many Masses ought daily to be celebrated as could be celebrated, according to the diocesan tariff. But if so many Masses could not be celebrated, e.g., on account of a lack of priests, then the offerers are to be warned. This is confirmed from the following Case resolved by the S. C. C.: In very many States of North America the custom had prevailed that, for the single Mass which is sung on the day of the Commemoration of all the faithful departed, the faithful should contribute money. But the sum of money thus collected was ordinarily so great that it would easily equal the alms of several hundred Masses. It was asked whether the aforesaid custom, which in some way at least was already becoming known to those offering, was to be absolutely prohibited. Now the S. C. C., Jan. 27, 1877, replied: "Let nothing be innovated: only let a tablet be placed in the church, by which the faithful may be taught that with those very alms one Mass is sung on the day of the Commemoration of all the faithful departed." For then without doubt the faithful would consent that one Mass be sung for all that money, and from mere liberality they would bestow the excess. A. S. S. vol. 10, p. 125.

7. The procurator general of a religious order received from a certain pious person 100 lire for 10 Masses. He put them away with all diligence in his desk; but on the following day he found

nothing; and he could find nothing, because a household thief had stolen them. The same procurator at another time received 100 lire from another pious person, but one unknown to him, for 50 Masses. On the following day, when he wishes to exchange the received note of 100 lire for others of lesser value, he finds it to be false. Hence he now asks whether he is bound to the celebration of the aforesaid Masses.

It is asked: What is to be said to the Case?

R. In the first Case the procurator is bound to the celebration of the Masses. The reason is that he, having accepted the stipend, undertook the obligation of celebrating, or causing to be celebrated, those 10 Masses; but the stipend, once accepted, he made his own, or rather the Convent's, namely by accepting it in the name of the Convent and for the Convent: whence he, or rather the Convent, ought patiently to sustain the loss of that stipend: for a thing perishes to its owner. Nor perhaps is it valid to object that those 100 lire were found enclosed in some paper with a superscription indicating that they were a stipend for Masses to be celebrated. For the thief who stole them certainly will not employ them for the celebration of Masses, and this surely cannot prudently be presumed.

But it does not seem that in the other Case he is bound to the celebration of the Masses. For in Masses to be celebrated for a stipend an unnamed contract intervenes: *I give that you may do*. But that pious person, although in good faith, in reality gave nothing. Therefore also Fr. Procurator is bound to do nothing. Nor indeed is it valid to object that that pious person acted in good faith, and therefore truly had the will of imposing the obligation of Masses to be celebrated, an obligation accepted by the procurator. For the will of the pious person obligating, and the will of the procurator accepting the obligation, essentially presupposed the stipend offered and accepted, which does not exist.

8. "Whether a priest, in anniversaries of the dead which are requested out of devotion, satisfies by celebrating the Mass of the Saint, when according to the rubrics the Requiem Mass cannot be celebrated?"

R. "Affirmatively." S. R. C., Apr. 23, 1875, ad 4, n. 2352; Aug. 5, 1662, n. 1238.

9. "Does a priest, to whom an alms is given for celebrating a Mass for one or more deceased persons, or a votive Mass in honor of some Mystery of the Blessed Virgin Mary or of a Saint, satisfy his obligation by making the Mass conformable to the office, when otherwise the rite of the day does not permit the requested Mass, provided that he applies it according to the intention of the one giving the alms?"

R. It would seem that the proposed question should be answered negatively from the Decree of the S. R. C., Mar. 3, 1761, n. 2461: "On days on which private votive Masses or Masses of the dead can be said, a priest obliged to them by reason of a foundation or of an accepted manual stipend does not satisfy his own obligation by saying the Mass of the occurring day: for the express will of testators or petitioners, provided it be rational, must be fulfilled." The same negative response can be confirmed from another later Decree of the same S. R. C., Sept. 28, 1872, n. 3285.

Nevertheless, to the proposed question by a very recent Decree the S. R. C. itself replies: "Affirmatively; but it is more advisable that, as far as can be done, satisfaction be made to the

intention of the one giving the alms by a Mass either of requiem or votive." S. R. C., June 13, 1899, n. 4031.

10. **Retention of part of the stipend** - Titius the priest, while making spiritual exercises, is very greatly troubled by three matters. a) To relieve the poverty of priests who, dwelling in a small town, very often lacked alms for Masses, by the help of a certain layman, a most industrious man, he collected many Masses with a stipend of two or three lire. But distributing these to the priests he retained whatever exceeded the synodal tariff of their diocese, assigning part of it to himself under the title of labor and industry employed, and granting part to the man out of gratitude. Aware of this matter, the priests of the small town were silent, giving thanks to Titius from the heart. b) Since a quantity of gold coin had been sent to him from France for Masses to be celebrated, he granted the whole stipend to the priests celebrating, but first exchanged the gold coin into another which is called paper money, and retained for himself whatever profit there was. c) From A., a nobleman to whom he had rendered a great favor, he received a stipend of one hundred lire for a Mass to be celebrated, yet he entrusted that celebration to another priest, giving an alms according to the synodal tariff.

Titius opens all these things in sacramental confession. The confessor remains uncertain, asking himself:

1. On what basis and how much can a priest receive as the stipend of a Mass? - 2. Whether it is licit to entrust a Mass to another to be celebrated, with part of the stipend retained? - 3. What is to be judged concerning the individual things in the Case?

Resp. to the 1st. In the first Question there are two questions. The first is: On what basis can a priest receive a stipend for the celebration of Mass? - To receive a stipend for the sacrifice of the Mass itself is certainly simony, and illicit. For simony consists in this, that a spiritual thing is given for a temporal thing. But if a stipend is received, not under a title intrinsic to the Mass itself, but under the extrinsic title of the support of the priest, simony ceases, and it is licit. Yet with this title, commonly admitted, there is difficulty in explaining how the stipend is owed from justice. Under the title of support alone, the stipend cannot be owed from justice. Otherwise a stipend would be owed from justice to anyone needing support, although he did nothing. By mere donation and alms that which is given and donated is ordinarily given for support. Therefore support is rather the extrinsic end than the intrinsic title of the stipend in the celebration of Masses. Now the stipend in this celebration of Masses is owed from justice. Therefore its intrinsic title is to be sought apart from every simony. Moreover there is the most grave difficulty: how, if a priest receives a stipend under the title of support alone, he can receive it even though he does not need support, because, e.g., he can already sufficiently support himself from a benefice. Therefore a title must be sought by force of which any priest can receive a stipend for the celebration of Masses. This title consists in this, that it is the wage of a work or of labor which someone performs. But labor is any inconvenience by which one is affected in carrying out the sacrifice of the Mass. Now that which is given on account of the work, or labor, is the wage of the work and labor, and therefore there is no simony; since on both sides there is something temporal; nor consequently is that which is given and received given and received as the price of a spiritual thing.

Indeed, as in all other matters there is a wage of work and labor, so also in the celebration of Masses. And as in all other matters one can bargain for that wage of labor, so also in the celebration of Masses; and therefore then the stipend is owed from justice, and the Mass will have to be celebrated. The contract which intervenes is certainly not of sale and purchase of the Mass; but it is an unnamed contract, *I give that you may do*. Hence in Luke 10:7 it is said: The laborer is worthy of his wage; and in 1 Cor. 9:7: Who serves as a soldier at his own expense? Why is the laborer worthy of a wage, except by reason of the labor which he undergoes for the advantage of others? Why is the soldier worthy of a stipend, except because military service is laborious and very useful to others? It is indeed true that, in the celebration of Masses, as in other spiritual things, labor, as advantageous and useful to others, does not give a right to a wage, since advantage and usefulness of this kind is spiritual and unsalable. Yet, although that labor, by reason of the office performed, or as advantageous to another for whose sake it is done, cannot be sold, nor gives a right to a wage: nevertheless from this it does not follow that precisely as it is labor, bringing weariness and trouble, requiring time, and hindering one from other lucrative functions to which one could apply himself, it is not worthy of compensation and wage. And indeed every labor is estimable by price not only by reason of the help or office rendered, but also by reason of itself. And thus in the wage of labor, great account is often taken, and the wage increases, by reason of the greater weariness itself or the longer time, although the usefulness of that labor is less. Therefore one who asks a wage with regard to labor alone in the manner aforesaid commits no injustice and no simony in itself. In itself; for simony can then intervene only if, namely, a prohibition of the Church intervenes; and therefore simony then would be, not of divine law, but of merely ecclesiastical law. Hence the other proposed difficulty vanishes: for whether the priest is rich or poor he always has a right to the stipend of his labor, he is always worthy of his wage. But he who, with regard to his sacred action, or insofar as this is advantageous and useful to another, demands something, commits simony of divine law, because he sells the sanctity of his work.

As to the other question of the first Question: How much can a priest receive as the stipend of a Mass? at first sight it would seem necessary to say that he can and ought to receive as much as is required and suffices for his honest support. For to this the wage of labor is of itself ordered, namely that by his labor a man be honestly supported. But because not every labor which is placed in individual actions merits the whole support of that day, what has been received by usage and approved or established by prelates must be observed. Therefore a priest can receive as the stipend of a Mass the quantity established by diocesan law or custom. This, however, of itself does not prevent him also from being able to receive less or more. For as a priest can celebrate Mass altogether gratuitously, so also he can celebrate it for a lesser stipend. And nothing prohibits the faithful from offering also a richer stipend with liberal charity.

As regards the second Question, one can entrust to another the celebration of a Mass. For, speaking regularly, it makes no difference whether one celebrates by himself or through another. But if the Mass to be celebrated is entrusted to another, it is not licit to hand over to the same person a lesser stipend, even a just one, if the greater stipend was received under the title of celebration alone. Indeed then every title for retaining part of that stipend is lacking. And this is confirmed from prop. 9 condemned by Alexander VII, whence it is held that a priest acting thus by no means satisfies through another, a lesser stipend having been conferred on him. But if the greater stipend is accepted not under the title of celebration alone, but under another extrinsic title, and with regard not only to

the Mass but also to the person, then it is licit to retain the excess of the stipend, and to hand over to the priest celebrating only the part of a just and ordinary stipend. For then a title for retaining that part is not lacking.

As to the third Question, Titius does not seem to have acted rightly in the first Case. For he assigned to himself part of the stipend under the title of labor and industry. But the labor and industry of Titius certainly do not appear estimable by price. For all the labor and all the industry of Titius consist in this, that he asks a friend who is willing to collect Masses and hand them over to him. Therefore the labor and industry is rather that of that layman, a most industrious man, who collected many Masses and handed them over to him. Titius likewise granted part of the stipend to the aforesaid man out of gratitude. If a concession of this kind was made to remunerate the labor and industry of that most industrious layman, Titius does not seem to be disturbed. For the aforesaid layman is called most industrious, and in reality he collected many alms, and those not ordinary. Therefore there is no doubt that he was worthy of an equitable remuneration of his labor. - Nor likewise did Titius act rightly in the other Case. For all know that the value of gold coin is different and greater. Therefore those who entrust a stipend in gold coin for Masses to be celebrated by that very fact give a greater stipend for the celebration of Masses. Therefore to change money of this kind, and to hand over the stipend to the priests celebrating, but to retain for himself whatever profit there may be from that change, in reality is nothing other than not to hand over to the aforesaid priests the whole stipend, by retaining part of it for himself, which is altogether prohibited. Finally, in the third Case Titius does not seem to be disturbed. For the greater stipend had been given to Titius not only under the title of the celebration of the Mass, but by another personal cause, namely on account of the great favor rendered to that nobleman.

11. "Titius gathers a great quantity of Masses in Portugal, receiving the stipend in Portuguese money, which he exchanges for Spanish money, obtaining a profit of 30 and even of 40 per 100. He has these Masses celebrated by Spanish priests, giving them the same stipend, retaining for himself the profit of the exchange. Is it licit for Titius to retain the profit of the exchange of Portuguese money with Spanish money? - R. Negatively." - S. C. C., Nov. 21, 1898.

12. Several bishops in France obtained an Apostolic indult, by force of which parish priests have the faculty, on certain days on which otherwise Mass would have to be said for the people, of celebrating the most holy sacrifice according to the intention of the one giving the stipend, yet under this law, that that stipend be sent to the bishops and be spent for diocesan pious works determined by the Holy See. Now, since the faithful very often offer for this Mass an alms richer than the ordinary stipend, not a few parish priests, after sending, as is proper, to the bishops the stipend taxed by the diocesan statutes, claim that it is licit for what exceeds to be kept by themselves, because there is present, they say, an extrinsic title for retaining this part of the alms, namely either extraordinary labor, if the Mass is with chant, or if some journey must be made, or especially liberality spontaneously and evidently imparted with regard only to the person.

It is asked: Whether parish priests, after sending to the bishop the stipend taxed by the diocesan statutes, are able to retain for themselves the excess of the alms of the Masses?

R. Negatively, unless it is established with moral certitude that the excess of the common alms was offered with regard to the person, or on account of greater labor or inconvenience. S. C. C., Jan. 31, 1880, A. S. S. vol. 13, p. 261. The reason is that the Apostolic indult granted to parish priests, namely of celebrating according to the intention of the one giving the stipend the holy sacrifice of the Mass which was to be applied for the people, was not given unconditionally and absolutely by the Supreme Pontiff, but on this condition, that the accepted stipend be sent to the bishops and be spent for diocesan pious works determined by the Holy See. Therefore, just as the accepted stipend must be handed over in its entirety to the one celebrating the Mass, so in the Case the aforesaid stipend must be applied in its entirety to those pious works. And this is confirmed from the fact that the Supreme Pontiff by that Apostolic privilege did not have regard to the condition of the parish priests, but intended to favor only those pious works. Now although an accepted stipend, however rich, must be handed over in its entirety to the priest celebrating the Mass, nevertheless part of it can be retained if it is established with moral certitude that the excess of the common stipend was given under a title extrinsic to the celebration itself of the Mass, namely with regard to extraordinary labor, because there is question, e.g., of a Mass with chant, or with regard to the person, that is, on account of his dignity, or office, or relationship, or poverty, or on account of gratitude owed to him. For in the Case the parish priests do not have to send to the bishops anything except the stipend of the Masses. Therefore they can retain that excess for themselves. - I. M. 624, 625.

13. Generosus, a very rich and very pious man, was accustomed to give several alms to the parish priest, who was also his confessor, and left them to the discretion of the same parish priest, so that he might dispose of them according to his own pleasure. Now, dying, Generosus left a legacy of twenty thousand lire to the same parish priest, namely that he himself should celebrate, or cause to be celebrated, a Mass for his soul daily for a year.

It is asked: 1. Whether the parish priest can, on Sundays and feast days, entrust to another the Mass to be celebrated for the people, so that he himself can celebrate the aforesaid Mass? 2. Whether the parish priest can entrust the Mass in the Case to another to be celebrated, handing over to him only the ordinary stipend? 3. Whether one who unduly retains part of the stipend is guilty of theft; and is bound to restitution, and to whom he ought to restore?

R. To the 1st. Negatively, speaking in itself. For the parish priest by force of his office and benefice is bound to celebrate Mass for the people on Sundays and feasts of precept. And this obligation is at the same time real and personal. Hence he cannot be excused from it, unless a canonical cause intervenes, which certainly is not the Mass to be celebrated for the deceased, a richer stipend having been given. Speaking in itself, because, if the parish priest is so poor that he does not have suitable fruits for support, he can, with the consent of the bishop, "even on feast days apply Mass for those offering alms, provided that within the same week he applies for the people the Masses omitted." S. Alph., l. 6, n. 325; I. M. 237, 238.

R. To the 2nd. Affirmatively. At first sight it could indeed seem that part of the stipend in the Case cannot be retained. For, if the parish priest himself celebrates the Mass, he holds himself as legatee; but if he entrusts the Mass to another to be celebrated, he is as executor. But from the circumstances of the Case it plainly appears that Generosus gave a richer stipend for Masses to be celebrated not under the title of the celebration of the Mass alone, but also with regard to the person. And this is

confirmed from the fact that for each Mass to be celebrated Generosus by no means defined a stipend, but under the title of a legacy left a solid sum of twenty thousand lire to the parish priest, with the burden imposed on him of the daily celebration of Mass. And, since a legacy is a kind of donation, the matter is evident that Generosus wished wholly to gratify the parish priest as legatee, with the obligation imposed on him either of celebrating Mass daily for a year, or of seeing to it that Mass be celebrated by another. For Generosus well knew that the parish priest could not always celebrate Mass himself. I. M. 624, 625; S. Alph., l. 6, n. 321.

To the 3rd. Whoever subtracts anything from an accepted stipend of Masses, even a little, even for a pious use, is held guilty of sacrilege, unless the other has entirely spontaneously and liberally, and therefore without being asked, remitted the excess. But the question is difficult whether he who retains part of the stipend is also held guilty of theft. And it seems that it must be affirmed; for, from the intention of the one giving the stipend, whether it is small or rich, the whole is given to the one celebrating, since by hypothesis a stipend of this kind is given under the title of celebration alone, and not also in consideration of the person; although indeed it is not given as a stipend of the Mass, which would be simoniacal, but as an alms to the person, namely of the priest celebrating. Whence it follows that the part of the stipend subtracted must be restored to him. For it must be restored to him to whom it belongs; but it belongs to him to whom it is given, and it is given to the one celebrating. I. M. 124; S. Alph., l. 6, n. 322.

14. **Obligation of celebrating by reason of a foundation** - In a village of the Archdiocese C., in the year 1862, Peter, a farmer, established by testament: *The remaining goods I leave to the parish church for the erection of a foundation of a morning Mass for Sundays and feast days, with the obligation in the said Mass of saying three Our Fathers for the benefactors of this church.* That property is equal in price to 5,054 marks. The wife of the said testator Peter had the usufruct for the days of her life. When she had died, a question arose whether the parish priest, who was the only priest in that parish, and who had the faculty of bination, was to be obliged to apply the aforesaid founded Mass according to the mind of the founder or not.

It is asked: What is to be said to the Case?

R. It has been received in Law that, in interpreting last wills, Rule 45 concerning the Rules of Law in the Sixth is especially to be kept before the eyes: *In obscure matters we look to what is more probable.* Now, as Benedict XIV says, *de Sacrif. miss.* c. 9, n. 2, it is more probable that he who has founded a benefice or chaplaincy, and has imposed the burden of celebrating Mass, but has added not even a word concerning its application for his own soul, wished the same also to be applied to himself. And this probability is such that the S. C. C. has most constantly followed this rule of interpreting foundations of this kind, as may be seen in the same Benedict XIV, l. c.

Nor indeed is there, in the Case, any contrary presumption. For that imposed burden of reciting three Our Fathers for the founders of the parish church by no means excludes the application of the Mass for the soul of the testator; indeed it rather suggests it. For if this other burden is imposed also for others, it is a sign that the testator reserved the application itself of the Mass to himself alone. Nor can the presumption of the free application of the Mass be drawn any more from the fact that by that foundation the testator wished to provide for the convenience of the parishioners. For this circumstance is not expressed in the aforesaid testamentary clause, and therefore it is not to be

asserted to the prejudice of the testator himself. Nor, if it were expressed, would it avail anything unless it were further proved that the foundation had been made on account of the convenience alone of the parishioners. Cf. Lugo, d. 21, s. 1, n. 23. Hence the S. C. C. never declared the free application of a Mass established on account of the convenience of the hearers, except when such circumstances were present that it could rightly be presumed that the founder had exclusively regarded that convenience. Cf. Benedict XIV, *Quaest. Can.* q. 7. Finally, that the parish priest was alone in that parish, who by Indult had the faculty of bination, and who consequently could not by that founded morning Mass satisfy the imposed burden, does not prove that the Mass is not to be applied for the founder according to his mind in the aforesaid foundation; but this proves only that the Mass for him is to be applied on another day within the week, since that Mass cannot be applied.

And thus, the Doubt being proposed: "Whether the parish priest is to be bound to apply this founded Mass?" the S. C. C., May 20, 1882, replied: "Affirmatively; but if another priest is lacking, the application of the founded Mass is transferred to the first non-impeded day within the week, the matter having been presented to His Holiness." Cf. S. R. C., June 14, 1845, ad 1, n. 2892; A. S. S. vol. 15, p. 200.

15. Ludovicus Antonius by testament left a Chapel to be erected in honor of the Blessed Virgin Mary of Sorrows, and in it one Mass to be celebrated on all feast days of the same Blessed Virgin Mary, for the suffrage of his soul.

It is asked: Whether the aforesaid Mass is to be celebrated only on all feast days of precept; or only on the seven principal feasts of the same Blessed Virgin Mary; or also on other lesser feasts, on which the commemoration of the Blessed Virgin Mary is accustomed to be made during the year?

R. "The Masses are to be celebrated on all days on which the Office of the Blessed Virgin Mary is made under the rite of double major or of a higher rite, whether in the universal Church or in the Diocese." S. R. C., Dec. 9, 1752, n. 2422; Sept. 13, 1760, n. 2460.

16. **Reduction of Masses** - A pious testatrix appointed her fellow citizen Titius executor of her testament, and left to him certain buildings, with the obligation of causing Mass to be celebrated daily, with payment of a determined alms, and of furnishing an annual legacy to the maidservant of the testatrix, so long as she should live. Titius has fulfilled the burdens up to now. But at present he wishes to suspend the celebration of Mass, because he must repair the buildings left to him, lest otherwise he be compelled, to his own loss, to spend his own money for restoring those buildings. This, he says, would certainly be contrary to the mind of the testatrix, who did not intend that the legacy would be a burden and loss to him.

It is asked: What is to be said to the Case?

R. Titius by his own authority can neither suspend the Masses to be celebrated nor reduce them to a smaller number. For the supreme wills of those dying are to be constantly observed, especially if there is question of the suffrages of Masses. Nor indeed does the reason of Titius avail. For the expenses now to be made, and which perhaps now exceed the revenues of the buildings themselves, are easily compensated by the perpetual ownership of the buildings themselves which he has, and by the cessation of the life annuity toward the maidservant. Likewise, once the buildings have now been

restored, the revenues undoubtedly will be increased in the future. Therefore the legacy is truly to his advantage. Cf. A. S. S. vol. 2, p. 411 ff.

17. "D. Franciscus Bartomen in his testament commanded that the testamentary executors arrange the celebration of a daily Mass with an alms of two lire in suffrage for him; which Mass indeed is to be celebrated by the Rector of the parish of Tirvia (of the Diocese of Urgell) or by another priest at his command.

For the fulfillment of this mandate the testamentary executors handed over as many bonds of a railway company as would suffice, so that from the revenues the aforesaid daily Mass would be celebrated with an alms of two lire for each one; which bonds are kept in the diocesan chest.

But, in the course of time, since the Government had burdened both the capital and the annual revenues with a certain tax, though slight; and on account of this, as well as by reason of the small expenses which the custody and administration of the aforesaid capital carry with them, the present proceeds do not suffice for receiving the said alms for each daily Mass. Therefore, since there is no one who is bound to increase the capital (at least so the testamentary executors affirm), the petitioner humbly asks from the S. C. that it deign to furnish a response to the following doubts:

1. Whether the parish priest of Tirvia is bound to celebrate the daily Mass with a reduction of the alms; or rather to reduce the number of Masses to be celebrated with an alms of two lire.

2. What is to be done in the future, if from the Government or from another cause the annual revenue of the aforesaid bonds of the railway company, or of other equivalent titles (public securities), suffers detriment.

R. To the 1st. According to the things set forth, the heirs are bound to the supplement; but insofar as this cannot be had, to the proposed doubt, Negatively to the first part, Affirmatively to the second." S. C. C., June 16, 1894.

The reason of this Decision is evident, because the legacy established by the testator was not taxative of such funds, but demonstrative, defining the number of Masses with a determined alms to be given. Therefore the inheritance is burdened, and from it must be supplied what is further required for the celebration of the aforesaid Masses. But when the funds left for the celebration of Masses have been diminished, from Trent, sess. 25, c. 4, de R., the number of Masses can also be diminished in due proportion. I. M. 981.

18. **Obligation of celebrating by reason of a benefice** - Fulberius, a beneficed cleric, omits to celebrate Mass once in the week: for he says that the obligation of celebrating daily is understood morally, and therefore that he can abstain from the celebration of Mass at least once in the week. But at other times he omits the Mass, yet entrusts it to another to be celebrated, handing over to him not the whole stipend which he himself receives from the benefice, but only the ordinary alms according to the custom of the place.

It is asked: What is to be said to the Case?

R. Fulberius does not act rightly in the first Case. For grave doctors indeed admit that a beneficed cleric can cease from the celebration of Mass once in the week by reason of devotion and reverence toward the most holy sacrifice of the Eucharist, if, however, the will of the founder does not stand in the way. But they by no means simply admit that he can abstain once in the week from the celebration of Mass merely at will, from some right belonging to him. - In the other Case Fulberius can entrust the Mass to another to be celebrated, if in the foundation of his benefice it was not expressly established that he celebrate personally. But in such a Case he can give to another only the customary alms, and retain the excess for himself. Const. of Innocent XII, *Nuper*, n. 21, ad VIII; M. E. vol. 5, p. 1, p. 121; Gennari, *Consult. Mor. Can. Lit.*, p. 2, Cons. 2, 26; I. M. 194, 624, 625.

19. In the Rubrics of the Breviary it is read: *If on the following day, June 24, the solemnity of the Most Holy Body of Christ occurs, the aforesaid solemnity is to be treated; the feast of St. John the Baptist is then to be put back to the 25th day, as to its proper seat.*

It is asked: Whether in the Case of the said translation parish priests are bound to the application of the Mass for the people on June 25?

R. Negatively. The reason is that the obligation of applying Mass for the people is held only on feast days. But that 25th day of June is in no way a feast day, but ferial. Hence, just as "when together with the solemnity the divine office shall have been transferred to the Lord's day, only one Mass is to be applied for the people," Pius IX, Const. *Amantissimi*; so, when the feast of St. John and of the Most Holy Body of Christ concur on the same feast day, one Mass for the people is to be applied on that day only. And thus it was also decided by the S. C. C., Apr. 28, 1888, A. S. S. vol. 21, p. 152. Nor indeed does the cited rubric stand in the way. For the aforesaid rubric treats only of the rite, office, and proper Mass of the day; it by no means affects, at least directly and in itself, the obligations which accompany feast days, i.e., the observance of the feast day and the burden of application for the people.

The preceding resolution can be confirmed from the following similar resolution: In the city of Trier, every year on the Wednesday of the third week after Easter, there is solemnly celebrated, and indeed of precept, the commemoration of the Most Holy Tunic of Our Lord Jesus Christ, which is preserved in the Cathedral church of the same place, to the great edification of the people. This feast in the year 1871 occurred on May 3. Hence the feast of the Finding of the Holy Cross of Our Lord Jesus Christ was transferred to the 11th day of the same month. Therefore it was asked whether parish priests were bound to celebrate Mass for the people on the said 11th day of May. Now the S. C. C., Apr. 24, 1875, replied: In the Case of which there is question, the parish priest is not bound. A. S. S. l. c.

20. In a certain village the feast of the Patron, St. Anthony of Padua, is celebrated of precept, from time immemorial. The parish priest of this place has never up to now applied Mass for the people on that day. For he says that this is a particular feast of that parish, which is celebrated as of precept neither in the universal Church, nor in the whole diocese; nor also has Mass for the people been applied on that day by his predecessors. There is added that he himself has only meager revenues, whence he himself is not to be burdened too much with this also extraordinary burden.

It is asked: What is to be said to the Case?

R. The aforesaid parish priest is bound to celebrate Mass for the people. For from Benedict XIV, Const. *Cum semper oblatas*, § 6, that obligation urges on Sundays and other feast days of precept, no distinction being made between feast days for the whole Church, or for the whole diocese, and for a particular place only. Moreover, since in the Case St. Anthony of Padua is the Patron of the place, that feast day, by reason of this Patron, is counted in the Catalogue of feasts of Urban VIII, Const. *Universa*, E. M. 1551. Therefore again there is no doubt that on that day the parish priest ought to apply Mass for the people. Nor does it avail that up to now an inveterate custom has existed in that place, or that the aforesaid parish priest does not have suitable revenues. For Benedict XIV, Const. cit., § 5, says generally: "We decree and declare, that although parish priests, or others, as above, having the care of souls, are destitute of suitable prescribed revenues, and although an ancient or even immemorial custom has obtained in their dioceses or parishes, the same [Mass] nonetheless must by all means be applied in the future by them." I. M. 237, 238.

21. "Whether after the recent legitimate dedication of a parish church made also to the Most Holy Heart of Jesus, St. Mary Magdalene being retained as co-titular, the parish priest is bound to apply Mass for the people on both feasts; or only, as has been done up to now, on the feast of St. Mary Magdalene the Penitent?

R. If the feast of the Most Holy Heart of Jesus is not of precept, the parish priest, on that day, is not bound to apply Mass for the people." S. R. C., Nov. 20, 1885, n. 3645.

22. "Whether parish priests ought to celebrate the sacrifice of the Mass for the people not only on the primary feast of the principal Patron of their own parish; but also on the primary feast of the chief Patron of the whole diocese?

R. "Affirmatively to the first part, and also to the second, if this other feast is celebrated with cessation from work at least by law." S. R. C., May 28, 1897, ad 2, n. 3957.

23. Gustavus the parish priest doubts whether on the day of the Nativity of the Lord he is bound to apply three Masses for the people; whether on the day of the Commemoration of all the faithful departed he is bound specially to apply Mass for the deceased of the parish; whether, when he must celebrate a conventual Mass in the cathedral, in which he himself is at the same time a canon, he can then apply the aforesaid conventual Mass for the people. But if at any time Gustavus falls ill, then without any scruple he omits Mass for the people, thinking that no one is bound to the impossible.

It is asked: What is to be said to the Case?

R. As to the first Case of Gustavus, Benedict XIV, *de Sacrif. miss*. l. 3, c. 9, n. 9, seems to adhere to the affirmative opinion; but he adds that nothing had been decided by the Church and Sacred Congregations as to the obligation of applying those three Masses for the people. Therefore on that day there is no obligation except of applying one Mass only for the people. - As regards the other Case, Gustavus is not bound specially to apply Mass for the deceased of the parish. For such an obligation is established by no positive document. Therefore to do this would certainly be a very fitting thing and one very commending the charity and zeal of the parish priest. - As to the third Case, a canonical cause is present why he should not celebrate Mass for the people personally.

Nevertheless he can in no way apply for the people the aforesaid conventual Mass, which has its own special application. Therefore he can then and ought to apply Mass for the people through another. - Likewise as to the fourth Case, there is a cause of necessity why he should not celebrate Mass for the people personally; nevertheless he ought to apply it through another, and for that reason is not also excused from this obligation. For Mass for the people is not only personal, but also real.

24. **Fee for utensils** - From the liberality of a pious person a chaplaincy was legitimately erected in a chapel of the Blessed Virgin Mary, in a certain church of Spain, with the burden of daily Mass, at the altar of the same chapel at the 9th hour. After the first month of the erection of this chaplaincy, the rector of that church at once asks the chaplain that he be willing to pay the fee for utensils, and the fee for the burden imposed on the church of daily Mass and at a determined hour.

It is asked: What is to be said to the Case?

R. For the mere celebration of Mass in the aforesaid church nothing is to be paid, since for the church it is not a burden, but an immense convenience. Likewise for the daily celebration of Mass at a certain determined hour, and in the Case at the 9th hour, neither is anything to be paid: for this also is a great convenience for the church, namely to have daily and at a fixed hour a stable Mass. This the very fact of the erection of the chaplaincy in the aforesaid chapel also shows. For if this had been grave, in the Case, for the church, neither the rector of the church nor the bishop would have accepted the erection of such a chaplaincy, or at least with the added condition of daily celebration of Mass at such an hour. But as to utensils, the rector of the church can indeed demand something. For although where there is question of manual Masses nothing can be demanded for utensils, unless the church is poor and lacks sufficient means for providing the necessities for the sacrifice of the Mass; nevertheless it is otherwise as to founded Masses. Hence in Camerino, Dec. 17, 1740, in the S. C. C. it is read: "It indeed seems received by common reckoning that all and individual beneficed clerics, and others holding chaplaincies under a perpetual burden of Masses, and also the canons themselves, are bound to contribute for utensils to the sacristy of the church according to the practice of each church." A. S. S. vol. 21, p. 302; M. E. vol. 5, p. 2, p. 148; Benedict XIV, *Instit.* 56, n. 13; E. M. 624.

119. Rite of the Celebration of Mass

1. Ambrose, a regular, administers a secular church, committed to him precariously by the Ordinary together with the care of souls. Although the people had up to now been accustomed to the feasts of the diocesan calendar, Ambrose nevertheless performs all the sacred functions according to the calendar of his own Order. Hence he also omits to celebrate the feast of the Dedication of the church, of the Titular, and of the Patron of the place. - Does he act rightly?

R. Negatively. S. R. C., Feb. 4, 1898, ad 2, n. 3979. Ambrose errs still more as to the feast of the Dedication of the church, of the Titular, and of the Patron. For the feast of the Dedication of a church is more solemn and primary, so that it is to be preferred to others, according to the General Decree of the S. R. C., Feb. 4, 1896, n. 3881. The feast of the Titular is to be celebrated by the whole clergy of the church, or by the priest rector assigned to the church or public oratory, through the entire office, and in defect of any clergy by Masses alone. General Decree of the S. R. C., June 5, 1899, n. 4025. But

the feast of the Patron of the place is also generally to be observed by regulars. General Decree of the S. R. C., July 9, 1895, n. 3863.

2. **On Mass before the Most Holy Sacrament.** - Onuphrius, a parish priest, without any scruple celebrates Mass, when occasion is given, at an altar on which the Most Holy Sacrament is exposed, and at it distributes communion to the people. For he says that no difficulty can be present in this matter, since it is altogether fitting that the most holy sacrifice be offered at that altar on which the most holy Eucharist is exposed.

It is asked: What is to be said to the Case?

R. Onuphrius does not act rightly. For by several Decrees of the S. R. C. it is prohibited that Mass be celebrated at an altar on which the Most Holy Sacrament is exposed without necessity, or without grave cause, or without immemorial custom, or without a special indult. By the same Decrees it is also prohibited to distribute sacred communion at the aforesaid altar. But as regards the reason of Onuphrius, the contrary is found in the *Caeremoniale Episcoporum*, l. 1, c. 12, n. 9: "It would be, not congruous, but most becoming, that at the altar where the Most Holy Sacrament is situated, Masses should not be celebrated, which seems to have been observed anciently." For the people, intent upon adoration, ought not to be distracted by other prayers and actions, though sacred, from Him to whom they are uniquely and principally intent. But there is an urgent necessity of celebrating Mass at an altar of this kind if other altars are lacking in the same church or in neighboring churches, especially where the precept of hearing Mass urges. But in order that sacred communion can be distributed to the people, the sacred Eucharist must be reserved at another altar.

The following things, moreover, are to be noted concerning Mass before the Most Holy Sacrament: The celebrant at an altar where the Most Holy Sacrament is exposed, whenever he is in the middle of the altar, must first kiss it and afterward genuflect; but when he comes from one side of the altar, he first genuflects, and afterward kisses the altar.

In solemn Masses which are celebrated at the altar of exposition, a commemoration of the Most Holy Sacrament is always made; in private Masses, whether they are read at the altar of exposition or at another within the same church, the aforesaid commemoration is made at the pleasure of the priest, except on feasts of the 1st and 2nd class, on which it cannot be made. The commemoration of the Most Holy Sacrament, on account of the identity of the Mystery, is to be omitted only on the feasts of the Passion, the Cross, the Most Holy Redeemer, the Most Holy Heart of Jesus, and the Most Precious Blood. S. R. C., July 3, 1896, ad 4, n. 3924.

In the exposition of the Most Holy Sacrament, whether for the Prayer of Forty Hours or for any other cause, the three altar cards are altogether to be removed from the altar of exposition, except during the time of Mass. S. R. C., Dec. 20, 1864, ad 3, n. 3129.

At the reposition of the Most Holy Sacrament the prayer *Deus, qui nobis...* must be concluded, *Qui vivis et regnas in saecula saeculorum*. S. R. C., Mar. 29, 1851, ad 6, n. 2986.

3. **On Requiem Masses** - Alexander, a noble man, having died, the principal hall of the house was at once turned into an oratory. Several altars were erected in it; and, many from the people coming together, several Masses were celebrated in the presence of the corpse, so that the soul

of the deceased might be aided by stronger suffrages. Alexander and his family enjoyed no privilege of a private oratory; whence the faculty of celebrating Masses thus was given by the bishop. - Licitly?

R. Negatively, speaking in itself. For first, when a certain hall of a house is chosen and is transiently turned into an oratory, so that when that function has been completed it is soon turned back to its former use, there is question not of the erection of a private oratory, but of the erection of a portable altar. And cardinals, bishops, and certain missionaries only have this privilege, which is granted only by the Apostolic See. Moreover, although bishops can grant the faculty of celebrating in private oratories, if great and urgent reasons are present, and only by way of an act; yet in the Case there is question neither of a private oratory, nor are great and urgent reasons present. Finally, private Requiem Masses can indeed also be celebrated in the presence of the corpse, but only in churches and oratories, both public and private, and in chapels belonging to seminaries, colleges, and religious or pious communities of either sex. S. R. C., May 19, 1896, n. 3903. E. M. 639; I. M. 639.

Speaking in itself, namely prescinding from legitimate and approved custom and from a special indult. Very recently the S. R. C., Apr. 3, 1894, n. 3822, established: "that while the body of a deceased diocesan bishop, clothed in sacred vestments, lies publicly and solemnly exposed in the great hall of his own residence, Masses may be celebrated throughout the whole morning in suffrage for his soul, all those things being observed which are prescribed in the *Caeremoniale Episcoporum*, l. 2, c. 38, concerning the exposing of the body of a deceased bishop and the offering of suffrages. Which privilege granted to bishops in their own diocese is to be understood, for the same reason, as extended to vicars apostolic in their vicariates, and also to abbots and the other prelates of no diocese enjoying ordinary jurisdiction over the people when they departed from life, yet in their own territory. Finally, by special grace, the S. R. C. grants that deceased titular bishops also may be able to enjoy the same privilege; provided that their bodies are exposed in a suitable hall, and, if outside the City, have been clothed with pontifical ornaments (yet without the pastoral staff); but if in the City, only in prelatial habit." M. E. vol. 8, p. 2, p. 76.

4. Sempronius the priest, in Requiem Masses, always reads the prayers as they lie in the missal, and always omits the sequence. Does he act rightly?

R. Negatively. For from the General Decree of the S. R. C., June 30, 1896, n. 3920: "In daily Masses of every kind, whether read or with chant, several prayers are to be said, of which the first is to be for the deceased person or deceased persons certainly designated for whom the sacrifice is offered, from those which are inscribed in the missal, the second at pleasure, the last for all the faithful departed. But if Mass is celebrated for the dead in general, the prayers are to be said which stand in the missal for daily Masses, and in the same order in which they are there inscribed. But if in the same daily Masses it pleases the celebrant to add several prayers, as the rubrics grant the power, this can be done only in read Masses, with an odd number preserved along with the others prescribed, and with the prayer for all the faithful departed assigned to the last place." But the sequence from the same Decree is to be said in any sung Masses, as also in read Masses, on the Commemoration of all the faithful departed and on the day and for the day of death or burial. In the rest it can be recited or omitted at the pleasure of the celebrant. I. M. 657. Cf. also General Decree of the S. R. C., *Commemorationis omnium Fidelium Defunctorum*, July 9, 1895, n. 3864.

5. Onuphrius the parish priest, since the rite was semidouble, after celebrating a Requiem Mass for the soul of his parishioner Urban, deceased on the preceding day, deferred the absolution at the tomb to another day, on which the corpse was to be brought into the church. - Does he act rightly?

R. Affirmatively. For the absolution is to be made after the Requiem Mass, or without Mass when the corpse is brought to the church, and in its presence. S. C. de P. F., Mar. 21, 1851, Collect. S. C. de P. F., n. 913. This is also clear from the Roman Ritual, title *de Exequiis*. For at the end it is said: "Mass, if the hour is suitable, in the rite for the dead as on the day of death, with the body present, is not to be omitted, unless a great solemnity of the day stands in the way, or some necessity advises otherwise."

6. **On the invalid consecration of wine.** - Paschal, a priest, at the taking of the Chalice, notices that water had been placed instead of wine. Having the aforesaid water already in his mouth, he remains very uncertain for some space of time whether he ought to throw it from his mouth back into the Chalice, so that, fasting, after the consecration has been made again, he may communicate, or whether rather he ought to swallow it. At last he does this latter thing, yet not without some fear.

It is asked: What is to be said to the Case?

R. Paschal acted rightly. For, this Case occurring, since in practice it is morally most difficult not to swallow the water, one can do this without scruple. Moreover, it seems to be a certain irreverence and indecency to throw the aforesaid drink from the mouth back into the Chalice. It can also be confirmed from the rubric of the missal, which, in the Case in which a particle of the consecrated host adheres to the Chalice while the Blood is being consumed, prescribes that the same either be brought with the finger to the lip of the Chalice, or be consumed after wine has been put into the Chalice, *de Defect*. tit. 10, n. 8; which latter mode is more approved, as Merati observes in the Notes to Gavantus. *Cas. Bonon. Dioeces.*, year 1791, month of March, Case 3; Gavantus, tom. 1, part 3, tit. 4, n. 5; Merati, ib., tit. 10, n. 8; G. 361; Elbel 148.

But from the rubric of the missal *de Defect*. tit. 4 it is prescribed that also a new host, in the Case, be consecrated, if, scandal being excluded, it can be done; otherwise, that only wine be consecrated. Yet all things are not to be repeated again; but it will be enough to repeat only those things which pertain to the consecration itself, beginning for the former consecration from the words, *Qui pridie quam pateretur*; and for the other from the words, *Simili modo*. But before the first consecration the offering of the Host and Chalice must be made mentally. Rubr. missal. *de Defect*. tit. 2, n. 5; tit. 4, n. 4, 5; *Cas. Bonon. Dioec.*, year 1792, month of Apr., Case 3; G. 360, 361; I. M. 329 ff.

But if a consecrated particle of the host has remained in the chalice with part of the water, then before the new consecration the water is to be poured into a clean vessel, the particle of the consecrated host being retained in the chalice, or extracted from it and soon reverently consumed; but the water poured into that vessel is to be consumed after the ablution, or put into the sacrarium. But if only a little water has remained in the chalice, whether with or without a particle of the consecrated host, wine can be poured upon this, which is then consecrated. Elbel 148.

7. **On the omitted consecration of the host** - Marinus the priest, after the consecration of the chalice, notices that through distraction he omitted the consecration of the Host. Hence he remains uncertain, not knowing what he should do; for he fears to consecrate the Host after the wine. For thus the nature of the sacrifice seems to him no longer to be verified.

It is asked: What is to be said to the Case?

R. There is no doubt that what Marinus must do in the Case is to consecrate the host. This is clearly had in the rubr. missal. *de Defect.* tit. 3, n. 4, 5, 6, where there is discussion of defect of the bread, and a fourfold case is distinguished: that someone notices the defect of the matter of bread before its consecration; after its consecration; after its consumption; after the consumption of the chalice. In the first Case, after a host has been supplied and a mental offering made, the priest is to continue from the place where he left off, and then the host is to be consecrated. In the second and third Case, after other matter likewise has been placed and a mental offering made, that matter also is to be consecrated, beginning from those words, *Qui pridie quam pateretur*, etc.; and the other corrupt or non-wheaten host, if he has not consumed it, he is to consume after the consumption of the Body and Blood; or he is to hand it over to others to be consumed, or preserve it reverently somewhere. In the fourth Case new bread and wine with water must again be supplied, and, after a mental offering has first been made, both matters are to be consecrated, beginning from those words, *Qui pridie*, and at once both are to be consumed, and the Mass continued. Hence it is clear that even after the consecration of the chalice and before its consumption, the host is to be consecrated, notwithstanding that inversion of order, that the wine was consecrated first, and afterward the host is consecrated. This is also clear from the same rubric, ib., in the following number, namely 7, where it is said: "If the consecrated host disappears, or by some accident, or by wind, or by miracle, or being taken by some animal, cannot be found, then another is to be consecrated, beginning from that place, *Qui pridie quam pateretur*, its offering having first been made, as above." And hence it is clear that the order of consecrating first the bread and then the wine does not pertain to the substance of the sacrifice. Hence also from the defect of a change of order in consecrating, a sufficient foundation cannot be taken for doubting about the validity of the sacrifice. Suarez, d. 75, s. 6; d. 86, s. 1; *Casus Bonon. Dioeces.*, year 1792, month of Febr., Case 3.

8. **On the consecration of small hosts** - Euphrasius always has to consecrate these small hosts; indeed he places them on the corporal, but by no means sees to it that they also are upon the altar stone. For he says that it suffices that the larger host and the chalice are upon the altar stone.

It is asked: What is to be said to the Case?

R. Euphrasius does not act rightly. For first, in rubric tit. 20 it is said: "The altar on which the most holy sacrifice of the Mass is to be celebrated must be of stone and consecrated by a bishop, or at least a stone altar-slab similarly consecrated by a bishop inserted in it, which is so large that it can contain the host and the greater part of the chalice." Therefore, as the larger host must be upon the altar stone, so also upon the same must be placed the other small hosts, which constitute part of one and the same sacrifice which is celebrated. Yet, as it suffices, if the altar stone is small, that the greater part of the chalice be upon it, so also it suffices that the greater part of the aforesaid hosts, which are taken by way of one matter, be upon the same altar stone, if it is so small that it cannot contain them

all. - Moreover, in rubr. tit. 2 it is said: "If the priest is going to consecrate several hosts for communion to be given, which on account of their quantity cannot remain on the paten, he places them on the corporal before the chalice, or puts them in some consecrated chalice or clean blessed vessel behind the chalice, and covers them with another paten or pall." Hence it is sufficiently understood that small hosts also are to be placed upon the altar stone, since they are to be placed near the chalice, and if on the altar stone there is space for the chalice and for the larger host, there consequently will also be space for the small hosts, unless that stone is very small, and the hosts are very many. Hence Merati in l. c. says: "When several particles are to be consecrated for the communion of the lay faithful and of others not celebrating, which on account of their quantity cannot remain on the paten (for when the particles are few, such as five or six, they must be placed upon the paten and beneath the host, so as to offer them together with the host at the same time, and after the offering they are placed upon the corporal separated from the host; yet in such a way that they remain upon the altar stone, and at the left side of the celebrant, according to common usage; but before the chalice according to the higher rubric), the priest, while he prepares the chalice at the beginning of Mass, places them on the corporal; so that, as we have just said, they remain upon the altar stone and before the chalice, according to the higher rubric, and as Quarti, Bissus, Hippolytus a Porto also teach, or according to the more common usage on the side of the Gospel or at the left of the celebrant, as the *Caeremoniale missae privatae* teaches, cap. 11, *de consecrat. particular. et commun. fidelium* § 1, and also Gervasi above § *Se poi*."

And here, as to communion to be distributed to the people outside Mass, the following things are to be noted:

In the administration of most holy communion outside Mass, after the Most Holy Sacrament has been put back in the tabernacle, the priest must bless the people before he folds the corporal, or does something similar. This is inferred from the word *then* placed in the rubric.

In the blessing after communion outside Mass the priest does not kiss the altar. S. R. C., Mar. 16, 1833, ad 6, n. 2704.

During the whole Paschal season after the administration of the most holy Eucharist outside Mass, to the antiphon *O sacrum...* and the versicle *Panem de coelo..., Alleluia* is added, and the Prayer is said: *Pour into us, O Lord, the Spirit of thy charity: that those whom thou hast satisfied with the paschal Sacraments, thou mayest make by thy piety to be of one accord. Through Christ our Lord. - Amen.* Roman Ritual.

9. **On communion to be given from the larger host** - "A chaplain celebrating at an altar in which the Eucharist is not reserved, so that he might satisfy the devotion of a pious woman seeking communion in the Mass, gives to her a part of the consecrated (larger) host.

It is asked: Licitly?

R. Suarez, 3 p., d. 85, s. 2, with Paludanus, and Gavantus, in rubr. p. 3, tit. 10, n. 3, affirmed that this was licit, relying on the old custom of the Church, which seemed to have been abrogated by no law; and not undeservedly did they write thus in their own age. But now there exists a Decree of the S. C. C., Feb. 12, 1679, approved by Innocent XI, by which, the old custom having now been changed, it is prescribed that none are to be handed over except the customary forms, or particles, of the Eucharist. From this Cavalerius, tom. 4, c. 4, Decret. 2, n. 9, infers that it is not licit to give a part of the host to

a layman, one exception being danger of death. And he confirms it from rubr. p. 3, tit. 10, n. 3, where it is established: If the priest celebrating becomes ill, or falls into syncope after the consecration, yet so that he can communicate, and there is not another consecrated host, the priest who supplies the Mass divides the host and gives one part to the sick man. Now, if only in defect of another host is part of the host of the sacrifice to be given in the Case to a priest already sacrificing, how much more will it be necessary to beware lest it be furnished to a layman outside the case of extreme necessity? Therefore it will not be licit for the chaplain, merely to satisfy the devotion of the woman, to assign to her part of the host." *Casus Conscient. Bonon. Dioec.*, year 1778, month of May, Case III.

But that rigid resolution is not proved by the Documents adduced. For from that first cited Decree nothing else is held except this: that ordinarily and from the general rule it is not licit to give anything except the customary Eucharistic forms or particles. Likewise from the cited Rubric nothing else is held except what must be done if there is, or is not, another consecrated host. By no means, however, does it follow from this that only in a case of extreme necessity can a part of the larger host be given. For fittingly, if another consecrated host is present, this is given to the former sick priest, and the other larger host, lest it be divided, is consumed whole by the other priest, since he then supplies and completes the Mass; rubr. l. c. And thus it is already the common opinion that this can licitly be done even outside the case of extreme necessity, when another just and proportionate necessity exists. For here there is not question of any most grave and graver, or even of any grave precept. And thus La-Croix, l. 6, p. 1, n. 498: "When is it licit for a priest to give to a layman part of his larger host? R. When there is a reasonable cause. Graff., Zanard., Zambran. indeed think that it is not licit outside necessity; but S. Anton., Sylv., Sa, Angel., Io. Sanch., Bon., Barb., Marchant., Possev., Dian., Dic., Aversa, Tamb., Gob., Verj. better contradict this, because Christ Himself did this, nor is it now prohibited, nor is there also any irreverence or indecency in this; but the contrary custom or non-use does not oblige under sin, but arises from this, that ordinarily smaller hosts are also had, which if they do not suffice for the number of those communicating can also be divided into several particles, of which individual particles are given to individual persons. The cited authors say that reasonable causes are present if someone has great devotion toward communicating and it is not convenient for him to wait; if a grave or noble person wishes then to communicate, so that afterward he may in good time dispatch himself to business; if servants cannot easily wait without loss to their duties; if the priest would have to wait a long time that a small host might be brought before the offering, etc." And St. Alphonsus, l. 6, n. 217: "But if," he says, "only one remained (without communion), Gobat advises rather that there be given to him part of the large host, which can now licitly be done, as Croix says with S. Anton., etc. And it suffices for a cause if the one about to communicate would have to wait a long time for communion." And at n. 245 the same holy Doctor says: "If this is done without cause it is not licit, but it does not exceed venial, as Tournely rightly says with Poss. But it suffices to excuse it if the one to be communicated is sick, a noble man, a servant, or another who could not wait without inconvenience, even if he communicates only from devotion, as the same Tournely and Conc., Salm. with Dic., Diana, Gran. and Elbel with S. Anton., Sylvest. and Bon. commonly say." And Scavini, l. 3, n. 133, ed. Milan 1874: "To no one," he says, "are several particles to be handed, nor larger ones, but the customary ones. S. R. C., Feb. 12, 1679, General Decree approved by Innocent XI. When the particles do not suffice, the custom of dividing consecrated particles is to be preserved, if necessity is present. S. R. C., Mar. 16, 1833. Benedict XIV

advises, if there is one to be communicated and particles are lacking, to give him part of the large host, if namely the one to be communicated would have to wait a long time."

Therefore to the proposed Case it must be said that the chaplain indeed acted illicitly if he did that so as to satisfy the importunate devotion of a woman who desired to receive communion from the great host of the priest himself. But the chaplain by no means acted illicitly if he did that lest the woman, e.g., a mother of a family, be deprived of communion, or lest she wait a long time with grave inconvenience to herself and her family. - I. M. 536.

10. **Mass without a Minister** - On a Sunday, about to celebrate Mass in a certain public oratory, into which many had come together to hear it, the chaplain finds no one who knows how to serve Mass, nor is it easy then to find someone suitable for this; for the oratory is distant from the parish, and it is near midday.

It is asked: What must the Chaplain do?

R. In a Case of this kind the chaplain must employ some man who may offer him wine and water in the ministry of the Mass. But as regards the prayers which must be recited either alternately by the priest and the minister, or by this latter alone, the celebrant alone will be able to recite them by himself, and to respond to himself. For in a case of necessity, such as the proposed Case is, the doctors commonly agree that this is licit. And certainly, if the rubric of the missal in the rite to be observed in the celebration of Mass, tit. 4, concerning the *Kyrie eleison*, expressly warns at n. 2 at the end: *If the minister, or those who are present, do not respond to the celebrant, he alone says it nine times*; and tit. 7, n. 7 likewise warns that, if by the minister or by the bystanders at the *Orate fratres* there is no response, *May the Lord receive the sacrifice from thy hands*, the priest himself by himself says: *May the Lord receive the sacrifice from my hands*, etc., up to the end; why could not the celebrant also say by himself the remaining things to be said in the Mass with the minister, or by this latter only, if the minister does not know how to respond? For indeed it is forbidden to celebrate Mass entirely without a minister, as is had in the rubric *de Defectibus*, tit. 10, n. 1, where it is said: *If there is not present a cleric, or another serving in the Mass, or there is present one who ought not to serve, as a woman*: but it is not forbidden in a case of necessity to employ a minister who does not know how to respond, provided however that he can furnish wine and water in the ministry itself, especially for washing the fingers, both before the consecration and after the consummation. *Casus Bonon. Dioeces.*, year 1766, month of Aug., Case 3; I. M. 653.

11. **On prayers before and after Mass** - A certain priest, while vested he goes to the altar to offer the sacred rite, is accustomed on the way to recite in a low voice the psalm *Miserere*, which, if he cannot complete it before he reaches the altar, he continues to the end while he unfolds the corporal and opens and arranges the missal; and sometimes, if the way from the sacristy to the altar was very short, he remains a little while in the middle of the altar, so that he may finish that psalm before he descends to begin Mass.

It is asked: Whether all that is contrary to the rite prescribed by the rubric?

R. All that, if not against the rite positively, since it is not expressly prohibited by the rubric, certainly must be said to be beside it, because it is in no way prescribed by the rubric. P. Merati, asking in his

additions to Gavantus, part 2, tit. 2, n. 6, whether it is licit for a priest proceeding to the altar to recite in a low voice some psalm, e.g., the *Miserere*, or something else, says that the doctors do not agree, since some affirm, others deny; then he adds: *I would believe that the negative opinion is to be adhered to; because nothing to be recited in the approach to the altar is commanded in the rubric, as it ought to have commanded, and as in fact it commands in the departure*. For the rest, if the recitation of some psalm or canticle, or of another prayer, helps the priest to gather his mind in God when he goes to the altar, he could perform it by mind alone without vocal pronunciation, and choose one which would not bring delay in the celebration of Mass after he has entered the altar. *Cas. Bonon. Dioec.*, year 1767, month of June, Case 3; I. M. 657.

12. A priest, Mass having been finished, returning to the sacristy, instead of the canticle *Benedicite omnia opera Domini*, etc., and the psalm *Laudate Dominum in Sanctis eius*, with the other prayers which are found in the missal after the rubrics for thanksgiving, recites on the way the hymn *Te Deum laudamus*.

It is asked: Whether he does this according to the rite?

R. Negatively. For this is manifestly against the rite prescribed in the missal, as is to be seen in the *Ritus celebrandi missam*, tit. 12, n. 6, where concerning the priest who has finished Mass it is said: "In the manner in which he had come, he returns to the sacristy, meanwhile saying the antiphon, *Trium puerorum*, and the canticle, *Benedicite*, etc." I. M. 657.

13. **On Mass in another's church** - Euphemius, a priest, on the occasion of preaching, often celebrates in another's church. When he does not depart from his own diocese, he himself always celebrates the Mass corresponding to the office according to his own Calendar. But when he departs from the diocese, he follows the Calendar of the church in which he celebrates; yet he omits the prayers prescribed by the Ordinary of the place, and likewise the name of the Patron in the prayer *A cunctis*, and the name of the Ordinary in the Canon.

It is asked: What is to be said to the Case?

R. The twofold rule which Euphemius follows as to the rite of the Mass is false, and therefore, generally and speaking in itself, he does not act rightly. Likewise Euphemius does not act rightly as to the prescribed prayers, as to the name of the Patron, and as to the name of the Ordinary. - Formerly there were several Decrees as to the conformity of the Mass with the office. At present, however, the following General Decree is had. S. R. C., July 9, 1895, n. 3862: "All and individual priests, both seculars and regulars, coming together to a church, or to a public oratory, shall altogether celebrate Masses, whether of Saints or of Blessed, even those proper to regulars, conforming to the office of the same church or oratory, whether they are contained in the Roman missal or in the missal of regulars; with the peculiar rites proper to orders, however, excluded. - But if in the said church or oratory the office of an inferior double rite is being held, it is free to each of the celebrants to perform a Requiem Mass or a votive Mass, or even one of the occurring feria; yet with those days excepted on which the rubrics of the Roman missal or Decrees of the S. R. C. prohibit the aforesaid Masses." In seminaries and other pious communities the principal chapel is held as public for the effect of the aforesaid Decree. S. R. C., May 22, 1896, n. 3910. Moreover all regulars, although having a special privilege in this matter, are bound by the same General Decree. S. R. C., Feb. 1896, n. 3883.

But in a private oratory the Mass must always agree with the office, although the office is of a Blessed concerning whom it is not celebrated in that place. S. R. C., Nov. 12, 1831, ad 31; Apr. 16, 1853, ad 14.

A visiting priest who in some place acquires a quasi-domicile, since he is bound by the laws of the place, is also bound to follow, as to office and Mass, the Calendar of the place. But those who remain somewhere as quasi-travelers for some short time are bound, speaking in itself, to follow their own Calendar; otherwise the whole order of offices would already be overturned. Yet they can follow the Calendar of the place where they are staying. - Hence also on a journey one is bound, again speaking in itself, to follow one's own Calendar. S. R. C., May 14, 1672; July 10, 1677, ad 3; Nov. 12, 1831, ad 50; May 7, 1846, ad 8; Aug. 31, 1839, ad 1; Sept. 25, 1852; Sept. 18, 1877, ad 3.

As to collects, there seems no doubt that they are to be said also by traveling priests. For since collects prescribed by the Ordinary of the place are to be recited even in churches of regulars and other exempt churches, S. R. C., Mar. 31, 1821, ad 1, n. 2613, it follows that they are recited indiscriminately by all celebrating Mass in that diocese. Common practice and custom also prove this. - The same must be said as to the prayer *A cunctis*, at the letter N.; namely, in it the Titular or Patron of the church is to be named, and, if the Titular or Patron of the church is lacking, or if it is celebrated in a private oratory, the Patron of the place can be named, if there is a custom of making his commemoration in the office; otherwise the words *ac Beato* are to be omitted. S. R. C., Feb. 15, 1873. Therefore all who celebrate Mass, whoever they may be, must name the aforesaid Titular or Patron in that prayer. - The same also holds as to the name of the Ordinary. For in the canon and collects mention of the bishop must altogether be made, even by exempt persons. S. R. C., Sept. 25, 1649, ad 6, n. 924.

14. **The bishop's traveling altar** - Timothy the bishop doubts whether, while he is outside his own diocese, during the time conceded by the sacred canons, whether in the house of his own family, or in another's house, or in a public inn, he enjoys as to Mass the same rights as in the oratory of his episcopal residence, so that any priest can celebrate, and the faithful can satisfy the precept of hearing Mass on feast days.

R. Affirmatively. For very recently, on the 8th day of June in the year 1896, Leo XIII granted "that henceforth all bishops, whether diocesan or titular, be adorned with the same privilege by which the cardinal fathers enjoy; namely, that not only they themselves in the oratory of their own dwelling, or upon a portable altar, wherever they may dwell, can offer Mass and permit another in their own convenience; but also all the faithful hearing either one of the same Masses, as often as there is need, fulfill the precept of the Church, all things whatsoever to the contrary notwithstanding." S. R. C., May 19, 1896, n. 3906.

15. "Whether a bishop enjoying, as is customary, the privilege of a portable altar can licitly, if perhaps at some time he is impeded by illness, command that some one of the priests well-disposed toward him perform the sacred rites upon the same portable altar, decently placed near his bedroom, for the solace of devotion? And insofar as negatively, the same bishop earnestly begs for an indult of this kind.

R. Affirmatively to the first part; to the second, he does not need an indult." S. R. C., Mar. 12, 1836, Tarvisina.

16. **On the blessing of sacred vestments** - "Whether Abbots, Priors, Guardians, Rectors of the Society of Jesus, and any other Regular Superiors, who by privilege can bless sacred vestments, reconcile cemeteries, and similar things, can perform these things not only for their own Monasteries and Churches, but also for others promiscuously and indistinctly?

R. Abbots, Priors, Guardians, Rectors of the Society of Jesus, and any others whatsoever having the privilege of blessing sacred vestments, reconciling cemeteries and similar things, cannot use the said privilege except in those things in which sacred unction is not employed, and for the service only of their own Monasteries and Churches." S. R. C., Mar. 13, 1632, n. 587. And this at other times was decided several times in altogether the same manner by the same S. C.

On Penance

120. On Sins to be Confessed

1. Germana, an old woman, confesses thus: Father, she says, I performed the penance imposed on me; I faithfully recited morning and evening prayers; each day I also recited the rosary and attended Mass. Yet I have committed many imperfections, not obeying divine inspirations; perhaps I also had distractions in reciting prayers, but I do not know; I also sometimes had evil thoughts against the charity of neighbor; but I rejected them. I confess that we are all sinners, born in sin from Adam, and therefore I ask for absolution and penance. The confessor asks and urges Germana to declare some sin of her past life in species; but he obtains from her no other answer besides this: Father, I have already said everything; nothing remains for me to say.

It is asked: What is to be said to the Case?

R. Germana cannot be given the benefit of absolution from the preceding confession, because the certain matter of the sacrament is lacking. For the distractions in reciting prayers which she accuses, she accuses only doubtfully and with an entirely negative doubt. Generally, all uncertain or doubtful sins are insufficient matter; for upon them absolution cannot be given without exposing the sacrament to the danger of nullity. Although it is indeed best to accuse oneself also of non-correspondence to divine inspirations concerning works of counsel, nevertheless this does not constitute sufficient matter of absolution, because, speaking in itself, it is not a sin not to correspond to divine inspirations concerning works of counsel, contempt of them being excluded. But the rest which Germana accuses contains no sin, but an act of virtue. Therefore Germana, since she has accused no sin, even after the insistence of the confessor, is to be dismissed with only a blessing, leave being given to her that she may approach communion. G. 378; I. M. 666, 667.

2. Justinus, distinguished for piety and fervor, frequently wishes to confess in order to obtain the benefit of absolution. But, since rather often he finds in his conscience no fault voluntarily admitted, he is accustomed to accuse himself thus: I accuse myself of all the sins by which I offended God in my past life, chiefly of sins formerly committed against chastity. If he confesses before his ordinary confessor, he says only: I accuse myself of the sins of my whole life, especially of the graver ones, which at other times I have already confessed. Indeed sometimes he says only: I accuse myself of sins committed in my whole life, and I ask for holy absolution.

It is asked: What is to be said to the Case?

R. Since Justinus is free from mortal sins, his accusation is sufficient. For there is question not of necessary matter, but of free matter; and therefore he is not bound to declare sins in their lowest species. "The lowest species of each sin," says D'Annibale, n. 303, "is to be explained, and, if the lowest is lacking or has slipped away, the highest; and if this also has slipped away, the sin in general, e.g., I detracted - I sinned against justice - I sinned mortally. - Wherefore for him who does not have necessary matter, it is enough to say, I have sinned." It is useful, however, in order that the sacrament

of penance may be received with greater fruit, to declare at least some sins in species. G. 381-383; I. M. 666, 673.

Hence it is clear that a penitent is to be absolved who, on account of ignorance and rudeness and natural stupidity, on account of old age and weakness of memory, has absolutely no knowledge or memory of any sin in species or in particular, and confesses that he has sinned by thoughts, words, and deeds. The confessor is then bound to supply the defect of the penitent by proposing to him some specific sins into which it may prudently be suspected that he formerly fell; e.g., do you not accuse yourself of all sins committed against God, against neighbor; against charity, against chastity, against justice; by lies, imprecations, blasphemies, etc. And if the penitent answers that he accuses himself of all, and is sorry for all, let him be absolved. For although so general and too confused an accusation does not suffice in itself, nevertheless on account of moral impotence it is sufficient. The confessor, moreover, will act very well if he helps such a person, especially if he is sick and in danger of death, to elicit not only an act of contrition, but also acts of faith, hope, and charity, before he absolves him. G. 384, 385; Elbel 15; Reuter 303.

3. **Sins after doubtful baptism** - Titius, a Frenchman by nation, but a Lutheran by religion, staying at Rome and very desirous of embracing the Catholic faith, approaches Caius the parish priest and opens his mind to him. Caius, from conversations had with him, seriously doubts the validity of the baptism conferred on him by a Lutheran minister. Hence he exhorts him to dispose himself both to receive baptism again under condition, and to make a general confession of his whole life. Titius promises that he will do the first, but he is very much afraid of the confession of the sins of his past life; yet he is prepared in mind duly to accuse all sins into which he may fall after baptism has without doubt been validly received. Caius indeed would wish still to insist; yet, fearing lest Titius, because of the difficulty of confession, be deterred from conversion, he judges it better to desist from his proposal.

After some days another parish priest, a friend of Caius, learning these things, rebukes him, as if he had conducted himself badly, and urges the obligation of an integral confession in Titius, especially on account of the very recent decree issued by the Congregation of the Holy Office under the date Dec. 17, 1868; after which decree he thinks that the controversy previously agitated among theologians must be held as already defined. But Caius on the contrary objects that the general controversy was not settled by a decree of this kind, since it was given for Neo-Converts in England, on account of special reasons of that region. Hence he infers that it has no force for Gaul; indeed neither is it to be applied to Catholics as regards sins not yet confessed by them, if perhaps in doubt of a preceding baptism they are to be rebaptized under condition.

It is asked: 1. Whether an integral sacramental confession is to be required from neo-converts to be rebaptized under condition? - 2. Whether confession, if it is made, is to be put before or after baptism? - 3. Whether Caius rightly interpreted the aforesaid decree?

R. to the 1st. An integral sacramental confession is indeed to be required from neo-converts in England who are to be rebaptized under condition. This is clear first from the Decree of the first Provincial Synod of Westminster, approved by the Holy See. The same, moreover, is clear from the Decree of the Holy Office of Dec. 17, 1868. But as regards other regions the matter is controverted, and the case is still under judgment. Indeed, whether in general an adult to be baptized under

condition, and whether in general a heretic to be baptized under condition, must confess the things they have committed since the last confession before repeated baptism, there are still two probable opinions among the doctors, even after the praised Decree of the Holy Office. For a Decree of this kind is not general, but is a Response for Neo-Converts in England. In that Response indeed the Sacred Congregation says that a similar Decree, issued on June 17, 1715, is to be given. But even this Decree is a particular Response. Indeed, when in the Question the question was concerning a certain Charles Wipperman, a German to be rebaptized, and the question was extended and made general - for it is said in the Question, both that care be taken for the salvation of him (Wipperman), and also that equal care be taken for the salvation of the others of that sect or religion, especially if they are ignorant - the Sacred Congregation with the greatest caution replied: "that Charles Ferdinand is to be rebaptized," evidently restricting its Decision to the individual person. Whence it is that this preceding Decree most evidently is not General. There is added that His Eminence Cardinal D'Annibale, who was Assessor of the Holy Office, certainly could, by consulting the Documents of the Holy Office, know the mind of the Sacred Congregation. Now in the last Edition made by the Author himself, namely in ed. 3 of the *Summula Theologiae Moralis*, p. 3, n. 301, note 3, these things are found: "Must, therefore, a heretic who, having returned to the faith, is rebaptized, confess the things which he admitted since the last confession before repeated baptism? Formerly Our men denied it, because the S. U. I. formerly seemed rather to advise this than to prescribe it. But on Dec. 17, 1868, consulting with the bishops of England, it judged that confession from neo-converts in England, and that integral, is to be required. Nevertheless, as regards other regions, I still think probable what Our men previously taught; 1. because the bishops of England had reported, among other things, that the younger men of the Anglican clergy faithfully observe the rite of baptizing... that most of them are those concerning the value of whose infant baptism it is not licit to doubt, etc.; 2. because the S. U. I. very cautiously replied: From Neo-Converts in England, etc."

Prescinding from heretics and Protestants, if there is discussion of others, no obligation of confession at all has been imposed by the S. C. And thus for catechumens in the Case of doubtful baptism, the Holy Office, Jan. 27, 1892, handing on the preceding Instruction of Aug. 1, 1860, decrees that there be added to this Instruction, "that if the catechumen has been invalidly baptized, he is to be baptized absolutely; but if he has been doubtfully baptized, he is to be baptized under condition." A. S. S. vol. 29, p. 570. Nor is anything had concerning confession. And in another Resolution, Dec. 2, 1874, soon to be reported in the Response to the 2nd, it indeed indicates the order to be followed in the confession and absolution itself, if confession is made, but makes no precept of confession.

Fr. Gury, Case 424, or rather his editor, Lyons 1885, assigns these reasons for that Decree for the English: "either because where there is question of the reception of sacraments which are necessary by necessity of means, the safer course is to be followed; or because baptism once certainly conferred is in possession, although there is doubt about its value, and therefore induces the obligation of confessing sins committed after it, so long as it is not certainly proved to have been invalid." But both these reasons are weak and by no means subsisting. For salvation in the Case is altogether placed in safety; since those sins committed before the repeated baptism, if they are not remitted by the repeated baptism, are certainly remitted indirectly by sacramental absolution, when he thereafter approaches to receive the sacrament of penance. But the possession of the prior baptism is probably doubtful; otherwise baptism could not be repeated. From that doubtful possession, therefore, a certain obligation cannot be drawn. For the rest, if that possession of the preceding baptism is of

such force that it imposes a certain obligation of confession, then it can by no means at the same time admit the repeated conferral of baptism. And, if baptism is repeated, since it is not repeated except while the probability of its validity stands, the sins committed before it probably are not valid matter of absolution, and therefore again no certain obligation of confession can be given. Therefore the reason of the preceding Decree is to be drawn only from particular circumstances. Hence the Holy Office answered most cautiously: for neo-converts in England, etc.; Charles Ferdinand, etc. I. M. 672; Gury, Cases, ed. Lyons, year 1868.

To the 2nd. The response to the 2nd question is had from the S. C. itself in the cited Decree of June 17, 1715, where it is said: "that Charles Ferdinand is to be rebaptized under condition, and, baptism having been conferred, he is to confess the sins of his past life, and from them he is to be absolved under condition." Therefore baptism is to be put first, and then confession is to be made, as the right order of things demands, since penance presupposes baptism. But this does not prevent it from being possible to proceed otherwise also, namely that the confession first be heard, by which perhaps someone can be better disposed for baptism itself; but afterward, after baptism has been received, the confession being resumed summarily, he can be absolved. And this is also had from another Response of the same S. C., Dec. 2, 1874. "Can catechumens confess sacramentally before they are baptized, either absolutely or conditionally? - R. As regards confession before baptism to be conferred absolutely, Negatively; but if nevertheless the catechumen wishes to confess himself, let him be instructed that this can by no means be had under the character of a sacrament, since absolution cannot be imparted, nor is the missionary bound to observe secrecy. But if there is question of those who must be baptized under condition, then, for the greater facility of the ecclesiastical function, they can first be heard sacramentally as to the accusation of their faults; then after the conferral of baptism under condition, the confessor, again resuming with the penitent by summary heads those things of which he has already made accusation, absolves sacramentally likewise under condition." - Cf. Collect. S. C. de P. F. n. 644, 955, 957.

To the 3rd. It appears from what has been said that Caius is not to be disturbed because he thought that the aforesaid Decree did not contain a general law. Nor indeed, at least on account of parity of reason, does the aforesaid Decree seem to comprehend also the Case of Titius. For that Decree treats first generally of baptized Neo-Converts in England who are to be baptized again. It treats, moreover, of baptized Neo-Converts concerning the value of whose baptism it is for the most part not licit to doubt. But the Case of Titius is a certain altogether particular Case, and the validity of his baptism is seriously doubted. But given the difficulty of confession, which Titius openly manifested, Caius seems to have acted altogether prudently by not insisting on it, namely lest from this a very grave evil follow, that Titius be deterred from conversion. Nor indeed can another Decree of the Holy Office for Charles Wipperman be urged against Caius on account of identity of case, since his baptism had truly been doubtful, as appears from the exposition itself. For first, identity of case is not had from only one or another circumstance of cases, but from the complex of all the circumstances. Moreover, if identity of case is invoked, by that very fact it is affirmed that in reality in that Response there is question of a Resolution given for a singular case, which therefore does not pertain to another singular case. Moreover the Decision of the Sacred Congregation is of counsel and economy rather than preceptive, since those words *let him confess, let him be absolved* do not necessarily import a precept. And this indeed pertains to the prudence by which the S. C. is accustomed to define questions. For that which can be useful in one case and in one region on account of special

circumstances is perhaps not useful, indeed perhaps could even be harmful, on account of other diverse circumstances, in another case and in another different region. Whence it is that unless there is first certainty concerning the general usefulness or necessity, the Sacred Congregations are not accustomed to issue a General Decree. But to assert that all Decrees of the Sacred Congregations have general force for all persons and for every place is against the very manner of proceeding of the same Sacred Congregations, which even in the titles themselves distinguish between particular Decrees and General Decrees. How many Responses indeed have come forth from the Sacred Congregation of the Council concerning the invalidity of clandestine marriages which are contracted by heretics where the Tridentine law is in force? Whence Fr. Gury, Comp. n. 841, judged that their validity must altogether be denied. But Benedict XIV, notwithstanding all those Decisions, affirms that nothing had yet been defined by the Apostolic See in any General Decree; and that the Responses of the Sacred Congregation are referred only to certain peculiar and various circumstances, and therefore were not always mutually conformable, since they were particular. See Const. *Matrimonia*, Nov. 4, 1741, § 2; *de Synodo*, l. 6, c. 6, n. 4. Likewise, how many Responses in more recent times did not come forth from the Sacred Congregation of Bishops and Regulars against the account of conscience to be rendered? Nevertheless the prohibition was not general, nor was there one, until the General Decree *Quemadmodum* came forth, Dec. 17, 1890. Indeed, as the S. Congregation itself declared by letter Jan. 20, 1891, even this Decree does not comprehend all religious Orders and all religious Congregations, but institutes of men by nature and governance entirely ecclesiastical are openly excepted. Likewise, how many Responses did not come forth from the Holy Office itself and from the Sacred Penitentiary concerning the illicitness of a sentence of divorce to be pronounced by a lay judge? Yet it was also positively declared that those decisions do not contain a General Decree for every region. See *Enchiridion Morale*, 3rd ed., p. 149. And, to pass over other things, the Sacred Congregation of Rites also, in the most recent Collection of Decrees which at present is being published in print, expressly distinguishes between General and Particular Decrees; and among the norms of this most recent Collection this was established in the 6th place: "The new general Decrees will have the title of *Decretum* or *Decretum Generale* according to the importance of the matter. The particular ones, however, will be named *Dubii*, *Dubiorum*, *Romana*, etc." To assert therefore that all Decrees of the Sacred Congregations are General, insofar namely as they contain a general force of comprehending all cases and of obliging all persons, is an assertion against the very Decrees of the same Sacred Congregations.

Nor finally, to demonstrate the universality if not of the Decree, at least of the matter itself, can there be objected the Decision of the Holy Office of July 20, 1859, by which, in the conversion of heretics, if baptism is to be repeated under condition, after abjuration or profession of faith, and after conditional baptism, sacramental confession with conditional absolution is established. For first, neither is this Decree of the Holy Office a General Decree, but a Response given to the Rt. Rev. Bishop of Philadelphia. But then what is said concerning the order to be observed in the conversion of heretics, if baptism is to be repeated under condition, is not a General Decree of the Sacred Congregation, but, as is expressly said there, it is an Instruction, and pertains to the Instruction. Hence it is clear that there is not had a universal law promulgated, nor a universal precept, but only an Instruction, to be most prudently observed where it can be done. And since in reality there is no universal law of this kind, and no universal precept, especially at present one must abstain from affirming it; since the Supreme Pontiff is expending every effort to recall Protestants and heretics into

the bosom of the Catholic Church. Therefore judgment concerning this most grave matter is to be left to the same Supreme Pontiff when he himself judges it opportune, lest perhaps that desired return be impeded or rendered more difficult.

When a Case of this kind was proposed in the year 1897 in the public Conference of Cases of Conscience at St. Apollinaris, the Most Eminent Cardinal Vicar of the City, and Secretary of the Holy Office, President of the Conference, with several other wise observations added, altogether approved and confirmed the preceding Resolution. - Cf. I. M. 672.

121. On Contrition

1. **Contrition outside the sacrament** - "Getulius, having committed a mortal sin, remained for three months in this unhappy state. At last, conscience rebuking him, he throws himself at the feet of the confessor. The confessor asks him whether immediately after the sin had been committed he elicited an act of contrition. Since he answered negatively, he is on that account accused of a new mortal sin. The spiritual father then asks whether at least within the week he had been contrite. The penitent answers that he had delayed penance up to this time. You have acted very badly, says the confessor, for thus you have multiplied mortal sins; since you have sinned gravely as many times as, attending to the state of your soul, or remembering your sin, you omitted to elicit an act of perfect contrition.

It is asked: 1. Whether there is a grave obligation of eliciting an act of contrition immediately after a grave sin has been committed? - 2. What delay induces grave sin?

R. To the 1st. Negatively, more probably, because the precept of contrition is affirmative, or is an obligation of doing penance. Therefore it does not oblige at every moment. Therefore it does not immediately urge after a sin has been committed; otherwise sins would be multiplied according to the number of moments of delay, or as often as the sinner notices the obligation of doing penance, which is contrary to the common sense of the faithful and to the practice of confessors. Lig. 437.

To the 2nd. More probably it is grave to defer an act of contrition, after sin has been committed, beyond a month, because there seems to be a grave obligation of eliciting an act of charity once in a month; but an act of charity cannot be elicited without an act of contrition. In practice, however, many, indeed most sinners, are excused from that sin of delayed penance because of ignorance or inadvertence. Lig. 437; Comp. n. 444." Thus Fr. Gury 398, 399.

But some things in this resolution are not very carefully corrected. For it is not true what is said in the response to the 1st, that if the precept of contrition immediately urged after sins had been committed, they would be multiplied according to the number of moments of delay. For if it immediately urged after a sin had been committed, it follows only that someone would then immediately sin against the precept of contrition, and afterward would persevere in that sin until he elicited that act; otherwise he who stole another's thing and retained it for a year would commit as many sins as there are moments in the year, or at least as often as, noticing the obligation of making restitution, he does not restore, which is not true. And thus Fr. Gury himself, Comp. vol. 1, n. 166, raises the question: "Whether he who long defers restitution commits several sins." And he answers: "Negatively, if he habitually perseveres in the will of retaining another's thing, because the evil will

perseveres by way of something continuous with the thing unjustly retained. Nevertheless, if the unjust possessor for a notable time has forgotten that restitution is to be made, and afterward renews the wicked purpose, he will commit a new sin, because his evil will is judged morally interrupted. St. Lig., n. 40, and others commonly, against others who say that the unjust possessor of another's thing sins as often as he attends to the obligation of restoring." Cf. Lig., l. 3, n. 683; Diana, tom. 1, tr. 7, res. 157; I. M. vol. 1, 308.

Moreover, as to the response to the 2nd, the same Fr. Gury, Comp. vol. 1, n. 218, says concerning the obligation of eliciting an act of charity: "The opinion of those who require an act of charity once in a month pleases St. Liguori. *Ho. Ap.* n. 12. But this opinion has no solid foundation." Likewise Fr. Gury, l. c., Comp. vol. 2, n. 444, raises the question: "What delay of contrition induces grave sin?" And he answers: "Theologians do not agree: it is indeed commonly admitted that there is given a grave delay of contrition independently of the precept of annual confession; but how great this delay must be, so that it may be judged grave, cannot be determined certainly: some extend it to a year; others to six months; others with St. Liguori to a month; nevertheless no reason or authority favors this last opinion. Moreover St. Alphonsus himself adds, n. 437, that sinners, especially rude ones, can for the most part, indeed almost always, be excused from this precept of delayed penance." I. M. vol. 1, n. 381; vol. 2, n. 478.

2. **Defect of contrition in the Sacrament** - Angelus, accusing only venial sins in sacramental confession, conceives no sorrow for them. For he says that, in order to blot them out in sacramental confession, their confession itself suffices, which is an act of satisfaction and penance.

It is asked: Whether at least attrition is necessary for the confession of venial sins.

R. Affirmatively. The reason is that Trent absolutely declares sorrow and detestation of sin to be the principal act on the part of the penitent, which with the others constitutes as it were the matter of the sacrament of penance. Cf. La-Croix, l. 6, p. 2, n. 682; Lugo, d. 9, s. 2; Suarez, d. 11, s. 3. Therefore confession of venial sins without sorrow can indeed be of itself an act of satisfaction and penance, but not sacramental. Angelus perhaps is indeed excused by good faith, but he acts badly, for, accusing only venial sins without sorrow, he exposes the sacrament to nullity, which is grave. I. M. 685.

3. Claudinus, a good old man, being asked by the confessor how he elicits the act of contrition for sins, answers: Thus I say: I love thee, my God, above all things, because thou art supremely good; spare, my God, spare my sins. The confessor, having heard this response, indeed labors with anxiety concerning the value of this contrition. Yet, thinking it to be a scruple, he absolves Claudinus.

It is asked: 1. Whether for sacramental confession perfect charity toward God suffices in place of an act of sorrow? 2. What is to be said to the Case?

R. To the 1st. Negatively. The reason is that the Council of Trent, sess. 14, cap. 3, asserts that the acts of the penitent are as it were the matter of the sacrament of penance. But among them it by no means enumerates charity, but places contrition, which the Council of Trent itself, in the following

chapter, says holds the first place among the acts of the penitent. But it says that this is sorrow or detestation for sin committed. Therefore that contrition required by the Council for penance is formal contrition, by no means merely virtual; it is an act of the virtue of penance, by no means of charity. But the contrition required for penance must be such only as is expressed and prescribed by the Council, loc. cit., where it professedly hands on Catholic doctrine concerning the sacrament of penance. Therefore.

To the 2nd. An act of charity can be understood in two ways: first, as having for its material object God to be loved, and for its formal object the absolute goodness of God; and there that act stops; nor does that formal object advance in any way so far as to excite in us detestation of sins. And thus charity does not suffice without a true and formal act of sorrow or contrition for the sacrament of penance, so as to constitute part of its quasi-matter, although it suffices for the remission of sins outside the sacrament. But if that formal object of charity moves us also to detestation of admitted sins, then there is perfect contrition, formed by charity, as the same Council of Trent speaks, l. c., cap. 4; and it is best, not only for the remission of sins outside confession, but also in sacramental confession. Now indeed such seems to have been the charity of Claudinus, if attention is paid to the act which he elicited after the formal act of charity: *spare, my God, spare my sins*. For these words, by imploring divine mercy and the mercy of sins, implicitly signify sorrow of soul and detestation or hatred of the sin committed, with the purpose of not sinning henceforth. It is morally impossible that someone, recalling his sins, should elicit an act of love toward God without being sorry for his sins and detesting them, insofar as they are opposed to God supremely loved. Therefore Claudinus's confessor acted rightly.

"Nevertheless in our Case," says Fr. Gury 402, "Claudinus ought to be carefully questioned by the confessor, so that the latter may know whether he really thought about sorrow for sins, or uttered a mere formula, the sense of which perhaps he did not sufficiently understand. Moreover the confessor ought to have taught the penitent about the manner of eliciting an act of contrition before confession." But these things are said rather by divining; for, as is drawn from the exposition of the Case, there is no trace in Claudinus of such alleged ignorance and negligence. From the very fact that Claudinus did not remain only in that act of charity, *I love thee, my God, above all things, because thou art supremely good*; but further uttered another act of sorrow and detestation of sins, *Spare, my God, spare my sins*, he certainly did not utter these words materially, by no means understanding them. And indeed who is so stupid that, uttering these words, he does not understand them? Certainly Claudinus is not such, who forms so perfect an act of charity, and then asks from God remission of sins. But who, asking from God remission of sins from a motive of perfect love, does not at the same time have sorrow for them and detestation of them? It is utterly repugnant seriously to implore divine mercy and forgiveness of sins at the same time, and not to be sorry for them, nor to detest them. Moreover contrition consists essentially in detestation of sin. Sorrow is its companion or effect. Roman Catechism n. 23, 24; St. Thomas, 3 p., q. 85, a. 1, ad 3. The object of contrition of this kind is sin, that is, an evil action by which God is offended. St. Thomas, l. c., a. 2. How therefore does someone explicitly asking forgiveness of sins from God out of true love not at the same time detest and reprobate them? Does he not at the same time have displeasure with them? Therefore no obligation appears in the confessor, in the Case, of teaching the penitent the manner of eliciting an act of contrition, since the penitent elicits an act of contrition so perfectly. I. M. 677.

4. **Motive of contrition** - Albert, after making confession, is asked by the confessor by what motive he is moved to sorrow for sins. The penitent answers: I am sorry for sins, because I fear lest God, who constantly appears in Sacred Scripture indeed merciful, but also just avenger of sins, punish me in this life with miseries or with sudden death. The confessor replies: Surely, my good man, did you sorrow for sins in the same way in the past, when you approached to confess? Albert affirms it. Whence the confessor, judging those confessions to have been invalid, orders him meanwhile to depart without absolution and to prepare himself for instituting a general confession of his whole life.

It is asked: What is to be said to the Case?

R. "The confessor imprudently declared that the aforesaid confessions were invalid by reason of attrition elicited from fear of temporal punishments. The reason is that such attrition is more probably valid if it was had from a supernatural motive. Although in practice it is safer to excite sorrow from the motive of punishments to be undergone after death, nevertheless after the fact, the obligation of repeating confessions is not established. Therefore the penitent is not to be obliged to undergo that burden." Thus Gury 408. Now indeed in the Case it is not to be doubted that Albert's attrition was from a supernatural motive, since the object was for him as it is apprehended by supernatural faith. And in this way attrition of this kind is brought back to attrition from fear of divine judgment begun. For although the punishments are temporal, nevertheless if they are considered as inflicted by God, they indicate to us His wrath, and in a certain way begin divine punishment, unless we amend. Under this aspect, however, they can well move to supernatural attrition, which is very well reduced to that which is from fear of hell. Suarez, d. 5, s. 2, n. 15; Lugo, d. 15, n. 137.

But although grave theologians regard attrition of this kind only as probable, nevertheless several and also grave theologians regard it as morally certain, and even as altogether certain. I. M. 687. And the distinguished Ballerini, in Gury, Comp. 452, says that the opposed reasons detract nothing from the firmness of the common doctrine, which stands for the sufficiency of such attrition, nor can they reconcile any, even slight, probability to the opposed opinion. Hence according to this common doctrine Albert would have been disturbed neither before nor after confession. But since Albert's Case regards confessions already made, and certainly the opinion affirming that the aforesaid attrition suffices for the sacrament of penance is at least probable and most probable, Albert certainly ought altogether to have been absolved by his confessor, and could by no means be obliged to institute a general confession of his whole life.

5. **Precedence of contrition** - Eleonora, approaching the sacrament of penance for several years, is accustomed to act thus: 1. On Saturday night she institutes an examination of conscience, and is sincerely sorry for all sins. But on Sunday, very early in the morning, she makes confession, without seeing to the eliciting of a new act of contrition, although sometimes she reveals a mortal sin which had not occurred to memory in the examination on the preceding day. 2. On a certain day, when she had fallen into a lethal sin, she at once was contrite for it, yet without ordering it to confession. After three or four hours she goes to the church to pray. But seeing the parish priest coming out of the confessional seat, she runs to meet him, and at once confesses without a new act of contrition. 3. Sometimes, after absolution has been

received, she remembers some sin which had not before occurred to memory; she opens it to the confessor, and is absolved of it, without becoming contrite again.

It is asked: What is to be said to the Case?

R. "More probably the contrition of Eleonora, elicited on the day before confession, was valid, because it seems virtually to persevere, especially if it had great intensity; nor does it stand in the way that the woman had forgotten a grave sin, because that sin was implicitly contained in the general contrition for the others. Eleonora is nevertheless to be exhorted that in the future she elicit an act of contrition immediately before confession.

More probably also the contrition of Eleonora was valid, although it was not elicited in order to the sacrament. The reason is that, from Trent, that attrition is said to dispose to justification in the sacrament which excludes the will of sinning with hope of pardon. Now all these things are verified in our Case. Therefore. Moreover, although sorrow was not ordered to confession by an antecedent relation, nevertheless it is ordered by a consequent relation, in that it is still verified that sorrow is laid open through confession. Nevertheless the opposed opinion is not without its probability, and therefore in practice contrition is to be renewed before confession for greater safety. St. Lig., n. 447.

Still more probably in the third Case the contrition of the woman was valid. For it was by no means necessary to elicit a new act of contrition in order to obtain a new absolution, because the prior contrition certainly persevered, which, as universal, was extended to all sins, even those omitted from forgetfulness. Add that it is not required that contrition be explicitly ordered to the sacrament, as has been said. Moreover explicit sorrow seems to be manifested in the very act of accusing that sin. Thus commonly. But since several theologians contradict, although relying on a slight foundation, in practice the opposed opinion, as safer, is to be chosen.

But Eleonora is by no means to be disturbed by reason of defect of contrition, which more probably in every case was sufficient for the value of the sacrament. Before confession indeed the safer opinion is to be followed, because there is question of rendering the value of the sacrament more certain; but after confession has been made, there is no longer question except of the precept of confession, which more probably has been satisfied. Hence this rule can well be applied: "An obligation is not to be imposed, unless it is certainly established." Thus Gury 410-412.

Now indeed Eleonora's contrition in the first Case seems not only more probably, but morally certainly, valid in order to confession. For first, the interval of time inserted from the beginning of Saturday night to very early Sunday morning is very brief, and after the examination of conscience and contrition were made on Saturday night, in approaching confession very early on Sunday morning by force of that examination and contrition, it is most evident that that contrition virtually perseveres, since with so solicitous diligence its effect is placed. Moreover, from the common opinion, even the stricter doctors make no difficulty as to so brief a space of time, since they commonly extend it much more. And Fr. Gury himself in the Compendium affirms that contrition can persevere according to the common opinion for one, or even several days, which St. Alphonsus also admits and approves, l. 6, n. 446; I. M. 682.

Not only more probably, but again with moral certitude, the contrition of Eleonora seems to have been valid in the second Case. For first, Eleonora's contrition has all those things which the Council

of Trent requires, sess. 14, cap. 4, where it professedly treats of contrition, which is the principal act on the part of the penitent in the sacrament of penance. And unless we wish to say that the Council handed on imperfect doctrine, this argument is not only probable, but demonstrative. Moreover, if perfect contrition, from the Council of Trent, l. c., does not justify except with the desire of the sacrament, and yet this desire need not necessarily be explicit, but an implicit desire suffices, namely the desire which by its nature is included in contrition itself, so consequently it is that if some ordering to the sacrament is required in contrition, this certainly need not necessarily be explicit, but that implicit ordering suffices, which by its nature is included in contrition itself. Otherwise there would also be that other inconvenience, that more would be required for justification from contrition and the sacrament than from contrition alone, although it is altogether certain that less is required; since even simple attrition suffices for justification with the sacrament. There is added that in the Instruction which is found at the end of the Roman Council, Appendix 29, nothing at all is had about this explicit ordering of contrition to confession. And in the formula of the act of contrition which is proposed there, nothing at all is also had about that explicit ordering. Now who will dare to affirm that contrition duly made according to the aforesaid formula is not sufficient for then receiving the sacrament of penance? I. M. 683.

Likewise in the third Case the confession of Eleonora seems not only more probable, but also morally certain. And, if the opposed opinion, as Fr. Gury himself says, rests only on a slight foundation, it cannot therefore be held as truly and solidly probable, because several theologians contradict. For it is very well known that extrinsic probability has value insofar as it is presumed to rest upon intrinsic probability. Therefore where intrinsic arguments are lacking, it helps little to heap together the names of authors. Cf. I. M. 684. For the rest, the Case of Eleonora is also admitted by several who admit the probability of the opposed opinion. For the sin forgotten in the preceding confession was contained also in the preceding sorrow. Therefore when someone confesses it, in reality he confesses it by force of the preceding sorrow, and that sorrow is evidently extended to this new confession, which is a certain supplement of the former. And if contrition virtually persevering suffices for confession, by what reason can it be said that contrition in the Case does not suffice, when most evidently, as is proved from its very effect, contrition virtually perseveres and moves to confess the forgotten sin at once?

6. **Intensity of sorrow** - Clodomira, a pious matron, very anxious about the sorrow required for confession, complains to her confessor: 1. That she feels more intense sorrow over the death of her son than over her sins. 2. That she does not seem to herself prepared to suffer all evils, e.g., to be burned alive, rather than commit sin. 3. That she recoils more from a monster, from a fierce beast, from plague, from slaughter, from fire, than from sin. - Wherefore she thinks that she has never made valid confessions; and she asks to make a general confession of her whole life. Yet she affirms that she is sorry and very sorry; but that she is not sorry enough for so many and such great sins by which she offended the divine Majesty.

It is asked: What is to be said to the Case?

R. Clodomira, as to the first, ought not to be disturbed. For the value of contrition there is not required a certain intensity of sorrow; just as neither for sinning is required a certain intensity of will. For the degree of sorrow does not pertain to its essence. Moreover Clodomira confuses sorrow, an act

of the will, with sensible sorrow. The former is necessary for true penance, not the latter. For in contrition there is a twofold sorrow. One is in the will itself, and is displeasure over past sin. The other is in the sensitive part, which is caused from the former sorrow, in one way from necessity of nature, according as the lower powers follow the motion of the higher faculties; in another way from choice, according as the penitent man excites this sorrow in himself, so that he may be sorry for sins. That sorrow of the will in contrition exceeds all other sorrows, because as much as something pleases, so much does its contrary displease. But the last end pleases above all things, since all things are desired on account of it; and therefore sin, which turns away from the last end, ought to displease above all things. And thus this sorrow is highest and greatest of all, appreciatively, insofar as man ought by his will to detest nothing else as much as sin. But the other sensible sorrow is not necessarily highest in either of the said ways. For first the lower powers are moved more vehemently by their proper objects than from the overflowing of the higher powers. And therefore the nearer the operation of the higher powers is to the objects of the lower powers, the more they follow their motion. Wherefore the sorrow which overflows from reason deliberating about bodily things is greater than that which overflows from reason considering spiritual things. Hence sorrow in the sensitive part overflowing from the displeasure of reason concerning sin is not greater than other sorrows arising from displeasure over sensible evils. And similarly neither is the sorrow which is voluntarily assumed necessarily greater; because the lower affection does not obey the command of the will so that such and so great a passion follows in the lower appetite as the higher orders. St. Thomas, Suppl., q. 3, a. 1; I. M. 679.

As to the second and third, although such really ought to be the disposition of the contrite person, nevertheless he is not to be tested concerning sensible comparisons of this kind, because a man cannot easily measure his affections. Sometimes that which displeases less seems to displease more, because it is nearer to sensible harm, which becomes more known, and more affects the sensible appetite. Likewise, as delightful things move more when considered in particular than in common or generally, so terrible things terrify more if they are considered in particular. Hence to descend in such matters to individual things is to lead a man into temptation and to furnish an occasion of sinning. But although the contrite person is bound in general to wish to suffer any punishment whatever rather than to sin, nevertheless he is not bound in particular to descend to this punishment or that; indeed he would act foolishly if someone were to solicit himself or another about punishments of this kind. St. Thomas, Suppl., l. c., ad 4; Quodl. 1, a. 9; I. M. 679.

As to that, finally, which Clodomira affirms in the last place, it must be noted that, speaking in itself and abstractly, it is not enough for the required contrition if the penitent is sorry that he is not sorry. For, speaking in itself and abstractly, if someone is sorry that he is not sorry, therefore he is not sorry; nor can sorrow for the defect of sorrow for sins supply this sorrow. But speaking practically, ordinarily penitents who are sorry from the fact that they are not sorry, or not sufficiently sorry, have true sorrow for sins and truly detest them; yet they are sorry that they are not sorry, not because they truly are not sorry, but because they do not experience sensible and intense sorrow in themselves. Therefore for the most part they are not to be disturbed about sorrow, but are to be exhorted to confidence. And this seems to be the Case of Clodomira, since she is a pious matron and is very anxious about sorrow. G. 414; Elbel 80; D'Annib. 312; I. M. 679.

122. On Purpose

1. Caelestinus, in making his confession, among other things declares that in his last confession, while he had been intent upon eliciting sorrow, he had by no means thought about the purpose of not sinning henceforth, and that he had thus been absolved; wherefore he labors under great anxiety about this absolution. The confessor, having heard this, decides that the confession had in reality been invalid, and therefore that it must be repeated.

It is asked: What is to be said to the Case?

R. "Caelestinus made a valid confession, at least much more probably, although his purpose was not explicit. Therefore he ought by no means to repeat the confession, because the obligation of repeating is not established. Therefore the confessor erred in declaring that the confession must be repeated." Thus Fr. Gury 419.

But Caelestinus not only much more probably, but with moral certainty, made a valid confession, from the *Instruction for children* of Benedict XIII, at the end of the Roman Council, Appendix 29, part 3. I. M. 694.

2. Cornelius, laboring under the habit of a base sin, is asked by the confessor whether he firmly resolves no longer to commit these sins of a wicked habit. - I do resolve, says the penitent, but I foresee that I shall certainly violate this purpose. For at other times I have similarly resolved, and I have always unhappily relapsed. So great is the force of habit in me that it entices and drags me away. But do you resolve to guard against a fall? the confessor replies. Yes, father, says Cornelius, but I am certain about a future relapse. The confessor, entangled by responses of this sort, does not know whether he can absolve this penitent. At length he decides to absolve him.

It is asked: 1. What is to be said of a habitual sinner who, soon after absolution, relapses into the accustomed sin? 2. What is to be said to the Case?

R. To the 1st. "The presumption ought to stand against him. Hence it must be presumed that he was indisposed, or lacked a firm purpose, in the last confession. The reason is that a sinner who soon and easily relapses, making no effort to resist temptation, is not considered to have firmly resolved no longer to sin. See *Comp.* n. 513.

To the 2nd. Cornelius seems to have made an invalid confession, because he who believes that he will certainly relapse, by that very fact argues that he has lacked firmness of purpose. Therefore the confessor acted badly in absolving a penitent of this sort, unless he recognized in him rather a fear of relapse than a defect of purpose." Thus Fr. Gury 422.

Moreover, as to the first question, Fr. Gury himself has the contrary in the cited place of the *Compendium*. For there he raises the question: "Whether relapsers are to be compelled to repeat preceding confessions?" And he answers: "Negatively, of itself. The reason is that a new fall of itself is not a certain argument that the relapser previously lacked disposition. Yet sometimes from the circumstances it will be possible to judge prudently that a certain relapser confessed invalidly. St. Lig. n. 505." Nor is this resolution of itself changed precisely by the fact that someone relapses soon after absolution. For the fact that someone afterward sins either by act or by purpose does not exclude that

previously there was true penance. For the truth of a prior act is never excluded by a subsequent contrary act. For as he truly ran who afterward sits, so he truly repented who afterward sins. St. Thomas, 3 p., q. 84, a. 10, ad 4. And St. Alphonsus 459 says: "A relapse, although it furnishes some suspicion, nevertheless does not exhibit a certain sign of indisposition. For it can well happen that the penitent truly had a firm will not to relapse, and yet by the force of an evil habit relapsed." These things indeed imply that the holy Doctor suggests that from true preceding penance it can be argued, speaking again of itself, that disposition is not lacking even in the present. And in fact, as the same holy Doctor had premised: "The penitent, on the one hand, is not to be presumed bad, so that he wishes to approach the sacrament indisposed; on the other hand, he is presumed disposed while he confesses his sins, since the spontaneous confession itself is a sign of contrition, unless some positive presumption to the contrary stands in the way." Wherefore the whole matter in practice is to be prudently judged and defined from the circumstances. And that suspicion which repeated relapse into the same sins casts ought to move the confessor, not indeed so that he should decide beforehand that the penitent is indisposed and must be dismissed without absolution, but so that, according to his office, he should inquire more accurately about the present disposition of the penitent, and help him to conceive this disposition, if perhaps he does not have it.

As to the second question, when the case really occurs, the resolution does not seem very difficult in practice. For the whole question is about the sincerity of the sorrow and purpose of Cornelius. If he has sincere sorrow and purpose, beyond doubt his confession is valid. Moreover, when a case of this sort occurs, from all the circumstances of the penitent and of his confession, and from the very manner of the confession, that sincerity of sorrow and purpose easily appears. But considering the Case as it has been proposed, it does not seem that the confession of Cornelius can be affirmed invalid with such facility. For Cornelius responds seriously to the confessor questioning him, and with a certain vehemence and insistence, that he indeed resolves to guard against a fall; and from the response appears his displeasure that at other times also he conceived the same purpose and nevertheless relapsed. Therefore from this an argument cannot be drawn for the invalidity of the confession, but rather for its validity, especially if it is considered that Cornelius after the relapse does not withdraw from the sacraments, but approaches the sacraments; namely, so that at length by the grace of the sacraments he may be efficaciously helped toward amendment; since no other reason can be assigned in the Case why Cornelius confesses again. Nor indeed can an argument for the aforesaid invalidity of the confession be drawn from that foresight of Cornelius concerning a new fall. For this foresight, founded only on his own frailty, can well stand together with present sorrow and purpose resting upon the aid of divine grace. Now indeed, as often as the penitent brings true signs of present sorrow and purpose, so often he can well be absolved, St. Lig., l. 6, n. 459. Nor indeed is the penitent absolved on account of future amendment; if this has thus far disappointed the hope of the penitent and the confessor, perhaps in the future, with divine grace helping, once begun it will no longer cease. "Well," says St. Alphonsus, l. 6, n. 459, "Lugo teaches, s. 14, n. 166, with Suarez, Sanchez, Reginald, Henriquez, and others commonly, that sufficient disposition is present sorrow and purpose, not future amendment; and thus the penitent can be absolved, although he is judged likely to relapse." But if the confessor, as is fitting, exhorts Cornelius to trust in God, and stirs him to repeat sorrow and purpose, and, dealing with him earnestly, patiently, and gently, more and more strengthens his will, the motives of sorrow having been explained and the due means to be employed

having been indicated; if Cornelius consents and signifies his good will, there is surely no reason why the confession of Cornelius should afterward be pronounced invalid. I. M. 694, 809.

123. Integrity of Confession

1. Crispinus, a young man, thus makes his confession: 1.º I have been given to intemperance, gaming, and blasphemies with various companions; 2.º I have rather often revolved impure thoughts in my mind concerning various persons; 3.º once I spent the whole night conversing with a girl; 4.º several times I nourished enmities in my mind, detracted from an enemy, and wished evil to him.

2. Elodia, a querulous woman, accuses herself that she had uttered imprecations against her husband about ten times; afterward, however, she discovers that she had uttered imprecations eleven times, or even fifteen times. Likewise she confesses some sin of detraction as doubtful, saying: I believe that I detracted, but I doubt about this. Afterward, however, she finds that that sin was certainly committed by her. Therefore she doubts whether the confession of the same sins must be repeated in both Cases.

It is asked: What is to be said to the Case?

R. "The confession of Crispinus lacks integrity in all points, since he declares neither the number of the sins nor their species, nor sometimes sufficiently expresses whether the matter is grave or light. Therefore the confessor must supply by questioning in the following manner:

1.º How have you violated temperance? Was it by excess in food or in drink? Was it to the point of surfeiting, or to full drunkenness? And how many times? - To what game did you give yourself? Was it a prohibited game? An unjust one? Was it with great prodigality? Was it several times? - How many times did you blaspheme? In what way? This last question will often be necessary for discerning whether the penitent really blasphemed.

2.º How many times did you deliberately give assent to wicked thoughts? Did you also foster wicked desires? What was the object of your concupiscence? Were the persons free, or married? Were they related by blood, or by affinity? Were the sins consummated or not?

3.º In conversing the whole night with the girl, did you sin several times, and how many times, or did you consummate the sin?

4.º How many times, or for how long, did you foster enmities? Did you wish grave evils to your neighbor, or how many times?

Elodia, however, is not bound to accuse the eleventh sin, as being comprehended in this accusation, about ten times. She is truly bound to express the fifteenth number, as not contained in the aforesaid expression. She is bound, at least speaking practically, to accuse again the sin of detraction according to the common opinion, because a certain sin is not contained in a doubtful accusation. See *Comp.* n. 472-480." Thus Fr. Gury 428, 429.

But it is to be noted here that, since the various questions to be asked by the confessor are not without burden and inconvenience for the confessor and for the penitent, the confessor can often

abstain from them: first, because he is bound to judge concerning what has been heard according to the obvious sense, and he is not bound to search out subtle things; then because often, although the sufficiently ultimate species of sins is not expressed, nevertheless it is understood quite sufficiently from other circumstances of a well-known penitent, or from other sins which are afterward declared. And thus the confession is sufficient "if one whom the confessor knows to be married, or a priest, says that he has had intercourse with another woman." D'Annib. 303.

Then, as to the confession of Crispinus, some of those questions which Fr. Gury teaches are to be asked under n. 1.º can in reality be omitted, since they do not contain a grave species of sin, as, for example: How have you violated temperance? By exceeding in food, or in drink? To the point of surfeiting or to full drunkenness? More briefly and more fittingly the confessor would ask: Did you commit excess in drink to the point of perfect drunkenness, or in food to the grave harm of health?

As to the other questions to be asked of Crispinus under n. 2.º, it must be noted that one must proceed with great caution, so as to remove every scandal, especially if there is question not of a man, but of a woman. Besides, as is established by experience itself, when the faithful simply accuse wicked thoughts, they distinguish them from wicked desires; whence they seem to accuse simple delight or complacency. And when they thus generally accuse these wicked thoughts or wicked delights or complacencies, it seems that then there is given only an indeterminate consent to venereal delight in common, or to copulation in common, and not to this or that determinate object. Hence the confessor seems to satisfy his obligation if he only asks the penitent, where there is need, whether he was delighted concerning some other person of the other sex. For the various objects apprehended do not pour back their malice into simple delight except insofar as they delight. But ordinarily they do not delight except either merely insofar as they stir the genital spirits, or insofar as they are referred to carnal copulation, toward which that stirring naturally tends. Besides, since it is better to fall short as to the integrity of confession than that the penitent be scandalized, this indeed is the practice of pious confessors: namely, to abstain from further questions. "This doubt," says Reuter 209, "creates no light annoyance for confessors who strive to discharge their office exactly; for on the one hand the more common opinion in the schools holds that simple delights, for example concerning copulation, a kiss, sodomy, bestiality, are distinguished in species... on the other hand it is dangerous to ask penitents about what object they thought and were delighted. For they will easily be scandalized, they will accuse confessors of excessive curiosity, and they will give responses which offend the ears. And perhaps for this reason the common practice of confessors... holds that they do not order penitents to declare the venereal objects about which they were simply and nakedly delighted... nor is reason lacking for this. For... although the objects are diverse - adultery, incest, fornication - nevertheless simple delights concerning them, not as such, but precisely as they are carnal copulation, do not differ in species. Now indeed simple venereal delights seem ordinarily to be borne precisely toward the delectability arising from the motion of semen and of the spirits serving generation, which is the same whether it arises from this or from that object thought of; therefore they seem not to differ in moral species." Cf. I. M. vol. 1, 291. But as to the question: whether of a blood relative, of an affine; since probably incest with blood relatives and with affines does not differ in species, the question can be omitted as to this precise distinction of a person related by blood or by affinity. I. M. 711.

But what of Elodia, if in good faith she had erred otherwise in the number, namely by notably exaggerating it? Would she have to declare this afterward in confession? **R.** Negatively. For the confession would have been good, since the smaller number is contained in the greater, and, since she acted in good faith, that exaggeration lacked every sin. - But as to a doubtful sin, afterward known as certain, and to be accused again, Fr. Gury himself, in the cited place of the *Compendium*, namely n. 480, says that the opinion denying that the confession must be repeated is sufficiently probable. And he concludes: "Thus Lugo d. 16, n. 78, Sporer n. 397, Elbel n. 274, Reuter n. 332, etc." Therefore, speaking practically, Elodia cannot be obliged to repeat the confession. I. M. 674.

3. **A recent sin declared as ancient.** Paulina, a clever woman, if at any time she sins more gravely, finds a way of confessing the sin with less shame, as will be clear from the things to be said.

1.º Once, when she had become guilty of a base sin, she made a brief general confession of several years, and she mingled and confused that sin recently committed and not yet declared with other sins already accused in preceding confessions.

2.º At another time, stained with recent lethal guilt, after accusing venial sins, she adds: I accuse myself also of such a sin, which I unhappily committed in the past year.

3.º At another time, the same Case recurring, after likewise accusing venial sins, she concludes thus: I accuse myself of all faults committed in my whole life, especially of such a base sin.

It is asked: What is to be said to the Case?

R. In the first Case Paulina satisfies the integrity of confession. For, speaking of itself, there is no obligation of declaring that she had not previously confessed such a sin. The reason is that the sin is the same whether someone had previously confessed it or not, unless perhaps a change of time brings with it a circumstance diverse in species. Speaking of itself, namely, unless the sin is reserved, unless there are adjuncts of proximate occasion or of wicked habit, which need the peculiar care of the confessor. Nor indeed does it stand in the way that the penitent says she wishes to make a general confession. For by this she does not say that she wishes to confess ancient sins alone, but that she wishes also to comprehend those. For a general confession embraces all sins up to this hour. Nor does it matter that the confessor understands that sin to be ancient; for the penitent did not say this, and therefore the intention of absolving is not regulated by the private estimation of the confessor, who intends to absolve from the sins which the penitent has brought to judgment, whatever they may be. Finally, it does not matter that the penitent seems implicitly to indicate that they are ancient sins; for she herself truly has the mind of speaking about new sins, and wishes to speak about them, although she desires not to be understood as to this by the confessor. Lugo d. 16, n. 47, 54.

"In the second Case," says Fr. Gury 435, "Paulina did not satisfy the integrity of confession, because she denied that she had sinned recently, which is false, and therefore equivalently concealed the sin committed in this last time."

"In the third Case," says the same Fr. Gury, l. c., "there was also lack of integrity of confession, because she accused a recent sin as ancient; for this formula, ordinarily uttered at the end of confession: I accuse myself of the sins of my whole life, in the commonly accepted sense, signifies

sins committed before the last confession. Therefore the confessor understands the sin specified by the penitent to pertain to the former life, and already to have been accused. Therefore that confession lacks integrity. Therefore it is to be repeated. See *Comp*. n. 488."

Moreover, in the cited place of the *Compendium* it is noted that there are not lacking theologians who think the aforesaid lie light. And then the distinguished Ballerini observes that the argument adduced does not exceed the limits of mere probability insofar as it is urged for denying the sufficiency of such a confession. "And indeed, as Tamburinus notes, *Exped. Conf.* l. 2, c. 1, n. 6, a disorder of this sort, by which you seem to accuse a sin never committed and to be silent about one truly committed, equally happens, even the adversaries freely admitting it, from other circumstances also which are falsely added. Thus, for example, if you say that you killed Paul, when you killed Andrew, or that you sinned with a stranger, when you sinned with an inhabitant, or that you stole from Lucius, when you stole from Caius, or that you detracted from someone at home, when you detracted on the road or in the theater, or that you read a heretical book of the author Melanchthon, when the book was by Osiander, or that you struck a Capuchin, when you struck a Carmelite: indeed, that these lies do not stand in the way of sufficient integrity of confession is clear also from this, that if perhaps they were uttered inadvertently, no one compels the penitent to amend the error in the following confession." Baller., *Comp*. P. Gury, l. c.; D'Annib. 309; I. M. 715.

124. Circumstances of Sins

1. Flavius, a young man, several times stole from his father, from his mother, and from his elder brother the sum of a few lire. He did indeed confess the theft, but omitted that circumstance of father, mother, brother. Hence he thinks that he made a sacrilegious confession.

It is asked: What is to be said to the Case?

R. Flavius, speaking of itself and excluding an erroneous conscience, did not make a sacrilegious confession by the omission of that circumstance. For injuries in the goods of fortune inflicted on parents or on other relatives by no means change the species of the sin, if the case is excepted in which parents or brothers, on account of the amount of the theft, would lose that which is necessary for their sustenance, and which the son or brothers would be bound by piety to supply to them.

But it would be otherwise if there were question of other injuries, for example, of imprecations, insults, etc., against father, mother, brother, sister, etc.; since injuries of this sort, as they are specifically opposed to piety, which strictly obliges among blood relatives, introduce a grave species of sin against piety. G. 456, 457; I. M. 712.

2. Anatolius, a parish priest, when he had unhappily fallen into a sin of the flesh with Rosaura, his maidservant, who at the same time was a parishioner and a daughter of confession or penitent, and afterward had sacrilegiously celebrated, dressed in lay clothing, goes to a distant place for the sake of confessing, and accuses himself that, being bound by a vow of chastity, he had sinned with some woman and had sacrilegiously communicated. Rosaura, however, since she could not easily go elsewhere and was known to all the confessors of the city, nor dared to open her sins to anyone, dressed in male clothing enters by night an oratory in which only men

are admitted, and with a simulated masculine voice confesses her sin, saying that she had sinned with a person of the other sex sacred to God.

It is asked: What is to be said to the Case?

R. Anatolius confessed integrally by omitting precisely the circumstance of sin committed with a penitent. The reason is that the confessor from his office is strictly bound only to the right direction of the penitent in the sacred tribunal. Nor indeed is there any kinship between confessor and penitent arising from confession. Yet there would be present a new species of sin, namely of sacrilege, if solicitation had preceded in confession or on the occasion of confession. Cf. I. M. 713.

Anatolius also confessed integrally by omitting the circumstance of maidservant. For service does not change the species of the sin, since a contract of this sort extends itself only to temporal things, namely to the price to be paid for yearly or monthly service. Nor indeed does the master, by admitting the maidservant to service, intend to bind himself as if from office to undertake spiritual care of her soul. But it would be otherwise if a younger girl were explicitly entrusted by her parents to the master's guardianship, because then a quasi-contract would intervene.

But Anatolius did not confess integrally by omitting the circumstance of parishioner. For it belongs to the parish priest from his office diligently to guard his sheep and to turn them away from sins.

Nor also did Anatolius satisfy the integrity of confession by passing over the celebration of Mass in the state of mortal sin. For by saying only that he had sacrilegiously communicated, he was silent both about the unworthy celebration of the sacrifice and about the unworthy administration of the Eucharist to himself. But, excluding the circumstance of the celebration of Mass, he probably satisfied by saying that he was bound by a vow of chastity. G. 458-461; I. M. 353, 710, 713.

Rosaura expressed her sin sufficiently. For there was no obligation for her to confess the circumstance of maidservant, parishioner, and penitent. But she fittingly expressed the carnal sin with a priest, who, by a solemn vow of chastity, is a person sacred to God. Nor indeed is it an obstacle to the integrity of confession that she simulates the male sex. "The reason is that the confessor hears and absolves the sinner present, of whatever state, condition, or sex the person may have been. For the error of the minister concerning the sex of the penitent is something merely accidental as to confession and absolution. For the confessor must not pass judgment concerning sex, but concerning sins; but sins do not change species according to the diverse sex. This also holds if a woman, confessing under the appearance of a man, were to accuse sins committed with a different sex, because the judgment of the confessor is not essentially changed." G. 438.

But what if Rosaura had procured abortion in herself? Would it have sufficed to say: I procured abortion? The answer is negative, because thus she would not express that she had brought death upon her own offspring, and therefore would conceal a most grave species of sin against piety. G. 439.

But if a proximate occasion of sin were present, as can easily happen in practice, Anatolius is altogether bound to dismiss that maidservant; and the maidservant likewise is altogether bound to depart from this house. And the same must be said if at least there were scandal of others from their suspicions and public murmurs. Among the Cases of Conscience of the Diocese of Bologna, in the year 1767, in the month of August, the following proposed Case appears under n. 1.º: "A certain

priest frequents the house of a certain woman, without any wicked end, but only for the sake of recreation and honorable friendship. Yet neighbors who observe the frequency, but do not know the end, murmur and perhaps suspect something evil. Is that priest, knowing a murmur of this sort among the neighbors, bound to abstain from frequenting that house? The answer is affirmative. The reason is that that priest, knowing the murmur of the neighbors, can prudently doubt both about some grave scandal of theirs, and also lest the reputation and good name of both himself and that woman be endangered; and therefore from charity both proper to himself and toward his neighbor he ought at once to abstain from frequenting the house and from conversation with that woman."

125. Causes Excusing from the Integrity of Confession

1. "Sigismund, a parish priest, bringing the sacred Viaticum to Barbara, who is dying, with a great crowd accompanying him, asks her according to custom, secretly, whether anything gnaws at her conscience. She confesses that for forty years she has confessed sacrilegiously; but the parish priest, fearing lest the assistants wonder if he prolongs conversation with the sick woman too long, after hearing one or another sin, absolves her and refreshes her with the sacred Eucharist.

2. Claudinus, a boy, when for the first time he was approaching the sacred table, with many companions crowding around, seized with fear of a sacrilegious Communion, resolved to declare a grave sin committed several years before and until now concealed in confession. The ordinary confessor being absent, he approaches the first priest who meets him and opens the matter to him in one word. This priest, because of the shortness of time and the danger of infamy, at once absolves the boy, ordering him to approach the sacred Synaxis, afterward to complete the confession by reason of integrity.

It is asked: What is to be said to the Case?

R. Sigismund proceeded rightly, nor could he prudently have acted in another way; for in such narrow circumstances the precept of the integrity of confession does not urge, because of the danger of reputation which the dying woman would have incurred. Therefore, in that Case, the principal sins having been heard, the woman had to be absolved. Then the confessor had to return to the sick woman as soon as possible, to obtain greater integrity of confession, insofar as, considering the circumstances, this could be done. Lig. 484; Gousset 433.

Claudinus could be absolved and receive the Eucharist with an imperfect confession. For the reason is the same as in the preceding case, namely because there urged a grave danger of infamy, excusing here and now from the divine precept of the integrity of confession. Therefore the confessor acted rightly toward Claudinus. Gousset 432." G. 436, 437; I. M. 718, 719.

3. Aegidius, observing that his sister was pregnant by Caius, her lover, driven into rage, struck her gravely, and thus procured her abortion. Repenting of the deed, he indeed confesses the grave striking of his sister, but keeps silent about the circumstance of her pregnancy and of the death of the fetus, lest he reveal her crime to the confessor by whom both he himself and the whole family are perfectly known.

It is asked: What is to be said to the Case?

R. "The matter is not without difficulty. On the one hand, it does not appear that he can declare his sin in species without manifesting the aforesaid circumstances. Yet according to several he would be able to confess each sin separately, namely the grave striking of his sister, and the procured abortion of a woman. Nor say that thus he would omit the specific circumstance of consanguinity as to the fetus killed; for, probably, the ill-treatment of relatives does not induce a new species of sin, unless there is question of blood relatives in the direct line in the first and second degree, as was said above n. 457. Moreover the infant killed is in the third degree of consanguinity of the collateral line, and therefore toward him the virtue of piety is not specifically wounded. Lugo d. 16, n. 258 seqq.; Salmant., etc. Therefore, if instead of his sister Aegidius had struck his widowed mother, made pregnant through crime, he could not extricate himself from the difficulty, and he would have to declare all the circumstances." Thus Fr. Gury 465.

Moreover, it must be noted here that, as the same Fr. Gury has at 462, 463, Aegidius indeed could accuse the sin, although it could not be declared without the infamy of his sister, who was the occasion and object of the sin. I. M. 720. Besides, what is said, that ill-treatment of relatives does not induce a new species of sin unless there is question of blood relatives of the direct line in the first and second degree, is not true. For even ill-treatment of relatives in a nearer degree of the collateral line induces a specific malice against piety, as the same Fr. Gury has in the place cited by himself, namely n. 457. For in this number 457 the doctrine of n. 456 is continued. There, speaking about imprecations, hatred, and the desire of revenge, he says: "Those grave injuries are to be declared in confession, at least when there is question of nearer kinship, because there is an altogether special defect of piety, since it is opposed to the reciprocal love which those proximately joined owe to one another. Hence the aforesaid injuries must be declared: 1.º as to parents and children, indeed as to grandparents and grandchildren, in the direct line; 2.º as to affines in the first degree of the quasi-direct line; 3.º likewise as to godparents and godchildren, or spiritual fathers and children, because there is present there quasi-paternity and quasi-filiation; 4.º as to spouses, because, since they are one flesh, they ought to be one heart and one soul; 5.º as to brothers or affines in the first degree of the collateral line, because they are united by an altogether special conjunction... Grave injuries also among other blood relatives and affines more probably do not contract a special malice, although they are found in degrees prohibited for marriage. The reason is that, since the conjunction is more remote, such great love is not owed to them beyond other outsiders, that injuries inflicted on them should constitute a different species of malice."

Besides, it is altogether an error that it is asserted that the infant killed, or the son of the sister, is in the third degree of consanguinity of the collateral line. The son of a sister, or nephew, in relation to his maternal uncle, is consanguineous with him in the second degree of the collateral line. And thus Fr. Gury himself in the *Compendium* n. 801 sets down this example: "Bertha will be consanguineous in the second degree with her paternal uncle, or the brother of her father, because she is distant by two degrees from the common stock, namely from her grandfather, although the paternal uncle himself is separated by one degree from the same stock, since he is the son of the stock, or the brother of Bertha's father." Moreover what is said of the paternal uncle holds of the maternal uncle; for the paternal uncle is a collateral on the father's side, and the maternal uncle is a collateral on the

mother's side, the same degree remaining, because the paternal uncle is the brother of the father, and the maternal uncle is the brother of the mother.

126. On Satisfaction

1. Theophilus, a confessor, if at some time he absolves a penitent again because, for example, the latter immediately confesses a sin of which he had been forgetful in the preceding confession, imposes no new penance for the new absolution, but the same already imposed before.

It is asked: What is to be said to the Case?

R. Theophilus does not act rightly. For although a work otherwise commanded can well be imposed as penance under the title of sacramental satisfaction, nevertheless a work already commanded under this same title of sacramental satisfaction cannot be imposed. L. 513; G. 511; I. M. 733.

2. Ubaldus, after confession had been made, was ordered as salutary penance to hear Mass once. He attends the sacred rite; but, since meanwhile he was involuntarily distracted, he decides now to hear it from mere devotion, and to hear another Mass on the following day in order to fulfill the penance.

It is asked: Whether Ubaldus is truly bound to hear another Mass?

R. Fr. Gury 520 affirms it. "For," he says, "someone unmindful of the obligation satisfies, because he is considered to have the habitual intention of satisfying. Therefore, if he excludes this intention, he no longer satisfies, because he does not wish to satisfy. Besides, the satisfactory work imposed by the confessor is held as in the place of a debt. Moreover, if someone bestows a gift, unmindful of a debt, he is considered more probably to have satisfied the obligation of justice. But it is otherwise if he positively excludes the will of satisfying. Therefore, by parity, he does not satisfy who excludes the intention of fulfilling the penance." But several think the contrary, as Fr. Gury himself notes in the cited place. And indeed also for a penance imposed by the confessor, which is a certain private law, the general principle holds, that precepts do not oblige to formal obedience, that is, that the thing be done because it is commanded, but only to material obedience, that is, that what is commanded be done. That is to say, the law does not oblige except to the substance of the work enjoined. Therefore, once this is posited, it is no longer in the power of the one acting that the law be said not to be fulfilled.

"Nor does it stand in the way, 1.º that an act does not operate beyond the intention of the agent; for that proceeds only in those things which depend on the sole power of the one acting himself. Nor 2.º that he who owes another one hundred does not satisfy the obligation if by a free donation he gives two hundred. Nor 3.º that one bound by vow to recite the rosary, if he recites it with the mind of not fulfilling, does not satisfy. The reason is that these and similar obligations proceed from the will of the one promising, who, just as from the beginning he freely constituted himself a debtor, so also can freely remain in the debt. But the obligation of obeying law proceeds from the will of the legislator, and therefore is not extended beyond his intention and will, namely beyond the substance of the work commanded. Indeed even in those things which proceed from one's own power, the one acting would satisfy without the said intention, provided he has not deliberately destined his work here and

now to another particular end; for anyone, from a general intention, first intends to satisfy a debt before those things which he has imposed on himself by his own free will. This holds, by parity of reason, also concerning sacramental satisfaction, if the penitent does the work imposed by the confessor, yet not intending to fulfill the penance. By this doctrine," says Roncaglia, "the confessor will often be able to meet the conscience of the scrupulous; for example, they recite the canonical hours or sacramental penance, and, since this does not seem to them to be recited as is fitting, they do not have the intention of satisfying, but intend to repeat them: let him forbid a new recitation. The same should be said of one who hears Mass on a feast day; since it does not seem to him that he hears it as he ought, he intends to hear a new Mass; this must be prohibited." Scavini ed. Mediolanensis 1874, l. 1, n. 366; Ferraris, v. *Lex*, art. 4, n. 1-10; I. M. vol. 1, n. 215.

3. Felicitas, after making a general confession with a certain missionary, is ordered as salutary penance to perform three fasts. But when the missionary had gone away, she cannot perform the prescribed fasts, because of weak health and also because of the strict prohibition of the physician. Hence she goes to Geraldus the confessor for the sake of obtaining a change of penance. Geraldus commands her to repeat the general confession from the beginning, and to receive absolution again, because a sacramental sentence can be changed only in the sacrament.

It is asked: What is to be said to the Case?

R. Geraldus did not act rightly. For first, since the penance, from a legitimate impediment, has become impossible, it is not necessarily to be commuted into another. For the penitent is then no longer bound to the execution of a penance which has become impossible. Besides, although the penance had to be commuted in the Case, nevertheless there was no need to repeat the general confession from the beginning; but either a certain summary confession sufficed, so that the confessor might acquire only a confused knowledge of the state of the penitent, or even only the knowledge of the prior penance sufficed, so that he might impose another approximately equivalent one. Nor indeed is it necessary that the penance be commuted in the sacrament itself, or that the penitent be absolved in that confession; because confession is truly sacramental even when the sacrament is lacking, provided it is made in order to the sacrament, otherwise or soon to be received, if the confessor has judged this opportune. But it suffices that the penitent be constituted in the sacramental forum, nor is it required that he receive absolution. G. 523, 526; I. M. 745, 746.

But it must be noted here what St. Alphonsus has, l. 6, n. 529, namely: "Navarrus, Sporer, and Tamburini probably add that if the confessor notices that the penitent has not fulfilled the penance, nor will easily fulfill it, even if the penitent is not asking, he will be able to commute it for him."

4. Martha, a woman of ungrateful memory, not rarely forgets the penances enjoined upon her by the confessor, and therefore is troubled by many perplexities. Among other cases take the following:

1.º Once Martha, forgetful of the sacramental penance, returned to the confessor, who, himself also no longer remembering the work enjoined, substituted another.

2.º The same case of forgetfulness recurring, the woman resolved to recur again to the confessor, but he had gone away and now could no longer be approached by the penitent. What therefore will the poor woman do? She goes to another priest, by whom she is ordered to repeat the confession, so that a new penance can be prescribed.

3.º At another time Martha, affected with weariness and sadness because of the recurrence still of forgetfulness of this sort, herself imposes upon herself a substituted work, and, for greater safety, repeats the penance enjoined upon her in the preceding confession.

4.º At another time she is tortured by a new anxiety: for after she had withdrawn from the confessor, she notices that this time he forgot to prescribe a penance. But in order that she may be freed from the inconvenience of approaching him again, she herself chooses some work to be fulfilled.

5.º Often also Martha sends her maidservant to the confessor, asking him to be willing, through the maidservant, to indicate to her the penance imposed. The confessor in such a Case responds to the maidservant: tell your mistress that she should recite three Hail Marys in honor of the Blessed Virgin Mary.

It is asked: 1.º If the penitent has forgotten the penance enjoined, is he bound to approach the confessor, that he may learn it again? - 2.º Is he bound to repeat the confession, that he may receive another? - 3.º If the confessor does not remember the penance enjoined, must he substitute another? - 4.º What is to be said of Martha in the various Cases?

R. To the 1st. Affirmatively, in a twofold Case, namely if the confessor is rightly presumed still to remember the penance imposed on such a penitent, and if the confessor can easily, or without notable inconvenience, be approached. The reason is that then ignorance of the penance is neither physically nor morally invincible; and besides, there is not a sufficient reason excusing from the obligation. But the penitent is much more easily excused from that obligation of approaching the confessor to learn the penance again if there is question of light matter. Hence pious penitents, who are not accustomed to sin gravely, are generally not bound to approach the confessor for this cause, unless, the confession just made, they still remain near the confessional seat. - Negatively, however, in other Cases, at least more probably, with the common opinion against several. The reason is that the penance which has fallen from memory has by that very fact become impossible.

To the 2nd. Negatively, at least with the common opinion. The reason is: 1.º Because where the penance is unknown both by the penitent and by the confessor, it has become impossible and cannot oblige. 2.º Because there can be no obligation that sins once accused and directly absolved be again subjected to the keys. Nor say that the confession must be repeated so that a penance may be enjoined by reason of completing the sacrament, for the precept of completing the sacrament cannot oblige with so great an inconvenience, as authors commonly note. St. Lig. 520.

To the 3rd. By no means. It follows from what has been said. For the penance in that Case has become impossible, and therefore its obligation falls. Nor is the confessor bound, more probably, to substitute a new penance for another given to oblivion, even if he sufficiently remembered the state of the penitent, because of the same reason. Yet in practice it is expedient that he impose at least some light work, to satisfy the devotion of the penitent, or to calm his anxieties.

To the 4th. In the first and second Case, Martha was not obliged to fulfill the new penance, nor, a fortiori, to repeat the confession. - In the third Case, she had to approach the confessor if she easily could, and presumed that he was mindful of the prescribed penance; otherwise in the other cases. But the work undertaken by herself can never have the force of sacramental satisfaction. Yet Martha acts altogether well if the confessor, considering her slippery memory, is accustomed always to impose the same penance on her. - In the fourth Case, Martha is not bound to approach the confessor with notable inconvenience to herself. Indeed, according to several, the obligation of returning to the confessor is not established if she absolutely withdrew from him; because then the sacramental judgment is completed, and the moral union between that judgment and the enjoined penance is lacking. - In the fifth Case the confessor acts rightly, to satisfy the devotion of the penitent and to quiet her anxiety. Nor is there had from this, as appears, any violation of the sacramental seal, nor any indiscretion, since he orders only through the maidservant that the mistress recite the angelic salutation three times in honor of the Blessed Virgin Mary. G. 527, 530; I. M. 743.

5. Titius, a wealthy merchant wholly given to business, abstained for many years from participation in the sacraments. But then, at last aided by divine grace, he approaches a confessor having faculty over reserved cases, and sincerely and sorrowfully discloses to him all the things admitted, even the reserved ones. The confessor, all things having been heard and duly weighed, tries to set forth to him in words the gravity of his crimes, and shows what punishment he had deserved on account of them; then, as sacramental satisfaction, he imposes on him that he distribute one hundred scudi coins to the needy, that on each Sabbath day for an entire year he fast in the manner in which fasting is prescribed by the Church, and finally that, the obligation of a vow having been interposed, he participate in the sacraments each month. But Titius, persuaded that he deserves such things, immediately after receiving absolution emits the vow and resolves to perform the rest. Now indeed, some days later, a merchant friend meets him who, with fortune adverse, having been reduced to poverty, manifests his misfortune to him; moved by mercy toward him, Titius gives him two hundred scudi coins, altogether unmindful of the satisfaction imposed on him by the confessor; afterward, remembering this obligation, he intends that by that largess he has satisfied sacramental penance for that part. The burden of fasting and of receiving the sacraments he carries out for two months according to the prescription of the confessor; afterward, however, he neglects to fulfill it. Finally, at Easter time he approaches Caius the confessor, who has faculty of commuting vows, but not of absolving from reserved cases, and discloses all things to him. This confessor, moreover, reckoning in his mind that Titius, because of his condition and weakness, is situated in grave danger both of transgressing the vow and of not observing the fast, at once, without any inquiry about the sins on account of which such a penalty had been given, commutes both burdens into daily recitation of the Rosary, judging that he had more than abundantly satisfied the obligation of almsgiving by the largess mentioned. But shortly afterward, doubtful about this manner of acting, he approaches a theologian and asks:

1.º How sacramental satisfaction is to be imposed, fulfilled, and commuted? - 2.º What is to be thought about the several points in the Case, and whether in the several points he conducted himself well?

R. To the 1st. Satisfaction to be imposed is indeed to be imposed by the confessor according to his judgment, but it must be fitting and salutary; namely, such as at the same time is punitive for the sins committed and medicinal for guarding against future relapses, and at the same time corresponds to the strength and dispositions of the penitent. But generally speaking, commonly satisfactions are disapproved which are complicated and various, too long-lasting, or too grave. The former and the latter because of the danger that they may not then be fulfilled; but the last also because not only does ordered charity require this, but also because this sacrament was instituted for reconciling sinners to God, not for making satisfaction to God. Cf. Suarez, *De Poenit.*, d. 38, s. 6, n. 5.

But satisfaction to be fulfilled is to be fulfilled in the manner of laws, since in reality it is a certain particular law, or particular precept. Wherefore the satisfaction imposed by the confessor is to be fulfilled, not another at one's own pleasure. Likewise it is to be fulfilled at the time prescribed by the confessor; and, if no time has been defined, it is to be fulfilled as soon as possible, lest it be given to oblivion, and so that it may immediately obtain its effect of satisfying God and of guarding against relapse.

Likewise its various circumstances imposed also by the confessor are to be fulfilled. And although someone fulfills it in the state of mortal sin, he still satisfies, although he lacks the fruit *ex opere operato*, because in reality for that reason it does not cease to be a penal work. Nevertheless he sins lightly against charity toward himself by thus deferring it.

Satisfaction is to be commuted by a confessor, either by the same or by another; for each has the same power. But it can be commuted if something supervenes which renders it more grave, or no longer fitting and salutary. Yet satisfactions imposed by a superior on account of reserved cases cannot be commuted by an inferior, since the inferior cannot change his sentence. Others, however, deny this. For, the reservation having been removed, the power of the inferior and the superior confessor is of itself the same. St. Alph., l. 6, n. 529, dub. 2. Since the new satisfaction must be sacramental, it cannot be made outside the sacrament; and, of itself, there is need of a new absolution, or at least confession, unless the prior judgment still morally perseveres. Indeed there are not lacking those who hold that there is no need of repeated confession, even summary or in confused form, since the judgment to be rendered is not about faults, but about the satisfaction imposed.

To the 2nd. It does not first seem that the confessor conducted himself well. The satisfaction imposed by him not only is not ordinary, and is altogether extraordinary and contrary to common practice, especially as to the imposed alms of one hundred scudi, and as to the vow; but also it is altogether grave, and so little fitting and salutary, that it exposes the penitent, as in fact it did expose him, to the danger of transgressing it. The satisfaction imposed by the confessor in the Case gathers in itself those three things which are commonly disapproved: namely, that it is complicated and various, is too long-lasting, and is too grave. But Titius, as to the alms of one hundred scudi to be given, since he gave two hundred, satisfied the imposed obligation, although he gave unmindful of an obligation of this sort. For one always has the general will first of fulfilling one's own obligation, and then of carrying out a work of supererogation. Hence Titius could well afterward, mindful of the matter, explicitly ratify this implicit and general will. But since Titius did not fulfill the prescribed satisfaction in another notable part, and since there is in reality danger lest he again transgress the imposed satisfaction, another confessor rightly commutes it. It does not seem able to be an obstacle

in the Case that he himself lacks faculty in reserved matters. For there is no question of absolution from reserved cases. But that that satisfaction was imposed on account of reserved sins also cannot be an obstacle, in the Case, to commutation. For first, there are those who hold, as has already been noted, that even an inferior confessor can commute a penance imposed by a superior on account of reserved matters. Then in reality, in the Case, the confessor who imposed that satisfaction was not a superior, but only a privileged confessor, or one having faculty in reserved matters. Hence the reason does not hold that an inferior cannot change the sentence of a superior, which indeed would hold when the Superior was truly such, who could impose a precept altogether, and imposed that satisfaction both as confessor and as superior. But because the new confessor did not require a repeated confession of the sins which already had rightly been absolved, he does not for this reason seem to be disquieted. For the cause at present is no longer about the number and gravity of those sins which have already been absolved, but about the difficulty of fulfilling the satisfaction, which is sufficiently known even without a new confession. As to the fact that the commutation of that double burden, the weekly fast for a year and monthly confession, was made into daily recitation of the Rosary, if by Rosary an entire Rosary is understood in the obvious sense, cf. *Collectanea S. C. de P. F.* n. 1926, a satisfaction of this sort still seems too grave. But if it is understood only of the third part of the Rosary, then it would also have to be seen whether a satisfaction of this sort could easily be fulfilled by Titius; for example, if it is recited daily in his family, as is the custom in Christian families, if Titius willingly accepts such a satisfaction, etc. Otherwise an even smaller satisfaction would still have to be imposed. One day, when I was in the church, a certain rustic asked me whether I would be willing to hear his confession. I answered that I would gladly do this. Then he said: Have patience with me, and pardon me, because now for twelve years I have no longer gone to confession. I encouraged him, so that he might then confess his sins with every confidence. But, notwithstanding every question made by me, I could find in him no other grave sin except confession omitted for twelve years. And indeed that rustic was an altogether good and honest man. Then I asked him why therefore for so many years he had omitted to frequent the sacraments of the Church; and he immediately answered: because the last time when I confessed, the confessor imposed on me that I recite twelve Rosaries. I could not recite those, and I did not wish to confess again before I recited them. And even when today I entered the church, I did not have the intention of confessing; but seeing you, the thought at the same time arose in me of making confession; and now I am content. But, returning to the proposed Case, there would indeed be difficulty in the vow emitted from the precept of the confessor, or from the imposed penance, namely if the new confessor did not have faculty of dispensing in vows or of commuting them. But in the Case it is openly said that, although the new confessor did not have power in reserved matters, nevertheless he had faculty of commuting vows. Hence, since in the Case there was question not only of an unfulfilled penance, but also of violation of a vow, there was certainly a still more urgent reason for making the commutation. But if the confessor himself had no faculty over vows, he could ask it from the Ordinary at least for the particular Case.

127. Form of Penance

1. Pamphilus, a confessor, hearing the confessions of clerics in the seminary, does not know whether he ought to add or omit the word *suspensionis*, since the aforesaid clerics are

constituted only in minor orders. For the Ritual says that the aforesaid word is to be omitted if the penitent is a layman.

It is asked: What is to be said to the Case?

R. The aforesaid word, *suspensionis*, can be omitted in the Case, since in reality there is no such suspension in force. "If the penitent is a layman," says Reuter, *Neo-confess.*, p. 1, c. 7, n. 22, "or, as Gobat and Stoz hold, only in minor orders, the word *suspensionis* is omitted." I. M. 748.

2. Nicasius, imparting absolution to a dying man, and fearing about his own intention, in order to drive out that fear, says: I wish to minister to thee the sacrament of absolution. This form having been pronounced, the sick man dies.

It is asked: What is to be said to the Case?

R. Nicasius indeed acts badly, perverting the form of the Church which is had in the Roman Ritual. But he acts very badly in the most grave Case of a dying man. For the absolution given is not only illicit, but also invalid. The will of doing something is not the same as doing that thing. Hence, I wish to minister, or I wish to absolve, is not the same as, I minister, or, I absolve. St. Thomas, 3 p., q. 84, a. 3, ad 5, explaining the form of the sacrament of penance, explains it thus: "I absolve thee, that is, I bestow upon thee the sacrament of absolution." But again, it is one thing to bestow the sacrament of absolution, another thing to wish to bestow the sacrament of absolution. Hence the Holy Office, June 23, 1840, declared invalid a baptism conferred with this form: I wish to minister to thee the sacrament of baptism of sins in the name of the Father and of the Son and of the Holy Spirit, *Acta S. Sed.*, vol. 25, p. 246. In this form, besides that word *I wish*, that other added word *of sins* disturbs the whole sense of the form.

3. **Presence of the penitent.** Remigius the confessor, after hearing the confession of Fugatius, while he was piously exhorting him and was asking whether he was prepared not to sin, notices, astonished, that he gives no response. He looks back, but sees no one; for the penitent had gone away, thinking himself absolved. Then looking again, he saw Fugatius in the middle of the crowd, kneeling and praying, and joyfully absolved him at once.

It is asked: What is to be said to the Case?

R. Remigius acted rightly, because since the penitent was morally present, the absolution was valid. Indeed the absolution would have been valid although the confessor had not seen the penitent in the midst of the crowd of the faithful, because for that reason he would not have ceased to be morally present. Yet he would have acted more rightly if, without scandal, under some pretext, he had been able to call the penitent back to himself, so that he might absolve him more fittingly. But it does not seem, in the Case, that grave inconvenience was really lacking in calling the penitent again to himself from the middle of the crowd.

4. Titius, formerly a fervent Catholic, afterward ensnared by the seductions of a friend, gives his name to a certain perverse sect. The members of this sect mutually bind themselves to reject the sacraments even at the article of death; indeed they promise that they will also give diligent effort that the access of a Catholic priest to sick companions be altogether prevented. After a

most wicked life carried on through many years, Titius falls sick unto death. At once some of the sectarians come to him, indeed under the pretext of furnishing assistance, but in reality so that, according to the prescription of the sect, they may prohibit the parish priest, if perhaps he is called, from approaching.

Titius, who had not renounced the Catholic faith in his mind, fearing the divine judgments, would wish to provide for his own salvation and to call a confessor. But he knows very well that this cannot easily be done because of the perversity of the companions who stand by. But it came opportunely into his mind that he could communicate by telephone with a very Catholic friend. Hence, pretending that he wished to rest for a little while, he sends the associates out of his room, and at once manifests his state to his friend, and at the same time earnestly asks him to call the parish priest to hear his confession by telephone. The parish priest who is called is seized by the novelty of the matter; nevertheless he at once hastens there, and, the confession by telephone having been completed, since he doubts whether this manner of confessing is valid, yet so that he may provide for the sick man in some way, he absolves him under condition. A little while afterward Titius dies.

Soon the parish priest, the matter having been considered more maturely, begins to doubt whether he conducted himself rightly; hence he consults a theologian, asking him:

1.º Whether and how the penitent must be present to the confessor absolving? - 2.º Whether the presence of the penitent to the confessor, required for the value of the sacrament, is had in the Case? - 3.º Whether he himself conducted himself rightly?

R. To the 1st. There can be no doubt that the penitent must be present to the confessor absolving. This is established, 1.º from the most common doctrine of theologians. It is established, 2.º from the Council of Trent, sess. 14, c. 2, where, explaining the proper nature of this sacrament from Christ's institution, it says that Christ so instituted this sacrament that he willed penitents to stand before this tribunal as accused persons, and to be freed from sins by the sentence of priests. For an accused person to stand before this tribunal certainly signifies the presence of the accused before the judge, since this tribunal is constituted only by the confessor and at the same time the penitent. This is established, 3.º from the decree of Clement VIII and Paul V, by which it was forbidden to teach that either confession made to an absent priest, or absolution imparted to an absent penitent, is licit. Cf. *Enchiridion Morale*, 3rd ed., n. 696. This is established, 4.º from the fact that the form of this sacrament consists in words, namely in the words of absolution, which are directed to one present.

But the presence required must be moral presence. Yet, if from the very form of this sacrament it is established that the presence of the penitent before the confessor is altogether required, from the same form it is established that that presence is required by which men are accustomed to converse among themselves with human voice. For the confessor, while he pronounces the form, seems to converse with the penitent himself. Fittingly St. Alphonsus, l. 6, n. 429, explaining this moral presence, says: "This moral presence is reputed to be that within which men can and are accustomed to speak with a common voice, although higher... Elbel with Sporer and others adds that such presence can be extended to about twenty paces, especially where the penitent has not yet gone out from the sight of the confessor... But Tamburini deservedly does not approve Leander, who says that it is enough for moral presence if the priest sees the penitent, or perceives him by another sense; for presence for absolution requires greater nearness than for hearing a sermon or Mass."

To the 2nd. The presence of the penitent to the confessor required for the value of the sacrament is certainly not had in the Case, prescinding from the telephone; since certainly the sick penitent in his own house is neither physically nor morally present to the confessor in the house of his friend. Therefore the question can be raised only about that circumstance of communication by telephone. But communication by telephone does not remove distance, nor consequently render mutually present to themselves those who are distant from one another, but is only an efficacious medium of communication between those distant or not present. But from the mere fact of communication of two persons between themselves, the presence of the persons themselves is not had, as is seen in communication by a messenger, by a letter, or by any other medium whatever; for example, by lights of diverse color lit at night, or by flags also of diverse color displayed upon a pole, or by sound and explosion produced by some instrument, or finally by telegraph. Nor indeed does it avail to object that communication in the Case is had through the very human voice of the one speaking, whence it is that the one hearing is one hearing the speaker. For first, that voice which is transmitted and heard through the telephone is not in reality the human voice of the speaker, but is a certain physical reproduction of this voice, or rather the physical effect of that voice. Wherefore the one hearing in reality does not hear the speaker, namely the voice of the speaker, but hears the sound of a metallic plate by its vibrations imitating and reproducing the sound of the voice, which impresses its vibrations of air upon another metallic plate, whence then the sound of the other plate, which is heard, is determined. Wherefore a human voice is not had, nor consequently are words had, but only a certain perfect imitation of the human voice, by a mechanical sound physically produced by the human voice. Hence from the telephone, which is here brought forward in place of the telegraph, not only is the difficulty from the impediment of distance in the Case not removed, but even that difficulty is not diminished. Perhaps it would be diminished, but certainly it would not be removed, if not the telephone but a voice-duct, commonly called a *portavoce*, were used; for then the speaker's own voice would in reality be heard. Nevertheless even in this Case moral presence would not be had, and because distance is had, therefore such a medium of communication is used.

To the 3rd. The parish priest does not seem to have conducted himself well in the Case. For indeed, in extreme necessity, it is licit to administer the sacraments conditionally, even with a slight probability concerning their value, as St. Alphonsus teaches, and theologians commonly teach. But that slight probability which the doctors here bring into the matter is not a true slight probability, which is not true probability, as slight, from the slight motive on which it rests, but it is a slight probability which nevertheless is true probability, since it is slight from a slight degree, that is, constituted in the lowest degree of probability. And indeed, even in doubt of baptism, which is most necessary, baptism cannot be repeated unless there is at least a probable doubt of the preceding baptism, as is had in the Roman Ritual, *De Bapt. adult.*, or, what is the same thing, unless there is a probable doubt about the validity of the first baptism, as is had in the Decision of the Holy Office, May 27, 1671, *A. S. S.*, vol. 25, p. 256. Moreover, in the Case there can indeed perhaps be had some slight motive for the validity of that absolution, but a truly prudent, grave, and probable motive, although in the lowest degree, is not had. Wherefore it does not seem that the parish priest conducted himself well, even by absolving only under condition.

But the parish priest ought, after the confession heard by telephone, to have stirred the penitent to an act of perfect contrition, consulting for his eternal salvation by this means, in the best way in which it could be done. Then, if time allowed, he ought at once to go to the house of the sick man,

and by some pretext, and even employing some simulation of some very grave business to be treated, penetrate into the room of that sick man, and then, a summary confession having been made by him, he could beyond doubt absolve him absolutely. But what if the sectarians present in every way prevented the aforesaid summary confession? If the parish priest then noticed in Titius some other sign of confession, as the thing would be easy, a sign of this sort would still suffice, and he could absolve Titius absolutely. But if, coming to the house of Titius after his confession heard by telephone, he had found him destitute of senses, then indeed the difficulty would be serious, but as it seems, he could have absolved Titius under condition. For in the Roman Ritual it is said absolutely of a sick man who, destitute of senses, could not confess: if he has shown the desire of confessing either by himself or through others, he is to be absolved. Moreover Titius altogether showed the desire of confessing, and by himself, namely through that confession previously made by him by telephone. The defect of presence in that confession indeed stands in the way; from it, however, the excellent dispositions of Titius can well be gathered, dispositions in which Titius certainly perseveres, and which, as ordinarily happens, he signified by some external effect and act; so that it can well be presumed that Titius both has and perhaps still shows the desire of confessing, although it is not noticed. For indeed we have been so constituted by nature that that interior contrition of soul, when it is true and sincere, regularly speaking, is betrayed outwardly at least by sadness and by lowering of the eyes and countenance. And if Titius could be absolved if his servant, for example, by his mandate had called the parish priest, and then, the sick man being present, had testified to the parish priest the desire of his confession, or even if he had previously testified a desire of this sort to him, and had gone away on account of other business, as several theologians teach, could the same be done in the proposed Case? But it is not necessary to define this speculative question, which we leave at present undecided and altogether doubtful, to be decided by wiser men, because in reality practically no difficulty can seem to be present in giving that conditional absolution. For in reality, as formerly, so also today, this is the practice of all confessors: that finding sick persons destitute of senses, unless their positive and actual unworthiness is established from some other source, they absolve them under condition. Confer the *Commentary on the Absolution and Assistance of the Dying*.

5. **Conditional absolution.** 1.º Claudinus, a confessor, absolves those doubtfully disposed under condition in the following Cases: 1.º the sick gravely endangered as to life, especially the dying, although much more probably indisposed; 2.º soldiers about to go into the army or battle, and sailors and others about to undertake a sea voyage; 3.º habitual betrothed persons now about to be joined in marriage; 4.º strangers, men who scarcely or hardly at all will be able to return to his tribunal, and are immediately about to depart; 5.º penitents who certainly or probably are foreseen not to return, although they can return; indeed also young men who threaten that they will not return unless they are absolved; 6.º boys of seven years, and even of ten years, and half-witted persons, who probably sinned gravely, and furnish only doubtful signs of reason and disposition; 7.º from a bridge he absolves sailors and the others contained in a ship who, by an unexpected shipwreck, were being submerged in the waters of a river; 8.º a soldier who, pierced in a duel, was lying dying and destitute of senses; 9.º a heretic in a hospital, dying, destitute of senses, and struggling with death.

It is asked: What is to be said to the Case?

R. Claudinus acted rightly in the first four Cases, because on the one hand there is no positive evidence of the indisposition of the penitents, and on the other hand, since they are found in danger of salvation and in a case of necessity, he provides for their spiritual good in the best way he can. But he acted badly by absolving the men or young men in the fifth Case from the fact that they threatened that they would not return, although they could easily return. For this seems an undoubted sign of indisposition. But as to those who, threats being excluded, were in reality foreseen not to return if they had been dismissed without absolution, the solution depends on the various circumstances of particular cases. In the sixth Case, he ought first to have disposed them insofar as could be done; but, the doubt persevering, he could absolve the same persons under condition, especially with the precept of annual confession urging. G. 395, 396.

In the seventh Case he could and ought out of charity to absolve those miserable shipwrecked persons under condition. The reason is that those dying persons were morally present, and they could be supposed to wish to confess and to give signs of sorrow, in the Case in which they were seen by the priest. At least among all, one or another could have been truly disposed, and could furnish all the conditions required so that the sacrament of penance, in so great an extremity, could be valid and applied. But the priest ought to have called out to them in a loud voice, and in one word exhorted them to contrition, and suggested it to them. Moreover he ought to have used the form in the plural number: I absolve you from your sins, etc. Elbel 37. But what if the priest immediately after the shipwreck had no longer seen any of those submerged? Nevertheless he could still have imparted conditional absolution to them, provided he prudently judged them still morally present, because in that Case there could still appear hope of validity and of fruit to be received from it. But otherwise it must be said if, because of the force of the river, they had slipped away so far that they could no longer perceive the priest calling out to them. G. 391.

In the eighth Case Claudinus seems praiseworthy, since, insofar as he could, he helped the miserable sinner. For it absolutely could have happened that he was disposed and wished in some way to confess. But he ought first to have called out to him, so that he might exhort him, if perhaps he was heard by him, to contrition disposedly, and also to confessing in whatever way. G. 486. Cf. *Commentary on the Absolution and Assistance of the Dying*.

In the ninth Case Claudinus also seems praiseworthy. The reason is that, if the contrary is not positively established, it can be presumed that here and now he wishes to die in the Catholic Religion, and consequently to confess and to be absolved. For this can absolutely happen. Certainly at least one such person among a hundred thousand can be found. But in a case of necessity it is licit to use even a slightly probable opinion in favor of a man in danger. It is surely certain that there are merely material heretics, and those who do not have hatred of confession. But it was not established in the Case that the aforesaid dying man was a formal heretic, and some hope could be had, although most slight, of the value of the absolution to be conferred. - La-Croix 1866; Elbel 212, 214; Reuter, *Neo-confessar.* 203; G. 488-491; Gennari, *Consultaz. Mor. Can. Lit.*, p. 1, Cons. 58; M. E. vol. 6, p. 2, p. 107 seqq.; I. M. 751-754.

6. Titius, a foreign youth from the sect of Protestants, who nevertheless was endowed with good morals and who seemed to err only materially in faith, while he was staying at Rome together with his widowed mother during the winter season, as he was accustomed, was seized by a most grave disease which the physician judged incurable. Caius, a Catholic priest of the same

> nation, who frequented his house, at once approached him, that he might consult for his eternal salvation. When they were conversing together, Titius declared himself to be a sinner, at the same time asking Caius to pour forth prayers to God, to obtain from Him pardon of his sins. Having obtained this good occasion, Caius desired gently to lead him, after heresy had been abjured, to the Catholic faith and to rebaptize him under condition; he secretly manifested this desire of his to the mother. But the mother, who pertinaciously adhered to the same sect, strongly resisted, adding at the same time both that there was no doubt about the validity of the baptism, and giving permission only that he should have conversation with him about those things alone which are common to heretics with Catholics; and from that time she sat constantly at the side of the sick man.

But when the disease grew worse, Caius, to whom nothing else remained, addressed Titius in this way: Do you believe all things whatsoever that have been revealed by God through Christ? Are you sincerely sorry for your sins? Do you confirm what you have already declared before God and me, namely, that you are a sinner? Does it please you that, through my help, toward attaining eternal life better, insofar as I can, you yourself be helped? When the sick man had nodded assent to each of these things, "Therefore trust in God," Caius says, "and He Himself will pardon your sins." These things having been said, he secretly absolved him under condition. A little while afterward Titius dies, and, by order of the mother, he is led to burial by the rite of the Protestants.

It is asked: 1.º Whether, at the article of death, a material heretic, enjoying the use of reason, can be absolved unless first, having been convinced concerning the Catholic faith, he embraces it and makes confession? - 2.º Whether Caius conducted himself rightly in all things?

R. To the 1st. St. Alphonsus, speaking of a dying man, destitute of senses, in the act of sin, to be absolved, altogether excludes heretics, saying, l. 6, n. 483: "For heretics, even if in that Case they give signs of penance, ought not to be absolved unless they expressly ask absolution, because such persons can never prudently be presumed to furnish those signs in order to confession, from which they exceedingly abhor." This is certainly a presumption, and a general presumption, which ought to yield to truth, and also to a contrary presumption in a particular case. Indeed there would be a contrary presumption if the heretic were altogether material and in good faith, with his mind altogether disposed and prepared for fulfilling all those things which have been ordained by God in His divine Providence for the eternal salvation of men.

Fr. Gury, *Cas.*, vol. 2, n. 488, distinguishes between a formal and material heretic, and concerning a material heretic dying and destitute of senses says that absolution under condition is to be granted to him. And the Most Reverend Gennari, *Consultaz.*, etc., p. 255, extends this even to a formal heretic. Moreover, if absolution can be given at least conditionally to a heretic of this sort dying and destitute of senses, it can also be given to the same if he enjoys the use of reason and the danger of death is imminent.

The question here about absolution to be given to such a heretic can exist only because of its invalidity from defect of intention and of the acts of the penitent. Moreover, such a defect does not seem really to be present. For first, as to intention, if implicit intention suffices in baptism, even in penance implicit intention can suffice, since penance is not of greater necessity, nor does it bring greater obligations, than baptism. Now indeed implicit intention is sufficiently had by the sincere and

explicit will of admitting and employing all things necessary for salvation, ordained by God. But as to the acts of the penitent, since confession made only in general suffices for the validity of absolution, this can well be suggested to a dying heretic, so that he duly confess himself a sinner, or that he has sinned, and then ask pardon of his sins from God with hope of pardon; and then neither the necessary confession nor contrition is lacking for the validity of absolution.

As is had in the Instruction of the Sacred Congregation, January 30, 1833, *Collectanea S. C. de P. F.* n. 650: "Theologians everywhere teach that for the value of the sacrament there is not necessary in the minister that intention which they call express or determinate, but that only a generic intention suffices, namely of doing what the Church does, or of doing what Christ instituted, or what Christians do." And, as is added there immediately, an express and distinct intention of making a sacrament is not required, but a confused, implicit, general intention of doing what is done in the true Church of Christ suffices. But if an implicit and general intention of this sort suffices in the minister, it seems consequently and much more to suffice in the subject: that general will and intention of fulfilling and employing all the means instituted by Christ for one's own sanctification and eternal salvation.

Nor indeed can there be difficulty on the part of defect of Catholic faith. For a material heretic and one in good faith can well have supernatural faith necessary for justification. Nor likewise can there be defect from the fact that the aforesaid acts of the penitent, namely confession and contrition, were not ordered by him to absolution; for at least implicit ordering is not lacking by that general will just mentioned. And this holds insofar as that ordering is affirmed necessary. For if no necessity of such ordering is maintained, then there will be no difficulty from this head.

Besides, theologians almost commonly admit, as to a material heretic and one destitute of senses, that he can be absolved under condition. Come now, why indeed can such a heretic be absolved at least conditionally? Certainly not because such a heretic, who never had any suspicion of the sacrament of penance, now destitute of senses thinks about such a sacrament and elicits an express desire of confession and an act of contrition. This in reality is naturally absurd. Nor also because, during that state, he is supernaturally enlightened by God so as to know the necessity of the sacrament of penance, and, recovering the use of reason at least for some very brief space of time, duly disposes himself for it by his acts. This surely pertains not to probability, but to possibility; not to the natural order of things, but to miracles; and therefore for this reason it cannot be affirmed that the aforesaid heretic can be absolved at least conditionally. Therefore there can be no other reason except that in such a heretic those said acts can prudently be presumed, which, absolutely speaking, could suffice for the validity of the sacrament.

Wherefore to the proposed Question the response seems to be affirmative, namely that the aforesaid heretic can be absolved under condition. Fittingly La-Croix, l. 6, p. 2, n. 1866: "If a Catholic priest understands that a non-Catholic man has been brought to extremities, he acts prudently, unless something else stands in the way, if he approaches him... elicits with him acts of faith, hope, and charity, and of perfect contrition for sins... But if the circumstances allow, he can afterward ask whether, if he knew that he was not in the true faith, he would wish to embrace another, and to do all things necessary for salvation; whether he would wish to confess and to be absolved, if this were necessary for salvation. If he nods assent to these things... he can be absolved under condition."

To the 2nd. From what has been said, Caius seems to have conducted himself rightly, disposing Titius for a holy death insofar as it was in him and the circumstances allowed, and absolving him under condition. As to the fact that, by order of the mother, the body of Titius was led to burial by the rite of the Protestants, it surely did not pertain to Caius, a private priest, to prevent that; and for avoiding greater evils and sins and scandals he conducted himself well by concealing that he had absolved Titius under condition, and by keeping secret the absolution given. Yet there seems to be another thing which Caius ought to have done first. Caius is of the same nation as Titius. Wherefore Caius ought to have known well the manner of conferring baptism among Protestants; and therefore, doubting about its value, he wished to rebaptize Titius under condition, and was prevented only by the obstinate Protestant mother. Hence, while such a doubt stood concerning the validity of the baptism received, as Caius secretly absolved Titius under condition, so also he ought previously to have baptized him secretly under condition, which he could easily have done, for example with a little cloth wetted with water, applied to the forehead and lightly pressed, so that a little water would flow.

7. Albinus, a confessor, for a just cause conditionally absolves Jacob, doubtfully disposed. But the latter, now about to depart, by I know not what fate, asks the confessor whether he has been absolved. Astonished, the confessor, hesitating, answers affirmatively, not daring to declare that he had given only conditional absolution. Can I therefore communicate? the penitent asks again. Behold a new difficulty; and again, hesitating, Albinus answers negatively. Jacob marvels, and indignantly asks the reason for the denial. But the confessor, so that he may extricate himself from such great difficulties, consents that the penitent receive the sacred Synaxis, kindly exhorting the penitent that before Communion he repeat from the heart acts of faith, hope, charity, and contrition.

It is asked: 1.º Whether it is necessary or fitting that penitents absolved under condition be warned? - 2.º Whether the confessor in such a Case ought to prohibit them from Communion, or can permit it positively or negatively? - 3.º What is to be said of Albinus?

R. To the 1st. It is neither necessary nor expedient that the confessor warn the penitent that he was absolved only conditionally, because from this warning no good and many inconveniences can follow. For from it anxiety and disturbance of the penitent arise, and ambiguities for the confessor. Nor indeed is there any harm present for the penitent. For, if afterward he confesses at another time, these sins will be remitted indirectly in that confession itself, if they truly were not remitted. If he does not confess, and the sins in reality were not remitted, and danger is present for the penitent, that is certainly from his negligence and evil will in omitting confession, and by no means from the conditional absolution. On the contrary, if this is not given, if perhaps he is disposed, since the matter is doubtful, the penitent is exposed to danger of salvation.

To the 2nd. The confessor who conditionally absolves the penitent ought neither to impel him to Communion nor to draw him back from it. Let the confessor himself be silent, and let the penitent do whatever pleases him. For if he approaches the Eucharist in good faith, he can even receive first grace by communicating; if in bad faith, namely because he feels himself indisposed, he himself voluntarily casts himself into danger.

To the 3rd. To the first question of the penitent Albinus ought to have answered affirmatively, without any hesitation, since in reality he absolved insofar as the dispositions of the penitent allowed. To the second question he ought to have answered the penitent that the whole matter was left to his own judgment. But since Albinus positively furnished consent for Communion, he indeed did well by exhorting the penitent to acts of charity and contrition, lest perhaps he receive Communion sacrilegiously. G. 392-394.

128. Approval of the Confessor

1. "Candidus, a newly ordained priest, was called to undergo an examination of doctrine for hearing confessions. After the examination had been completed, the written and signed votes of the individual examiners are handed to the vicar general, who, in the absence of the bishop, was president and director of the ecclesiastical council. But he, not doubting the suitability of the priest, at once sent him as the cooperator of some parish priest, so that, with the next feast approaching, he might receive confessions. But afterward, when the votes of the examiners were opened in the next session of the council, Candidus was found wanting, or rejected by the examiners. Wherefore, immediately recalled, until he should make greater progress in moral doctrine, he was suspended from the office of hearing confessions.

It is asked: 1.º Whether Candidus validly absolved the penitents? - 2.º What if he himself knew his defect of doctrine, or even knew well that he had failed in the examination? - 3.º What if, after suspension, he still absolved several persons? - 4.º Whether the faithful, once the error is discovered, are bound to repeat with another the confessions made to Candidus?

R. To the 1st. Candidus validly absolved before he was prohibited from hearing confessions. The reason is, 1.º because he was simply approved by the superior, although the latter approved from error; 2.º because where common error intervenes with a colored title, the Church certainly supplies the defect of approval, as theologians commonly say. But in our Case such common error intervened with a colored title, namely with the title of jurisdiction conferred by the superior. Therefore, etc.

To the 2nd. In this hypothesis, he would indeed have sinned gravely by undertaking so great an office, although he knew himself incapable; nevertheless the confessions would always have been valid, because the approval of the superior and the common error of the faithful with a colored title would subsist in the same way.

To the 3rd. Even in this Case Candidus would have validly absolved if the suspension had not become known to the people, because common error would still have persevered, although the colored title had failed; for common error, even without a colored title, more probably brings it about that the Church, as pious mother, wishes to supply, lest many perish. Lig. 572.

To the 4th. Absolutely negatively. The reason is that, from what has been said, those confessions were valid, from the fact that the Church supplied jurisdiction, common error standing. But confessions once valid are never necessarily to be repeated. For the circumstance of an error discovered afterward cannot bring it about that what previously was valid becomes invalid. Therefore, etc. Elbel 320; Lig. 572." Thus Fr. Gury 542-544.

But in the response to the 1st, to the 2nd, and to the 4th, common error seems to be brought into the matter in vain, since the approval of the superior certainly was present in the Case, and with the approval jurisdiction was conferred. I. M. 755, 756.

2. Ugolinus, a parish priest, hears a confession outside the diocese, without any approval of the Ordinary of the place, of Sempronius his parishioner and of Nemesius his fellow diocesan. He absolves the former from sins reserved in his own diocese and from sins reserved in the place of confession; but the latter he absolves only from venial sins.

It is asked: What is to be said to the Case?

R. Ugolinus, existing outside the diocese, indeed acts rightly in hearing the confession of his own parishioner, but by no means in hearing the confession of his fellow diocesan. For to hear the former confession he does not need the approval of the Ordinary of the place; but for the latter he needs the aforesaid approval, as is openly drawn from Trent, sess. 23, c. 15, *de R*. Hence he also rightly absolved his own parishioner from sins reserved in the place of confession, but by no means from those reserved in his own diocese. For he absolves his own parishioner only with jurisdiction which he has restricted by reservation by his own Ordinary. D'Annib., p. 1, n. 78. But a fellow diocesan, not his own parishioner, he would indeed absolve illicitly and invalidly from grave sins without the approval of the bishop of the place. But since he absolved him only from venial sins, certainly illicitly; whether, however, also invalidly, is not certain. Cf. I. M. 757.

3. Habitual care exists with the chapter of the cathedral church of the city NN. Hence the archpriest each month designates a canon who for the month exercises the parochial duties. The canons indeed perform this, after receiving the mandate of the archpriest, although they have never sought and obtained the approval of the Ordinary of the place. Indeed, even after the month of exercise of parochial care has been completed, the individual canons continue to hear confessions, without any approval of the Ordinary of the place.

It is asked: What is to be said to the Case?

R. The canons of the cathedral church, if this is a church with cure, and habitual care of souls is in the hands of the chapter, need the approval of the bishop, even with a previous examination if the Ordinary has so judged, for hearing confessions, whether when, in their own time, having been designated they exercise the care of souls, or when they hear confessions outside the aforesaid time. This is established from the Response of the Sacred Congregation of the Council, April 1, 1876, *A. S. S.*, vol. 9, p. 550, and is openly drawn from Trent, sess. 23, c. 15, *de R*. For the aforesaid canons have neither ordinary nor delegated jurisdiction: not ordinary, which is communicated by force of office, because they do not have the parochial benefice; not delegated, because it is certain that they have not obtained approval from the Ordinary. When the canons actually exercise the care of souls, in their month, by mandate of the archpriest, they do not then become parish priests, but are only temporary vicars, removable at the nod of the chapter itself or of the archpriest. But common error standing, the penitents whose confessions the canons have hitherto heard are not to be disturbed. I. M. 757-766.

4. "The Bishop of Ostia, for example, is present at Rome, where there are also some citizens of Ostia, who beyond doubt can confess at Rome to confessors approved by the Roman Vicar. But nevertheless they would wish to confess to another Roman priest, who is not approved by the Roman Ordinary, and therefore they ask from the Bishop of Ostia that he approve him for hearing his subjects. Yet I said that this cannot be done, disp. 21, *De Poenitentia*, n. 37, where I conceded that to this effect an Ostian priest present there, who is still a subject of the same bishop, can be approved at Rome by the Bishop of Ostia; but that a Roman priest staying at Rome, who is not a subject of the Bishop of Ostia, cannot be approved. But on this occasion it was asked of me why I denied this, since otherwise the approval of a confessor is an act of voluntary jurisdiction, and therefore can be exercised by a bishop outside his own diocese. Wherefore, just as the Bishop of Ostia can approve a Roman priest existing at Ostia, so that he may hear confessions at Ostia, so it seems he can approve the same priest existing at Rome, so that he may hear the confessions of Ostian citizens at Rome.

Yet I answered that this cannot be done, as I had proved in the place cited; which can again be proved from the declaration of the Congregation of the Tridentine Council adduced in that place, by which the Most Eminent Fathers said that the bishop himself, staying in another diocese, cannot confess to an outside priest not approved by the Ordinary of that place in which the confession is made. If therefore the bishop himself cannot choose for himself a confessor not approved by the Ordinary of the place in which he is, much less will he be able to assign him to his subjects. For if he could approve a Roman priest at Rome for hearing the confessions of Ostians at Rome, surely the Bishop of Ostia himself could confess to the same, since he himself is no less Ostian than his subjects; wherefore if he himself cannot, neither will the Ostian citizens be able to confess to that priest.

But the reason *a priori* from the things said in the cited place is this: because a confessor from the decree of Trent must be approved by his own Ordinary; but in the proposed Case the Roman priest existing at Rome would not be approved by his own Ordinary. For the Bishop of Ostia is not the Ordinary of the Roman priest, nor can he punish him, even if at Rome he should offend concerning the hearing of confessions of Ostians; but he will be able to be punished only by the Roman Ordinary. The Bishop of Ostia could indeed punish an Ostian priest staying at Rome, as Gonzalez wills, on rule 8 of the Chancery, gloss. 62, n. 11, and Barbosa, *De Officio et potestate episcopi*, alleg. 6, n. 17; he could also punish a Roman priest staying at Ostia, and there approved, if there he should offend concerning confessions; and therefore whether an Ostian priest stays at Rome, or a Roman priest is at Ostia, the Bishop of Ostia can be said to be the Ordinary of each, since he can punish each, and therefore each will be called approved by his own Ordinary if he is approved by the Bishop of Ostia. Yet he is not the Ordinary of a Roman priest staying at Rome, because superior and subject are correlatives, and that Roman priest existing at Rome cannot be considered the subject of the Bishop of Ostia, by whom he can in no way be coerced and punished." Lugo, *Resp. Mor.*, l. 1, d. 17.

But it does not seem that the Bishop of Ostia, in the Case, can approve an Ostian priest at Rome. For the Council of Trent in reality does not say that a confessor must be approved by his own Ordinary, but says generally that no one can hear confessions unless either he has a parochial benefice, or is judged suitable by the bishops and obtains approval. Hence among theologians it has been disputed whether approval is to be given by the Ordinary of the priest, because jurisdiction cannot be given except to a subject; or by the Ordinary of the penitent, because it cannot be exercised except over

subjects; or by the Ordinary of the place, because jurisdiction is exercised in one's own territory. The first is foreign to law and to practice. For bishops allow simple priests, travelers, and guests to hear confessions in their own dioceses. The second was formerly more common from the ancient discipline, by which permission was given to depart, and tacitly permission also to receive the sacraments from outside priests. The third, according to the law now in force, must altogether be held. Innocent XII, Const. *Cum sicut*, April 10, 1700; Benedict XIV, Const. *Apostolica*, Const. *Benedictus Deus*. And it is so far from the truth that travelers today are absolved only by tacit delegation of their own Ordinary, that when a certain bishop, and later the Synod of Middelburg, had forbidden them to confess at Easter except to their own parish priest or with his permission, the Sacred Congregation of the Council, April 5, 1584, judged that its decrees were in no way to be observed. Cf. Benedict XIV, *De Syn.*, l. 11, c. 14, n. 6. And the Sacred Congregation de Propaganda Fide, September 17, 1792, *Collect*. n. 628, decreed: "the obligation imposed on parishioners of sacramentally confessing themselves to their own parish priest, or to another priest, yet with his permission, at Easter time, cannot be tolerated." Likewise, when at present to someone is granted the faculty of choosing for himself a confessor from those approved by the Ordinary, the absolution is void unless the confessor is from those approved by the Ordinary of the place. I. M. 759.

129. Jurisdiction of the Confessor

1. "Laelius, a vicar, notices on Holy Saturday that the time for which he had been approved has elapsed. Therefore he sends a messenger to the vicar general, to whom he was very well known and familiar, for the sake of asking an extension of the approval. But, being persuaded that the grace asked would certainly be granted to him, as in fact it was granted, he receives confessions several hours before the return of the messenger.

It is asked: Whether Laelius acted validly and licitly?

R. Laelius indeed validly absolved, although destitute of jurisdiction, common error standing; but he sinned gravely by hearing confessions without the due faculty, and by compelling the Church to supply, because it is not licit to absolve from merely presumed jurisdiction. Besides, it could happen that the superior, for some unknown cause, was going to deny the faculty asked, or that he was absent, etc." Thus Fr. Gury 548.

Speaking practically, it is indeed not licit to absolve from merely presumed jurisdiction, because the sacrament is exposed to the danger of nullity if in reality jurisdiction is not granted for any cause whatever. But if, as in the Case, jurisdiction is truly granted, and was granted when someone begins to hear confessions, is the absolution given with such jurisdiction, reasonably presumed, invalid? Presumed, namely, concerning the present, and not concerning the future, or interpretatively, with the truth on the part of the thing corresponding to the presumption. Moreover the absolution seems valid; for although certain knowledge *a posteriori* of the granted jurisdiction is not yet had, jurisdiction is nevertheless had, since, absolutely speaking, for having jurisdiction knowledge of it is not required, since its whole effect depends on the will of the superior constituting subjects. And thus, although a simple confessor believes that he lacks jurisdiction even in the article of death, yet if, when the case occurs, he truly wishes to absolve, he validly absolves. Likewise, "if the parish priest, Sempronius asking, allows an outside priest to be present at a marriage, and he, ignorant both of the petition and

of the concession, assists, one must stand for the value of the act." D'Annib., p. 1, n. 225; Laymann, *De Legib.*, c. 23, n. 10; I. M. vol. 1, n. 249; vol. 2, n. 760.

Cardinal De Lugo, treating the question of presumed jurisdiction, d. 19, n. 23, says: "If the presumed will is a will indeed existing in the superior, but not sufficiently explained, a distinction must be made. For if it is merely internal, and disclosed by no external sign, it effects nothing; both because jurisdiction is not given in a human way except by human signs, and also because this sacrament must be a sensible sign, in which, just as the form must be sensible, so also must the power of the minister be. But it is not sensible if it is founded only on the internal will of the superior, manifested by no sensible sign. But if that presumed will is manifested by some external sign, although not altogether explicit, then it will suffice for the value of absolution. But what those signs ought to be depends on the circumstances and the judgment of a prudent man. Suarez adds, d. 26, s. 1, n. 17, that even if such signs make a probable estimation concerning the present consent of the one delegating, such jurisdiction is not to be used unless there is no opportunity of knowing the will of the superior more clearly and expressly, and from another source there is sufficient cause for administering the sacrament. Yet this is opposed to the common opinion, which Suarez himself defends, d. 26, s. 6, that it is licit to administer this sacrament with probable jurisdiction and power." The signs, not altogether explicit, of which Lugo and Suarez treat, are present signs and manifest actually to the confessor. Wherefore in reality there does not seem to be question of jurisdiction sought by letter. But since that knowledge of the jurisdiction granted is not necessary at most except for the acceptance of the same jurisdiction, and the acceptance is sufficiently understood through the very petition and letter sent by the confessor, it does not seem that for this reason the act is to be held invalid.

Indeed Gousset 478 says: "To absolve validly, it is not enough to be sure that the bishop would give faculties if he were asked; for it is one thing that a bishop would grant, another thing that he actually grants, jurisdiction. A simple presumption does not suffice; but if there is reason to believe that the bishop actually grants faculties for this or that present circumstance, the absolution is valid."

And the same seems to be said if there is question not of jurisdiction sought by letter, but of jurisdiction sought through a messenger. And thus Schmalzgrueber, l. 4, tit. 3, n. 206, says: "A marriage celebrated before a priest of this sort is valid, even if he does not yet know that permission has been granted to him, but gathers this only from conjecture of the time. The reason is that then the permission given is considered accepted by this very fact, that he to whom it was given, or another in his name and with his knowledge, sought it. From this it follows that a marriage is validly celebrated before a priest at that time in which the messenger, bearing the letters of concession of the permission sought by him, is still on the way, even though the priest himself is ignorant that it has been granted to him. I said, validly celebrated; for before knowledge of the permission granted to him, he will illicitly assist at the marriage, because by thus assisting he exposes the sacrament of marriage, contracted before him, to the danger of nullity."

And the same is to be said much more if jurisdiction is sought not through a simple messenger, but through a procurator, and he has not yet returned and communicated the knowledge to the mandator. The reason is that, since the procurator bears the person of the mandator, the matter is the same as if it had been transacted among those present. D'Annib., p. 1, n. 224; Sanchez, l. 3, d. 36, n. 6, 8;

Reiffenstuel, l. 5, t. 33, n. 41 seqq.; Tamburini, tr. *De Casib. reserv.*, c. 9, § 1, n. 10, 21; Bertagna, *De Casuum reservat.*, p. 153 seqq.

2. "Casimirus the confessor, while he is earnestly occupied in receiving confessions, began to doubt whether the time of jurisdiction granted to him had already expired or not. But he cannot resolve the doubt, because he has lost the episcopal letters. Nevertheless, without doubt he continues to hear confessions and absolve, relying on this principle: In doubtful or probable jurisdiction, the Church certainly supplies. But afterward, moved by scruple, he resolved to abstain from confessions until he should obtain renewal of the faculty. Meanwhile, however, being earnestly asked, he still absolves several penitents, namely a parish priest about to celebrate on a feast day and agitated by anxiety; a woman laboring in difficult childbirth and abhorring the parish priest; a man whose confession he had already begun, and who could not persevere longer in the state of mortal sin without the greatest trouble; and others like these.

It is asked: What is to be said about the manner of acting of Casimirus?

R. Casimirus acted badly in the first Case by absolving with jurisdiction doubtfully present practically or negatively, when no necessity or grave cause was urging. For it is not true that the Church certainly supplies in doubtful jurisdiction, grave cause being excluded, since this is commonly denied by theologians. Nevertheless he validly absolved, because in such a Case the Church supplies jurisdiction at least on account of common error. He could also licitly absolve if, with conscience formed, he probably thought that he was not destitute of jurisdiction. But he acted validly and licitly by absolving in the later Cases, because a grave cause of absolving was urging, and therefore the Church was deservedly considered to supply jurisdiction. Thus St. Liguori teaches, 573." Thus Fr. Gury 550.

In the first Case Fr. Gury seems implicitly to assert that the Church probably supplies jurisdiction when jurisdiction is negatively doubtful; but that it certainly supplies when jurisdiction is positively doubtful; and he openly asserts that it supplies it in the later cases of necessity, when jurisdiction is doubtful, concluding that St. Alphonsus 573 so teaches. But in this place the holy Doctor does not speak of jurisdiction truly doubtful, but probable, which is quite different. The Church indeed supplies jurisdiction in a twofold case: 1.º when common error underlies, on account of the common good, Lig. 572; 2.º when a probable opinion underlies in a doubt of law, on account of the same common good, Lig. 573; Suarez d. 26, s. 6, n. 7; Lugo d. 19, n. 29; not likewise in a doubt of fact, for example, if one to whom it was entrusted at the choice of the will of the person himself, or for a certain time, doubts lest perhaps the one who entrusted it has died, or lest the definite time has passed. Yet it is licit also in this negative doubt of fact to give absolution if "by absolution being denied notable detriment would threaten the soul of the penitent," Lig. 431, or if the doubt arises "after the penitent has begun to confess his sins, because to him the right of obtaining absolution has already been acquired." D'Annib. 321. But in each Case the absolution must be given under condition, because of reverence for the sacrament; and the penitent, if he confessed mortal sins, should be warned about it, so that, if afterward perhaps it becomes known that the confessor really lacked jurisdiction, the penitent may again confess those sins as he ought, and duly provide for his salvation. Lig. 432, 571.

But if there is question of a doubt of fact and of a negative doubt, Busembaum in St. Alphonsus, and St. Alphonsus, n. 571, openly admit the doctrine set forth above in the preceding paragraph. But if again there is question of a doubt of fact and of a positive doubt, Busembaum in St. Alphonsus, n. 571, holds that in that case the Church supplies jurisdiction. "But if," he says, "from a probable reason he resolves the doubt, namely that he has jurisdiction, although with fear of the opposite, he absolves absolutely and licitly; both because then he is practically and morally certain, and because in that case the Pope gives faculty." St. Alphonsus himself seems implicitly to hold the same in the cited n. 571, and seems openly to hand on the same in n. 573, but with the limitation of necessity or utility. There the holy Doctor indeed treats the general question: "Whether it is licit to administer the sacrament of penance with only probable jurisdiction." He brings forward various opinions, and then himself embraces the opinion which says that "it is indeed licit to minister this sacrament of penance with probable jurisdiction, but only when there is present a grave cause of necessity, or of great utility, or a reasonable cause." But although the holy Doctor speaks thus generally about probable jurisdiction, nevertheless he seems to have had in mind rather probability of fact than of law, from the examples then brought forward. For immediately he adds: "A cause of this sort occurs: 1.º when the penitent needs the help or counsel of that confessor. 2.º If the accomplice of the sin of the penitent is known to the confessor who possesses certain jurisdiction, and unknown to the confessor having only probable jurisdiction. 3.º If the confessor who has probable jurisdiction prudently fears that the penitent will not make an integral confession before him who has certain jurisdiction. 4.º Sporer adds: lest the penitent fall into some aversion or harmful suspicion toward the certain confessor. 5.º If the precept of confession is urging, or some singular indulgence is to be gained, or because someone will not be able to confess for a long time."

D'Annibale, p. 1, n. 80, speaking generally about jurisdiction, says: "It is supplied in a doubtful matter, provided the doubt is not merely negative, but positive and truly probable. Not negative, for example, if I doubt, still more if I am ignorant, whether jurisdiction has been entrusted to me; but positive, or of law, suppose whether the Church supplies jurisdiction with common error alone...; or of fact, otherwise than I once thought, as if jurisdiction was entrusted to me for a certain time... whether the time has passed. The reason is that thus it has been introduced by custom, and that jurisdiction can be acquired by custom is of settled law." But, notwithstanding the asserted custom, concerning which there is no certainty, D'Annibale himself excludes doubt of fact on the same p. 1, n. 342; and p. 3, n. 321, published however after the death of the eminent Cardinal, absolutely affirms that the Church supplies jurisdiction when there is a probable opinion in a doubt of law, but by no means in a doubt of fact. And indeed, as Suarez argues, d. 26, s. 1, n. 7, in a doubt of law, or of a common question of law, "the ignorance which arises from the probable opinion of doctors is common and public, and could harm the common people if in the matter itself ministers lacked jurisdiction. And therefore it is not licit to argue to private ignorances or errors which can intervene in particular facts, because it does not pertain to good governance that provision be made for all these, which could not be done without other greater inconveniences; but to provide for common and public necessity is very fitting and necessary." I. M. 770, 771.

3. Leonardus, a priest approved in the diocese, absolved many penitents, even at Easter time, against the will of the parish priests. He also continues to do this after the bishop prohibited

the faithful, at Easter time, from confessing to anyone outside the parish without permission of the parish priest.

It is asked: Whether Leonardus absolved validly against the will of the parish priests? Whether against the will of the bishop of the diocese?

R. "1.º Leonardus validly absolved, against the will of the parish priests, even at Easter time, because, from the common interpretation, one's own priest to whom the faithful must confess once in the year is understood to be any approved priest. 2.º He could not validly absolve at Easter time if the bishop decreed that parishioners should confess to parish priests alone, because the bishop can validly restrict jurisdiction." Thus Gury 540. But a statute of this sort would first be contrary to common practice and custom. Besides, it has already been prohibited by several Decrees of the Sacred Congregations, and by them it has been declared that it cannot be tolerated. Cf. *Enchir. Mor.*, 3rd ed., n. 778, 782.

"The Holy See has always held the maxim that the liberty of Christians must not be bound in any way in so delicate a matter as sacramental confession, and it has always willed that it be licit for each one to manifest his faults to that one among the approved sacred ministers who was more pleasing to him. Nor has it equally ever prohibited an approved confessor from hearing in his own church the confession of any Catholic whatsoever who presented himself at the sacred tribunal. Thus it is not prohibited for Christians of one diocese to pass into another in order to confess there. Moreover, although for the fulfillment of the Easter precept every Christian must make his Communion in his own parish, nevertheless he has no obligation of confessing on such an occasion to his own parish priest. This has always been, and is, the maxim, the practice held by the Holy See. Nor has any distinction of rite ever been made, since the administration of such a sacrament brings with it no change of rite; indeed the same Holy See, whenever any doubt has been raised on such a particular point, has declared that no limitation of this kind ought to be made in such a matter. Hence in 1626, on June 5, it severely forbade certain Latin bishops to prevent their subjects from confessing to Ruthenian priests and vice versa." S. C. de P. F., June 2, 1835, *Collectan.* n. 929, 932.

Finally, as is drawn from the Declaration of the Sacred Congregation, April 5, 1584, and from the Constitution *Superna* of Clement X, §§ 4, 5, that restriction of jurisdiction of all confessors, even those already indefinitely approved after previous examination, for Easter time would be invalid, and therefore they would absolve validly. Cf. *Enchir. Moral.* 782; I. M. 776-778.

4. "Antoninus, a parish priest, is accustomed once a year, Hydulphus his vicar accompanying him, to go with not a few parishioners on a pious pilgrimage beyond the borders of the diocese. When they had arrived at the pious sanctuary, both he himself and his assistant earnestly devote themselves to hearing the confessions of their own. They also receive and absolve some other pilgrims approaching their tribunal.

It is asked: 1.º Whether Antoninus, the parish priest, validly absolved his parishioners outside the parish, or even outside the diocese? - 2.º Whether his vicar absolved his own penitents? - 3.º Whether each absolved other outsiders?

R. 1.º Antoninus, the parish priest, validly absolved his parishioners outside the parish and even outside the diocese, without delegation of the bishop of the place, because the parish priest enjoys

ordinary jurisdiction, and therefore personal jurisdiction over his own subjects, and can absolve them in every place.

2.º Hydulphus, the vicar, could not absolve his own penitents, as being destitute of due approval or of personal jurisdiction. For the jurisdiction of a vicar is only delegated, and therefore merely local. Yet, common error standing, in reality he did not absolve invalidly.

3.º Neither, neither the parish priest nor the vicar, could licitly of themselves absolve outside pilgrims - add, also validly - namely because of the lacking approval of the bishop of the place. Yet, common error standing, each validly absolved." Thus Fr. Gury 552.

It must be noted here that what is said by Fr. Gury, and in reality is commonly accustomed to be said, namely that ordinary jurisdiction is personal, and delegated jurisdiction is local, speaking of itself, is said altogether improperly. For all jurisdiction is personal, since it is only over persons. But it is called personal or territorial to signify that it is or is not restricted by territory as to its exercise. Therefore that ordinary jurisdiction is not restricted by territory, and consequently someone can absolve in every place because it is personal, is ineffectively proved from this, if that word personal signifies what is exercised over a person; for delegated jurisdiction is also exercised over a person, and therefore it also could be exercised in every place. But if it signifies that it is not restricted by territory, this is precisely what must be proved, and the same thing would be proved by the same thing. Likewise, that delegated jurisdiction, on the contrary, is restricted by territory because it is local, evidently contains a begging of the principle, because this very thing is what must be demonstrated. Therefore another reason must be assigned why the parish priest could absolve his own parishioners outside the parish and diocese without approval of the bishop of the place, but his vicar could not.

D'Annibale 322 and others think that even the vicar in the Case, at least speaking absolutely, could absolve his own penitents outside the parish and diocese, because of the general reason that delegated jurisdiction according to itself is the same as ordinary, and is exercised over one's own subject as the latter is. This is the whole doctrine of the distinguished author: "Jurisdiction can be prorogued, as otherwise, from time to time, from person to person, from place to place. It cannot be prorogued from case to case because of the reservations, as they call them. From the first, therefore, a penitent is absolved by a confessor by whom he was dismissed unabsolved and about to return soon, if he returns at that time when that confessor has ceased to be. See St. Alph., VI, 537, q. 111. From the second, we absolve travelers in our diocese. From the third, a bishop or parish priest absolves his subjects in another diocese. S. C. C., Dec. 3, 1707; Benedict XIV, *Not*. 86, 7. Therefore can even a simple confessor absolve his own diocesan subjects outside the diocese? Several deny it from the Pontifical Constitutions, which require approval of the Ordinary of the place. See St. Alph., VI, 548, and first from the Constitution of Innocent XI, April 10, 1700. Some affirm, Suarez, Sanchez, Lugo, Salmanticenses, Mazzotta. This opinion in the point of law seems truer to me, because the delegate uses the jurisdiction of the one delegating. Nor do the Pontifical Constitutions stand in the way; otherwise neither could parish priests do this; and the Constitution of Innocent XI was issued from peculiar causes and for some places, Salmanticenses, Mazzotta. Nevertheless the former opinion is altogether to be held, because from the probable intention of the one delegating, delegated jurisdiction is bounded by territory. But I do not think confessions made are to be repeated, except at the article of death."

But if in reality the delegate uses the jurisdiction of the one delegating, if the delegator signifies nothing positive to the contrary, from the probable intention of the delegator delegated jurisdiction, on the contrary, is not bounded by territory. Therefore the reason why the delegated vicar cannot hear the confessions of his own outside the diocese, and the parish priest can, must be sought from the approval of the Ordinary of the place, which Trent, sess. 23, c. 15, *de R.*, and the Pontifical Constitutions in reality require for all others, apart from a special privilege, except parish priests, but by no means for parish priests. Hence it does not follow that, if delegates could not hear the confessions of their own penitents without approval of the Ordinary of the place, neither could parish priests without that approval hear the confessions of their own parishioners in another diocese. And, if there is any doubt in the Law, it certainly vanishes from custom, which is the best interpreter of laws. I. M. 774.

5. "Sabellus, a priest, surrounded for some time by a great crowd of penitents, after the term of approval had expired, continued to receive confessions, first indeed laboring under invincible ignorance, then also in bad faith. But having therefore been suspended from confessions by the bishop, he nevertheless absolved some little women ignorant of the suspension. Then, taking flight and forging letters from the bishop, he establishes himself in another place to which the report of the suspension had not yet come, and there, for hearing confessions in a certain great solemnity, he is admitted by the parish priest.

It is asked: 1.º Whether Sabellus validly absolved, whether in good or bad faith, before the suspension? - 2.º Whether he validly absolved the little women after the suspension, and the faithful after the flight?

R. To the 1st. Affirmatively. The reason is that common error was present, from which it happens that the Church more probably supplies, even when a colored title is lacking. Nor does it stand in the way that afterward Sabellus was in bad faith, because this bad faith does not destroy the common error. Lig. 572.

To the 2nd. Sabellus invalidly absolved those few little women who were ignorant of his suspension, because then there was only private error. But the Church, according to the common opinion of theologians, does not supply jurisdiction in private error, because the Church, as general provider, is not considered to supply except by reason of the common good. But after the flight Sabellus validly absolved, at least probably, because common error was present in the place into which he betook himself." Thus Fr. Gury 545, 546.

The response to the 2nd is not without difficulty. For if Sabellus before suspension, by reason of common error, validly absolved, why after suspension, by reason of the same common error, did he not validly absolve, since he altogether lacked jurisdiction both after the suspension and before it? And if before he was suspended the error in that place was common, how then, after the suspension was unknown, did the error there become private? And indeed, as Fr. Gury himself has it, because after the flight common error was present in the place into which he betook himself, therefore there he validly absolved, at least probably. Therefore the same must be said about the place from which Sabellus had fled, because the error there was common; and therefore, just as he validly absolved other penitents, so he also absolved those little women. Nor does it avail to say that there was question of some little women. For otherwise Sabellus, continuing to hear confessions after the term

of approval had passed, would have absolved invalidly at least the first penitents, which neither Fr. Gury says, nor others say, nor can be said. For let it be supposed that on the first day after the term of approval had been completed, that whole crowd of penitents had indeed been at the same time in the church, and after Sabellus heard the confessions of some, an impediment suddenly arising, he could not continue with the confessions of the others: would the absolutions of those few have been invalid? And if that whole crowd, as usually happens, was not all at the same time in the church, but some came after others through the whole morning, would at least the absolutions of those who came first be invalid? And what if, after some had already come and had been absolved, because of a fire, earthquake, invasion of enemies, or some other reason, others could no longer come to the church: would those who were absolved therefore have been invalidly absolved? Then surely it would have to be said that, in order that absolution be valid by reason of common error, it is necessary that that great crowd of penitents had in fact already been absolved. Wherefore the absolution at least of the first penitents would then remain suspended until the fact of a great crowd of absolved penitents is verified. But if this cannot be said, it certainly does not appear why those little women, although they were some and were not innumerable, whether simultaneously or successively, were not validly absolved in the Case, just as the other preceding penitents of Sabellus, who for some time continued to receive confessions without jurisdiction. Otherwise also after the flight Sabellus did not validly absolve at least the first, if after he heard their confessions he could not then hear the confessions of the rest. That is to say, for common error here there is not required common error in fact as to the very effect of that error, namely the fact itself that several are really deceived and confess to one not having jurisdiction, but only common error in law as to the aforesaid effect: namely such a state of affairs that error of many follows of itself, and therefore many can confess to one not having jurisdiction. And then the reason for jurisdiction to be supplied is verified, namely the averting of the danger of common harm. A state of affairs of this sort certainly is had whenever a confessor publicly exercises the office of confessor, so that publicly he is considered a confessor and therefore can hear the confessions of many. "There is common error," says D'Annibale, p. 1, n. 79, "if in that place where someone exercises jurisdiction, for example where he acts as parish priest, he is publicly considered to be endowed with it, from Law 3 to the Macedonian Senatusconsult; whether an error of fact or of law is involved, from Law 41, *Mandati*; La-Croix, l. 6, p. 1, n. 113; provided the error of law is probable." And Casimirus Gennari, *Monit. Eccles.*, vol. 7, p. 1, p. 85: "Behold," he says, "the theory of common error clearly formulated. When a person, called by canon or civil law to exercise some jurisdiction, exercises it publicly, so that the generality believes that he has the title, even when the title is not there, for the good of persons the jurisdiction is supplied by the legitimate power." It is supplied, namely, by the law; for it is not supplied by him who wrongly gave it or ought to have given it. But when the law supplies jurisdiction, it is the same as if one were endowed with it. Therefore validly, although illicitly, it is exercised by him and also with him who is not ignorant that it is lacking to the one exercising it. D'Annib., p. 1, n. 79. And La-Croix, l. 6, p. 1, n. 112: "When there is given a prudent and common persuasion for the jurisdiction or power of someone, whether ordinary or delegated, for doing something, although that persuasion before God is false, nevertheless it is certain that the Church, if it can, supplies or dispenses, etc." Therefore Sabellus validly absolved even those few little women, because he was still publicly considered to be a confessor and to have jurisdiction. Hence, if not only some but also very many others after them had been absolved, he

would have absolved validly, until he was held by the multitude, or publicly, as a confessor. I. M. 769. Cf. following Case.

6. Titius, formerly a monk, afterward an apostate from religion, using false testimonial letters, since he was a simple priest, showed that he had both exercised the office of preacher and received the confessions of nuns. Therefore in a certain diocese he obtains these same offices, both of preacher and of confessor of nuns. But in the faculty letters this clause is placed: "if the things set forth are true and he has exercised the same office elsewhere."

Titius exercises the office entrusted to him with great zeal and the appearance of virtue; but in receiving the confessions of girls who were staying in the monastery for the sake of education, he often commended the state of marriage and insinuated as most grave the burden of the vow of perpetual chastity and enclosure. This finally became known to the abbess, who, exploring more diligently into the manner of his life, recognizes concerning him what was hidden, and also his apostasy from religion. Immediately terrified, she calls a learned confessor and explains the whole matter to him. But he asks within himself:

1.º Whether and under what conditions the Church supplies jurisdiction when penitents invincibly do not know this defect? - 2.º Whether the absolutions given by Titius were valid? - 3.º By what more prudent manner provision is to be made in the Case?

R. To the 1st. The Church supplies jurisdiction by reason of the common good, if nevertheless it could have given it. Wherefore it does not supply it if the abbess, for example, about whom there is question in the Case, were to absolve all the nuns and seculars coming to the monastery. But it supplies it first when someone exercises it with a colored title and common error, by reason already stated of the common good. It supplies second, when someone exercises it with common error, but without a colored title. Several indeed deny this, but others more probably affirm it. For the cause of public utility is the same, common error standing, whether a colored title is present or lacking in the one exercising jurisdiction. It supplies third, when someone exercises it while its probability stands. The reason is the universal custom of confessors in this matter, and custom furnishes jurisdiction. St. Alphonsus, l. 6, n. 573. Probability, namely of law, for example, whether one not approved can validly absolve a dying man when an approved confessor is present. What about probability of fact? For example, whether the time of jurisdiction delegated to me has passed? There are not lacking those who affirm. D'Annibale affirms among others, retracting himself, 3rd ed., p. 1, n. 80, note 78, saying: "Jurisdiction is supplied in a doubtful matter, provided the doubt is not merely negative, but positive and truly probable... whether of law... or of fact, otherwise than I once thought." But this is not commonly admitted, and the same D'Annibale, in the same 3rd ed., p. 3, n. 321, again retracting himself, says: "The Church supplies jurisdiction when a probable opinion underlies in a doubt of law, not likewise in a doubt of fact." But the reason is that, if in favor of probability of law a universal practice and custom of confessors can be affirmed, this surely cannot also be affirmed in favor of mere probability of fact. Hence much more must it be said that the Church by no means supplies jurisdiction in a merely negative doubt, if someone, for example, merely doubts whether jurisdiction was delegated to him; or also, and a fortiori, in ignorance of jurisdiction, if someone namely is ignorant whether jurisdiction was conferred on him. Likewise the Church does not supply jurisdiction if someone uses merely presumed or interpretative jurisdiction, holding for certain that

the Church will ratify it. For the act in the Case cannot be made valid by ratification; and most commonly, and by all doctors, this Case is either explicitly excluded, or at least implicitly, since they do not list it with the other cases in which the Church supplies jurisdiction.

To the 2nd. It seems that the response must be affirmative. If a colored title is required with common error so that the Church may supply jurisdiction, a colored title was not lacking in the Case. For a title is a cause by which some right is acquired, and it is colored when, although nothing seems to be lacking to it, nevertheless it labors under a hidden defect, whence it transfers no right. Now Titius obtains from the Ordinary of the place, that is, from one having power for this, faculty letters for hearing confessions, by which letters approval and jurisdiction are accustomed to be legitimately conferred upon all confessors. Therefore Titius did not lack title. But that title was merely colored; for it labored under the substantial defect of obreption, since the faculty of hearing confessions was not granted to him absolutely, but under this formal condition, if the things set forth are true and he has exercised the same office elsewhere; which condition was not verified. Nor indeed was common error lacking in the Case. It indeed seems at first sight to be lacking, since there is question only of one monastery of nuns. Yet in reality common error was present. For common error here is not an error in fact of many, of the greater part of the community, or of the whole community. Since there is question of the validity of acts, and of acts altogether successive, if common error were common error in fact and in second act, those acts would not begin to be valid until after someone had already absolved almost the whole community, or a smaller part of the community, or at least several but not yet many; and then how many? And therefore the matter would always remain uncertain for the last absolved; but for the first, the benignity of the Church would profit nothing, although she supplies jurisdiction by reason of the good of all souls. Besides, if when there begin already to be at least many, or the greater part of the community, or the whole community, the first who is absolved is then certainly validly absolved, and validly absolved by reason of common error, by reason of the common good, how indeed in this one is there had common error and the common good? Therefore common error and the reason of common good were verified already from the first who was being absolved; and therefore already that first one was validly absolved. Wherefore common error cannot be understood as error in fact and in second act; but as common error in law and in first act, that is, in such a state or condition of affairs that error publicly or of the community can and ought naturally to follow, namely if the matter follows its natural course. Moreover such is the state or condition in which Titius is found. For Titius has faculty letters for hearing the confessions of the nuns of the diocese; and therefore not restricted to one or another house of two or three sisters, but he has in the diocese a general faculty of hearing the confessions of nuns, as now the Sacred Congregation of Bishops and Regulars exhorts bishops to do, namely so that nuns can easily have recourse to them. Decree *Quemadmodum*, Dec. 17, 1890, § IV. But if Titius obtained a special approval for nuns, he certainly obtained approval also for all other Christian faithful, especially since he also simulated the office of preacher. Hence, if he himself began also to hear confessions in some public church, setting up for himself some confessional, as is usually done, from this head also common error appears more than sufficiently in the Case of Titius. Finally, common error is drawn also from the fact that Titius by every art tries to hide his true condition, and publicly to boast himself as preacher and confessor, and as a confessor endowed also with special approval of nuns in that diocese. This indeed is not explained in the Case, but is drawn sufficiently from its exposition, since it is said that he bore before himself great zeal and the appearance of virtue.

To the 3rd. Since the confessions were valid in the Case, the consciences of the nuns and girls are not to be disturbed. Wherefore the defect of jurisdiction of Titius in that monastery must be pressed down in deep silence. But the abbess is bound to denounce the whole matter to the Ordinary of the place. Nor indeed meanwhile can the nuns and girls confess to Titius, and therefore the abbess is bound at once to seek another confessor from the Ordinary. But the obligation in the abbess of denouncing Titius arises not only from the defect of jurisdiction of Titius, but also from the scandal which could easily have been had from that recommendation of marriage, and from that burden of chastity and of religious life declared to the girls either exaggeratedly or beyond all opportunity and prudence.

130. Jurisdiction at the Article of Death

1. "Lucianus, the parish priest, with the people assembled to hear Mass on a feast day, prepares himself to celebrate. But, when he was already clothed in the sacred vestments, he is informed that Titius, a parishioner dwelling in a village about one hour distant, is near death. What will he do, pressed by these straits? He hesitates in uncertainty, not knowing what counsel is to be taken; for the people have not heard Mass, nor is there time remaining to wait until the parish priest returns, so that he may celebrate it, for midday is already nearer. But soon, he says to himself, I know what I shall do. Excellent thought! Colombinus, a priest of this place, who celebrates as chaplain in the neighboring parish, has already returned. Behold, I shall send him at once to the dying man; but I, remaining here, shall celebrate. He indeed is not approved for confessions; but in danger of death no approval is required. Colombinus, having been asked, agrees, and goes as quickly as possible. Soon he arrives at the house of the dying man; he already begins to ascend the stairs, when the groans, cries, and wailings of women are carried to his ears, among which a sorrowful voice is heard: Now the poor man is breathing forth his spirit! Then the priest cries out in a loud voice: I absolve thee from thy sins, and immediately, hastening to the room of the one lying ill, he sees him already dead.

It is asked: 1.º Whether the parish priest, another priest being lacking who might go to the dying man, could have omitted Mass, or even ought to have done so? - 2.º Whether the parish priest acted well by sending a priest not approved to the sick man? - 3.º Whether the absolution was valid, which Columbinus imparted in these circumstances of affairs? - 4.º Whether the chaplain could even have celebrated Mass in the place of the parish priest, so that the latter might go to the dying man?

R. To the 1st. Affirmatively. Lucianus could and ought to have omitted Mass. The reason is that in a conflict of two precepts which cannot be fulfilled at the same time, the greater precept must be fulfilled. But the greater precept is that he succor the soul of the dying man; for the urgent precept of charity in these circumstances by natural law is greater than the ecclesiastical precept of hearing Mass. Therefore Lucianus could and ought to have omitted Mass.

To the 2nd. The Case is not without grave difficulty, and grave reasons for each opinion, namely affirmative and negative, can be adduced. For probably Lucianus could not send Columbinus to the sick man. The reason is that Columbinus could not absolve the dying man as delegated by the parish priest, as is clear; but neither from the general approval of the Church for the case of death, because there is not lacking an approved priest, namely the parish priest, who is not absolutely impeded. Yet

the opposite opinion does not seem to lack a solid foundation. For a most grave reason urges that the parish priest send the chaplain to the dying man; for he can be said to be morally impeded, since he then ought to celebrate, so that a great people may hear Mass. Nor does this seem alien to the intention of the Church. Therefore, the opposing reasons adduced on both sides, resting upon a grave motive, we are in a Case of doubtful jurisdiction. But it is lawful to use doubtful jurisdiction when a grave cause urges, as it is grave in our Case. Therefore the good parish priest is not to be condemned, who in such great straits of affairs sent the chaplain to the dying man.

To the 3rd. Affirmatively. For 1.º it was valid on the part of the minister, because then he was the only priest present, and therefore he certainly enjoyed jurisdiction. 2.º It was valid by reason of the presence of the priest, which was truly moral. 3.º It was valid on the part of the form: *I absolve thee from thy sins*. 4.º It was valid also probably on the part of the dying man well disposed, inasmuch as he had called for a priest, and, if he heard him approaching, could have given a sign of penance; but this absolution ought to have been imparted conditionally.

To the 4th. Negatively of itself. The reason is that the chaplain is no longer fasting. Moreover, it is not of itself a sufficient reason for celebrating Mass without observing the fast, that the people may hear it. Yet that would be lawful if otherwise scandal, grave tumult, and offense of the people, etc., were to be feared." Thus Fr. Gury 559-562.

In the Response to the 2nd it must first be noted that, the probability of each opinion standing, with regard to the question whether a simple priest can validly absolve when an approved confessor is present, there is no longer properly a question of a case of doubtful jurisdiction, but of probable jurisdiction. Then that grave difficulty which Fr. Gury affirms seems now no longer to be present after the Response of the Holy Office, July 29, 1891, which is of the following tenor: "1.º Whether the absolution is valid which any priest, even one not approved, has imparted at the article of death, when an approved priest could easily have been called or could have been present? 2.º Whether similarly the absolution is valid, granted at the same article of death to a dying man having reserved sins, whether simply or with a censure, by a priest not having jurisdiction in reserved matters, even if a priest having the aforesaid jurisdiction could easily have been called or could have been present? R. to each: Those are not to be disturbed who hold the affirmative opinion." S. O., July 29, 1891; I. M. 773.

In the Response to the 3rd, there is difficulty. For considering the Case as it stands, it is certainly not easy to understand how in reality Columbinus was sufficiently present to the dying man. For he gave absolution when he had begun to ascend the stairs of the house. Columbinus indeed cried out the absolution loudly. But, if the dying man lay in some inner room of the house, if the house was not sufficiently close to the first stairs, moral presence is understood with difficulty. I. M. 748. Wherefore the absolution, in the Case, ought indeed to have been given under condition also on this account.

2. Naborius, struck by a sudden illness and already brought to extremities, asks for a priest. When Marius the chaplain, destitute of all jurisdiction, was passing by, he is called. The beginning of confession having scarcely been made, behold, Lucas the vicar is present, who, Marius withdrawing, receives the confession of the sick man. But soon, hearing a reserved sin, and not enjoying the faculty of absolving from reserved matters, he is not moderately entangled; when, the rumor of Naborius's illness having spread, Urbanus the parish priest also

flies there. When he appears, the vicar gives thanks to God and asks the sick man that he be willing to confess to the pastor, his most loving father. He agrees; but when the sick man had opened a Case to which was annexed an excommunication reserved to the bishop, now the parish priest does not know what must be done. Behold, meanwhile there arrives the vicar general, very familiar with Naborius, to whom the pastor would gladly have yielded his place in his stead, if he had dared to do this, or if the penitent had considered it agreeable; but fearing offense to the sick man, he heard him integrally and absolved him. Afterward, however, Naborius recovered and was restored to perfect health.

It is asked: 1.º Whether a priest not approved can hear confession in the Case of death? Whether in the presence of one approved? - 2.º Whether a simple confessor, in the Case of death, can absolve from reserved matters? Whether from censures, and in what way? - 3.º Whether the various confessors acted rightly in the present Case, or what ought to have been done by them? - 4.º Whether Naborius, having recovered health, ought to have repeated the confession?

R. To the 1st. A priest lacking approval can absolve in a Case of necessity, or at the article or danger of death, from the general faculty granted by the Church, lest anyone perish through defect of power in the priest. But according to many, he cannot absolve when another approved priest is present, because in that Case no necessity urges. Yet, if the confession of a dying man has been begun by a simple priest, it can be completed. Lig. 563. But according to others, a simple priest can even absolve a dying man in the presence of an approved confessor, because, in that Case, jurisdiction is attributed to him by the Church simply and without any restriction. This opinion is probable.

To the 2nd. A simple confessor can absolve from reserved cases in danger of death, because the Church, a benign mother, willed that in death there should be no reservation. But he cannot absolve from censures except indirectly, or in such wise that, if the sick man recovers, he is bound to approach another confessor enjoying the faculty of absolving from censures. See *Comp*. 579.

To the 3rd. 1.º Marius, the first confessor, acted badly by yielding his place to another; for although he was a simple priest, he ought to have pursued the confession begun, as is clear from what has been said; and therefore in the Case he could validly absolve.

2.º Lucas, the vicar, also acted badly by yielding his place to the parish priest. For he ought not to have been restrained from completing the confession because of a reserved sin, since in death there is no reservation.

3.º But what about Urbanus the parish priest? First, he acted badly by carrying through a confession begun by another; but afterward he acted well by not sending the wretched sick man back to the vicar general. For a confession begun, while the danger of death urges, is a sufficient reason that a confessor destitute of the power of absolving from censures absolve from them also, indirectly, even when a superior has supervened.

To the 4th. Naborius, having recovered health, by no means ought to have repeated the confession, but only to make known to the superior, or to the delegate, according to the common opinion, the sin to which the censure was annexed, so that he might be absolved from it directly; or through the parish priest himself to request the faculty, so that the confession could be completed by him." Thus Fr. Gury 555-558.

With regard to the response to the first and third questions, cf. the preceding Case and I. M. 773.

With regard to the response to the second question, it must be noted that sins indeed can be absolved indirectly, but censures by no means. I. M. 669, 800. But as regards censures, these at the article of death, if they are reserved, are absolved by one not having power either absolutely, without any burden of later appearing, if the sick man recovers, before the superior, or with such a burden, as will soon be explained below. I. M. 799.

With regard to the response to the fourth question, Naborius, having recovered health, was bound then only to present himself to the superior, or to be absolved by another having power from the reserved censure, if it had been reserved with this burden. I. M. 799.

Lest anyone perish on this occasion, there never was nor is THERE ANY RESERVATION at the article (or danger) of death. Trent, sess. 14, c. 7. And therefore in that article every reservation CEASES. Roman Ritual, *On the Sacrament of Penance*, § 17. Every reservation, and therefore whether sins or censures have been reserved; and consequently they ought to be judged by the same law. Suarez, *de Poenit.*, d. 30, s. 3, n. 4; D'Annibale, p. 1, n. 349. Wherefore all priests, whether approved or not, who in that crisis of affairs can absolve from any sins whatsoever, can also absolve from any censures whatsoever, namely from those laid by law; likewise also from excommunications and from a personal interdict laid by man, since, unless the excommunications have first been absolved, sins cannot licitly be absolved; and, unless the personal interdict has been absolved, ecclesiastical burial also cannot be given. Whether also from suspension? Some affirm, for Trent says *from any censures whatsoever*; therefore none is excepted. Others, however, deny it, because Trent here provides only for those things which concern souls, lest anyone perish. Lugo, *de Poenit.*, d. 20, n. 203; D'Annibale, p. 1, n. 349.

Moreover, does absolution given by an inferior because of the article or danger of imminent death, if the sick man recovers, bring with it the obligation of approaching the superior, certainly not that someone confess again to him, but that he receive his mandate? Some affirm absolutely from c. *Eos qui*, 22, *de Sent. exc.*, in 6.º. Others deny it from Trent, since there is no reservation at the article of death, and therefore no burden of reservation, unless the law expressly commands it, as for papal cases reserved in a special manner, or the matter had been notorious, or had been brought to the contentious forum. Cf. *Comment. de Censur.*, ed. 5, n. 76; I. M. 799.

131. Jurisdiction of Regulars

1. "Angelus, a regular, is constituted by his superior to hear the confessions of his confreres, and by the bishop he is approved simply for seculars. But behold, suddenly good Father Angelus becomes deaf, so that he must be removed from the sacred ministry of confessions. For this reason, in his place, the superior substitutes another confessor for the religious, forbidding that anyone else exercise the same office. But after three months had elapsed, Father Angelus, healed from his infirmity beyond the expectation of all, eagerly applies himself to receiving the confessions of the faithful. He also hears the confessions of nuns of the same order, exempt from episcopal jurisdiction and subject to the superior alone."

It is asked: 1.º Whether Father Angelus, having recovered his hearing, validly received the confessions of seculars? - 2.º Whether he validly absolved the aforesaid nuns?

R. To the 1st. Affirmatively. The reason is that he was approved by the bishop for them simply, without the clause concerning the consent of the superior; therefore that approval was by no means revoked. Therefore it continued to be valid. Therefore good Father Angelus is not to be disturbed, nor are the seculars heard and absolved by him to be disturbed. Let him certainly proceed with ready spirit and with great fruit to use the faculty of receiving confessions made to him by the bishop.

To the 2nd. Negatively. For he could not validly absolve nuns not subject to the bishop, but dependent upon the superior of the monastery alone, just as he then could not have absolved his religious companions; because the faculty of absolving religious men and nuns of the same order had been withdrawn from him by the superior, and not restored." Thus Fr. Gury 566, 567.

The response to the 2nd question, with regard to the nuns, does not seem altogether sufficient. Father Angelus indeed invalidly absolved the nuns; but the proper reason is that he lacked the special approval of the Ordinary of the place, required for hearing the confessions of nuns. For by the bishop, as is drawn from the Case, he was not approved except for seculars. I. M. 791.

2. "Benitius, a regular priest, a moderator in a certain college, at vacation time sometimes leads a band of students into distant regions for the sake of recreation, and receives their confessions, although outside the diocese, from the sole license of the bishop under whom the college is.

It is asked: Whether Benitius validly absolved his students outside the diocese from the sole delegation of his own bishop?

R. It is controverted. More probably affirmatively. The reason is 1.º because, since students or boarders have actually every sort of dependence upon the regulars, they are now their familiars. 2.º Because to several regular orders ... indeed also to some secular Congregations ... there belongs the privilege of familiarity for their boarders. But from the communication of privileges the other regular orders now obtain such a privilege. Therefore, etc. Now this opinion has as patrons several Roman theologians, and indeed very grave ones." Thus Fr. Gury 554.

It must be noted with regard to this resolution that, if regulars enjoy the aforesaid privilege of familiarity with regard to boarders, and therefore Benitius more probably validly absolved his students outside the diocese without the approval of the Ordinary of the place, it is not understood to what purpose in the Case and in the Question it is said that Benitius absolved from the sole license or delegation of the bishop under whom the college is. For if in the diocese of the bishop under whom the college is, Benitius cannot hear the confessions of students without the approval of the same bishop, neither outside his diocese can he hear those confessions without the approval of the Ordinary of the place. But if the aforesaid students truly enjoy the privilege of familiarity, then Benitius can in that same diocese under which the college is hear the confessions of the students even without the license, or delegation, of the bishop. I. M. 785.

132. On Reservation

1. "Olivarius, stained by a reserved sin with an episcopal censure, but ignorant of the reservation, truly contrite and in the best faith, confesses to Sabellus, a priest not approved for reserved matters. But the confessor, whether from ignorance or from inadvertence, absolves him, and does not notice the error until the penitent has already gone far away. Wherefore he hesitates in uncertainty, not knowing what must be done by him.

It is asked: What, the reservation having been known after confession, must be done by the penitent or by the confessor?

R. 1.º With regard to the penitent: if afterward he knows that he could not be absolved by Sabellus, let him approach another confessor enjoying a greater faculty, and open the reserved sin to him; or let him ask an ordinary confessor to seek pardon, by force of which he can absolve him. - **2.º With regard to the confessor:** let him admonish the penitent concerning the error committed, if this can be done easily, for example, if he returns to confession, so that that error may be repaired; or better, let him immediately seek from the bishop the faculty of absolving from that reserved sin, and take care that the penitent approach again for the sake of confessing, and, a new declaration of this sin having been prudently obtained, let him absolve him even without admonishing him of the error. But if he can neither easily admonish nor absolve the penitent, let him leave him in good faith." Thus Fr. Gury n. 578.

The reason of this resolution is that, as the same Fr. Gury has in the preceding number 577, although ignorance of the censure excuses from the censure, because a censure, since it is a punishment, directly affects the person of the sinner, nevertheless ignorance of the reservation does not excuse from the reservation, because reservation by its nature looks to this, that reserved things undergo the judgment of a more prudent one, and therefore directly limits the jurisdiction of the inferior; which is the most common opinion of St. Alphonsus 581. I. M. 796.

Now in the Case Olivarius does not appear to have confessed other sins besides the reserved sin; but his confessor Sabellus seems to have been a confessor who was already publicly known as such and was publicly carrying out the office of confessor. Hence although the absolution was invalid by reason of the reservation of the sin and the defect of the confessor's power, nevertheless in fact the absolution was valid by reason of common error. The reason: "From Law 3, *de Offic. praetor.*, it is declared that jurisdiction is supplied on account of the utility of those among whom the thing has been done: and this is valid here also; especially because a title is not usually displayed to the people nor asked for; as, for example, when someone receives the power of receiving confessions, or of absolving from reserved matters. Certainly common error supplies those things which pertain to the state and condition of persons, whenever by law, whether civil or canonical, this is needed so that something can validly be done; nor does it need a colored title: as in the one who is publicly held to be free (L. 3 and L. 2, *de Sent. et interl.*), a citizen (L. 1 C. *de Testam.*), a head of a household (L. 3 *Ad S. C. Maced.*), a wife (L. 24 *de Rit. nupt.*), a cleric (c. 12 *de S. E.* in 6.º), a suitable witness (§ 7 *de Testam.*), an heir (L. 44 *de A. H.*), patron of a benefice (Perez, *de Matrim.*, 40, 5, 3), a husband (St. Alphonsus III, 232), (Toull. V, 407; Durant. IX, 109; Zach. 670, 27; Less. II, 29, 67)." Thus D'Annibale, p. 2, n. 79, note 74. And thus, as to the solution of the case, Gennari, *M. E.*, vol. 7, part 1, p. 83 ff.

For the most distinguished author, in the place cited, proposes this Case: "Giulio, a penitent, confesses only reserved sins to Giovenale, a simple confessor. Giovenale, not noticing the reservation,

simply absolves him ... It is asked: What is to be said in the case of Giovenale? ... When a priest exercises the ministry of confessions and is commonly believed to be a confessor, although he does not have the faculty, or it has expired, and although he does not have that for reserved matters, nevertheless he validly absolves, although he commits a most grave offense ... We are of the opinion, therefore, in our case, that Giovenale validly absolved Giulio, who confessed only reserved sins; because the absolution, although null in itself, is made valid by the Church through common error. For if the Church supplies jurisdiction when approval for confessions is entirely lacking, she ought to supply it also when only the approval for reserved matters is lacking; for this second case the same reason holds which holds for the first. The matter concerns securing eternal salvation for the penitent."

But this solution, if it is taken absolutely as it stands, seems difficult to me. For then I do not see how also, by force of error, an accomplice would not validly be absolved from the sin of complicity, if the penitent confesses only this sin, as in the preceding Case. Nor indeed, where there is speech of common error, is there question only of the eternal salvation of the penitent, but of the common good; otherwise even in a Case of private error the Church would supply jurisdiction. Yet the solution seems to me to be admissible, and the reason just given seems to me urgent also in the Case of reserved matters, if it is added that common error is really had concerning that jurisdiction regarding reserved matters. And thus, for example, in time of jubilee, such common error could well be had with regard to some confessor who is thought to be approved, when he is not approved, and who consequently also is commonly thought able, like the others, to absolve from reserved matters. Cf. D'Annibale, p. 1, n. 348, note 20; I. M. 769.

2. "Nigritius in his diocese committed a sin to which was annexed not only reservation, but also an episcopal excommunication. A little afterward, traveling outside the diocese, he approaches the vicar general of the bishop of the place in which he is staying, sincerely lays open his conscience to him, and is absolved by him without difficulty.

It is asked: 1.º Whether a traveler can be absolved outside the diocese from episcopal censures which he incurred in his own diocese? 2.º What is to be said to the Case?

R. If there is question of censures by law, or even by man through a general sentence, it seems that one must answer affirmatively, the actual and common custom standing, against which Ordinaries do not protest, although the older authors very commonly denied it. It seems also to be drawn from the Council of Trent, by which the privilege of absolving from occult cases is granted to bishops, and where it is said: *in any occult cases whatsoever, EVEN those reserved to the Apostolic See*. Moreover, from the particle *even* it is sufficiently shown that the faculty of absolving from cases reserved by other bishops is comprehended.

To the 2nd. Nigritius more probably was validly absolved, the controversy standing which was related in the preceding question. Therefore he is not bound to repeat the confession before his own superior. Consequently the vicar general by whom he was absolved is not to be blamed. Except if there were question of a censure *ab homine*, about which there is by no means question in our Case." Thus Fr. Gury 585, 586. But, in the first response, the argument taken from the Council of Trent and from the particle *even* is by no means demonstrative. S. C. C., Jan. 24, 1741; Nov. 29, 1742; Benedict XIV, Const. *Pias Christi*, Aug. 20, 1752; *de Syn.*, l. 5, c. 5, n. 9; I. M. 797.

3. "Albericus, a parish priest, bound by a reserved sin, is in the necessity of celebrating because of the multitude of people about to hear Mass on a feast day. No other priest is present except Paulinus, his vicar, who is destitute of the faculty of absolving from reserved matters. What will the wretched man do? Confession having been neglected and an act of contrition elicited, he prepares himself for performing the sacred rite. Yet, moved by scruple, he approaches the vicar and confesses only venial sins, leaving aside the reserved mortal sin.

It is asked: Whether Albericus was obliged to confess?

R. More probably negatively, because he is not bound to confession either by reason of the reserved sin, which cannot be remitted directly, or by reason of venial sins, which are not necessary matter of confession. Lig. 265. But Albericus is bound to elicit perfect contrition, and, if he doubts about it, he is obliged to confession." Thus Fr. Gury 590.

Yet, if Albericus was bound by a papal case, it does not seem that he could omit confession. For, since he himself is found in a truly more urgent case, and in that case any confessor can directly absolve from a papal case, it certainly does not appear how he can omit confession. But he is bound at least within a month and through the medium of a confessor to have recourse to the Holy See. I. M. 800, 802. But if Albericus is bound by an episcopal case, the same seems to be said, according to the opinion that a simple confessor can directly absolve from it, the impediment standing. But Albericus, when the impediment has ceased, must present himself to the superior, to receive his mandate. I. M., place cited. Cf. *Comment. de Censuris*, ed. 5, n. 58 ff.

133. Absolution from Reserved Matters

1. Benedictus, a confessor, received from his Ordinary the faculty, the first time, of absolving from reserved sins; the second time, of absolving from reserved cases. Could he in each Case absolve from reserved censures?

R. Affirmatively. For with regard to the first formula, *from reserved sins*, sins regularly cannot be absolved unless the censures first have been absolved, if they are punished with censures. But sins are most truly reserved whether they are reserved by themselves with no censure added, or are reserved by reason of an added reserved censure. Therefore that formula of absolving from reserved sins embraces each case, both cases reserved without censure, and cases reserved with reserved censure.

But the other formula, *of reserved cases*, of itself also embraces each reservation; for a reserved case most truly exists whether a sin is reserved without any censure, or whether it is reserved by reason of a reserved censure. Besides, from the now customary manner of speaking, by the name of reserved cases today everywhere and by all are understood both cases reserved without censure and cases reserved with reserved censure. D'Annibale, ed. 3, p. 1, n. 347, note 16.

2. "Recadius, a simple confessor, absolved Titius from the grave sin of striking a cleric, reserved to the Pope, because he, on account of the inconveniences of advanced age, labors under a perpetual impediment to going personally to Rome. Afterward, however, he doubts whether he acted rightly, or what must be done.

It is asked: Whether a simple confessor can absolve from papal cases those who cannot go to Rome?

R. Negatively. The reason is that a simple confessor has no faculty of absolving from that censure. For a grave striking of a cleric is a case reserved to the Pope; if it had been a light striking, it would be reserved to the bishop. Nor does it matter that the penitent cannot go to Rome; for although on that account he is exempted from the law of approaching the Apostolic See, nevertheless he is not exempted from the law of presenting himself, in the way in which he can, to the bishop, from whom, the aforesaid impediment standing, he is able to obtain absolution from his censure. Therefore the confessor will be able, if some grave necessity urges and easy access to the bishop is not open, to absolve this penitent with the burden of presenting himself to the bishop at the time and in the manner in which he can. Lugo, d. 20, s. 10. Hence Recadius invalidly absolved the penitent from the grave striking of a cleric, under the pretext that he could not personally go to Rome, because then the case remained reserved to the bishop." Thus Fr. Gury n. 600.

This resolution must be corrected according to the norm of various Decrees of the Holy Office and of the Sacred Penitentiary concerning absolution from sins and censures reserved to the Supreme Pontiff. Cf. I. M. 800. Wherefore 1.º to the proposed Question, as it stands, one must respond: Negatively, and this "holds even for the Case when the penitent has been perpetually impeded from personally setting out for Rome." S. O., June 17, 1891. For recourse must be made by letter to the Holy See. But in more urgent cases, in which absolution cannot be deferred without danger of grave scandal or infamy, or it would be hard for the penitent to remain longer in grave sin, absolution can be given by a simple confessor, with the obligation, however, of having recourse to the Holy See at least within a month by letter. S. O., June 23, 1886; June 16, 1897.

But as regards the proposed Case, it must be noted that from the Constitution *Apostolicae Sedis* the censure of the canon is simply reserved to the Roman Pontiff; but from this papal reservation, by the same Constitution, are excepted "the cases and persons concerning which by law or privilege it is permitted that a bishop or another absolve." I. M. 1182. Wherefore, the penitent being impeded from approaching the superior, he can be absolved by another, c. *Eos qui*, 22, *de Sent. excomm.*, in 6.º. Therefore Recadius does not seem to be disturbed. Cf. *Comment. de Censur.*, ed. 5, n. 58 ff.; D'Annibale, p. 1, n. 346, 349, 368.

3. "Samuel, a religious, enjoying the faculty of absolving from cases reserved to the Pope, absolves also from episcopal cases, although he had not been specially delegated for this, especially when a double reservation, namely papal and episcopal, attaches to the same sin; because, he says, he who can do the greater can also do the lesser.

It is asked: What is to be said to the Case?

R. Fr. Samuel erred greatly by absolving from episcopal cases without the delegation of the bishop, from the fact that he was approved for papal cases, and by loosing a double chain, while he was able to loose only one. For he falsely applied the principle: He who can do the greater can do the lesser; he should have added: in the same genus. But here there is no question of the same genus, since papal and episcopal cases draw their origin from a diverse principle." Thus Fr. Gury 598.

Fr. Gury says nothing in the resolution of the Case about a double reservation attaching to the same sin, namely papal and episcopal. In such a Case Fr. Samuel does not seem to err. There is no mixed

reservation, that is, pontifical and episcopal at the same time. Nor can there be; for those things which are called to the judgment of a superior are by the law itself withdrawn from the jurisdiction of inferiors; otherwise absolution given by him would be almost useless. And so the Ordinary cannot also reserve to himself those cases which are reserved to the Roman Pontiff; and, if he had reserved some to himself, and the Roman Pontiff afterward reserves them, the episcopal reservation vanishes by the law itself. Suarez, d. 31, s. 4, n. 26; Lugo, d. 20, nn. 149, 151; D'Annibale, p. I, n. 339. Cf. *Commentar. de Censur.*, ed. 5, n. 24.

4. "Liborius, a simple confessor, absolves from reserved matters even outside the case of death: 1.º Germana, who otherwise would have to remain for a week in the state of mortal sin with great anxiety; 2.º Caius, whose long and difficult confession he had received before he knew the reservation; 3.º Geruntius, an old man, who comes to confess on the last day of the Easter time and is very far from the episcopal city, and therefore cannot approach the bishop personally. In absolving these penitents, Liborius earnestly utters and repeats these words of the sacramental form: *so far as I can, and thou hast need*. But he does not take care to warn them of the obligation to confess these reserved sins afterward, when occasion is given, to the superior or to some delegate.

It is asked: What is to be said to the Case?

R. Liborius could indirectly absolve Germana from reserved sins, because it is a great inconvenience to remain so long in the state of mortal sin for a soul seized with great anxiety. He could absolve Caius, because it would be a great inconvenience to him if he had to repeat a long confession before another. He could absolve Geruntius, by reason of the necessity of communicating in the Easter time. But the reason does not hold that he cannot personally have recourse to the bishop, because he could write by himself or through another. Those bound by a papal censure can indeed approach the bishop, if they cannot seek Rome, as is conceded by the Law; but not on that account can those impeded from approaching the bishop personally be absolved by anyone whatsoever. But Liborius acted badly by omitting to admonish the aforesaid penitents concerning the obligation of declaring the reserved case again to a confessor who was approved for reserved matters. It would have been consonant with charity if, while admonishing them, he had promised that he would ask license for them, and absolve them again, so that thus a new accusation would be avoided for them." Thus Fr. Gury 595.

Concerning the preceding resolution, it must first be noted what is said about indirect absolution. For, the impediment standing, the inferior more probably absolves directly, as is drawn from the Law of the Decretals, and with regard to papal cases this is certainly established from the Responses of the Holy Office, Aug. 19, 1891, and March 30, 1892.

Then it must be noted what is said about recourse to the bishop by letter. For reservation obliges only to presenting oneself to the superior, not to sending a letter or a messenger. Hence, if one cannot perform that, he is not bound to another thing. This is admitted without any controversy by St. Alphonsus, l. 7, n. 89; whence it is also confirmed from the Response of the Holy Office, July 8, 1860: "Whether those impeded from approaching Rome in person are bound to approach at least by letter, or by a procurator, to obtain absolution from cases reserved to the Apostolic See? - R. Let him consult approved authors, among whom St. Alphonsus M. de Liguori." But although from the

Response of the Holy Office, June 23, 1886, the impediment to seeking Rome standing, one must at least by letter have recourse to the Holy See, nevertheless from this the same obligation does not follow with regard to recourse also to be made to the bishop. For in the aforesaid Decree there is question of papal cases, and of these alone is there question; and since it is of strict interpretation, it is not of itself extended also to episcopal cases. Besides, the aforesaid Decree is founded on the practice of the Sacred Penitentiary, but by no means on some common disposition of Law, and so again the aforesaid Decree of itself does not comprehend episcopal cases. Wherefore the same disposition for episcopal cases cannot be affirmed except by reasoning; and that it be in fact extended to these, apart from another positive declaration, legitimate and demonstrative, as is fitting, reasoning is needed. Cf. *Comment. de Censur.*, ed. 5, n. 58 ff.; Gennari, *Consultaz. Mor. Can. Lit.*, p. 1, c. 34; I. M. 800.

As regards Germana, if the reserved sins of which there was question were papal cases, it seems that Liborius acted rightly by absolving her. For from the Decrees of the Holy Office, June 23, 1886, and June 16, 1897, penitents must have recourse by letters to the Holy See in the case of an impediment to approaching Rome personally. Meanwhile absolution can be given to them, with reincidence after a month unless they have recourse, in cases however truly more urgent, in which absolution cannot be deferred without danger of grave scandal and infamy, and also if it would be hard for them to remain longer in grave sin. Of this sort, moreover, is the Case of Germana. But if there was question of episcopal cases, he also acted rightly by absolving Germana, but he ought to have imposed on her the burden of presenting herself before the superior, namely unless she was excused because of an impediment, or of receiving absolution again from one having the faculty, which he himself also could have asked for her. I. M. 800; D'Annibale, p. 1, n. 349; Lig. 585.

As regards Caius, it does not seem that he acted rightly, for the inconvenience of repeating confession before another here is intrinsic to the very confession of reserved sins. If Liborius had wished to exempt his penitent from this inconvenience, then he could have deferred absolution for him meanwhile, and sought the due faculty from the superior. I. M. 800.

With regard to Geruntius, he could, with the aforesaid burden of having recourse, be absolved, if the cases were papal; because certainly, the circumstance of the Easter time standing, it would have been hard for him to remain longer in grave sin. But if the cases were episcopal, the perpetual impediment standing, for there is question of an old man, he could be absolved absolutely. I. M. 800.

5. Gregorius, his confession of reserved sins having been begun before the bishop, who had the due faculty in that matter, having left him, approached the Holy See by letter for absolution. But before he received a response, he returned to the bishop, so that he might complete the confession and be absolved.

It is asked: Whether Gregorius could in the Case be absolved by the bishop?

R. Affirmatively. "It can be asked," says D'Annibale, p. 1, n. 77, "whether the jurisdiction of the inferior ceases, if someone, passing him over, approaches the superior. Conradus and De Iustis affirm it, if he, passing over the Ordinary, approaches the Roman Pontiff, namely by a certain quasi-laying-on of hands. The rest, almost all, deny it more truly, because this is provided by no law ... Certainly the Ordinary can absolve from censures him who has appealed to the superior, and a delegate can grant a favor denied by the delegator ... For who would say that one having recourse to the Roman

Pontiff for absolution from an excommunication incurred because of abortion cannot return to the bishop and be absolved? For it can scarcely be understood how someone by having recourse to the Father of all the faithful would make his own condition worse."

134. On the Office of the Judge

1. "Gervasius, a confessor, because of haste and some carelessness, sometimes omits one or another question to be asked about the species or number of sins.

It is asked: 1.º Whether, or in what way, there is a grave obligation of interrogating penitents? - 2.º What must be said about Gervasius?

R. To the 1st. Of itself there is a grave obligation in the confessor of interrogating penitents, because the confessor, insofar as he is judge, must take care that, as much as is sufficient, the cause of the sacramental judgment be instructed. Besides, he is constituted so that he may not only hear the penitent, but aid him in duly fulfilling his obligation. Hence:

1.º A confessor sins gravely if from the voluntary omission of some interrogation there ought to follow grave harm of the penitent or of another, and he had foreseen that harm at least confusedly. He also sins gravely if he fails in the obligation of interrogating with regard to a notable part of this obligation, considered in its whole complex; for example, if knowingly and voluntarily, without reasonable cause, he omits most questions about number and species. For then he gravely fails in his office, and inflicts grave irreverence upon confession and the sacrament.

2.º But he does not sin gravely if from slight negligence, or from inadvertence, he omits several things even necessarily to be asked. Billuart, diss. 6, a. 10, § 2, where he speaks thus: "If from slight negligence, from inadvertence, from lapse of memory, human distraction, weariness of spirit, too great attention in hearing confessions, etc., he omits to inquire something even necessary, it will be no sin or only a light sin: for no one is bound with so great difficulty and moral impossibility to supply the defects of others."

3.º There will be greater difficulty if the confessor, without grave reason and voluntarily, or from grave carelessness, omits only one or another necessary interrogation, for example, concerning number or species. On the one hand he seems to sin gravely, because he supplies the place of the penitent; but the penitent, if he adverted to the obligation and did not satisfy it, would sin gravely. Yet on the other hand it does not more probably seem that he sins gravely. The reason is that in this there appears smallness of matter with respect to the whole obligation considered in its complex. Besides, if gravity of matter were admitted, a very great burden would be imposed upon confessors, who would always fluctuate amid anxieties, fearing lest perhaps from grave negligence they had omitted an interrogation to be made, and thence would be driven into the opposite excess with great burden to penitents.

Furthermore, although the confessor supplies the place of the penitent, nevertheless he does not seem to be bound to interrogate with such rigor as the penitent is bound to accuse himself. For the confessor precisely supplies not as taking caution for the penitent, but rather as his helper. Add also that, if a rigorous comparison between the obligation of each were admitted, the burden of the

confessor would exceed the debt of the penitent a thousand times; since the penitent is rarely bound to confess, but the confessor must continually and often the whole day fulfill his office.

To the 2nd. Gervasius seems to be excused from grave sin, since from carelessness he omits a few questions to be asked about the species and number of sins, because he is judged to fulfill his office as to its substance." G. 666-668, 671; I. M. 819.

As regards the number of sins, one must not be solicitous beyond measure, and when it is very difficult to know the probable number, it will be better to know the state of the penitent, especially with the unlearned and the habituated, and as regards internal acts. Lig. 466; Sporer 451; Lugo, d. 16, nn. 573, 575, 576.

It must also be noted here that if the confessor has not understood something well, he will be able at the end to interrogate about it, lest he interrupt the penitent. "But if from the conscience of the penitent known to him he can presume that what he did not perceive is something light, and he cannot interrogate without disturbance or annoyance of the penitent, he can be silent and absolve." La-Croix 1716.

2. "Guido, a priest of unhappy memory - whatever may be said of his judgment - lest he disturb penitents, is accustomed to postpone to the end of confession the questions to be asked, the remedies to be prescribed, and the burdens of restitution to be imposed, of abandoning the occasion, etc. But not rarely, when the narration of the penitent has been completed, he has become entirely forgetful of the things to be investigated or imposed, indeed even of the sins themselves. What then, the wretched man? He compels the ruder to repeat the confession in a summary way, but leaves the more cultivated in peace, lest he offend them; and, the matter being dissembled, he immediately absolves, sometimes indeed not knowing what he is absolving.

It is asked: What is to be said to the Case?

R. Guido acted badly, by postponing to the end of confession all questions to be asked and burdens or remedies to be prescribed, because of the danger of forgetfulness. Any other man acting thus would be imprudent; how much more Guido, who knows well that he is of unhappy memory?" Thus Fr. Gury 679.

Guido indeed acted badly, but is he bound before he absolves to demand from his penitent a repeated confession, so that he himself can now ask the questions which he omitted, especially concerning the species and number of sins? Busembaum, apud St. Alphonsus 499, says: "If, when confession has been finished, you understand that the confessor did not perceive some things, whether because of sleep or distraction, but you do not know what those things are, you are bound to repeat the confession if it was short, because you can prudently doubt about each thing. But if it was long, you are not bound because of the contrary reason; and it is enough to confess that you doubt whether the confessor perceived any of your sins." And St. Alphonsus immediately adds: "Thus also hold the Salmanticenses, etc., who say that Christ the Lord is not presumed to have imposed the precept of integrity with so great a burden, namely of repeating all sins in such a Case, and Lugo teaches the same, d. 16, n. 607, with Sanchez, etc., commonly." Hence it is drawn that a confessor who had proposed to himself to interrogate the penitent about the species and number of some grave sin at

the end of confession, and then forgets such a sin, if the confession was of only one or another grave sin, seems to be bound to demand a repeated confession; for then he can prudently doubt about each thing, nor otherwise is a grave burden imposed upon the penitent, especially if the confessor does this prudently. And this certainly without scruple is commonly done by confessors, if sometimes they do not hear and understand some sin well, nor are penitents disturbed on that account. But if the confession was long and of several grave sins, then the confessor seems able to abstain from demanding a repeated confession of all, lest he impose so great a burden upon the penitent. I. M. 717.

3. Robertinus abstains from hearing confessions, because he says that from experience itself it is established for him that he often cannot define whether there was mortal or venial sin, since penitents often explain sins in a very doubtful manner, so that they themselves do not know whether they gave consent. Besides, he adds that he is greatly wearied in his head in hearing confessions, both so that he may form a judgment about the lowest species of sins and determine against what virtue precisely they are, and so that he may judge about the number, which often is impossible for him to perceive clearly, since he cannot at once make mentally the addition of all the sins in order to know the entire number of sins.

It is asked: What is to be said to the Case?

R. Robertinus is greatly deceived concerning the nature of the judgment to be formed about sins in the administration of the sacrament of penance. For first, "the confessor is not bound to form a certain judgment about individual sins, but only about the obvious and clear." Lig. 500. "It is not necessary that the confessor judge in all things which sins are grave or light; it is enough if he knows how to judge this in those which commonly occur; but the rest he may hear and absolve." Lig. 627.

Besides, as regards the judgment to be formed by the confessor concerning sins, 1.º with regard to the species of sins, a twofold knowledge of sin must be distinguished. The first knowledge is explicit, reflex, and in the signate act, concerning the nature or species of each sin, against what virtue and what precept it is; and such is the knowledge of guilt in the external judicial forum, when the judge pronouncing punishment explicitly signifies the various laws violated by the guilty person and the punishments already established by law in the diverse articles of the code. The other knowledge is implicit, direct, and in the exercised act, and is had when the confessor apprehends the sin with all its circumstances changing the species, so that if any one of them is lacking, he is prepared to interrogate. Although he himself does not actually say: such a sin is against such virtues and precepts, in such or such lowest species, nevertheless he distinguishes one sin from another very well. Now for hearing confession validly and licitly this latter knowledge of sin is sufficient; for it is sufficient for forming a true judgment about the sin. But it is enough, with regard to the species and circumstances of sins that must necessarily be explained, by reason of restitution of goods and reputation, reservation, censure, irregularity, etc., "if the confessor understands the things which more frequently happen, and knows how to doubt about the others." Lig. 627; I. M. 811. - 2.º With regard to the number of sins, it is not necessary that at the end of the whole confession the confessor make some arithmetical calculation and addition of all the sins. For, for imposing penance, even a confused knowledge of the state of the penitent is sufficient; but once the penance has been imposed, it is not necessary for imparting absolution also to remember even confusedly the sins or the

imposed penance, but it is enough to remember that the penitent, rightly disposed, has rightly confessed, and that judgment has been passed upon him. Nor indeed is it necessary to make the same calculation in any part of confession, when the penitent confesses sins of each species, saying, for example, that through several years he committed such a sin about ten or twelve times; and then through several years fell into it more frequently, say about twenty times each week, etc. For that distinct knowledge of the number is sufficient which is had successively by parts: then the confessor, although successively and by parts, truly forms judgment about the number of sins, and from this can sufficiently know at the end of the whole confession at least confusedly the state of the penitent. Besides, that calculation would be an intolerable burden for the confessor. Suarez, d. 22, s. 6 at the end; Lugo, d. 16, n. 636; La-Croix, l. 6, p. 2, n. 1717; Reuter, *Neoconf.*, p. 1, c. 7, n. 28; L. 502; G. 678; I. M. 745, 749.

4. Patutius the confessor asks: Whether he is always bound to absolve a penitent whose confession he has heard, and for this purpose to embrace the more benign probable opinion?

R. 1.º In a Case of grave necessity, for example at the article of death, he is bound. The reason is that in such a Case he cannot, charity being preserved, leave the penitent without a remedy which he can licitly apply. But, according to a morally certain opinion, he can licitly use the more benign probable opinion.

2.º Outside the case of grave necessity, if that probable opinion stands on the part of the penitent, who in his action wishes to embrace a probable opinion favorable to himself, for example, whether the penitent in such a Case is bound to restitution, then the confessor is bound to embrace the probable opinion of the penitent and absolve him. The reason is that, the confession having been heard, the penitent has a certain right to absolution if he is legitimately disposed. But although he wishes to embrace the more benign probable opinion, the penitent can be legitimately disposed; for by embracing that opinion, he can well detest all past sins and have an efficacious purpose of observing all the precepts of God. For he sufficiently observes the divine precept who, by following a probable opinion, prudently judges that he is bound by no precept to perform something, and therefore omits it. Therefore. - But if that probable opinion stands on the part of the confessor, for example, whether in such circumstances the confessor can deny absolution or give it, and each opinion is probable, the confessor can choose the stricter opinion and deny absolution. For 1.º then the confessor acts according to an opinion truly probable and consequently licitly. Therefore, just as the penitent concerning his own obligation can choose a probable opinion, so also the confessor concerning his own obligation can choose a probable opinion. 2.º Because, if there were any reason why the confessor could not do this, it would be because, the confession having been heard, the penitent has a certain right to absolution. But since only the obligation of absolving the penitent is probable, the penitent does not have a certain right to absolution. Therefore. - Lugo, *Resp. Mor.*, l. 1, d. 26; L. I, 6, n. 604; H. A., tr. 16, nn. 118, 119; I. M., vol. 1, n. 119.

135. On Relapsers and Those in Occasions

1. Alphonsus, a confessor, does not grant absolution to penitents unless he is altogether certain of their good dispositions. Hence he always grants absolution to relapsers and those in occasions the first, second, and third time; but afterward he always denies absolution to all

relapsers and those in occasions, unless first the former abstain from every relapse and the latter remove the occasion. Finally, he always defers absolution for all when he himself is doubtful about the dispositions of the penitents.

It is asked: What is to be said to the Case?

R. The manner of acting of Alphonsus cannot be approved, and he seems not to act well in all things. For first, so that the confessor can grant absolution, it is by no means required that he have complete certainty about the good dispositions of the penitent; but "it is enough that the confessor have a prudent probability concerning the disposition of the penitent, and that on the other side a prudent suspicion of indisposition not stand in the way; otherwise hardly anyone could be absolved, since whatever signs of penitents furnish only probability of disposition." St. Alphonsus, l. 6, n. 461.

Always to grant absolution to relapsers and those in occasions the first, second, and third time is not right. For the fact that relapsers and those in occasions of this sort have not previously approached confession, or have approached only once and again, certainly is not an argument of the good disposition of those penitents, who can well approach confession without the necessary contrition. Therefore the norm of absolution to be given cannot be that the penitent confesses the first or second or third time, but the prudent judgment in the confessor concerning sorrow and purpose. Indeed, "the penitent must be absolved as often as he seriously proposes to amend in the future and altogether to abstain, provided that the confessor prudently believes that he truly proposes and speaks seriously." Sporer, c. 2, n. 330, cited by St. Alphonsus, l. 6, n. 463, as handing down the common opinion.

It is also not right always to deny absolution to relapsers, unless first they abstain from every relapse. If it were so, then that would have to be deleted which is contained in the Roman Ritual, *Order of Administering the Sacrament of Penance*: "But to those confessing more rarely or later, or easily falling back into sins, it will have been most useful to counsel that they confess often, say once in a month, or on certain solemn days, and, if it is expedient, communicate." How will they be able to communicate unless they are first absolved? Nevertheless there is question also of relapsers, and of relapsers easily falling back into sin.

Likewise it is not right always to deny absolution to those in occasions, unless first they remove the occasion. For first, according to the opinion which St. Alphonsus, l. 6, n. 457 at the end, affirms to be held most commonly, any penitent and always can be absolved who approaches confession with true sorrow and purpose, so that hope of amendment shines forth. Besides, an occasion can be voluntary, from which one can withdraw by his own will; but it can also be necessary, which one cannot remove; nor indeed is he bound to remove it, speaking absolutely, but he is bound only to render it remote from proximate, by using the means which a prudent and discreet confessor will suggest. Therefore if the penitent truly uses these means and tries not to sin, although in fact he has sinned, he can still sincerely grieve and propose; and the very means used and the effort employed can be an argument of that sincere sorrow and purpose. Indeed even still, after experience of no progress, true sorrow and the required purpose can stand, without the will of taking away the occasion with so great a detriment. Therefore the penitent can be absolved. For nothing else is required except confession with sorrow and purpose. Finally, as St. Alphonsus also says, l. 6, n. 454: "The doctors commonly affirm that the penitent is not bound to dismiss the occasion, if otherwise he is going to suffer grave

temporal harm, provided meanwhile he is prepared to use the prescribed means ... The reason is that the occasion of sinning is not in itself a sin, nor does it bring a necessity of sinning; wherefore true detestation of sins, and a firm purpose of not relapsing and of using due remedies, can well stand together with it."

It is likewise not right that absolution is always to be deferred when the confessor is doubtful about the dispositions of the penitent. For even in that case of doubt absolution is to be given, although conditionally, if from absolution denied grave spiritual harm of the penitent would follow. Gury, *Comp.*, vol. 2, n. 435.

Therefore it must be said that in this matter of absolution to be granted, deferred, or denied, "a certain rule cannot be established, but the confessor must direct himself from the occurring circumstances." St. Alphonsus, l. 6, n. 463. And from circumstances of this sort he will easily be able to form a prudent judgment concerning the sufficient disposition of the penitent. And, if the priest, clothed with the bowels of the mercy of Christ, who did not come to call the just but sinners, knows how to act studiously, patiently, meekly with those penitents who seem unprepared, and by every industry of charity to stir them to sorrow and purpose, it will indeed be difficult for them not to exhibit some sufficient sign of their mind. Cf. *Commentarium De absolutione danda, differenda, deneganda*, ed. 5.

2. Titius, a priest receiving the confessions of the faithful in the church on the day on which the solemn feast of the Blessed Virgin was celebrated with a great concourse of people, among several others imparted absolution to a certain drunken old man, who had abstained from the sacraments for ten years; besides, to a certain young man devoted for about seven years to impurities and self-abuse, although he had been accustomed several times a year to approach the sacrament of penance; finally, to a certain woman who was living after the manner of a prostitute, and who, although with abundant tears she deplored the things admitted by her and detested her most wretched state, nevertheless feared greatly lest from want she would be impelled to relapse again.

Having returned into the sacristy, Titius, exulting with joy, cries out: "Oh, how salutarily these feasts have been instituted! It can scarcely be said what very abundant fruits are perceived from the sacrament of penance!" Then he recounts the three cases reviewed, in general words, to Caius the confessor, who by chance was present. This man greatly wondered at the manner of acting of Titius; for he could not persuade himself how to sinners of this kind, without any intervening delay, and before the habit had been amended and relapse avoided, absolution could be conceded. For he held as certain that there was no truer and safer sign of penance than to abstain from sins, and that he who with a sincere heart proposes that he will sin no more will not relapse so quickly, just as a house solidly built does not fall so quickly. And so a contention arises between them on this matter, to which, that an end may be imposed, both together consult a theologian most distinguished in doctrine and reputation. Having learned the question, he asks within himself:

1.º What comes under the name of customary sinner and relapser? - 2.º What signs of penance must be present in sinners of this sort, so that they can be absolved? - 3.º What must be judged about the manner of thinking and acting of each confessor, as in the Case?

R. To the 1st. Customary sinners are here called those who have contracted the custom of sinning. But this custom, as in all moral matters, is not fixed and determined by such a number of falls; but from greater or lesser frequency it has a certain breadth. He is a customary sinner who blasphemes twenty or ten times in a week, and he also is a customary sinner who blasphemes only five times or once in a week. But relapsers are called those who after confession, although admonished by the confessor, relapse into the same sins, without any or almost any amendment. Wherefore although customary sinners are also relapsers, nevertheless they are not here called relapsers unless after confession they relapse into the same sins, having already been admonished before, and fall back without any or almost any amendment.

To the 2nd. Relapse into sins, whether others or the same, cannot of itself impede absolution. For to the sinner, by the sentence of Jesus Christ himself, not only seven times, but even seventy-seven times, it is forgiven. Hence it is plainly evident that amendment already following, as it is not necessary and essential to true penance, so neither is it necessarily prerequired for absolution. But another thing is plainly evident from this: also with regard to customary sinners and relapsers it is said without any foundation that they can be absolved at least the first time, or once and again, or three times, or three and four times. For if such a relapser could be absolved the first and fourth time, this was because he had contrition and purpose; why therefore could he not have it also the fifth and sixth time? Hence, if a relapser always has it, he can always, speaking absolutely, be absolved. But by what signs is sufficient contrition and sufficient purpose discerned? There are those who require extraordinary signs. But besides the fact that the extraordinary signs which they assign are at least in several things confused with ordinary ones and can also be fallacious, why can ordinary signs not suffice the second time, for example, if they sufficed the first? Why will he who quite seriously affirms and proves by the whole tenor of his confession that he has sorrow and purpose the first time not be able also the second and third and fourth and fifth time quite seriously to affirm and demonstrate the sincere penance of his mind? Wherefore again this is the whole difficulty: to judge prudently about the sincerity of sorrow and purpose, by whatever signs someone may finally be led to a prudent judgment of this sort. Yet it must not be denied that, although absolution can be given, sometimes nevertheless it is expedient to defer it; and this holds both for relapsers and for those in occasions, namely when that delay is judged going to profit the penitent. For if to the office of judge belongs the judgment of absolution to be given or denied, to the office of physician belongs giving it at an opportune time for the greater utility of the penitent. Wherefore, if the confessor judges that delay useful to the spiritual good of the penitent, he can prudently defer it, without being bound to do so, namely if the penitent is sufficiently disposed. Moreover, almost all agree that one must act more mildly both with those who are placed in a necessary occasion, because they are held by a graver difficulty, and with customary sinners and relapsers, because they labor under a greater infirmity. St. Alphonsus also has the doctrine handed down, as to the very substance of the matter, who in *Homo Apostolicus*, last treatise, n. 13, says: "Whenever some sign is present by which it can prudently be judged that the penitent has changed his will, he can be absolved well." And in the same place the Holy Doctor treats of those in occasions and relapsers.

To the 3rd. Titius acted well by absolving the drunken old man, who had abstained from the sacraments for ten years. For what doubt can there be that that drunken man, approaching the sacraments again of his own accord after ten years, was moved by sincere penance? A sign is certainly present by which the penitent can prudently be judged to have changed his will. The young man

devoted to self-abuse could also be absolved, if namely Titius had first suitably stirred him to sorrow and purpose. Spontaneous frequency of the sacraments certainly is a sign of sincere will. It will perhaps also be useful, because that man was accustomed several times a year to approach the sacraments, if Titius frightens him somewhat and shows, as St. Alphonsus says in the place cited, n. 15, as though he could not absolve him. Likewise Titius acted well by absolving the prostitute, who showed not only ordinary signs but also, with abundant tears, extraordinary signs of contrition. Fear of future relapse does not impede the sincerity of present sorrow, and therefore there could be no difficulty of absolving on this account.

But as regards Caius, amendment of life following is certainly the best sign of penance, but true penance can be had also without it. This, from the things just related among others, is plainly established from proposition 36 of the Synod of Pistoia, condemned by Pius VI. Likewise, from the fact that someone relapses quickly after sorrow and purpose and after confession, speaking absolutely, there is no argument of defect of sincere penance. For someone, recalling his mind from worldly things and remembering his last things, with the grace of God aiding, can conceive true and perfect contrition. Once this has been conceived, at once, for example, an occasion of sinning presents itself, placing the matter before the senses, vehemently striking the imagination, more sharply irritating the mind; whence, thinking worldly things again, he adheres to worldly things, and this according to the liberty and mutability of the human will. Wherefore he who just now truly loved God, now loves creatures; as he who just now truly sat, now stands. Nevertheless it must likewise not be denied that some prudent suspicion of defect of sincere penance can be had from the fact that the penitent, admonished and already often admonished, returns without any or almost any amendment. For in reality to what prudent man ought that good faith not to seem suspect, which someone has always disappointed? But, since this is only suspicion, presumption, and conjecture from the very fact of purpose not observed, the matter must be carefully examined with all its circumstances, and then, if the disposition of the penitent still prudently appears doubtful, absolution certainly cannot be given to him, but it is either to be denied, or at least deferred. But that is not understood which D'Annibale has, p. 3, n. 340, ed. 3, namely that it is required that the relapser appear not doubtfully, but sufficiently disposed, and yet absolution is to be denied him when no probable hope of amendment any longer appears. With pardon of the illustrious theologian, these things seem contradictory and practically impossible.

3. To Bertha, a servant girl often sinning with Caius her master, Titius the confessor imposes that she immediately depart from his house. But she refuses to do this, both because Caius had promised amendment, and because for some years he had not paid her the wages of service, which nevertheless she hoped to receive soon, and would receive no longer if she departed. Having heard these things, Titius absolves her, at the same time enjoining that she return to confession each week. But only after six months, with relapse repeated several times, does Bertha return to Titius, bringing forward the same reasons lest she be compelled to leave the house of her master. And since the confessor hears from her that the master in a few days is about to set out for Naples, where it was necessary for him to remain rather long, and at the same time that she wishes to communicate on that day lest she be deprived of a plenary indulgence, he again imparts absolution. In reality it happened that before the master departed from Rome, Bertha committed no sin with him.

Meanwhile Caius, dwelling at Naples, manifests to a confessor that he has at Rome a servant girl as concubine, whom nevertheless he promises that he will dismiss scarcely after he has returned to his native land; from this it happens that he is immediately absolved.

But when afterward he returned to Rome, he interposes conversation about this matter with the servant girl, and lest they be separated from each other, both firmly determine not to fail any more in the future. A whole month passes and they faithfully observe their purpose. Soon, however, the Easter precept urging, they approach a confessor, who, having been made certain about the matter, dismisses them unabsolved until they separate. Therefore they approach another confessor, who, having heard all things, asks within himself:

1.º What and of how many kinds is an occasion of sin? - 2.º Whether and in what occasion a penitent constituted in it can be absolved? - 3.º What must be judged about the manner of acting of the confessors, as to each thing as in the Case?

R. To the 1st. An occasion is a certain exterior circumstance, bringing to us a danger of sinning. This danger comes from the fact that that exterior circumstance is of itself alluring to sinning. Hence it is clear that an occasion is a true moral cause of sin, although by accident and not of itself. If the aforesaid danger of sinning is possible, but not probable, the occasion is remote. But if the danger is truly probable, the occasion is proximate. But just as the probability of danger is not in an indivisible point, but there is lesser and greater probability, and then moral certainty, so a proximate occasion is less or more proximate, and simply proximate. A proximate occasion, if it is such with respect to someone in particular because of his special fragility, is an occasion relatively; but if it is such regularly with respect to all, it is an occasion absolutely. If again it is such that it cannot be taken away, or not except with grave detriment to oneself, or on the contrary can be removed altogether, then the occasion is simply necessary, morally necessary, or voluntary. Finally, if someone has it with himself or otherwise, it is called *in esse*, or present, or *not in esse*, or absent.

To the 2nd. In whatever occasion the penitent is constituted, he can indeed be absolved if he sincerely grieves and proposes. And this in reality is the whole difficulty: to judge prudently about the sincerity of contrition and purpose. Wherefore what is said, that one in an occasion can be absolved at least the first time, is said with no reason. If one in an occasion exhibits signs of contrition and purpose neither the first nor the hundredth time, he can never be absolved; and on the contrary, speaking of itself, he can always be absolved, if he always exhibits sincere contrition and sincere purpose. Hence, if he is in a voluntary occasion and does not remove it, and therefore falls into sins, a prudent argument of sincere contrition and purpose certainly is not had, and therefore he cannot be absolved. If he is in a necessary occasion and tries to render it remote by using opportune means, even if sometimes again he falls into sins, on the contrary an argument is had of the sincerity of sorrow and purpose, whence, speaking of itself, he can be absolved.

To the 3rd. Bertha is found in an occasion, if not simply necessary, then certainly morally necessary. Titius the confessor acted well the first time by absolving her. For on one side Caius had promised amendment, and on the other Bertha also promises amendment, and seems to promise seriously, because she willingly accepts approaching confession frequently from the excellent admonition and exhortation of the confessor. Titius the confessor also acts well the second time by absolving Bertha. For the good will of Bertha appears serious from the confession performed spontaneously, although after six months, and from the desire of Communion and of the plenary indulgence. But the occasion

meanwhile is physically removed by the journey of the master. And the sincere will of Bertha this time was also proved by the very fact, because no sin was committed after confession and before the departure of the master. Caius also at Naples is rightly absolved by his confessor. For, since he is removed from the occasion and promises that he will take it away, his will of sinning no more appears serious, and consequently his contrition must be called sincere. These things having been premised and presupposed, the will of Caius and Bertha not to sin any more, after the return of the master, also appears serious, which is also confirmed by the experience of a whole month. Hence the later confessor, whom they soon approached while the Easter precept was urging, does not seem to have acted well by denying absolution to them unless they first separated from each other.

And here it must be noted that, since there was question of the Easter precept, absolution was not to be denied for this special reason also without a graver reason. Besides, Bertha and also Caius appear to be persons, although fragile, religious, and who revere the laws of the Church. Hence the confessor ought not by that denial of absolution, made so precisely, rather to keep them away from confession than to allure and invite them to it. Finally, another thing must be attended to in practice with regard to this Case and others like it. Caius will dismiss Bertha; Bertha will leave Caius. But will not Caius, taking on another servant girl, perhaps be able to have for himself a new and worse danger? And will not Bertha, finding another master, perhaps herself be able to find a new and worse occasion? Hence would it not be better to meet the old evil than perhaps to furnish occasion for a new one? But this certainly is the practical difficulty in cases of this sort, and there is need of great consideration of all circumstances so that a truly prudent judgment may be formed.

136. On the Sacramental Seal

1. Landulphus, a parish priest, is often consulted by his vicars, with the license of penitents, concerning the same cases of conscience occurring to them in confessions, yet not set forth with the same circumstances. Hence he is very doubtful, when the case has already been proposed to him in one way and then is set forth in another way with other circumstances, what he himself ought to respond, and whether he can use in his response the knowledge which he already has of the Case. Indeed, while he himself hears confessions, he often notes that a case which a penitent sets forth to him has already been set forth several times to him by his vicars, with other quite diverse circumstances. Hence he is still more doubtful whether he himself can respond according to the knowledge which he already has of the case, and manifest it to the penitent, so that the penitent can better set forth the case and he himself resolve it.

It is asked: What is to be said to the Case?

R. "When someone has been consulted concerning the same sin by two confessors, to whom the penitent has confessed separately, he must speak with each as if he did not know it by another way; nor can he say to one any other diverse circumstance which he learned from the other, but he must respond to each according to those things which each narrates. Yet he will be able to say conditionally, if the matter were not in this way, but in another diverse way with such a circumstance, it would have to be said otherwise. But he must do this very thing cautiously and with the seal preserved." Lugo, d. 23, n. 30. St. Alphonsus 648 indeed thinks the opposite true, because just as it is

certainly believed that the penitent wills no other counsel except right counsel, so it is certainly presumed that he wills that the doctor himself speak freely about all things which he knows from the first confessor and which pertain to furnishing right counsel. But this presumption is very uncertain; for in this matter the presumption is, as the same Holy Doctor asserts in the place cited, that the penitent gives license with every limitation with which he can. And certainly the matter is not without burden for the penitent and hatred of the sacrament, if the confessor, observing that more is answered to him than the matter set forth would require, should thence come into suspicion concerning the sincerity of his penitent. But if the penitent then performs confession before this doctor whom his confessor had consulted, "can this man speak about those sins which he previously knew by knowledge derived from the first confession? For this does not seem to be against the seal, since he does not speak outside the sacramental forum; but the matter always remains under the same seal of confession. Moreover, I would not dare to concede this license, because, although each is a seal of confession, nevertheless it is not of confession made to the same confessor; for this priest knew the sins of the former confession as one holding something on the part of the prior confessor and in his name; wherefore he shared in the seal and the obligation of that man." Lugo, d. 29, n. 128; I. M. 837.

2. Xaverius, a confessor, asks: After the penitent has manifested that he confessed all his sins, which were many and grave, and narrated them publicly to others, can he himself by his own authority confirm the matter, and thus manifest his true conversion to the glory of God?

R. These things of Busembaum apud St. Alphonsus 638 pertain to our matter: "The seal is not broken ... if you use knowledge acquired outside confession, indeed if you reveal the very sin which became known to you from elsewhere, provided you do not report any circumstance known from confession alone, nor more certainly than you know outside confession; in which Case great caution is needed, and it is safest to be silent." - Layman, l. 5, tr. 6, n. 9, has these things: "It has not been granted to the confessor to elicit public sins, insofar as they have been received from confession," and he says this is common doctrine. "Outside confession," says Busembaum again apud St. Alphonsus 651, "with the license of the penitent, there can be dealing concerning things heard in confession either with the penitent himself, or with any other person, although it is dangerous ... Concerning which license it is required 1.º that it be formal and express, for a presumed, tacit, interpretative, virtual license, even for the good of the penitent himself, does not suffice ... It is the same whether that license is given by word or by deed, which indeed is equivalent to express concession; for example, if the penitent outside confession begins to speak with the confessor about things said in confession, for then Aversa, Tanner, etc., teach that this man can proceed. Yet Lugo well observes, says St. Alphonsus, that in that case the seal still perseveres with respect to others, because, although the penitent speaks outside confession, nevertheless he is judged not to furnish the confessor any license other than one dependent on the confession performed." Wherefore, as regards the proposed question, if the penitent truly and expressly gives permission to the confessor that he may manifest his confession and confirm his conversion to God, if the confessor does this, he does not act against the seal, but the matter is very dangerous. But if the penitent does not truly and expressly give this license to the confessor, although he himself then publicly manifests his sins, the confessor cannot use the knowledge received through confession and speak according to it to confirm those things which he hears from others.

3. "You set forth that some missionaries, when they know the number of those whom in confession they have permitted to approach Holy Communion, without interrogating the penitents, place the same number of particles to be consecrated; and you ask whether this practice is to be prohibited. No one fails to see that missionaries acting thus use knowledge acquired in confession, which is expressly forbidden by the laws of the Church; nor is this depraved manner of acting efficacious for keeping away the unworthy: for an unworthy person can approach among the first to the sacred synaxis, from which a worthy person would be excluded from Communion for an unworthy one, with the added danger also of further scandal to the prejudice of sacramental confession. Wherefore this abuse is altogether to be removed." S. C. de P. F., Feb. 29, 1836; *Collectan.*, n. 939.

4. In a certain parish, so that children might be duly admitted to first Communion, they were directed to certain determined confessors, who, having heard the confession of the same children, according to a judgment prudently formed by themselves concerning the dispositions of each one, would freely admit them or exclude them from first Communion, handing to them admission cards to be shown to the parish priest. Was this done licitly?

R. Altogether illicitly. For it is sufficiently clear that in the Case the judgment concerning the due disposition of the children for first Communion is simply committed to the confessor, and that the confessor forms that judgment from the confession heard. But when the confessor, from this judgment concerning the state of the soul of the children, handed or did not hand to those same children the card of admission to first Communion, thus distinguishing those to be admitted and those to be excluded, it is evident that there is had thence an illicit use of knowledge received through confession. S. Poenit., June 8, 1843. Cf. *Nouvelle Revue Theolog.*, vol. 21, p. 52 ff.

5. Hannibal, a confessor, asks what must be thought about those things which the distinguished theologian D'Annibale has in nn. 359 and 363. There he hands down the following: "1.º There is no scandal which it is lawful to prevent or repair with a breaking of the seal; for example, if from confession you learned that Seius and Caia, wishing to contract marriage, are father and daughter. Nevertheless our doctors commonly teach that it is wrong, for the sake of preserving the seal, to do something which by its nature is evil, such as to fornicate, to lie. Let others solve this knot."

2.º "If from the confession of Lucius you learned that ambushes are being prepared for you, when you are about to travel, in such a place, can you defer the journey or go by another road, if from this those who are preparing them can deservedly suspect that you received this from the confession of Lucius?"

3.º "That you can deny a sword to him who has confessed to you that he wishes to kill you, when he asks it back from you for the sake of this thing, was once the most common opinion. Otherwise, if he should signify to you in confession that on that day he is going to give you poison at supper, and after confession invites you to supper, you will have to go! From your confession I learned that you, my confessor, are not a priest; I am not compelled to return to you, even if you well understand why I do not return, unless from this some harm or disgrace should redound to you. If I received from you in confession that Seius was baptized with wine, who would say that I cannot rebaptize Seius, because this will be unpleasant to you? Indeed Sporer, n. 870, thinks that if from your confession I learned

that Osius is most unworthy of a benefice, I can use this knowledge, even if you bear it ill, if nothing of yours is involved."

R. To the 1st. There is no difficulty in solving that knot. For the aforesaid not preventing scandal is not a sin in the Case. But if fornication and lying are evil by their nature, the seal of confession certainly does not oblige one to sin.

To the 2nd. Negatively. For evidently there is had an indirect revelation of sin and a violation of the seal. But it is supposed, as is clear, that Lucius manifested those ambushes in confession not as a matter not pertaining to confession, but as a matter belonging to the confession itself, by accusing, for example, his sin of complicity. Hence neither could the confessor abstain from the celebration of Mass when he knows in confession from some accomplice of the crime that poison has been poured into the cruet with wine, if the other accomplices would understand that the crime had been revealed by some one of their associates. Lig. 659.

To the 3rd. It does not first appear how these things cohere with the general doctrine of the distinguished author handed down in the same n. 363 a little before. For the distinguished author teaches that without doubt there is a violation of the seal if from the use of knowledge of confession a burden of the penitent follows, immediately adding: "But we must take as burden whatever can be not only harmful to the penitent, but annoying or unpleasant, whether by right or by injury." Then, as the same distinguished author has, n. 359: "In doubts here the safer things and those more favorable to the seal are always to be held, and not only in a doubt of fact ... but more truly also in a doubt of law." Since, therefore, there are various opinions with regard to the proposed Cases, how can someone embrace in practice the opinion against the seal? Besides, if in that Case of returning the sword and avoiding the poison there is not had a violation of the seal, supposing that a sacramental seal is truly present in that twofold Case, how is this violation had, on the contrary, as D'Annibale himself asserts in the same n. 363, "if your servant confessed to you that at night he receives a female friend at home, or plunders your property, and you at night closed the doors, or watched over your property more diligently, or in the confession itself commanded him to depart from service: inasmuch as the master, not the confessor, would command"? If these things redound to the burden or reproach of the penitent, why not those? And as regards the other Case of the confessor who is not a priest, "more commonly and more truly," says St. Alphonsus 660, "Lugo, Mazzotta, etc., hold the opposite. The reason is that in such an omission, although there is not present a revelation of the seal, nevertheless there is always present a certain hateful reproach of the penitent. Nor then is it necessary for you to simulate the sacrament ... but you can simply manifest some sin to that fictitious priest or confessor without intention of absolution." And that certain hateful reproach of the penitent is had by the very fact in the Case of Seius baptized by that penitent with wine. "Nor do the harms," says the same D'Annibale in the place cited, "of another, or of the republic, or of religion excuse; for example, to remove from the office of confessor him whom you know not to be a priest, or not to choose him for this office which you were going to give." But as regards the last Case, there is had hatred of the sacrament; for, if the faithful knew this, that from their confession another could suffer harm, they would be removed from confession. - G. 780, 784; I. M. 844, 845, 851, 858.

5. A rector of a seminary asks: Whether from confessions heard he can at least be enlightened in the right government of the same seminary, as the author of the additions to Wigandt affirms?

R. "The author of the Additions to Wigandt is by no means to be heard, saying that granted that from the knowledge of confession alone a superior cannot be directed to external government, nevertheless he will be able from it to receive light and to take another external pretext or color for denying an office." Lig. 657; I. M. 859.

6. Eugenia, confessing several sins of impatience, anger, and also imprecations, manifested to the confessor the extreme misery in which her whole numerous family was secretly placed, although it was not of common condition. Immediately after Eugenia a most pious matron confesses, and when the confession has been completed offers the confessor a note for a thousand lire to be spent on some pious work or alms. Going into the sacristy, the confessor sees Eugenia still kneeling before the confessional seat, and, passing by her and saying nothing to her, hands her that note wrapped in another paper, as though it were some letter.

It is asked: 1.º How is the seal of sacramental confession violated? - 2.º Whether the use of sacramental knowledge is licit? - 3.º Whether the confessor acted rightly in the Case?

R. To the 1st. The sacramental seal can be violated both directly and indirectly. Direct violation of the sacramental seal is had by manifesting those things which are the object of this seal, so that the penitent also becomes known. Indirect violation of the seal is had by saying or doing, or even by not saying or not doing something, whence either some sin of the penitent is deduced, or a burden of the penitent follows, or hatred against confession for the faithful follows.

To the 2nd. The use of knowledge of sacramental confession is illicit whenever from it there follows either revelation of some sin of the penitent, or some burden of the penitent, or hatred against confession. Outside these cases it is not illicit.

To the 3rd. In the Case the confessor does not seem to have violated the seal of sacramental confession. He certainly uses knowledge of confession; but that use certainly neither contains the revelation of any sin, nor can the sin of the penitent be inferred from it. Likewise that use is not unto hatred of confession, since surely a use of this sort would not commonly keep the faithful away from confession. Finally, the aforesaid use brings no burden to the penitent. For, considering the prudent and discreet manner of handing that note to the penitent, and considering also that notable quantity of money, which perhaps could even be owed to that family from some hidden restitution to be made, certainly no injury to the penitent followed from this, no even tacit reproach, no shame for that penitent, no embarrassment. Who indeed would say that the penitent, opening that letter and finding a note for a thousand lire, would feel displeasure, and would not rather give thanks with grateful heart to God for a grace received even though not asked for?

On Extreme Unction

137. On the Matter and Form of Extreme Unction

1. Iacobus, a sick man, after the anointing of the hands and before the anointing of the feet and loins, seemed to all those standing by already to have breathed forth his spirit. Hence Ioannes the priest abstained from completing the two aforesaid anointings. But after a quarter of an hour he noticed that the sick man was still living. Hence with great anxiety he asks: what must he do?

R. Since all the essential anointings had already been duly performed, nothing seems to have to be repeated, not even under condition; nor does anything seem to have to be added. D'Annibale 420; I. M. 864, 868.

2. Augustinus, a parish priest, administering extreme unction in a case of urgent necessity, since he did not have the Ritual before his hands, used this form, which then occurred to his memory: *I anoint thee with holy oil, that through His mercy God may pardon thee*, etc. - Is it valid?

R. St. Alphonsus, l. 6, n. 711, dub. 3, says: "Bonacina, etc., deny it. But Suarez, Laymann, Filliucci, Henriquez, Reginaldus, and the others more commonly apud the Salmanticenses, affirm more probably, although they say that the matter is uncertain. The reason is that by these words the substance of the form is already expressed." - I. M. 865.

138. On the Minister and Subject of Extreme Unction

1. Petrus, a parish priest, was called to a dying man so that he might minister to him Viaticum and Extreme Unction. Since death was pressing, he thought that he would act better and more usefully if he first ministered Extreme Unction and then Viaticum, both lest that sick man lack the peculiar grace of that sacrament of Extreme Unction, and because already in the morning he had received Holy Communion from devotion, whence Viaticum seemed to him less necessary. The matter having been done, Petrus anxiously asked whether he acted rightly by ministering Viaticum after Extreme Unction.

It is asked: What is to be said to the question of Petrus?

R. Petrus acted rightly. For 1.º in the Roman Ritual it is thus had: "From the general custom of the Church, if time and the condition of the sick man permit, before Extreme Unction the sacraments of Penance and Eucharist are to be furnished to the sick." But in the aforesaid Case of Petrus, death was pressing. Therefore the condition of the sick man prudently advised that Extreme Unction could be ministered first, lest the sick man lack the peculiar grace of that sacrament, which is useful especially at the time of proximate death. 2.º Since that sick man had received Communion in the morning from devotion, he indeed could, but was not bound to, receive Viaticum; and therefore, death pressing, Extreme Unction could be ministered to him first, lest he lack that sacrament; and then, if time should suffice, Viaticum also could be ministered. But if time were lacking, no inconvenience

would have redounded from this to that sick man. 3.º St. Alphonsus, l. 6, n. 716, says openly: "To receive Extreme Unction before Viaticum will either be no sin, or scarcely venial, as Suarez, d. 44, s. 1, n. 2, and Croix, n. 2120, say; nor does Benedict XIV disapprove it, *de Syn.*, l. 8, c. 8, n. 2, because the custom of placing Viaticum before it has not been received at least under grave obligation." Therefore, a reasonable cause standing for the inversion made by Petrus, that inversion is free from every aforesaid fault. - I. M. 562, 872.

2. "In the kingdom of Buganda, lest a new persecution be stirred up against Christians, the faithful cannot publicly profess religion, and live as almost unknown among infidels. Hence there is the greatest difficulty for missionaries in visiting the sick; for from the presence of a missionary danger would arise for the sick man, and for those among whom he dwells; indeed even for all Christians, who are not tolerated, once their office has been known by the king. Therefore it is asked whether, to avoid this danger, missionaries can and ought not to visit the sick, or whether, despising any danger whatsoever, whether of private persons or of the Christian community, they can or ought to visit the sick constituted in grave danger of dying, so that they may refresh them with the sacraments of the Church.

R. According to the mind; and the mind is that the faithful are to be admonished by the missionaries that, considering the difficulty of having the assistance of a missionary at the article of death, they strive with every zeal to avoid sins, and in danger of death furnish mutual assistance to themselves; and besides, that the missionaries instruct well the catechists, who in the exposed cases may in some manner fulfill the places of missionaries." S. O., Apr. 3, 1889.

3. Geminus, a parish priest, confers Extreme Unction even on dying infants before the use of reason. For, he says, why ought they to be deprived of grace, which they will certainly have *ex opere operato*? But he does not confer Extreme Unction on adults unless death is certain and proximately imminent. Otherwise, he says, the sacrament is exposed to the danger of nullity. - Does he act rightly?

R. Negatively. For first, "those who lack the use of reason are not apt to receive this sacrament, and children who admit no sins, the remains of which there is need to heal by the remedy of this sacrament." Roman Catechism, n. 9. The reason of Geminus proves too much, for then it ought also to be ministered to the healthy and to those not dangerously sick. Besides, as the same Catechism says in the same place, "they sin most gravely who are accustomed to observe that time for anointing the sick man when, all hope of health already lost, he begins to lack life and senses." But it is to be ministered to those "who seem to be sick so dangerously that it is to be feared lest the last day of life be upon them." Catechism 16. And if the last period of life is awaited, the sacrament of Extreme Unction is now perhaps frustrated of the effect of bodily health, which it does not work by way of miracle, which then would be necessary, but by a certain power, supernatural indeed, but in a certain manner ordinary, which aids natural causes. Wherefore the reason of Geminus rather proves the contrary. - I. M. 862, 871.

On Order

139. On the Matter of Order

1. "Titius, when he approached to receive the priesthood, was prohibited by the master of ceremonies, little skilled in his office, from touching the chalice and paten while the bishop was pronouncing those words of the form: *Receive power*, etc.; but immediately after the whole form had been pronounced, he was ordered to touch. Afterward he doubted about the value and security of his ordination, and whether he could or ought to be ordained again under condition.

"I said in the aforesaid Case that Titius could rest in the first ordination without any repetition, even conditional; nevertheless he would not sin if, for the greater quiet of his soul, he were ordained again under condition, which also the bishop could licitly do in his favor ... Because the opinion teaching that the first ordination is not valid, although it has on its side some ancient authors, nevertheless is now so deserted that it seems antiquated and to lack every probability ... yet it seems probable, at least through extrinsic principles, that it can be repeated under condition. For Cajetan, Scotus, Richardus, Navarrus, and Zambranus denied the value of the first ordination." Thus Lugo, *Resp. Mor.*, l. 1, d. 33, nn. 3, 5.

But if the ordination in the Case is held as certainly valid, and therefore safely not to be repeated, it is not understood how someone can at the same time hold some opinion as destitute of every intrinsic probability, and yet hold it as probable by extrinsic probability, so that nevertheless, in the Case, ordination can licitly be repeated. "For neither," as Lugo himself has in the place cited, n. 4, "does it suffice for a moral doubt of ordination that some authors have said it is not valid, if nevertheless it is established that they said this without sufficient foundation." This indeed the same Lugo demonstrates in this way, asserting at the same time that in fact the ordination of Titius had been held as valid, and that no bishop could be induced to repeat it. "The common opinion of theologians," he says in the place cited, n. 1, "does not require mathematical simultaneity, but moral simultaneity between the matter and form of the sacrament ... Nor does the contrary opinion seem to have probability, since there is not a sufficient foundation for requiring that mathematical simultaneity; indeed, in the conferral of the diaconate and subdiaconate this is not in fact observed, but the form having been pronounced by the bishop in the plural number for all those to be ordained, each one successively touches the book or instruments. Why therefore could the same not be done in the conferral of the priesthood, so that the bishop would say to all: *Receive power*, etc., and afterward each would successively touch the matter; or, if perhaps the number of those to be ordained were large, the bishop would repeat the same form three or four times with interrupted delays, lest the pronouncement of the form be too distant from the contact of the matter? I know that sometime some bishop did this thus, and, if I remember well, Fr. Luisius ab Alcazar narrated to me that he had in fact been ordained priest in this way, nor could the bishop be brought to repeat the form under condition and present the matter, constantly asserting that this was demanded without any foundation at all. Wherefore, in the Case brought to us, the same would have to be said a fortiori, in which a much greater simultaneity intervened, and therefore many bishops, asked by the same Titius

to ordain him again under condition, constantly refused this, not daring, on account of that very slight scruple, to repeat sacred ordination even under condition."

Nor likewise is it understood what Lugo also has in nn. 3 and 5 to demonstrate his assertion, namely that it can well be that the opinion denying the value of the ordination is not probable, and at the same time that the opinion affirming the obligation of repetition is probable: "for they are diverse questions." They are indeed diverse questions, but so connected that if the value of the ordination is truly morally certain, as in the Case, then consequently the ordination cannot be repeated; for the obligation, morally certain, of not repeating the ordination follows from its morally certain value. Baptism itself cannot be repeated unless its value is positively doubtful. I. M. 888.

2. Adulphus is afflicted with great anxiety, because in his priestly ordination with one hand indeed he touched the chalice and paten with the host, but with the other hand he also touched the paten with the host, but the chalice only with the nail of the middle finger. Wherefore he urgently asks that he be ordained again, at least under condition.

It is asked: What is to be said to the Case?

R. Adulphus ought to be altogether at peace, and neither ought nor can he be ordained again, even under condition. For he was altogether validly ordained, since the touch of the paten and chalice was certainly not lacking, and indeed such as is prescribed by the Roman Pontifical. Just as he who touches with a finger truly touches with the hand, so also he who touches with a nail truly touches with the finger; and if he touches with the nail, he certainly touches. Besides, he who, through the medium of a glove, struck another with the hand and assaulted him with blows, would certainly touch him. Therefore a fortiori he truly touches who touches through the medium of the nail. Moreover, since Adulphus with one hand perfectly touched the instruments, with the other perfectly touched the host with the paten, and has a scruple only with regard to the touch, through the medium of the nail, of the chalice with the other hand, there can be no doubt about his valid ordination. Let La-Croix, n. 2155, be heard: "If the ordinand touches the matter with only one hand, or only one finger, Sanchez, etc., rightly teach that this suffices for the value of the ordination, because he who touches with one hand is said simply to touch, indeed even if with the nail alone of the hand, as Lugo and Gobat have; for, if with the nail alone you were to tear the face of another, certainly you would be said to have touched him. A further reason is that we ought not to say that something is required for the essence of the sacrament, when without it the form of the sacrament is preserved; and the authority of Scripture or of the Church does not compel us to require such a thing." St. Alphonsus 743 has the same: "Escobar rightly says that it suffices for validity that the matter be touched with one hand. And likewise Escobar, etc., with the common opinion, rightly judge that mediate touch suffices, namely if the chalice, paten, or book is touched through some veil or glove; for he who touches in this way is said in the sense of all truly to touch." Cf. *Coll. S. C. de P. F.*, n. 1205.

3. 1.º "Fr. N. N., positively doubting whether in his ordination he physically touched the paten, although he is certain that he touched the host, asked for his own quiet: what must be done in this Case?

R. Let him acquiesce. S. O., July 2, 1892; *Collect. S. C. de P. F.*, n. 2178.

2.º "Caius, a priest ... touched only the paten together with the host placed upon the chalice, but not the chalice, although he strove to reach it with his finger.

R. Let the petitioner acquiesce." S. O., March 17, 1897.

3.º "Gaspar, a priest ... there being four or five ordinands, and all crowding to touch the instruments, remembers that he had first touched them, but nevertheless in the act in which the formula was being pronounced, although he hurried to touch them again, he did not succeed in doing it, having been impeded by the hands of the others.

R. Let the petitioner acquiesce." S. O., March 17, 1897.

4.º "Sempronius ... not having used the index and middle fingers in touching the instruments, but the index fingers and thumbs, first touched the cup of the chalice; but then, when the bishop was pronouncing the formula, touched only the paten with the host placed upon the chalice.

R. Let the petitioner acquiesce." S. O., March 17, 1897.

5.º "Those ordained to the orders of subdiaconate, diaconate, and priesthood by Bishop A., the matter of the said orders not having been presented by him, are to be ordained again under condition and singly to the said orders, the form prescribed in the Roman Pontifical being observed." S. O., Aug. 1, 1697; *M. E.*, vol. 9, part 2, p. 217. - E. M. 884 ff.

4. "A certain bishop, when he wished to confer the order of diaconate on a certain subdeacon, in carrying out his ordination indeed suspended his right hand, and at a very small distance, over his head, without nevertheless touching the aforesaid head bodily. Not very long afterward he promoted the same cleric to the priestly order. - Whether, to repair the defect of the aforesaid ordination, the whole ordination of the diaconate must be repeated under condition in that priest?

R. Affirmatively." S. O., Jan. 20, 1875; *M. E.*, place cited, p. 231.

5. In the priestly ordination of Pancratius, the first imposition of hands by the bishop and by the other assisting priests was omitted. Indeed, the bishop and the other priests, while the *Oremus, fratres carissimi*, etc., was being recited by the bishop, all omitted the extension of the right hand over the ordinand. Immediately when the bishop completed the aforesaid prayer, having been admonished about the omission of the imposition of the hand, he supplied it by imposing hands upon his head. - Was the ordination of Pancratius valid?

R. The aforesaid ordination can be called into doubt from the fact that the second imposition of the hand, or extension, was omitted, which also according to the common opinion is held as necessary for ordination. Wherefore, although the first imposition of hands was validly supplied, because, made immediately after the form, it was now morally joined with it, nevertheless it alone does not suffice. Yet, considering the common doctrine of theologians concerning the first and the second imposition of hands, the ordination is more truly valid in the Case. For therefore the first and second imposition of hands are commonly required, because in the first there is had bodily touch, which is lacking in the second, and in the second there is had the form, which is lacking in the first. Wherefore the second imposition of the hand is only the continuation of the first, namely for having the moral

union of the first imposition of the hand with the form; hence in the concrete there is only one continued imposition of hands. If therefore immediately after the form the imposition of hands was supplied by bodily touch, the ordination must be called valid. I. M. 883; *M. E.*, vol. 12, p. 375. Immediately after the form. For if, for example, the aforesaid imposition of hands were supplied after the handing over of the instruments and when the Canon of the Mass had already begun, the ordination would have to be repeated entirely under condition. S. O., Aug. 22, 1900; A. S. S., vol. 33, p. 224 ff.

140. On the Subject and Minister of Order

1. "In the year 1790 a certain young Frenchman, born from the diocese of Nantes, entered Tonkin; he seems suitable to receive orders and intends to devote himself to the Tonkin Mission. But in doubt whether dimissorial letters can be obtained from the bishop of his native diocese, it is asked whether it is not lawful for apostolic vicars to ordain, without dimissorial letters, those whose Ordinaries are so distant that recourse to them is most difficult, especially after the ordinands of whom there is question have dwelt for at least three years under the jurisdiction of the apostolic vicars and have been supported at their expense, as of their family?

R. It is not lawful, but it can be permitted to the apostolic vicar of Tonkin, in the Case of the young Frenchman from the diocese of Nantes, considering the circumstances, to enroll him in the clerical militia and promote him to orders without the dimissorial letters of his Ordinary, if no impediment exists and insofar as he is found suitable. - The Most Holy approved." S. C. de P. F., Jan. 18, 1793; A. S. S., vol. 25, p. 577.

2. Benedictus, a monk of the Benedictine Congregation, received first tonsure and minor orders from the abbot of his monastery. But Benedictus is greatly afflicted, doubting about the validity of such ordination, since the abbot of the monastery, although he was legitimately elected in chapter, nevertheless did not receive the blessing.

It is asked: What is to be said to the Case?

R. Abbots indeed can confer first tonsure and minor orders on their regular subjects, as is established from the Council of Trent, sess. 23, c. 10, *de R*. But, "so that they can use this power, they must not only be constituted in the order of priesthood, but they must besides obtain the blessing from the bishop, unless perhaps the bishop, being requested a third time with humility and devotion, as is fitting, should refuse to bless them, according to the text in c. *Statuimus*, *de Suppl. neglig. praelator.*, or unless they are supported by some other peculiar privilege, by which power is made for them, even without receiving the office of blessing, to perform all things which belong to abbots, in some way consecrated by the blessing of the bishop."

Thus Benedict XIV, *de Syn.*, l. 2, c. 11, n. 9. Therefore, if the abbot of the monastery in the Case did not receive the blessing because the bishop, having been requested, refused to give it, Benedictus was surely validly initiated by first tonsure and minor orders, as is had from the aforesaid c. 1, *de Suppl. neglig. praelat.* Nor indeed "can it be doubted that the Pope can concede this, because that blessing does not imprint character, nor is it from the institution of Christ so that it should be considered necessary for this concession; therefore, just as the Pope can commit Confirmation to a simple priest

without some previous blessing, so also ordination; and thus for that Case in fact he committed it." Suarez, *de Relig.*, tom. 4, l. 2, c. 29, n. 16. Indeed for that Case it is said in the aforesaid Decretal that it is lawful for abbots to bless their own monks and to exercise other things which pertain to an office of this sort. But if the abbot of the monastery in the Case did not receive the blessing because he omitted to ask for it, or because he is a triennial abbot, who is not blessed since he is not perpetual, and the blessing is, as it were, perpetual and indelible, then the difficulty is greater. "Some," says Suarez in the place cited, n. 17, "affirm this from privileges conceded to the Cistercian family in Spain." But the same Suarez affirms it, as is to be seen both in this n. 17 and in n. 25 and n. 28. And as is clearly affirmed in the aforesaid nn. 17 and 25, and deduced from n. 28, Suarez affirms this generally not only about Cistercian abbots, but about all abbots who, namely, possess the true office and dignity of abbot. Mention of the same privileges is also had apud Diana, coordinated ed., tom. 2, tr. 5, resol. 81. But Benedict XIV denies it, as clearly appears from the text cited above and from *Quaest. Canon.* 373, unless namely there is a special privilege. Decisions of the S. C. C. surely seem to require blessing or privilege. For the S. C. C. constantly affirms that abbots of this sort can indeed confer first tonsure and minor orders on their regular subjects if they are solemnly blessed and priests; or those to whom a privilege has been conceded by the Apostolic See that they can do all things which blessed abbots can do. Cf. Benedict XIV, *Quaest. Can.*, cited. Wherefore it must be concluded that Benedictus illicitly and invalidly received first tonsure and minor orders, if the abbot of the monastery did not have the aforesaid privilege.

141. On Ordination outside the Times

1. Antonius, a regular prelate, thinks that all regulars can be ordained outside the times. Hence he earnestly asks the Ordinary to be willing to confer orders outside the times on his subjects. The Ordinary refuses; but Antonius insists, asserting that this is a privilege common to all regulars, which was not abrogated by the Council of Trent; and was newly conceded to the Hierosolymitan Order by the Bull *Circumspecta* of Pius IV, without any clause of incommunicability. It was besides recognized by the Roman Council, since c. 2, title 5, says: "We decree that regulars, without a new Apostolic Indult, can safely be ordained outside the times." Finally, it was admitted by the Sacred Congregation of Bishops and Regulars in the Decision of June 25, 1730, and of July 18, 1732. Cf. Bizzarri, *Collect.*, ed. 1885, pp. 341, 343. But the Ordinary replies that this privilege is proper only to the Society of Jesus, and is incommunicable to other Orders from the Bull *Pium et utile* of Gregory XIII. This, moreover, is confirmed from the practice prevailing at Rome, where only members of the Society enjoy this privilege.

It is asked: What is to be said to the Case?

R. Benedict XIV, *Notif.* 23, n. 3 ff., has these things concerning the present question: "Since the Sacred Council of Trent at sess. 23, c. 8 determined that sacred ordinations are to be celebrated *at the times established by law*, from this it follows that it derogated from the privileges which religious orders could have had previously, that their religious be ordained *outside the times*; all the more because Pontiff Pius IV, in his Bull 94, at t. 2 of the Bullarium, in which he confirms the Sacred Council of

Trent, says that privileges contrary to what was established in it are understood to have ceased and to be annulled and reduced to the terms of the same ...

"And since We had the honor of serving for many years as Secretary of the Sacred Congregation of the Council, We did not have occasion to see admitted by it any privilege other than that of the Fathers of the Society of Jesus, and not indeed that conceded to it by Paul III, of which there is speech in his Constitution 48, § 19, t. I of the Bullarium, because it was prior to the Council; but rather that of Gregory XIII, posterior to the said Council and inserted in his Constitution 77 at t. 2 of the Bullarium, which privilege was afterward confirmed by Paul V, as is seen in the Bullarium of the said Religion, and also by Innocent XII, who, having established some rules concerning particular indults of *extra tempora*, naming Regulars, solemnly declared, at the request of the Religious of the Society, that he had never intended to bring any prejudice to the privilege conceded to them by Gregory XIII, as can be seen in a paper printed at Rome in his Pontificate and reprinted apud La-Croix, l. 6, n. 2194, without this particular privilege being able to be extended to the other Regular Orders, which participate in the privileges of the said Society, since Gregory XIII, in § 4 of the cited Bull, determined that this privilege not pass to others who participate, or were going to participate, in the privileges of the Jesuit Fathers: *Moreover we altogether prohibit the communication of the present grace to be made in the future in any way to all others, even those who share abundantly and will be able to share their privileges with the same Society* ...

"And although in the last Roman Council, held under the Holy Memory of Benedict XIII, at title 5, c. 2, it is thus read: *But as regards regulars having privileges from the Supreme Pontiffs, whether expressly or conceded by way of communication, namely of receiving sacred orders outside the times, since the privileges themselves persist in their force, and it is not established that derogation has been made from them, we therefore decree that these same regulars, without a new Apostolic Indult, can safely be ordained outside the times*; nevertheless, since in the said chapter it is not read: *whether expressly or by way of communication conceded before the Council of Trent*, from this it follows that one cannot say that the controversy was decided by force of the Roman Council; the reason mentioned above always remaining in its force, namely that derogation was made by the Council of Trent, in the place mentioned, from prior privileges. Nor should this reason be judged either subtle or unsubstantial; for in consequence of the same, today at Rome none are admitted to the privilege of *extra tempora* except only the Fathers of the Society, who had it after the Council of Trent ... and no other regular now appears at Rome to be ordained *extra tempora* without having dispatched his particular indult."

From these things it sufficiently appears that the reasons of the regular prelate are not altogether demonstrative; but the assertion and reason of the Ordinary are sufficiently sustained. Yet the opinion of the regular prelate is not lacking every probability, and therefore the Ordinary, if he wishes, can acquiesce to him, although he does not seem to be bound. Let Honorante, *Prax. Secr.*, c. 12, be heard: "But whether the ancient privileges conceded by the Apostolic See to Regulars, of receiving orders outside the times, were revoked by the Council of Trent, sess. 23, c. 8: several doctors affirm it ... Several doctors also have come to the contrary opinion ... But it must be asserted that each assertion of the doctors departing into diverse opinions is an opinion, but not a certain sentence, as Passerinus, distinguished member of the Order of Preachers, well observes ... And although in the Roman Council the following Decree exists: 'But as regards Regulars having privileges from the Supreme Pontiffs, whether expressly or conceded by way of communication,

namely of receiving sacred orders outside the times, since the privileges themselves persist in their force, and it is not established that derogation has been made from them, we therefore decree that the same regulars, without a new Apostolic Indult, can safely be ordained outside the times'; title 5, c. 2. Nevertheless, since in the said chapter it is not read: whether expressly or by way of communication conceded before the Council of Trent, it cannot be said that the controversy was decided by the Roman Council, since the same reason always persists in its force, namely that derogation was made by the Council of Trent, in the cited place, from antecedent privileges. Finally Benedict XIV, Const. *Impositi*, Sept. 27, 1747, declared that privileges of this sort favor only those regulars to whom, after Trent, they had been conceded by name and directly, but not by communication ...

"And in fact, in the Secretariat of the Tribunal, even before the said Constitution issued, from the beginning of the Pontificate of the holy memory of Clement XII up to these times, no other privilege concerning *extra tempora* was admitted, except only that conceded to the brothers of St. Paul the First Hermit of the Hungarian Province, studying in the City by force of the Decree of the S. C. de P. F., Sept. 26, 1718; and the privilege conceded to the Fathers of the Society of Jesus, not indeed that conceded by Paul III, since it issued before the Council, but that of Gregory XIII after the Council, which afterward was confirmed by Paul V and by Innocent XII; nor can it be extended to other regular orders which participate in the privileges of the said Society.

"But this must not here be passed over, that to the Friars Minor of the Observance dwelling in parts of the West Indies the aforesaid privilege was conceded after the Council by Urban VIII in the Constitution *Cum sicut*."

St. Alphonsus, *de Privil.*, n. 115, treats the question: "Whether religious can be ordained outside the times." And he responds: "Vasquez, Lezana, etc., deny it; for they say that although Gregory conceded this to the Jesuits, nevertheless he prohibited communication. But today it is no longer to be called into doubt that they can, both from the many privileges conceded to other Religions and from the Declaration lately made by Benedict XIII in the Roman Council, title 5, c. 2, in which it was established that such privileges persist in their force and that it is not established that derogation had been made from them." And in l. 6, n. 797, the same Holy Doctor moves the question and says: "Vasquez, etc., deny it. But Laymann with Marchant, etc., more truly affirm it. The reason is that after Gregory XIII, Clement VIII absolutely conceded this privilege to all mendicants, and Urban VIII conceded it to the Order of Discalced of the Most Holy Trinity. And most recently Benedict XIII, apud Benedict XIV, *Not*. 23, n. 5, in the Roman Council, title 5, c. 2, confirmed this privilege."

Yet doubt is truly present in this matter. Whence D'Annibale, n. 294, note 2, says: "Sacred orders can be conferred on religious of the Society of Jesus on any feast days of precept by privilege conceded to them by Gregory XIII. Whether also on other religious is disputed; and so the matter is left to the judgment of the bishop, and, if he is unwilling to ordain, it is not lawful to approach another bishop. Clement VIII, March 15, 1569; Benedict XIV, *Not*. 23." And in reality Benedict XIV himself, accommodating regulars, admits in the place cited that he often conferred sacred orders on them outside the times.

But it must be noted in the last place that although the Roman Council, in the place cited, does not expressly say that the privileges of regulars persist in their force, whether expressly or by way of communication conceded before the Council, nevertheless it speaks absolutely and indefinitely.

Moreover, if those privileges conceded before the Council have been abrogated, what finally are those privileges, whether expressly or BY WAY OF COMMUNICATION conceded, which persist in their force and from which derogation has not been made? Besides, the Council speaks of privileges persisting in their force and from which it is established that derogation has not been made, namely by the Council of Trent; and surely in the cited sess. 23, c. 8 no clause derogating from privileges is found.

But the established resolution is confirmed from the S. C. of Bishops and Regulars, which on July 18, 1732, replied: "that the bishop can, but is not bound" to ordain regulars outside the times, although the same Sacred Congregation openly admits in its Decision of July 13, 1730, that the privilege of ordination outside the times is in its force. Bizzarri, *Collect.*, 1885, pp. 342, 344.

2. "A certain regular, lacking the privilege that he can be ordained by any Catholic prelate, exhibits to an outside bishop attestations of the Ordinary in whose diocese there exists the convent where the regular dwells, by which it is declared that the Ordinary himself does not hold ordination outside the established times. Hence it is asked: 1.º Whether, according to the Constitution *Impositi* of Benedict XIV, Feb. 27, 1746, the outside bishop can, outside the times established by the canons, ordain the regular lacking the aforesaid privilege in the Case? And insofar as affirmatively: 2.º Whether the attestation of the diocesan Ordinary suffices, as in the Case; or whether there is required an attestation by which it is declared that the bishop of the place where the regular dwells will not hold ordination at the established times?

R. To the 1st. Affirmatively. **To the 2nd.** The attestation that the bishop will not have ordination at the next legitimate time is required." S. C. C., Aug. 18, 1888.

3. "The Decree of the Synod of Meath in Ireland, by which it is declared that no one in the future, whether secular or regular, in this diocese is to be promoted to sacred orders except with the intervals observed, nor without diligent examination by the Ordinary, unless the utility or necessity of the Church should persuade the bishop otherwise; and that this judgment also with regard to regulars does not pertain to regular superiors, but to the Ordinary, is to be reformed with regard to those who have a contrary privilege conceded after the Council; and in the rest Decrees of the following tenor are to be given and observed: June 30, 1597; Sept. 30, 1609 ... that remission of the intervals for causes expressed by the Council pertains to the ordaining bishop, even with regard to regulars receiving orders from him, but not to regular superiors; yet that the bishop himself concerning the causes of remission is bound to give credence to and defer to the testimony of the regular superior." S. C. C., Aug. 24, 1686.

142. The Mass of Ordination

1. Ricardus, a priest about to be ordained soon, doubts whether the words of consecration, which the newly ordained priests pronounce together with the bishop, ought to be pronounced by him merely materially and recitatively, as a sign of power received, or formally and significatively for concelebrating with the ordaining bishop. He is also very anxious with regard to the pronouncement of those words, lest he finish them before the bishop and thus the bishop not consecrate; or lest he finish them after, and thus he himself not consecrate. Besides,

since he received a fat stipend from a friend for the first Mass which he himself will celebrate, he asks whether for that stipend he can apply the Mass which he will celebrate with the bishop in the ordination itself.

It is asked: What is to be said to the Case?

R. To the 1st doubt of Ricardus. Although the newly ordained priests, in that Mass of ordination, are only secondary concelebrants, nevertheless they are truly celebrating; and therefore Ricardus must have the intention of consecrating. This is clearly drawn from the Roman Pontifical. Hence Benedict XIV, *de Sacrif. miss.*, l. 3, c. 16, n. 6, says: "It must be established that by those recently ordained the words of consecration must not be pronounced materially and recitatively, but significatively; so that the intention of all be directed to the same moment of consecration. This is not to be understood in such a way that they must have the intention of consecrating at the same moment at which the bishop has pronounced the last words of the form, whether they themselves completed the form before or after; for the effect of the form cannot be suspended; but it must be understood that they ought to employ every zeal so that they pronounce the last words of the form together with the bishop, with that intention that, completing the form of consecration in this way, they consecrate together with the bishop; from which it happens that if they finish the form before or after the bishop, they do not consecrate, because they did not have the intention of consecrating while finishing in this way."

Hence the response to the 2nd doubt of Ricardus is clear. For it suffices that he have the intention of pronouncing the words in the due manner and of consecrating the same host and the same chalice with the bishop, then employing zeal and diligence lest he pronounce them before the bishop. And this is enough, nor must he anxiously labor over the proposed inconveniences. For they seem to be sufficiently removed if it is considered that the bishop is in the Case the principal consecrator, and the newly ordained priests concur as accessories to the same consecration; and the form which they pronounce with the bishop is morally joined with that which the bishop himself pronounces. From this it happens that even if the priests complete the form a little before or a little after the bishop, nevertheless it is to be judged as pronounced morally together with the bishop, and constitutes one and the same consecration. Wherefore, whether the priests pronounce it before or after, their intention must be referred after the manner of the pronouncement of the bishop with whom they concelebrate. Benedict XIV, place cited, n. 7.

To the 3rd doubt of Ricardus, it seems one must respond: Negatively. For the ordained man indeed is not the principal celebrant, but nevertheless he is truly celebrating. Wherefore the authority of applying the Mass for whomsoever he wishes cannot be taken away from him. But, notwithstanding this, it is not lawful for the priest to accept the alms, because he who furnishes the alms asks that the customary Mass be celebrated at the altar. Besides, because in reality there is not had a multiple sacrifice of the Mass, but one; the fruit of which is applied by the bishop, the principal celebrant. There are indeed several priests offering, and several offerings of priests, but in reality the sacrifice in the Case is only one. Wherefore, unless the one giving the alms knows this and consents, it does not seem that the newly ordained priest can satisfy, by this concelebration of the Mass, the application of the sacrifice of the Mass from the stipend received. Besides, this concelebration of Mass is not in reality the first Mass which Ricardus himself celebrates, and for which therefore he received a fat stipend from his friend. Cf. Benedict XIV, place cited, n. 10.

On Matrimony

143. On Betrothals

1. Severinus, in the presence of Amalia, asked Modestinus, the brother and tutor of Amalia, for his sister Amalia as his bride. Modestinus agreed, and then Severinus promised marriage by the solemn form of words, with an oath also added; which promise Modestinus accepted in the name of Amalia, who at the same time promised marriage back to Severinus with an equal solemnity of formulas. Amalia, hearing all these things, was silent because of shame and modesty; yet internally the matter greatly pleased her, and therefore she was consenting, and promising, and was also being bound by oath before God. But after a few days Severinus, seized by a sudden illness, dies; and then his brother Ioannes, who had heard Severinus often speaking of the virtues of Amalia, immediately, without previous betrothals, enters into marriage with Amalia in the place of his brother.

It is asked: What is to be said to the case?

R. Schmalz., l. 4, tit. 1, n. 66 seqq., reports the opinion of some who stand for the validity of these betrothals. Then, n. 67, 68, he says: "But Paludanus, etc., better defend the negative. The reason is that the contract of marriage and of betrothals, by natural and divine law, is so personal that no one, even a father, can by that law furnish consent for a son, unless he has a special mandate from him; therefore, when the consent of parents, joined with the silence of the child, makes presumed betrothals, this is had only from the disposition and presumption of positive law, through c. un. *de Desp. imp.* in 6°, which, since it is restrictive of natural law, ought not to be extended beyond the case expressed in law; but it would be extended if it also proceeded in brothers, relatives, tutors, because the cited chapter mentions only parents; therefore, etc.

"From this it follows that, although perhaps the pupil, or the sister, in reality has complacency and internal consent of contracting betrothals and of obligating himself or herself, while the tutor or brother contracts in his or her name, nevertheless no betrothal obligation arises from this either for the internal forum or for conscience. The reason is that from the disposition of law the words of parents alone, and not those of a tutor or of any other person joined in whatever way, signify internal consent into a betrothal obligation; therefore, even if the pupil or sister has been silent at the promise of the tutor or brother, he or she nevertheless will not be considered by this very fact to have promised marriage; or if he or she promised it internally, nevertheless this promise, because it was not expressed by a suitable sign by the promisor himself or herself, and therefore could not be accepted by the other party, will in no way be obligatory."

Therefore, since in the case there were no betrothals, there cannot be had from them the impediment of public honesty; and therefore Amalia's marriage is valid.

But here it must be noted that, if there is question not of other outsiders, or of other relatives, but of parents, the same positive disposition of law exists, whether it is the father or the mother who contracts betrothals for the children; whether he or she contracts for children who have reached

puberty or for those who have not reached puberty: and "from them arises the justice of public honesty." C. un. cit., Schmalz. n. 62. - I. M. 919.

2. "A marriage was contracted in the city of Messana, after the publication of the Decrees of the Council of Trent, by words concerning the present and mutual consent, the publications not having been made, nor the parish priest being present, but only a notary and witnesses. It is requested to declare whether the aforesaid contract of marriage, since it was made against the form handed down by the decree of the same Council concerning contracting marriage, is so null that it does not even pass over into betrothals for the future.

"The S. C. C., in the year 1573, judged that it does not pass over." Benedict XIV, Not. 46, n. 24; I. M. 923.

3. "In the year 1697 Antonius Levame drew up two writings of betrothals toward Benedicta Gena, signed by both: one under the date of 9 Nov., in this tenor: *I, the undersigned, say and promise not to marry any other girl except Signora Benedetta Gena, as she also promises not to marry any other young man except me. Antonio Levame, Benedetta Gena.* But the other, under the day 12 of the same month, of this sort: *I, the undersigned, say and promise not to marry any other girl except Signora Benedetta Gena, as she also promises and swears. Antonio Levame, Benedetta Gena.*

"1. Whether there is certainty concerning the validity of the betrothals between Antonius Levame and Benedicta Gena? And, insofar as in the affirmative: - 2. Whether Antonius Levame is to be compelled, or can recede from them by contracting with another, in the case?

"The S. C. C., June 1, 1709, responded: To the 1st: from the things deduced so far, it is not established that there are absolute betrothals. - To the 2nd: As to coercion to contract with Gena, negatively. But whether he is able to contract with another, deferred. But when, on Sept. 28, 1709, to the question: Whether Antonius can contract with another woman in the case? it responded: Affirmatively." De Iust. de Dispens. matr. Cas. 13.

For indeed one promising that he will not take another as wife except such a woman does not absolutely promise that he will contract marriage with her; but he only obligates himself to take her as wife on the hypothesis that he wishes to choose the conjugal state. This is made clear by the example of him who promises that he will not sell a farm except to Titius; he certainly is not simply obligated to sell the farm to Titius, but only in the case in which he wishes to sell the farm. Benedict XIV, Quaest. Can. CCCCXXXIV; L. 842; G. 835; I. M. 919.

4. "Antonius de Cristophoro, after he had entered into betrothals for the future with Catharina Carusio, joined to him in the third and fourth degree of consanguinity, and had known her carnally and had begotten offspring, then entered into other betrothals for the future with Catharina Pascharelli; but at length, having changed his mind, he contracted marriage by words concerning the present with Catharina Carusio, having obtained an apostolic dispensation upon the impediment of consanguinity. But since the brother of the said Antonius intends to contract marriage with the other Catharina, it was doubted whether the impediment of public honesty stood in his way, arising from the betrothals previously entered into with the other brother, insofar as they are valid. Therefore the doubt is proposed: Whether there is certainty

concerning the impediment of public honesty between Alexander and Catharina de Pascharello, so that they need a dispensation in the case?

"R. Affirmatively." S. C. C., March 31, 1708. De Iustis de Dispens. matr. Cas. 11, 12; I. M. 919.

5. Dominicus, after betrothals entered into with Agnes, thinks of abandoning her, in order that he may take another as wife. Therefore he asks his confessor whether he can licitly effect this. For he is prepared to provide Agnes sufficiently with a dowry, indeed even to establish a considerable dowry for her, so that she may easily marry another.

It is asked: What ought the confessor to respond?

R. He ought to respond that he cannot effect that. Since betrothals oblige under grave matter by reason of an onerous contract to marriage, and to nothing except marriage, Dominicus cannot abandon Agnes, she being unwilling, although he wishes abundantly to provide her with a dowry. For by deserting Agnes, even though he endows her, he no longer stands by his promises. Cf. Benedict XIV, Quaest. Can. CCLXXIX; I. M. 926.

144. The Nature of Marriage

1. Augustinus, a jurist, holds that in the marriage of the faithful the contract and the sacrament can well be distinguished. Therefore matrimonial causes, he says, are mixed, and under the aspect of a contract pertain to the civil power, under the aspect of a sacrament to the Church.

It is asked: What must be thought of the doctrine of Augustinus?

R. Augustinus is remarkably deceived. For the sacrament of matrimony is not something added over and above the contract itself, or extrinsic to the contract, or separable from the contract, or really distinct from the contract itself; but the sacrament is the contract itself. And therefore, if matrimonial causes under the aspect of a sacrament pertain to the Church by her own right, they also pertain to her under the aspect of a contract. Therefore the Church, and she alone, and by her own right, has power to establish diriment impediments, and also directly to establish impediments which of themselves impede, and to dispense them; of herself also, and consequently, she has equal power of judging concerning the value, the consistency, and the duration of marriage.

Besides, from the opinion of Augustinus it would follow "that the marriage of the evangelical law, sanctified and perfected by the grace acquired by Jesus Christ through His Passion, and raised to the dignity of the great sacrament of the Church, would at the same time, by divine disposition, be exposed to contradictory enactments of laws, and would be perpetually battled over in war between two different powers, while the one protects what is rendered void by the other; the one holds in contempt and punishes what the other blesses and applies sanctification to; the one grants civil effects to him whom the other renders incapable of civil and spiritual effects." S. O., July 6, 1817; Collect. S. C. de P. F. n. 1289; I. M. 971.

Those things which precede are confirmed from the things which Benedict XIV has in the Letter of Sept. 17, 1746, *Redditae sunt Nobis*. For he says, speaking of places where the Decree of the Council of Trent has been promulgated, "it is clear that a marriage entered into before a civil magistrate or a

non-Catholic minister, and not likewise before the proper parish priest of either of the contracting parties and two witnesses, can be sustained neither under the aspect of a sacrament nor under the aspect of a contract, nor in any way be reputed valid." Therefore, under each aspect altogether, both of sacrament and of contract, the marriage of Christians is subject to no power except that of the Church. And soon after he adds: "Let the Catholics entrusted to your care know that, when they present themselves to a civil magistrate or a heretical minister for the sake of celebrating marriage, they perform a merely civil act, by which they show their obedience toward the laws and institutes of rulers; but that then no marriage is contracted by them. Let them know that, unless they celebrate nuptials before a Catholic minister and two witnesses, they will never be TRUE AND LEGITIMATE SPOUSES either before God or before the Church; nor, if meanwhile they have had conjugal intercourse with each other, will it be without grave fault. Finally let them know that, if any offspring arises from such a union, that offspring, as BORN FROM A NON-LEGITIMATE WIFE, WILL BE ILLEGITIMATE IN THE EYES OF GOD, and, unless the spouses renew consent according to the prescription of the Church, WILL BE PERPETUALLY ILLEGITIMATE ALSO IN THE FORUM OF THE CHURCH."

From these things it is clear what the nature of civil marriage is, and what and how great is the force of marriage as sacrament. It is, namely, so great that, true marriage being removed, the effects of true marriage are lacking before God, that is, in the objective truth of things and in the forum of conscience.

Hence Leo XIII, in the Encyclical Letter of February 10, 1880, expressly teaches these things: "It ought to be established for all that, if any union of a man and a woman among the Christian faithful is contracted apart from the sacrament, it lacks the force and character of a just marriage; and although it has been made agreeably to civil laws, nevertheless it cannot be more than a rite or custom introduced by civil law; but by civil custom only those things can be ordered and administered which marriages of themselves bring forth in the civil sphere, AND WHICH, IT IS MANIFEST, CANNOT BE BROUGHT FORTH UNLESS THEIR TRUE AND LEGITIMATE CAUSE, NAMELY THE NUPTIAL BOND, EXISTS." Cf. Cass. 55; I. M. 959, 969, 970, 973.

2. "It is asked whether a marriage contracted by two Catholics who are minors by birth, according to the forms prescribed by the Church, but nevertheless with the parents unwilling, is valid.

"R. Affirmatively; for neither the dissent of parents nor minor age can in any way be numbered among the impediments diriment of marriage in these our times. We do not delay over imperial laws and commands of rulers contrary to this opinion; for they are to be understood either only of civil effects, as outstanding men think concerning the edict of Henry III, Most Christian King, confirmed by Louis XIII: Loretus, Counselor in the senate of Paris, Hubertus, Bishop of Vabres, Cabassutius, Gerbasius, Natalis Alexander, and others; or, since they establish what exceeds the limits of secular power, they are altogether to be rejected. Concerning those things which pertain to the nature of the sacraments, the full power of defining belongs not to secular rulers, but to the Church alone. But she not only held and declared marriages of this sort valid in cap. *Licet* and in cap. *Tua de Sponsa duorum*, but also at Trent, legitimately gathered in the Holy Spirit, struck with anathema those who falsely affirm that marriages contracted by children of families without the consent of parents are void, and

that parents can make them valid or void. Therefore no place of doubt is left concerning the validity of the aforesaid marriage." S. O., Nov. 17, 1835; Collect. S. C. de P. F. n. 1448.

3. "... Into three classes can be divided those Armenians who present themselves before the Turkish judge to contract marriage. Some go there to take a concubine, and these cannot intend to celebrate the contract of marriage, but to cloak their lust in such a way. Others present themselves to the Turkish minister to make a simple declaration of a marriage already contracted, or to be contracted shortly, but they do not intend then to contract a true marriage, although they use *verba de praesenti*. - Finally, others also appear before the same judge in order to take a woman as a true wife, which at times has not been granted to them by the Church by reason of some impedient impediment; but these persons, not knowing that their marriage, celebrated in such a way before the Turkish minister, can be a true and valid marriage, although illicit, cannot intend to contract it, although they have the will for it, and they believe rather that they are contracting a concubinage; but if they knew the sufficiency of this act of theirs for contracting a true marriage, they would certainly intend to contract it.

"R. This is the substance of the doubts to which the Sacred Congregation responded that the marriages contracted by those of the first class before the Turkish judge are null and void, because the will of the contracting parties and their consent is directed to concubinage alone; and meanwhile externally they say that they celebrate marriage, insofar as they wish with this color to cover their incontinence. But if perchance this intention had been hidden in the mind of only one of the contracting parties, who had conducted himself in all external acts as if he had wished to celebrate a true marriage, and in such a way had deceived the other spouse with craft and fraud, in this case, if legitimate proof of the fraud and deception cannot be had, although the marriage may be null in the internal forum, nevertheless the same judgment must not be formed in the external forum. Therefore the Vicar Apostolic will be obliged, when the case occurs of having to decide concerning one of such marriages contracted with a feigned intention and with the mind of taking a concubine and not a wife; he will be obliged, I say, to examine well the circumstances of the fact, and not to give faith to the mere assertions of the deceiving spouse, especially if the woman was entirely ignorant of the deception; and he must oblige him to persevere in the marriage and to renew the necessary internal consent, because *he is bound under mortal sin to consent anew and to effect a true marriage*, as all the theologians teach us and as duty requires.

"For the others of the second class, who present themselves before the Turkish judge, but do not then wish to contract a true marriage, although they use *verba de praesenti*, intending to contract it afterward if they have not contracted it before, the Vicar Apostolic must verify the circumstance whether the marriage had been validly contracted before presenting themselves before the Turkish judge, or whether it must be contracted afterward. In the case in which the marriage had already been validly contracted before, the appearance before the Turkish judge, when it is made for a truly civil act and in order to obey the laws of the Principality, is not prohibited, as Benedict XIV teaches in his Constitution 139, t. 1, Bull. § 10, and it harms nothing in the validity of the marriage already celebrated; but if the marriage either had not been contracted, or had not been validly contracted, since, when these persons present themselves before the Turkish judge, they do not have the intention of then contracting a true marriage, thus, true and internal consent being lacking in them, and they being disposed only to furnish it then when they will celebrate the marriage, they cannot be

regarded as legitimate spouses, nor can their marriage be said to be valid. But also for these the Vicar Apostolic must be very careful not to give faith so easily to the hidden intentions of the contracting parties, when from the exterior acts there results the contrary of what they assert.

"Finally, for the others of the third class, who have the will of taking a true wife, but are in the error that it is not sufficient for the value of marriage to present themselves before the Turkish judge, but if they knew the sufficiency of this act of theirs for contracting a true marriage, they would certainly intend to contract it, the Sacred Congregation ... decided that these marriages are valid when no other canonical impediment intervenes. For, according to the circumstances of the proposed case, there can be no doubt of the true, legitimate, internal, and reciprocal consent of the contracting parties. Their error that marriage cannot be validly contracted before the Turkish judge cannot render it null, because it does not concern nor belong to the substance of marriage, and does not remove the preceding will of the one who wished to celebrate it, but falls only upon its form and solemnity, and thus cannot render it invalid, since, in marriage as in other contracts, when the error is concomitant and does not influence the essence of the thing which is willed, but its accidental qualities, the contract remains valid. Nor does the opinion prevailing among the Armenian nation stand in the way of the validity of such marriages, namely, that a marriage cannot be contracted before the Turkish minister, but that it is necessary to celebrate it before the Church and with the priestly blessing. This opinion is not constant, nor is it even common among the nation; and the ecclesiastics who have studied theology know how to think differently.... Moreover, this opinion is not furnished with any Armenian synodal canon; it is not approved by the Apostolic See, but rather derives from the ignorance of the Armenians, who do not distinguish invalid marriage from illicit marriage.

"... The necessity of the assistance of the parish priest at marriages has been introduced only in the Latin Church by the Decree of the Sacred Council of Trent; and the Armenians, who, as Benedict XIV wrote in the noted Instruction of 1754, have never heard of this Decree, consequently cannot be subject to it. And therefore, when they celebrate their marriage in the presence of two or three upright and honorable witnesses, or before the Turkish judge, since then there can be no doubt of legitimate consent reciprocally manifested for contracting marriage, so its validity cannot be called into question." Instr. S. C. de P. F., Oct. 1, 1785; I. M. 959, 962, 967, 969.

4. "In the present case, with the parish priest and two witnesses present, and with the woman purposely waiting there, the bridegroom arrived in order to contract clandestinely; and at his very entrance, being asked by a certain third person why he was coming into that place, he answered: *I come that I may see Lady N., my spouse*, or, as others said, *who is my spouse*. Having heard this, the parish priest rose and fled, lest he be compelled to assist at a clandestine marriage. Therefore it was doubted whether those words of the man sufficed for contracting marriage concerning the present.

"R. In strictness it is not a true marriage, because although the contracting parties, afterward, having mutually given hands, expressed consent, nevertheless the parish priest neither saw nor heard that, but only those prior words, which indeed do not seem in practice to signify obligation, but enunciatively or narratively. For if someone says to a certain third person: *I wish to leave Peter my heir*, by these words he does not in practice constitute him heir, but only signifies the intention which he has. Likewise, if he says: *Call the notary, because I wish to donate my goods*, he does not in practice donate

by these words. Thus, therefore, in that case, he who responds to a third person asking the cause of his coming, that he comes to see his spouse, does not use words which, by the institution of men, signify obligation in practice, but only narrates what has been done, or what is to be done in the near future; for that whole proposition spoken to a third person seems ordered only to giving a reason. For suppose someone to have come in the same way to make a testament in favor of Peter existing there, and, being asked by another third person why he was coming, says: *I come to see Peter my heir*; certainly by these words he would not institute him heir. Likewise, when the Supreme Pontiff used to be elected by public suffrages and adoration, if a cardinal, with the mind of electing someone, should go to the chapel where the one to be elected was present with others, and, being asked by another, *Whither are you going?*, should say, *To adore the Pope*, certainly by this response he would not be considered already to have given practical consent and suffrage for his election, but would signify only the mind with which he was coming to elect him." Lugo, de Iust. et iur., d. 22, n. 23.

5. Titius gave a mandate to Caius that he should contract marriage in his name with Sempronia. While Caius was contracting the marriage, Titius, seized by a very grave typhoid fever, fell into furious madness. But, many remedies having been applied, after a year he wholly recovered.

It is asked: Is the aforesaid marriage valid?

R. Affirmatively. For during the intervening time the will of Titius was not retracted, although then, when Caius was contracting for him, Titius had lost the use of reason. Sanchez, l. 2, d. 11, n. 12; I. M. 963.

6. "With what rite will the priest assist at marriages in which one party is non-Catholic? Is it permitted to pronounce the form, to say prayers, to bless the ring of the heretical bride?

"R. Negatively." S. O., Aug. 1, 1821; Collect. S. C. de P. F. 1543, 1427, 1443; Enchir. Moral. 1016; I. M. 1016.

7. "Many Protestants, without any intention of embracing the Catholic religion, often request that, either before one of their own ministers or before the bishop himself, they furnish consent for contracting marriage. It is to be noted that in such circumstances the bishop and priests would act not as priests, but as civil magistrates, which is permitted by the laws of the republic. Now he asks, whether it is permitted to him and to his missionaries to preside over such marriages?

"R. If there is question of marriage between two heretical parties, although an intervention of this sort is not so reproved that it can never be licit, nevertheless commonly it must be dissuaded. But if one party is Catholic, with a dispensation having been obtained from the impediment of mixed religion, and with the usual clauses and conditions being observed, it is permitted." S. O., Dec. 20, 1837. Cf. Enchir. Moral. 1016.

145. The Indissolubility of Marriage

1. Paulus, an infidel, converted to the faith, married Paulina, a Catholic. After three years of marriage, Paulus, having apostatized from the faith, returns to infidelity. Can Paulina 1. marry

another Catholic? 2. at least be separated from Paulus by divorce from bed and cohabitation?

R. To the 1st: Negatively. "Faithful spouses cannot, on account of the return of the other spouse to infidelity, contract another marriage with another faithful person." S. C. de P. F., Dec. 7, 1626. - To the 2nd: The other particular circumstances of the case which are present must be set forth and weighed. "Catholic spouses can remain with an apostate infidel, or separate themselves from him, according as the danger of perversion and the dishonor of the Creator, in the judgment of a prudent confessor, require; and the sacraments can be administered to these." S. O., Sept. 19, 1671. Cf. Collect. S. C. de P. F. n. 1257, 1280-1282, 1284, 1287, 1288; I. M. 978.

2. Franciscus, converted to the faith, once the interpellation had been made and a negative response had been received, decided to pass to other nuptials only after a notable time. - Must the interpellation be repeated?

R. If the spouse remains in infidelity, the interpellation must not be made again. But if the spouse has embraced the faith, or now embraces it, Franciscus is bound to receive her. S. C. de P. F., June 26, 1820; Enchir. Moral. n. 980; Innocent III, c. *Gaudemus*.

3. Francisca, recently converted to the faith, having obtained an apostolic dispensation from making the interpellation, enters into marriage with Caius, a Christian. After three months her former husband appears, reclaiming her, and he had already received baptism a whole year before. - Must Francisca return to the former husband?

R. Negatively. The reason is that, by the apostolic dispensation, that former marriage was dissolved. Whatever may be said concerning the question by what law the Supreme Pontiff dissolves the bond of marriage consummated in infidelity, cf. Ballerini apud Gury 759, it is wholly certain what Benedict XIV affirms, *de Synodo*, l. 13, cap. 21, n. 5: "The first marriage remains dissolved at that very moment, and indeed irrevocably, at which the spouse converted passed to other nuptials with a faithful person, whether because he was vindicated into this liberty by divine law, for the reason that the infidel spouse, judicially interpellated, had denied himself to evangelical truth or to harmless cohabitation, or because peculiar circumstances of things opened the way to an apostolic indult; which indult indeed, since it is bound to no condition, perpetually asserts the validity and firmness of the second marriage, and closes off return to the first nuptials, even if someone should contend that he can prove that the first spouse interpellated had not been free to respond, or that he had even then been prepared to embrace the Christian Religion, indeed that before that day on which the second marriage was celebrated by the converted spouse, he himself also had given his name to Christ and received baptism." Enchir. Moral. 980; I. M. 980.

4. Ubaldus, a missionary, furnished with the faculty of dispensing with gentiles and infidels having several wives, so that after conversion and baptism they can retain whichever of them they prefer, if she also becomes faithful, unless the first wishes to be converted, using this same faculty with a certain gentile woman converted to the faith at the same time as her last husband, likewise converted to the faith, dispensed so that she might retain this man in preference to her first legitimate husband, who was in another region and persisted in

infidelity, without his being interpellated as to whether he wished to cohabit peacefully and be converted to the faith.

It is asked: What is to be said to the case?

R. 1. That Ubaldus used the aforesaid faculty, not with a gentile man converted to the faith, but with a gentile woman converted to the faith, seems to deserve no blame. For in the aforesaid faculty, what is said of a man in relation to several wives is valid also with respect to a woman in relation to several husbands. S. C. de P. F., Jan. 14, 1793; Collect. n. 1317. This declaration was again given by the Holy Office, June 12, 1850; Collect. S. C. de P. F. n. 1339. Nevertheless, there is a later Decision of the Holy Office, Sept. 5, 1885; Collect. S. C. de P. F. n. 1345, which seems to suppose that the aforesaid faculty, as regards polygamy, does not also comprehend a faculty as regards polyandry. Therefore, in the case, it would certainly be safer to have recourse to the Holy See for an extension of the aforesaid faculty.

2. Nor did Ubaldus sin in this, that he used that faculty with a woman who had had several husbands not simultaneously and jointly, but successively; namely, who, the first husband having been dismissed, married another, and, this one likewise dismissed, adhered to another. For the word *several* in the aforesaid faculty can be understood in both ways: both simultaneously and jointly, and also successively, whether they are cohabiting or have been left. S. C. de P. F., Jan. 14, 1806; Collect. n. 1321.

3. But the question is whether Ubaldus acted rightly by dispensing from the interpellation. According to the Instruction of the Holy Office, June 11, 1760, to the Superior of the Mission of Pegu, Collect. S. C. de P. F. n. 1313, Ubaldus indeed could dispense from the interpellation, but only when there stood a true impossibility and an urgent necessity, concerning which nothing is said in the case; and after a summary process had been made, of which likewise no mention is made in the case. For the aforesaid faculty is explained thus in that Instruction: "Although on the sheet of faculties which are granted by the Holy See ... the following is read, *Of dispensing with gentiles*, etc. ... nevertheless ... there is not to be dispensation from the interpellation of the infidel spouse except when the infidel party is absent, and either it is not known where he or she is, or on account of distance the interpellation is rendered too difficult, and also for urgent reasons and in a case of necessity, and rarely. But the Father Superior of the Mission must diligently observe, and with every possible caution, that in each of these cases in which he will believe it necessary to dispense from the interpellation, it will not suffice that he be internally persuaded of it, but he must make a summary little process, from which this necessity may appear for every future time, either because the one interpellated does not respond, or because it is not known where he is, or because he has given proofs by the fact of his open dissent; and it will be well in such a case, lest caution be lacking, that citations also be made *ad valvas et per edictum*, with the assignment of a fitting time *ad comparendum et denuntiandum*, etc. This previous summary little process arises from the letter and the spirit of the Gregorian Brief: *provided that it be established even summarily and extrajudicially*, etc." Cf. Enchir. Mor. n. 980.

Outside the aforesaid case of impossibility and urgent necessity, according to the recent Instruction of the same Holy Office, March 28, 1860, Collectan. cit. n. 1297, a partial interpellation must altogether be made; for there it is said: "The infidel, if after baptism he wishes to enjoy the Pauline privilege, if he has had only one wife and she legitimate, is bound to interpellate her: 1. whether she wishes to be converted; 2. whether at least she wishes to cohabit peacefully without injury to the

Creator. He will accept her consenting to both or to either, according as the laws establish. The same is to be said of a woman who would wish to be converted; and in this spouses who are infidels are judged as equals. But for polygamous infidels a special concession was made in favor of the faith, namely, that that interpellation must be made as regards the first part, that is, whether she wishes only to be converted. If the first wife refuses, he will be able to choose any one from the others, provided that she also becomes faithful, consent having been renewed. For by these words is expressed the aforesaid faculty granted to missionaries, of dispensing with gentiles, etc. Therefore to this prior wife full nuptial right is attributed; for this reason, if she is converted, she will be able to remain in legitimate wedlock, provided it be without injury to the Creator; but if he wishes to enjoy the Pauline indult, he will make the interpellation as is noted above, nor can missionaries at their pleasure turn aside from this rule, but if they find anything worthy of note to the contrary, they will most faithfully report it to the Sacred Congregation." And "whenever it is certainly established that the infidel spouse wishes neither to embrace the faith of Christ, nor to cohabit with the converted spouse without dishonor to the Creator, bishops, as delegates of the Apostolic See, and vicars apostolic, will be able to dispense upon the interpellation, provided that necessity urges and there is not sufficient time to have recourse to the Holy See." S. O., Aug. 11, 1859; Collect. S. C. de P. F. n. 1351.

And in another later Instruction of the Holy Office, June 20, 1866, Collectan. cit. n. 1354, these things worthy of note as regards the present case are had: "It is a most thoroughly established principle that a marriage celebrated, in the time of infidelity, by a man with a woman, while another was living with whom he had bound himself by an earlier marriage, is null and void, both by divine and by natural law. Hence, where it is established that an infidel man wished to enter true marriage, not simple cohabitation, with the first woman whom he took, and that no impediment of natural law stood in the way of this marriage, that first woman is to be held as a just and legitimate wife; but all the others whom, while she had not yet been removed by death, the man afterward married are to be held as adulteresses and concubines. Therefore the polygamist must retain the wife earlier in time, who alone is the just and legitimate wife, and dismiss the rest as adulteresses and concubines.... In only one case does this obligation cease, and it becomes free for the polygamist, converted to the Christian religion, to dissolve the conjugal bond of the prior and only legitimate wife, and to contract other nuptials with the woman whom he himself has preferred, namely, when there can be place for the privilege granted in favor of the faith by Christ the Lord and promulgated by the Apostle Paul.... Such is the force of the Pauline privilege, that a marriage entered into and consummated by infidels in the state of infidelity is dissolved when, one of the spouses having been converted to the faith, the other wishes neither to be converted, nor to consent to cohabit without dishonor to the Creator. Therefore it is clear, 1. that this privilege belongs only to the true and legitimate husband toward the true and legitimate wife, and vice versa. It is clear, 2. that the converted spouse cannot enjoy this privilege except after baptism has been received, and after the interpellation has duly been made to the other spouse concerning embracing evangelical truth and permitting peaceful cohabitation. It is clear, 3. that no place can exist for this privilege if both legitimate spouses are converted to the faith at the same time. But as regards the interpellation, two things besides must be noted. First, that to polygamous infidels embracing the Christian religion together with one of their concubines, it is conceded by the Apostolic See that they are bound to interpellate only concerning the purpose of conversion. The other, that with any infidels converted to the faith, by the authority of the same

Apostolic See, dispensation can be given so that they omit both interpellations, whenever these either cannot in reality be made, or, if made, are judged to be of no utility, according to those things which are handed down by Benedict XIV, l. 13, c. 21, *de Syn. dioec.*"

Also worthy of note, as regards the present case, is the recent Response of the Holy Office, Nov. 22, 1871; Collect. S. C. de P. F. n. 1356. "Whether the missionaries can use in its whole latitude the power granted universally by St. Pius V through the Brief which begins *Romani Pontificis*, Aug. 2, 1571. Cf. Enchir. Moral. n. 980. - R. The Brief of Pius V, of holy memory, regards the case in which the first legitimate wife is not known, and at the same time it is most difficult to find her; but in its use the rule prescribed by his successor Gregory XIII must be observed, that is, that before the neophyte is joined in marriage with another woman who has been baptized together with him, it must be established by a summary and extrajudicial process that it is in reality most difficult to find the first wife."

From all these things it appears that Ubaldus did not act rightly. For there was no question of a case of true impossibility and urgent necessity. Nor indeed, in the case, was it most difficult to find the first spouse. The cited Brief of St. Pius V. - Cf. S. C. de P. F., March 20, 1836; Sept. 26, 1837; S. O., June 8, 1836; July 4, 1855; Aug. 6, 1856; Aug. 11, 1859; March 28, 1860; June 3, 1874; Nov. 29, 1882; Collect. n. 1331, 1332, 1333, 1344, 1348, 1351, 1352, 2185, where these things are confirmed in particular cases and are still more declared. I. M. 980; Collectan. S. C. de P. F. n. 2185 ad 2; Compend. Privil. Soc. Iesu n. 388.

146. Impotence and Bond

1. Sabinus, wishing to contract marriage, asks the confessor whether he can effect this. The reason for his doubting is his natural debility, by force of which, although he himself can pour forth seed, nevertheless he experiences no erection. Without any hesitation the confessor responds affirmatively, because, he says, on the authority of many and grave theologians, it suffices that seed can be poured forth at the mouth of the vagina, which Sabinus can certainly accomplish.

It is asked: What is to be said to the case?

R. The confessor's undoubting response does not seem to be approved. For Sabinus first does not seem able licitly to contract marriage. For the wife could be wholly unwilling as to that imperfect mode of coming together. Then also, once marriage has been contracted, scandals can easily arise. For, with that imperfect mode of coitus standing, if dissensions arise between the spouses, they will immediately seek divorce, and will institute a lawsuit, and will introduce the cause from the head of the impotence of the man, as is evident from the fact itself. But neither does he seem able validly to enter marriage. For Sabinus labors under the impediment of impotence, which is called the impediment of frigidity. For this impediment, in impotence, is not in the impotence of generation, nor is it in the impotence of pouring forth seed, but it is in the impotence of coition, as is to be seen through almost the whole title *de Frigidis et Maleficiatis*. The impediment of impotence surely exists when there is impotence for consummating marriage. But then marriage is properly said to be consummated when it is established that copula sufficient for generation has intervened, as the S. C. C. teaches in the Nuscana marriage case, Sept. 11, 1880. Where, therefore, impotence is had for

accomplishing that copula, an impediment is had to the marriage itself. Most clear on this matter is the doctrine of St. Thomas: "Although the act of carnal copula is not of the essence of marriage, nevertheless potency for this is of its essence, because through marriage there is given to each spouse power over the body of the other with respect to carnal copula." 4, D. 34, q. 1, a. 2, ad 1. Hence the Angelic Doctor then concludes, ibid. ad 6, that with respect to the impediment of marriage "the same judgment is to be made concerning the narrowness of the woman and the frigidity of the man," namely, because of impotence of coition in both cases.

2. Fabia, wishing to contract marriage with Fabius, asks her confessor whether she can; for she has purposely undergone the excision of an ovary, namely, so that, after marriage is then entered into, she may not have children. There is no difficulty, says the confessor. And he responds thus because he judges that marriage pertains also to the mutual assistance of life and to restraining concupiscence. D'Annib., p. 3, n. 431, note 9, ed. 3. Nevertheless the parish priest raises a difficulty, and requires the attestation of a surgeon, by which it may be established that generation is not physically impossible, with attention to the manner in which that excision of the ovary was accomplished. And when Fabia did not acquiesce in this decision, the matter was brought to the bishop, who wholly approved the decision of the parish priest.

It is asked: What is to be said to the case?

R. Certainly the most prudent manner of acting of the parish priest and the decision of the bishop are to be approved. For if it is established that the ovaries were altogether perfectly excised, so that generation is physically impossible, marriage is impossible. But otherwise, if that excision was wholly imperfect, of part of an ovary or of only one ovary. Likewise it is impossible that marriage be also for mutual assistance of life and for quieting concupiscence, unless it is marriage. But marriage is essentially a conjunction in order to offspring. Hence Augustine, praised by the Angelic Doctor, "says against Faustus that a woman ought not to marry for any other thing, except that she be a mother." But where offspring is physically impossible, conjunction in order to that offspring is impossible. S. Th., 3 p., q. 75, a. 2, apud Cajetan. Likewise from the same Angelic Doctor, apud the same Cajetan, q. 76, a. 1, the conjunction which is the sacrament in marriage is a conjunction which is for the office of nature. A conjunction which would not be for the office of nature cannot be marriage as a sacrament, and therefore neither a remedy of concupiscence. And once the office of nature has been excluded, neither can the assistance of life be had in a wife, namely such as nature itself intends. "Woman was made principally for this, that she might be a help to man for offspring; but man was not made for this." S. Th., ib., q. 75, a. 2, ad 1. And in the Council of Florence, Decree for the Armenians, marriage as sacrament is said to have been instituted by Christ Our Lord so that the Church may be CORPOREALLY INCREASED through it. Once the physical possibility of offspring has been excluded, and, on the contrary, the physical impossibility of offspring established, how can it any longer be true that this sacrament IS ORDERED TO THE MULTIPLICATION OF THE CHURCH, as the same Council of Florence has it? I. M. 994, 995.

3. "1. A certain woman, after she had waited in vain for two or three years for the return of her husband, was united in marriage to another man, notwithstanding the admonitions which the missionary made to both; now the second husband of this woman, repenting of the deed,

would wish to leave her and pass to other vows. - 2. Another woman, since she also had waited in vain for the return of her husband, after three years, judging that he was already dead, in good faith joined herself in marriage to another man; and since it is now impossible to investigate whether the first husband is still living or is in reality dead, it is asked whether she herself can be left in the use of the second marriage contracted until certainty is had concerning the life of the first husband?"

R. The Holy Office, March 24, 1865, responded: "As to the first, that the spouses are to be separated, and that the man cannot enter second nuptials until it is morally certain that, at the time when he himself entered marriage with the woman in question, the first husband of that same woman had already died. As to the second, that they are to be left in good faith." Cf. E. M. 996.

4. There is a husband who, after 14 years, has not yet been able to have information concerning his wife. Can he enter other nuptials?

R. Negatively. "A lapse of time, of whatever length, is not sufficient for spouses to be permitted to enter new nuptials, unless first it has been established with moral certainty that the former spouse has died, as from c. *In praesentia* 19, *de Sponsalibus*." S. C. de P. F., Apr. 21, 1788; Collect. n. 1365, 1366, 1368; I. M. 996.

147. Consanguinity

1. Aloisius is the son of Caius and Caia from illicit intercourse. Aloisia is the daughter of Sempronius and Sempronia from likewise illicit intercourse. Caius and Sempronia, Sempronius and Caia, after the aforesaid children were born, entered marriage between themselves because of the exhortation of the parish priest, who often warned them to cease from sin and to establish an upright life. But after these marriages had been celebrated, Aloisius wishes to take Aloisia as wife. But the parish priest refuses because of the impediment of consanguinity.

It is asked: What is to be said to the case?

R. The reverend parish priest is deceived in the proposed case. For no consanguinity is present between Aloisius and Aloisia. And first, there can be no question of affinity, since Aloisius had no carnal intercourse with the blood-relatives of Aloisia, nor, vice versa, did Aloisia have carnal intercourse with the blood-relatives of Aloisius; for nothing is said about this in the exposition of the case. Now as to consanguinity, that this is absent is clear from the fact that Aloisius and Aloisia do not have a common stock. For Aloisius is the son of Caius and Caia; and Aloisia is the daughter of Sempronius and Sempronia. - I. M. 997, 1002.

2. Ioseph, the parish priest, is called to administer the sacraments to Emmanuel, dying, who in the house of Carmela had already lived for several years, applying himself to studies of Law. Emmanuel, seized by love for Carmela, had promised marriage to her; and, this promise having been made to her, had conceived three children from her, still living. Although Carmela is of an honorable family and of equal condition with Emmanuel, who now has the age of twenty-six years, the mother of Emmanuel always opposed the marriage, the father already being

deceased. Since Ioseph found Emmanuel excellently disposed, and time was pressing, given the gravity of the illness, he celebrated the marriage before witnesses. For Emmanuel and Carmela belonged to his parish. But, once the marriage had been celebrated, Emmanuel and Carmela were found to be blood-relatives in the fourth degree in equal line. Without delay the parish priest asks for and obtains a dispensation, and proceeds to Emmanuel, so that he can convalidate the marriage. With Carmela present and with the witnesses present, the parish priest addresses Emmanuel, that he renew his consent. But Emmanuel, placed in the lethargy of agony, did nothing other than turn his eyes to the parish priest and emit a sigh several times; and after four hours he died. Immediately after his death, new investigations having been made, it appeared that Emmanuel's grandfather had been the brother of Carmela's great-grandmother. But Emmanuel's mother, hearing of the death of her son and of his marriage, contends that the marriage of the son was altogether invalid, whence she vindicates for herself the rich inheritance of the son.

It is asked: 1. Whether the parish priest acted rightly by celebrating the marriage? - 2. Whether the aforesaid marriage was valid? - 3. Whether the mother of Emmanuel is bound to restore the inheritance of the son to his widow and children?

R. To the 1st. There is no doubt that the parish priest acted rightly by celebrating the marriage. Emmanuel was duly disposed, and he was bound to repair the scandal and the damage inflicted on Carmela, by taking counsel for the good reputation and honor of Carmela, as well as for the legitimacy of the children, in the best way in which it could be done. But from the very common opinion of doctors, the damage in the case cannot conveniently be repaired except by marriage. But nothing could stand in the way of this marriage. For both were consenting spontaneously, and Carmela was of an honorable family and of equal condition. Nor could the dissent of Emmanuel's mother evidently stand in the way of the validity of the marriage, nor of its liceity, since, with the circumstances of the case attended to, it is altogether irrational, and there is question of a most grave obligation of justice to be fulfilled and of scandal to be repaired. And since Emmanuel had already exceeded the twenty-fifth year of age, that consent is no longer required even by civil law. Cf. St. Alph., l. 3, n. 641 seqq.; I. M. 920.

To the 2nd. From the circumstances of the case it is clearly apparent that Emmanuel and Carmela were ignorant of the impediment and contracted the first marriage in good faith. Therefore from this head no difficulty can arise for the invalidity of the marriage. For, since Emmanuel is said to have been duly disposed and to have entered marriage in order to satisfy his own conscience, and since the man himself is not uncultivated, so that he could have been ignorant that the impediment of consanguinity renders marriage null, it must consequently be said that Emmanuel and Carmela were ignorant of their own consanguinity. And as regards Carmela, it certainly was very much in her interest not to contract a null marriage; whence it must altogether be said that she too was wholly ignorant of the impediment.

When the impediment had been discovered, the parish priest acted wholly well by asking for a dispensation, namely so that the marriage might be convalidated. But the dispensation was altogether valid in the case. For if Emmanuel's grandfather was the brother of Carmela's great-grandmother, then the common stock is Emmanuel's great-grandfather, who at the same time is Carmela's great-great-grandfather; and therefore Emmanuel and Carmela were blood-relatives in an

unequal line, that is, in the fourth degree touching the third. But from the Motu Proprio *Sanctissimus* of St. Pius V, Aug. 26, 1566, a dispensation obtained without mention of the nearer degree cannot be marked with the defect of subreption or obreption, provided that the nearness is not of the first degree of consanguinity or affinity; nevertheless declaratory letters upon the nearer degree are to be obtained afterward, for removing the scandals of the people, who think, on account of ignorance, that a dispensation made upon only the more remote degree is not valid. Benedict XIV, C. *Etsi pastoralis*, Sept. 30, 1755; St. Alph., l. 6, n. 1136; I. M. 998, 1001, 1038.

But since Emmanuel spontaneously and entirely consented to the marriage the first time, it is permitted to presume that also the second time he consented to the marriage; indeed, those acts of Emmanuel, that is, the turning of the eyes toward the parish priest and the sighs several times repeated, can and must also be held as true and sufficient expressions of consent. And although, because of the gravity of the illness, Emmanuel could not have manifested his will the second time, the nullity of the marriage does not therefore certainly follow. For from the opinion of grave theologians, the party ignorant of the impediment does not necessarily have to renew consent for a valid reintegration of the marriage. The reason is that the prior consent, although it lacked its effect because of the impediment placed by positive law, nevertheless by the law of nature was valid, since it was furnished by a person capable by the law of nature toward a person capable by the law of nature of contracting. Therefore, the impediment having been removed, the prior consent suffices, which virtually perseveres. Gury, Comp. n. 896; I. M. 1050.

Lastly, in the present matter there is not question of a marriage to be contracted, or of a marriage contracted, but of a marriage already dissolved by death, and of the effects of a marriage of this sort. Now for sustaining the value of a marriage already dissolved by the death of either or both spouses, as regards the acquired rights of the widow and children, lighter proofs suffice, as the Rota has in Decis. 668, n. 21, part. 19, tom. 2, recent. These proofs certainly are not lacking in the case.

To the 3rd. It is certainly known to all that children, although born from a condemned union, that is, procreated by those between whom marriage cannot stand, are considered not spurious nor incestuous, but simply natural as regards the right of succession, if either or both of the parents were ignorant of the diriment impediment existing between them. Rota, Decis. 325, n. 7, part. 12, recent.; Decis. 376, n. 5, part. 16, recent. But as ignorance of incest makes it so that children arisen from a condemned union are considered not incestuous but natural, in exactly the same way an irrit and invalid marriage makes children legitimate no less than a true marriage, if both or one of the spouses is in good faith. Rota, Decis. 367, n. 9, 10, 18; I. M., v. 1, n. 680. But further, the marriage in the case must be held as altogether valid. For, the marriage having first been celebrated invalidly, and a dispensation of the marriage immediately obtained, Emmanuel, stirred by the parish priest to renew consent into marriage, furnished it in the best way he could, with sighs issued several times and with a turning of the eyes toward the parish priest; whence it is established that he understood those things which were being said to him by the parish priest and agreed. Besides, there is no need here of an altogether certain demonstration, since lighter proofs ought to suffice in the case. Nor indeed, as has already been said, was renewal of consent certainly necessary in the case for revalidating the marriage, given the ignorance and good faith in which the marriage had been contracted; for that ignorance and good faith does not prevent someone from truly and sincerely consenting to marriage. It is indeed understood only with difficulty how someone sincerely consents to marriage who knows

that the marriage is null. Whence consent must then be renewed. But he can consent very well who, although through error, nevertheless thinks that no diriment impediment intervenes. Hence, the impediment having been removed by dispensation, that consent produces its natural effect. But the dispensation was asked for immediately after the marriage had been celebrated; whence also ceases another reason why consent should be renewed, namely the danger lest in the intervening time the prior will had been changed. Likewise, there is no question here of living spouses, who could renew consent in order to prevent grave damages which otherwise could arise; but there is question of a union already dissolved by the death of one party, for whose validity, if renewal of consent were altogether required, grave damages, on the contrary, would follow for the widow and children. Whence the Sacred Rota, in controversies of this sort, namely when there is question of a union dissolved by the death of one of the spouses, perpetually proclaims that it is valid, even if in the revalidation a new consent had by no means intervened. Decis. 455, part. 1; Decis. 687, part. 2, recent., etc. - A. S. S., v. 26, p. 407 seqq.

Since these things are so, it is clear that, since the rights of Carmela and of the children are certain in the case, Emmanuel's mother cannot retain the inheritance of the son for herself, but must restore it entire to the children of Emmanuel and to his widow.

3. Franciscus and Dominica entered civil marriage; and now they have several children. But publicly they are held as truly married. Converted to God, they approach the parish priest so that they may duly be joined by the sacrament of matrimony; but secretly, lest infamy and scandal arise. While the proper investigations are being made to the aforesaid effect, a grave doubt arises whether Franciscus and Dominica are brother and sister between themselves from the illicit intercourse of Titius and Caia, whose children Franciscus and Dominica are affirmed to be by two persons whom the parish priest interrogated.

It is asked: What is to be said to the case?

R. The office of the parish priest as regards marriages to be contracted is to investigate whether some impediment stands in the way, c. 3, *de Cland. Desp.*, and he must report it to the bishop, and meanwhile abstain from the banns. For the matter is one which pertains to the external forum. Therefore the parish priest, in the case, cannot render a definitive judgment, but must remit the business to the bishop, with the witnesses, documents, and indications having been given.

Now the office of the Ordinary is to judge from the acts and proofs whether the impediment really exists. Here even a single witness is admitted, if he is worthy of faith, Lig. 996, 997, 998, and reputation. It is necessary that the witness depose concerning the impediment under oath and from his own knowledge, excepting impediments of kinship, in which witnesses from hearsay also are admitted. Lig. 997. But the reputation must be of that place, and not only rumor, provided that this is not weakened by the oath of the blood-relatives or of the contracting parties. Lig. 999.

Therefore those two persons who depose concerning the impediment are duly to be examined; and if they are worthy of faith and not base persons, although otherwise they are not greater than every exception, the aforesaid marriage must altogether be impeded. And although the impediment appears doubtful or only probable, the marriage cannot be permitted because of the danger of scandal which lies beneath. But if those persons deserve no faith, the marriage, on the contrary, cannot be impeded for that reason. Lig. 902; I. M. 1031.

And here it must be noted that apostolic missionaries to whom, by indult, the faculty is conceded of dispensing in degrees of consanguinity not prohibited by divine law, can in no way dispense with an infidel converted to the faith upon the impediment of the first degree of consanguinity in the transverse line, so that he can marry his own sister, with whom he had entered betrothals in infidelity; for it is not permitted to presume that the Supreme Pontiffs delegated an authority which they themselves have never used. Zitelli, *de Dispens. matr.*, Rome, 1887, p. 55.

148. Affinity

1. Paulus, hearing the confession of Titius, came to knowledge of the nullity of his marriage from an occult impediment of affinity. Reasonably fearing that, if he were warned, he would withdraw from the marriage with public scandal, he is silent and dismisses him absolved. But afterward he asks from the Sacred Penitentiary a dispensation in the root.

It is asked: 1. What is the impediment of affinity? - 2. What is a dispensation in the root? - 3. Did Paulus act rightly?

R. To the 1st. Affinity is "the association of two kinships through the conjunction of man and woman." L. 4, § *Affines de Gradib.* It is contracted from intercourse, whether licit or illicit, by which man and woman become one flesh, c. 3, 5, cau. 33, and therefore from perfect intercourse. Therefore all blood-relatives of the man become affines to the woman, and consequently all blood-relatives of the woman become affines to the man. Hence affinity does not go beyond the persons themselves joined by intercourse. Affinity of this sort dirimently impedes marriage up to the fourth degree from licit copula, c. 8, *de Consanguin.*, and up to the second from fornicatory copula, Trent, sess. 24, c. 4, *de Ref. Matr.*

To the 2nd. A dispensation *in radice* is a dispensation by which there is removed not only the incapacity of the person for contracting, or the defect of the form of the contract itself, but also the defect of consent, which is the root of marriage, is healed; whence, by that dispensation, no renewal of consent is needed, and it can be applied while either spouse or even both spouses are ignorant of it. Then by it offspring is rendered legitimate just as if it had been born from a legitimate marriage.

To the 3rd. Paulus did not act rightly; for he used knowledge from sacramental confession to the burden of the penitent himself. To the burden; for here one does not attend to whether the burden is irrational or rational, but the fact itself is inspected, namely that the penitent is in some way burdened; for the aforesaid burden is whatever could happen to the penitent that is not only harmful, but also troublesome or unwelcome, whether by right or by injury. Now it is clear that the revalidation of the marriage was altogether burdensome in the case for the penitent. Then the inconveniences of this revalidation, with each spouse ignorant of it, are clear; for if Titius, making confession with another confessor, comes to knowledge of the impediment, he will in reality be able to withdraw from the marriage, judging it null; which, if the circumstances have changed, and if there is no scandal and no damage to a third party, he could also licitly do.

2. "Doubt 2. Paulus, a Christian widower, took Balbina, an infidel, as wife, who desires to be enrolled in the number of Christians, so that she may contract marriage with him in the Christian manner. Meanwhile Demetrius, the son of Paulus, born from the former wife,

declares that he has had relations with Balbina. It is asked whether, through copula of this sort with an infidel woman, there results an impediment of affinity in the first degree.

"Doubt 4. A faithful man took in marriage an infidel woman, whose blood-relative in the second degree, also an infidel, he had known previously. It is asked whether, after his wife has embraced the Christian faith, she needs a dispensation upon the second degree of affinity, so that she may be able to contract with him sacramentally.

"R. To the 2nd. Two things are to be distinguished: 1. whether Paulus took Balbina, an infidel, as wife with a previous apostolic dispensation upon disparity of cult, or without an apostolic dispensation; 2. whether Demetrius had relations with Balbina before Paulus took her to himself as wife, or afterward. If Paulus took Balbina with a previous apostolic dispensation, even if the copula of Demetrius with the same Balbina had preceded, the marriage must now be held as valid; since the impediment of affinity, especially from illicit copula, as in the case, since it is not held as of divine or natural law, but only of ecclesiastical law, does not affect infidels according to the mind of the Church, because they are not subjects of the Church; and the Church, by dispensing with the Catholic party upon disparity of cult, so that he may contract with an infidel, is understood also to dispense from those impediments from which the infidel party is exempt, so that, on account of the indivisibility of the contract, this exemption remains communicated also to the other party. Hence it follows that a marriage of this sort cannot be repeated after Balbina's conversion to the faith. For, once valid, it always perseveres in its validity; nor would it be weakened by subsequent copula which Demetrius might have had with Balbina, because the conjugal bond, which is indissoluble, would not thereby be dissolved. Therefore in this first case let missionaries take heed not to admit spouses of this sort, asking to contract in the Christian manner, to a new furnishing of consent; indeed let them warn them of the validity of the preceding marriage, so that they may know that through the sacred ceremonies of the nuptial blessing they are not entering a new marriage, but only sanctifying what they have already entered and what stands firm.

"But the contrary must be said in the second case, namely if Paulus contracted with Balbina without an apostolic dispensation upon disparity of cult. For then, since the marriage was null and void and as if it had not been contracted, Balbina herself, after baptism, would be bound by the impediment of affinity. Nor does it matter that Balbina, when she was carnally known by Demetrius, was still remaining in infidelity, and for that reason was not subject to an ecclesiastical impediment. For affinity in itself and regarded physically must be distinguished from the impediment of affinity. Now affinity is contracted even by infidels, because even among infidels it is true that man and woman are made one flesh through carnal copula. Therefore, as is had in cap. *Fraternitas*, 35, quaest. 10: 'If they shall have been one flesh, how will some relative of them be able to pertain to the one, unless he pertains to the other?' Therefore, because Paulus the father pertains to Demetrius the son, he must be said also to pertain to Balbina; and Balbina, because she has been made one flesh with Demetrius, must pertain to Paulus. The only difference is that affinity does not produce an ecclesiastical impediment for infidels, but it does produce one for the faithful. Therefore, since through baptism her affinity, already physically contracted with Paulus, is not removed from Balbina, this same affinity, radically inhering in her, which for that same infidel was not an impediment to contracting, becomes an impediment after baptism, by which she becomes subject to the Church, and consequently subject to its laws; and indeed an impediment in the first degree, and in the direct line, because Paulus the

father and Demetrius the son touch one another in such a degree and line, and the degrees of affinity are taken from the degrees of consanguinity.

"To the 4th. From those things which were said in response to the 2nd doubt, the response to the 4th is clear. For in each case there is question of the impediment of affinity from illicit copula, except that there the discussion was of the somewhat passive affinity of Paulus the faithful, which namely he had contracted with Balbina, not from his own act, but from the act of another, namely Demetrius; but here there is question of active affinity, of which namely the Catholic man himself is the author, who wishes to contract with a woman whose blood-relative in the second degree he carnally knew. Therefore all the more must it be said that the impediment results on the part of the man, and indeed in the second degree, because consanguinity and affinity proceed and are computed in the same degree, and that the woman too is similarly held by the same impediment when she has embraced the Catholic faith. Therefore, if an apostolic dispensation upon disparity of cult preceded the marriage contracted by the faithful man with the infidel woman, it must be held as valid, and therefore, after the baptism of the woman, it must not be repeated by a furnishing of new consent; but if it was entered without a dispensation of this sort, because then it would have been null and void, the impediment of pre-existing affinity would affect, after the reception of baptism, the woman also, so that she too would need a dispensation for contracting validly and sacramentally." S. O., Sept. 16, 1824; Enchir. Moral. 1002; I. M. 1002.

149. Spiritual Relationship

1. "A certain Christian was sponsor of a certain infant baptized at home because of danger of death; afterward he took the infant's mother as wife. Because of the diverse opinions of theologians concerning the impediment of spiritual relationship, what must be judged concerning this marriage?

"R. The Most Holy One must be consulted for a dispensation of the marriage, insofar as there is need, upon the impediment of spiritual relationship, and also for sanation in the root." S. C. de P. F., March 18, 1817; Collect. n. 1250; I. M. 459.

2. Laurianus acted as sponsor in the baptism of all the children of Iacobus. Iacobus having died, Laurianus thinks of taking his widow as wife.

It is asked: Is Laurianus bound to the aforesaid widow by a multiple spiritual relationship, or only by a single relationship?

R. Spiritual relationship can indeed be multiple, and this multiplicity must be expressed in the supplicatory petition, so that the dispensation may be valid. But, in the case, there is not had a multiple spiritual relationship. For it is not multiplied when someone acts as sponsor of several children of someone in the same sacrament; but when each one in turn receives or holds the offspring of the other, and when someone, which is illicit, both receives the same child, or another child of the same person, in baptism, and holds him in confirmation. I. M. 1009.

3. Amandus, an infidel, had promised nuptials to Amalia, a Catholic. For the marriage to be celebrated, a dispensation from the impediment of disparity of cult was awaited. Meanwhile

> Amandus falls gravely ill, and, now near death, is converted to the faith by Amalia. On a certain day, when danger of death was imminent, since the missionary was far away and no other Catholic was present, Amalia herself administered baptism to Amandus. Having received baptism, Amandus recovered; and, to the common joy of all, since no dispensation was now needed any longer, he celebrates marriage before the missionary and witnesses.

It is asked: What is to be said to the case?

R. The marriage of Amandus and Amalia is null because of the impediment of spiritual relationship. But it is most difficult that a dispensation can be obtained in the case.

For first, it is altogether undoubted that spiritual relationship is contracted even by a layperson privately baptizing, and in necessity, an outsider who is not his own child, as is clear from Trent, sess. 24, c. 2, *de R. M.*, where it is affirmed that relationship arises from true baptism, between the one baptizing and the baptized, and no distinction is made between baptism conferred solemnly and not solemnly, by a layperson or by a priest. Schmalz., l. 4, t. 11, n. 50, 51; L. 149.

But an impediment of spiritual relationship of this sort between spiritual father and spiritual son is such that the Apostolic See is not accustomed to dispense in it. Ancient and more recent theologians and canonists report scarcely one example, which nevertheless is referred to a sponsor and a goddaughter. Cf. De Iustis, *de Dispens. matr.*, l. 2, c. 5, n. 72; Sanchez, l. 8, d. 24, n. 15; Pont., l. 8, c. 17, § 5, n. 28. The reason is that spiritual regeneration, from which this relationship arises, is likened to carnal generation, which altogether does not admit dispensation in the direct line. And the Sacred Canons define that there must be greater abstaining from the marriage of those who are spiritual relatives to us than of those who are carnal blood-relatives to us. C. 1, 2, 3, q. 3, c. 30; Schmalz., l. c., n. 57.

Second, with attention to the exposition of the case, there is altogether lacking, for obtaining dispensation of such an impediment, a just and proportionate cause. For "a most grave and most urgent cause is required, such as would be danger of life threatening the petitioners because of their carnal commingling; or another public cause, as Sanch. teaches, l. 8, d. 24, n. 15, Fagnanus in cap. *Ex litteris De Cognat. Spirit.*, n. 18, and the distinguished Fr. Schmalz., v. 9, tit. 16, n. 144. And here De Iustis adds, lib. 2, cap. 5, n. 79, that, where a dispensation of this sort is to be obtained in the form for the poor, the petitioner is also bound to go to the City, in order to contribute his labor to the Fabric, although he be lame and weak." Giovine, *de Dispens. matrim.*, Consultat. Canonic., tom. 1, p. 2, § 217, p. 391 seq.

Third, which is the chief point, theologians and canonists who assert the very great difficulty of obtaining a dispensation upon spiritual paternity and filiation, who require for it a most grave and most urgent cause, and who affirm that a marriage of this sort is most unbecoming, and therefore that the Holy See is not accustomed to dispense in it, and bring forward one example of dispensation, in reality speak only of spiritual paternity and filiation which exists between a sponsor and a goddaughter; by no means, however, of the paternity and filiation which exists between the one baptizing and the baptized. Namely, the aforesaid doctors seem to suppose that such a dispensation has altogether never in fact been conceded and is never to be conceded. Indeed that unbecomingness is still far greater in the marriage of one baptizing and one baptized; and if the one baptizing is a woman, as in the case, and the baptized person a man, the irreverence of marriage between a

spiritual mother and a spiritual son appears still graver. Cf. Sanchez, l. 8, d. 19, n. 7; d. 24, n. 15; De Iustis, l. 2, c. 5, n. 80; Reiffenstuel, Append. n. 136; Corrad., l. 8, c. 8, n. 15.

Notwithstanding these things, a dispensation has in reality been conceded in the internal forum by the Sacred Penitentiary in more recent times. Therefore, should the case occur, it can be set forth to the Sacred Penitentiary.

Besides, this too must be noted: that the present impediment is not found excepted in the faculty granted to Ordinaries of places of dispensing the sick in very grave danger of death upon diriment impediments of marriage by ecclesiastical law, by force of the Decree of the Holy Office, Feb. 20, 1888.

150. Legal Relationship, Public Honesty, Vow

1. "Whether adoption is to be held as a canonical impediment diriment of marriage in the Kingdom of Tunkin, when, according to the laws and customs of the same kingdom, a person not yet of his own right can adopt, and it is not required that the adopter be older by 25 years, just as little care is taken whether it be a male or a female; eunuchs themselves also are able to adopt, and no account is taken of the age of the adopter relative to the adopted person, nor is the presence of the adopted person required, or his consent in the adoption, so that even absent little children and girls, and those incapable of true consent, can be adopted as sons and daughters?

"R. Negatively." S. C. de P. F., Jan. 14, 1802; I. M. 1011.

2. Titius, a pagan, married Maevia, a pagan, and with her did not consummate the marriage. After the death of Maevia, Titius becomes a Christian. Can he marry Bertha, the sister of Maevia, who has become Christian from pagan?

R. Affirmatively. For the impediment of public honesty from a marriage not consummated does not subsist in the case. And the same would be so if only betrothals had intervened between Titius and Maevia. S. O., Sept. 26, 1837; I. M. 1014.

3. Titius, a spouse, having obtained permission from his spouse to set out for a time into America, entered Religion there and emitted solemn vows. Titia, his spouse, knowing the matter, recalled Titius, her spouse, to herself, since she had several children and herself labored under a grave illness. Titius returned, and, finding his spouse dead and the children still minors in age, entered a new marriage with Caia.

It is asked: What is to be said to the case?

R. The religious profession of Titius, his wife being unwilling or not consenting, as in the case, was invalid. But Titia the wife wholly by right sought and recalled her husband, who, returning, was bound to render the debt to his wife. C. *Quidam* 3, c. *Placet* 12, *de Convers. coniug.*; Schmalzgr., l. 3, tit. 32, n. 24. But, since Titius, emitting religious profession, is presumed by force of law to obligate himself as much as he can, hence he is considered to emit a vow of continence, and therefore, while his wife was living, he could not have asked the debt; his wife being truly dead, he cannot enter

another marriage. C. *Quidam* 3, *de Convers. coniug.* Nevertheless, if Titius, emitting religious profession, had altogether been unwilling to vow continence except dependently on religious profession, he would not then be held by the vow of continence, and could then have asked the debt, and now could contract another marriage; for presumption yields to truth; and this is valid both in the forum of conscience and also in the external forum, if it is duly proved. Schmalz., l. c., n. 24, 26. But if Titius had truly wished to obligate himself as much as he could, then, entering marriage after his wife had died, without dispensation, this indeed would have been illicit, but not invalid. C. *Quidam* cit. - G. 913; I. M. 899, 990, 1015.

151. Disparity of Cult

1. Ioannes, a Hebrew, entered marriage with Petronilla, a Protestant. Both are converted to the Catholic faith, and it is asked whether the marriage must be renewed between them.

R. Benedict XIV, Const. *Singulari nobis*, Feb. 9, 1749, § 1, expressly affirms: "that both, after they have given their name to the Catholic faith, the one through baptism, the other through detestation of heresy, are again to be joined by the bond of marriage. For what they had entered before was altogether void because of the diriment impediment which is called disparity of cult." - I. M. 1016.

2. A Hebrew woman had been repudiated by a Jewish man, who soon had taken another wife. Moreover, the woman repudiated, having renounced Judaism, embraced the sect of the Protestants, and then married a Catholic man, who, wearied of this wife, contends that these nuptials are invalid, since the wife is still bound to the prior Jewish man.

It is asked: What is to be said to the case?

R. Two questions must be distinguished, one concerning the Pauline privilege, the other concerning the omitted interpellation. And as regards this latter, if the case is such that it is established with moral certainty that the infidel spouse does not wish to be converted nor to live peacefully, then, at least according to a very probable opinion, there was no need of warning or interpellation. But if the matter was not so manifest, the second marriage was entered illicitly; but as regards validity, according to the same opinion, it is just as if a spouse, before he certainly learns anything about the death of the other spouse, enters a new marriage; for the second will be valid or invalid according as the truth is on the part of the thing, or according as the spouse is in reality dead or, on the contrary, living. - As regards the former question, from the doctrine of the Fathers on the text of the Apostle, 1 Cor. 7:15, baptized Christians also are comprehended, although divided from Catholic unity. Cf. Baller., Op. Mor., v. 6, n. 719 seqq., ed. 1. Hence it is clear that the aforesaid marriage of the Hebrew woman with the Catholic man was valid from this head; for the first was dissolved by the subsequent marriage, if in reality that Jewish man departed, unwilling to be converted to the faith or to cohabit peacefully. Therefore that Catholic man cannot pass to other nuptials. - Baller., l. c.; I. M. 979, 980.

3. Sempronia, a Christian, wishing in France to marry Titius, a Hebrew, obtained a dispensation from the impediment of disparity of cult. But Titius has not yet exceeded the eighteenth year, which is the age required by French Law, Civil Code art. 144, for the validity of marriage;

nevertheless they marry. The same is the law of the Italian Code, art. 55, and therefore the same difficulty.

It is asked: Are the nuptials valid in the case?

R. The distinguished Palmieri, in *Op. Theol. Ant. Ball.*, v. 6, n. 1341, 1342, ed. 1, resolves this case thus: "The French law is supposed to have invalidating force. Gasparri denies it, Tr. Can. de Matr., v. 1, n. 297, because the man is incapable because of the law to which he is subject, requiring the completed eighteenth year, nor does the Church remove this incapacity, whose laws and dispensations cannot directly, as would be necessary here, reach an infidel. And D'Annibale is also cited, v. 3, n. 294, who, after he affirmed as more true that the marriages of infidels are ruled by the power and jurisdiction of Princes, whether faithful or infidel, adds: 'Wherefore, if an infidel enters nuptials with a faithful person, these, other things being equal, if they have not come together by the law of each, are void.' But those who deny to Princes the power of establishing impediments for marriages even of infidels will certainly be of another opinion. But even once that power is admitted, the doctrine denying that a marriage contracted from a dispensation of the Church by a faithful person with an infidel who is affected by an invalidating impediment of his own Prince is valid does not yet seem very probable. You certainly have two powers: one of the Church on the part of the faithful person, the other of the Prince on the part of the infidel; nevertheless powers concurring upon one thing, that is, marriage. But when powers disposing concerning one thing are unequal, it is equitable that the thing be ruled by the law of the superior power, which here is the Church: moreover the Church says that this marriage is valid if it is not contrary to the laws established by her. But that supposition does not seem sufficiently solid; for both the French Code and the Italian Code in the obvious sense seem rather to signify a mere prohibition than invalidation. But if the law is supposed to have invalidating force, that the marriage is valid, given the apostolic dispensation upon the impediment of disparity of cult, seems undoubted from that very Response of the Holy Office, Sept. 20, 1854, Collect. S. C. de P. F. n. 1239, 1449, which is adduced for proving that infidel Princes can establish diriment impediments. Cf. also Ench. Mor., ed. 3, 1002. And D'Annibale, although in the 3rd edition, n. 425, he followed the same opinion as regards the power of Princes in respect to infidels, nevertheless omitted that final conclusion, 'Wherefore, if an infidel,' etc.; whence he seems implicitly to have retracted it.

"All these things can be confirmed from those things which Benedict XIV has in Const. *Singulari nobis*, Feb. 9, 1749. In this Constitution the Supreme Pontiff treats of the validity of marriage between a Jewish man and a heretical woman, and weighs various laws, first of the Hebrews, then imperial, and finally ecclesiastical, by force of which alone he declares the aforesaid union null. And § 7, concerning civil law, has these things which pertain to our matter. 'The one law which pertains to this matter is that of Theodosius, which begins *Ne quis*, under the title of the Code *de Iudaeis*, whose words are these: Let no Jew take a Christian woman in marriage; nor let a Christian obtain marriage with a Jewish woman: for if anyone has admitted anything of this sort, this crime will be held in the place of adultery committed. But two difficulties occur here: (NOTE) The first, that this law, as being made by a lay Prince, ought to have no force in marriages.... (NOTE) The other is graver. For by the law of Theodosius the marriage of a Hebrew with a Christian, because of the unworthiness of the crime, was condemned most severely, not indeed as void, but as adultery....'

"But as regards that opinion which affirms the power of Princes over the marriage of infidels, it will not be beside the matter to note that the chief argument, taken from the Resolution of the Holy Office, Sept. 20, 1854, and of the S. C. de P. F., June 26, 1820, does not seem altogether demonstrative. For in the question proposed to the Holy Office there is question of a marriage altogether prohibited by civil law, even under penalty of death. Now from this it does not follow that there was a diriment impediment from civil law; it follows only that there was a prohibiting impediment. Hence even in the question it was not absolutely affirmed that the marriage was invalid because of such an impediment, BUT THAT IT SEEMED INVALID. Therefore the Vicar Apostolic himself, proposing the case, certainly did not know the force of that impediment, and therefore affirmed invalidity under opinion. But the Response of the Holy Office gives only a norm to be held practically in the particular case set forth, and has nothing concerning the question of the power of infidel Princes. But in another Response of the S. C. de P. F. there is question of a marriage already null by common opinion, from the omission of some prescribed ceremony. Therefore it does not necessarily follow from this that the marriage was null, as is had in the Response of the Sacred Congregation, by force of a diriment impediment; for it could well have been null because of defect of consent, since by common custom that marriage was held as null. And when it was expressly asked whether a diriment impediment, sanctioned by an infidel Prince, rendered marriages void and invalid, the Sacred Congregation did not respond to this question, but was content only to declare the marriage null in the particular case proposed. This indeed the Sacred Congregation could well have done in the case because it judged the general doctrine concerning the power of an infidel Prince to be true, and that a true diriment impediment had been present in that case. But it could also well have issued that Declaration because, since the aforesaid marriage, by the omission of the prescribed ceremony, no longer publicly had the form and appearance of marriage, but of mere cohabitation, and with the common opinion concerning the nullity of such a nuptial contract also prevailing, consent into marriage was lacking. It is indeed true that at the end of the Response of the Sacred Congregation it is said, 'and let an Instruction be given,' and in the Instruction it is openly affirmed: 'Secular Princes, whether faithful or infidel, retain the fullest power over the marriages of infidel subjects, so that, namely, by placing impediments which are not contrary to natural and divine law, they may thoroughly rescind them not only as regards civil effects, but also as regards the conjugal bond. For since, for the good of the republic, they can prescribe by their laws a certain form and solemnity for the legitimacy and validity of other contracts, there is no reason why they cannot effect this in the matrimonial contract of infidel subjects.'

"But from this precise Instruction a grave difficulty arises against the opposite opinion. For, while in the Decree it was said, 'and let an Instruction be given,' and the Instruction was composed by order of the Sacred Congregation and exhibited to the Fathers in Particular Congregation so that it might be approved, nevertheless the approval of the Fathers is altogether lacking in it, since it is not found in the Acts of the Sacred Congregation, cf. Collect. S. C. de P. F. n. 1447; whence in the same Collectanea this Instruction is not numbered with the other Decrees and Instructions, but is brought forward in a note separated from the text, and the defect of approval in the Acts is noted.

"Besides, that argument taken from the nature of contract and parity with other contracts is in reality not valid. For marriage is not a civil contract, as Schmalzgr. also asserts, l. 4, tit. 1, n. 367, but a contract existing by natural and divine law. Hence Pius VI, in the Letter to Charles, Bishop of Eger, July 11, 1789, expressly says: 'Whoever thinks ... that marriage, provided the character of sacrament

is absent from it, is nothing except a merely civil contract, and therefore dissoluble by civil power, is mistaken. This is not so; for ... marriage is not a merely civil contract, but is a natural contract by divine law, instituted and made firm before every society; and it also differs from any other merely civil contract by this notable distinction, that in that civil kind consent is sometimes supplied by law for certain causes; but in marriage consent cannot be supplied by any human power.'

"And if a civil Prince could invalidate marriages to be contracted because marriage is a contract, as he can invalidate other contracts, why then could he not also rescind marriages already contracted, at least those not yet consummated, as he can rescind other contracts? And if, according to St. Thomas, children of families are of their own right as regards marriage, and do not depend on the parents themselves, who cannot invalidate the marriages of their children, how would they depend in this matter on a civil Prince invalidating marriage? Hence the same St. Thomas, Quodl. 5, a. 15, says that only by the authority of the Supreme Pontiff can a Statute be established, 'according to which certain persons are rendered illegitimate for contracting, so that, if they even contract, the marriage is dirimently impeded.'

"Therefore marriage, since it is not a merely civil contract, cannot be ruled by civil authority as regards its intrinsic nature, or as regards the matrimonial bond itself. But since it is sacred by its own force, by its own nature, by its own spontaneity, cf. Enchir. Moral., ed. 3, 971, it is fitting that it be ruled not by the command of civil Princes, but by religious authority, which alone can, in the name of God, moderate the sacred and religious contract of marriage. The Church certainly does this by her own right; she is furnished with this power, as regards Christians, because the marriage of Christians is a sacred thing, and moreover is a sacrament. But secular Princes, as regards infidels, certainly not insofar as they are civil Princes, but insofar as religious authority also is said to reside in them, have they too received this power from God? This certainly is that which still must be declared by the Sacred Congregations or defined by the Supreme Pontiff, and consequently still must be demonstrated by theologians, while the matter meanwhile remains under opinion. Indeed the Holy Office and the S. C. de P. F. everywhere declare the marriage of infidels valid, provided it is established that there was no impediment of natural or divine law; nor do they make any mention of another impediment. Cf. S. O., Dec. 15, 1885; E. M. 835, etc.

152. The Impediment of Crime

1. Franciscus, married, attempts to contract marriage with Francisca, his adulteress. After the death of his wife, he again wishes legitimately to contract marriage with Francisca. - Can he validly contract this marriage?

R. Negatively, from c. *Cum haberet* 5, *de Eo qui duxit*, etc.; I. M. 1018.

2. Sempronius, married and faithful, attempts to contract marriage with Sylvia, his adulteress, an infidel. After the death of the wife of Sempronius, he now wishes legitimately to contract marriage with Sylvia, converted to the faith. - Validly?

R. Negatively, from c. *Laudabilem de Conv. infid.* - I. M. 1021.

3. "1. Can an infidel man who before baptism had copula with the infidel wife of another, to whom, the woman consenting and accepting faith of future marriage, he brought death, after the baptism of both, enter marriage with the said woman? 2. Can they contract this marriage if, when they perpetrated those crimes, one party had been Christian?

"R. To the 1st: Affirmatively. - To the 2nd: Negatively." S. C. de P. F., Aug. 23, 1852; I. M. 1021.

4. Seius committed adultery with Seia. Meanwhile Gneus, the husband of Seia, is seized by a grave illness. Seia, seeing this, rejoices in her mind because of the marriage which she hopes afterward to enter with Seius. But the illness of Gneus, although very grave, is not mortal if Gneus undergoes a surgical operation in time. Seia, making use for herself of so good an occasion, in view of the future marriage, herself draws out delays in calling the surgeon, and Gneus dies. Hence Seia immediately contracts marriage with Seius.

It is asked: 1. What is the impediment of crime? - 2. What is to be said to the case as it is set forth? - 3. What if there had been present in the case a mutual matrimonial intention, reciprocally manifested? - 4. What if there had been present in the case a mutual promise or a mutual conspiracy, or both? - 5. What if the crime in the case had become public?

R. To the 1st. Cf. I. M. n. 1017 seqq. It is only to be noted that, although as regards adultery alone, more probably and more commonly a return-promise is not required for a promise made of future marriage, but the acceptance of that promise suffices, nevertheless in the formulas of dispensations of the Apostolic Datary there is the clause: *faith having been given to each other concerning marriage to be contracted after the death of the spouse*; which clause imports a return-promise.

To the 2nd. No impediment is present, because the impediment affects both, and therefore, since in the case there is question of the impediment of crime, and this is a penalty for protecting the rights of marriage lest they be violated for the sake of a future marriage, it is necessary that each one, at least in some way, in perpetrating that crime, act in view of a future marriage, and that this intention held by one be at least manifested to the other. Hence it is clear that, in the case, no impediment of adultery is present, because a promise of marriage was lacking, since nothing is said concerning it. Likewise there was no impediment of homicide, because mutual conspiracy was lacking, as appears from the tenor of the case. Finally there was no impediment of both together, because the view toward marriage was held by Seia alone, and Seius perhaps never even thought of the future marriage. Nor is it valid to object that that intention was sufficiently had in the preceding adultery committed. For this can hold at most in the external forum, by reason of presumption; but not in the internal forum, where not presumption, but truth is attended to, namely if in reality Seius did indeed wish to sin with Seia, but in no way to contract marriage, as happens many times. Nevertheless in the external forum that intention is indeed presumed by law, both if the woman and an alien man concur by common work toward the death of the innocent spouse, and if adultery preceded, with only one party bringing death. Schmalzgr., l. 4, tit. 7, n. 55; De Iustis, *de Dispensat. matr.*, l. 2, c. 16, n. 22; Sanchez, l. 7, d. 78, n. 19.

To the 3rd. Certain persons to whom the present case was proposed judge that the impediment is not present, because the wife did not kill the man, but only permitted him to die, since she was certainly not held by justice to call the surgeon; and because besides it is required, as the doctors

have, cf. Reiffenst., l. 4, t. 7, n. 22, that death follow from machination and not from the lack of skill or negligence of the physician or surgeon. But they are remarkably deceived. For although the wife does not sin in the case against justice, she certainly sins against charity and piety; and this already suffices so that it can no longer be said that she permits the death of the man, but she wills it, and she is the true cause of it, although indirect, by not acting, that is, by not doing that which she could and ought to do. Then she most truly sins against justice; whence not only by charity and piety, but also by justice, she was held in the case to call the surgeon, and by injury, by not calling the surgeon, she acts against her husband. For first, Seia was held to call the surgeon from the office of wife, and consequently from quasi-contract. For Gneus the husband, as the matter practically happens, and in the case happened from the tenor of the case, trusting his wife, entrusted himself to her judgment, vigilance, and diligence, and did not commit himself either to a servant or to another outside person, so that the surgeon might immediately be called and every work be applied for preserving health. Besides, Seia knew, either from herself or from the opinion of the physician manifested to her and, as usually happens, not explained to the sick man, the lethal danger in which the husband was found, and the urgent and absolute necessity of calling the surgeon. Saying nothing to the husband and omitting to call the surgeon, that most cunning woman used a most notable fraud, thus deceiving the husband, and therefore acting altogether with injury. Nor indeed must that machination of death be a physical cooperation toward death, but a moral one suffices, Reiffenst., l. 4, t. 7, n. 21; and if moral cooperation toward death suffices, as it certainly suffices, by mandate, by counsel, is there not in the case true moral cooperation? Is not Seia the true moral cause of the death of her husband? He surely kills you who shuts you in a room where you perish by hunger, and who does not free you by opening the door of the room, when he can and ought to do that most easily. Nor does the authority of the doctors praised make to the matter. For it is one thing that a physician treating unskillfully, or not applying due diligence, or someone else not applying every due assistance to a sick person, for example, be, contrary to opinion, the cause of death; it is another that one intending death deliberately omits to do, for preventing death, what he is most strictly bound to do. The first is voluntary in the cause, by which one does not properly contract morally the malice of homicide, since he neither wills nor notices it, but contracts only the malice of a defect of skill to be had or of diligence to be applied. The other is voluntary in itself, which most properly brings in the malice of homicide. But the authority of the doctors invoked is beside the matter, which is clear from Reiffenstuel himself, who is cited against himself. For after Reiffenstuel, l. c., n. 21, explaining machination, expressly said that for contracting the impediment it suffices "that one of the spouses be the true physical or moral cause of the death of the innocent spouse," he concludes, n. 22: "The doctors commonly infer that then an impediment does not arise if death indeed follows, or follows not by force of the aforesaid machination, but from negligence or from the lack of knowledge of the physician or surgeon, or from elsewhere." It follows not by force of the aforesaid machination: namely there is no question of an unskillful and negligent physician and of one thus killing by his unskillfulness and negligence, whether namely he himself incurs the impediment of crime; but there is question of the one machinating, whether namely he incurs the impediment of crime if death follows not from the machination itself, for example, from the wound inflicted, but from the lack of knowledge and negligence of the physician. Therefore that authority does not make to the matter, and round things are confounded with square things. Cf. De Iustis, *de Dispensation. matrimon.*, l. 2, c. 16, n. 13; Schmalz., l. c., n. 54.

And the whole assertion can be confirmed from this, that a dispensation is conceded with more difficulty if the petitioners killed the spouse by poison than if they had killed him by sword, because they act more treacherously, and the one killed could defend himself less. Now would not a killing be still more treacherous if someone were to deny food to the sick person, from the intention of his death, when he could and ought to give it, or, as in the case, if he were to omit calling the physician?

To the 4th. If there had been present in the case a mutual promise of marriage as regards adultery, the impediment of adultery would certainly be had, since all the conditions of this impediment would be verified. I. M. 1018. The impediment of homicide would not be present, because mutual conspiracy is lacking. I. M. 1019. But the impediment of both together would be present. For adultery and machination of death are present, with the promise of marriage and return-promise, which suffices, so that it be from one alone with the intention of marriage already manifested to the other. I. M. 1020; Sanchez, l. 7, d. 78, n. 2. And this impediment of both together would absorb in itself the impediment of adultery. For adultery induces the impediment of marriage insofar as it induces the danger of machinating toward the death of the spouse, in hope of entering marriage; which machination would be present in reality in the case. But since with that adultery there is had a promise of marriage, which now of itself suffices for establishing the aforesaid danger, Schmalz., l. 4, t. 7, n. 6, 32, 51, hence in reality rather the impediment of adultery with homicide would be had, and thus it would have to be expressed in asking for dispensation. - But if mutual conspiracy had been present in the case, there would indeed be present the impediment of homicide, if namely it were from the intention of marriage; otherwise, as has already been said to the 2nd, the intention of marriage being removed, even with adultery and homicide from mutual conspiracy, no impediment is had, at least in the forum of conscience; for in the external forum that intention would be presumed. De Iustis, l. c., n. 22. But if the intention of marriage had been present, the impediment of both together would also be present. I. M. 1020; Sanchez, l. 7, d. 78, n. 9, 14. For if this impediment is present when there is adultery and homicide with the intention of marriage without mutual conspiracy, all the more is it present if there is also mutual conspiracy. Whence this impediment of both together absorbs that other one of homicide alone, as in the preceding case. But as regards asking for a dispensation, because this is more difficult, it must be added in the petition that both together were present with the promise of marriage, or with mutual machination; or a dispensation can also be sought from the impediment of adultery with spouse-killing, in the first case, and a dispensation from the impediment of spouse-killing with adultery in the other. - But if finally there were present at the same time mutual promise of marriage and mutual conspiracy, two impediments are had, of adultery and of homicide, since all the proper conditions of each impediment are then present. I. M. 1020.

To the 5th. Benedict XIV says that it is established by no example that the Pontiff dispenses in a public impediment of this sort. I. M. 1021. Hence Clement VIII, although supplication had been made to him by most powerful petitioners for a dispensation upon this impediment, with only one of the two machinating, in no way wished to concede the dispensation. Schmalzgr., l. c., n. 65; Pyrrhus Corradus, *Praxis dispens. apostol.*, l. 8, c. 9, n. 8.

153. The Impediment of Error and Abduction

1. Antonius, the father of a family, greatly desired that his son Ioannes should marry a certain Ioanna, daughter of Antoninus, who was living in another city, and whose old and very useful friendship to himself he wished to preserve and strengthen. Therefore Antonius proposed the matter to his son; but he, who did not know Antoninus nor Ioanna, responded to his father: Allow me to think over and weigh this business well. But when the son Ioannes was weaving delays and meanwhile gave no response to his father, the father, insisting on the same matter, said to the son that there was in that city, which he named, a certain Ioanna, very rich and beautiful, indeed more beautiful than all the other girls of that city. Then the son consented to the marriage, and immediately, permission having been obtained, the marriage was celebrated by proxy in the city of Ioanna. After a few days the bride, with great solemnity, was led into the house of Antonius to her bridegroom Ioannes. But he, seeing her and finding that, although she was in reality very rich, nevertheless she was notably deformed, immediately fled from the paternal home and married another girl.

It is asked: 1. What concerning consent and concerning error as regards marriage? - 2. What is to be said to the case?

R. To the 1st. Consent to marriage is essentially required; so that without consent there is no marriage. The reason is that marriage is a contract; and without consent a contract cannot be had.

But, excepting error of servile condition by reason of the diriment impediment positively established by the Church, no error invalidates marriage unless it is substantial. The reason is the very firmness of this state, which both the private good and the public good altogether require. Hence, according to the opinion which St. Alphonsus, l. 6, n. 1012, calls common and more true, not even error concerning a quality giving cause to the marriage invalidates marriage: here also this error is accidental, not substantial, since it neither removes consent nor removes the object of this contract.

Therefore, in order that error of quality invalidate marriage, it is necessary that it be a substantial error. This is verified 1. when the quality is a condition without which there is no consent; for then, the condition not having been verified, consent is not had, which is altogether substantial in marriage, as in any other contract. It is verified 2. when the quality is determinative of the person; for then another person is had, which is altogether substantial in marriage, as its proper object. St. Alphonsus, l. c., n. 1016, adds another third case, namely when the quality is principally intended and the person secondarily. But this third case practically induces great confusion, and speculatively is not true, or it falls back into the preceding two enumerated cases. For first, in marriage, as in any other contract, its object is always that which is principally intended in it; any other intention added over and above is extrinsic to that contract, and neither removes consent nor removes the object; and therefore the marriage is valid. Besides, that principally intended quality is either principally intended because it gives cause to the contract, or it is principally intended because it is the condition of consent, or it is principally intended because it falls back into the object or person, insofar namely as it is determinative of the person; for otherwise it cannot fall back into the person. The first is to be excluded, because, as has already been said, error of a quality giving cause to the contract does not invalidate marriage. Therefore only the second and third remain, and thus we fall back into the two cases already proposed.

To the 2nd. In order that the case may be resolved, it is necessary to see how the father proposed that bride to his son the second time. If this second time the father was proposing to his son a certain girl of that town, by the name Ioanna, the richest and most beautiful of all the girls of that town, the marriage was evidently null, because those accidental qualities determining the individual person induced substantial error, namely concerning the person itself. But if the father, the second time, was proposing to his son that same Ioanna whom he proposed the first time, namely he proposed Ioanna the daughter of Antonius, the only daughter of Antonius, or the firstborn, or the secondborn, etc., the most beautiful and richest of all the other girls of that town, then the marriage is valid. For then the error certainly is not substantial; since that accidental quality of beauty remains accidental in the case. For a person is an individual substance of rational nature: this individual substance is altogether designated by that expression, Ioanna, firstborn daughter, for example, of Antonius. Now from the whole tenor of the case it must be concluded that the father proposed the marriage to his son in this second way. But if in a practical case there were doubt, Antonius and his son would have to be carefully questioned concerning the manner in which that person was proposed to him in marriage, when finally the son furnished his consent to his marriage.

2. Pantaleo entered betrothals in Spain with Leocadia, she herself and her parents consenting. But when afterward Leocadia's parents opposed the marriage, Pantaleo abducted Leocadia by night, led her into England, and there contracted marriage with her.

It is asked: Was the impediment of abduction present in the case?

R. The resolution of the case depends on the question whether he incurs the impediment of abduction who abducts a girl previously duly betrothed to himself. It seems that one must respond: 1. Affirmatively, if the bride has a just cause for receding from the betrothals. For in such a case a true injury is done to the bride, and it is the same as if betrothals had not preceded. - 2. But if the bride has no just cause for receding from the betrothals, there is controversy. Sanchez, *de Matr.*, l. 7, d. 13, n. 15, and others affirm from c. pen. *de Rapt.*, where it is said: "That man ought not to be called an abductor, since he had the consent of the woman; and he betrothed her before he knew her, although the parents protested." Therefore "the marriage is null if the woman is taken away unwilling, otherwise if willing, even if the parents are unwilling; and in the beginning of the text it is not said that abduction does not intervene because betrothals preceded, but because the woman consenting was abducted." St. Alphonsus, l. 6, n. 1109. - La-Croix, l. 6, p. 2, n. 636, and others deny it, because the bride is compelled to this which she was bound to do; and thus it is said in cited c. 6, *de Raptoribus*: "That man ought not to be called an abductor, since he had the consent of the woman, and he had betrothed her before." - Schmalzgr., l. 5, tit. 17, § 1, n. 37 seqq.; Lessius, *de Iust. et Iur.*, l. 4, c. 3, dub. 8. - But as regards excommunication, cf. here the treatise *de Censur.*

3. Celerinus abducted Laura, and led her by force into the house of Paternus. After Laura remained in that house for a long time, and she herself now consents spontaneously to the marriage, both Celerinus and Paternus wish to marry her.

It is asked: Who in the case can marry Laura?

R. If Celerinus, by his own will, with no mandate received, abducted Laura so that she might marry Paternus, each of the two can marry her, although she is in the power of each. For Paternus then did

not abduct her, and Celerinus did not abduct her for the sake of contracting marriage with her. But if Celerinus abducted her for this end, of contracting marriage with her, he cannot marry her so long as she remains in his power, even if Laura now of her own accord and most freely enters marriage. In order that Celerinus may be able to marry her, it is necessary that she first be restored to a safe place, outside his power. Finally, if Celerinus abducted Laura by the mandate of Paternus, then the latter is understood as the abductor, and consequently cannot marry Laura in the case. For what one does through another is reckoned as done through oneself. But then Celerinus can marry Laura. For the impediment of abduction is not had between the abducted woman and an abductor who abducts the woman for another, not for himself, so that namely she may be joined in marriage with another, not with the abductor himself. The reason is "because the penalty of that Decree is that between the abductor and the abducted woman marriage cannot stand so long as the abducted woman is under the power of the abductor; and therefore it supposes that the abduction is destined to this, that the abductor may marry the abducted woman; therefore there will be no place for those penalties when the abduction is done for the sake of entering marriage with another." Sanchez, *de Matr.*, l. 7, d. 13, n. 6; I. M. 1024.

154. Clandestinity

1. Gertrudis, a widow, has until now had domicile under the parish of St. Mary, with the brother of her deceased husband. Wishing to pass to second vows, leaving there her own furnishings, she betakes herself to the paternal home under the parish of St. Nicholas; where, in order that she may make the matter pleasing to her father, she intends to remain; so that after fifteen days, the banns having meanwhile been made, she can be joined in marriage.

It is asked: To which parish priest belongs, in the case, the right of celebrating the marriage?

R. Gertrudis the widow, when she betakes herself to the paternal home, either sincerely has the mind of remaining there and of contracting a new domicile, or she does not have it. - If the first: the celebration of her marriage belongs to the parish priest of the Church of St. Nicholas, under which the paternal house is situated. This is proved by the resolution of the S. C. C., Feb. 20, 1723, which judged valid a marriage contracted by two inhabitants of Cesena, who, in order to avoid the troubles from parents, had secretly fled to Forli, and there had celebrated marriage before the parish priest of St. Blaise, unexpectedly caught up in the matter. Indeed by that principle the Sacred Congregation judged that a marriage of this sort, although clandestine by law, was valid, because the woman had already confirmed by oath that she had come to Forli so that she might remain there with a sincere mind and choose her domicile with her maternal grandmother, who was living under the same parish of St. Blaise and whom she asserted to be her guardian or curator. From this species of fact it is openly evinced that, for the validity of marriage, that parish priest is to be judged proper in whose parish at the time of the contract the contracting parties dwell and to which they have gone so that they might remain there with a sincere mind. - If the second: if namely Gertrudis sought the paternal home not indeed with the mind of contracting domicile there, but with the sole mind of celebrating marriage there, so that namely she might make the matter pleasing to her father, then the celebration of the marriage of the same Gertrudis belongs to the parish priest of St. Mary in such a way that, if it

were celebrated otherwise, the marriage would not be valid, just as is expressly had from the S. C. C., Feb. 22, 1631; Cas. Consc. Bonon. Dioec., year 1768, month of July, case 2; I. M. 1026.

2. Two persons originating from the place Spezzano, but dwelling in the place called Maranello, in the dispensation from the banns obtained from the bishop, erased the word Maranello and substituted Spezzano. The parish priest of Maranello, for that reason, having inspected the document, sent them to Spezzano. But the man, after two children had been received, left the woman and elsewhere married another.

It is asked: Was the first marriage valid?

R. Negatively, because namely it had indeed been celebrated before the parish priest of origin, but not before the parish priest of domicile. S. C. C., Nov. 18, 1702; I. M. 1026.

3. In a certain diocese the practice flourishes that often spouses pass from one parish into another parish of the same city, and contract marriage before a parish priest who is not proper, namely of the new parish in which they place their domicile. To avoid grave damages which can arise from this, parish priests mutually, yet without any writing, delegated to themselves the faculty of assisting at the marriages of new parishioners, and they did this with the Ordinary of the place approving.

It is asked: Are the marriages in the case valid?

R. Affirmatively. For from the Council of Trent, sess. 24, c. 1, *de R. M.*, for a marriage to be validly contracted before a parish priest who is not proper, the permission of the proper parish priest or of the Ordinary is required. But in the case permission of this sort is had; since a general permission is a true permission, nor does the Tridentine decree require a particular permission. Likewise habitual permission is a true permission, nor does the Tridentine decree require an actual permission. Besides, permission given only by living voice is a true permission; nor likewise does the Tridentine decree demand permission consigned in writing. This is confirmed from the Resolution of the S. C. C., March 18, 1893. Cf. Reiffenst., l. 4, tit. 3, *de Clandest. despons.*, § II, n. 18. Hence even permission given in writing by the parish priest suffices for contracting marriage before a priest to be chosen at the discretion of the contracting parties. S. C. C., June 15, 1586. But although marriages of this sort are valid, nevertheless a permission given generally is illicit and to be disapproved; rather a special and express permission is to be given in occurring cases, unless a grave reason for acting otherwise in some particular place is excluded, in the judgment of the Ordinary. The reason is that otherwise the aim of the Decree of the Council of Trent is frustrated in great part; and it is confirmed by the Response of the S. C. C., Dec. 22, 1891.

4. Paschalis, a priest, by permission of the parish priest, was present at the marriage of Lucius and Lucia. But on the preceding night, the parish priest, seized by a grave illness, had died. Hence, the matter having become known after the marriage had already been contracted, doubt began concerning the validity of such a marriage.

It is asked: What is to be said to the case?

R. If the death of the parish priest was commonly unknown when the marriage was contracted, the marriage was valid. But if it was not commonly unknown, then the marriage was invalid. The reason is that it is a general rule that, the one delegating being dead and the matter still intact, the power of the one delegated for one special and determined act in favor of some determined person perishes. But the case is excepted in which the death of the one delegating is commonly unknown; for on account of common utility, then, according to the commonly handed down rule, common error sustains the value of those things which are done by the delegated person. Lugo, Resp. Mor., l. 1, d. 20 and 35; Sanchez, *de Matrim.*, l. 3, d. 22, n. 55-55; l. 8, d. 28, n. 72, 73, 89; Baller., *de Matr.*, Op. Mor., n. 1231.

Hence the marriage is also valid if the parish priest had secretly revoked the permission of assisting at the marriage, legitimately conceded, while common ignorance of the revocation stands, because the permission is still retained by reason of the title initially had and the common error. Thus Sanchez, l. c.; Lugo, l. c. But in reality here the application of the doctrine of common error is altogether difficult, for the error in the case is only private and particular. Perhaps it would be better said that the marriage is valid because that occult revocation, as also a merely internal revocation, can produce no effect until it is sufficiently manifested and made known to the party. - A deacon who is publicly considered a priest, delegated by the parish priest, is validly present at marriage. Sanchez, l. 3, d. 22, n. 61; De Iust., l. 2, c. 19, n. 72. Indeed even a layman who by common error was held as a priest, and obtained from the parish priest the faculty of assisting, would also validly assist. De Iust., l. c.; Bonacina, *de Matr.*, q. 2, p. 8, n. 30. Likewise the parish priest himself whose jurisdiction has occultly ceased, for example after resigning the parish, would validly assist.

5. Eligius and Vibiana, having set out from France into Spain so that they might remain there for a month, and thus acquire a quasi-domicile, and then be able to celebrate marriage, after a whole month had passed, celebrated marriage before the parish priest of the place and witnesses, and returned to France the following day.

It is asked: Was the marriage valid in the case?

R. The resolution of the question depends in the case on the time required for acquiring a quasi-domicile. Schmalz., l. 2, tit. 2, n. 19, raises the question: "To how much time ought this purpose of remaining extend itself, so that someone acquires a quasi-domicile and is judged not a guest but an inhabitant and resident?" And he responds: "Sylvester, Sanchez, and others think that it is necessary that he wish to dwell there for the greater part of a year. Those seem to think more conformably to the Law who say that the purpose of dwelling for some months suffices, especially if a house, room, shop, etc., has been rented. Thus Navarrus, Suarez, Laymann, and most recently Fr. Friderich." Fr. Ballerini also holds thus, Comp. Fr. Gury, n. 839; and Fr. Gury, n. 846, is content even with one month. But from the Sacred Congregation of the Council, June 7, 1867, habitation is required for the greater part of the year. Only one month would suffice if there were question of the United States of America, from a special Decree of the same S. I. C., May 6, 1886, approved and confirmed by Leo XIII. Hence it is clear that the marriage of Eligius and Vibiana cannot be held as valid. Cf. Lugo, Resp. Mor., l. 1, d. 37; Enchir. Moral. 1026; I. M. 1026.

6. Bertha, a Catholic woman, having domicile at Rome, enters marriage with a certain English Protestant man in the house of the English Legation. Now, desiring to enter a Catholic union

with a Catholic, she asks whether the aforesaid union was valid.

R. Negatively. S. O., Aug. 1, 1900; M. E., v. 12, p. 241; A. S. S., v. 33, p. 211.

155. Dispensation of Impediments

1. The faculty is customarily granted by the Holy See of dispensing in the third and fourth degrees of consanguinity and affinity, simple and mixed only, and in the second, third, and fourth mixed degrees, but not in the second degree alone as regards future marriages; but as regards past marriages, even in the second degree alone, provided that it in no way touches the first degree, with those who are converted from heresy or infidelity to the Catholic faith; and, in the aforesaid cases, of declaring legitimate the offspring received. It is asked: 1.º "Whether this faculty of dispensing in the degrees of affinity includes affinity contracted illicitly or not. And if the response be affirmative, how it can be dispensed by the said missionaries, if it always touches the first degree; and: whether this faculty of dispensing in the degrees of consanguinity and affinity is understood also for Catholics, since the privilege says: with those who are converted from heresy or infidelity to the Catholic faith?

R. As regards the first doubt, in which it is asked whether the faculty of dispensing in the degrees of affinity includes affinity contracted illicitly or not, the answer must be: Affirmatively. But in the remaining matters the answer must be: Negatively." S. O., Oct. 19, 1712, Collect. S. C. de P. F. n. 1229.

However, the following other Decision is had, which is later: "It must be answered, by way of instruction to Monsignor the Archbishop of Corfu, that by virtue of the words: of dispensing in the third and fourth degree of consanguinity and affinity, simple and mixed only, and in the second, third, and fourth mixed degrees, but not in the second degree alone as regards future marriages, he can dispense with all his diocesans. But as to the other part of the said § 6, contained in these words: but as regards past marriages, that is, marriages, even in the second degree alone, provided that it in no way touches the first degree, the aforesaid Monsignor Archbishop can dispense only with those who are converted from heresy or infidelity to the Catholic faith; warning also the above-named Monsignor Archbishop that in practice schism is joined to heresy." S. O., Mar. 13, 1736, Collect. cit. n. 1231; Comp. Priv. Soc. Iesu n. 390.

2.º Concerning the faculty of dispensing in the second degree with converted heretics, it is asked: Whether this is permitted in the case in which one party of the contracting parties is such, and presses for the favor, or whether both must be converted?

R. Either the matter is of two heretics, of whom only one has been converted to the Catholic faith, the other remaining in the state of heresy; or of two persons, of whom only one is a heretic, while the other is a born Catholic. In the first case it is required that both be converted to the Catholic faith; but in the second it is enough that one only be converted." S. O., Sept. 26, 1709, Collect. cit. 1228.

Yet there is also another Decision as regards the aforesaid faculty, of the following tenor: "By past marriages... are understood not just any unions whatever, even fornicarious ones, but only those which, according to the customs of the regions either of infidels or of heretics, have the form and

figure of marriage and are held as legitimate marriages, which nevertheless are void. And there are understood marriages: 1.º of the faithful with infidels, entered without apostolic dispensation on disparity of cult; 2.º of Catholics with heretics; 3.º of heretics with infidels, or among themselves... when namely in the first and second case the other party is converted to the Catholic faith, and in the third case whether one party only or both parties are converted to the faith." S. O., Sept. 16, 1824, Collect. cit. n. 1235, 1463.

Moreover by the same faculty power is given also as regards marriages contracted invalidly after the conversion of one party on account of the aforesaid impediments; and as regards mixed marriages formerly contracted invalidly, although the heretical party is now converted. Besides, a faculty is given of dispensing with a converted infidel who before conversion contracted with a baptized non-Catholic party in the aforesaid degrees. But as regards that particle *and*, whether it is to be understood copulatively or disjunctively? "The words of the Formula are to be taken thus: that the granted faculty is understood as a faculty of dispensing both from the impediment of consanguinity and from the impediment of affinity, but separately; not, however, when both impediments concur in one and the same case." S. O., July 2, 1884, Collect. S. C. de P. F. n. 1245. Cf. Collect. ad usum oper. apost. Soc. miss. ad ext. n. 31; Comp. Priv. Soc. I. n. 390.

2. "The petition having been reported, sent by the S. C. de P. F. to the Holy Office, of the capitular vicars of the diocese of Tuam in Ireland, who proposed the doubt whether, since they have the faculty of dispensing in the third degree, they can use it in favor of those who had already contracted marriage knowingly within the prohibited degrees and in fraud of the law, against the express prohibition of the Council of Trent, or whether a new particular dispensation of this Holy Office is required; the Eminent Lords decreed: That it should be rescribed that in the Formula of faculties a distinction is made between the faculty of dispensing from impediments for marriages to be contracted and for marriages contracted, which is restricted to those converted from heresy; and that for marriages contracted knowingly with an impediment, a special faculty is required." S. O., Dec. 22, 1723, Collect. cit. n. 1230.

Here also another much more recent Decision is had: "Whether the faculties of the Formularies, by which power is given of dispensing in matrimonial impediments, are valid also when there is question of a marriage contracted nullly, both parties, while it was being contracted, being conscious of the nullity?...

R. The faculties in question are valid also when both parties are conscious of the nullity of the marriage already entered." S. O., July 2, 1884, Collect. S. C. de P. F. n. 2187; Collect. ad usum oper. apost. Soc. miss. ad ext. n. 31. 6.-9.º; Compend. Privil. Soc. Iesu n. 390.

3. With what extension is the aforesaid faculty of dispensing in consanguinity and affinity to be understood?

R. 1.º An indult of relaxing the impediment of affinity, granted without limitation, extends to relaxing both that which arises from licit intercourse and that which arises from illicit intercourse.

2.º An indult of relaxing the impediment of affinity from conjugal intercourse extends also to the impediment of public honesty, which is necessarily connected with it.

3.º A faculty delegated generally of dispensing as regards some degree of consanguinity or affinity extends to the same degree duplicated or multiplied, proceeding from both parents. S. Poenit., Apr. 20, 1883, Collect. cit. n. 1244.

4.º The word *simple* and *mixed*, as regards a degree of consanguinity or affinity, simple or mixed, can be understood in three ways. 1.º *Simple* excludes only the mixture of unequal degrees on either side; *mixed*, on the contrary, includes inequality of degrees on either side. 2.º That is called *simple* which excludes the multiplication of consanguinity or affinity; *mixed*, on the contrary, that which includes it. 3.º That is called *simple* which excludes another impediment diverse in species; *mixed*, that which includes it, e.g., consanguinity mixed with affinity, with spiritual relationship, etc.

Now in the preceding faculty the word *simple* and *mixed degree* is understood, in the first sense, of inequality of degrees; and thus those words, *mixed degree*, understood in that way, comprehend not the same degree mixed with some nearer one, unless this is said in express words, but with some more remote one only. Hence the faculty of dispensing in the third degree simple and mixed does not confer the power of dispensing in the third degree when, for example, on the part of one of the contracting parties it reaches the second, but only when either both contracting parties touch each other in the third degree, or one is distant from the common stock in the third degree and the other in the fourth. Likewise that word, *simple and mixed degree*, is understood also in the other sense, concerning multiple consanguinity and affinity.

Wherefore the Holy Office, June 15, 1875, declared that Ordinaries "who enjoy the faculty of dispensing in the third and fourth degree of consanguinity and affinity, simple and mixed only, and in the second, third, and fourth, but not in the second alone as regards future marriages, can dispense in the third and third, in the fourth and fourth, in the third mixed with the fourth, and also in the third and fourth mixed with the second, whether the degree arises from one stock or from multiple stock." Collectan. cit. n. 1243.

4. "Whether it is lawful for vicars apostolic in England to use the faculty of restoring the right of asking the conjugal debt when it has been lost from some cause, if the other party was heretical?

R. The vicar apostolic, by virtue of the faculties which have been granted to him by the Holy See under Form 2, n. 8, namely, of dispensing upon the impediment of crime, neither of the spouses however plotting, and of restoring the right of asking the debt when lost, can restore to the right of asking the debt the Catholic spouse who has validly married with a heretic." S. C. de P. F., July 19, 1782, Collect. cit. n. 1564; Collect. oper. apost. ad usum Soc. miss. ad ext. n. 31. 8.º; Compend. Privileg. Soc. Iesu n. 390.

5. "It often happens that confessors ask from the petitioner (the Vicar Apostolic) the faculty of dispensing concerning restoring the right of asking the debt when lost; but he does not know how he is to connect the final member of the faculty, *and of restoring the right of asking the debt when lost*, with the clause sounding thus: *and in the dispensation the tenor of such faculties is to be inserted with expression of the time for which they have been granted*, since nothing is given in writing.

R. Let the dispensation be given orally, provided that the faculties have not expired in the one dispensing." S. O., Dec. 3, 1765, Collect. ad usum oper. apost. Soc. miss. ad ext. n. 31. 8.º 10.º; Compend. Priv. Soc. Iesu n. 390.

6. "Whether the faculty of dispensing in the impediment of spiritual relationship, besides between the one lifting and the one lifted, is to be understood of spiritual relationship arising from baptism only, or also of the same relationship arising from confirmation?

R. To arise (sic) both from baptism and from confirmation." S. O., July 2, 1884, Collect. S. C. de P. F. n. 1252. Cf. Collect. ad usum oper. apost. Soc. miss. ad ext. n. 31. 9.º; Compend. Privileg. Soc. Iesu n. 390.

7. Anastasia, after obtaining from Mauritius a promise of marriage to be entered in the Church as soon as possible, enters a civil marriage with him. After this has been entered, Mauritius delays the fulfillment of the promise made; and when he already seemed determined to contract marriage in the Church, he has a dispute with the parish priest on account of some contract to be drawn up, so that, angered, Mauritius no longer wishes to go to the Church, nor to see the face of any priest any more. Prudently and cautiously, by exhortation, sorrow, and other efforts, Anastasia tries to bend Mauritius and bring him back to Christian sentiments, but all things fall in vain. Wherefore, several years having now passed in this unhappy state, and since they are now living in another region, Anastasia asks from the confessor that he himself be willing to bring a remedy to so great an evil by seeking a dispensation from the Holy See, yet without the husband noticing; for there is danger that, if he knows the matter, he will recede from the marriage and leave her with the children, not without grave scandal, since all in that place think them joined in legitimate marriage.

It is asked: What to the Case?

R. In the Case no dispensation can be applied except one *in radice*. But this, although rarely, and only when a very grave urgent cause is present, is granted even in the case of a civil marriage. The difficulty in such a case of civil marriage is only on the part of consent, namely whether the party who does not consent to an ecclesiastical marriage truly consents to marriage, and not rather to mere concubinage. Speaking absolutely, there is no doubt that in such a civil marriage sufficient consent can be present, so that afterward, with the Pontifical Dispensation acceding, it can be a true marriage. For since for marriage in itself nothing else is required except natural consent to an indissoluble union ordered to the proper end of marriage, the procreation of offspring, consent of this sort can well have place in a civil marriage, which cannot be a true marriage only on account of the extrinsic impediment of clandestinity. Therefore, this having been removed through dispensation, a true marriage arises. If therefore it is established that there is true consent to marriage, and a just and proportionate cause is present, the dispensation *in radice* can indeed be sought. Now, in the Case, as it seems, since no scandal is to be feared if the dispensation is granted, since one party refuses to renew consent, or at least there is grave danger that he may not again consent to marriage, since the defect of clandestinity and the civil marriage only entered are hidden, and since a cause truly and very grave is not lacking, it seems that the confessor can seek the aforesaid dispensation, explaining all the

circumstances of the case and first obtaining the recommendation from the Ordinary. S. Poenit., Aug. 12, 1882, Zitelli, *de Dispens. matr.*, pag. 105; I. M. 1050.

156. Value of Dispensation

1. Didacus and Aloisia sought from the Holy See a dispensation upon the impediment of consanguinity. The reason brought forward was that Aloisia was without dowry, and Didacus intended to marry her thus without dowry and at the same time to endow her sufficiently. The dispensation having been obtained, and the marriage having been entered, after quarrels arose with Aloisia, Didacus claimed that he should pass to other nuptials because of the nullity of the prior marriage, the invalidity of the aforesaid dispensation standing. For it had inadvertently been left unmentioned that Aloisia had a certain small dowry; and Didacus in reality had insufficiently endowed Aloisia before marriage, since he had assigned only the sum of 500 ducats for the children to be born from the nuptials soon to be contracted.

It is asked: What to the Case?

R. The dispensation was valid in the Case; and therefore the marriage was rightly contracted. Wherefore Didacus cannot marry another. For first, the dowry of Aloisia, considering her condition, was insufficient, and the reticence concerning it, made in simplicity without deceit, was not the cause of the concession, and consequently the concession was not invalid. It is the same that a woman be without dowry and that she be insufficiently endowed. De Iust., *de Disp. matr.*, l. 3, c. 3, n. 20. The Supreme Pontiff is moved to succor a poor female petitioner who, since she either has no dowry or has an insufficient one, is in danger either of remaining unmarried with danger to the soul, or of being compelled to marry an unworthy or unequal man. Therefore, all deceit being removed on the part of the female petitioner, the Supreme Pontiff is equally moved to dispense, whether the petitioner has no dowry or has only a small and insufficient one. But that Didacus did not endow Aloisia in a competent quantity does not harm the validity of the dispensation, since when several causes are set forth, it is enough that the motive cause on which the Dispensation rests be true. Now the motive cause in the Case was that Aloisia had been without dowry. The other cause, that Didacus also wished to endow her, was only an impulsive cause, which does not render the dispensation null, and which besides Didacus at that time also set forth in good faith. S. C. C., July 4, 1722; Giovine, *de Dispens. matr.*, Consult. Canon., v. 1, § 121; I. M. 1036, 1037.

2. "Whether the non-observance of the clause customarily appended in dispensations: *some alms having been given according to the judgment of the Ordinary*, imports the nullity of the dispensations?

R. Negatively." S. Poenit., June 10, 1876.

3. "The rescripts of the Sacred Penitentiary in matrimonial causes, when public incest has been present, contain at present the following clause: *Scandal having been removed, insofar as it is present; especially through separation, if it can be done.* In these most wretched times it not rarely happens that the separation of the petitioners cannot be obtained, either because they already have several children to be educated together, or because they can live nowhere else; and then it can scarcely be understood what other reparation of scandal ought to be exacted before the

dispensation is granted. We therefore ask that the Sacred Penitentiary may kindly be willing to declare whether this clause, *scandal having been removed*, must so necessarily be fulfilled that, if it is omitted, the dispensation has been granted nullly.

R. Separation is to be preferred to other modes of reparation of scandal; if this cannot be done, the scandal is to be repaired, but the mode of repairing the scandal is remitted to the prudent judgment and conscience of the Ordinary, according to the requirements of each case. In the case in which separation has been omitted and the scandal has been repaired in another way, let him acquiesce; otherwise, if in some case he has omitted the reparation of scandal, let him be silent and conduct himself more cautiously in the future." S. Poenit., Apr. 12, 1889, Collect. S. C. de P. F. n. 1496, 1498; I. M. 1046.

4. "In the sheet of faculties which the Holy See grants to vicars apostolic, it is had thus: n. 10.º These matrimonial dispensations, namely 6, 7, 8, 9, are not to be granted except with the clause: provided that the woman has not been abducted, or if she has been abducted, that she is not in the power of the abductor; and in the dispensation the tenor of such faculties is to be inserted with expression of the time for which they have been granted. Now, in the time of persecutions which raged in some places, matrimonial dispensations were not even delivered in writing, but orally. But in later times, in dispensations of this sort, it has indeed been inserted that they are granted from the faculty obtained from the Holy See; but by some, neither was the time expressed for which the aforesaid faculty had been granted to the vicars apostolic, nor was the clause set forth: provided that the woman has not been abducted. But this gives rise to doubt because of what is found in Bullar. Bened. XIV, t. 2, pag. 223. It is therefore asked whether the aforesaid dispensations of this sort are licit, or at least valid?

R. The omission of the clauses does not harm the validity of the concessions, provided that in reality the woman has not been abducted, or, if abducted, that she is not in the power of the abductor." S. C. de P. F., Feb. 11, 1804, Collect. n. 1484, 1486, 1487, 1491, 1492, 1494; Collect. ad usum oper. apost. Soc. miss. ad ext. n. 31. 10.º; Comp. Priv. Soc. Iesu n. 390.

5. "It has happened sometimes that, in the petitions which are made to the Holy See for matrimonial dispensations, it was set forth by the Ordinary of the male petitioner, through error, that the female petitioner belonged to the same diocese, whereas by origin and domicile she was of another diocese. Therefore, the favorable Rescript having been obtained, whether through the organ of this Sacred Penitentiary or through that of the Sacred Datary, the doubt has arisen concerning the validity or liceity of the execution. To remove it, humble supplication is made that it may deign to declare:

1.º Whether, considering the norms given by the S. U. I. on Feb. 20, 1888, the dispensation can be validly executed by the Ordinary of the male petitioner, who gave the testimonials, when through error it was said in the same testimonials that the female petitioner was of the same diocese, whereas both by origin and by domicile she belonged to a different diocese?

2.º Supposing that such a dispensation can be validly executed, can it also be executed licitly, without a new recourse to the Holy See?

R. To both, affirmatively; but if the error has been noticed, it must be corrected." S. Poenit., Feb. 6, 1895, M. E. v. 9, p. 1, p. 10.

6. Iulius, desiring to contract marriage with Iulia, his kinswoman in the fourth degree, seeks and obtains a dispensation, Iulia being unaware of Iulius's desire and of his petition for dispensation, since she was unaware also of the existing impediment.

It is asked: Whether the dispensation is invalid in the Case?

R. When the impediment necessarily affects both contracting parties, as do consanguinity and affinity, which cannot affect one only, it is enough that the dispensation be obtained or accepted by the other, so that it may benefit also the other who is ignorant. For dispensation extends to necessarily connected things. But the dispensation of a man for contracting with a woman is annexed to the dispensation of the woman for contracting with the man. And by the very fact that one of them seeks or accepts the dispensation, he becomes able to contract with the other. But this cannot be done unless each is made able. Therefore that dispensation will benefit the other who is ignorant. And it is confirmed, for when the marriage was void because of an impediment of this sort unknown by the other party, the spouse conscious of the impediment can, after obtaining its occult dispensation and without manifesting it to the other spouse, and without manifesting the impediment, simulatedly seek a renewal of consent in marriage.

But if the impediment were of one party only, because one only, for example, has vowed chastity; or if it were so common that it is entirely diverse in each, as if each had vowed chastity, then it is necessary that the one who is affected by the impediment, and if it is both, that both, accept the dispensation, although it can be sought and obtained without his mandate. The reason is that the dispensation is directly obtained for the one having the impediment; nor, when obtained for one, is it obtained by a certain necessary consequence for the other, as happens in the former Case. Therefore he who needs it must know it and accept it; and if each needs it, each must know it and accept it, speaking of the ordinary mode of dispensation.

Therefore, since in the proposed Case the discourse is of an impediment affecting both parties, namely of consanguinity, although the dispensation was sought and obtained while Iulia was unaware, nevertheless it also benefits her. Wherefore, if Iulius afterward manifests to her the desire of marriage, he will be able to contract marriage validly with Iulia, although neither the pre-existing impediment nor the obtained dispensation is manifested to her; and much more if, after the impediment has been manifested to her, the obtained dispensation is also manifested and is accepted by her. Sanchez, l. 8, d. 26; I. M. v. 1, n. 249; v. 2, 1044, 1050.

7. Flaminius, seized by love of Flavia, his kinswoman in the third degree, sought and obtained a dispensation from this impediment. But afterward, Flavia having been left, wishing to marry Flaminia, also his kinswoman, but in the fourth degree, he sought and obtained another dispensation, no mention having been made of the prior dispensation. The marriage having been entered, after two months Flaminia dies. Then Flaminius, without a new dispensation, marries Flavia.

It is asked: What to the Case?

R. The marriage of Flaminius with Flaminia is valid. For the dispensation obtained was valid. For the validity of this dispensation it was in no way necessary to express the other dispensation obtained before. For a prior dispensation obtained must be manifested in three cases. The first is when the case is expressed by Law. But by no law has it been provided that mention be made of a prior dispensation in the case set forth. The other case is when, the prior dispensation being kept silent, the Pontiff could not know the whole impediment upon which the dispensation is sought. But this is not verified in the Case. For the second dispensation does not regard the same impediment, nor does it tend to the same marriage. Sanchez, l. 8, d. 21. Besides, since the prior dispensation did not have the effect of an entered marriage, it is as if it had never been sought nor granted. The third case is when through the second dispensation another greater grace is sought, a grace already granted in that matter concerning which someone has already been dispensed. If someone, for example, having obtained a dispensation from a vow of chastity, marries a wife, and then, she having died, wishes to marry another, he is then bound to make mention of the prior dispensation obtained. Since, in the Case, the second dispensation was not in the same matter from which Flaminius had already first been dispensed, but upon a different matter, namely a different impediment of consanguinity and a different marriage, mention of the prior dispensation is not necessary, namely so that the Supreme Pontiff may understand how great a relaxation he is making upon this second marriage. Therefore the second dispensation is valid, no mention of the prior one having been made; and therefore the marriage is valid. De Iustis, l. 1, c. 4, n. 10 seqq., n. 31 seqq., n. 205 seqq.

But, the prior marriage having been dissolved by death, the prior dispensation is no longer valid; and therefore Flaminius cannot marry Flavia without a new dispensation. For a double dispensation, in the Case, which in reality has the effect of marriage, is contrary to the mind of the Pontiff. For it cannot be presumed that the Supreme Pontiff wished to grant a double dispensation from the impediment of consanguinity that would be valid, unless he granted each from certain knowledge. Certainly the prior dispensation was valid. But when the second dispensation was given to execution, then the prior one was already weakened and fell. For the execution of both of those dispensations is now a grace too exorbitant from the common law, too greatly wounding the law. Wherefore, if the Supreme Pontiff had known the prior dispensation when he granted the second, he would have revoked the first, or would have added other conditions by which so great an amplitude of concession would be restrained. The reason, besides, is "because although through the second marriage, for which the dispensation does not serve, he does not seem to renounce the dispensation, yet otherwise, I believe, through the obtaining of the later dispensation... Because, since these dispensations cannot stand together, but are repugnant as regards execution, through obtaining the later one the petitioner is seen to have renounced the prior one into the hands of the Pontiff from whom he obtained the later one... And thus he will no longer be able to use that one, but only the later dispensation... Finally, because granted that the mind of the petitioner was not to wish to renounce the prior dispensation, yet the Pontiff did not wish to grant a double dispensation, so that each would stand, and the petitioner could use either one at will. And if this were sought, he would certainly deny it as very discordant with reason." Sanchez, l. 8, d. 22, n. 19; I. M. 1038.

8. Aloisius, bound by a vow of chastity, obtained a dispensation for the sake of marrying. But afterward, agitated by scruples of conscience, he renounced the dispensation, with the mind of persevering in the vow.

It is asked: Whether, the renunciation of the dispensation having been made, it is lawful for Aloisius to marry?

R. If the mandate of the Pontiff concerning dispensing the vow was given to execution by the delegate, and after this execution Aloisius renounces the dispensation with the mind of persevering in the vow, he can no longer marry. The reason is that through a renunciation of this sort he himself reassumes the vow already dispensed, and obligates himself anew; and since the dispensation has already been given to execution, it is not valid to dispense Aloisius again from the vow. Indeed to renounce the dispensation of a vow imports nothing else than to return to the prior vow, or to be bound anew by that vow which through the dispensation was extinguished. But the dispensation was granted only for dissolving the first vow emitted before it, and by no means for invalidating also the vow emitted again after it. Sanchez, l. 8, d. 22; I. M. 1038.

On Censures

157. On Censure *ab homine*

Audifax, a regular missionary, after he had spoken many things against the Apostolic Delegate, was suspended by him from order and from office. Audifax, sent by his Superior to another mission, is absolved from the suspension laid upon him by the Apostolic Delegate of this mission.

It is asked: What to the Case?

R. Since Audifax was suspended through a censure laid down *ab homine*, he surely could not be absolved from this censure by the Apostolic Delegate of another mission, although the latter was strong with the same authority as the other Apostolic Delegate. Although Audifax changed domicile and no longer depends on the former Apostolic Delegate, nevertheless, as regards absolution from the censure laid upon him, he is still dependent on him. "As regards censures," says St. Alphonsus, l. 7, n. 72, "laid down *ab homine*, if the censure is borne by way of a particular sentence against a determinate person, that person cannot be absolved except by the one bearing it, or by his superior, or by his successor or delegate. It is certain and common." And Suarez, d. 7, s. 2, n. 26: "One must distinguish," he says, "concerning one excommunicated by his bishop either through a general sentence or through a special one. For, if it is in the former mode, he can be absolved by another bishop to whose diocese he has transferred his domicile... But if he has been excommunicated through a particular sentence, he cannot be absolved by another judge, even if he has transferred domicile elsewhere, because the case was already begun before another judge, who consequently acquired as it were a permanent jurisdiction in such a case, and in those things which pertain to it, among which are the censure and absolution from it. But jurisdiction thus confirmed is not taken away because of transfer of domicile, as is clear from C. *Proposuisti de Foro comp*." And Schmalzgr., l. 5, t. 39, n. 85, 87, 93: "It is doubted who can absolve from censures specially laid down *ab homine*? Resp. From these only he who laid it down can absolve, and his successor, superior, or delegate, and no one else... even if the guilty party changes domicile. For he is still to be absolved by him who bore the sentence, arg. C. *Proposuisti* 19, *de Foro comp*.... The reason is that by change of domicile he cannot elude the jurisdiction of the author of the censure... And no one else; for besides those thus far enumerated, the power of absolving from a censure specially laid down belongs to no other. The reason is manifest; for to no other is found granted the dissolution of this bond; and rightly, lest the jurisdiction of judges be disturbed, or their authority be contemned. Exception is made if the guilty party is prepared to offer satisfaction, but on account of infirmity or some other impediment cannot approach the author of the censure in order to be absolved; for then he can be absolved by an equal or inferior judge, an oath having been offered that as soon as he can he will present himself to him to whom by law the absolution belongs, according to C. *Ea noscitur* 13, *Quod de his* 26, *Quamvis* 58, *de Sent. exc.* The reason is that, since a censure is a medicinal penalty, depriving one of many spiritual advantages, it was expedient that, correction being placed, it be removed."

Moreover, the doctrine and prescription of C. *Proposuisti* 19, *de Foro comp.*, is very clear, and is of the following tenor: "You have proposed to us that a certain subject of yours, legitimately cited by you to a case at the petition of a certain adversary of his, because afterward he began to be of another

jurisdiction, intends to decline your judgment. Now we do not believe it to be doubtful to your prudence that he, in the aforesaid case, does not have the right of recalling the forum, as one already anticipated by that forum."

Therefore Audifax cannot be absolved except either by that Apostolic Delegate by whom the censure was laid upon him, or by the Supreme Pontiff, who is the Superior of the author of the censure. Namely, if Audifax offers to the Apostolic Delegate whom he offended by his manner of speaking a fitting satisfaction, the latter is bound to absolve him. But if without reasonable cause he denies absolution to him, then he will be able to have recourse to the S. Congregation de Prop. Fid., and he will certainly obtain absolution from it if he himself is truly penitent.

158. On Burial

1. "When a wife has predeceased within the limits of a certain parish, no burial having been chosen, and the husband declaring that she is to be buried in the ancestral sepulcher of the husband himself, which is in the Church of another parish, supplication was made that it be defined: whether the husband could licitly do this for the predeceased wife?

R. That if the husband has his own burial place, the wife also is to be entombed in it; but if not, in the parish church within whose limits she died." S. R. C., Jan. 15, 1633, n. 601; I. M. 1150.

2. "The chaplain of a confraternity contended against the parish priest of the place that to himself, and not to the parish priest, belonged the right of performing the funeral office over corpses which, unless public cemeteries existed, would have to be buried in the public church of that confraternity.

R. The aforesaid right belongs to the parish priest when the one to be entombed is subject to the parish priest and to the parish within whose boundaries the aforesaid church of the confraternity is." S. R. C., Dec. 10, 1703, ad 20, n. 2123; Nov. 20, 1885, ad 4, n. 3645.

3. Primatius, advocate and parish priest, for the funeral rites of the Marquis de Fugatiis, his parishioner, yet to be entombed in another parish according to the latter's testament, contended against the rest of the clergy present, against the other parish priest of the entombing church, and against the chapter also of the cathedral church, invited with the others, that all ought to proceed under the cross of his parish, that he alone, vested with stole, ought to lead the funeral, and that he should fulfill all the functions of the obsequies. For it is a question, he says, of his own parishioner. - Is this rightly said?

R. Negatively. For 1.º "The corpses of the dead are to be accompanied with one cross only, which ought to be that of the church to which the body of the deceased is borne, provided that the chapter of the cathedral church does not intervene, under which all who accompany the funeral ought to proceed.

2.º The right and burden always belongs, even when the chapter of the cathedral church is present, yet outside this cathedral church, to the parish priest, of putting on the stole and performing all

offices over the corpse of the deceased belonging to his church, until from the place of death it has entered the entombing church.

3.º The same parish priest has precedence over all the clergy, except if the chapter of the cathedral church has been present, which in the accompaniment will proceed after the parish priest himself. In this Case the more worthy member of the cathedral chapter proceeds with stole and cope, which the parish priest does not wear.

4.º If the deceased is to be entombed in another parish church, to the rector of that one church alone, likewise vested with stole, belongs the right and burden of performing the remaining offices there over the corpse, and of preceding all others, not even the parish priest of the deceased excepted, who, when the corpse has been brought to the threshold of the church, should withdraw." S. R. C., Apr. 23, 1895, n. 3854, Decr. sup. exequiis.

159. On Favor toward Heretics

1. Frigerius, for the sake of curiosity, frequents the temples of heretics and assists at their assemblies and offices, together with other Protestants. He himself, however, is internally altogether Catholic.

It is asked: Whether Frigerius incurs excommunication?

R. First, Frigerius does not act rightly and sins. For although to go to the temples of Protestants, for the mere sake of curiosity, without any communication in sacred things, is an act indifferent in itself, and Frigerius does not internally adhere to heresy, nevertheless frequently to go to the temples of Protestants is not without scandal, nor is it without some favor toward heresy and heretics. Besides, since, by frequently going even to the temples of heretics, he is present at their assemblies and offices, there can practically be no doubt that communication in sacred things is had, nor without scandal, since Frigerius is a Catholic and is certainly regarded as such, and wishes to be regarded as such, by the very fact that internally he does not adhere to the errors of heresy. Hence certainly he cannot be excused from excommunication because of favor. This is openly confirmed from the Instruction of the Eminent Cardinal Vicar for parish priests and confessors of Rome. Cf. *Enchir. Moral.* 365, 367, and *Commentar. in Const. Apostolicae Sedis*, ed. 5, n. 9 seqq.

2. Petrus possesses an old and spacious house in Rome in the square called Navona. The Methodist Protestants would like to buy it, so that there they may open a public school and boarding house for boys and girls. Moreover that sale would be altogether useful to Petrus; nevertheless he does not wish at all to complete it before he is certain of its liceity.

It is asked: 1.º What is cooperation in sin, and is it licit? - 2.º Whether Petrus licitly sells the house in the Case? - 3.º Insofar as the response to the second is negative, whether he also incurs excommunication?

R. To the 1st. Cooperation in sin is to concur by some work in the sin of another. As it is illicit to sin, so also it is illicit to cooperate by direct will in sin; and then the cooperation is called formal. But if the cooperation is not toward the sin, but toward some other work which is ordered by the sinner

to the sin, the cooperation is material, and consequently in itself is not illicit. But from the circumstances its liceity or illiceity in the concrete is to be defined.

To the 2nd. Negatively. For there is a sufficiently proximate cooperation, the circumstances considered, toward public harm, through the instruction of boys and girls in Protestantism, especially since the place is very favorable for a school and boarding house of this sort for attracting several families and for gathering boys and girls in no small number. Besides, public scandal is present, namely if it becomes known that a Roman and a Catholic sold a house in Rome to Protestants in the most principal square of the City, so that there a school and boarding house of Protestants might be established.

To the 3rd. Affirmatively. For there seems no doubt that such a deed, by itself, would greatly favor heresy and its propagation in the City.

3. Cornelius, a Catholic, receives several heretical newspapers to which he is subscribed, and reads them only occasionally.

It is asked: Whether Cornelius incurs excommunication?

R. There is no doubt, speaking in itself, that it is a grave sin to read newspapers of this sort by natural law itself, on account of the grave danger of falling away from the faith. Moreover, the reading of them is positively prohibited by the General Decree of the Constitution *Officiorum* of Leo XIII, VIII Kal. Febr. 1896, Cap. VIII, n. 21. But as regards excommunication, the following Decision is had of the Holy Office, Apr. 21, 1880: "Whether those knowingly reading newspapers which champion heresy incur the excommunication of the second article of the Constitution *Apostolicae Sedis*, reserved in a special mode to the Supreme Pontiff? R. Negatively." But although Cornelius, because of the reading and because of the retention of these newspapers, does not incur the aforesaid excommunication, he does indeed incur it because of favor, by reason of the subscription.

160. The Reading of Books of Heretics

1. Antoninus, a bishop, hearing that heretical books are being spread in his diocese, without delay orders them to be brought to himself, so that he may read them, examine them, and, insofar as there is need, proscribe them. Can Antoninus read the aforesaid books of heretics in the Case?

R. Affirmatively. For bishops, according to necessity or time, can well read the books of heretics, C. 1, Dist. 37. And the contrary opinion of certain persons was seen in the Holy Office as too rigorous, Albitius, *de Inconst. in fide*, c. 30, n. 204. Namely, bishops are the born judges of the faith, and to their office it belongs to defend the faith, and therefore to ward off from the sheep committed to them the harmful pastures of faith. Whence it is of their office to prohibit the reading of depraved books, and also, if it is necessary, to denounce them to the Holy See. Leo XIII, C. *Officiorum*; I. M. 1301. Now how could they ever execute such an office unless they read the aforesaid books? *Commentar. in C. Apostolicae Sedis* n. 13, ed. 5; D'Annib., *Comment. in C. Apost. Sed.*, ed. 4, n. 41.

2. Alphonsus, owner of a typographical workshop, and Alfredus, corrector in the same workshop, in which books of heretics have until now been printed, doubt whether they have incurred excommunication, and their confessor himself also doubts.

It is asked: Whether Alphonsus and Alfredus have incurred, in the Case, excommunication reserved in a special mode to the Supreme Pontiff, art. 2 of the first series of C. *Apost. Sed.*?

R. Affirmatively. For first as regards Alphonsus, he cannot indeed be counted among readers, nor among defenders, nor even among printers from the fact that he is owner of the workshop, himself provides the expenses, and by his will and mandate the books are printed. Nevertheless he must be counted among retainers, since he very truly retains them in his own workshop. But Alfredus, because he is corrector, is reckoned among readers. Wherefore both incur the aforesaid excommunication. *Comment. in C. Apost. Sed.* n. 13.

3. Seius, having lapsed into heresy, wrote several heretical books, which he himself was continually reading and correcting in order to prepare new editions. He was converted to the faith, and his uncertain confessor asks whether, besides the excommunication because of heresy, he also incurred excommunication because of the reading of heretical books.

R. The more common opinion affirms. And by the rigor of law and of the law it must be affirmed, because Seius in reality was retaining and reading books of a heretic championing heresy. Yet D'Annib., *Comm. in Const. Apost. Sed.*, n. 41, note 44, says: "I fear lest this be true; for who, in the proper and common meaning, would say that a heretic reading his own books reads books of heretics?"

4. Guido, an editor of books, gratuitously furnishes the expenses of the edition of a heretical book of Vincentius, his friend. Does he incur excommunication reserved in a special mode to the Supreme Pontiff, art. 2, first series, C. *Apost. Sed.*?

R. Negatively, as is clear from the preceding case; because he does not read, does not print, does not retain. Nevertheless he incurs excommunication art. 1, as a favorer of heretics. *Comm. in C. Apost. Sed.* n. 9 seqq.

161. On the Immunity of Ecclesiastical Persons

Lambertus, a priest, owed Iovinus, a priest, 1000 lire, and always deferred their payment. Iovinus cited Lambertus before the bishop, but profited nothing. For Lambertus confessed the debt, promised payment, but did not stand by his promises. Hence Iovinus cites Lambertus before the lay judge. Two priests, associates, are called as witnesses. And thus Iovinus finally obtained payment of the debt. But Lambertus was saying everywhere that Iovinus and the other two priests were excommunicated.

It is asked: What to the Case?

R. A priest can be cited, whether as defendant or as witness, both in a civil cause and in a criminal cause, before a lay judge, yet with permission first obtained from the bishop, who must permit that he be examined in the secular forum, on account of the good of public and private justice. S. C. EE. et RR., Apr. 14, 1616; July 19, 1619. Wherefore Iovinus, since he already cited Lambertus in vain before

the ecclesiastical judge, is not to be disturbed if he now cites him before the lay judge, permission first having been obtained from the bishop. Likewise those two priests, witnesses in the lay judgment, are not to be disturbed if they have first obtained the bishop's permission. Moreover, although Iovinus omitted to seek permission from the bishop, he would not therefore have incurred excommunication; and the same is to be said concerning the two priests who were witnesses. Nor indeed does that excommunication fall upon the judge himself, who pronounced sentence against Lambertus. That indeed is clear from the tenor of art. VII of the first series of excommunications in C. *Apostolicae Sedis*, and from various Declarations of the Holy Office. Cf. *Commentar. in cit. Const.*, ed. 5, n. 20 seq.; I. M. 1170.

162. On the Absolution of an Accomplice

1. Fabia approaches Caius, with whom she recently sinned, for the sake of making sacramental confession before him. Caius does not dare to repel her from the Sacred Tribunal, nor does he dare to absolve. "I cannot," he says, "absolve you from this sin; I do not have jurisdiction; it is necessary that you go to another." Nevertheless, greatly disturbed, he absolves her from the other sins. Caius, sincerely penitent, manifests this to his confessor, who, anxious, doubts whether Caius has incurred excommunication; and suspending resolution, before he absolves Caius or does anything else, he determines to seek counsel concerning this matter from a pious and learned friend.

It is asked: What to the Case?

R. Here first one must note what Cardinal De Lugo has, *de Poenit.*, d. 20, n. 77. Concerning sacramental absolution it must be said that "it cannot be divided or halved, just as neither can confession itself without necessity and urgent cause, since the integrity of confession is of divine law. Whence Suarez adds that even if the superior wished, after the whole confession had been heard, to absolve directly from only the reserved sins, he could not validly do this; but either he must absolve from all sins heard, or from none, because Christ did not give such a power. Yet this does not lack difficulty, nor will it easily be proved that a priest cannot validly, although not licitly, will to absolve from these and not apply the absolution directly to the others, but to hold himself as if he had not heard them." But whatever may be of this, there is no doubt that in the Case Caius could not absolve from the sins of complicity, since in that whole matter he lacked jurisdiction. As regards the other sins, Caius did not lack jurisdiction, but it does not seem that, in the Case, Fabia was truly absolved from the other sins. For since Caius told her that he did not have jurisdiction for absolving her, Fabia in fact received absolution in bad faith, and therefore sacrilegiously. But as regards excommunication, there is no doubt that Caius incurred it in the Case. For first, although he was greatly disturbed, nevertheless since he absolved, and absolved from other sins, therefore he well adverted to what he was doing, and so well that by acting thus he surely wished to avoid excommunication. But he did not avoid excommunication, for he truly absolved an accomplice. And if that man incurs excommunication who even feigns and simulates absolving, how much more he who simply absolves an accomplice.

2. "Titianus, a priest, a slippery occasion having been given, by an unhappy fall lapsed with Anna into grave sin against the sixth precept of the Decalogue. Soon each accomplice repented of

this shameful fault. Since no other priest was present there, Titianus immediately went to another place for the sake of confessing. But Anna, detained by some infirmity, could not go to another confessor. Therefore, sad and sorrowful, she earnestly begs Titianus that he hear her confession. He, doubtful and uncertain, first hesitates; on the one side he is restrained by the law of the Church prohibiting the absolving of an accomplice; but on the other side he would like to help the miserable woman, who otherwise will be without a confessor for a long time. Finally, moved by mercy, he hears Anna in confession and absolves her, thinking that the prohibition of the Church does not press in this difficult Case.

It is asked: What to the Case?

R. Titianus absolved Anna, his accomplice, altogether invalidly, since he wholly lacked jurisdiction over her. Nor did the law cease in that Case, because an invalidating law does not cease on account of any particular inconvenience whatever. From the law itself only the case of extreme necessity is excepted. Therefore Titianus incurs excommunication, unless he was excused from it by good faith. But he must warn Anna that the absolution imparted by him is null and void, so that she may repeat the confession before another." Thus P. Gury 614.

That the absolution of Titianus was altogether void is denied not without merit. For although in the Constitution *Sacramentum Poenitentiae* it is said to be altogether void, nevertheless in the same Constitution jurisdiction is taken away from the confessor as regards a sin of this sort. Wherefore, if the penitent is in good faith, as she seems to be in the Case, it is indeed altogether void as regards the sins of complicity, but by no means as regards the others. S. Poenit., May 16, 1877; I. M. 1291, 1293; *Comment. in Const. Sacram. Poenit.* n. 71, ed. 5.

But it is most true that an invalidating law, as is the law of Benedict XIV in the Case, does not cease on account of any particular inconvenience whatever. For "it is, as it were, contrary to the nature of an absolute incapacity introduced without restriction, and contrary to the custom of laws simply inducing incapacity, which do not receive interpretation from equity and goodness; because a law invalidating acts does not attend to particular cases and reasons, but precisely to the common reason and uniformity, to the common and necessary good and utility." Suarez, *de Leg.*, l. 5, c. 23, n. 3.

But what is said in the resolution of the Case, namely that Titianus incurred excommunication unless he was excused from it by good faith, is precisely that which must be resolved from the proposed Case, as a matter often occurring in practice. Nor indeed would the Case be conveniently resolved practically if, to the penitent asking in the case set forth whether he incurred excommunication, the confessor were to respond thus conditionally: affirmatively, unless you acted in good faith. Now there seems no doubt that Titianus cannot be excused by good faith. For he seems to labor in this matter under an altogether crass and supine error, which does not excuse from incurring this censure. S. O., Jan. 13, 1892.

3. Fulberius and Arcontius, priests, converse among themselves about shameful matters with mutual and scandalous complacency. Wherefore both sin by deed, but without any complicity. After these committed sins, they institute confession to each other and absolve each other. Then they have a doubt whether they have incurred excommunication. For they thought that shameful speech was not certainly comprehended under the prohibition of absolving an accomplice in a sin committed against the sixth precept of the Decalogue. They did indeed

doubt, but if they had known certainly that shameful speech also was comprehended, they would have abstained from that mutual confession and absolution. Moreover, they were ignorant of the Decree of the Holy Office of May 28, 1873; when afterward they came to know it by consulting Moral Institutions, they began to be troubled by still graver anxiety.

It is asked: What to the Case?

R. It seems one must say that Fulberius and Arcontius incurred excommunication. For they were not ignorant of the ecclesiastical law and the censure. They also had a doubt in the particular Case, and they acted in bad faith, and indeed in altogether vincible and crass ignorance, by absolving each other. For with such a doubt standing, they ought at least to have asked others beforehand. Nor indeed was there need to have knowledge of that Decree. For it is a question not of a new law, but of a simple Declaration of a pre-existing law, already known to them. Moreover, ignorance in the Case, if there is any, is certainly not ignorance of fact, but of law. But ignorance of law is scarcely admitted in the external forum, and censures are above all penalties of the external forum. Wherefore there is no doubt that, the matter in the Case being brought before a judge, Fulberius and Arcontius would be declared excommunicated. Cf. *Commentar. in C. Sacramentum Poenitentiae* n. 69, ed. 5; I. M. 1289.

4. Titius, hearing the confession of Berta, with whom, amid consolations, he had exercised touches, although not gravely shameful, recognizes that she had sinned lethally because of the interior pleasure of soul in receiving them, and nevertheless absolves her. Similarly he conducts himself with a friend, with whom he had had dishonest conversations, and together with whom, mutual solicitation having been given, he had gone to visit a bad woman. Finally he absolves Caia, his accomplice in a shameful matter, who was laboring under a long-lasting, although not dangerous, sickness; nor, with Easter time approaching and her relatives exhorting her to be refreshed by the sacred banquet, could she omit communion. No other priest was at hand, nor was there hope that another would come shortly. To this was added that therefore Titius also could not abstain from hearing her confession, lest perhaps Caia's husband be confirmed in suspicion concerning his wife's adultery with Titius himself. Indeed another time Titius, earnestly asked, absolved the same Caia, because she seemed seized by an unexpected sickness, although in the middle of confession it was learned that it was a fainting fit, and meanwhile before she was absolved another priest happened to arrive.

It is asked: 1.º What is a shameful sin, and in what sense is complicity in this sin to be understood according to the Constitution of Benedict XIV *Sacramentum poenitentiae*? - 2.º Whether absolution given to an accomplice is illicit only, or also invalid; and what penalties the confessor absolving an accomplice incurs? - 3.º Whether and what exception concerning absolution to be furnished to an accomplice is assigned in the same Constitution? - 4.º What is to be judged concerning the manner of acting of Titius as regards each thing, as in the Case?

R. To the 1st. A shameful sin, as regards the absolution of an accomplice, is a sin certainly grave, consummated exteriorly, against the sixth precept of the Decalogue, even if it is only touch, sight, or conversation. This is clear from the Constitution of Benedict XIV *Sacramentum Poenitentiae*, and from the Holy Office, May 28, 1873. But complicity is to be taken in the Case thus: that one is to the other a companion of the crime, as is had in the other Constitution of Benedict XIV *Apostolici muneris*. A

companion, and therefore one knowing and willing with another knowing and willing. Of the crime, that is, a companion in the same exterior work gravely dishonest.

To the 2nd. Absolution given to an accomplice is illicit and at the same time invalid, as is established in each Constitution of Benedict XIV just praised. But the confessor absolving an accomplice incurs excommunication reserved in the most special mode to the Supreme Pontiff, as is had in the same Constitutions of Benedict XIV, and in the Constitution of Pius IX *Apostolicae Sedis* concerning censures, and also from the Declaration of the Holy Office, Apr. 4, 1871.

To the 3rd. An exception is indeed had, and it is altogether the only one, and in the cited Constitution of Benedict XIV *Sacramentum Poenitentiae* it is expressed thus: namely, that the accomplice not absolve the accomplice "outside the case of extreme necessity, namely at the very article of death, and then with any other priest who can perform the office of confessor being lacking." But from the other Constitution of Benedict XIV *Apostolici muneris*, any other priest who can perform the office of confessor is judged lacking if "another priest cannot be called or cannot approach without some grave infamy or scandal that would arise." But by this same Constitution it is declared that, if the priest who is an accomplice nevertheless absolves the accomplice at the article of death without the aforesaid necessity, the absolution is valid, although illicit, and the same priest incurs reserved excommunication.

To the 4th. Titius, absolving Berta, does not incur the aforesaid excommunication. For the sin was not grave in the notion of an external act, as is openly said in the Case. He incurs it by absolving the friend; for with him, as is drawn from the whole tenor of the Case, he had gravely dishonest conversations, whence then together, mutual solicitation having been given, they had gone to visit a bad woman. He also incurs the same excommunication by absolving Caia the first time. For although Caia labored under a long-lasting sickness, nevertheless it was not dangerous. Wherefore Caia was neither at the article nor in the danger of death. Nor indeed did Easter time constitute Caia in the aforesaid article or danger of death. Wherefore the necessity of Easter communion did not excuse Titius. From whatever source the obligation of Easter communion is had, from ecclesiastical Law only or also from divine Law, it is certain that Benedict XIV, who knew this obligation, positively excluded this case, since he excepted only the case of extreme necessity, and that at the article of death. Nor is it valid to insist that, on the one hand, Caia's relatives were exhorting her to communion, whence if she had abstained there would have been infamy for her; and that Titius, on the other hand, was pressed to hear the confession by fear of a suspicion of adultery that would arise in Caia's husband. For this twofold inconvenience of infamy does not constitute Titius and Caia in the aforesaid case of extreme necessity and at the article of death. Concerning the article of death the matter is clear. But infamy can easily be avoided. For Titius, from the Constitution of Benedict XIV *Sacramentum Poenitentiae*, has himself as any other priest deprived of jurisdiction. Now any other simple priest, not yet approved, lacking jurisdiction, certainly would not acquire it in the aforesaid case. Therefore neither does Titius. Besides, if another priest lacking jurisdiction were present, then Caia, with a true danger of infamy standing, could, after eliciting an act of contrition, receive Communion. Therefore she can do the same with only Titius present. Moreover, in order that the suspicion of adultery may be avoided, it is not necessary that Titius truly hear Caia's confession and absolve her; but, having been called to hear Caia's confession, if another confessor truly cannot either meanwhile or afterward be called without scandal or infamy, he himself can then, instead of hearing Caia's confession and

absolving her, exhort and excite her to elicit an act of perfect contrition, and declare to her that in straits of this sort she can well receive Communion without Confession and Absolution, by the act of perfect contrition alone, lest perhaps she sin from an erroneous conscience. But Titius, absolving Caia a second time, incurs no excommunication. For her confession truly was in danger of death, although only an apparent one. Real and apparent danger of death are the same here, provided nevertheless, as in the Case, that danger was prudently judged; for otherwise there would be danger to the salvation of souls. Besides, no other confessor was present at that moment. Wherefore Titius could then well hear the confession. The confession having been begun, although afterward both that danger vanishes and another confessor is present, he can by right complete it and absolve Caia. The reason is that the jurisdiction which is had at the beginning of the act perseveres until the same act is completed. "Where judgment has once been accepted, there also it ought to receive its end." L. *Ubi* 30, *de Iudiciis*, Dig., lib. 5, tit. 1.

163. Excommunication of the Canon

Lupus threw a stone at the face of Trepidantius, a priest, who, terrified by the imminent blow, fell, and from the fall poured out no small quantity of blood from his nostrils, although the stone did not touch him. Did Lupus incur the excommunication of the Canon?

R. Negatively. For first, Lupus indeed wished to lay violent hands, but in fact did not lay them; for the stone did not touch Trepidantius. But that Trepidantius fell and poured out blood was beyond the intention of Lupus. Besides, there are two opinions on this matter, and consequently the matter is uncertain, and the excommunication is doubtful; and therefore it cannot be affirmed. St. Alph., l. 7, n. 274; D'Annib., *Comment. in Const. Apost. Sed.*, ed. 4, n. 109, note 12.

164. On the Immunity of Ecclesiastical Asylum

1. A certain anarchist was attempting to place an explosive ball in a certain hidden corner of the church. Arcadius, the parish priest, saw him, and immediately summoned the soldiers who were guardians of public order; entering the church, some extinguished the lit ball, others seized the anarchist, and, his hands having been well bound, brought him to the Quaestor.

It is asked: Whether Arcadius and the soldiers violated the immunity of ecclesiastical asylum and incurred excommunication?

R. Negatively. In the Case there is no question of a guilty person fleeing to the church lest he be seized there by force. But there is question of a wicked man who attempts to profane the church with great harm to it, and perhaps also with great harm to persons. Wherefore Arcadius, the parish priest, by immediately summoning the soldiers to seize the criminal man and to prevent so great a harm, acts altogether rightly. Cf. *Commentar. in C. Apostolicae Sedis* n. 50; I. M. 1187.

165. Excommunication on Account of Violation of Enclosure

1. Since a certain nun violated enclosure for an evil end, and the case is occult, the bishop of the place asks whether he can absolve the aforesaid nun by virtue of the Tridentine faculty, Cap.

Liceat.

R. The difficulty in the Case is from a certain Declaration of Gregory XIII, by which he decreed that the bishop cannot absolve a nun breaking enclosure from an occult excommunication reserved to the Pontiff on account of the Bull of St. Pius V. St. Alph., l. 6, n. 594. The difficulty likewise is from the Responses of the Holy Office, July 18, 1860, where it is also affirmed that the reserved case of the enclosure of nuns is not comprehended in the aforesaid Tridentine faculty. G. 645, 646. But, notwithstanding these things, it seems that at present the bishop can absolve even from that occult case by virtue of the Tridentine faculty. For this faculty, by virtue of the Constitution *Apostolicae Sedis*, persists unmoved as regards all cases simply reserved to the Roman Pontiff in the same Constitution, excepting only those which in the aforesaid Constitution are reserved in a special mode to the Supreme Pontiff. But the violation of the enclosure of nuns is reserved in that Constitution only simply. Therefore it must be said that the bishop, in the Case, can absolve the nun. Cf. Bertagna, *de Casuum reservatione*, pag. 100 seqq. and the authors cited there; Thesaurus, *de Poenis*, p. 1, c. 23, Dico VI; *Commentar. de Censur.* n. 6; *Commentar. de C. Apostolicae Sedis* n. 51 seqq.; I. M. 801, 1101, 1188.

166. On Trafficking in Masses

Titius, a priest and editor of an excellent Catholic daily paper, for the greater diffusion of his newspaper, yearly seeks for himself from the procurator general of a religious order, a kinsman of his, several alms, and indeed rich ones, of Masses to be celebrated everywhere. These he then commits for application to priests who ask to subscribe to his newspaper, retaining for himself from the alms only as much as corresponds to the just price of the subscription. With the greatest diligence he can, he takes care that the Masses are celebrated and that nothing is subtracted from the will of those who offered the alms, both concerning the quantity of the stipend and concerning the time of celebration, with testimony also being given, to whom by law it is due, concerning the completed celebration of the Masses.

One day, speaking about this manner of acting of his with a priest friend, he is warned by him that this is now forbidden under penalty of censure to be incurred by the fact itself, through the decree *Vigilanti studio*, issued by the Sacred Congregation of the Council on May 25, 1893. But Titius immediately responded that this decree is not applied to him, since it regards only booksellers or merchants, who studiously collect alms of Masses, which they then commit to priests for celebration in order to make profit, repaying newspapers, books, or other merchandise in place of money.

It is asked: 1.º Whether Titius rightly interpreted the decree of which there is question in the Case? - 2.º Whether he incurred the penalty of suspension threatened to priests in the same decree? - 3.º What must be done by him in the future?

R. To the 1st. The whole resolution of the Case depends on the resolution of the first Question. Now as regards this first Question, there can be no doubt that Titius did not rightly interpret the decree *Vigilanti studio*. The aforesaid decree regards not only booksellers or merchants, but all. For first, the only reason which could be brought forward by Titius for limiting the aforesaid decree to booksellers and merchants is this: that in the first Doubt, resolved by the S. C. C. in the year 1874, and inserted in the present decree with the other resolved Doubts, the discourse is of booksellers and merchants. But evidently the doctrine of the Sacred Congregation of the Council cannot be restricted

to booksellers and merchants. For the shameful trafficking which the Sacred Congregation disapproves is not shameful trafficking because it is done by booksellers and merchants, but because it is a certain trafficking in Masses. By whomsoever trafficking of this sort is done, it is shameful and damnable.

Besides, this is evident not only from the subject matter, but from the whole tenor of the decree, from its beginning, progress, and end. Now this is the beginning of the decree: "With vigilant zeal this Sacred Congregation has continually applied itself to tearing up and eradicating abuses relating to the celebration of Masses, and has issued several decrees by which it wished every damnable profit in this matter to be removed, and commanded the pious wills of testators and the faith pledged to benefactors to be exactly observed and religiously guarded." Therefore in that decree there is question of tearing up and eradicating abuses relating to the celebration of Masses, by whomsoever they are committed, and not only abuses of booksellers and merchants. Likewise there is question of removing damnable profit on the occasion of Masses, by whomsoever this damnable profit is sought, and not only of the damnable profit of booksellers or merchants. And the generality of the decree appears also from that other clause of the beginning, namely that the mind and desire, indeed the mandate, of the Sacred Congregation is that the will of testators and the faith owed to benefactors be exactly observed and guarded.

The same is evinced from the whole progress of the decree. For, after the already narrated beginning of the aforesaid decree, these words immediately follow: "Wherefore, to restrain the depraved license of certain persons who were using the aid of Masses for more easily exchanging newspapers, books, and other merchandise with the clergy, the Sacred Congregation established certain things, and, Pius IX of happy memory approving them, took care that they be issued and made known to Ordinaries, so that they might be observed by all." Here the Sacred Congregation takes a step toward showing practically and concretely the abuse relating to the celebration of Masses and the damnable profit in this matter. The abuse and damnable profit consists in this, that several persons, for rendering the exchange of things easier, use the aid of Masses. In this indeed is the abuse, damnable profit, or depraved license, as it is here called by the Sacred Congregation. This depraved license is not condemned because it is done by booksellers or merchants, but is condemned considered in itself, because it contains an abuse relating to the celebration of Masses and damnable profit on the occasion of Masses.

Then in the decree are added and inserted the Doubts proposed and already resolved before by the Sacred Congregation, not all the Doubts, but only some which would be more to the point. For it is said: "For, among other things, the following Doubts having been proposed, etc." Therefore when afterward, in the first Doubt, there is question of booksellers and merchants, that expression concerning booksellers and merchants is not to be taken taxatively, but demonstratively, namely as an example of the aforesaid depraved license. Wherefore, whether or not they are booksellers or merchants by profession, all who use the aid of Masses in order to exchange books or merchandise more easily carry before themselves a depraved license, commit an abuse relating to the celebration of Masses, and seek for themselves a damnable profit.

And here, before we proceed further, it must be noted that Titius has in fact fallen into the abuse reprobated by the Sacred Congregation, has sought the damnable profit proscribed by the same

Sacred Congregation, and has used the depraved license which the praised Sacred Congregation condemns by its decree.

For this is that which Titius does: he exchanges the numbers of his newspaper more easily with the clergy by the aid of Masses. Indeed, as is said in the Case, for the greater diffusion of his newspaper Titius yearly seeks for himself from the procurator several alms, and indeed rich ones, of Masses. And indeed, as the matter is clear in itself and is proved by the fact itself, there is no doubt that that means of Masses helps much for selling and spreading merchandise, books, and newspapers; since it is far easier to exchange books and other merchandise with the clergy by the aid of Masses.

Besides, after the related Doubts resolved elsewhere, the Sacred Congregation complains that salutary dispositions of this sort, through ignorance or malice, have rather often been neglected, and abuses in this matter have grown strong very broadly and widely. Whence it is that the Sacred Congregation thinks it necessary to recall among all to memory and full observance that which had long before been decreed. Therefore the Sacred Congregation evidently does not direct its decree to booksellers and merchants, but to all, and regards all indiscriminately, since certainly it wishes to remove from the universal Church that aforesaid depraved license and shameful trafficking.

Finally, if any doubt should remain in a matter so certain, it would surely appear with all evidence from the sanction with which the Sacred Congregation judged it opportune to strengthen its decree. For it is established that those sinning against the related decrees, if they are priests, are subject to suspension *a divinis* reserved to the Holy See; if they are clerics not yet initiated into the priesthood, they are subject to the same suspension as regards orders received and are besides made incapable of receiving higher orders; if finally they are lay persons, they are bound by excommunication reserved to bishops. A sanction of this sort upon priests, clerics, and lay persons sinning against the decrees surely shows that in those decrees there is question not only of booksellers and merchants, but that whoever they may be who sin against those decrees, they are subject to the aforesaid penalties.

The interpretation of the decree set forth is confirmed also from the end of the same decree. For the Sacred Congregation, in order to bring an effective remedy to the aforesaid damnable profit, depraved license, and shameful trafficking on the occasion of Masses, renewing the dispositions of preceding Roman Pontiffs concerning burdens of Masses to be fulfilled, commands that at the end of each year all and each, in every place, beneficiaries and administrators of pious causes, or persons in any way obligated to fulfill burdens of Masses, whether ecclesiastics or lay persons, at the end of each year deliver to their own Ordinaries the burdens of Masses which remain and which they have not yet satisfied. By this final prescription, under a grave precept of obedience, added to the preceding sanction of suspension and excommunication, the Sacred Congregation certainly does not regard merchants and booksellers only, but all who are in any way obligated to fulfill burdens of Masses.

And hence it is clear that the interpretation of Titius is also false when he asserts that the decree concerns a studied collection of Masses. That word *studied* is not found in the decree. Moreover, a studied collection is not lacking in Titius. Does not Titius collect Masses with this zeal, this art and industry, so that by the aid of Masses he may obtain a greater diffusion of his newspaper?

Only this much could be said in favor of Titius: that he himself does not in reality collect Masses, since he obtains them only from the procurator, his kinsman. But neither can Titius be excused from this. For the collection reprobated by the Sacred Congregation does not consist in this, that someone

seeks and obtains Masses from several persons, but consists only in this, that he heaps up a great number of Masses, whether he obtains them from several persons or from only one. Moreover, in the Case not even collection from several persons is lacking. For that procurator, as is accustomed to be done, seeks and obtains Masses from several persons. But what someone does through another, he seems to do through himself. And it matters little indeed whether Titius himself assumes for himself the labor of seeking Masses from several persons, or whether he leaves labor of this sort to the procurator. A collection of Masses is always had, and in the Case a collection for the end prohibited by the decree.

To the 2nd. A few things are now to be said concerning the second and third Question. Titius seems able to be excused from suspension. For, as is clear from the exposition of the Case, Titius acts in good faith. Wherefore, since he is immune from sin, he is also immune from censure. Certainly the contumacy necessary for incurring censure is in no way detected in Titius.

To the 3rd. But in the future Titius must either desist altogether from his manner of acting, or he must seek an Indult from the Holy See, as several have done.

But here a difficulty rises to be resolved: how the Holy See can grant an Indult in trafficking in Masses. If it were really a question of shameful trafficking in Masses, the Holy See could neither give, nor certainly would give, an Indult in shameful trafficking of this sort. But in this matter it is a question only of the appearance of shameful trafficking, prohibited by the Church, and of the danger of scandal, and of the danger lest the will of benefactors and testators not be fulfilled. Hence, with conditions added for removing the aforesaid danger of scandal and infidelity, an Indult can well be given in this matter by the Church, and in fact is given.

167. Usurpation of Ecclesiastical Goods

1. Euphemius owes 10,000 lire to the fabric of the parish church from a certain contract of sale legitimately made to him by the parish priest. The parish priest having died immediately, he did not pay the debt. But now, after ten years, he determines to pay the aforesaid debt, considering himself excommunicated.

It is asked: Whether Euphemius incurred excommunication?

R. Negatively. For Euphemius is not a usurper of ecclesiastical goods. Whence the S. C. C., Feb. 27, 1569, decreed: "Nor do those incur the excommunication of the Council (of Trent) who do not pay debts, although they can." Nor indeed can there be any difficulty in the Case from the fact that Euphemius thought that he had incurred excommunication. For our false opinion does not change the truth of the thing. Here there is no question of guilt, which depends on one's own conscience, but of penalty, which depends on the will of the legislator. *Commentar. in C. Apostolicae Sedis* n. 73, 74; I. M. 1202.

2. Robertinus bought from the usurping government a Convent of Religious. Then he sells it.

It is asked: Whether Robertinus incurred two excommunications?

R. Robertinus incurs only the Tridentine excommunication on account of the purchase from the state domain of the aforesaid Convent; but no excommunication on account of its alienation. For those incur the Tridentine excommunication to whom ecclesiastical goods come by purchase from usurpers. But only those incur excommunication on account of alienation who are legitimate administrators of ecclesiastical goods. Cf. *Comment. in C. Apostolicae Sedis* n. 73, 86; I. M. 1202, 1209.

3. Fructuosus bought from the government, which had usurped it, a rural fund of the church. He cultivates the fund and sells the fruits.

It is asked: 1.º Whether tenants cultivating the fund incur excommunication? - 2.º Whether the buyers of the aforesaid fruits incur excommunication?

R. To the 1st. Negatively. For the tenants are not usurpers of the fund, nor are they cooperators as regards the usurpation, nor do they in any way become participants in the usurped thing. Indeed, the tenants cultivating the fund seem to be excused even from the sin of cooperation, for their cooperation is not formal and proximate.

To the 2nd. Buyers of the aforesaid fruits incur the Tridentine excommunication if they buy them in their own species or nature, and if they buy them in a notable quantity, and not only that quantity which constitutes grave matter in theft. For it is a question of the censure of excommunication, which is borne only on account of graver and atrocious crimes. Trid., s. 25, C. 3, *de R.* But if the fruits of the fund are converted into a new species, e.g., from wheat bread is made, which is sold, from the wool of a flock cloth is made, which likewise is sold, etc., since through specification the buyer of the fund in the Case, according to more recent laws, does not acquire ownership of the new species, but the new species yields to the alien matter, the same thing would have to be said as in the preceding hypothesis. But since there is question of goods of the Church, which is still ruled by Common Law, by which through specification the ownership of the specified thing is acquired, if the new species cannot be reduced to the former and rude matter, Instit., l. 2, tit. 1, *de Rerum divisione*, § 25, Fructuosus then, usurping and destroying the fruits of the fund, sins and incurs excommunication by this new sin; but since he sells his own thing, the buyers neither sin nor incur excommunication. Cf. *Comment. in C. Apostolicae Sedis* n. 73; I. M. v. 1, 906; v. 2, n. 1202.

These things indeed seem to have to be said in the rigor of law and right. For from the Council of Trent, s. 22, C. 11, *de R.*, anyone to whomsoever the goods of the Church and their fruits shall have come in any way is subjected to anathema. Nevertheless D'Annibale raises a doubt, *Comment. in Const. Apost. Sed.*, ed. 4, n. 97, note 65, and, inclining to the more benign opinion, says: "Therefore do those also who buy the saleable fruits of estates from a usurper, and consequently those who buy from the buyers, and so thereafter, incur this excommunication? I would not dare to affirm it; but I prefer rather to say what Modestinus said about a certain Edict of D. Marcus: Although especially the words of the law have this meaning, nevertheless the mind of the legislator wills something else, L. 15, § *Aliud de Accusat. tutor.*; than, contrary to the mind of the legislator, Trid., s. 23, C. 3, *de R.*, to fill all things with excommunications."

5. When certain ecclesiastical goods were being sold publicly under the hammer, three brothers, Lucius, Lucillus, and Lucinus, a priest, who had undivided patrimony, entered into counsel among themselves concerning buying goods of this sort. Lucius, the firstborn, gave a mandate

to Lucillus that he buy those goods. But Lucinus, having a scruple in this matter, indeed consented to the purchase, but declared that he in no way wished to have a part in the ownership of these goods. Hence Lucillus, counsel having first been sought from Luciano, an advocate, bought the aforesaid goods with money of the common patrimony. Only Lucius and Lucillus retain the property of these goods undivided, with the obligation of paying Lucinus the interest of the third part of the whole sum of money which was necessary for buying those goods and which had been taken from the common patrimony. But Lucretius, the steward of the three aforesaid brothers, after the purchase was completed, assumes the administration of these goods.

It is asked: What to the Case?

R. Lucius and Lucillus incur the Tridentine excommunication as acquiring usurped goods of the Church. But Lucretius incurs excommunication since a right in usurped goods of the Church truly came to him, namely the right of administration from the cession and procuration made to him by the aforesaid brothers. For the Council of Trent, s. 22, C. 11, *de R.*, bears excommunication against those presuming, by themselves or through others, to convert to their own uses and usurp ecclesiastical goods, and therefore against usurpers and those mandating usurpation; likewise against those to whom the aforesaid goods shall have come in any way, and therefore against those acquiring and retaining those goods in whatever way and from whomever they have acquired them; and not only against those to whom the goods themselves shall have come, but also against those to whom some right in the goods of the Church shall have come, as is the right of administration of those same goods. Finally, against clerics who shall have been the contrivers or consenters of a wicked fraud and usurpation of this sort. Hence it is also clear that Lucinus the priest did not incur excommunication, since he did not acquire the goods; nor indeed was he a contriver or consenter in the wicked fraud of usurpation, in the Case. For there is no question of usurpers and of usurpation, but of acquirers and of mere acquisition; and as regards mere acquisition, only acquirers incur excommunication, from the obvious text of the Council of Trent. The advocate, giving mere counsel, also by no means incurs excommunication, since no mention is made of one giving counsel, but only of one mandating usurpation and of a cleric who is a contriver of a fraud of this sort, or consenter, by positive and efficacious consent, in the same fraud or usurpation. I. M. 1202.

6. Seius hires for five years a mill which Gneus built on a certain field of the Capuchin Fathers, bought by him, but which had been usurped and sold by the Government. Likewise he hires for five years the field, which was entirely dry when it was possessed by the Capuchin Fathers and not planted with any trees. Gneus greatly increased the value of this field by inserting into it vines taken from his own vineyard. Does Seius incur excommunication?

R. Since there is question of ecclesiastical goods, judgment concerning them must be made from Canon Law and from Roman Law. Now Instit., l. 2, t. 1, *de Rerum divisione*, § 28 seqq., has these things: "Everything that is built on land yields to the land... If someone on another's land has built a house with his own material, the house becomes his whose the land is... If Titius has placed his own plant in the land of Maevius, the plant will be Maevius's, if only it has taken root." Therefore the mill and the vineyard are of the Church. But by hiring the mill and vineyard of the Church, without the Church's permission, goods of the Church come to him who hires them, against the prohibition of

the Council of Trent, which condemns with anathema both the usurpers of goods of this sort and all those to whom these goods shall have come in any way. Hence, unless he is excused by invincible ignorance of law or fact, Seius incurs excommunication simply reserved to the Supreme Pontiff. M. E. v. 9, p. 2, p. 275; I. M. 1202.

7. Adauctus, without order of the Holy See, receives ecclesiastical estates in emphyteusis from the usurping Government. Besides, he emancipates estates in emphyteusis previously received from the Church. Moreover he redeems other estates assigned to various chaplaincies and benefices. Finally he redeems various censuses. Does Adauctus incur excommunication?

R. In the first case he incurs excommunication, because from the usurper there came to him the very right of useful ownership of things of the Church. He incurs excommunication in the second case, because from the same usurper there came to him the very right of full ownership, direct and useful, of ecclesiastical goods. He incurs excommunication in the third case; for he truly buys that part which the fisc attributes to itself, and he usurps that part which the fisc restores to him. Therefore things of the Church come to him and he retains them; and at the same time he retains the fruits which ought to be converted to the necessities of ministers. Nor will it profit that he pays annual or monthly money to the chaplains and beneficiaries, because one thing cannot be paid for another against the will of the creditor; and because this does not prevent him from retaining the goods, rights, and fruits of the Church. In the last case, whether he incurs excommunication can be deliberated, says D'Annib., *Comment. in Const. Apost. Sed.*, ed. 4, n. 97, note 66. "For since all censuses are redeemable, he seems to use his own right. Let us see whether he redeems them 1.º from the churches themselves, or 2.º from the usurper, or from those who have succeeded into his place. If the first, it must be said that he does not even sin, provided that, if in redeeming them he has paid less than the received lot, he restores that to the churches. S. Poenit., June 1, 1869, ad 10. But if the second, if indeed he has redeemed under compulsion, the same, if I think anything, is the law; but if spontaneously, although he sins as regards intention, since he does not restore to the owner, nevertheless I do not think that he incurs excommunication, both because he rather pays what is not due, and because the money with which he redeems is his own, nor meanwhile does he affect the church with loss, to which it is prohibited to pay the canons." But Gennari, *Consult.*, p. 1, Cons. 44, simply affirms it, if namely the matter is grave, that is, of the capital, not of the canon. His reason is that, by restoring the capital to the Government, someone cooperates in its usurpation and vindicates for himself a thing pertaining to the church; and because among the extraordinary faculties communicated by the Penitentiary to bishops on June 1, 1869, there was also this, of absolving from excommunication those "who redeemed censuses and ecclesiastical rights redeemable by their nature, provided that first they deliver to the Ordinary whatever they paid less of the capital sum."

But from the Letter of the S. Penitentiary directed to the bishops on Jan. 24, 1890, only those are admitted to composition who from the redemption of rights redeemable by their nature profited WITH DAMAGE TO THE CHURCH. And if the matter is not grave, namely if the value does not exceed 25 gold scudi, 225 lire, then there is no need of Pontifical permission, but the bishop himself can give it, for redeeming the canon, since they are not immovable goods or precious movable goods prohibited from being alienated by Canon Law without Apostolic Beneplacitum. I. M. 1202, 1209.

8. "Whether those are to be held to have incurred the censure inflicted by Chapter 11, session 22, *de R.*, of the Council of Trent, who illicitly acquired ecclesiastical goods, movable or immovable, usurped by the Government, when the value of the same does not exceed the value of ecclesiastical goods which can be alienated without the Apostolic Beneplacitum; or at least to what amount approximately the value of ecclesiastical goods usurped by the Government and illicitly acquired must rise, so that those who acquired them are to be held bound by the Tridentine censure."

R. "Very Illustrious and Reverend Lord, as Brother. The Pro-Vicar General of Your Amplitude has asked from this Sacred Congregation of the Council how great the value of ecclesiastical goods must be so that one who acquires the same without any permission is bound by censures. Since nothing has been determined concerning this, approved authors are to be consulted, who, as is very well known, teach that censure is not incurred unless there is grave sin. I pray God that He grant Your Amplitude all prosperous things, I profess myself. - Rome, Aug. 13, 1898. -

As brother of Your same Amplitude,

A. Card. Di Pietro, Prefect. -

B. Archbishop of Nazianzus, Pro-Secretary. -

To the Most Reverend Archbishop of Udine."

9. Aurelius, without Apostolic Beneplacitum, sold goods which pertained to a lay chaplaincy. From the sale made he established from public securities a sum sufficient for the daily celebration of Mass, which was the only burden of that chaplaincy, no alms having been fixed by the testator. Aurelius remitted the sum to the Ordinary of the place, so that he and his heirs might be freed from that burden of conscience.

It is asked: 1.º Whether Aurelius incurred the Tridentine excommunication, or the excommunication of the Extravagant *Ambitiosae*? - 2.º Insofar as negatively, whether he acted rightly?

R. Since there is question of a lay chaplaincy, its goods are not ecclesiastical goods. Wherefore no excommunication is present in their alienation. Moreover, since Aurelius, in the Case, diligently provides for the certain fulfillment of that burden of celebrating Mass, there does not seem to be reason why he should be blamed. It is confirmed from the Response of the S. Penitentiary, Dec. 14, 1898: "Buyers of goods pertaining to merely lay pious causes, speaking generally, do not need composition, unless by reason of burdens imposed upon those same goods some right belongs to the Church." M. E. v. 10, p. 2, p. 267; D'Annib., ed. 3, p. 3, n. 71, 84.

10. "Whether Catholic workers of the goods of a church usurped by the Turks can enjoy the portion which falls to them from having worked such goods; and whether they can hide fruits, grains, etc., which fall to the usurping Turks, in order to hand them over to the parish priest who in reality is the owner, and to have as many Masses celebrated for the benefactor.

R. Affirmatively as regards the first part, and negatively as regards the second." S. C. de P. F., Apr. 18, 1757, Collect. n. 1615.

168. A Subdeacon Contracting Marriage

Seius, a subdeacon, gave a mandate to Salustius, likewise a subdeacon, that he contract marriage in his name. Which of them incurs excommunication?

R. According to C. 72, *de Reg. Iur.*, "He who does something through another is seen to do it through himself." Therefore there can be no doubt that Seius the subdeacon, truly presuming to contract marriage, incurs excommunication; but by no means Salustius, who in no way attempts marriage. - I. M. 1203.

169. Solicitation to Shameful Things

1. "Cornelia, with tears and sighs, confesses in confession to Sulpitius, the parish priest, that under the pretext of confession she committed a shameful deed with Evraldus, a confessor, whom she pursued with a most depraved love. Sulpitius prudently questions her, and learns that Cornelia had feigned herself gravely sick and had called the confessor, entirely ignorant of that depraved affection, under the pretext of confession, and had finally induced him, although at first reluctant, to perpetrate the crime. These things having been heard, Sulpitius hesitates, uncertain, not knowing whether he ought to urge the denunciation of this confessor or not.

It is asked: Whether Cornelia is to be obliged to denounce Evraldus, whom she herself solicited and induced into sin?

R. St. Lig. denies it with others... But the Decision of the Holy Office, Feb. 11, 1661, stands in the way... and the recent Instruction of the same Sacred Congregation, Feb. 20, 1867, by which this is also expressly declared in § 2." Thus P. Gury 653.

But in the cited Decision and Instruction nothing is had which bears on the matter; for there the question is of true solicitation on the part of the confessor in confession. But in the aforesaid Case there is in no way question of confession. There is indeed a pretext of confession; but in order that under pretext of confession a confessor must be denounced, it is necessary that the confessor use confession as a pretext for soliciting the penitent; and it is not enough that the penitent use confession as a pretext, so that she can solicit the confessor and sin with him. In the Case no pretext appears on the part of the confessor. For a pretext is everything which covers an interior intention by some exterior fact, whether true or only apparent. Now in the Case there was no intention of solicitation on the part of the confessor. The confessor did nothing to cover this intention. Nor indeed does it appear from the Case that the confessor set about hearing a true confession, or simulated hearing a confession. But the penitent alone is the one who feigns herself sick and, using confession as a pretext, calls the confessor so that she may solicit him. The confessor, having been called, goes into Cornelia's house; solicited by her, he first resists and then consents. Where, here, is solicitation of the confessor under pretext of confession, that is, a provocation to shameful things made by a priest as by a confessor, using confession as a pretext in the Case, or inviting to confession so that he might provoke to shameful things? Cf. *Commentar. in C. Sacramentum Poenitentiae* n. 17, ed. 5; I. M. 1255.

2. Titia was accustomed to use Caius, a religious man, for sacramental confession; she was also employed in washing and mending his linen garments. One day, after confession had been completed, in which, as never before, she had accused herself of adultery, Caius asks her to betake herself after communion to the monastery atrium. Titia promises that she will do this; and not long afterward, approaching the atrium, she finds the confessor waiting for her. While they interweave conversation concerning certain garments to be mended, Caius kisses Titia and exercises other shameful touches with her, to which she consents. After these things it happened more than once that, when she was entering the church to hear Mass, Caius, sitting in the confessional, invited her by finger to approach him, and said to her at her ears: "wait for me today at home; I will come to visit you." Finally Caius promises her that he will come to the aid of her necessities if, the remaining lovers having been put aside, she would serve him only; which indeed happened for three years.

It is asked: 1.º What is the crime of solicitation, of which the Constitutions both of Gregory XV, *Universi gregis*, and of Benedict XIV, *Sacramentum poenitentiae*, speak? - 2.º What are the clauses under which Constitutions of this sort make provision concerning this crime? - 3.º Whether, in the circumstances of the proposed Case, a true species of solicitation was present, and which clause it regards?

R. To the 1st. Cf. I. M. 1253. **To the 2nd.** Cf. I. M. 1254 seqq. **To the 3rd.** Solicitation indeed was absolutely present in the Case on the part of Caius, since he provoked and induced Titia to shameful things. But whether solicitation to be denounced according to the cited Constitutions was present is distinctly declared by parts. The first time, when Caius kisses Titia and touches her shamefully, the aforesaid solicitation cannot be affirmed. For first, that Caius, after the confession of Titia was completed, in which she had first accused herself of adultery, asked the same Titia to betake herself to the monastery atrium, certainly cannot be held as solicitation at least in cause or means. For Caius perhaps could well have asked Titia to go to the monastery atrium on account of some need of linen garments to be washed and mended, and in no way for some evil end. And this is certainly persuaded and confirmed from the fact that afterward Caius and Titia interwove conversation concerning certain garments to be mended. That Caius in the meantime kisses Titia and exercises other shameful touches with her certainly is not to solicit on the occasion of confession, to which clause almost the others can easily be reduced.

At most it would be to solicit from knowledge of confession, and it is at least a controversial and doubtful matter whether this solicitation is contained in the aforesaid clause; but it must be excluded from it, whether because in reality it is not to solicit from confession, but from knowledge of the fragility of the penitent acquired through confession; or because the penitent could not denounce the confessor without betraying and defaming herself; for she would have to manifest her confession in order to explain that denunciation, as must be done, how it had been carried out on the occasion of confession. Besides, could not Caius, when he was interweaving conversation with Titia present, then for the first time have seen her being tempted and miserably conquered by temptation? That Caius, sitting in the confessional, invited Titia by finger to approach him, and with a lowered voice told her to wait for him at home, likewise does not contain solicitation on any occasion of confession, since no confession followed either before or afterward in the Case; and the woman, as appears from the Case, was altogether outside the confessional and only stood before it in order to hear those words of

Caius. Finally, that Caius urges Titia and obtains that she serve only his shameful love likewise brings in no occasion connected with confession; and therefore neither by reason of this solicitation continued for three years does there appear an obligation of making denunciation according to the Constitutions of Gregory XV and Benedict XIV.

But although here there is not present, from positive law, an obligation of making juridical denunciation to the ecclesiastical Judge, nevertheless, the circumstances of the Case having been inspected, there can well be an obligation of making denunciation by natural law to the Prelate of that Caius. For there is question of a religious man, of a religious who through so long a time continues shameful sins with a woman, all modesty being removed, and not incidentally from some sudden temptation, but from a well-considered purpose of soul; whence the aforesaid scandal can easily still threaten in the future both for the same Titia and for another, and not without danger also of public scandal and public defamation for the whole Convent.

170. Excommunication on Account of Abduction

"Whether those who abduct girls, betrothed by their parents to a gentile man, against their will, and bring them to the house of the bridegroom, incur the penalty of excommunication?

R. Either the betrothals were entered by the parents before the girls obtained the use of reason, and it is not established that after the use of reason they confirmed and ratified them; since these betrothals are altogether void, surely those who offer counsel, aid, or favor to the abduction of these virgins are excommunicated by the law itself, according to chapter 6, session 24, *de Ref. Matr.*, Council of Trent. But otherwise, if the betrothals were either first entered with their consent, or afterward confirmed, and therefore are reputed firm and valid; for those who drag the bride by force to the bridegroom are not subjected to the penalties of abductors, although she is unwilling and refusing." S. C. de P. F., Apr. 17, 1784, Collect. n. 1418; I. M. 1024, 1212.

171. A Parish Priest Illegitimately Assisting at Marriage

From the Council of Trent, s. 24, C. 1, *de R. M.*, I. M. 1235: "If any parish priest... shall have dared to join in marriage spouses of another parish without the permission of their parish priest... by the law itself let him remain suspended for so long until he is absolved by the Ordinary of that parish priest, etc." Whether is this suspension a mere penalty, or a true censure?

R. It would be a mere penalty if it were at will. But this formula, "let him remain suspended for so long until he is absolved by the Ordinary, etc.," signifies in the obvious sense only that the absolution of this suspension is reserved to this Ordinary when the delinquent has repented. Wherefore it seems that this suspension is a true censure, but reserved.

On Irregularities

172. Violation of Censure

Paulus, believing himself bound by excommunication on account of reading a book prohibited in the Index, done without permission, absolved a penitent who was his accomplice in a shameful sin. When afterward he had occasion of reading the book of a certain heretic championing heresy, he again absolved the accomplice. Is Paulus irregular?

R. Although Paulus believed himself excommunicated by reading a book listed in the Index, in reality he was not excommunicated; and therefore, by absolving the accomplice the first time, he did not incur irregularity, because he does not truly violate a censure. Paulus certainly incurred excommunication by reading the heretical book; wherefore then certainly, when he again absolved the accomplice, he incurred irregularity from violated censure. But Paulus had already before, on another occasion, absolved the accomplice, and because of this also was excommunicated. Wherefore when the second time he absolved the accomplice, he was bound by a double excommunication. Nevertheless he incurs only one irregularity, because all censures forbid the exercise of order with regard to one virtue of religion, on account of reverence for the sacred ministry. But since this irregularity is equivalent to several, "in the petition for dispensation he ought to express this." St. Alph., l. 7, n. 359; I. M. 1325.

173. Homicide

1. Seius, a priest, conversing with Tiburtius, the enemy of Aurelius, willingly receives and even praises the plan of Tiburtius to kill Aurelius. Tiburtius in reality kills Aurelius. Hence Seius greatly doubts whether he himself by his manner of speaking commanded the homicide, and whether at least he counseled it. Wherefore he consequently doubts whether he is irregular.

R. Seius is not irregular. For although someone incurs irregularity on account of doubtful homicide, namely if it is established that a man was killed and it is only doubted whether he himself or another killed him, nevertheless irregularity is not had if it is doubted only whether someone was the cause of the homicide by his mandate or counsel. St. Alph., l. 7, n. 347, dub. 3, n. 371; D'Annib., ed. 3, p. 1, n. 424, 428; I. M. 1318, 1330.

2. Fulgentius, seized by hatred against his aged father, made him perish by hunger, daily diminishing food to him in order to kill him, and finally denying it. Doing sincere penance for the gravest sin, he entered a strict religious institute, in which he lived most observantly for several years; and since he is endowed with no common knowledge, his superiors desire that he ascend to the priesthood. Is Fulgentius irregular?

R. It is certain among all that if someone is bound only from charity to prevent a homicide, and does not prevent it, although from hatred, he does not incur irregularity. "The doubt is raised," says St. Alph., l. 7, n. 376, "whether he incurs it who is bound to prevent it from justice by reason of pact or office, namely if he is a physician hired by stipend, an advocate who is bound to defend the accused, a

guardian of roads, a father, tutor, master, or husband who is bound to furnish support to a wife. The first opinion denies that he incurs it.... The reason is that he who positively flows into a homicide must be judged differently from him who does not prevent a homicide. But the second opinion affirms it.... The reason is that one omitting to defend, when he can, him whom by justice he is bound to defend, is judged a true murderer, since he himself, if not physically, nevertheless morally flows into the homicide. This opinion is indeed more common and probable, but the first seems to me no less probable; for since irregularity ought to be expressed in Law, Ronc. rightly says that from the sacred canons it is not sufficiently clear that those not preventing in this way, furnishing only a moral cause, incur irregularity, but only those killing, commanding, counseling, and all those positively flowing into homicide." From these things it could seem that Fulgentius, according to St. Alphonsus himself, did not incur irregularity. Nevertheless it must altogether be said that Fulgentius incurred irregularity by studiously procuring the death of his father, diminishing and denying food to him. And this is clear from the very opinion of St. Alphonsus, for he immediately adds: "But the same Cont., Tourn., and Escob. excuse from irregularity those who omit to prevent, not now studiously so that a man may be killed, but only from fear or negligence; and they rightly infer this from C. *Quaesitum de Poen. et rem.*, where parents by whose fault children perish in the cradle are judged irregular if they studiously neglected to prevent suffocation, but not however if the children died from their carelessness." Cf. Reiffenst., l. 5, t. 12, n. 42 seqq.; I. M. 1329, 1330.

174. Abortion

1. Caius, a priest, opened a vein for a pregnant woman so that abortion would follow; and since it was not established that there had been an abortion, he gave her counsel of immersing her feet in hot water for half an hour; nor nevertheless, even this time, could it be established that there had been an abortion. Is Caius irregular?

R. "Diana says with Nav. etc. that if a physician opened a vein for a pregnant woman so that abortion would follow, but afterward it is not established that an abortion followed, he is not to be judged irregular... because proceedings are not taken against someone for penalties unless the body of the crime is established. But otherwise it must be said if the means applied for abortion were so efficacious that from them the effect commonly follows, because then presumption is made from things commonly occurring." St. Alph., l. 7, n. 347, dub. 3. But since even that washing of the feet is not a remedy altogether efficacious for procuring abortion, it does not seem that Caius incurred irregularity. But a fortiori he is to be excused from irregularity if it is not established that the fetus was animated, and still much more if the pregnancy itself is not established. St. Alph., l. 3, n. 395, 396; I. M. 1330.

2. Sempronius, a priest, doubts whether by his counsel he procured an abortion that in fact followed. Is Sempronius irregular?

R. Negatively. St. Alph., l. 3, n. 396, says: "What must be said if there were doubt whether someone by his counsel or work cooperated in the certain death of a fetus now certainly animated? See what is to be said, l. 7, n. 371." Now in that place the Holy Doctor raises the general question whether one commanding or counseling homicide is irregular in doubt whether the mandate or counsel was or

was not the efficacious cause of the homicide. And then he brings forward two opinions, one more common, affirming, the other, which does not seem to have to be called improbable, denying. Wherefore Sempronius, in the Case, can probably be excused from irregularity. I. M. 1318.

3. Fuscus, a priest, so that he might sin more freely with a certain woman without danger of infamy, persuaded her to procure for herself the perfect excision of each ovary by a surgical operation, so that she would thus be made sterile or impotent with no danger of generation. That woman did this, and thus both continued in sin for several years. On the occasion of the Holy Year Fuscus is converted to good fruit, and asks whether he ought to be dispensed from irregularity.

R. Irregularity here would be first by reason of mutilation. St. Alph., l. 7, n. 380, raises the question: "Whether he is irregular who cuts off the testicles of another." And he responds: "Bon. etc. deny it, because, as they say, those are not a member, but part of a member. But Roncaglia etc. more probably affirm it, because the testicles now have their proper operation." Now the same seems to have to be said concerning the ovaries. Moreover, not only he who mutilates another incurs irregularity, but also he who proximately cooperates in that mutilation, as in homicide, because mutilation is equated to homicide. "Hence," says Reiffenst., l. 5, t. 12, n. 57, "by the same reason the doctors commonly hold that in those cases in which he contracts irregularity who counsels, commands, cooperates toward an unjust homicide, or does not prevent it, or ratifies it, in the same cases one counseling, commanding, etc. mutilation also contracts the same irregularity." Therefore Fuscus, as one commanding or at least counseling mutilation, contracts irregularity in the Case.

But Fuscus would have to be punished with still graver penalties. For "Sixtus V in the year 1588 issued a Bull which begins *Effraenatam*, in which he subjected all knowingly procuring abortion of a fetus, whether animated or inanimate, and in any way consenting in this or furnishing to women poisons of sterility, to all penalties which are owed to homicides by civil and canon law, such as privation of every clerical privilege, dignity, or ecclesiastical benefice, and also inability to obtain them in the future, etc." St. Alph., l. 3, n. 395. Fuscus indeed did not procure abortion, nor did he furnish poisons of sterility for killing a fetus. But did he not furnish more than poisons of sterility, by commanding or counseling that excision for impeding generation?

175. Defect of Lenity

1. Eulogius, a minorist, in good faith gave medicine to a sick man for his remedy and relief, who nevertheless died from it. Does Eulogius incur irregularity?

R. Negatively. For in the Case none incur irregularity except 1.º clerics constituted in sacred orders and monks; 2.º except by cutting or burning; and 3.º if the sick person dies from the incision or burning. But Eulogius is a minorist and applied no incision or burning in the Case. Therefore he incurs no irregularity, although he is beneficed. St. Alph., l. 7, n. 384, 385; I. M. 1345.

2. Clemens, a soldier, in a defensive war indeed discharged his weapon several times against enemies, of whom many were killed and mutilated. But since he always had to discharge it together with many other fellow soldiers of his, he doubts whether he himself truly killed or

mutilated anyone. But now wishing to ascend to sacred orders, he asks whether he himself is irregular.

R. Negatively. "If someone fought in a just war in which some were killed, and doubts whether he himself by himself killed someone, Bon., Leand., and others think that he can judge himself not to be irregular, because when the law says that one doubting about homicide ought to be judged irregular, it speaks of unjust homicide. Therefore in doubt concerning just homicide the condition of the possessor is better." La Croix, l. 7, n. 453. Nevertheless a dispensation can be sought as a precaution.

176. Bigamy

1. Philiarchus, after he committed fornication with two women, wishing to ascend to the priesthood, received first tonsure and minor orders. But, inconstant in soul, he entered marriage with a certain widow woman, who afterward was known to be his kinswoman in the fourth degree. Since therefore a marriage of this sort was void, he again intends to ascend to the priesthood; but he doubts whether he is irregular.

R. That Philiarchus first fornicated with two women gives rise to no bigamy from that, and therefore no impediment of bigamy, since there is no true, similitudinary, or interpretative marriage. I. M. 1343. But that, in an invalid marriage, already an acolyte, he married a widow, according to the more common opinion, is interpretative bigamy because of the affection of the intention, as if the husband of a widow, C. ult. *de Big.*, and therefore irregularity is present. The less common opinion denies it, because in the aforesaid C. ult. there is question only of one ordained in sacred orders, and not of an acolyte nor of a layman; and in odious matters extension is not made from case to case, and thus Navarrus affirms that it was concluded in the Sacred Penitentiary. And D'Annib. says that he follows this opinion, ed. 3, p. 1, n. 419.

2. Titius married Caia invalidly because of an occult impediment of affinity. Caia having died, he married Sempronia, but also invalidly because of another occult impediment of affinity. The invalidity of each marriage having become known, Titius, wishing to receive sacred orders, thinks that he is bound by no impediment from this. Is this rightly thought?

R. Titius, according to the most common opinion of the doctors, is irregular from interpretative bigamy, namely if each marriage, as is supposed, was consummated. I. M. 1343.

The reason is that here not the thing itself, but the thought of the soul and the affection of the intention is attended to. C. 4, *de Bigam.* If this reason is valid when someone, his wife having died, receives sacred order, and then marries another wife and consummates the marriage, which second marriage is in reality null, the same reason consequently is valid when someone, although initiated in no sacred order, contracts and consummates a double marriage, although invalid. Whence it is also clear that although this irregularity, like others, is not expressed in the law, nevertheless it is most commonly affirmed. And D'Annibale, who calls the same irregularity doubtful, nevertheless, because it is most commonly affirmed, "does not dare to recede from this opinion, although received against all rules of law." Ed. 3, p. 1, n. 418.

On Indulgences

177. On the Little Office of the Blessed Virgin Mary

1. Certain nuns, who daily recite, according to their Constitutions, the Little Office of the Blessed Virgin Mary, would like to add at the end of the same office commemorations of St. Joseph, St. Francis, and St. Anthony of Padua. Can they?

R. They can indeed add commemorations of St. Joseph, but as regards the other commemorations there is need of a special Indult. *Monit. Eccles.*, v. 6, p. 1, p. 68. But according to *Ephemerides liturgicae*, July 1892, p. 115, the Indult which permits adding the commemoration of St. Joseph is not general, but for a particular case on account of a pre-existing practice. Cf. S. R. C., Feb. 27, 1883, Rhedonen., ad 3.

2. Veronica asks whether, for gaining the indulgences of the Little Office of the Blessed Virgin Mary and the Sabbatine privilege attached to the scapular of the same Blessed Virgin Mary of Mount Carmel, it is necessary to recite the aforesaid office in the Latin language.

R. Affirmatively. S. C. Indulg., Aug. 18, 1868; May 6, 1887; Sept. 13, 1888. A. S. S. v. 21, p. 191; I. M. 1367.

178. Imposition of Scapulars

1. Humbertus, a parish priest, when several persons are present who ask that various scapulars be imposed on them, lest it be wearisome to the people and he himself be too much fatigued, all things having been duly performed, says once, in the plural number, the formula, *receive, brothers* or *sisters*, etc., imposing the scapular successively and without interruption on all present, without repeating the aforesaid formula in the singular number for each. Is this licitly and validly done?

R. Affirmatively. Thus from the S. C. Indulg., Apr. 28, 1891, Collect. S. C. de P. F. n. 2175.

2. The same Humbertus, since it is often almost difficult to impose scapulars in the ordinary manner around the neck of women and nuns, then imposes them on one shoulder only. - Is such an imposition valid?

R. Affirmatively. S. C. Indulg., Sept. 26, 1892. A. S. S. v. 25, p. 319.

3. Tecla asks from her confessor that he be willing to commute for her into another pious work the works enjoined for gaining the indulgences of the scapular of the Blessed Virgin Mary of Mount Carmel and the Sabbatine privilege. But Lucas, her confessor, does not know whether he himself has this power.

R. The confessor cannot make a commutation of this sort unless he expressly has the special faculty of making the aforesaid commutation. But this faculty is ordinarily given, together with the faculty of blessing and imposing the scapular, to an approved confessor. Yet it is not necessary that the commutation be made in confession. St. Alph., l. 6, n. 534, XV.

179. On Gregorian Masses

1. Copiosus, a priest, a stipend having been received, promised that he would celebrate thirty Gregorian Masses for the soul of the priest Iustus, recently deceased. But after ten Masses had been celebrated, he interrupted celebrating them for three days, since on those days he had received a very rich stipend for the application of the Mass. Then he celebrated another ten Masses not on the same altar, but on another altar, an unforeseen impediment having supervened. Finally, since he himself could not celebrate the remaining ten Masses, he committed them to another priest, who on days not impeded did not celebrate the Mass of Requiem, but according to the rite of the current day. - Did he act rightly?

R. Copiosus did not act rightly by interrupting the Masses. For the thirty Gregorian Masses, from the institution of St. Gregory himself, who first commanded that they be celebrated for the soul of a deceased monk, are to be celebrated on thirty continuous days, so that no day be omitted. - But that not all those Masses were celebrated on the same altar does not harm the special efficacy of the thirty Masses of St. Gregory. For St. Gregory prescribed nothing concerning the place of celebration, but only determined the time, on thirty continuous days, of offering the divine sacrifice. And this is confirmed from the S. C. Indulg., Jan. 14, 1889. - Likewise, it does not harm the aforesaid efficacy that the thirty Masses are not celebrated by one and the same priest. For although St. Gregory imposed upon one and the same priest that those Masses be celebrated, nevertheless from his words it clearly appears that their efficacy is to be sought only from the continued celebration of Mass for thirty days, and not from the priest celebrating: *Take care that no day be omitted on which the saving Host is not offered for his absolution.* And this is also confirmed from the S. C. Indulg., Jan. 14, 1889. - Finally, as regards the rite, it seems altogether more probable that the aforesaid Masses, on days not impeded, are to be celebrated in the proper rite for the dead, since St. Gregory says that the saving host is to be offered for the absolution of that deceased person, which in the obvious sense also includes the rite for the dead, when namely the rubric permits this; otherwise it will be enough to celebrate in the rite proper to the day. M. E. v. 12, p. 404 seqq.

180. Plenary Indulgence at the Article of Death

1. Candidus, a priest, asks: 1.º Whether a plenary indulgence at the article of death is acquired, during life, by the sick person when he has fulfilled all the enjoined works, or after his death. 2.º Whether, if someone then fulfills several pious works to which a plenary indulgence at the article of death is attached, he gains all these indulgences.

R. To the 1st. In the Case, someone does not acquire the plenary indulgence after his death; for then it would no longer be an indulgence for a living person at the article of death, but for a deceased person. Likewise the sick person does not acquire it while his life is still lasting, when, for example,

he has already fulfilled all the works; for if in reality he does not immediately die, there would not be a true article of death, but only, at most, a presumed one. S. C. Indulg., Apr. 23, 1675. Therefore the sick person does not acquire it except at the true article of death, which consequently death itself in reality follows. The reason is that the end of the Supreme Pontiffs granting a grace of this sort is that for those dying nothing remain to be expiated after this mortal life, and that, by this remission of sins, being truly contrite for sins, they be brought immediately to possess eternal beatitude.

To the 2nd. From the very nature of the plenary indulgence at the article of death, explained in the above manner, it is clear that the sick person acquires it only once. Nevertheless, those several works to which this same indulgence is attached are useful for making it more secure. If perhaps the sick person does not gain it by one work, he can gain it by another work. Nor is it valid to say that someone can gain one such plenary indulgence for himself, another or others for the souls of Purgatory. For it is clear from the very nature of a plenary indulgence at the article of death that it is altogether personal and is applied only to the dying person.

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