INSTITUTIONS OF MORAL THEOLOGY

According to the Doctrine of St. Thomas and St. Alphonsus

by Gennaro Bucceroni, S.J.

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VOLUME IV

Marriage · Censures · the Constitutions Apostolicae Sedis, Sacramentum Poenitentiae, Officiorum ac munerum · Irregularity · Indulgences · Appendix · Indexes (nn. 919–1390)

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Title Page

According to the Doctrine of St. Thomas and St. Alphonsus By January Bucceroni of the Society of Jesus Volume IV Sixth Edition Rome

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Approval of the Work

Since some theologians of the Society have reviewed the work whose title is *Institutiones Theologiae Moralis*, etc., by Fr. January Bucceroni, S.J., and have approved that it can be brought to light, we grant the faculty that it be printed, if it shall so seem good to those whom it concerns. Rome, March 7, 1904. Provincial Superior of the Roman Province

We grant the faculty that the aforesaid work, revised and augmented by the author himself, be published for the sixth time, if it shall so seem good to those whom it concerns. Rome, July 8, 1913. Provincial Superior of the Roman Province, S.J.

Abbreviations

S. Th. S. q. 1. a. 1. = St. Thomas, *Summa Theologica*, Supplement, question 1, article 1.

L. 5., H. A. tr. 1. n. 37. = St. Alphonsus de Liguori, *Theologia Moralis*, Naples, 1819, in the same tract, n. 5; and *Homo Apostolicus*, Bassano, 1826, tract 1, number 37.

A. A. S. v. 1. p. 6. = *Acta Apostolicae Sedis*, volume 1, page 6.

A. S. S. v. 1. p. 6. = *Acta Sanctae Sedis*, volume 1, page 6.

E. M. = *Enchiridion Morale*, 4th edition, at the same number.

The Codes of Italy, France, Switzerland, Spain, Portugal, and Austria are indicated by initial letters: C. I., C. G., C. He., C. H., C. L., C. A.

The German Code is indicated by the initial letters C. B., the Borussian Code. Usual Citations of Roman Law:

Inst. de Mand. § 1. *Mandantis* = the Institutes under the title *de Mandato*, § 1, beginning *Mandantis*.

L. 7. § 4. *Sed cum* de Pactis = the Pandects, Law 7, § 4, beginning *Sed cum*, under the title *de Pactis*, or with D. or ff. added before the title; that is, *Digestum* in Latin, *Pandectae* in Greek.

L. *Creditor* C. de Usuris = the Law which begins *Creditor*, in the Code, title *de Usuris*. Nov. 22. C. 1. = Authentic Novella 22, chapter 1.

Lib. 1. f. tit. 7. C. un. = Book 1 of the feuds, title 7, sole chapter. Usual Citations of Canon Law: The Decree of Gratian:

First Part: Can. *Ieiunium* 7. Dist. 76; or Dist. 76. Cap. 7.

Second Part: Can. *Qui viderit* 13. question 5. cause 32; or cause 32, q. 5, C. 13. Treatise *de Poenitentia*, Dist. 1, Can. I.

Third Part: Can. *Est unitas* 49. Dist. 4 *de Consecr.*; or *de Consecr.*, Dist. 4, c. 49.

Decretals of Gregory IX: Cap. *Presbyter* 2, *de Peculio Clericorum*.

Decretals of Boniface VIII: Cap. *Non putamus* 2, *de Consuetudine* in 6. Clementines of Clement V: Clem. 3, *de Haereticis*. Extravagants of John XXII: Extr. 2, *de Conc. praeb.* Common Extravagants: Extr. Comm. 5, *de Poenit.* Pr. d. = Condemned proposition. Cf. 119. = Confer here number 119.

A small dash at the end of any paragraph or number is the same as "Confer."

Citations refer to those things which immediately precede; after a small dash at the end, they refer to those things which precede in the number or paragraph itself.

On Marriage

I. On Betrothals and on the Banns

919. What are betrothals? Betrothals are a voluntary, deliberate, and mutual promise, expressed by a sensible sign, of future marriage between persons capable by law. A promise: true, not feigned; not a purpose, for this induces no obligation. Voluntary and deliberate, namely, with will and deliberation sufficient for grave sin, since betrothals bind under grave obligation. Mutual, for betrothals are an onerous contract, involving the condition: if you shall promise in return. Nevertheless, if the one promising should voluntarily wish to bind himself independently of the promise of the other, and this is certain, betrothals would not be had, nor consequently the impediment of public honesty, but a mere gratuitous promise binding only one party, by force of mere fidelity. It is said, and this is certain, because regularly spouses never intend to bind themselves gratuitously without the condition that the other also bind himself. But acceptance of a promise does not of itself include a promise in return; because anyone can accept the obligation of another without binding himself. Expressed by a sensible sign, for in any contract internal consent does not suffice, but consent externally expressed either by words or signs is required. Hence silence does not suffice for betrothals.

Nevertheless, per se, betrothals would be valid if parents contracted them in the presence of a son who is silent, provided the son internally and positively consents. For since parents, on account of their great love toward their children, are presumed to consult well for them, children are rightly judged to consent to their promise, and thus to express their own consent through the promise of the parents. But if the son internally dissents, "he is certainly not bound to those betrothals contracted by the parents. And I think exactly the same must be said if the son had himself negatively, neither dissenting nor consenting." L. 838. And the same must be said if parents contract betrothals for absent children, and those children, having been informed of the betrothals by the parents, do not contradict, namely, if they truly ratify the betrothals tacitly. Parents, not others; betrothals, not also marriage. Since in this matter the law is special, it is not to be extended. C. *Si infantes*, un., de Desp. imp. in 6; R. I. 28 in 6. But these things no longer have force after the Decree *Ne temere*, concerning which we must speak here at the end. Schmalz., 61 ff.; St. Thomas, IV, D. 27, q. 2, a. 2, ad 1; Suppl., q. 43, a. 2, ad 1; L. 831, 836-839.

Between capable persons, that is, those who are prohibited from marriage by no impediment. Therefore betrothals will be null if some impediment obstructs marriage. For when a diriment impediment stands, the thing promised either does not subsist, or is not in one's own power, and therefore there can be no promise of it. But when an impedient impediment stands, the thing promised is illicit, and there can be no promise of an evil thing. Except, unless the promise is not absolute but conditioned, namely, if dispensation is obtained, or is referred to a future time when the impediment ceases, as in betrothals of the prepubescent, or betrothals against the will of parents, where their dissent ceases. Moreover, no solemnity of law was commonly required for their validity, and neither the civil power nor local Ordinaries can attach it. S. C. C., July 8, 1865; March 23, 1878. Commonly. For in order that betrothals be valid in Spain and in Latin America, they had to be

contracted by public writing. S. C. C., Jan. 31, 1880; S. C. Neg. Eccl. Extr., Jan. 1, 1900. Of future marriage; therefore, where the Decree of Trent was in force concerning marriage to be contracted before the pastor and witnesses, a contract in the present was neither marriage, because the Tridentine form was lacking, nor did it constitute betrothals, because a promise of future marriage was then not had, per se, nor virtually. As marriage contracted by proxy and by letters is valid, so also, per se, betrothals are valid. L. *In sponsalibus* 18, ff. de Sponsal.; St. Thomas, Suppl., q. 43, a. 1, 2, q. 55, a. 4; Schmalz., l. 4, tit. 1, n. 73-77, 247; E. M. Cf. 923.

But from the Decree *Ne temere* of the S. C. C., they must be made by public writing, in order that they be valid, signed by the parties and either by the Ordinary of the place, or by the pastor, or by two witnesses. But if both parties or either party does not know how to write, this is to be noted in the writing itself; and another witness is to be added, who, together with the Pastor or local Ordinary, or with the two said witnesses, signs the writing. For validly entering into betrothals, the parties are bound to sign the writing in one context with the pastor or Ordinary, or with the two witnesses; and it does not suffice that the writing, signed by one party with the pastor or with two witnesses, be sent to the other party, who in turn signs with the pastor or with two witnesses; and the date is also to be added, that is, the notation of the day, month, and year.

Here and in marriage, the pastor is the one who legitimately presides over the parish, or to whom in some defined territory the care of souls is primarily committed, or to whom in mission territory the care of souls is universally committed. The special law of Spain extended to Latin America remains abrogated, by force of which a public writing signed by a notary was required for the validity of betrothals. Indeed betrothals are invalid, if the aforesaid form is not observed, both for the external forum and for the internal forum, even if they are confirmed by oath, since the aforesaid form was prescribed for the common good. L. 1, 3, n. 177. But a simple promise of marriage without a promise in return remains valid. For the Decree *Ne temere* regards only betrothals. Betrothals cannot be contracted except before the local Ordinary or pastor, and not also before one delegated by either. They can, however, be celebrated before any local Ordinary or pastor whatever, provided this is within the limits of his territory, that is, in the proper territory, S. C. C., March 28, 1908, of the same Ordinary or pastor. All Catholics are bound by these decrees, whether they contract among themselves or with non-Catholics. Non-Catholics contracting among themselves are not bound by the aforesaid decrees. Therefore Catholics contracting otherwise contract invalidly, unless something else has been established by the Holy See for some place; but non-Catholics contract validly.

920. Is one who feignedly promised betrothals to another truly promising in return bound to contract marriage? Resp. In the negative. For 1. since the promise was feigned, he cannot be bound by force of the promise, even if it was confirmed by oath. St. Thomas, III, D. 39, q. 1, a. 3, q. 3. 2. "Granted that the one feignedly promising sinned against justice by deceiving the other party, nevertheless he was not bound from justice to put forth true consent, since there was no obligation upon him to enter into the contract, and, on the other hand, the other acquired no right over him from his own consent; therefore afterward he is indeed bound by reason of the deception to repair damages, but he is not bound by reason of the promise to put forth true consent and to contract marriage.

But it must be said otherwise if defloration intervened, because then the one deflowering is altogether bound to marriage, since he cannot then by another way repair the damage sufficiently

equivalently." L. 833, 847, l. 3, n. 642. Hence, if a man induces a woman to sin under this condition, that he is going to take her in marriage if she agrees to his desires, then, after the crime has been committed, if not by force of contract, at least by force of unjust damage, according to the very common opinion, he is bound to take her if he can; otherwise it will suffice if he provides for her marriage.

The reason is, "because otherwise, if the deflowerer does not marry the deceived virgin, he will never render her an equivalent, nor repair the damage to be equaled." L. 1, 3, n. 642. And this holds even if the man vowed religion, orders, or chastity, and afterward knew the woman under a true or feigned promise of marriage. For the vow does not oblige, since a wholly notable change has been made, and a very grave obligation of justice has supervened. L. 1, 6, n. 833, 874. Nevertheless the Holy Doctor and others commonly except: 1. If from the marriage a very bad outcome is feared, such as discords, quarrels, scandals, etc. 2. If the man knew the woman, thinking her to be a virgin, but found her corrupted; or if she afterward had relations with another; for if this suffices in marriage so that separation is made, much more does it suffice when marriage has not been contracted. Sporer, 538 ff. 3. If there will be disgrace to the family. L. 849, 851. 4. If the man notably surpasses the condition of the woman, on account of the same reason of family disgrace. L. 1, 3, n. 642-650, l. 6, n. 851; St. Thomas, Suppl., q. 46, a. 2, ad 4; C. B. 1300. Cf. 928.

921. Are betrothals contracted through deceit giving cause to the contract void, even if the deceit is about a quality, for example riches, qualities of body or soul? This is disputed. The first opinion, sufficiently probable, affirms. For this is proper to betrothals, because marriages must be entered into voluntarily by mutual benevolence. The second opinion, more probable, denies. For this is common to any contract, that it is not void except by defect of consent or of object. "But then the deceived party has an action for voiding the contract on account of injury and defect of consent, and this holds even if the deception came from some third party, with the party ignorant." L. 835. "Lessius, etc., probably say that if the matter is intact, as happens in simple betrothals, and the error is invincible in conscience, the deceived party is not bound to stand by the contract, not even after the sentence of a judge." L., H. A., tr. 18, n. 2.

922. Are betrothals entered into through fear invalid by the law itself? If the fear is grave, this is disputed. The first opinion affirms, if the fear is extrinsic and unjust; for they would be valid if the fear were intrinsic, for example if someone promised, fearing lest he be compelled to pay a debt; or just, for then the contracting party would be unwilling irrationally. The reason is that fear dirimently impedes marriage, and betrothals are the way to marriage. The second opinion denies; nevertheless it adds that they can be rescinded by the one who suffered the fear; but if an oath was present, it must be observed until it is relaxed. The reason is that they are not invalid by positive law, which has nothing concerning betrothals; nor invalid by natural law, for fear of itself does not remove consent. "Each opinion is probable, but the first seems to me more probable..., because no one can be obliged to execute an act null in itself, and against which the law resists, such as marriage contracted while such fear endures would be... From these things it is inferred that from betrothals of this sort the impediment of public honesty by no means arises." L. 844.

If the fear is light and gave cause to the contract, the first opinion affirms, which Ballerini calls much more probable; but the second, more common and more probable to St. Alphonsus, denies. The reason is that the other is not judged to have inflicted a true injury, since light fear can easily be

repelled. But whether in such a case the one who suffered the fear can rescind the betrothals in conscience, the first opinion, sufficiently probable, denies, on account of the reason just brought forward; but the second opinion, more common and more probable, affirms. "The reason is that since fear gave cause to the contract, so that otherwise it would not have been entered into, the one instilling fear is bound to rescind the contract; hence, just as he is bound to relax the pledge unjustly extorted by such fear, so the one who suffered the fear can revoke the pledge given." L. 844. Sanchez, l. 1, d. 14; l. 4, d. 16.

923. Do words in the present tense among prepubescents, apt for marriage, since this is null by positive law, have the force of betrothals? Resp. Affirmatively, from C. *Si infantes*, un., de Desp. imp. in 6, C. *Tuae nobis*, fin., e.t. The reason is that, when acts do not have force in the manner in which they are made, from the interpretative will of those contracting they have force in the better way in which they can, unless someone expressly dissents. But betrothals are contained interpretatively in marriage, unless in reality only the bond of marriage is expressly intended for binding oneself. For betrothals are not had except by a mere presumption of law. Sanchez, l. 1, d. 21, n. 3, 5; Schmalz., l. 4, tit. 2, n. 63; Pignatelli, Cons., tom. 9, C. 133, n. 46. Hence many said the same if adults contracted marriage clandestinely, that is, without the pastor and witnesses, in a place where Trent has been promulgated. But this must be denied altogether. S. C. C., June 8, 1595; Ferraris, v. *Matrimonium*, art. 2, n. 2; Benedict XIV, Quaest. can. 291, par. *Ultimum*. "The reason is that when an act is null not now on the part of those contracting, but on the part of itself, because it is against good morals and the law resists it, Trent, sess. 24, C. 1, then such an act produces no obligation." L. 841. Except, on the contrary, unless those contracting clandestinely expressly intend to bind themselves in the way in which they could. Sanchez, loc. cit., n. 6. But if there is question of civil marriage, from the Declaration of Leo XIII, March 17, 1879, where the Decree of Trent, sess. 24, C. 1, de Ref., has been promulgated, whether marriage is intended in the present or in the future, "the impediment of the justice of public honesty is not produced"; and therefore neither is had. E. M.

But after the Decree *Ne temere* it must be denied altogether that marriage in the present is converted into betrothals for the future. For they are two altogether distinct and quite different contracts. And they remain thoroughly distinct and different from the praised Decree, as is clear from its whole tenor. Indeed, for the validity of each contract, quite different formalities are required. Marriage cannot be contracted validly unless before the pastor or the local Ordinary or a priest delegated by either, and at least two witnesses. Betrothals cannot be contracted except by writing, signed by the parties and either by the pastor, or the local Ordinary, or at least by two witnesses.

924. Are betrothals valid which are entered into before the seventh year by malice, that is, by advertence of reason supplying for age? Resp. Affirmatively, "because, namely, the laws prescribing the seventh year are founded strictly on the presumption that the light of reason does not dawn except when the seventh year has been completed... C. *Si infantes*, un., de Despons. impub. in 6." Ithur., Cas. 30, n. 25. Therefore all who can licitly enter marriage among themselves can licitly enter betrothals, and prepubescents besides. C. *A nobis* 8, de Despons. impub.; St. Thomas, Suppl., q. 43, a. 2; Ferraris, v. *Sponsalia*, n. 15; C. *Litteras*, de Desp. imp.; C. *Ad dissolvendum* 13, e.t.; C. *Accessit* 5, e.t.; L. 14, ff. de Sponsal.

925. Are betrothals contracted between those having a diriment impediment under the express condition "if the Pope shall dispense," once the condition has been fulfilled, valid without new

consent? Resp. Affirmatively. For consent perseveres per se until the fulfillment of the condition. Moreover, such consent is in itself honest and licit. Therefore there is no reason why consent must be renewed. L. 843, 859, l. 3, n. 650. But before the condition is fulfilled, they are neither betrothals, nor do they induce the impediment of public honesty. Nevertheless they oblige one to seek dispensation, if the Pope is accustomed to dispense in such an impediment. Therefore the bridegroom would sin if he contracted marriage with the sister of the bride without awaiting the event of the condition. But betrothals contracted with the same woman would be null, since it would be an illicit promise concerning an unjust thing, which does not oblige. If the Roman Pontiff is not accustomed to dispense, the betrothals would be altogether illicit and therefore of no moment, and they would induce no obligation. L. 11, cc.

Nevertheless, in the present, there are several who hold that the aforesaid betrothals are altogether void; and therefore there is no obligation of seeking dispensation. They rely on various Decisions of the Holy See.

Cf. A. S. S., vol. 1, p. 79 ff., 121.

St. Thomas says these things generally concerning betrothals under condition: "But if the said promise is made under condition, it must be distinguished; because either the condition is honorable, as when it is said: I will take you, if it pleases my parents, and then, while the condition stands, the promise stands, and when it does not stand, it does not stand; or it is dishonorable, and this in two ways; because either it is contrary to the goods of marriage, as if I should say: I will take you, if you procure poisons of sterility, and then betrothals are not contracted; or it is not contrary to the goods of marriage, as if I should say: I will take you, if you consent to my thefts, and then the promise stands, but the condition must be removed." Suppl., q. 43, a. 1.

But since, for betrothals to be validly contracted now, it is necessary that they have been contracted by a written act, it is necessary that the aforesaid condition was expressed in the same written act; otherwise the betrothals are altogether null.

926. What and how great is the obligation of betrothals? Betrothals oblige one to enter marriage under mortal sin. For they are an onerous contract in a grave matter. If a term has not been fixed, it will suffice if the one promising fulfills them according to the custom of the region, or when he is required by the promisee. Here it is to be noted that "if the other party, from forgetfulness, fear, shame, or a similar cause, should not ask, as especially happens in women, then the bridegroom is bound of himself, without petition, to contract marriage when he conveniently can... But if the other party, when she can conveniently ask, is silent, then she seems to assent to the delay." L. 845. Therefore one withdrawing can be compelled to marriage, even by a judge through censures; this, however, is rarely expedient because of the danger of an unhappy outcome. C. *Requisivit* 17, de Sponsal.; L. 846; St. Thomas, Suppl., q. 43, a. 1, ad 2.

Nothing concerning betrothals is had in C. G. But C. I. 53, 54; C. H. 43, 44; C. A. 45, 46; C. B. 1297 deny to betrothals a legal obligation of contracting marriage. Nevertheless, if the promise is duly established, the one withdrawing without just cause is bound to compensate the other for damage, from C. A. and from C. B. 1298; from C. I. and C. H., for expenses which he made on account of the promised marriage. But from C. I. and C. H., compensation must be sought within a year from the day on which the promise was to be fulfilled. By Roman law, one who is bound by betrothals is

permitted to renounce the condition or pact, and afterward contract with another. L. *Alii* 1, C. h.t. But if, without previous renunciation, either the bridegroom or the bride marries another, he is marked with infamy. L. *Quid ergo* § 3, de His qui notantur infamia. By canon law, there is an obligation not only from fidelity, but also from justice, of contracting marriage, and there is an impediment, impeding marriage with another, and dirimently impeding marriage with blood relatives in the first degree. E. M.

927. Are later betrothals, entered into against a prior pledge, valid, and are they to be fulfilled before the prior ones? "It is certain that if the second bride was conscious of the prior betrothals, marriage must be contracted with the first." If she was ignorant, "the first opinion says that the bridegroom is bound to contract with the second, if he had copula with her..., but the second opinion, more common and more probable, says that the bridegroom is bound to contract with the first, even if copula with the second was present... The reason is that the promise made to the second bride is always null, as being about an illicit thing, since it had been promised to the prior bride; nor does an injury inflicted on another take away the right of this one. And this holds even if the second promise was confirmed by oath." L. 848. Nor indeed is the prior bride bound to yield her right, even if the other would suffer grave damage from defloration, because this woman must impute it to her own crime that she suffers such damage. It is indeed a grave sin, after betrothals have been entered into, to attempt other betrothals, which, as illicit, are also void; for there can be no force of an illicit promise, although both oath and copula intervene. For the oath cannot be a bond of iniquity. Copula cannot take away a right acquired by another. But one entering betrothals with another woman or another man falls from his own right as regards the prior betrothals. And the same judgment is to be made if he makes to another even a mere promise of future marriage. L. ibid.; Sporer, 237; Benedict XIV, Notif. 46.

928. Do sons subject to family authority sin by contracting betrothals and marriage without parental consent; and are these valid in such a case? As regards validity, it is certain that marriage is altogether valid, even without parental consent, and even if they altogether dissent. Trent, sess. 24, C. 1, de Ref. Matr. But as regards betrothals, when parents are unaware and even unwilling, they are never invalid for that cause alone; since from this it is not generally and necessarily had that they are illicit. For the consent of parents is not necessary per se, that is, from the nature of the thing, nor from positive law. The first reason is that every man, in choosing a state and an individual society of life, is of his own right and liberty. The second reason is that from Trent, loc. cit., marriage is valid without the consent of parents. But the same reason holds for betrothals, which are the way to marriage, because, namely, a man in this matter is of his own right. St. Thomas, II-II, q. 104, a. 5; St. Bonaventure, IV, d. 29, a. 1, q. 3. For that cause alone; for from another cause, even by reason of parents, betrothals can be entered into illicitly, if the parents are unwilling reasonably, for example, if the bride or bridegroom is imbued with bad morals, if such a marriage would redound to disgrace of the family, or if grave scandals or dissensions would arise from it. "But in the case in which the son could not enter such a marriage without sin, the authors say that he is not bound to it, even if he had contracted betrothals with an oath; because since this promise would be about an illicit thing, an oath cannot be a bond of iniquity... The authors commonly think the same must be said, namely, that the bridegroom is not bound to fulfill betrothals of this sort with grave injury to his parents, even if he deflowered a virgin, but that it suffices that he dower her... The reason is that the virtue of justice cannot oblige one to an act which cannot be fulfilled without sin... The authors agree, however, that children are excused at

least from mortal sin if they contract marriage without the consent of parents from just causes... If a father impedes his son from some marriage without a just cause, then the son is not bound to obey, and the father sins gravely by impeding." L. 849.

The principal difficulty on account of which parents often are unwilling, and there is doubt both whether the parents dissent justly and whether the spouses themselves, after the promise has been made, are obliged, in practice arises from disparity of condition between the two contracting parties. "It is certain that if those contracting, at the time of the betrothals, were not conscious of the disparity, the betrothals are null, provided the ignorance was antecedent; nevertheless they are valid if it was concomitant... If they were already conscious, the authors commonly say that they are bound to marriage." L. 851. And betrothals of a noble man with an ignoble but honorable girl were declared valid. S. C. C., Aug. 28, 1751.

Except 1. if by reason of disparity in nobility disgrace to the family would come from that marriage. "The reason is that the promise is null, since it is about a gravely illicit thing, as something which cannot be fulfilled except with great detriment to the family." L. 851. Surely justice obliges that this detriment not be inflicted on the family. But not just any disparity suffices, "but a notable one is required, for example if a noble man betrothed the daughter of an artisan, mechanic, or farmer." L. 851.

Except 2. if by reason of disparity in wealth scandal is probably feared, for example, hatreds of relatives, etc., "because in that case the bridegroom would sin gravely against charity, and therefore, since to contract that marriage would then be an illicit thing, the promise made cannot oblige to it. And for the same reason Sanchez says, etc., that this must be said even if the bride suffered defloration. And even if, as Sanchez adds, ... there is no disparity between those contracting. I confess indeed that this is the common opinion, and, speaking per se, true, when the son could conveniently avoid scandals of this sort; but if he could not do so without grave inconvenience to himself, it seems to stand in the way of the reason adduced that charity does not oblige with grave inconvenience... Does not the bridegroom perhaps seem about to undergo grave inconvenience if he is forced to omit marriage with the girl with whom he believes he will lead a quiet life, on account of the vehement passion of love by which he feels himself affected toward her? All those authors, etc., indeed judge this to be a grave inconvenience... All the more because scandals of this sort..., once marriage has been entered into, easily vanish, and minds are reconciled." L. 851.

But if no scandals are feared by reason of notable disparity in wealth, nevertheless, because a promise of this sort is prodigal, St. Alphonsus, loc. cit., still thinks that the bridegroom is not bound to marriage. But from the common sense of men, it is certainly not illicit that a rich man contract marriage with a poor woman. Salm., c. 1, n. 82; Sanchez, l. 1, d. 14, n. 2. "Nevertheless," the same Holy Doctor adds, "since the fault of prodigality is not more than venial, any moderate just cause can remove the vice of prodigality." Hence St. Alphonsus adds, "the case can scarcely occur in which the bridegroom is not bound to take her, because some one of these causes will very rarely be lacking."

From C. I. 63; C. G. 148, children cannot contract marriage without the consent of parents before the twenty-fifth year has been completed, if they are males; the twenty-first year, if they are females. From C. H. 45-47, 320, marriage is prohibited to a minor, namely, before the twenty-third year of age, without the consent of the father, or, in his defect, of the mother; but to one of age, without the counsel of the father, or, in his defect, of the mother. From C. A. 49, minors and also those of age

who cannot validly oblige themselves by themselves, also cannot validly contract marriage without the consent of the father, or, if he is lacking, of the tutor, or curator and judge. From C. B. 1304, 1305, 1331, he who has restricted capacity for contracting needs the consent of his legal representative; a son before the twenty-first year needs the consent of the father. In place of the father the mother succeeds, but a son declared legitimate does not need her consent. From the defect of consent of this sort, annulment of the marriage can be sought. But where there is truly question of the validity of the marriage itself, all contrary dispositions of civil law are of no force as regards the validity of the marriage itself, if otherwise it is valid by natural and canon law. Trent, sess. 24, C. 1, de Ref. Matr.; L. 849, 859, 851, 877, l. 3, n. 335; St. Thomas, Suppl., q. 47, a. 6; Ithur., Cas. 14, n. 7 ff.; E. M.

929. How are betrothals dissolved? Betrothals are dissolved by mutual consent, just as any contract whose obligation, as regards its stability, does not depend on another law, namely divine or human, as, for example, in marriage and religious profession. L. 854; St. Thomas, Suppl., q. 43, a. 3, ad 5. "Between adults, betrothals are dissolved by mutual consent, even if confirmed by oath, not only validly, but also licitly, if there is a reasonable cause; for otherwise it would be at least venial..., because an oath in favor of a third party, although principally made in honor of God, always includes the condition, if the other accepts, or if he does not remit." L. 855. "But between prepubescents, betrothals are not dissolved unless they themselves become adults, from C. *De illis* 7, de Despons. impub.... Sanchez, etc., say, moreover, that if one of the spouses dissented before puberty, and persevered in such dissent, the betrothals are dissolved when he comes to puberty. Nevertheless, if he dissented only internally, Sanchez, etc., judge that he can also withdraw in conscience; but Coninck, etc., more probably deny this, both because this benefit of withdrawing is not granted by law except to those objecting, which is certainly understood externally, and because, just as internal consent alone does not suffice for entering into a contract, so also internal dissent alone does not suffice for dissolving a contract." L. 856; Schmalz., l. 4, tit. 2, n. 32, 40-43. "Moreover, it is certain that he is an adult who by the habit of the body shows puberty, and can now generate." C. *Puberes* 3, de Despons. impub.

Betrothals are likewise dissolved if a notable change occurs or is discovered which, if it had been foreseen, the betrothals would not have been contracted, or which, if it supervened, would now be sufficient for rescinding them. The reason is that spouses are judged to be obliged under this understood condition. A change of this sort would be had if a diriment impediment is discovered; if grave enmity or hatred should supervene or be discovered between the spouses themselves, or the parents or blood relatives; grave infirmity, for example leprosy, consumption, syphilis, etc.; great debts or grave danger of fortune, reputation, etc. L. 863, 865; St. Thomas, Suppl., q. 43, a. 3, ad 3.

Betrothals are likewise dissolved if one party preferred to enter a more perfect state of life. St. Thomas, loc. cit. For they are judged to have been contracted also under this tacit condition. But if religious profession dissolves even ratified marriage itself, much more betrothals. Finally, betrothals are dissolved by the authority of the Supreme Pontiff, when a just cause intervenes, as is clear from the practice itself of the Church. A. S. S., vol. 15, p. 587.

930. Is a party laboring under a hidden defect sufficient for dissolving betrothals bound to manifest it before betrothals, or, once they have been contracted, before marriage? If the defect would render the

nuptials pernicious, as infamy, leprosy, syphilis, etc. would be, he is bound to manifest it or to desist from the nuptials.

And the same must be said if the bride, from intercourse had with another, is pregnant, because then there is present the danger of damage to the bridegroom, namely, that he might have to support another's offspring, and that offspring might be counted among his own heirs.

But if the defect would only render the nuptials less desirable, as, for example, that the bride is not a virgin but corrupted, then, granted that she cannot deceive the man by pretending that she is immune from such a defect, if the man shows that otherwise he would not wish to take her; nevertheless otherwise, even if questioned, she can dissemble by answering equivocally. The first reason is that it is against justice. The second reason is that no one is bound to make known his own defect with his own infamy, if he does not injure the right of another. L. 863-865; La-Croix, l. 6, p. 3, n. 183.

931. Are betrothals dissolved by the crime of the other? By an atrocious crime of the other spouse, betrothals are dissolved on the part of the innocent one. Heresy, grave theft, homicide, or something similar is judged an atrocious crime, which produces grave damage or infamy. The reason is that a notable change of affairs is altogether present. On the part of the innocent one; for no one ought to gain advantage from his own delict. L. 860; C. B. 1299.

932. Is fornication a sufficient cause for dissolving betrothals? "If the fornication was before the betrothals, it is certain among all that the man, after the betrothals, once the fornication of the bride is known, can leave her. Conversely, the woman cannot rescind the betrothals on account of fornication of the bridegroom had before with another..., unless the man also had offspring from another, or unless he is known to have been given to this vice by mixing himself with many women." L. 861. The reason for the assertion is that the bride is thereby rendered notably less valuable, but not likewise the bridegroom. But the reason for the exception is that then it can rightly be feared that the bridegroom will not keep faith with the bride. Nevertheless St. Thomas says absolutely: "although those contracting betrothals have not yet given each other power over the body, nevertheless from this they become mutually suspect of not preserving fidelity in the future; and therefore one can provide for himself against the other by dissolving the betrothals." Suppl., q. 43, a. 3, ad 6. Add that the bride can also withdraw if, at the time of the betrothals, she would not have given consent if she had known that the bridegroom was a fornicator; for then there would be an error giving cause to the contract, and therefore consent would be lacking. And, if the bride is truly an honorable virgin, she by no means intends equally to marry an impure man as a chaste one. "But if the fornication was after the betrothals, it is certain that the bridegroom can leave the woman if she fornicated voluntarily... If the bride suffered fornication violently..., the more common and truer opinion affirms." L. loc. cit. But if the bridegroom fornicated after the betrothals, the authors more commonly and more probably say that the bride cannot withdraw, and much less if the man was compelled by fear. The reason is the same as that which is adduced for the preceding case. But as regards preserving the faith given, either the man or the woman is judged by equal right. Therefore, if the other party voluntarily fornicates, it seems more truly that the other can withdraw. Moreover, although the fall of the bride is held to be more shameful than that of the bridegroom, nevertheless the fall of the bridegroom produces a notable change of status. What fidelity can the bride henceforth hope for from such a bridegroom?

If both spouses fornicated, the first opinion holds that each is permitted to withdraw, because each is judged by the same right in preserving fidelity; the second opinion, that this is permitted to neither, because equal delicts are removed by mutual compensation; "the third opinion, more probable and common..., teaches that the bridegroom can well withdraw, but not the bride. The reason is that in this there would not be equal compensation, since the fornication of the bride is far more shameful than that of the bridegroom." L. 861, 862; H. A., tr. 18, n. 18; Diana, tom. 2, tr. 6, r. 14.

933. Are betrothals dissolved by a supervening impediment? "If the impediment is impedient, the authors very commonly and more probably... deny that the betrothals are dissolved, unless the impediment comes from a vow of religion, and very probably also of chastity... The reason is that other impediments do not have force today." "But if the impediment is diriment, it is certain among all that they are dissolved on the part of the innocent one... The mere reputation of such an impediment suffices, when there is an opinion of the impediment among the greater part of the neighborhood... Whether then they are dissolved also on the part of the guilty one, Dic. affirms, and Salm. think it probable, because, with such an impediment supposed, marriage has now become impossible. But Sanchez, etc., more commonly and more probably deny it, and say that then the obligation of betrothals is suspended until the impediment is removed; because it is not equitable that the delinquent gain advantage from his own crime." L. 857; St. Thomas, Suppl., q. 43, a. 3, ad 4.

934. Is he who has placed the impediment bound to obtain a dispensation, or to accept it when offered? "Some, as Filliucci, etc., say that he is not bound, even if the betrothals were sworn, unless he is obliged to this by reason of damage inflicted, namely defloration, or reputation defiled, because the promise is understood to have been made, things remaining in the same state.... Others, as Roncaglia, etc., say that he is bound, even apart from damage inflicted, to procure the dispensation together with the expenses..., even if they should be great. The reason is that each one is bound, in the way in which he can, to repair the right of another which he himself unjustly injured.... Finally others, more probably, as Sanchez, etc., say that he is indeed bound, even with damage inflicted excluded, if the dispensation can easily be obtained; otherwise, if great expenses and a long delay would be required for it; because the obligation arising from betrothals urges the spouse to employ only ordinary and easy means, not difficult and extraordinary means. Sporer, etc., nevertheless except the case in which the damage of defloration or of reputation must be repaired: because then he would be bound even to expend a great amount, but not so much that he would be forced to fall from his own state." L. 858.

935. Does the obligation of betrothals cease through a subsequent marriage only while the marriage lasts, as is certain; or are they also entirely dissolved, so that, when the spouse has died, the obligation of the prior betrothals no longer urges? The first opinion affirms, because an obligation once extinguished never revives. Moreover, when a thing previously subject to servitude or obligation passes into another state which does not bring an excuse from that obligation from accidental impotence, but of its own nature is repugnant to that obligation or servitude, then this is not only suspended, but entirely extinguished. But marriage of its own nature is indissoluble, and through it the spouse hands himself over perpetually into the power of the other. Therefore. The second opinion, which St. Alphonsus 875 says is absolutely more probable for himself, denies; because neither by positive law nor by natural law is it certain that betrothals are entirely annulled by a

subsequent marriage, "as is clear in him who, after a vow of religion, should consummate marriage; for he, when the spouse had died, would indeed be bound to fulfill the vow."

936. Are betrothals dissolved by the reception of orders? - "By the reception of sacred orders it is certain that betrothals are also dissolved, but not ratified marriage. Thus all... and it is clear from the Extravagant *Antiquae*, on Vow." L. 871. But does he sin who receives sacred orders without the bride knowing or against her will? "The first opinion affirms that he sins gravely, and Sanchez, Palaus, etc., hold this. The reason is that by no law has it been granted to sacred order to dissolve betrothals, as has been given to the religious state.... But the second opinion, not less probable, denies, and Pontas, Navarrus, etc., hold it. The reason is that in the promise of betrothals there is always imbibed the condition: unless a better state is chosen." L. 871. - Whether betrothals are also dissolved by the reception of minor orders? "The first opinion affirms... because there is such a change of the bridegroom... that the bride is deservedly judged not to have wished to oblige herself to contract nuptials with him.... The second opinion, more common and truer, denies.... The reason is that in reality the state of minor orders is not of itself incompatible with marriage... as is clear from C. 1 and 2, *de Cler. coniug*." L. 872. But this proves that betrothals are not dissolved on the part of the one initiated into minor orders; it by no means proves that they are not dissolved on the part of the bride, to whom marriage with such a man could deservedly be grave.

937. Are betrothals contracted before profession dissolved by the entrance of one spouse into religion? - There are three opinions. The first asserts that they are dissolved on neither side. Of it St. Alphonsus says: "It does not seem sufficiently probable." The second, which Busembaum, Sanchez, and others hold, says that they are dissolved on the part of both. The holy Doctor shows that this is not sufficiently persuasive. The third, which "seems absolutely more probable" to St. Alphonsus, says that they are dissolved only on the part of the one remaining in the world, because on his or her part there then occurs a notable change, since it is deemed disgraceful to marry one who has deserted religion. But the other, by entrance, does not become incapable of contracting marriage, and therefore, if he goes out, he must stand by his promises. "The bridegroom would be bound before entrance to celebrate the nuptials, if this were necessary to legitimate offspring, to repair scandal, or to provide for the honor of the bride, if it could not be met in another way. And in this case it is not even permitted to the bridegroom after the celebration of marriage to enter religion and leave it unconsummated; for he cannot then desert the wife, who because of infamy could not find other nuptials." L. 870.

938. What as regards a vow of entering religion, or of receiving sacred orders, or of preserving chastity? - "It is certain, 1., that one vowing to enter religion vows licitly and ought to enter, nor is he bound to stand by the betrothals, if he truly wishes to become religious.... It is certain, 2., that by these three vows betrothals are dissolved on the part of the one not vowing, since by them the one vowing is deservedly judged to renounce the betrothals. It is certain, 3., that if someone after betrothals emits a vow not only of entering, but also of professing religion, then the betrothals are dissolved on the part of both; because the one vowing then becomes altogether incapable of contracting marriage." L. 873.

939. Are betrothals dissolved also on the part of the one vowing by a vow of preserving chastity, or of receiving sacred orders? - "If the vow precedes the betrothals, it is certain that they are invalid, because their promise, since it is about an illicit thing, does not oblige." - If it follows, the first

opinion denies, and many grave theologians hold it. "The reason is that God does not accept the promise of a thing promised to another and accepted by him, nor is it held by any law that betrothals are dissolved by these vows ." But the second opinion affirms, and very many grave doctors hold it in St. Alphonsus and Sanchez, "who calls it most probable, and Salmanticenses, etc., commonly call it probable and safe, and St. Thomas teaches it absolutely, Suppl. q. 52, a. 1, ad 1....

The reason, which they more commonly hand down, is that the promise of betrothals is always judged to have been made under the condition: unless a better state is chosen. And they say that this holds even if the betrothals were sworn, because an oath follows the nature of the act." L. 873. It is confirmed by the Decision of the S. C. C., March 15, 1705, where it was said: a vow of chastity or of receiving sacred orders, through the election of a better state, annuls betrothals, even those confirmed by oath. But except "if the bridegroom were to make the vow in order to elude the bride.... Likewise more probably... even if the bridegroom vowed chastity without the intention of eluding, if afterward he obtains dispensation from the vow, he will not be able to marry another.... But not altogether improbably Bonacina and Sanchez deny this." L. ib. - De Angelis, *Praelect. iur. can.*, l. 4, t. 6, n. 6.

940. Is the dissent of parents a cause for dissolving betrothals? - "I think it must be said," says St. Alphonsus 877, "that, if the father unjustly dissents from such a marriage, the son cannot withdraw from the betrothals, and both he himself and the father would sin if they wished to dissolve them. But otherwise, if the father justly contradicts, namely if the marriage would turn to the disgrace of the family; for then those betrothals do not oblige, since no one can be obliged to execute an unjust thing." And Laymann and Sanchez say the same, "with others commonly, if from such a marriage great scandals would arise among relatives." And hence it is clear that the dissent of parents is not a true impedient impediment of marriage. For the question is only of the honor and deference owed to parents. Hence some fault would not be lacking, grave or light according to the various circumstances, by contracting marriage, without the parents' knowledge, when no urgent cause exists. L. ib.

941. Can a bridegroom rescind betrothals if a rich inheritance comes to him? The doctors most commonly deny it, because the bridegroom "has not been deceived in the condition of the bride, in whom no change has been made." A change has indeed been made in the bridegroom, but in a thing extrinsic to this contract. But several probably affirm it, "because in such a case there now comes a notable change of things." The same consequently would seem to have to be said if someone contracted betrothals with one woman and afterward marriage with another of an exceedingly better condition is offered to him. This "I would not dare," says St. Alphonsus 876, "altogether to condemn"; nevertheless he adds: "I would never dare to depart from the contrary opinion, nor ever to advise it."

942. Can a bride withdraw from betrothals if the bridegroom departs elsewhere? - "It is certain that if the bridegroom transfers his domicile elsewhere, or if he goes away to a distant region, even with the intention of returning, the bride can at once pass to other nuptials; this is expressed in C. *De illis* 5, *de Sponsal.*... - But if the bridegroom has departed to a nearby place..., one must wait until he returns; or the bridegroom must be required to come within a fixed time to contract marriage; but if he, having been required, should delay his return for a just cause, either one must wait according to the judgment of a prudent man... or, what is safer, the cause is to be remitted to the judgment of the judge....

These things proceed, however, if in the betrothals no time was fixed for entering the nuptials.... When a term is attached to betrothals, one must look at whether it is attached to urge, or not to delay, the obligation of contracting marriage, or whether it is to end the obligation. It is attached to urge when the parties therefore fix the term so that neither party before it can compel the other to fulfill the contract. But it is to end when the term is attached so that, when it has elapsed, no obligation remains.... - Whether, when the term has elapsed by the defect, for example, of the bridegroom, the bride can withdraw, if he inculpably omitted entering the nuptials, detained by a just impediment? The first opinion denies.... The reason is that it is not equitable that one be deprived of his right who is impeded by a just cause from fulfilling his promises.... The second opinion, more common and more probable, affirms.... The reason is that the term is attached for this, lest the party who is ready remain for a long time without nuptials; otherwise a time would be fixed in vain. Moreover, this opinion is clearly proved from C. *Sicut* 22, *de Sponsal.*... Whether, when the term has elapsed, the party also remains free who culpably caused the delay? The first opinion, more common, denies.... The reason is that no one ought to draw advantage from his own crime.... The second opinion affirms..., and St. Thomas also expressly holds this in 4, d. 27, q. 2, a. 3, ad 2....

The reason seems to be that since the term was attached to end the obligation, when it has elapsed, the obligation ceases.... The first opinion is indeed far more common, and to me far more probable; but the second does not lack its probability." L. 866, 868. - S. C. de P. F., September 26, 1840, Collect. n. 1216; St. Thomas, Suppl. q. 43, a. 3, ad 2; L. 17, *de Sponsal.*, ff.; L. 2, e. t., C.

943. Is one withdrawing from betrothals bound to restore the earnest money? That betrothals can be contracted with earnest money given, there is no doubt. For earnest money is a pledge given of fulfilling the thing promised. If the thing promised, as here, is licit, a pledge is licitly given for fulfilling it. - One who culpably withdraws from betrothals loses his own earnest money, and is bound to return that of the other party, and to restitution of as much as it was in that party's interest that such a contract be fulfilled. Cf. 926. - L. 852; Sanchez, l. 1, d. 30, 35; Schmalzgrueber, l. 4, t. 1, n. 126 ff.; L. 5, *de Sponsal.*, C.; C. B. 1301.

944. Is one justly withdrawing from betrothals bound to pay the promised penalty? "If the penalty is generally attached against him who withdraws justly, it is certain among all that the promise of the penalty does not oblige." L. 853. For it is against the liberty of marriage. - If it is added against one withdrawing unjustly, "the first opinion, sufficiently probable, denies..., because liberty would still be injured...; but the second opinion, more probable, affirms.... The reason is that such addition of a penalty is contrary neither to natural law nor to positive law." L. 853, l. 3, n. 949. - From C. B. 1297, a promise of a penalty, if marriage is not contracted, is null. - St. Thomas, Suppl. q. 43, a. 1, ad 4; Sanchez, l. 1, d. 30 ff.; L. *Titia* 134, C. *de Verborum obligationibus*; C. *Gemma* 29, *de Sponsal. et Matr.*, C. *Requisivit* 17, e. t.; S. C. de P. F., November 22, 1790, Collect. n. 603, v. 1.

945. Is the authority of a judge required for dissolving betrothals? "In the aforesaid causes, when they are manifest, the authority of a judge is not required for dissolving betrothals; otherwise it is required. But if the bridegroom, after his right of withdrawing has become known, nevertheless carnally knows the bride, he is judged tacitly to have renounced his right and to have ratified the betrothals.... Laymann and Palaus say that, when there stands a probable fear of an unhappy outcome, a man can licitly withdraw from betrothals." L. 878. But after the Decree *Ne temere*

something else must be said for Catholics. Since betrothals are contracted by a public act, for their dissolution it is necessary that the public authority of the Church intervene.

946. What concerning kisses and embraces of betrothed persons among themselves? Kisses, embraces, and other similar acts which are shameful or less honorable are illicit to the betrothed in entirely the same way as to others. The reason is that betrothals confer on the betrothed no special right to intercourse and venereal pleasure, and therefore neither to those acts which contain a danger more or less proximate of venereal pleasure. - Kisses, embraces, and other acts honorable from their object and from the manner of performing them are permitted to the betrothed. The reason is that those acts are licit in themselves, and therefore, as they are permitted to others who are free, so also they are permitted to the betrothed. But the question is moved especially about the betrothed rather than about others, both because on the one hand these acts can more easily be permitted to them because of the special reason which has force for them, namely for mutually fostering benevolence, which is entirely necessary to them for future marriage, and because on the other hand there is also present a special danger of sin; whence counsel should generally be given to them that they abstain even from these acts, as far as can be done. - Billuart, diss. 6, art. 16; L. 950.

947. What must be thought of those acts of the betrothed which otherwise in themselves are honorable and licit, if they contribute to arousing venereal acts? Here the general rule holds: these acts are culpable only when either the cause is evil, or there is a proximate danger of consent. What if it is clear to the bridegroom or bride that the other sins in these acts because of a depraved affection? If those acts are done before others, the other can licitly permit those acts, lest he or she be defamed, or introduce suspicion of himself or herself, and lest others be scandalized. If those acts are done secretly, and it is certain that they are done maliciously, where the question concerns others and not betrothed persons, the doctors commonly teach that one is bound to repel those acts. But if the question concerns betrothed persons, for whom often in this matter a notable inconvenience could be present, because the other will certainly withdraw from the marriage, the general rule concerning scandal received seems to have to be applied, namely that this can be permitted if it cannot be impeded without grave inconvenience; but it must be impeded if this can be done without notable inconvenience.

What must be thought of these same acts when, from frequency of falls, the danger of consenting to subsequent venereal pleasure must be held as a proximate occasion of sin? - This question, like the preceding ones, can be raised even about looks and conversations themselves, which have a most just cause, as is clear of itself; whence parents can altogether licitly permit such looks and conversations, although great caution and prudence must always be applied in these things. But here the general rule concerning a necessary proximate occasion holds; for it is morally impossible that a bridegroom seriously thinking of entering marriage should not visit, look upon, speak to the bride, and according to custom show her other signs of benevolence which manifest his mutual love. Therefore the confessor should suggest not only general but also special means: that due moderation be preserved, and that necessity not be exceeded in showing these signs; and then that he never deal alone with her alone. Care is likewise to be taken that the marriage not be long delayed. But if these and other remedies do not obtain fruit, this one thing remains: that they be dealt with no otherwise than with other persons in occasions of sin and recidivists. Reuter, *Neo-confess.* 112.

948. Is intercourse had with one betrothed by words about the future adultery? - "More probably it is denied with Sanchez, *de Matr.*, l. 1, d.

2, n. 2, Salmanticenses, Roncaglia. But Roncaglia and Salmanticenses judge that if one of the betrothed fornicates with another person, he must disclose in Confession the circumstance of the betrothals, as changing the species by reason of the injury inflicted on the other. But it is sufficiently probable with Trullench, Pontas, Diana, Covarruvias, Lugo, Sanchez, and Laymann that it is only an aggravating circumstance, since the bridegroom by betrothals acquires no right over the body of the other." L. l. 3, n. 447; l. 6, n. 647; Billuart, diss. 6, app. 1, question 3; Ithur., Cas. 6, n. 16; Lugo, *de Poenit.*, d. 16, n. 177, 178.

949. Must banns be sent before marriage? - Marriage cannot be contracted licitly, although validly, without previous proclamations of the same, and the obligation is grave. Trent, sess. 24, C. 1, 5, *de R. M.*; C. *Cum inhibitio* 3, section 1, *de Clandest. desp.* - All who are to contract are subject to the law of proclamation. From usage, however, Princes are excepted, because their lineage is sufficiently known, and ordinarily their marriages are sufficiently public. The case of urgent necessity is also excepted, for example, if someone near death should wish to marry a concubine to legitimate offspring, and there would be danger in delay. - A parish priest omitting the denunciations, even if he knows that no impediment is present, sins gravely.

For the law obliges, although in the particular case its reason may cease; and a very grave danger is always present if this matter is left to the judgment of parish priests. But does a parish priest sin gravely if he omits only one proclamation without dispensation? It is controverted. Some affirm, because one proclamation out of three must be held a grave part of the whole precept. Others probably deny, because of the opposite reason. But to omit two denunciations is more probably grave. L. 991. - From a just cause the Bishop and his vicar general can dispense from the law of banns, more easily from one or another denunciation than from all. Trent, sess. 24, C. 1, *de R. M.* But dispensation must be obtained from both Bishops if the spouses belong to different dioceses.

For if impediments are not detected on one side and in one place, it does not follow that they cannot be detected on the other side and in another place. Yet there are not lacking authors who say that the Ordinary of either side can dispense with both, because of the unity of the act of both, and St. Alphonsus 1006 seems to approve. - The doctors commonly teach that the Bishop not only can, but also sometimes is bound to dispense, namely to avoid grave common or private damage, spiritual or temporal; indeed even because of a notable spiritual or temporal good of the community or of another private person. - L. 389-391, 1005-1007; C. I. 70 ff.; C. B. 1316; E. M.

950. Note: If for a grave cause the denunciations were omitted before marriage, lest, for example, it be maliciously impeded, "then before its consummation let denunciations be made in the Church, so that if any impediments underlie it they may more easily be detected." Trent, sess. 24, C. 1, *de R. M.* Therefore, if it is clear that there is no impediment, the spouses will not sin gravely against the Decree by consummating. Indeed Trent immediately adds that the denunciations can be remitted by the prudence and judgment of the Bishop. The parish priest cannot undertake to make the proclamations unless it is first clear to him concerning the free consent of both contracting parties. He must also inquire whether they are affected by any impediment, and whether they know the rudiments of faith, which they must afterward teach their children. Roman Ritual, *de Sacr. matr.*

Free state: It must be clear before the reception of Orders and before entering marriage. It can be proved by the sworn testimony of two persons. A process is of itself to be instituted, and the norms handed down in the Instruction of the Holy Office, August 21, 1670, with the attached declarations, August 29, 1890 and 1868, are to be observed as regards proving the death of a spouse. But if the aforesaid free state cannot be legitimately proved, then recourse must be made, after the faculty has first been obtained, to a supplementary oath. Holy Office, February 1, 1865.

951. In what place must denunciations be made? - "It is certain that they must be made in the parish of each contracting party..., because custom so bears. Laymann, etc., except, unless the parishes are very near.... If one of the spouses stays in some place briefly, Pontas thinks it suffices if they are made in the place where he actually lives. But far more probably Sanchez, etc., from the declaration of the S. C., say that they must altogether be made in the parish from which he departed, because denunciations are made for this, that impediments may be manifested, and therefore they must be made where the spouses have lived for a longer time. And here it must be noted that if one of the spouses is external, the parish priest must not make the denunciations unless after he has proved the free state before the Ordinary by an authentic document, as is had from the Instruction of the S. C. of the Holy Office.... But as regards vagi, Trent, sess. 24, C. 7, *de R. M.*, commands parish priests not to assist at their marriages unless after diligent inquiry has been applied, and unless first they have obtained from the Ordinary license to assist. Hence Roncaglia rightly says that a parish priest would sin gravely if he did not observe such a precept." L. 991. - They are to be made in the parish church of the domicile or quasi-domicile of the spouses, or of simple residence and the immediately previous domicile, unless the spouses have left it for six months.

Nevertheless, monthly residence is now to be attended to only for marriage, and not also quasi-domicile. Hence if the spouses, where they now are, have come there for six months or at least for a month, there the denunciations are to be made; otherwise also in the place from which they departed. "For generally satisfaction is made to the Tridentine Decree if marriages are denounced where those intending to contract marriage are parishioners at the time of the denunciations." Schmalzgrueber, l. 4, t. 3, n. 14. But as regards place of origin and previous domicile, or where they lived longer, it is enough to seek testimony of free state through the documents of their Ordinaries, and through examination of witnesses, according to the cited Instruction of the Holy Office, August 21, 1620, confirmed by Clement X, or at least, by special indult, through the supplementary oath of those wishing to contract. But if one or both spouses have equal domicile in two places, or domicile in one place and quasi-domicile or monthly habitation in another, the banns must be proclaimed in both. - Many doctors say, moreover, that proclamations can be made outside the church in a place of great gathering, because thus the end of the Council is obtained. - L. 991; E. M.

It has been granted to the Archdiocese of Paris that written notices exhibiting future marriages be affixed in a conspicuous place of the church for three continuous Sundays or feast days, and that they remain affixed throughout the whole day from the first morning Mass to the last evening liturgical office. S. C. C., March 28, 1908.

At Rome, "from those who have stayed for six continuous months after attaining puberty in another diocese, a Document of free state is required, given by the Ordinary of the place. Those from outside the diocese shall exhibit a Document of origin, baptism, confirmation, and free state.... Once the publications have been carried out in the parishes of the contracting parties, and also in the parishes

where the contracting parties have equal domicile or quasi-domicile..., the parish priest will be able to proceed to the celebration of marriage." Instruction of His Eminence the Cardinal Vicar of the City, April 5, 1902, A. S. S., v. 37, p. 223 ff. Cf. the more recent Instruction in M. E., v. 23, p. 28-34.

For proving free state, witnesses are to be duly examined according to the Instruction of the Holy Office, August 21, 1670, Collect. S. C. de P. F., v. 1, n. 192; Decree of the Holy Office, February 24, 1847, Collect. cit. n. 1011. Cf. also Decree of the Holy Office, January 13, 1869, Collect. cit., ed. 2, 1907, n. 1342.

When certain documents concerning the death of a spouse are not had, the response given by the Holy Office on July 20, 1898 concerning men who were present at the battle of Adua is to be applied to other similar cases. S. C. of Sacraments, December 16, 1910. Cf. *Enchiridion*, num. 996.

952. When must proclamations be made? - They must be made on feast days of precept, continuously, during the solemnities of Masses. Trent, sess. 24, C. 1, *de R. M.* On feast days of precept, at least in the place of the proclamations. On feast days. Several teach that they can also be made on a weekday if for some cause there is a great gathering of people at the church. Schmalzgrueber, l. 4, t. 1, n. 24. Continuously, i.e. with no feast day omitted from the first proclamation to the third. St. Alphonsus 992 thinks it probable that there is no grave sin if the feast days are not continuous, one or another having intervened, especially if the question concerns feasts other than Sunday. For there is slight danger that the people will forget. But can proclamations be made on feast days immediately succeeding each other, if they occur? It is controverted, and there is a twofold probable opinion. During the solemnities of Masses, i.e. in the parochial or conventual Mass. The doctors add probably that, from a just cause, they can be made in a sermon, or on the occasion of a procession, when the people are gathered. They cannot be made in private Masses, nor at Vespers. If, however, the parish priest has forgotten to make the last proclamation at Mass, and the nuptials are urgent, he can supply it at Vespers. Once the proclamations have been made, it is licit to contract at once even on the same day. But if, once the proclamations have been made, marriage does not follow within two months, more probably the proclamations must be repeated, unless it seems otherwise to the Bishop. Roman Ritual. And after three months have elapsed, there is also need of a new testimony of free state, unless again it seems otherwise to the Bishop. S. I. C., February 24, 1847, ad 4. - L. 991, 992, 993; E. M.

The S. C. C. in Pineroli, April 7, 1862, rescripted that "denunciations can be made on the aforesaid suppressed feast days, i.e. according to the Decree of Pius IX to the Subalpines; care is nevertheless to be taken that these be fulfilled at the time of the divine office when the greater number of the faithful is usually present in the church." But the authors add: with the permission of the Ordinary.

953. Must known impediments of marriage be revealed? - There is of itself a grave obligation of revealing impediments of marriage. The reason is drawn from the motive of religion and charity, and from the very precept of banns. - This obligation pertains to all, of whatever sex, age, parish, diocese, even friends and blood relatives; and it must be fulfilled as soon as morally possible, lest perhaps, once dispensation has been obtained from one or another proclamation, marriage immediately follow. But once marriage has followed, the positive law indeed ceases; but the natural law, according to circumstances, can require revelation. - The aforesaid obligation is present however hidden the impediments are, and even if someone knows them under a natural secret, even one simply committed or promised, even sworn. For a secret of this sort does not oblige when grave damage

threatens the community or a particular person. But more probably there is no obligation of revelation if it is a secret committed for the sake of seeking counsel, for example to an advocate, physician, parish priest, etc. The common good seems to require this. But those who know impediments of marriage in this way must at least admonish the spouses to desist from the marriage. C. *Praeterea* 12, *de Spons*.

One is bound to reveal impediments, although he alone knows them and cannot prove them, since here the testimony of one suffices. One can, absolutely speaking, reveal an impediment if damage threatens an innocent person, or public damage would follow. Cf. V. 1, n. 1542. And the contracting parties themselves are bound to reveal it, since the question is not of undergoing a penalty, but of avoiding sin and scandal. - But one is not bound to reveal it with grave damage to himself, if grave scandal of others would follow from it, if the revelation would be useless or rather would harm those contracting in good faith, if dispensation had already been obtained, etc. - L. 994-1002.

954. Can a parish priest sometimes dispense in denunciations? - R. In the negative, because he has no jurisdiction in the external forum. "Nevertheless Sanchez, Laymann, etc., say very probably that in cases in which the Bishop is bound to dispense, and cannot be approached, and there is danger in delay, he can declare that the precept of proclamations does not oblige, provided he is certain that no impediment is present. Indeed in cases of this sort Busembaum, Pontas, etc., judge that the spouses themselves, if they are certain that they are not impeded, can enter nuptials without denunciations." L. 1007.

955. What is the parish priest to do if the spouses are already in the Church to contract marriage, and he detects that a hidden impediment is present? - If the nuptials cannot be delayed without danger of infamy or other very grave inconveniences, and the penitent is in invincible ignorance of the impediment, the admonition is to be omitted, and the celebration of marriage is to be permitted until dispensation is obtained. If the penitent is in vincible ignorance, or if he openly knows the impediment, and the marriage cannot be delayed without infamy or scandal, not even to obtain dispensation from the Bishop, then the difficulty is very great. According to St. Liguori and others, the confessor could declare the law of the Church concerning impediments not to oblige in such straits of infamy and scandal, and proceed to the celebration of marriage. Certainly every power has been given unto edification, not unto destruction. Nevertheless, as soon as possible, at least for caution, he ought to request dispensation. According to others, simulation of the contract of marriage could be permitted with the purpose of seeking dispensation from the impediment as soon as possible. But, they say, an impediment cannot cease naturally; for an invalidating law never ceases on account of a particular inconvenience, whatever it may be. But whenever the Bishop can be approached, he must be approached, because, according to the common opinion, in that case he can dispense from ecclesiastical impediments.

C. *Ubi* 2, *de Desp. impub.*; L. 613, 1122; *Monit. Eccles.*, v. 12, p. 16 ff.

Nor are there lacking those who likewise hold that, at the article of death, when grave danger would be present for the eternal salvation of the sick person, the ecclesiastical law of impediments ceases by force of the more urgent natural law, namely of charity, and that at least then there is room for legitimate epikeia. M. E., v. 20, p. 177, 474.

But in the present matter almost every difficulty vanishes. For Bishops, in the aforesaid case, have among the quinquennial faculties the faculty "of dispensing over the impediments of adultery and affinity from illicit intercourse, even in marriages to be contracted, and of subdelegating, as regards the aforesaid impediment of affinity, the faculty of dispensing, even habitually, to parish priests of their own diocese." Form of Faculties, May 5, 1896. To parish priests, and also to rectors, so called, who exercise the care of souls in some district, although they are not parish priests in the strict sense; and also to those priests who, during the vacancy of a parish, or on the occasion of sickness or absence of the parish priest, are deputed as administrators of the parish. S. Poenitentiaria, July 17, 1901. Cf. 1044; E. M. *de Leg.*, n. 264, and here 955.

II. On the Nature and Properties of Marriage

956. What is marriage? - Marriage can be considered in two ways, namely as contract and as sacrament, since it is both. Marriage as contract is an agreement by which a man and a woman legitimately hand over to each other dominion over their bodies in order to acts of themselves apt for the generation of offspring, and oblige themselves to an undivided society of life. Marriage as sacrament is defined: a sacrament of the new law, conferring grace for sanctifying the legitimate union of man and woman, and for piously receiving and holily educating offspring. Trent, sess. 24, Doctrine on the sacrament of marriage, c. 1; Decree of the Holy Office, *Lamentabili*, July 3, 1907, prop. 51; L. 879, 880; St. Thomas, Suppl. q. 42, q. 44.

957. Resolutions: Therefore marriage is licit; and its use is licit. It is not, however, necessary for individuals, since it is necessary from its intrinsic nature only for the perfection of the multitude, and not for the perfection of each one. St. Thomas, Suppl. q. 41, a. 2, 3; E. M.

958. What is the division of marriage? Marriage can be considered both as regards the union of man and woman, and as regards the bond which arises from it. Hence it is called first *in fieri* or *in facto esse*. Marriage *in fieri* is called the actual contract itself, which is perfected by the mutual consent of man and woman. But the marriage persisting in the bond, which comes from the matrimonial contract, is called *in facto esse*.

Moreover, marriage is distinguished as legitimate, ratified, and consummated. Legitimate marriage is called that which is contracted according to the norm of natural and civil law, but nevertheless does not have the ratification of the Church or the notion of sacrament; such as was formerly entered in the law of nature and the Mosaic law, and is also now entered among Jews and Gentiles. - Ratified marriage is that which is contracted between Christians entangled by no impediment, between whom, however, after the contract, conjugal commerce has not yet intervened. Ratified, because not only nature and civil law, but also the Church approves it and holds it ratified. C. *Quanto* 7, *de Divort*. Consummated marriage is called that which has been completed by the intercourse of the spouses; this must be understood not only of ratified marriage, but also of merely legitimate marriage. That marriage may be called consummated, two things are required: 1. that the carnal union be perfect and sufficient for generation, so that, as is had in C. *Verum* 2, *de Conv. coniug.*, the spouses have been made together one flesh. Therefore that would not suffice from which, although the bodily integrity of virginity had been taken from the woman, nevertheless, because suitable effusion of male seed was lacking, generation could not follow. 2. That legitimate consent or ratified marriage preceded a union of this sort. Therefore intercourse had before the matrimonial contract does not bring it about that

the marriage afterward contracted is judged consummated, and therefore neither indissolubility nor the other effects of consummated marriage will be produced. Whence you conclude that he who, bound by a vow of religion, has violated a woman can marry her and then, unless another cause stands in the way, enter the vowed religion, if after he married her, he did not know her again. - Schmalzgrueber, l. 4, t. 1, n. 227, 228.

There is moreover another distinction of marriage into true, presumed, and putative. - True is called that which has really and validly been contracted, and is proved as such by some one of those arguments by which other affairs also are customarily proved, such as the testimony of the parish priest or of others, the book of marriages, the confession of the spouses, long cohabitation of an honorable woman. Lighter proofs suffice when the question concerns sustaining a marriage than when the matter is of dissolving it. Schmalzgrueber, l. 4, t. 1, n. 233.

Presumed is called that which is presumed by law; and this presumption of law has place especially in a threefold case. And 1. when, in places where the Tridentine decree concerning the form of marriage was not in force, after betrothals entered absolutely between two capable persons, carnal intercourse followed between them; for then consent concerning the future is presumed to have passed into consent concerning the present, and intercourse is presumed to have been admitted with conjugal affection. Schmalzgrueber, l. 4, t. 1, n. 115 ff.; Pirhing, e. t., n. 27; Barbosa on Cap. *Is qui*, e. t., n. 3 ff.; St. Thomas, Suppl. q. 46, a. 2. - 2. When after betrothals entered under a condition, before the event of the same, carnal commerce intervened between the spouses; for the Church, with abstraction made from the aforesaid Tridentine Decree concerning form, then presumes that the spouses receded from the condition, and therefore wished to contract marriage purely and absolutely. This is clear from C. *Per tuas* 6, *de Cond. apposit.* - 3. When after betrothals concerning the present invalidly contracted by prepubescents, in whom malice does not supply age, signs of ratified consent intervene between the same after they have attained puberty, such as not only carnal intercourse, but also kisses, embraces, cohabitation, etc. This is clear from C. unic. section *idem quoque, de Desp. impub.*, in 6. Nevertheless this case also can have place only where the aforesaid Tridentine Decree is not in force. Cf. Schmalzgrueber, l. 4, t. 1, n. 234.

But by the Decree of Leo XIII, February 15, 1892, this presumption of law, which at the same time was a presumption *de iure*, admitting no contrary proof, was abrogated. By this Decree, indeed, the presumption from carnal intercourse is explicitly abrogated. But consequently and implicitly the presumption from other signs, which are of lesser force, must be judged abrogated. The presumption, however, is abrogated. Wherefore, if intercourse, or other signs, really express consent concerning the present from the real intention of the contracting parties, the marriage will still be valid in places where the Tridentine Decree is not in force. - C. H. 83.

Moreover, in the present day from the above-cited Decree *Ne temere*, this presumed marriage can no longer have place, since for its validity it must altogether be contracted according to the form established in the same Decree, except in those places and among those persons whom the aforesaid Decree does not regard.

Finally putative marriage is called that which is believed to have been legitimately contracted, although nevertheless in the reality of the matter it is null because of some hidden impediment. Concerning this the doctors therefore inquire, so that it may be clear when it has the force of legitimating offspring received from it and other effects of law. Now two things are necessary for this:

1. that it be contracted in good faith by at least one of the spouses, who was ignorant of the impediment.

Thus in C. *Ex tenore* 14, *Qui filii legit*. This good faith indeed neither an error of law nor doubt concerning the value of the marriage excludes, as Covarruvias proves, *de Spons.*, p. 2, c. 8, section 1, n. 9. But in doubt this good faith is presumed. 2. That the marriage was contracted publicly and in the face of the Church, that is, before the parish priest and witnesses, and with the denunciations premised, or at least dispensed. Cf. C. fin., *de Clandest. desp.*, section 1.

Another distinction of marriage into canonical, political or civil, and of conscience must also be remembered. They call that marriage canonical in which all things concur which are prescribed by the sacred canons for marriage. - They call that marriage political or civil in which those things also concur which are required by civil law, namely certain solemnities, dotal agreements, etc.; without which marriage is indeed canonically valid, but nevertheless is reputed illegitimate civilly, and therefore in the civil forum it has no action and lacks civil effects, for example, as regards the paternal power of the husband and wife, as regards the succession of children, as regards the dowry of the woman, etc. Marriage of conscience, or morganatic marriage, is called the legitimate union of a man with a woman of inferior condition, entered by this agreement: that the wife and the children born from it are content with the nuptial gift or another certain portion, destined at the time of betrothals, and abstain from the remaining ancestral and paternal goods, together with titles, dignities, and insignia. Schmalzgrueber, l. 4, t. 1, n. 236 ff. - But marriage of conscience or occult marriage is called that which is contracted secretly before the parish priest, or another priest deputed by the Ordinary or parish priest, and two familiar witnesses, who are bound to preserve secrecy. Marriages of this sort, and baptism conferred on children born from them, are noted in a secret book of marriages and baptisms. Care must be taken in them lest the marriage, which is occult, be held with scandal as shameful concubinage, lest the children be judged illegitimate and be deprived of their legitimate portion, and lest their education be neglected. Wherefore it cannot be done without the faculty of the Bishop. Benedict XIV, Const. *Satis vobis*, November 17, 1741; E. M.

Clandestine marriage: It is marriage celebrated without previous banns; this, without due permission, is illicit. It is also marriage celebrated without the parish priest, or another priest legitimately delegated, and witnesses; and this now, as regards Catholics, is altogether null, unless there is a positive exception, according to the Decree *Ne temere*. From it no impediment of public honesty is had.

The print's appendix has more on this paragraph: [Marital and Perfect Intercourse] (/manuals/bucceroni/marital-and-perfect-intercourse). (ed.)

959. What are the essentials of marriage, insofar as it is a contract? As all contracts, so marriage consists of thing, cause, and consent.

The thing is what is mutually given and accepted: power or right over the body, for coming together, in order to generation. Therefore the commingling itself does not pertain to the essence, but only to its consummation. Hence spouses can licitly abstain from the use of marriage, and wish that no more children be born than they can nourish, provided they do not positively impede them, nor procure abortion.

The cause is the procreation and education of offspring, the primary end of marriage, and the mutual help of the whole of life, the secondary end of marriage, Gen. 1:28. After the sin of Adam, a remedy also for concupiscence is another secondary end of marriage, 1 Cor. 7:2, 5, 9. The generation of offspring is from the primary institution of marriage, the remedy from the secondary institution, which presupposes the former. St. Thomas, Suppl. q. 42, a. 2; C. G., l. 4, c. 78. Hence marriage is licitly contracted as a remedy for concupiscence, provided offspring is not positively excluded, and therefore with the primary end of marriage presupposed, namely the generation of offspring, without which end marriage cannot exist. For that remedy is not to be sought in another thing, but in marriage. - And the same must be asserted of the use itself of marriage for calming concupiscence. St. Thomas, Suppl. q. 49, a. 5, ad 2, opines the contrary. But St. Alphonsus 882 departs from him, and rightly, since this is drawn by a more proper interpretation from the text of St. Paul cited. Likewise it is licit to contract marriage for an honest extrinsic end, for example, to reconcile the peace of families, to preserve love among blood relatives, to preserve the honor of the family, to protect health, etc. The reason is that "this is not disorder, to choose one of the honest secondary ends before the primary end, provided that this is not excluded. But otherwise, if the end is not honest, namely if it is of pleasure, or of desire for riches, or of vain honor." L. 883. Indeed for every right operation it is not necessary that the principal end to which that operation is ordered always actually be intended. It suffices actually to intend other ends to which that operation also by its nature is referred, provided the primary end is not excluded, or something is not positively done contrary to it, or they are subordinated to the primary end, so that another secondary end is not intended as principal, nor the others subordinated to that secondary end.

Finally it is perfected by consent, namely the true will of each concerning the same thing, i.e. the right of coming together, by handing this over on both sides, marriage is contracted. The right of coming together, namely in order to generation. And because marriage is perpetual, if one of them has the purpose of contracting it only for a time, from defect of legitimate will, although not manifested externally, nothing will be done. Wherefore marriage can indeed be given without the good of offspring and without the good of faith, or fidelity, according to themselves; because these two goods of marriage, according to themselves, regard the use of marriage, and the being of a thing does not depend on its use; but marriage cannot be given without the good itself of sacrament or inseparability; for this "pertains to marriage itself according to itself, because from this very fact, that by the conjugal pact spouses mutually hand over to each other power over themselves in perpetuity, it follows that they cannot be separated, and hence it is that marriage is never found without inseparability." St. Thomas, Suppl. q. 49, a. 3. - L. 879, 883; St. Thomas, Suppl. q. 41, a. 1; q. 42, a. 2, 4; q. 44, a. 1; q. 45, a. 1; q. 48, a. 1; q. 49; q. 54, a. 3; q. 58, a. 1, ad 3; 4 D. 2, q. un., a. 4; D. 26, q. 2, a. 4; Commentary on 1 Corinthians, Lect. 1; C. G. 146; C. B. 1325; E. M.

960. What sort of consent must there be? - Consent must be: 1. Mutual; for marriage consists in a contract, which is essentially the consent of two, or mutual consent. Whence if it is lacking on one side, it will be null. - 2. Concerning the present: because by a promise concerning the future only betrothals are made, not marriage. This is also deduced from C. *Si inter* 31, *de Spons. et matrim.* - 3. Deliberate and voluntary: because it is a contract concerning a grave matter, and therefore inducing a grave obligation; but no one is judged to impose a grave obligation on himself unless he consents freely and fully. This is clear from Canon Law, which invalidates marriages contracted from grave fear. - 4. Manifested by external signs, because every agreement among men must be known by some

external sign; for agreement necessarily supposes mutual acceptance among those contracting. - St. Thomas, Suppl. q. 45; Lugo, *Resp. Mor.*, l. 1, d. 42; E. M.

961. Must consent be expressed by words? R. In the negative as regards validity, because by natural law in a contract it suffices that consent be expressed by some certain sign. C. un. section fin., *de Despons. impub.*, in 6; C. *Is qui fidem* 31, *de Spons.*; C. *Tuae fraternitati* 25, *de Spons.* Wherefore it suffices that consent be externally manifested, for example, by the handing over and acceptance of a ring, and as regards the woman even by silence. L. 882, 887; St. Thomas, Suppl. q. 45, a. 2; q. 47, a. 3. - In the affirmative as regards liceity, because otherwise one would act against the Rubric and the custom of the Church. Yet it does not seem to exceed venial sin if words are not used; indeed shame or another reasonable cause would excuse from every fault. L. 888.

962. What is to be done if someone says that he consented fictitiously? - As regards the external forum, credence is not given to him, unless from the circumstances it is clear that he was either deceived by fraud or induced by grave fear to contract; for it cannot be supposed that he who freely entered marriage consented fictitiously. - As regards the internal forum, he who asserts that he consented fictitiously must be obliged to abstain from asking and rendering the debt until he has truly consented, and ordinarily also to place true consent, so that he thus repairs the injury inflicted on the other party. Ordinarily, because if the other party consents to separation, or if he himself was forced to contract, he is not bound to supply consent. But it suffices that the consent of the one party accede to the preceding and not revoked consent of the other. Wherefore, if someone before the parish priest and witnesses did not truly consent, he satisfies by consenting afterward.

Besides, the spouse who placed true assent is not obliged to believe the other asserting that he consented fictitiously, unless he confirmed it by oath; and therefore he would licitly ask the debt until the defect of consent was evidently proved. S. C. C., February 24, 1720; St. Thomas, Suppl. q. 45, a. 4, ad 2. But the obligation of entering marriage by true consent easily shows itself to be most grave, not only because otherwise one sins gravely against the reverence owed to the sacrament, but also because by injury a most grave damage is inflicted on the other party. Indeed since in the external forum fiction can be proved with very great difficulty, other nuptials are not permitted to the deceived party, and therefore this one thing remains to that party: either to enter Religion, or to remain unmarried in the world. - L. 887, 1113, 1114; Schmalzgrueber, l. 4, t. 1, n. 265 ff.

963. Does consent through a procurator suffice? - R. In the affirmative, as regards validity, provided the required conditions are present, because marriage has the whole nature of a natural contract. But any contract can be made through a procurator. - The conditions for contracting marriage in this way are: 1. that the procurator have a special mandate; that the mandate be concerning contracting with a determined person; that he execute the mandate by himself, C. fin., *de Proc.*, in 6, unless he has had an express faculty for this; 2. that the one mandating has not revoked the mandate, neither only mentally, nor even tacitly, for example by celebrating betrothals with another; 3. that the procurator show the written mandate to the parish priest and witnesses: but it also suffices that the mandate be given orally; 4. that he contract marriage before the same, according to the Tridentine form formerly in force, and now also before the parish priest and witnesses according to the Decree *Ne temere*; it likewise matters nothing that the mandate is given to a man or a woman. For this neither removes nor changes the nature of mandate; 5. that he not exceed the limits of the mandate, if, for example, the condition required by the one mandating is that it be contracted with such a dowry, at such a

time, etc. - In the negative as regards liceity, unless a very grave cause urges. The reason is that this mode of contracting is contrary to the ordinary practice of the Church, and marriages are scarcely made thus among any but Princes and Magnates. Hence the parish priest ought not by his own authority to bless marriages of this sort, as is clear from the practice of the Church and the Rituals. - L. 885, 886, 889; Sanchez, l. 5, d. 8, n. 24.

Marriage can likewise licitly be contracted by letter, which is read by the other party before the parish priest and witnesses, declaring at the same time his or her consent. And this also now after the Decree *Ne temere*. The invitation of the parish priest can well be made by an absent person through a letter, and through a letter read before the other party and witnesses the parish priest can seek the consent of the absent person, and likewise through a letter read before the same witnesses and the other party he can have the offered consent of the absent person and the accepted consent of the other.

964. Is marriage entered under condition valid? - It is certain that it is valid if the condition is concerning the past or the present, and is verified. The reason is that that conditioned consent immediately passes into absolute consent, and therefore nothing is lacking to the value of the sacrament. - If an honest and possible condition concerning the future is added, marriage is not perfected until the condition is fulfilled; because the contract must transfer the mutual right over bodies concerning the present.

But when the condition has been fulfilled, the marriage is valid without new consent, since a conditioned contract, once the condition has been fulfilled, passes into an absolute one, and by that very fact is valid by reason of sacrament, because among Christians the contract of marriage cannot be separated from the sacrament. Without new consent; although many deny this, and from St. Alphonsus 895 probably, it is safer to renew consent. Although the marriage is valid even if the contracting parties are ignorant that the condition has been fulfilled, because the existence of the condition does not depend on knowledge of it, nevertheless they cannot use marriage before receiving notice of its fulfillment; otherwise at least by will and intention they would commit fornication. - A condition impossible from the nature of the thing, or only in fact, is held as not added in the external forum, because in so grave a matter it is presumed not to have been added seriously. C. fin. 7, *de Condit. apposit.* But because presumption yields to truth, both for the external forum and for the internal forum those cases must be excepted in which the truth certainly opposes and prevails over the presumption. But if there is doubt, then the condition is held for both forums as not added, lest perhaps those who are legitimately joined be separated, and be joined illegitimately to others. - 5.

"But if the condition concerns a necessary future, as that the sun will rise tomorrow, then it is marriage; because such future things are already present in their causes." St. Thomas, 4 D. 29, q. un., a. 3, q. 3; L. *Si pupillus* 9, section 1, *de Novationib.* - L. 890, 892, 895; St. Thomas, Suppl. q. 47, a. 5; Schmalzgrueber, l. 4, t. 5, n. 37, 60 ff.

965. Is it licit to contract with conditioned consent? R. In the negative. Such a mode of contracting is illicit, especially if the condition concerns the future, unless perhaps, as St. Liguori 892 has it, there is a most urgent cause. The reason is that many and grave inconveniences can easily follow from such a mode of contracting, namely ambiguities, difficulties, and from them quarrels and scandals.

966. Is marriage entered under a shameful condition valid? - If the shameful condition does not repugn to the substance of marriage, the marriage is judged valid in the external forum; for in it the condition is held as not added. C. fin., *de Condit. apposit.* But because this rests on presumption, hence if from elsewhere it is certain that it was added seriously, and that consent in reality was not given except under its event, then certainly the marriage will be judged valid in neither forum unless the condition happens. But when the condition has been verified, as regards the internal forum it is controverted, as in other contracts. Ordinarily, however, it is not judged a condition *sine qua non*, but a mere purpose or promise independent of the matrimonial contract, and therefore consent is not judged suspended by such a condition unless this is altogether clear. Besides, in doubt one must always judge in favor of marriage. L. 891. - But the marriage is judged invalid in the internal forum if this condition repugns to the substance or essence of marriage, namely to its threefold essential good, that is, 1. the good of sacrament; 2. the good of faith; 3. the good of offspring; which would happen if the spouses, in contracting marriage, excluded perpetuity in marriage by making divorce, fidelity in marriage by not rendering the debt and by commingling with another, or the generation of offspring by positively impeding it. The reason is that by such a condition, whether added only interiorly in the intention of one or both contracting parties, or only exteriorly, either there is not had, or at least exteriorly there is not expressed, consent to true marriage, since the very substance or essence of marriage is taken away by force of such a condition.

But in the external forum, unless the condition is drawn into an express pact, the presumption is for the value of the marriage, since the cause is favorable and of the common good. - Therefore marriage is invalid, if such a condition repugnant to the substance of marriage is expressly added and drawn into a pact, in both forums, even if interior consent were present, because sufficient exterior consent would be lacking.

C. *Si conditiones* 7, *de Cond. appos.* - If the shameful condition does not concern the future, but the present or the past, according to the more common opinion the marriage is valid if the condition is verified, and is not valid if it is not verified. The reason is that such a condition is not properly a condition. L. *Institutio* 10, section 1, ff. *de Condition. institution.* - L. 881, 882, 891; St. Thomas, 4 d. 29, q. un., a. 3, q. 3; d. 31, q. 1, a. 3; Schmalzgrueber, l. 4, t. 5, n. 90 ff.; Lugo, *de Sacr.*, d. 8, n. 129; E. M.

967. Resolutions: If the shameful condition does not affect the contract itself, but affects only the execution of the contract, because they do indeed wish to be bound by marriage, but do not wish to fulfill the offices of marriage, then they sin gravely, but the marriage is valid. - In places where a law of divorce exists, if knowledge of the law has itself antecedently as regards consent, i.e. if they contract for this reason, because they know that this is licit for them, and otherwise they would not contract, the marriage is invalid; but if it has itself concomitantly, because they have the general will of contracting, so that they would contract equally without such knowledge, the marriage is valid.

In the external forum the general will of contracting is always presumed, unless the contrary is proved, as Benedict XIV teaches, *de Syn.*, l. 13, c. 22, n. 7, and as Pius VI declared, Letter to the Archbishop of Prague, July 11, 1789. - If marriage was indeed entered under a condition excluding the good of offspring, but one which is honest, namely under the condition of preserving chastity, the marriage is valid: for consent and object, which are altogether essential to the contract, are still had; for the object is the mutual handing over and power over one's own body. Yet others deny this. And Benedict XIV, l. c., n. 10, reports that a marriage of this sort was declared null by the S. C. C. in a

certain particular case. And it seems thus to have to be held if by the aforesaid condition one renounces not merely the use, but the power.

"For that agreement, expressly drawn into a pact, by which the woman abdicated from herself power over the body of the man, and the man likewise power over the body of the woman, is openly contrary to the substance of marriage." Benedict XIV, l. c. And this certainly was verified in the aforesaid case decided by the S. C. - L. 881, 882; Lugo, *de Sacr.*, d. 8, n. 131, 132; Collectanea S. C. de P. F., n. 1291, 1292, 1299, 1301, 1302.

968. "It must be noted here that a condition differs from a demonstration, cause, mode, and day, because a demonstration, or added cause, for example if someone says, I marry you, who are a virgin, or because you are a virgin, does not vitiate nor suspend marriage, even if the cause is false or shameful, even against the substance of marriage, as Sanchez, l. 5, d. 19, n. 2. For although he would not contract if he knew that she was not a virgin, nevertheless he then gives absolute consent, which is not impeded except by error concerning the substance, or concerning the substantial conditions of marriage. Nor does a mode suspend, if it is said, for example, I marry you so that you may serve me..., even if the mode concerns a shameful or impossible thing, I marry you so that you may kill, etc. The reason is that consent does not depend on a mode, as it depends on a condition. And even if, says Viva with Palaus, the mode is against the substance of marriage, namely, I marry you so that you may commit adultery, etc. But more probably Salmanticenses with Sanchez contradict this, because he who has an intention opposed to the contract does not seem to have the mind of contracting.

But whether an attached day suspends the contract, for example if it is said: I marry you after three days? Sanchez denies. But more probably Viva with Coninck, etc., affirm, because the one contracting then does not intend to place perfect consent except after the third day." L. 896. - St. Thomas, Suppl. q. 48, a. 2; Schmalzgrueber, l. 4, t. 5, n. 136 ff.; Sanchez, l. 5, d. 19, n. 2, 3.

969. What are the essentials of marriage insofar as it is a sacrament? The sacrament of marriage is not something distinct from the contract of marriage itself, but is the very contract of marriage itself, elevated by Christ our Lord to the being of a sacrament. Pius IX, Allocution, September 27, 1853; propositions 67 and 73 of the Syllabus given by Pius IX. - Hence it is clear that the contracting parties themselves are the ministers and subjects of this sacrament.

Florence, Decree for the Armenians; Trent, sess. 24, C. 1, *de R. M.* But the matter and form are contained in the contract itself. The remote matter is the bodies themselves or the right over the bodies of the spouses, to be mutually handed over in the contract of marriage in order to generation. But the proximate matter is the mutual handing over of bodies, which is perfected through words or signs expressing consent in the contract; and the form is the mutual acceptance of the contracting parties, expressed by words or signs. - Wherefore among Christians, laboring under no impediment, whether natural, divine, or canonical, there cannot be had a contract of marriage without at the same time having the sacrament of marriage; and conversely, the sacrament cannot exist without the contract. Among Christians, for unbaptized men are not capable of sacraments.

Laboring under no impediment, etc.; for although of itself every baptized human being is a subject capable of the sacrament of marriage, nevertheless accidentally many are barred from validly contracting marriage because of various impediments. - From the aforesaid mutual acceptance and handing over, moreover, the bond of marriage arises, namely the mutual right and obligation over

bodies in order to generation, and therefore the union of husband and wife for one generation and education of offspring, and again for one domestic life. - L. 879, 880, 897-899; St. Thomas, 4 d. 26, q. 2, a. 1, ad 1; d. 28, q. 1, a. 3; Suppl. q. 44, a. 1; q. 45, a. 1, 2; q. 48, a. 1; E. M.

970. Resolutions: The marriage of unbelievers, although it is valid in the notion of contract, nevertheless is not a sacrament. St. Thomas, Suppl. q. 59, a. 2. Whether the marriage of a faithful person with an unbeliever, with the Pope's dispensation acceding, is a sacrament, some deny, others affirm. But a marriage contracted by unbelievers, when both spouses are converted to the faith, passes into a sacrament by the reception of baptism. - Heretics and schismatics who, in entering marriage, observe the laws of the Church as regards the substance of marriage, validly contract and are fortified with the sacrament. - All Christians who are altogether unwilling to receive the sacrament do not validly contract, even if they wish to contract marriage; and if they truly wish to contract marriage, they also receive the sacrament, even if they do not wish to make the sacrament. - Lugo, *de Sacr.*, d. 8, n. 120-130; Schmalzgrueber, l. 4, t. 1, n. 302-304; t. 19, n. 164-176; Ferraris, v. *Matrimonium*, a. 1, n. 19; Clericatus, *de Matr.*, decis. 4, n. 25.

971. Is marriage governed by civil or ecclesiastical authority? - Since among Christians the contract itself of marriage is a sacrament, marriage cannot, insofar as it is contract, be governed by civil power, and insofar as it is sacrament, by ecclesiastical power; nor at the same time, insofar as it is contract and sacrament, be governed by both powers, civil and ecclesiastical; but it must be governed exclusively, both as contract and as sacrament, by the authority of the Church.

Wherefore to the Church alone it belongs to establish especially those things which regard the substance of this contract, both as regards the incapacity of persons and as regards the form and solemnity to be constituted, namely as regards diriment impediments to be established. And likewise to the Church alone belong matrimonial causes and causes of betrothals and of other impediments immediately and directly impeding marriage. Trent, sess. 24, c. 4, 12; Benedict XIV, Const. *Singulari*, sections 7, 9; Leo XIII, Encyclical *Arcanum*, and Letter to the Bishops of the Province of Venice, February 3, 1893; Syllabus, prop. 68 ff. - But since families are members of Civil Society, hence marriage in Civil Society produces civil rights and obligations, which are called the civil effects of marriage.

Therefore if civil Princes can do anything over marriages, those things only are regarded which are situated in the civil order. Leo XIII, Encyclical *Arcanum*, and Letter dated February 8, 1893. - But marriage is not a certain civil contract, but is most of all natural. The contract of marriage was instituted by God Himself at the beginning of the world, Gen. 2:18; and furthermore it always was and is a sacred thing, sacred indeed not only by natural law, but also by the supernatural ordination of God. Trent, sess. 24, Doctrine on the Sacrament of Matrimony; Leo XIII, cited Encyclical.

Hence marriage, as regards unbelievers, both as natural contract and as sacred thing, by no means depends on the civil power and jurisdiction of Princes as regards impediments diriment of it, according to the opinion of many grave doctors. But there are other doctors who think that the marriages of unbelievers, since they are not sacraments, and therefore cannot be governed by canon law, lest those contracting be without law in so grave a matter, are governed by the power and jurisdiction of Princes, whether faithful or unbelieving. St. Thomas seems to adhere to this second opinion, 4 d. 39, q. 1, a. 2, ad 3, since "those things which pertain to the law of nature are determinable by positive law; and therefore if by some positive law among those unbelievers

marriage with unbelievers of another rite is prohibited, disparity of worship impedes marriage among them." - St. Thomas, Suppl. q. 42, a. 2; 4 d. 34, q. 1, a. 1; Quodl. 5, a. 15; Schmalzgrueber, l. 4, t. 1, n. 360 ff.; t. 18, n. 2-8; Collectanea S. C. de P. F., n. 1089; E. M.

972. Resolutions: Impediments diriment of marriage are to be taken from Canon Law, by no means from Civil Law, except insofar as the approbation and confirmation of the Church has acceded to this, or insofar as Civil Law is conformable in this matter to Canon Law; from this it is to be corrected where it is discordant. Trent, sess. 24, Decree *de R. M.*, etc.; C. I. 56 ff.; C. G. 161 ff.; C. H. 83 ff.; C. A. 47 ff.; C. B. 1303 ff.

Civil marriage contains nothing illicit in itself, if nothing else is signified by it except "an extrinsic ceremony for fulfilling the forms which are customarily required by civil authority." S. C. C., January 7, 1899. Wherefore in this sense it is permitted. *Monit. Eccles.*, v. 11, p. 389.

973. Note: Since by present Italian, French, and German Civil Law marriage is not admitted unless civil, namely entered according to civil law, hence, if that is passed over, many grave damages can follow, both spiritual and temporal. Spiritual, because it will be open to one to depart from the other and to enter another civil marriage. Temporal, because the husband is not compelled by law to support the wife, and the children, in no way recognized by law as legitimate, do not succeed to the paternal inheritance by force of civil law in the external forum. Wherefore the civil ceremonies are not to be omitted. And if by civil law the bridegroom and bride are prohibited from marriage, it is not licit to join them in marriage without the command of the Bishop. S. Poenitentiaria, January 15, 1866. Cf. C. I. 70 ff., 93 ff., 721; C. G. 165 ff., 723; C. B. 1317, 1324. - But it is otherwise from C. A. 69 ff., 75 ff., and from C. H. 42 ff., 75 ff. - Cf. V. 1, n. 223, 680; Collectanea S. C. de P. F., n. 1390; E. M.

Civil marriage is not marriage, nor is it equivalent to betrothals, and therefore induces no impediment of public honesty.

Nevertheless, since it has the appearance of marriage, it can be sanated in the root. It is to be contracted before religious marriage by reason of civil effects, lest otherwise grave damages arise. And in this sense civil marriage, insofar as it signifies the civil rite to be observed in it for obtaining its civil effects, contains nothing, as has already been said, which cannot be approved. And when it cannot be contracted, recourse must be made to the Bishop. In particular cases, it can be permitted by the Bishop that first the religious marriage be contracted and then the civil. Therefore the Ordinary can permit religious marriage to be contracted without civil marriage having first been entered, but there is need: that if before this the spouses had been bound by civil marriage, they have obtained legal separation; or, if this cannot be had, that it be morally certain that the other party will never demand civil union before the law; that they promise in writing and before a person delegated by the Ordinary and two witnesses that they will celebrate civil marriage as soon as it can be done; that it be morally certain that those entering marriage are not afterward to be separated from one another. S. C. of Sacraments, March 1909. - Civil marriage, as also mixed marriage or a null marriage contracted ignorantly or knowingly, or the danger of marriage whether civil or mixed, is a canonical cause for obtaining dispensation from some diriment impediment. - Clerics constituted in sacred orders, or Regulars or Nuns after the solemn vow of chastity, presuming to contract marriage, and also all presuming to contract marriage with some one of the aforesaid persons, even merely civilly,

incur excommunication reserved to the Ordinary. - Clerics constituted in sacred orders consummating this marriage incur irregularity besides.

974. Is the state of grace required for the sacrament of marriage? - Spouses contracting marriage must be in the state of grace, because marriage is a sacrament of the living. Those who contract in mortal sin become guilty of sacrilege, and do not receive sacramental graces. Probably, however, those graces are only suspended, and when the obstacle or mortal sin has been removed, they are applied to the soul. - If no fruit is hoped from admonition, it will be better not to admonish the unworthy person concerning the sacrilege, so that at least thus he may sin less; and rather he should be induced at least to approach confession as soon as possible. - L. 894.

975. Must the parish priest require that a certificate of Confession be exhibited by the spouses? He cannot of himself require this, unless law or a precept of the Bishop establishes it. The reason is that although the state of grace is required for receiving this sacrament, nevertheless Confession is not necessarily required, since contrition can suffice absolutely even for those who are in the state of mortal sin. From another source it is generally not known to the parish priest that the spouses are not in the state of grace. - Where a particular law exists, the parish priest must require testimony of Confession. Nevertheless cases can occur in which this law admits exception, as if marriage has already been contracted civilly, and one party exhibits the required testimony of Confession, etc. And if the bridegroom is not a public sinner, nor is his unworthiness clear, even less grave reasons suffice. Cf. 372 ff.

976. Must marriage be celebrated in Church, and be blessed by the parish priest at Mass? - It is fitting that marriage be celebrated in Church, and spouses are to be exhorted that they receive the nuptial blessing, which pertains to the solemnity of nuptials, and is altogether distinguished from the rite of celebrating the sacrament of marriage, by which the priest joins the spouses and blesses the ring, and which is contained in the Roman Ritual. The Missal exhibits the nuptial blessing in the Mass for the bridegroom and bride. If they omit it, either they are free from every fault, or certainly from grave fault.

Marriage can be celebrated at any time, even forbidden time, or time of interdict. The nuptial blessing is given only in Mass, and can be given even after marriage has been celebrated, even if the bride approaches pregnant. But it is given by the Bishop alone or by the proper parish priest, only in their own proper territory, and outside forbidden time and interdict. It consists in the Prayers which are had in the Missal: *Propitiare*, etc., and *Deus, qui potestate*, etc., to be said before *Libera nos*; and also *Deus Abraham*, to be said before the blessing. In Mass; namely, if it can be done, a votive Mass for the bridegroom and bride; this is therefore permitted on any day, except doubles of the first and second class, feast days of precept, and the vigil of Pentecost, and other excepted days. Cf. here 657; but on these days the prescribed commemoration for the bridegroom and bride is to be added to the Mass; and moreover after the Lord's Prayer and *Ite Missa est* the Prayers are added which are had for this purpose in the Mass for spouses. But once it has been given either to the man or the woman, it cannot be given again in second nuptials. But since that blessing chiefly regards the woman, if the woman has never received it, it can be given, whether she then marries for the first time, or then marries again, where this custom is in force. - C. 1, 3, *de Secund. nupt.*; Trent, sess. 24, C. 1, *de R. M.*; Roman Ritual, h. t.; Holy Office, September 1, 1841, Collect. S. C. de P. F., v. 1, n. 938; S. R. C., June

23, 1853; August 14, 1858, Mont. Alb.; May 9, 1893; June 30, 1896; Benedict XIV, Instr. 80, n. 8; L. 984, 988; Collectanea S. C. de P. F., n. 1536, 1537, 1559, 1560, 1561; E. M.

For imparting the nuptial blessing after forbidden time, the presence of both spouses is necessary, and that of the bride alone does not suffice. S. R. C., May 27, 1911, ad 7.

If one party is Catholic and the other has publicly cast off the faith or has enrolled himself in a condemned sect, although he has not also been enrolled in a heretical sect, the matter having been brought to the Bishop, the Bishop can permit the parish priest to assist at the marriage only as an authorized witness, if otherwise grave scandal or damage would arise, with every ecclesiastical rite excluded, and the celebration of Mass altogether excluded, unless the circumstances require otherwise. Holy Office, February 21, 1883; April 23, 1873; E. M.

All priests blessing nuptials, or joining spouses in marriage, without permission of the parish priest of the spouses are suspended until they are absolved by the Ordinary of the aforesaid parish priest. - The blessing after childbirth must be done by the parish priest, if he himself has been requested; it can be done by any Priest, if he likewise has been requested, in any church, after its superior has been informed. It is not to be denied to a woman after childbirth whose offspring died without baptism. A woman who has given birth to an illegitimate child does not have a right to the blessing after childbirth.

Proof of marriage. If legitimate proof of an entered marriage cannot be had, an oath is to be deferred to the parties by which they confirm their own assertion; when this has been furnished, the parties are to be held as joined in legitimate marriage, and their offspring as legitimate. Nevertheless those cases are to be excepted in which the law requires full proof, for example if the question concerns prejudice to another marriage, or receiving orders. But marriage confirmed by oath, as above, is to be inscribed not indeed in the common book of marriages, but in a distinct booklet destined for this purpose. S. C. of Sacraments, March 6, 1911.

977. What concerning the unity of marriage? The unity of marriage consists in this, that marriage is the union of one man with one woman. - It is certain that polyandry, or the simultaneous union of several men with one woman, conflicts with the natural law, because it is opposed to the chief ends of marriage, namely the generation of offspring and their good education. The seed of several mixed is sterile. Furthermore, the father becomes uncertain, upon whom the education of offspring especially falls. - It is certain that simultaneous polygamy, or the simultaneous union of several women with one man, is prohibited in every case, at least by positive divine law of the New Law, as is clear from Luke 16:18: Everyone who dismisses his wife and marries another commits adultery.

It is likewise clear from Trent, sess. 24, Doctrine on the sacrament of matrimony, c. 2. Moreover, it repugns at least to the peaceful dwelling of spouses, a secondary end of marriage, and renders the education of offspring more difficult. - It is certain that second nuptials and further nuptials are licit both for a man and for a woman even under the Evangelical law. This is clear from the authority and practice of the Church, and also from Sacred Scripture, 1 Cor. 7:39: A woman is bound by the law as long as her husband lives; but if her husband has fallen asleep, she is freed: let her marry whom she wishes, only in the Lord. - St. Thomas, Suppl. q. 63, q. 65; E. M.

978. What concerning the firmness of marriage, insofar as it regards the bond? - Marriage is indissoluble, i.e. once marriage has been contracted, divorce as regards the bond cannot be made, at

least by positive divine law. It is of faith. Proof 1. From the words of Christ, Matt. 19:6: And so they are no longer two, but one flesh. What therefore God has joined, let not man separate. 2. From the words of St. Paul, 1 Cor. 7:10-11: But to those who are joined in marriage I command, not I, but the Lord, that the wife not depart from the husband; but if she departs, let her remain unmarried, or be reconciled to her husband. And let not the husband dismiss the wife. 3. From Trent, sess. 24, c. 5, 7. Therefore even if before consummated marriage a case occurs such that, were it standing, marriage could not have been entered, for example, if the man becomes impotent, if the woman becomes insane, the bond of marriage perseveres. C. 25, caus. 32. - L. 955; St. Thomas, Suppl. q. 67; Collectanea S. C. de P. F., n. 1295; C. B. 1348; E. M.

979. Is an exception given as regards the aforesaid firmness of marriage? - A threefold case must be excepted. 1. Ratified and non-consummated marriage of Christians can be dissolved, for a grave cause, by dispensation of the Pope, from the power divinely conceded to him. This is clear from the fact that the Supreme Pontiffs have already used this power many times, as St. Gregory VII, Paul III, etc.; Benedict XIV, Const. *Dei miseratione*. Cf. Perrone, *de Matr.*, t. 3, s. 2, c. 6, a. 4. Moreover, this faculty is to be extended to marriages consummated in unbelief, if the spouses after baptism, by which the union becomes ratified, have not again consummated it; and likewise to marriages consummated in unbelief, when the spouse converted and baptized is permitted, by Apostolic Authority, to remain with the wife who was converted and baptized with him, as with a legitimate wife, the others having been dismissed, although she is not his first wife; or, because the absent unbelieving spouse cannot be warned, when it is permitted by Apostolic Authority that the spouse converted to the faith and baptized contract marriage with any faithful person. Indeed this marriage is valid and firm, even if afterward it becomes known that the prior unbelieving spouse could not justly declare his or her will because of an impediment, and had also been converted to the faith at the time the second marriage was contracted. This is most clearly established from the Letters of St. Pius V, August 2, 1571; Gregory XIII, January 25, 1585; Urban VIII, October 20, 1624; September 17, 1627. - Non-consummated, namely by an act of itself suitable for the effect of generation; and consequently, St. Alphonsus 1036, St. Thomas, 4 D. 41, q. 1, a. 1, q. 4, ad 2, by an act perfect on both sides. - Consummated marriage of Christians can in no way be dissolved, Matt. 19:6; Trent, sess. 24, C. 7, *de M.*, and the same must be said if marriage is contracted by a faithful person with an unbeliever from dispensation of the Roman Pontiff. Clement XIII, August 2, 1759; Holy Office, August 1, 1753. - L. 955, 956, 959; Collectanea S. C. de P. F., n. 1308.

Dispensation from ratified non-consummated marriage is to be obtained exclusively from the Supreme Pontiff. The Bishop in this cause cannot, without a special faculty obtained from the S. C. of Sacraments, institute the process. But in other causes the Bishop is the competent judge in first instance.

2. Ratified and non-consummated marriage can be dissolved through the solemn religious profession of one spouse, and this from a special privilege conceded by Christ and declared by the Church. C. *Verum*, C. *Ex parte, de Convers. coniugat.*; Trent, sess. 24, c. 6. Solemn: i.e., not of simple vows, even in the Society of Jesus, but solemn vows. Profession; not mere entrance into Religion. - But so that the spouses may deliberate about the use of this privilege, by the law itself they have two months conceded to them after the nuptials, during which time they are not bound to render the debt. C. *Verum*, C. *Ex publico, de Convers. coniug.* And "either spouse can

licitly deny the debt within the two-month period, although he does not have the intention of entering Religion, because he uses his own right." L. 956. Indeed after that two-month period also, if the marriage has not been consummated even through illicit denial of the debt, this privilege remains. Nor is it impeded by fornication had between the spouses before the celebration of marriage, unless the marriage is necessary for legitimating offspring, or for repairing scandal, or the honor of the bride. If within the two-month period violence is applied, and the marriage is thus consummated while the bride was in fact thinking about embracing religion, although the marriage is now indissoluble, nevertheless the bride can even in this case enter Religion. But he sins who contracts marriage with the intention of entering Religion without warning the other party. - L. 870, 958; St. Thomas, Suppl. q. 61, a. 2, 3; Schmalzgrueber, l. 3, t. 32, n. 11 ff.

There are those who judge that a right of this sort is not conceded except to those who, after nuptials have been contracted and not yet consummated, deliberate about entrance into religion. But in this sense that right would be void, for then immediately after the contract of marriage each one would be bound to render the debt. For who is so mad that, while deliberating about entrance into religion, he would contract marriage?

3. Even consummated marriage of unbelievers can be dissolved from divine concession, when either spouse is converted to the Christian faith, although not Catholic but heretical, through reception of baptism, and the other refuses to cohabit peacefully with him, or does not cohabit except with injury to the Creator and contempt of the Christian Religion, or makes an attempt to draw the faithful party into mortal sin. This divine concession is drawn from the words of the Apostle, 1 Cor. 7:12-15, where he says: If any brother has an unbelieving wife and she consents to dwell with him, let him not dismiss her...; but if the unbeliever departs, let him depart, for the brother or sister is not subject to servitude in such matters; but God has called us in peace. Innocent III explains the same more fully in C. *Quanto* 7, *de Divortiis*. - L. 955, 956; St. Thomas, Suppl. q. 59, a. 3-6; E. M.

Interpellation of the unbelieving spouse is to be made, if the other, while that one remains in unbelief, is converted and wishes to enter a new marriage. Provided it is clear that the spouse is unwilling to live peacefully from that one's response, or from a process at least summary that he or she was unwilling to give any response, or dispensation from making interpellation has been obtained from the Holy See, marriage can be contracted.

980. Note: Marriage is not dissolved immediately by reception of baptism; Crimes are dissolved in baptism, not marriages, C. *Gaudemus* 8, *de Divortiis*, C. *Si quis* 28, q. 2; but when the converted and baptized spouse enters a new union. Even after intercourse has been had after the conversion of either party, if the other party is unwilling to cohabit peacefully without insult to the Creator, the marriage can still be dissolved, whatever time has elapsed. But when the spouse converted passes to other nuptials, since the prior marriage is now dissolved, even the spouse who remains in unbelief can validly and licitly contract another marriage. - Regularly, from the prescription of the Law, C. *Quanto* 7, *de Divortiis*, interpreting the Pauline privilege, *But if the unbeliever departs, let him depart*, the converted party cannot pass to other vows before the unbeliever, having been interpellated, has either absolutely refused to cohabit with the converted party, or at least has been unwilling to cohabit

without insult to the Creator. - If the unbeliever cannot be interpellated, because he or she is far absent and has fled, or lies hidden, several judge, apud Sanchez, l. 7, d. 74, n. 13-15, that interpellation can be omitted, because there is no obligation of impossibilities; nor is there need of it, since it is now clear with moral certainty that the unbelieving spouse is unwilling to be converted, nor willing to live peacefully. Others, with whom Benedict XIV agrees, *de Syn.*, l. 6, c. 4, n. 3, think pontifical dispensation necessary; and the S. C. C., January 17, 1722, adhered to this opinion apud the same Benedict XIV, l. c., and the Holy Office, September 16, 1824. Cf. Collectanea S. C. de P. F., n. 1328. The case would certainly be different if the unbelieving spouse is absent from the spouse by some compulsion and wishes to be joined with that spouse; for then the unbeliever neither departs nor can depart, in which case Apostolic dispensation would be needed for the converted unbeliever, and then indeed in this sense the dispensation from interpellation which is given can be well understood. - When, in some places, by law or custom, in order to remove a peculiar danger of perversion, it is prohibited that the converted party cohabit with the unbeliever unless this one also wishes to be converted to the faith, not only must the unbeliever be interpellated whether he consents to cohabit peacefully, but also whether he wishes to embrace the Christian faith. But if, when the time prefixed by law or custom has elapsed, he has declared that he is unwilling to be converted to the faith, although from another source he would wish to cohabit peacefully, the converted spouse recovers liberty and is permitted to fly to new nuptials. For by the judgment of the Church, according to the circumstances of places, the pertinacity alone of the unbeliever in unbelief is judged to present danger for the perversion of the faithful spouse, and for insult to the Creator. - By the Pauline privilege, it is not conceded to the converted party that he can enter a new marriage with another unbeliever, or even with a catechumen, but only with a baptized faithful person. S. C. de P. F., January 16, 1683; August 7, 1891, Collectanea cit. n. 2183; L. 956, 957; St. Thomas, Suppl. q. 59, a. 3, 6; Benedict XIV, *de Syn.*, l. 13, c. 21; Sanchez, l. 7, d. 73; *Monit. Eccles.*, v. 11, p. 533.

When one of two unbelieving spouses is converted to the faith, the other remaining in unbelief, the converted one can receive sacred orders or profess religion. In the first case the marriage is not dissolved, and therefore if the other spouse is converted, he or she cannot contract a new marriage. Sanchez, l. 7, d. 76, n. 11. But in the other case, "it must altogether be held," says Sanchez, l. c., n. 9, "that the prior consummated marriage is dissolved through profession, just as it would be dissolved through subsequent marriage." - Ferraris, Supplementum, v. *Privilegium Paulinum*; E. M.

981. What and of how many kinds is divorce, and by what cause and authority is it licitly made? - Divorce is separation and disjunction. It is threefold: as regards the bond, as regards habitation, as regards the bed. Divorce as regards the bond is that by which the very bond of marriage is dissolved, so that the former spouses can licitly and validly enter another marriage; this is verified in the three cases explained in the preceding number. Divorce as regards habitation is separation merely as regards cohabitation, while the bond of marriage remains. - Divorce as regards the bed is separation regarding the use itself of marriage and the conjugal debt, while again the bond of marriage remains.

A spouse can separate from a spouse as regards habitation and bed: 1. From mutual consent, which is clear of itself, provided the danger of incontinence is absent; whether for a time, because of affairs, or perpetually because of a desire for a more perfect life. 2. Because of adultery of the spouse, on account of violated fidelity, Matt. 5:32; 19:9; 1 Cor. 7:11; C. 4, 5, 8, *de Divort.* Because of adultery, namely morally certain, not condoned either expressly or implicitly through a conjugal act, not

mutual, because then compensation would exist, voluntary, but not committed from violence inflicted, perfect and consummated. Whether also because of sodomy and bestiality? The common opinion affirms, from which St. Alphonsus 362 says one must not withdraw, but he says that it is not really proved. St. Thomas, 4 D. 39, q. 1, a. 1, ad 4. 3. Because of supervening heresy. C. *de illa*, *de Divort*. 4. Because of any grave danger of body and soul, can. 28, caus. 1; C. 8, 13, *de Rest. spol.*; Trent, sess. 24, c. 8; for example, if danger of life, mutilation, enormous or frequent cruelties is imminent; or danger of perversion. - C. I. 148-155.

The aforesaid divorce from bed because of adultery certainly can be made by one's own authority; likewise from bed and habitation, provided that, if the delict is hidden, scandal is absent, which can scarcely be absent; and more truly also because of heresy; and because of the aforesaid danger, if it is proximate and clear. - But no one of himself is bound to make divorce; since neither is anyone bound to this from justice, as is undoubted; nor from charity, which does not urge with grave inconvenience, which is ordinarily inherent in divorces: provision is made besides for one's own and the other's incontinence, and greater scandals are prevented.

Divorce is one thing perpetual, another temporary. Perpetual divorce is of itself divorce made because of adultery, or by the authority of a judge. Once perpetual divorce has been made, the innocent spouse, in whose favor it is, can still call the spouse back to himself or herself whenever he or she wishes; yet he or she is not compelled to admit that spouse, since this is not without grave inconvenience, although the other spouse has been converted to good fruit, or, more probably, has afterward fallen into the same delict, for example, of adultery, whether the divorce was made by one's own authority, or, more truly, by the authority of a judge. But if the divorce is temporary, the spouse is compelled to receive the spouse returned to the faith, C. 6, *de Divort.*, or when the danger because of which he or she separated has now been removed. - L. 960-977; St. Thomas, Suppl. q. 59, a. 3, 6; q. 62; Sanchez, l. 10; Schmalzgrueber, l. 4, t. 19; E. M.

982. What concerning children to be educated after divorce has been made? - The doctors unanimously establish that children are to be educated with the innocent party. But when the other spouse is an unbeliever or heretic, the offspring must always be educated with the faithful party, although this one is guilty, and this in favor of the faith, from C. fin., *de Conv. infid.* But the expenses for educating the offspring are to be borne by the father, if he is at fault, Auth. *Si pater* apud L. 976. But if the mother is at fault, the law establishes nothing; Sanchez, l. 10, d. 20, n. 8, nevertheless judges it equitable that what has been established for the father also be understood for the mother. But if, once divorce has been made, the man retains the dowry, the wife would now seem sufficiently to concur for the education of the offspring. These things according to Roman Law. But now the more recent laws of various places are to be consulted. C. I. 148 ff.; C. G. 229 ff.; C. H. 104 ff.; C. A. 103 ff.; C. B. 1585, 1635, 1636, 1685. - Schmalzgrueber, l. c., n. 181-183.

983. What concerning a sentence of divorce from the bond to be pronounced by a lay judge? - Where civil law of divorce is in force not only from bed and habitation, but also from the very bond of marriage, spouses cannot, for any reason, petition the sentence of the judge; nor consequently can advocates petition and defend it; nor can judges in any way pronounce it, namely a sentence which repugns to natural, divine, and ecclesiastical law concerning the indissoluble bond of marriage. For there is question of a thing intrinsically illicit. But if by supreme crime spouses have petitioned and obtained from a judge a sentence of this sort of divorce from the very bond of marriage, the civil

registrar can in no way admit these spouses to another civil marriage and authorize it by his presence. For then by his authority he would admit them to nothing other than public and legal adultery, which would be protected by the very favor of the law. Hence he would inflict the greatest injury on the pre-existing marriage, and authoritatively declare those capable of the civil effects of marriage who, while the prior marriage still endures, are altogether incapable of these effects. C. B. 1564 ff.; E. M.

III. On the Impediments of Marriage

984. What and of how many kinds is an impediment of marriage; by what law is it constituted, and by what superior; whom does it affect? Impediments of marriage are certain conditions or circumstances constituted by law, which prohibit from contracting marriage. By law, for a particular precept or prohibition made to someone or to some persons is not customarily called an impediment. - Impediments which forbid entering marriage licitly are called impedient; those which bar from validly contracting marriage are called diriment. Contracting, for if perhaps they supervene when it has already been contracted, they by no means render it invalid. Diriment impediments fall into inhabiting and invalidating laws. Wherefore regularly neither ignorance nor force nor fear even of death excuses from incurring them. - All diriment impediments are established either by natural law, or by divine law, or by canon law. Nor can Bishops constitute them, but only the Roman Pontiff. Impediments introduced by Christian Princes are neither diriment, nor properly impedient, and therefore do not oblige in conscience except merely per accidens, from damage that would occur if they were not observed. - Impediments of natural and divine law oblige all, even unbelievers. Impediments of canon law oblige only Christians, C. 4, *de Consang.*, C. 8, *de Divort.*, namely Catholics and heretics; and thus the Holy See, when permitting mixed marriages of Catholics and non-Catholics, if some diriment impediment is present, first dispenses it. And if marriage is entered by a faithful person with an unbeliever, an impediment of ecclesiastical law certainly does not directly affect the unbeliever; nevertheless it directly affects the faithful person, and because marriage is a contract, and a contract is between two and cannot be invalid on one side and valid on the other, the impediment indirectly affects even the unbeliever, as is seen in the impediment of disparity of worship, crime, etc. C. 1, *de Conv. infid.* - Trent, sess. 24, c. 3, 4; Sanchez, l. 7, d. 5, d. 78, n. 3; Schmalzgrueber, l. 4, t. 1, n. 375; t. 7, n. 46; La-Croix, l. 6, p. 3, n. 525; Benedict XIV, *de Syn.*, l. 8, c. 14, n. 5; l. 13, n. 23; Lugo, *Resp. Mor.*, l. 1, d. 45, n. 4; E. M.

985. Resolutions: Hence, if after marriage has been contracted the woman certainly detects a diriment impediment, by force of which there was no marriage, she cannot ask the debt, nor render it, even if she were compelled to this by the threat of death, because the union would be fornication, which in no case is licit. Except probably, unless the woman were merely passive, so that she would cooperate in an altogether material way in such an act, if she is compelled to this by fear of death, with danger of consent always excluded.

986. How many and which are the impedient impediments? - Today four are numbered: prohibition of the Church, time, betrothals, vow. Formerly six were numbered. For there were also the impediments of catechism and crime. But these two impediments, by the consent of all theologians and canonists, are now held as obsolete. - The impediment of catechism was contracted by him who answered for an infant in the profession of faith which precedes the conferral of baptism, and

constituted an impedient impediment in the same degrees as with the sponsor of baptism and confirmation. - The impediment of crime was a certain penalty imposed by the old law on certain graver crimes, by which namely the guilty person was prohibited from contracting any marriage with any person, either altogether, if he was unmarried, or after the death of the spouse, if married. - Schmalzgrueber, l. 4, t. 11, n. 59 ff.; t. 13, n. 3, 27-29; t. 16; Sanchez, l. 7, d. 15; De Iustis, *de Dispensat. Matrim.*, l. 2, l. c., n. 58 ff.

987. What is the prohibition of the Church? - It is a prohibition, whether general or particular, made by the Church or some ecclesiastical superior, that some marriage not be celebrated. - Particular prohibition is had when, from a just and special cause, marriage is interdicted to someone, whether by the parish priest, or by the Bishop, or by the Pope, who last can also add invalidation to the prohibition. C. *Tua* 4, *de Sponsa duorum*. The Pope and Bishop can furthermore attach a censure to the prohibition. C. ult., *de Matr. contracto contra interd.* - Three just causes, because of which marriage can be interdicted according to the common opinion of the doctors, are chiefly numbered: 1. complaint concerning betrothals by which either of the spouses first bound himself or herself with another person; 2. not vain suspicion of a hidden impediment, either diriment of the union between them or even merely impedient; 3. not empty fear lest from that marriage grave quarrels, enmities, scandals, or other inconveniences should follow. - A general prohibition, which namely regards marriage specifically, is had: 1. that marriage not be contracted without the consent of parents. Cf. 928, 940; 2. without banns. Cf. 949 ff.; 3. clandestinely. Cf. 1026; 4. with a non-Catholic. Cf. 1010. - Schmalzgrueber, l. 3, t. 16, n. 1; Pirhing, l. 4, t. 16, n. 1; Benedict XIV, Instr. 80.

988. What is time? - It is some determined time through the course of the year, which is called forbidden time, and during which the Church forbids solemnities of nuptials. Trent, sess. 23, c. 11, C. 10, *de R. M.* But now such time is that which flows from the first Sunday of Advent up to Epiphany inclusive, and from Ash Wednesday up to the Octave of Easter likewise inclusive. - Now; for before the Tridentine Synod the forbidden time was 1. from the first Sunday of Advent up to Epiphany; 2. from Septuagesima Sunday up to the Octave of Easter; 3. from the second feria of Rogations up to the Octave of Pentecost; 4. two or three weeks before the Nativity of St. John the Baptist. Besides, Trent prohibits in the aforesaid time only the solemnities of nuptials, namely to bless the spouses, together with the Mass for the bridegroom and bride in which that solemn blessing is had; to lead the bride home with noise; to prepare more solemn nuptial banquets. But it does not forbid the parish priest to make the proclamations, or even to join the spouses privately, although in various places because of custom this also is prohibited. Namely the custom of certain places has it, not indeed that proclamations not be made, or that the contract of marriage not be celebrated, or that this not be consummated through forbidden times, but that nuptials not be celebrated unless either some necessity urges, or the license of the Ordinary has been obtained, even, if it can be done, in a case of necessity; to this custom it is certainly fitting that parish priests accommodate themselves. Nor indeed, according to the ancient canons, must one abstain from consummation of marriage, whether from precept or from counsel. For those canons speak only of the solemn leading of the bride, not of the consummation of marriage; and thus it is not necessary to explain them as mere counsel and not precept, for that solemn leading is in reality interdicted by precept. - Roman Ritual, *de Matr.*; S. R. C., August 14, 1855, Mont. Alb., n. 3079, 3380, 3922; Schmalzgrueber, l. 4, t. 16, n. 27, 31-41; Benedict XIV, Instr. 80; L. 983, 984; St. Thomas, Suppl. q. 64, a. 10.

From the Constitution of Leo XIII *Trans oceanum*, April 19, 1897, for Latin America it was conceded "that Indians and Blacks can receive the nuptial blessing at whatever time of the year, provided that in those times in which nuptials are prohibited by the Church, they do not use an apparatus of pomp."

989. What are betrothals? Any betrothals, whether ecclesiastical or private, seriously contracted, unless they have been legitimately dissolved either by mutual consent of those contracting or by another just cause, are an impediment impeding marriage. This is clear from natural law; for there exists a grave obligation of justice to preserve a pact from an onerous contract. But if someone, notwithstanding that impediment, contracts nuptials, the marriage will indeed be valid, since this impediment is only impedient, yet it will not be licit. C. *Duobus* 1, *de sponsa duor.*

990. What is vow? A fourfold vow impeding marriage is distinguished, namely a vow of chastity; a vow of not marrying; a vow of entering Religion; a vow of receiving sacred orders.

A vow of chastity. - He who has emitted such a vow sins gravely by entering marriage with the intention of consummating it, because he breaks the vow. - He also sins gravely, even with this intention excluded, because he exposes himself to danger of violating either the vow or the right of the other spouse. Once marriage has been contracted, he can neither ask nor render the debt during the first two-month period, because by divine privilege spouses are exempted during this time from the obligation of the conjugal debt. But when this time has elapsed, he can indeed render the debt and satisfy the right of the other, but he cannot ask without dispensation from the vow, or without suspension or indirect irritation of the vow made by the other spouse. - He must altogether abstain if the other consents, or has lost the right of asking, for example, because of adultery or incest. But if he can abstain with difficulty, he must as soon as possible request dispensation, or seek the aforesaid irritation from the other spouse. - If the other spouse dies, he cannot fly to new nuptials unless he has obtained dispensation from his vow also to this effect. - St. Thomas, Quodl. 3, a. 18; Quodl. 10, a. 11; La-Croix, l. 3, n. 564.

A vow of not marrying, or a vow of virginity. - He who, after emitting this vow, contracts marriage sins gravely, as is manifest. - Once marriage has been contracted, he can render and even ask the debt, because the observance of the vow has now been made impossible. For the same reason, when the spouse has died, he can at least probably contract a new marriage. - In practice it is sometimes doubtful whether someone strictly vowed virginity or only bodily integrity, virginity or celibacy, or rather chastity universally. The penitent will have to be asked whether he was led by love of the aureola of virginity, or by intention of freeing himself from the burdens of marriage and serving God more holily, or solely by love and affection of purity. In the first case he is to be judged to have vowed virginity, which is lost only by voluntary emission of seed in a man and voluntary laceration of bodily integrity in a woman; in the second case celibacy, which merely prohibits marriage; in the third case truly chastity. La-Croix 57.

A vow strictly of virginity, namely of preserving bodily integrity only, is not violated by the mere contract of marriage, but is violated because, by contracting marriage, someone exposes himself to danger of losing virginity in it. But once it has been lost, since the vow has now been made impossible, he can ask and render the debt.

A vow of entering Religion. - He who has emitted such a vow sins gravely by entering marriage, both because he deceives the other and because he exposes himself to danger of violating the vow. - Before

the consummation of marriage he is bound to enter Religion; and therefore he sins mortally when for the first time, either by asking or rendering the debt, he consummates the marriage, because he must fulfill the vow when he can. But he can fulfill it by not consummating marriage in the first two-month period, since then by divine privilege either party can enter Religion, and the other party, when the spouse solemnly professes, is freed from the bond of marriage. - After consummated marriage he can ask and render the debt, because execution of the vow has been made impossible, and the asking of the conjugal act is not against the vow itself, since he did not vow chastity, but Religion. - Even after marriage has been consummated, of itself he is bound to enter Religion as often as he can do this without injury to the right of the other party, for example, if the other consents, or loses the right of asking the debt in perpetuity, or if the marriage is dissolved by death; because the obligation of the vow always subsists. But in practice in these cases it is more expedient that recourse be had to dispensation. More expedient; for in practice the circumstances by reason of age, of offspring perhaps received from marriage, of the state of fortunes, and also of suitability for religious duties, are so changed that because of change of matter the obligation of the vow almost of itself ceases, and there is no need of dispensation.

A vow of receiving orders. - He who has emitted that vow sins gravely by entering marriage, as is well known. - He is bound to receive orders if he can, for example, if he obtains the consent of the other. According to several he is bound to enter Religion before the consummation of marriage, even against the will of the other, so that he can fulfill the vow. But others more probably deny this. - Once marriage has been entered, he can consummate it if he can no longer fulfill the vow. - When the wife has died, or when separation has legitimately been made, he is bound to receive sacred orders, unless he is dispensed. For the vow does not cease. St. Thomas, Suppl. q. 53.

991. Who can dispense in impedient impediments? - No one can dispense, except the Supreme Pontiff and from a just cause, from an impediment arising from valid betrothals, since in this matter there is question of a strict debt of justice, which no one besides the supreme Prince can take away. The same must be said concerning the necessity of the consent of parents, which is to be referred back to natural law; nevertheless this naturally ceases if the parents dissent unjustly. - Bishops, or Ordinaries, Pastors of souls, enjoying full jurisdiction in the external forum, can dispense 1. in the obligation of banns; 2. as regards the contract during forbidden time, where custom also interdicts this; 3. in a vow of temporary chastity, and of virginity or of not marrying. - But they cannot dispense 1. as regards a vow of perpetual chastity; 2. as regards a vow of entering Religion; 3. as regards the impediment of disparity of worship between Catholics and heretics; 4. as regards clandestinity, or marriage to be contracted in the face of the Church; 5. as regards the solemnities of nuptials, S. R. C., August 14, 1858, Mont. Alb., ad 2; 6. as regards proof of free state. For these impediments are reserved to the Pope. - Regulars by their privileges are able to dispense merely for the internal forum in a vow of virginity, or of not marrying; for they have the same power of dispensing from vows in the internal forum which belongs to Bishops by ordinary right, according to the common opinion of the doctors. L. 987, 1119, 1128; Benedict XIV, Instr. 80, n. 15; Sanchez, l. 1, d. 61.

992. Note: The Bishop, when necessity urges, namely when there is danger in delay, can dispense in a vow of chastity for contracting marriage. Likewise, once marriage has been contracted, the Bishop can dispense, when necessity urges, in the same vow of chastity, for asking the debt; and the Bishop can also do this absolutely by force of quinquennial faculties, and a confessor having the schedule of

the S. Penitentiary. Cf. the respective Formulas. - The Bishop can do the same in a vow of continence by which either spouse has obliged himself or herself after marriage has been contracted. For since by force of this vow one is indeed prohibited from demanding the debt, but nevertheless can and even must render it, it is not a vow of perfect chastity, and therefore is not reserved to the Supreme Pontiff. Otherwise it must be said if by common consent each spouse had vowed perpetual continence. L. 986, 987, 1126.

993. How many and which are the diriment impediments of marriage? - Today twenty diriment impediments are absolutely numbered. Five are on the part of consent and liberty: 1. error of person; 2. error of servile condition; 3. fury and insanity; 4. force; 5. abduction. Fourteen are on the part of the persons contracting. If someone is simply impeded from contracting with any person whatever, the impediment will be 6. either of impotence, 7. or of age, because he cannot altogether, whether perpetually or only for a time; or because he cannot because of an office received, and it is the impediment 8. of order; or because he cannot because of a vow emitted, and there is had the impediment 9. of vow. But if someone is impeded from contracting only with a determined person, either this is because of an obligation to another, and it is 10. the impediment of bond; or because of excessive distance from that person, and it is 11. disparity of worship; or because of excessive nearness, and it is 12. consanguinity, 13. spiritual kinship, 14. legal kinship, 15. affinity, 16. public honesty; or because of undue union with that person, and so it is crime, namely 17. adultery, 18. homicide, 19. both together. - Finally one is on the part of extrinsic solemnity, and the impediment is 20. clandestinity. St. Thomas, Suppl. q. 50, a. 1.

The aforesaid impediments are contained in the following verses. The first comprises the five impediments on the part of consent; the four following contain the fourteen impediments on the part of the persons contracting; the last contains the impediment on the part of form.

1. Error, 2. Condition, 3. Madness, 4. Violence, 5. Abduction;

6. Not able, 7. or Age, 8. Order, and 9. Vow, 10. Bond, 11. Disparity of worship, 12. Blood, 13. Sacred kinship, 14. Or kinship arising from adoption, 15. Affinity, 16. Public honesty, 17. Invading the marriage bed, 18. Killing, 19. or each crime;

20. If Clandestine: the twice ten related things dissolve.

994. What is the impediment of impotence and of age? - For contracting marriage there is essentially required a thing suitable for contracting: for the substantial elements of a contract are thing, cause, consent. The thing is the right of coming together in order to the generation of offspring, to be handed over and accepted on both sides. Therefore impotence for coming together, so that man and woman cannot become one flesh, constitutes a diriment impediment of marriage, which is called impotence. C. 1, section 1, *de Frigid.*; Sanchez, l. 7, d. 92, n. 7. Wherefore those who are impotent for the aforesaid act "cannot satisfy even the secondary end, which is the remedy of concupiscence, for that must be had not through any intercourse whatever, but through that which from its nature is apt for the generation of offspring." Schmalzgrueber, l. 4, t. 15, n. 32.

Hence they cannot contract even as a remedy for concupiscence, since the secondary end supposes the primary; and marriage cannot be for a remedy of concupiscence unless it is marriage. For

marriage "is principally for the office of nature." St. Thomas, III, q. 73, a. 2, apud Cajetan. And an accessory cannot exist without the principal. And certainly marriage instituted secondarily as a remedy for concupiscence is not another marriage of its own kind; but it is that same marriage instituted before sin, so that to that institution for the office of nature there afterward acceded another institution as a remedy for concupiscence. St. Thomas, ibid., in c., ad 2, ad 3. If therefore marriage is impossible according to the first institution, how can marriage be had according to its secondary institution? Indeed, how can a natural union, or union according to nature, of man with woman any longer be had, once the possibility of offspring and the ordering of that union to offspring has been removed? "The union," says the Angelic Doctor, Suppl. q. 55, a. 3, c., "of husband and wife is called natural principally because of the production of offspring." And this union according to the same Angelic Doctor is at the same time so natural and principal that it is what constitutes the first perfection or essential perfection of marriage. "It must be said," he says, q. 73, a. 4, c., apud Cajetan, "that integrity is twofold; one is attended according to first perfection, which consists in the very being of the thing. The other is attended according to second perfection, which consists in operation. Since therefore carnal union is a certain operation, or use of marriage, through which faculty is given for this, therefore carnal commingling will be of the second perfection of marriage and not of the first"; and faculty for it will be of the first. Wherefore, immediately ad 1, speaking of the first institution of marriage, and of those words, "they shall be two in one flesh," the holy Doctor says: "It must be said that Adam set forth the integrity of marriage as regards each perfection, because a thing is made known from its act." Whence this also appears, that according to the Angelic Doctor the aforesaid carnal commingling is commingling apt of itself for generation, or, as the same holy Doctor speaks, a commingling of seeds which can be the cause of generation. Suppl. q. 55, a. 3, ad 3. And Cajetan in cited q. 75, a. 1, defining conjugal intercourse, says: "For that is what is ordered of itself to one kinship and the education of one offspring, and one domestic life." Therefore by this intercourse the remedy of concupiscence can be sought, not by another. Intercourse from which, according to itself and not according to some accident, as in the sick, the sterile, and the elderly, generation cannot follow, is, according to the Angelic Doctor, an act against nature, and therefore in it it is altogether absurd to seek the remedy of concupiscence. "That act," says the holy Doctor, "is against nature in the genus of lust from which generation cannot follow according to the common species of the act; but not that from which it cannot follow because of some particular accident, as old age or infirmity." *QQ. DD. de Malo*, q. 15, a. 2, ad 14, and a. 1, c.

Therefore it is impossible to enter the contract of marriage, as certain moderns assert, by intending its secondary end, with the primary end positively excluded, in which alone that secondary end is to be sought.

Impotence is one thing natural, another accidental. The first is that which is naturally inherent, as frigidity of the man, by which intercourse of itself apt for generation cannot be perfected at all; or excessive heat, by which the man always emits seed outside the vessel before he can penetrate. The other is what is from accident, for example, from abhorrence of the man toward the woman, from disease, from cutting off, from sorcery. Likewise one is temporary, another perpetual. If it can be removed either by some licit remedy without danger of life, or by the progress of years, it is temporary; otherwise perpetual. C. 1, *de Frigid.*; St. Thomas, 4, d. a. 24, a. 2. And thus impotence of excessive heat is temporary, and the impotence of a sick man even in danger of death. Perpetual

impotence is one thing absolute, if namely the impotence is of coming together as regards all, another relative, if it prohibits commingling only with someone.

Only perpetual impotence, if it is antecedent to marriage, whether absolute or relative, dissolves marriage, and this by natural law, and therefore even if unknown; but temporary impotence does not stand in the way of marriage. C. 1, 2, 3, 6, *de Frigid.*; Sanchez, l. 7, d. 92, n. 6; d. 97, n. 2; St. Thomas, Quodl. 11, a. 10, 11. - Therefore there is no marriage contracted with a castrated man or eunuch lacking both testicles, who does not have true seed, Sixtus V, Const. *Cum frequenter*; Sanchez, l. 7, d. 92, n. 20; with one frigid, or so worn by disease or old age that there is no power for the conjugal work; otherwise one is by no means prohibited from marriage even by extreme old age. Consequently there is no marriage, as it seems, contracted with a woman absolutely lacking both ovaries, or a uterus, or having a closed uterus; there is no marriage with her from whom someone is restrained either by sorcery, or natural repugnance, or because of excessive narrowness. C. 4, c. 33; C. 1, 5, 6, *de Frigid.*; Dominic Benetti, *Opus Medico-Morale*, Canon Eleventh, Annotations, num. 1, 2, 3.

Consequently; because in the same way as with the impotence of the man, when the impotence of the woman intervenes, an act per se apt for generation, or a conjugal act, cannot exist. Then neither husband nor wife can exist. For marriage is a marital union, or a union ordered to those things which the office of a husband requires. St. Thomas, Suppl., q. 44, a. 3, ad 1. And there, in the body, speaking of the essence of marriage and of the definition which touches the essence of marriage, namely that it is a marital union, the Angelic Doctor says that the specific difference is contained in that word "marital," "because since marriage is a union ordered to one thing, such a union receives its species from that to which it is ordered, and this is that which pertains to the husband." And there, a. 1, the Angelic Doctor says that marriage "is ordered to one generation and education of offspring, and again to one domestic life." According to that union one is and is called husband and wife; and according to this ordering there is and is called marriage, in the body and ad 3. "I wish to beget children, and therefore I have taken a husband." C. 1, *de Frigid.* Nor is one pubescent unless he can generate. C. *Puberes* 3, *de Despons. impub.* And L. 320, § 3, ff. *de Verborum significatione*: "Nature also teaches us that pious parents take wives with the intention and desire of procreating children." And L. 9, C. *de Nuptiis*: "If, with neighbors or others knowing it, you had a woman at home as a wife for the sake of procreating children... although no nuptial tablets were made, the reality of marriage nevertheless has its own force." And Auth. Coll. IV, tit. 1, Nov. XXII, Pref., marriage is called honorable from the procreation of children. And there, chap. VI, a man is called potent who is able to minister to the procreation of children. Therefore also a woman. Cf. Commentary, n. 150. If it were otherwise, the definition of marriage, and the object of the matrimonial contract, would indeed have to be changed.

Nor is it valid to object that the woman contributes nothing essential in generation. For this, especially at present, after the latest studies of physiology, is altogether false. For generation, on the part of the man, a zoosperm is essentially required; on the part of the woman, an ovum; and the mingling of the seed of both, as the ancients speak. And, as a consequence, on the part of the man testicles are required, by which that zoosperm is elaborated, and the penis by which the same zoosperm is ejaculated into the woman's vagina. But on the part of the woman, besides the vagina, which receives the male penis, ovaries are required, by which ova are elaborated, and the uterus, in which generation takes place, and therefore communication of the vagina with the uterus; otherwise the fertilization of the ovum in the uterus is physically impossible. Cf. the paragraph on Impotence.

Nor likewise can it be objected that nature intends nothing other than sensible copulation, with no account taken of those things which are not sensibly evident; and therefore impotence is present if copulation appears impossible, but potency is present if the possibility of material copulation is established, without inquiry into the virtue and efficacy of the copulation itself. But since eunuchs, if removal of the testicles takes place after puberty, retain the capacity of erecting the member and of coeundum, their marriage then would be wholly valid, contrary to the cited Constitution of Sixtus V.

And as regards the substance of the matter, the doctrine of the Angelic Doctor on generation agrees with this. For in it he fully recognizes as essential not only the part of the man but also the part of the woman. Speaking of affinity, Suppl., q. 55, a. 4, ad 2, St. Thomas says "that man and woman become one flesh in carnal copulation through the mingling of seeds." And this mingling of seeds, namely of the man and of the woman, is, according to the Angelic Doctor, the cause of generation. Hence there, a. 3, ad 3, he says: "It must be said that intercourse against nature does not have a mingling of seeds which can be the cause of generation; and therefore from such intercourse affinity is not caused."

Moreover St. Thomas, speaking of generation, Suppl., q. 58, a. 1, ad 6, says "that the male is active, but the female is passive." Yet she is not passive in such a way that she does nothing and contributes nothing in generation. Hence there he immediately adds: "And therefore greater heat is required in the male than in the female for the work of generation." And III, q. 15, a. 1, ad 2: actively generation is from the man, because he supplies the seminal principle; passively from the woman, because she supplies the corporeal substance. And Quodl. 5, a. 8: "Since in the generation of man," he says, "as also of other animals, the seed of the father is active, but the matter supplied by the mother is as passive, from which the human body is formed, etc." Likewise Quodl. 8, a. 5, ad 3: "For the conception of a human body two things concur: namely the matter from which the conceived body is formed, and again the formative power which forms the conceived body. The first of these Augustine calls the corporeal substance, the second the seminal principle. We are therefore said, according to both of these, to have been in Adam originally, inasmuch as the matter of the conceived body is prepared by the generative power of the mother, but the formative power is in the seed of the father." Cf. also I-II, q. 81, a. 5; II-II, q. 26, a. 10, ad 1. If the seminal principle is called the zoosperm of the man, which fertilizes the ovum of the woman, and the corporeal substance is called the ovum on the part of the woman, in what does this doctrine disagree with the opinions of recent physiologists? Besides, since according to the Angelic Doctor something essential to generation is supplied both by the man and by the woman, although principally by the man, as regards the substance his doctrine on generation in no way differs from the doctrine altogether certain among physiologists, especially after more recent observations have been made. And when physiologists say that generation is had from the fusion of the substance of the zoosperm with the germinal vesicle of the ovum in the uterus, can this not rightly be understood in other words as that mingling of seeds by which, according to the Angelic Doctor, man and woman become one flesh, and by which the production of offspring is had, Suppl., q. 55, a. 8, in the body, and a. 4, ad 2, the seed of the man descending to the womb of the woman, Quodlib. 6, a. 18?

Equally it is nothing to object that according to St. Thomas, Suppl., q. 58, a. 1, ad 1, of the essence of marriage there is not potency for the act of generation, but potency for carnal copulation. Certainly, according to the Holy Doctor, there does not pertain to the essence of marriage potency for

copulation or carnal union, or union of bodies, of any sort whatever; otherwise even sodomitic copulation could be understood. Rather, it is potency for conjugal carnal copulation; and this, from the whole doctrine of the Angelic Doctor in the Supplement, is no other than that which is ordered to generation. "It must be said," says the Angelic Doctor, Suppl., q. 49, a. 2, ad 1, "that in offspring there is understood not only the procreation of offspring, but also its education, to which, as to an end, the whole communication of works which exists between man and wife, insofar as they are joined in marriage, is ordered... And thus in offspring, as in the principal end, the other is included as secondary," namely the communication of works. If the communication of all other works has no principal end except offspring, is not carnal copulation per se ordered to offspring according to the Angelic Doctor? Therefore, although this Holy Doctor does not repeat this in the cited place, nevertheless it is understood, and so that carnal copulation is copulation per se apt for generation. Nor could it be otherwise at all; for nature does not intend that copulation for its own sake, so as to stop in it, but for something else, for generation. "Nature intends offspring" in marriage. St. Thomas, Suppl., q. 49, a. 5, ad 1. And Contra Gentiles, book 3, chap. 122: "coitus," says the Angelic Doctor, "is ordered to the utility of generation... Thus, therefore, the emission of seed ought to be ordered so that both fitting generation and the education of the one generated can follow." Therefore, if generation is positively excluded, that carnal copulation is already illicit. And so also, if in marriage itself a condition is positively placed of offspring to be positively impeded, if you avoid the generation of offspring, L. 891, if you procure poisons of sterility, St. Thomas, Suppl., q. 43, a. 1, the marriage is null, because that condition is repugnant to the substance of the contract. C. fin. *de Cond. appos. in despons.*

Nor is it valid to press the answer of the Holy Doctor in that same article 1, q. 58, ad 1: "that old persons, although sometimes they do not have sufficient heat for generating, nevertheless have sufficient heat for carnal copulation. And therefore marriage is conceded to them insofar as it is a remedy, although it does not belong to them insofar as it is an office of nature."

For those old persons, according to the Angelic Doctor, are not impotent for an act per se apt for generation, since the Angelic Doctor says only that they sometimes do not have that power. Hence, according to the Angelic Doctor, if generation does not in fact follow from that act, as it can follow and sometimes does follow, this is only per accidens. And this fact of generation, according to the same Angelic Doctor, is sometimes lacking not because of impotence, but because of sterility; for it is lacking because of a defect of sufficient heat, which indeed does not pertain to the very physiological cause of generation, which consists in the organs of generation themselves and in copulation performed in the natural manner, cf. 995, but to sterility, namely to those favorable conditions in which that cause, like all causes, must be found in order to produce its effect.

But these favorable conditions in human generation are very many and hidden, and they depend not on the human will, but on nature itself. Hence the same Angelic Doctor, Quodl. 11, a. 11, ad 1, says that old persons are not cold with respect to the act of generation, but with respect to the generation itself of offspring.

Potency of generating, joined with the effect, fails regularly in women from the age of 45-50, and is regularly diminished in men from the age of 50. There are, however, cases in which even sexagenarian and septuagenarian women generate; and septuagenarian men generate more easily

with a younger woman. But detriment to the offspring is not absent when there is a notable inequality in the age of the spouses. Antonelli, *Medicina Pastoralis*, 2nd ed., vol. 2, nn. 340, 363.

Hence, according to the Angelic Doctor, marriage "is conceded" to old persons and to the sterile "insofar as it is a remedy, although it does not belong to them," namely, does not in fact belong to them, "insofar as it is an office of nature"; but by no means although it cannot belong to them insofar as it is an office of nature, while there is physical impotence for generation. For this, according to the Angelic Doctor, renders marriage impossible. For, speaking of the threefold good of marriage, offspring, fidelity, and sacrament, he says that the good of offspring is more principal and more essential, indeed the most principal and most essential: "Offspring is the most essential thing in marriage." How would that most essential thing be present, if in marriage copulation per se unfit for generation sufficed? Therefore marriage can belong to old persons and to the sterile as a remedy in such a way that this most essential thing is not wanting, namely not in act, but in potency. Indeed this most essential thing is again so truly such that neither those old persons, nor all others joined in marriage, can licitly, according to the Angelic Doctor, intend the remedy in carnal copulation unless they simultaneously intend the office of nature. What then if they positively exclude it, by positively rendering that office impossible, both as regards the liceity of copulation after marriage has been contracted and as regards the validity of the marriage itself to be contracted? "When spouses," says the Angelic Doctor, "come together for the sake of procreating offspring, or in order to render the debt to each other, which pertains to the end, they are wholly excused from sin... And therefore in only two ways do spouses come together without any sin, namely for the sake of procreating offspring and of rendering the debt; in other ways there is always at least venial sin... If someone through the act of marriage intends to avoid fornication in the spouse, there is no sin, because this is a certain rendering of the debt, which pertains to the good of fidelity. But if he intends to avoid fornication in himself, then there is excess there, and according to this it is venial sin; nor was marriage instituted for this except according to indulgence, which concerns venial sins." Suppl., q. 49, a. 5, corpus and ad 2. For it was instituted for the procreation of offspring, to which that carnal copulation, constituting the conjugal debt, is per se ordered, and in which the remedy of concupiscence is constituted secondarily; so that "without the intention of offspring there cannot be marriage," ibid., a. 3, corpus, nor consequently the conjugal debt and the remedy of concupiscence. "From the principles of St. Thomas," says Billuart, diss. 7, a. 9, "you will gather, third, that for the consummation of marriage, by which man and woman are judged to be one flesh, there is required a mingling of seeds, or of those things which are in place of seed on the part of the woman." Therefore, from the principles of St. Thomas, for a ratified marriage there is required potency, natural and physical potency, Billuart, l.c., ibid., ad 1, for the aforesaid mingling of seeds, by which the spouses can become actually one flesh. Therefore a ratified marriage as a remedy, without the aforesaid potency, namely for an act per se apt for generation, cannot subsist from the principles of St. Thomas. "From this it is clear that every emission of seed in such a manner that generation cannot follow is against the good of man... But I call that manner from which generation cannot follow according to itself, as every emission without the natural mingling of male and female; for which reason sins of this kind are called against nature. But if per accidens generation cannot follow from the emission of seed, it is not for this reason against nature, nor a sin, as, for instance, if it happens that the woman is sterile." Contra Gentiles, book 3, chap. 122.

And as regards old persons, St. Thomas himself expressly tells us that that copulation of the old is not, according to itself, impotent for generation, but only per accidens, and therefore both marriage and conjugal copulation are permitted to them. Indeed, still more clearly, the Angelic Doctor tells us that that copulation of old persons is not, according to its intrinsic nature or species, impotent for generation, and therefore is per se apt for generation, although from a merely particular accidental cause generation does not follow. Let his words, brought forward above, be reported again here: "That act is against nature in the genus of lust from which generation cannot follow according to the common species of the act; but not that act from which it cannot follow because of some particular accident, such as old age or infirmity." Quaestiones Disputatae *de Malo*, q. 15, a. 2, ad 14. Hence, when that particular accident has been removed, generation follows even in old persons and in the infirm. Now, when ovaries and uterus are perfectly and absolutely lacking, or when the uterus is entirely closed, can the copulation which is had in such circumstances be called an act according to its common species from which generation can follow, and consequently one in which, when that accidental cause of the defect of the uterus, ovaries, and closure of the vagina is removed, generation in fact follows? If so, then indeed impotence is not had from it; but if it is not so, according to the Angelic Doctor impotence is had.

Lastly, the well-known Responses of the Sacred Penitentiary and of the Holy Office, that marriage is not to be impeded in the case of excision of an ovary and uterus, do not stand in the way at all. For, as was expressly declared to me by His Eminence Cardinal Lucido M. Parocchi himself, Secretary of the Holy Office, those Responses, given only for particular cases, supposed that generation could still per se follow in those cases, namely insofar as there had not been perfect and absolute excision and absence of the uterus and ovaries. And the same opinion was embraced, as regards matrimonial dispensations to be granted or denied, both by His Eminence Cardinal Aloisi-Masella and by His Eminence Cardinal Di Pietro, Datary of His Holiness and both belonging to the Holy Office. And, omitting other cases, the Sacred Congregation of the Council, December 19, 1899, because of a defect of the uterus, declared a marriage invalid, although the defender of the bond ex officio had sharply maintained the contrary in the Monasterien. cause. And in the *Collectanea* of the S.C. de Propaganda Fide, 2nd ed., 1907, n. 1733, to the Response of the Holy Office, "It is not to be impeded," there is added the note: "This response concerns the particular case with which it was dealing." And the same Congregation of the Holy Office, January 16, 1895, declared that in cases of this kind recourse must be had in each individual case, since thus far no response had been given except for particular cases. *Collectanea*, cited, n. 1907.

Nor is the most recent Response of the Sacred Congregation of the Sacraments, April 2, 1909, in any way decisive. For the Sacred Congregation, referring to the Response already given elsewhere by the Holy Office, June 23, 1890, answered with the usual formula: Marriage is not to be impeded.

Therefore, when a practical case occurs, recourse must be had to the Sacred Congregation, since the matter has not yet been defined. And in practice marriage is indeed not to be impeded, since it cannot be denied that the natural sciences can still progress, and that other things necessary and sufficient for generation can be found. As it was reported to me by a certain Official of the Sacred Congregation, the Supreme Pontiff Pius X said that marriage is not to be impeded; for it is not known what is within, what happens within.

There is likewise another question concerning vasectomy in the man, or the cutting of the canals which carry the male seed. And as regards impotence, the matter likewise is not altogether certain; for some say that perpetual impotence is had from it, since the potency for emitting seed cannot be restored, and consequently the marriage is null; others, on the contrary, say that the aforesaid potency can be restored, and consequently, since the impotence is only temporary, the marriage is valid.

Impotence, on the contrary, is not had from mere shortness of the vagina, because carnal copulation can still be had; and it can sufficiently receive and retain the male seed as much as is enough for generation, for which one zoosperm suffices, fertilizing one ovum in the uterus, in which it is then developed. It is developed; whether, taking the matter properly and strictly, the ovum is also fertilized in the uterus, or is fertilized in the tubes or in the ovaries, we leave to physiologists to define, since this does not pertain to us, nor does it change anything with respect to the moral doctrine on impotence, with which we are dealing.

Many and weighty doctors assert that it is enough if the man can pour out seed at the opening and entrance of the vagina, and the woman can receive it within herself; for experience itself establishes that this suffices for generation. Gury-Ballerini, 885; D'Annibale, 3rd ed., n. 431. Yet others deny this. Indeed, it is one thing for generation to be able to be had by that act; it is another thing for marriage to be able to be had by that act, or by potency only for an act of that sort, since it is not the marital act in a natural manner. And if that most imperfect act sufficed for marriage, it no longer appears how frigidity can be reckoned an impediment of marriage, as is commonly handed down. And thus La Croix, book 6, part 3, n. 793, says: "If the man cannot penetrate the female vessel, although he pours out seed at its entrance..., impotence must be judged present, because such insemination does not suffice per se for such spouses to be judged to become one flesh in the natural manner." Cf. Sanchez, book 2, disp. 21, nn. 2, 5; St. Thomas, Quodl. 6, a. 18; A.S.S., vol. 26, p. 534 ff. And this seems to be held from causes often decided by the Sacred Congregation of the Sacraments, for dispensation from a ratified but non-consummated marriage, in such a case.

This impediment of impotence, of natural and divine law, is altogether irrationally and unjustly not admitted by the French Civil Code. The Italian Civil Code admits it, 107; the Spanish Civil Code, 83; the Austrian Civil Code, 60. But it is had only implicitly and in a limited way in the German Civil Code, 1333, 1334. Moreover, since all Codes must admit the invalidity of marriage from error of person, and since, when impotence stands, there would be a substantial error in the person, marriage, according to the same Codes, if not directly, at least indirectly, must also be held null in civil law. Cf. French Civil Code, 146, 180.

Now, if a marriage is null because of this impediment of impotence, the spouses are separated by the authority of the ecclesiastical judge; other nuptials are forbidden to the impotent party, and another marriage is permitted to the potent party. C. 5, 6, 7, *de Frigid.* In such a case recourse must be had to the Ordinary and to the Sacred Congregation of the Council.

Only by positive law is the marriage of the impubes invalid, because they are presumed to labor under a certain natural impotence for generation, although only temporary. Puberty is had by the same canon law for males when the fourteenth year has been completed, for females when the twelfth year has been completed, because the proximate potency of generating usually begins and ceases sooner in females than in males. For the capacity of generating begins with puberty, namely

when in males the testicles begin to elaborate zoosperms, which happens between the thirteenth and sixteenth year of age; and ovulation likewise begins in females, which is regularly had with menstruation, and this begins around the twelfth year. Therefore the marriage of impubes is valid if they can already generate and coire, and sufficiently understand the burden of the conjugal bond; and the marriage of an impubes who already can, with a pubescent person who cannot yet coire. Nevertheless it would always remain illicit to contract marriage without the license of the Ordinary before the lawful age. Likewise valid is the marriage of impubes who have the use of reason among unbelievers, who are not subject to the laws of the Church. C. 2, 3, 6, 7, 9, 10, 11, 14, *de Despons. impub.*; Benedict XIV, Const. *Magnae nobis*, June 29, 1748; Sanchez, book 7, disp. 104, n. 9; Schmalzgrueber, book 4, tit. 2, nn. 48-60.

For a just cause the Supreme Pontiff can dispense the faithful in this impediment, and at times has in fact dispensed. Schmalzgrueber, book 4, tit. 2, nn. 50-52; Navarrus, Cons. 4, 5, tit. *de Despons. impub.*; de Iustis, book 8, n. 55.

The Austrian Civil Code, 48, and the Spanish Civil Code, 83, agree with canon law as regards the required age. But since full and perfect puberty is had as regards the man in the eighteenth year, and as regards the woman in the fourteenth year, hence other more recent Codes require the eighteenth year in the man and the fifteenth in women, Italian Civil Code, 55; French Civil Code, 144. According to the German Civil Code, 1303, a man before majority and a woman before the sixteenth year cannot contract marriage. Before the eighteenth year for men and the fifteenth for women, they either are still sterile or beget only weak offspring. And in order that good effects may follow from marriage, besides the faculty of generating, it is necessary that the body of the spouses be fully developed; this happens for both woman and man after the twentieth year of age. If marriage is contracted at a lower age, not a few inconveniences for the spouses and for the children will easily follow. Antonelli, vol. 2, p. 180, nn. 360, 361, 362. L. 1064-1066, 1094-1104; St. Thomas, Suppl., q. 58; E.M.

The print's appendix has more on this paragraph: [Marriage of Old Persons] (/manuals/bucceroni/marriage-of-old-persons). (ed.)

995. Note: In doubt concerning antecedent impotence, one must stand for the validity of the marriage, and the spouses must be permitted to try copulation. Indeed, for this purpose a three-year period is conceded to them by canon law, notwithstanding greater probability for perpetual impotence. C. *Laudabilem, de Frig. et malef.* Therefore, when antecedent impotence appears with certainty, the experiment must already cease, and the marriage must be declared null. But if even after the three-year period the doubt persists, the marriage must be judged valid, for one must stand for the validity of the act. In doubt concerning consequent impotence, it is likewise lawful for the spouses to try copulation until they are certain that it can in no way be completed, "although often or always they pour out seed outside the vessel." L. 1103. "Excessive heat can scarcely be a perpetual impediment." St. Thomas, Suppl., q. 58, a. 1, ad 2. "Continuators of Tournely and Cabassut probably judge that spouses of this kind, if they are young, are not to be separated, because in the course of time that ardor diminishes, and thus they can become apt." L. 1096.

Impotence is not to be confused with sterility. Impotence, as the word itself indicates, consists in an essential defect of the physiological generative cause, which remotely is in the organs of generation of the man and the woman, and proximately in the carnal copulation itself perfected in the natural manner, namely with the pouring out of seed on the part of the man into the vagina of the woman,

and reception on the part of the woman, so that generation can follow, or they can truly become one flesh.

Sterility: It is wrongly confused with impotence by certain moderns. Sterility is not impotence. For the latter regards the very cause of generation, and consequently imports a substantial defect of the members necessary for the conjugal act and for generation. Sterility, on the contrary, regards the effect itself of generation not having followed, because of an accidental defect of the due conditions by which the generative cause can produce its effect. This is established by the most common opinion, for all permit marriage to the sterile, and all forbid it to the impotent. The same is also established from the very meaning of the words; for impotence is a defect of power, sterility is a defect of effect.

But it is altogether illicit by a direct intention to procure the sterility of a woman. Holy Office, May 22, 1895.

Sterility consists only in some accidental impediment of fecundation and generation, whence either there is an obstacle to the entrance of the zoosperm into the ovum and to the contact of both elements essential for generation, or, once that contact has been posited, there is an obstacle to the action of the fecundative power of the zoosperm upon the ovum, or finally there is a temporary absence of spermatozoa in men or of ova in the woman. Hence it happens that, when that impediment is removed, as often occurs, generation follows in act. For this reason copulation in circumstances of this kind is and always remains per se apt for generation, but only per accidens, namely from an accidental impediment, remains frustrated of its effect, through defect of those favorable dispositions in which that cause must be found in order to produce its effect. And this defect is per accidens, for a time, indeed even for a moment, and regularly hidden. Physiologists themselves do not have fully perfected knowledge of all those dispositions which are in fact necessary for generation to be had. In general this can be said to be required: that the zoosperm be sound and mature, that the ovum be sound and mature, and that both arrive at a suitable and fitting contact. Therefore impotence concerns the conjugal act itself; sterility concerns its effect. Sterility is hidden; impotence is manifest.

Hence in human generation there are as it were two acts. The first is in copulation, which depends on the human will, and which, in order to be licit, need only be per se apt for generation, and consequently must take place in this manner and in these circumstances of aptitude; and therefore nothing is done which is positively against generation, or which obstructs generation contrariwise, as is the most common opinion of the doctors. The other act, which is the continuation of the first, depending on nature itself and not on the human will, is the meeting of the sperm through the vagina and uterus with the ovum, and the fusion of that sperm with the substance of the ovum, whence its fecundation, or generation, is had. And this is to become one flesh. "They shall be two in one flesh," that is, "in one perfect and due principle of carnal generation," as Cajetan says, Ientac. 9, q. 1, who then explains the matter thus: "And indeed that one perfect carnal principle of generation intervenes here is clearly evident: for although the flesh of the woman and of the man are two, and each is a partial principle of generation, nevertheless both concur to make up one numerically complete principle of generation." Therefore in those words "the discourse is about the flesh of the spouses themselves, and about the numerical unity of the perfect and due principle of carnal generation." Cajetan, ibid. That the perfect principle of generation is had by the mingling of bodies,

Cajetan says there; certainly by that mingling which is per se apt for generation, both on the part of the man and on the part of the woman; otherwise how will there be able to be one perfect principle of carnal generation?

Therefore, since sterile persons are not impotent for the conjugal act, they can licitly coire; indeed they can also enter marriage. Although generation does not follow per accidens, nevertheless, once copulation is duly perfected, the act is still per se apt for generation. And thus old persons who are able to consummate marriage validly contract, as also men lacking one testicle; likewise women who can receive the seed, even if they do not retain it, Gousset, 791; L. 1095, and women lacking one ovary.

996. What is the impediment of ligamen? On the part of the thing, another impediment is had, that of ligamen: namely if the right over one's own body is no longer had, because by a preexisting marriage it has already been handed over to another; hence it can in no way be transferred to another, and it is a diriment impediment. Therefore ligamen is the bond of a prior marriage, which by force of unity and indissolubility impedes another marriage for as long as the preceding marriage itself endures. French Civil Code, 147, 184; German Civil Code, 1390, 1326. Cf. ibid., a. 1348. But if the right over one's own body has only been promised to another by betrothal, then only an impedient impediment is had, since, without injury to the other, the right of coeundum cannot be transferred to another; except in the case in which there is question of blood relatives of the betrothed woman in the first degree, for then there is had the diriment impediment of public honesty. Cf. 1014. Hence if doubt is had concerning the death of a prior spouse, then it is not lawful to contract marriage; because, since the preceding marriage is certainly established, another cannot be entered with prejudice to the prior spouse, if perhaps he or she has not died; rather, the death must be morally certain. C. *Dominus* 2, *de Secund. nupt.*; C. *In praesentia* 19, *de Sponsal.*; L. 901, 902; Holy Office, May 6, 1891: A.A.S., vol. 2, p. 198 ff. According to the German Civil Code, 13 ff., an absent person can be declared dead after some years determined by the law itself for various cases. But this is only a certain mere presumption of law. This presumption of law is had after 30 years from the time when absence has been declared by the office of the judge, according to the Italian Civil Code, 10 ff.; French Civil Code, 112 ff.; Austrian Civil Code, 34. St. Thomas, Suppl., q. 62, a. 5; q. 65; q. 67; Schmalzgrueber, book 4, n. 4 ff.; E.M.

The death of an absent spouse, in order that the other spouse may be able to contract marriage, must be proved positively, by authentic documents, or by trustworthy witnesses, or by convincing supporting evidence.

If no marriage has been entered because of some diriment impediment, it is not lawful to enter a new marriage before it is established in the external forum by a legitimate sentence that the prior marriage was null. In such a case recourse must be had to the Ordinary. *Collectanea* S.C. de Propaganda Fide, n. 1225. L. 1101.

The cause of nullity of marriage in the ecclesiastical forum is admitted even after the death of a spouse, but not for temporal gain, and therefore it is very rarely admitted; for example, if there is question of the legitimacy of offspring or of some other spiritual harm. Cf. A.S.S., vol. 41, p. 779 ff.

997. What is the impediment of consanguinity? In contracting marriage the thing must not only be possible, whence the impediments of impotence and ligamen arise; but it must also be honorable,

whence, on account of reverence for joined persons, the impediments of consanguinity, affinity, and public honesty arise, and on account of reverence for religion the impediments of order and vow are had. Now these impediments partly rest on natural law, partly on canon law. Those which are constituted by canon law do not touch unbelievers. But if, having been converted to the faith, they wish to enter marriage, then the natural bond of consanguinity and affinity, which existed before baptism and certainly endures after baptism, stands in the way of marriage. C. ult. *de Divort.*; St. Thomas, IV Sent., d. 41, q. 1, a. 1, q. 1; Sanchez, book 7, disp. 65, n. 4.

Consanguinity is the bond of certain persons among themselves from the fact that they descend by carnal generation from one and the same nearest common stock; and therefore it arises from the unity and participation of the same blood. Three things are to be distinguished in consanguinity: namely, 1. the stock, or the person from whom others take their origin and in whom, as in one root, they come together; 2. the degree, or the measure of the distance of one person from another, which distance is counted from the stock in which they are joined; 3. the line, or series of persons descending from the same stock. The line is twofold: one is direct, and the other collateral or transverse. The former is the series of persons of whom some descend from others, either immediately, as children from parents, or mediately, as grandchildren from grandparents, or from great-grandparents, etc. The latter is the series of persons who, although they have a common stock, nevertheless do not descend from one another, such as brothers, cousins, etc. The collateral line is equal or unequal, according as the blood relatives are equally or unequally distant from the common stock, as will be explained below. Cf. 998.

Marriages between blood relatives bring grave physical inconveniences for offspring, unless the blood relatives enjoy perfect health. The inconveniences are more grave in proportion as the degree of consanguinity is nearer. Antonelli, vol. 2, p. 181 ff.

Consanguinity dirimently impedes marriage in the direct line indefinitely, Nicholas I to the Bulgarians, C. 37, 39, and by natural law at least in the first degree. At least, for the other degrees are disputed; L. 470, 1029; Sanchez, book 7, disp. 51, n. 7; Schmalzgrueber, book 4, tit. 14, n. 30. In the collateral line, it impedes up to the fourth degree. C. 8, *Non debet*, *de Consanguin*. But whether by the law of nature marriage is dirimently impeded at least in the first degree, namely between brother and sister, is controverted. Yet it seems more true that it is impeded only by canon law, from Genesis 20:12. But this is certain, that the Church has never dispensed in this degree. Benedict XIV, Const. *Aestas anni*, October 11, 1754; Schmalzgrueber, book 4, tit. 14, nn. 42-48; L. 470; Lugo, *Responsa Moralia*, book 1, disp. 40, n. 9. As regards the other degrees, according to all, marriage is dirimently impeded only by ecclesiastical law.

Indians and Blacks. In Latin America they can contract marriages within the third and fourth degrees both of consanguinity and of affinity. To the indigenous Catholics of the three Apostolic Vicariates of the Island of Madagascar an extension was granted of the privilege of the Indians and Blacks of Latin America, namely of the impediment of consanguinity and affinity restricted to the first and second degree, yet in such a way that, as long as the said privilege for Latin America endures, it should at the same time be in force for the island of Madagascar, so that both in Latin America and on the aforesaid island the duration of the privilege may be the same. Leo XIII, Const. *Trans Oceanum* for Latin America, April 19, 1897; Sacred Congregation of the Sacraments, April 1, 1911, from the Audience of April 2, 1911.

Consanguinity dirimently impedes marriage also between those who were born only from the same father or only from the same mother; that is, between blood relatives only through the male line or only through the female line; as also between blood relatives born from illegitimate births. The reason is that diversity of father or mother, i.e. that the common stock is only the father or only the mother, or the illegitimacy of birth, does not prevent carnal consanguinity from truly existing. C. *Pertuos, de Probat.*

Consanguinity can arise between the same persons from a double or even multiple source, and then there is a double or multiple relationship, or impediment, to be disclosed in the petition for dispensation. This happens from the fact that among near ascending blood relatives either some have contracted marriages among themselves, or someone has contracted successively with several persons who are blood relatives among themselves, or blood relatives from one stock have contracted with blood relatives of another stock. And thus: 1. If someone marries a woman who is his blood relative, e.g., his cousin, their children are at once the children and grandchildren of each parent, and among themselves they are at once siblings and second cousins. 2. If someone marries a blood relative of his wife, e.g., her sister, the children of each wife will be among themselves at once consanguineous brothers and cousins. 3. If two brothers marry two sisters, the children proceeding from each marriage will be blood relatives among themselves in a double way, namely they are at once paternal cousins and maternal cousins. This circumstance of multiple consanguinity must necessarily be declared. Cf. De Iustis, *de Dispens. matrim.*, book 2, chap. 3, n. 31 ff. But it must be noted that multiplicity of kinship is not caused by the fact that two persons are from the same father and mother. For the father and mother are considered as one stock.

And it is one thing to be brothers or paternal cousins, another thing to be blood relatives in a double way.

Therefore a distinction must be made between the quality and the quantity, or multitude, of the degrees of kinship. Quality is the first, second, third, fourth degree; a pure or mixed degree. Quantity is a simple, double, triple degree, etc. Trent, sess. 24, chap. 3; L. 1029; St. Thomas, Suppl., q. 54.

A degree of consanguinity or affinity is called simple or mixed: 1. insofar as simple excludes the admixture of an unequal degree from the other side; and thus Titius and Titia are blood relatives in the third simple degree if they are equally distant from the stock, whether they are blood relatives from one source or from a double source. On the contrary, they are blood relatives in a mixed degree if they are unequally distant from the stock, Titius in the third degree and Titia in the fourth; and then they are called blood relatives in the fourth degree touching the third, if they are blood relatives from one source. Or again, if they are unequally distant from the stock, Titius in the third degree and Titia in the fourth, Titia in the second and Titius in the third, then they are called blood relatives in the fourth degree touching the third on the part of one contracting party, and in the third degree touching the second on the part of the other contracting party, if they are blood relatives from a double source. 2. It is called simple insofar as it excludes multiplication of the same degree from any cause whatever. 3. It can be called simple insofar as it excludes the admixture of another different impediment, e.g., consanguinities mixed with affinity. 4. Finally it is called simple insofar as inequality of degrees, multiplication of the same degree, and any other impediment whatever are excluded.

There are some who hold that in consanguinity account must be taken only of the nearer stock, Gallo, *Suppetiae Evang. Praecon.*, vol. 4, p. 149 ff. But others hold that account must also be taken of the more remote stock when marriage has intervened in the higher degrees; since then, if this marriage had not intervened, they would still be blood relatives from the more remote stock. And thus, for example, Caius, grandson, and Caia, granddaughter, of Titius the grandfather, are blood relatives to each other in the second degree in the collateral line. These contract marriage with each other. Their grandson and granddaughter, Sempronius and Sempronia, are likewise blood relatives to each other in the second degree from the nearer stock, Caius and Caia; and they are also blood relatives in the fourth degree from the more remote stock, Titius, and that doubly, namely through the paternal and maternal line, or through Caius and Caia. The Holy Office approved this second opinion on March 11, 1896, and decreed that three impediments are to be declared, namely the impediment coming from the nearer stock, and two impediments coming from the more remote stock through the lines joined in the intermediate stock. E.M. "But lest marriage be contracted within the prohibited degrees, you must publicly prohibit it, and punish presumptuous persons by ecclesiastical severity, notwithstanding custom, which must be called corruption." C. *Quod per his* 5, *de Consanguin. et affin.*

998. What are the rules for computing the degrees of consanguinity? Three rules are assigned from Canon Law.

First Rule. In the direct line as many degrees are counted as there are persons, the stock being removed, or there are as many degrees as there are generations. Hence between father and son there is one degree, because there is one generation, or one person of the son, the father being excluded as the stock. Between grandson and grandfather two degrees are counted, because there are two generations, although three persons intervene, namely grandfather, father, and his son, or grandson with respect to the grandfather. Similarly suppose a great-grandfather or great-great-grandfather, and you will have three or four degrees.

Second Rule. In an equal collateral line there are as many degrees as there are persons on one side, the stock being removed. Hence brother and sister are in the first degree, because if the common stock or father is set aside, one person remains on each side; and since each is distant by one degree from the stock, they are also distant by one degree from each other. Likewise paternal cousins, or children of brothers, and maternal cousins, or children of sisters, are each distant by two degrees from the common stock, or from the grandfather, and therefore are blood relatives to each other in the second degree. So also must it be said of others.

Third Rule. In an unequal collateral line there are as many degrees as there are persons on the more remote side, always with the stock removed. Hence, if one is distant from the common stock by two degrees and his blood relative by three, they will be blood relatives to each other in the third degree, according to the saying: the more remote degree draws the nearer to itself. Therefore Bertha will be a blood relative 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 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. So also must judgment be made concerning any others. Therefore no impediment is present if consanguinity is in the fifth degree touching the fourth. C. *Vir qui* fin., *de*

Consang. et affin.; St. Pius V, Const. *Sanctissimus*, March 20, 1566; Benedict XIV, Const. *Etsi pastoralis*, September 30, 1755.

There are as many consanguinities as there are different ways of ascending to the same stock, or to different stocks.

The rule from Civil Law is one. For computing degrees according to Roman Civil Law, the number, or sum, of all the persons in each line is taken, the stock being removed. Therefore in the direct line they are computed in the same way as canonical degrees; in the equal collateral line, the canonical degrees are doubled; in the unequal collateral line, the lesser line is doubled and the excess of the greater is added. C. 2, c. 35, q. 5; L. 1029; St. Thomas, Suppl., q. 54, a. 2; Schmalzgrueber, book 4, tit. 14, nn. 15, 19, 60, 107.

It must be noted here that in an unequal transverse line, in the petition for dispensation, the nearer and more remote degree must be expressed on both one side and the other. If the nearer is kept back, "the marriages are indeed valid, but illicit, provided that the dispensation does not touch the first degree; and therefore, until declaratory letters, or, as they call them, letters *perinde valere*, are issued, the spouses must be separated." Holy Office, December 12, 1748. The first degree is excepted, because in that first degree the Pope does not intend to dispense unless it is expressed. St. Pius V, Const. *Sanctissimus*, August 20, 1566; L. 1031; Benedict XIV, *Quaest. can.*, 183; De Iustis, book 1, chap. 4, n. 121 ff.

It must likewise be noted that according to the Austrian Civil Code, 41, 65, degrees are computed as in Roman Law; but marriage is not prohibited according to all the degrees constituted by Canon Law, which must be followed. The Spanish Civil Code, 84, 915, also follows Roman Law as regards computing degrees of consanguinity, except in marriage, in which, as regards matrimonial impediments, it follows Canon Law, except that it restricts the impediment of consanguinity from illegitimate copulation to the second degree in the collateral line. Therefore in this matter also Canon Law must be followed. For Trent changed nothing concerning this impediment with respect to the ancient Law, although it contracted affinity to the second degree. Schmalzgrueber, book 4, tit. 16, n. 9.

The French Civil Code, 161-164, 735 ff., and the Italian Civil Code, 48 ff., 59, 68, preserve the same rule of Roman Law in computing degrees of consanguinity. But as regards the impediments of marriage they depart from Canon Law, as also does the German Civil Code, 1310, 1327, 1589. But in this matter Canon Law alone is to be observed. And let this also be said for the other impediments.

999. What is understood by cognate and agnate? Cognation is nearness between persons of a different family, joined to one another through the female line. Agnation is nearness between persons born to the same family, and therefore joined to one another through the male line. Therefore persons are called cognates if they descend through the female line; they are called agnates if they descend through the male line. "Because those who are born follow the family of the father, not of the mother." Institutes, book 1, tit. 15, § 1; Schmalzgrueber, book 4, tit. 14, n. 10.

1000. Who are blood relatives in the direct line? Staying within only four degrees, above the father and below the son, they are the following, in this order, beginning from the fourth higher degree: 1. great-great-grandfather (*trisavolo*); 2. great-grandfather (*bisavolo*); 3. grandfather (*nonno*); 4. father

(*padre*); 1. son (*figlio*); 2. grandson, granddaughter (*nipote*); 3. great-grandson, great-granddaughter (*pronipote*); 4. great-great-grandson, great-great-granddaughter (*terzo nipote, terza nipote*).

1001. Who are blood relatives in the transverse or collateral line? Collateral blood relatives on the father's side are: 1. propatruus, paternal great-granduncle (*terzo zio paterno*), brother of the great-grandfather; proamita, paternal great-grandaunt (*terza zia paterna*), sister of the great-grandfather; 2. patruus magnus, great-uncle on the father's side (*prozio paterno*), brother of the grandfather; amita magna, great-aunt on the father's side (*prozia paterna*), sister of the grandfather; 3. patruus, paternal uncle (*zio paterno*), brother of the father; amita, paternal aunt (*zia paterna*), sister of the father; 4. brother, sister. Brothers are called consanguineous if they have only a common father, but a different mother; uterine if they have only the mother in common and a different father; full siblings if they have a common father and mother; 5. patrueles, paternal cousins (*cugini paterni*), sons or daughters of the father's brother; 6. sobrini, second paternal cousins (*secondi cugini paterni*), sons or daughters of patrueles; 7. children of the sobrini, third paternal cousins (*terzi cugini paterni*).

Collateral blood relatives on the mother's side: 1. proavunculus, maternal great-granduncle (*terzo zio materno*), brother of the great-grandmother; promatertera, maternal great-grandaunt (*terza zia materna*), sister of the great-grandmother; 2. avunculus magnus, great-uncle on the mother's side (*secondo zio materno*), brother of the grandmother; matertera magna, great-aunt on the mother's side (*seconda zia materna*), sister of the grandmother; 3. avunculus, maternal uncle (*zio materno*); matertera, maternal aunt (*zia materna*), sister of the mother; 4. brother and sister; 5. consobrinus, maternal cousin (*cugino materno*), son of the mother's sister; amitini, paternal and maternal cousins (*cugini paterni e materni*), two children of whom one was born from a brother and the other from a sister; 6. sobrini, second maternal cousins (*secondi cugini materni*), children of consobrini; 7. children of the sobrini, third maternal cousins (*terzi cugini materni*). Institutes, book 3, tit. 6; L. 1 ff., *de Grad. et adfin.*

In the following scheme of consanguinity the various degrees and lines can be seen. Persons who are joined by a line are among themselves in the direct line; with the others they are in the collateral line. On the right side, where the brother is placed, are placed male blood relatives, and females joined through the male sex. On the left, where the sister is placed, are placed female blood relatives, and males joined through the female sex. The empty cell with the letter N is the person whose kinship is in question, and who wishes to contract marriage with another. It must be seen in which other cell this person is to be placed; and, once the proper cell has been assigned to him or her, one must ascend up to the cell in which the lines are joined, for there the stock is had. The number written in the cell indicates the degree of consanguinity, and always designates the more remote degree with respect to N.

Translated scheme of consanguinity:

| Degree | Direct line | Paternal collateral side | Maternal collateral side | | --- | --- | --- | --- | | 4 above | Great-great-grandfather / great-great-grandmother | Great-grandfather's brother: propatruus; great-grandfather's sister: proamita | Great-grandmother's brother: proavunculus; great-grandmother's sister: promatertera | | 3 above | Great-grandfather / great-grandmother | Great-uncle / great-aunt on the father's side; their children | Great-uncle / great-aunt on the mother's side; their children | | 2 above | Grandfather / grandmother | Paternal uncle / paternal aunt; their children | Maternal uncle / maternal aunt; their children | | 1 above | Father / mother | Brother | Sister | | N | Person whose kinship is being examined | Paternal cousins / amitini; nephews and

great-nephews through the brother | Maternal cousins / amitini; nephews and great-nephews through the sister | | 1 below | Son / daughter | Brother's children | Sister's children | | 2 below | Grandson / granddaughter | Brother's grandchildren | Sister's grandchildren | | 3 below | Great-grandson / great-granddaughter | Brother's great-grandchildren | Sister's great-grandchildren | | 4 below | Great-great-grandson / great-great-granddaughter | Their children | Their children |

1002. What is the impediment of affinity? Affinity is the relationship which one contracts with the blood relatives of the person with whom he has carnal intercourse, or it is the relationship which arises from carnal copulation between one person and the blood relatives of the other, e.g., between the man and the blood relatives of the wife, and vice versa. From carnal copulation, namely one apt of itself for generation, although generation does not follow. Affinity from licit copulation dirimently impedes marriage in the transverse line up to the fourth degree, and further also in the direct line, C. *Non debet* 8, *de Consanguin.*; from illicit copulation, up to the second, Trent, sess. 24, chap. 4, *de R. M.*, and therefore from public concubinage and from merely civil marriage it does not extend beyond the second degree. Does it also arise from a null marriage? Some affirm this, whether the man and woman have coeundum in good faith or in bad faith. Carriere, *de Matr.*, p. 163. According to others, if the man and woman have coeundum in good faith, it extends up to the fourth degree; but if in bad faith, according to many, says Scavini, Milan, 1874, 12th ed., book 3, n. 794, it extends up to the fourth degree, according to others up to the second. And this seems more true according to Trent. The degrees and lines of affinity are taken from consanguinity, and as in consanguinity; so that one who is related by affinity to one party is in the same line and the same degree in which he is a blood relative of the other party. Hence he who is, for example, a blood relative of the wife in the first degree, whether of the direct or of the transverse line, is related by affinity to the husband in the same degree of the direct or transverse line. And as in consanguinity, so in affinity the distance is taken from the more remote degree. Therefore there is no need of a dispensation from affinity because of illicit copulation when one party is distant from the stock in the first degree and the other in the third. German Civil Code, 1310, 1327, 1590.

According to the certain opinion of all, affinity dirimently impedes marriage by ecclesiastical law alone in the collateral line, and much more probably also in the direct line, if perhaps the first degree is excepted. Concerning the first degree of the direct line, there is controversy among doctors. Yet there is no room for doubt concerning the power of the Pontiff to grant a dispensation in the first degree of affinity in the direct line, even from licit copulation between stepfather and stepdaughter. Holy Office, September 4, 1743; Schmalzgrueber, book 4, tit. 14, nn. 82-84, 101-105; Benedict XIV, Epistle *Aestas anni*, October 11, 1757; *de Syn.*, book 9, chap. 13. But the Church has never dispensed in affinity arising from legitimate marriage, although she has dispensed in affinity arising from illicit intercourse, e.g., if someone marries a woman after having fornicated with her daughter or mother. For affinity from fornicarious copulation arises only because of the union of bodies; from consummated legitimate marriage it arises both because of carnal copulation and because of conjugal society in a common and individual life. St. Thomas, IV Sent., d. 41, q. 1, a. 1, q. 3; q. 4, ad 2; Lugo, *Responsa Moralia*, book 1, disp. 40, 43. Therefore if two unbelievers, related by affinity in the first degree of the direct line from a legitimate marriage, after contracting a legitimate marriage with each other, were converted to the faith, they could not be separated without pontifical dispensation. But cf. the following case, n. 1002 bis.

Affinity from marriage, whether it is a diriment impediment by natural law or by ecclesiastical law, is certainly a natural affinity. Therefore an unbeliever converted to the faith cannot contract with the daughter, mother, or sister of that wife whom he legitimately had during the time of unbelief. The reason is that the natural bond arises even among unbelievers from marriage, and because it perseveres after baptism, it then becomes subject to the invalidating law of the Church. Does the aforesaid natural bond also arise from illicit copulation? Sanchez, book 7, disp. 65, n. 9, Lugo, l.c., and others deny it; but many other grave doctors more truly affirm it from St. Thomas, IV Sent., d. 41, q. 1, a. 1, q. 3. For if a man and a woman, although coeundum illicitly, nevertheless necessarily and naturally become one flesh, necessarily and naturally one enters the limits of the other's kinship and is joined to that person's blood relatives. Therefore an unbeliever converted to the faith cannot, without dispensation, enter marriage with the mother, daughter, or sister of her whom he had previously known fornicariously. And this is also established from the Response of the Holy Office, August 26, 1891.

Affinity also can be multiple, namely if someone has had carnal intercourse with several blood relatives, or with a person who is related by blood to the spouse in multiple ways, but by no means if he has done so several times with the same blood relative. For affinity is multiplied not by acts, but by persons. Sanchez, book 8, disp. 24, nn. 4, 5; L. 1067, 1069; St. Thomas, Suppl., q. 55; Schmalzgrueber, book 4, tit. 14, n. 67 ff.; E.M.

1002 bis. The following case was very recently solved: "John T. and Rebecca St. of the diocese of Hagulstadensis and Novocastrensis (Hexham and Newcastle), prostrate at the feet of Your Holiness, very humbly ask for dispensation so that they may licitly contract marriage with each other, notwithstanding the impediments of affinity in the first degree and of public honesty. "The matter stands thus: "John T. contracted marriage with a woman named St., already the mother of a daughter from dishonorable copulation, named Rebecca St. "From these nuptials three or four children were born, and the wife of John T. died. But in the year 1907 John contracted a civil marriage with Rebecca St., in good faith as regards the diriment force arising from affinity. "It is certain and can be proved that Rebecca is not the daughter of John. From these second nuptials two children were born. "The causes are: 1. The legitimation of offspring. 2. The greater good of the offspring, who, still infants, are greatly in need of the care of father and mother. 3. To regularize the state of John and Rebecca. 4. To quiet the scandal arising from the cohabitation of the parties, who now can scarcely be separated because of the education of the offspring." "The Sacred Penitentiary, having maturely considered the peculiar circumstances set forth in the case, by special and express Apostolic Authority, with Our Most Holy Lord Pius X graciously thus assenting, grants to you, beloved in Christ, the Ordinary of the petitioners, the faculty, if things are so, of graciously dispensing the petitioners from the impediments listed in the prayers, so that they, the proclamations being omitted but scandal being removed, and the remaining canonical prescriptions being observed, may licitly and freely be able to contract marriage and remain in it, and of declaring and respectively announcing as legitimate the offspring either to be received thenceforth. All things to the contrary notwithstanding. But these present letters, with the attestation of the execution imparted, are to be carefully kept in the episcopal chancery, so that for any future event there may be proof concerning the validity of the marriage and the legitimacy of the offspring. Given at Rome in the Sacred Penitentiary on December 2, 1911." It is asserted that on another occasion already the same dispensation had been given.

The print's appendix has more on this paragraph: [Intrinsic Nature of Affinity According to the Common Opinion of Doctors] (/manuals/bucceroni/intrinsic-nature-of-affinity-according-to-the-common-opinion-of-doctors). (ed.)

1003. Note: When there is question of one who wishes to marry a daughter after having fornicated with the mother, the condition is usually added in the dispensation, provided that copulation with the mother did not precede the birth of the daughter, namely so that the danger may be guarded against that someone marry his own daughter. But the condition can be judged sufficiently fulfilled if copulation with the mother preceded at such a time that that danger is entirely absent.

For contracting affinity it is certain that insemination by the man is required; but is insemination also by the woman required? Pontius and others deny it, because female seed is not necessary for generation. St. Bonaventure and others affirm it, "both because according to the opinion of many others the seed of the woman is also required for generation, and because, and this reason presses more strongly, affinity is not contracted unless those coeundum become one flesh; but they do not become one flesh unless the seeds are mingled. And this opinion is greatly strengthened from the authority of St. Thomas.... In doubt one must presume for perfect copulation (of the man), because from things that commonly happen it is prudently presumed to have been present.... And so also the insemination of the woman is always presumed when she felt great pleasure in coitus, even if she did not advert to the insemination. Indeed, in the external forum, where coitus is established, judgment must always be pronounced for the impediment of affinity contracted, and thus one must also judge in the internal forum, which must always conform to the presumption of the external forum, and it is not established that this presumption is false." L. 1075; Schmalzgrueber, book 4, tit. 14, nn. 71-73. These are the words of St. Thomas, IV Sent., d. 41, q. 1, a. 1, q. 4, ad 2: "Man and woman become one flesh through the mingling of seeds. Hence however much someone may invade the barriers of modesty, unless mingling of seeds follows, affinity is not contracted from this." And Pyrrhus Corradus, *Praxis Dispens. Apost.*, book 7, chap. 1, n. 18: "For causing affinity the concurrence of both seeds is required." But since the seed properly so called in the woman is not that humor which is secreted in the heat of pleasure and even shows itself externally, but the ovum, which is insensibly secreted from the ovary from venereal excitation, and also without any sense of pleasure, naturally, almost every month, descends into the uterus and is fecundated in the uterus by male seed, if the man has inseminated within the female vessel, it will indeed be difficult to pronounce that the act on the part of the woman has not been consummated. Cf. Joseph Antonelli, *de Conc. imp. et sterilit.*, Rome, 1900.

Affinity contracted between spouses cannot dirimently impede their own marriage, since it supervenes upon this marriage already indissolubly contracted; nevertheless it impedes the use of the same marriage as a punishment of the adulterous and incestuous spouse, by depriving the guilty party of the right of asking the debt. C. *Si quis, de Eo qui cognovit*, etc. But this, since it is from illicit copulation, by force of the decree of Trent, sess. 24, chap. 4, *de R. M.*, is not contracted except from copulation with the blood relatives of the other in the first and second degree. This is confirmed from the express Declaration of Gregory XIII in St. Alphonsus, 1070. But it probably does not impede imperfect acts, provided the danger of pollution is absent. For since the law is penal, it must be understood strictly, and is not to be extended also to these acts. L. 933.

The Italian Civil Code, 52; the French Civil Code, 162; the Austrian Civil Code, 40, do not seem to acknowledge any affinity except from marriage, whence under it the bond of public honesty also is

comprehended. But it is otherwise according to the Spanish Civil Code, 84, which rightly distinguishes legitimate affinity from merely natural affinity; and under that, public honesty also is comprehended. As regards Roman Law, cf. Schmalzgrueber, book 4, tit. 14, n. 70.

1004. Resolutions: Persons who are carnally joined are not properly related by affinity between themselves, but are the principle of affinity, and hold, as it were, the place of the stock. Affinity cannot exist between two persons neither of whom has had copulation with a blood relative of the other; therefore the blood relatives of one spouse have no affinity with the blood relatives of the other. No one is prohibited, after his wife has died, from marrying the widow of her brother; or from successively marrying the widows of two of her brothers. Two brothers can marry two sisters; father and son can marry mother and daughter; indeed the son can marry the mother, and the father can marry her daughter. A stepfather can marry the widow of his stepson; and a stepmother the widower of her stepdaughter. For affinity does not beget affinity. C. *Non debet* 8, *de Consang.*; Schmalzgrueber, book 4, tit. 14, nn. 74, 75. One who has sinned with two sisters, or with full cousins, or with mother and daughter, can marry none of these. A man who has sinned with the sister, cousin, or paternal aunt of his spouse is bound to render the debt to the one asking, although he himself cannot ask.

The reason is that, since there is question of a law merely prohibiting, the innocent party ought not to suffer from the fault of the guilty. He who sins with his own blood relatives is not deprived of the right of asking the debt, because from this he contracts no affinity with his wife. If each spouse has contracted affinity with the other through incest, neither is bound, indeed neither can render the debt to the other. L. 1068, 1069; St. Thomas, Suppl., q. 55; E.M.

1005. Has a wife, known by force or fear by a blood relative of the husband, lost the right of asking the debt? R. Negatively, if the force was absolute; for that impediment of asking the debt, as regards incestuous spouses, has only the nature of a penalty, but there can be no penalty where there is no fault. Negatively also when the wife who suffered force or fear did not sin gravely, because a grave penalty is not proportionate to a light fault. Indeed it seems more probable that it must also be denied if that wife sinned gravely, because grave fear excuses from human laws, even if it cannot excuse from the natural law; therefore, since in our case it excuses from the law insofar as it is ecclesiastical, it ought also to excuse from the penalty inflicted by that law. Schmalzgrueber, book 5, tit. 39, n. 79; L. 1071.

1006. Does ignorance excuse from the impediment of asking the debt? R. More probably affirmatively, if there is ignorance of law, namely of the human law prohibiting this. The reason is that just as ignorance excuses from the transgression of a human law, so also from the penalty. If there is ignorance of fact, namely that this woman is a blood relative of the wife, it is common that the impediment is not incurred. The reason is that where the fault of incest is lacking, the penalty is also lacking. This is clear also from C. *Si quis* 1, *de Eo qui cognovit*, etc., where this impediment is imposed on one sinning knowingly. Ignorance of the penalty also excuses with sufficient probability, since it is an extraordinary penalty. L. 1072, 1074.

1007. Who can dispense in this impediment concerning the asking of the debt? "They very commonly teach that the Bishop can always and absolutely dispense.... The reason is that, granted that the Bishop could not do this from the disposition of the Law, nevertheless he can well do it by reason of custom. And he can well delegate this faculty of dispensing to another, not only in particular, but also in general. Moreover, all mendicant regular confessors, deputed by the provincial

for this office, can also dispense in this impediment from several privileges." L. 1076. Bishops can indeed do this by force of the quinquennial faculties, and also approved confessors having the Form of the Sacred Penitentiary. Cf. that Form.

1008. Who are relatives by affinity? The principal relatives by affinity by reason of licit copulation are the following: 1. Socer, socerus, father of the husband, to whom corresponds the nurus, the wife of the son. Socer magnus, grandfather of the husband, to whom corresponds the pronurus, wife of the grandson. Socer is also the wife's father, to whom corresponds the son-in-law, husband of the daughter; socer magnus or prosocer is likewise the grandfather of the wife, to whom corresponds the pro-gener, husband of the granddaughter. Socrus, mother of the husband, to whom consequently corresponds the nurus, or wife of the son. Socrus magna, the husband's grandmother, to whom the pronurus corresponds. Socrus is also the mother of the wife, to whom the son-in-law corresponds. Socrus magna or prosocrus, grandmother of the wife, to whom the pro-gener corresponds. 2. Vitricus, husband of the mother; noverca, wife of the father, to whom correspond privignus and privigna, son and daughter from the first marriage of the father or mother. 3. Levir, brother of the wife, brother of the husband; glos, sister of the wife, sister of the husband; fratria, wife of the brother; sororius, husband of the sister.

1009. What is spiritual kinship? Spiritual kinship is a certain nearness of persons which arises from baptism and confirmation. It dirimently impedes marriage by ecclesiastical law: 1. between the minister of the sacrament and the subject, and the subject's parents; 2. between the godfather or godmother and the goddaughter or godson, and their parents. Trent, sess. 24, chap. 2, *de R. M.* Therefore it is contracted neither by the spouse of the one baptizing, nor by the spouse of the godfather, St. Pius V, *Cum illius vicem,* nor among the godparents themselves. Hence the godfather and godmother can enter marriage with each other.

For contracting kinship, baptism is a necessary condition as regards all; therefore if either the one baptizing or the parents of the baptized person are unbelievers, although catechumens, kinship is not contracted by them. Therefore both a believer who baptized the offspring of an unbeliever, and one who received that offspring from the sacred font, could contract marriage not indeed with the baptized offspring, but with that offspring's parents after they had been converted to the faith. Schmalzgrueber, book 4, tit. 11, nn. 32-35. But it is certain that this kinship is contracted even by a heretic, both if he baptizes and if he holds at the sacred font, and also if another baptized person, whether heretic or Catholic, either baptizes or holds his offspring. The reason is that whoever has the baptismal character is capable of this kinship and is subject to the laws of the Church. Sanchez, book 7, disp. 60, n. 2; Pirhing, book 4, tit. 11, n. 40. Likewise in confirmation, in order that sponsors contract kinship, it is necessary that they be confirmed. This kinship too can be multiple. It is multiplied from the sacraments, e.g., if someone held Caius in baptism and confirmation, but not if he held several sons of Titius in baptism or confirmation. Holy Office, April 29, 1894. Likewise it is multiplied from persons, if two have mutually held the other's children, etc. Reiffenstuel, book 4, tit. 21, app. *de Disp.*, n. 201; Schmalzgrueber, book 4, tit. 16, n. 208; Sanchez, book 7, disp. 54, n. 17; De Iustis, book 1, chap. 4, n. 170; Corradus, book 8, chap. 8, n. 16. St. Thomas, Suppl., q. 56. Cf. 442 ff.; E.M.

1010. Note: Parents baptizing their children in necessity or in good faith contract no spiritual kinship by which they are prohibited from the use of marriage; for this prohibition has the nature of a

penalty, which is not incurred without fault. Indeed, probably they do not seem to contract the same kinship even if, deliberately and apart from necessity, they baptized their offspring. Truly, the doctors disagree, and some affirm, others deny. Therefore, although they contract spiritual kinship, this nevertheless does not have the effect of depriving them of the right of demanding the debt. The reason is "because the cause for permitting the use of marriage in such a case to each spouse was most just, namely the evident and manifest danger of incontinence...; which danger rightly proves that the deprivation of the right of asking the debt in this case is not to be asserted without an open text of law, such as, however,... none is found." Schmalzgrueber, book 4, tit. 11, n. 48. C. 2, *de Cogn. spir.*; La Croix, book 6, part 1, n. 358; L. 150; Schmalzgrueber, book 4, tit. 11, n. 42 ff.; E.M.

1011. What is legal kinship? Legal kinship is the nearness of persons which arises from legal adoption. Adoption is a legitimate act by which one who is not such by nature is assumed as a son or grandson. In common law adoption is distinguished as twofold: 1. Perfect, which is also called arrogation, and this is that by which an outside person who is sui iuris, by Rescript of the Prince, passes into the power and family of the adopter, acquires all the rights of a legitimate son, and becomes a necessary heir. 2. Imperfect, which is called simple, is that by which an outside person who is not sui iuris, but remains in the power and family of his natural father or grandfather, by the authority of any competent judge, is assumed as a son or grandson; nevertheless he does not pass into the family and power of the adopter, and for that reason does not become his necessary heir from a testament, although he succeeds to him ab intestato. Cf. vol. 1, n. 663.

Legal kinship, namely perfect adoption, constitutes a diriment impediment by ecclesiastical law, approving Roman Law, by which this impediment was first introduced. This is drawn from the Response of Nicholas I and Paschal II, C. *Ita diligere* 1, c. 30, q. 3; C. *Post susceptum* 5, l.c.; C. un., *de Cogn. leg*. And the reason is that kinship stands in the way of nuptials because of the dangers of cohabitation. St. Thomas, IV Sent., d. 42, q. 2, a. 3, ad 2. Hence this impediment is in force where adoption is preserved: in Roman Law, not in the more recent law, by which the adopted person does not pass into the family of the adopter and under his paternal power. Thus Gury, 809; D'Annibale, 3rd ed., part 1, n. 65, compared with part 3, n. 433, and others, against others who hold that imperfect adoption also, and therefore also by more recent law, dirimently impedes marriage. "More probably," says St. Alphonsus, 1027, "St. Thomas, Suppl., q. 57, a. 2, Sanchez, book 7, disp. 73, n. 9, Salmanticenses, n. 41, with others, say that (legal kinship) arises only from perfect adoption." This indeed follows from L. *Adoptivus* 14, ff. *de Adoptionib.*; L. *Si paterfamilias* 15, ibid.; L. *Quin etiam*, § 2, ff. *de Ritu nuptiarum*, etc.

But in order that a canonical impediment be had by adoption, it must have been legitimately entered. Sacred Penitentiary, May 16, 1826. Adoption entered privately, with no solemnity of law, produces no impediment. Holy Office, April 16, 1761.

Legal kinship, after the likeness of natural kinship, dirimently impedes marriage by Roman Law between the following persons: 1. as if in the direct line, between the adopter and the adopted person and this person's children, while they are constituted under paternal power; 2. between the adopted person and the children of the adopter, as if in the collateral line, while the latter's children are under paternal power and are not emancipated; 3. between the adopter and the wife of the adopted person, and, conversely, between the adopted person and the wife of the adopter, as if in the direct line by

way of affinity, as is established from the declaration of the Sacred Congregation of the Council in the Hortana case, September 25, 1734.

These kinships differ among themselves, and consequently also the impediment arising from them, in that the first and last are perpetual. Therefore the adopter, for example, cannot take an adoptive daughter or granddaughter as wife, even if the adoption has been dissolved by emancipation; nor can the stepson or daughter-in-law, understand adoptive, be joined in marriage with the stepmother or father-in-law, although the adoption has ceased either by emancipation or by the death of the adopter. Therefore a dispensation of the Apostolic See would be required, which, however, even in the last case is granted with very great difficulty. But the second, in the collateral line, lasts only as long as the adoption lasts. Lugo, *de Poenit.*, disp. 16, n. 327.

According to Roman Law adoption is dissolved in six ways: 1. by the natural death of the adopter; 2. by the civil death of the same; 3. because of incestuous nuptials; 4. because of dignity, e.g., episcopal; 5. by sentence; 6. by emancipation.

Since this impediment is of common law, only the Supreme Pontiff can dispense. In the direct line and in legal affinity he dispenses with very great difficulty and from a grave cause. In the transverse line a dispensation is rarely sought, since this impediment is removed by emancipation, and thus without any dispensation the adopted person can contract marriage with the natural daughter of the adopter. Schmalzgrueber, book 4, tit. 12, n. 37.

Italian Civil Code, 213, etc.; French Civil Code, 353, etc.; Austrian Civil Code, 181; Spanish Civil Code, 178, 179: adoption is made by intervention of a public magistrate, and with the other prescriptions of law observed. Italian Civil Code, 211; French Civil Code, 349: adoptive parents are bound to procure, if there is need, the education of the adopted person, and to supply him the necessary supports and sustenance. But the adopted person is held by the same obligation as regards sustenance toward the adopter. The Spanish Civil Code, 176, establishes the same concerning sustenance. Italian Civil Code, 737, 806; French Civil Code, 350; Austrian Civil Code, 183, 755: the adopted person with his descendants is heir of the adopter together with legitimate children, and succeeds to him ab intestato. Nevertheless he has no right to the goods of the blood relatives or cognates of the adopter. Spanish Civil Code, 177: the adopted person acquires no right to inheritance except by testament or by special agreement. Italian Civil Code, 210; French Civil Code, 347; Spanish Civil Code, 175; Austrian Civil Code, 182: the family name of the adopter is conferred on the adopted person, who adds it to the name of his own family. Italian Civil Code, 210, 212; French Civil Code, 348, 349: the adopted person remains in his natural family and preserves in it all his rights and obligations. Therefore the adopted person does not pass into the family of the adopter, nor is he subject to his paternal power, as in perfect adoption, or arrogation, of Roman Law. Austrian Civil Code, 183; Spanish Civil Code, 177: the adopted person indeed preserves his rights in his own proper family, but passes under the paternal power of the adopter, the prior paternal power being dissolved. Nothing concerning the dissolution of adoption is contained in the Italian Civil Code and the French Civil Code, and therefore it seems to endure perpetually until death. According to the Austrian Civil Code, 185, adoption can be dissolved. According to the Spanish Civil Code, 180, an adopted minor can impugn the adoption within four years after attaining majority. Italian Civil Code, 60; French Civil Code, 348: marriage is forbidden between the adopter and the adopted person and this person's descendants; between the adopter and the spouse of the adopted person; between the adopted person

and the spouse of the adopter; between the adopted person and the children of the adopter who are born after the adoption; between adopted children of the same person. Spanish Civil Code, 84: the adopting father or mother and the adopted person cannot contract marriage as incapable persons; nor the spouse of the adopting father or mother and the adopted person; nor the adopting father or mother and the spouse of the adopted person; nor the legitimate descendants of the adopter and the adopted person, while the adoption remains. German Civil Code, 1311: the adopter cannot contract marriage with the adopted person and his or her descendants as long as the adoption endures.

According to the Italian Civil Code and the French Civil Code, adoption is only imperfect, since the adopted person does not pass into the family of the adopter, nor is he placed under his paternal power. Hence more probably no diriment impediment is had from it, until the Church certainly counts an adoption of this kind among diriment impediments, as she counted perfect adoption or arrogation of Roman Law. For more probably only perfect adoption or the arrogation of the Romans is, by Canon Law, a diriment impediment. On the contrary, for the opposite reason, adoption according to the Spanish Civil Code and the Austrian Civil Code seems to be a diriment impediment. And as regards Austria, in the Instruction of Cardinal von Rauscher, commended by the Pronuncio, it is said, § 29: "Adoption of the Austrian Empire... dirimently impedes marriage whenever the adopted person is subjected to the paternal power of the adopter, or is received into his house to dwell after the manner of children of the family."

Benedict XIV, *de Syn.*, book 9, chap. 15; Schmalzgrueber, book 4, tit. 12, nn. 3, 10, 26 ff.; L. 1027; St. Thomas, Suppl., q. 57; E.M.

1012. Does legal kinship dirimently impede marriage up to the fourth degree between the adopter and the descendants of the adopted person, or vice versa? It is certainly restricted to the first degree as regards the adopted person and the descendants of the adopter. This is established from Canon Law. It is controverted as regards the adopter and the descendants of the adopted person. Probably the kinship does not extend beyond the first degree, or beyond the adopted person, unless he has descendants constituted under his power. For according to the more common opinion of Sanchez, book 7, disp. 63, n. 34, from Roman Law the impediment extends to those who, together with the adopted father of the family, pass into the power of the adopter. L. 1027.

1013. Resolutions: Therefore, while adoption endures, marriage can subsist: 1. between the adopter and the mother and sister of the adopted person; 2. between the adopter and the daughter of an adopted woman, because this daughter is not in the power of the mother, and therefore does not pass into the power of the adopter; 3. between the adopter and the illegitimate daughter of the adopted person, because illegitimate children are not in the power of the father, and therefore the daughter of the adopted person in the case does not pass into the power of the adopter; 4. for the same reason marriage will subsist between the illegitimate son of the adopter and his adopted daughter; 5. between the son and daughter of two adoptive brothers, because these are bound by no bond of kinship among themselves; 6. between two adopted persons of one adopter, for this is forbidden by no law; 7. between the adopted person and the sister or mother of the adopter. Schmalzgrueber, book 4, tit. 12, n. 31 ff.; L. 1027; St. Thomas, IV Sent., d. 42, q. 1, a. 2, ad 5.

1014. What is public honesty? Public honesty is a certain quasi-affinity from the union of minds. It arises: 1. from valid and certain betrothals, but by no means from invalid and uncertain ones, C. un., *de Spons.*, in VI; Trent, sess. 24, chap. 3, *de R. M.*, although occult, Holy Office, August 11, 1852;

Sacred Penitentiary, September 10, 1834; A.S.S., vol. 2, p. 381; Schmalzgrueber, book 4, tit. 1, n. 108. Although occult; but now, after the decree *Ne temere*, occult betrothals can no longer exist by law, but only in fact. If betrothals were entered under a resolutive condition, since they are immediately valid, the impediment of public honesty arises and perseveres, although they are dissolved. But if they were entered under a suspensive condition, while that condition is pending there are neither betrothals nor an impediment; but when it has been fulfilled, if consent has not been revoked, they are valid without new consent and produce the impediment. But if marriage is contracted in the meantime, and then the condition is verified, they can neither dissolve the marriage nor impede its use. It is contracted between the betrothed man and the blood relatives of the betrothed woman, and between the betrothed woman and the blood relatives of the betrothed man, whether legitimate or illegitimate, C. 8, *de Spons. et matr.*, only in the first degree of both the direct and the oblique line, Trent, ibid.

It arises: 2. from ratified marriage, even invalid marriage, namely because of some diriment impediment, e.g., impotence, kinship, disparity of cult, crime, ligamen, provided that it was not invalid from defect of consent, from error, from fear, from simulated consent, although the defect is occult; nor from the prior impediment of public honesty from betrothals validly contracted to the prejudice of prior betrothals; and therefore the impediment is in force if those betrothals had been dissolved before the marriage. There is no explicit text of law, but it is deduced a fortiori; for the bond of ratified marriage is stronger than that which arises from betrothals. C. un., *de Spons.*, in VI; St. Pius V, Const. *Ad Romanum Pontificem*, sec. 35, July 1, 1568; Schmalzgrueber, l.c., nn. 101, 104-106. Hence if Titius, for example, after entering betrothal with Bertha, leaves her and marries her sister, he can and must return to the first, and he does not need dispensation unless he has consummated the marriage. Ratified; for when it has been consummated, it passes into perfect affinity and produces no other impediment. For public honesty is a certain inchoate affinity. Benedict XIV, *de Syn.*, book 9, chap. 13, n. 3. From ratified marriage, not from civil marriage, in places where the decree of Trent concerning contracting marriage before the pastor and witnesses has been promulgated. Leo XIII, March 17, 1879. And much less now, after the decree *Ne temere*, is the impediment contracted from merely civil marriage. Is it also not contracted from clandestine marriages, namely those contracted without pastor and witnesses? Sanchez, book 7, disp. 70, n. 13, thought so; Pontius, book 7, chap. 35, n. 5, held the contrary. Many indeed supported Sanchez, far more Pontius. Nevertheless, after the cited Decree of Leo XIII, the opinion of Sanchez consequently must be altogether preferred. And the reason for each is that civil marriage, where Trent has been promulgated, and now after the decree *Ne temere* has been promulgated, and clandestine marriage, do not have the form of marriage; and form gives being to the thing. Hence they are altogether nothing in the being of marriage, and therefore from them, as from an invalid marriage, the impediment of public honesty cannot arise. Cf. 919, 923. If a marriage is null from defect of age, since by interpretation of law it passes into betrothals, the impediment must be considered as from betrothals, not from marriage. Cf. n. 923. But again, now after the decree *Ne temere*, the aforesaid marriage in no way passes into betrothals.

This impediment, arising from marriage whether ratified or invalid, advances up to the fourth degree of the direct and collateral line. C. un., *de Spons.*, in VI; L. 1061. And this impediment of public honesty, once contracted, is perpetual and endures after betrothals and marriage have been dissolved. It has no natural bond for its foundation, no natural kinship, from betrothals or from ratified

marriage, whether invalid or valid. Therefore unbelievers converted to the faith are not bound by it. L. 1061-1064; Mansella, *de Impedim.*, etc., p. 66; E.M.

1015. What is the impediment of vow and order? The vow which dirimently impedes marriage is only the solemn vow of chastity, emitted by profession in an approved religion. C. 10, *de Conv. Coniug.*; C. un., *de Voto*, in VI. Chastity, not a religious vow as such, because religious profession dirimently impedes marriage for this reason and to this extent, insofar as it includes the solemn vow of chastity. Therefore vows, although solemn, of certain Equestrian Orders do not dirimently impede marriage, since these profess only conjugal chastity. Schmalzgrueber, book 4, tit. 6, n. 45. Solemn; for a simple vow of chastity, even perfect and perpetual, even emitted in religious Congregations of men and women, does not dirimently impede marriage, but only impedes it. By special privilege of Gregory XIII, the simple vows which are emitted after two years of novitiate in the Society of Jesus are to be excepted.

Order dirimently impeding marriage is sacred order, namely priesthood, diaconate, and subdiaconate. C. *De Diacono* 1; C. *Ex Litterarum* 2, *Qui cler. vel vov.*; Extravag. *Antiqua, de Voto*; Trent, sess. 24, chap. 9. Sacred order even among the Greeks and Italo-Greeks, Ruthenians and Maronites, dirimently impedes marriage. But the certainty is not the same for all. For as regards Italo-Greeks, Benedict XIV declared invalid such a marriage attempted by subdeacons, deacons, and priests. For Ruthenians, the Synod of Zamosc in 1720, approved in specific form by the Apostolic See, and for Maronites, the Synod of Lebanon in 1736, likewise approved by the Apostolic See, declared invalid, the former the marriage of a priest, the latter that of a deacon, priest, and bishop. As regards other Greeks, there is not yet an express definition of the Apostolic See; but the opinion is consonant both with the opinion of the Tribunals of the City and with the ancient Law itself of the Eastern Church. Benedict XIV, Const. *Eo quamvis tempore*, secs. 38, 39; Const. *Anno vertente*, sec. 13; Const. *Etsi pastoralis*, sec. VII, n. 27; Sacred Congregation de Propaganda Fide, March 24, 1858. *Collectanea* S.C. de Propaganda Fide, n. 1572. As regards Ruthenians in North America and in the Canadian Region, cf. here nn. 97 and 377.

Now as regards the vow, it must have been emitted: 1. voluntarily and deliberately; 2. with the true intention of obliging oneself; otherwise the vow would not be valid. As regards order, it is required: 1. that it have been received validly; 2. that it have been received voluntarily, and therefore not from grave fear.

The impediment of order, according to the common opinion, dirimently impedes only by ecclesiastical law. The reason is that on the one hand order of itself is not repugnant to the conjugal state; nor, on the other hand, is there any divine prohibition which is found in the Scriptures or in Tradition. L. 1059. But since the solemnity of a vow is of ecclesiastical law, for that very reason the Pope can dispense, provided that there is a sufficient cause, that is, one proportionate to the gravity of the matter. That the Pontiff can dispense from this impediment is the very commonly received opinion of the doctors, whom Sanchez, *de Matr.*, book 8, disp. 8, n. 7, alleges in a long series; and examples of this dispensation having been granted are everywhere available, as can be seen in Schmalzgrueber, book 3, tit. 35, n. 48; Albitus, *de Inconst. in fide*, chap. 36, n. 132 ff. This is confirmed from the Decree of the Holy Office, February 20, 1888, by which Leo XIII granted to Bishops the faculty of dispensing, "either by themselves or through an ecclesiastical person well pleasing to them, the sick established in the gravest danger of death, when there is not time to have recourse to the Holy See, from impediments, however public, dirimently impeding marriage by ecclesiastical law,

except the sacred order of priesthood and affinity of the direct line arising from licit copulation." Benedict XIV, *de Syn.*, book 2; L. 808, 1025, 1026, 1059, book 3, n. 256; Mansella, *de Impedim.*, etc., p. 92 ff.; St. Thomas, II-II, q. 88, a. 11; Suppl., q. 53.

Modern laws are those which admit even those ordained in sacred orders to marriage. There is indeed no law forbidding this in the Italian Civil Code and the French Civil Code. Hence they leave a free way for such persons to most shameful and sacrilegious concubinages. But it is otherwise in the Austrian Civil Code, 63, and the Spanish Civil Code, 83. E.M.

1016. What is the impediment of disparity of cult? If the cause of marriage is considered, marriage was instituted for the mutual help of life. Lest from this there should rather be danger to the spouses in religion and life, provision has been made for each danger by the impediment of disparity of cult and of crime, by keeping Catholics away from nuptials with non-Catholics, and the criminal spouse, after the spouse has died, away from nuptials with the partner in the crime.

Disparity of cult is one thing between a Catholic and a non-Catholic, and is called mixed marriage; another is between a Christian and an unbeliever. A non-Catholic, namely from a sect, whether heretical or schismatic, whether born and educated in it, or having defected from the Catholic faith and given his name to it. A non-Catholic; not a Catholic free-thinker; nor a Catholic Mason. As regards the marriages of Masons, cf. E.M. 976, 1029.

The first disparity of cult, between a Catholic and a non-Catholic, impedes marriage, but does not dirimently impede it. Benedict XIV, Const. *Singulari nobis*. It belongs only to the Holy See to permit mixed nuptials, or nuptials of mixed religion between Catholics and non-Catholics. Pius VII, Letter *Vix nova*, February 17, 1809, to the Bishops of France. It permits them only for a grave cause, provided that nothing is to be feared for the faith of the Catholic spouse, that this spouse procure according to his or her strength the conversion of the non-Catholic, and on this express condition, that both spouses promise that they will educate all children to be born in the Catholic Religion. Gregory XVI to the Archbishop of Freiburg, May 23, 1846. The exhibition of these cautions must be established with moral certainty, and, for removing scandal, must be notorious. If the heretical party, after dispensation has been obtained, afterwards refuses to acquiesce that the children be educated in the Catholic religion, the marriage is valid, because from this the nature of a merely impedient impediment is not changed. And the Catholic party is permitted to remain in such a marriage, lest greater harm come to the offspring.

But if a Catholic contracts mixed nuptials either without having obtained a dispensation, or without observing the aforesaid law of the dispensation, he is kept from the sacraments until he has promised the confessor that he will educate the children in the Catholic Religion, and repair the scandal given to the other faithful. Pius VI, Epistle to Cardinal de Frankenberg, July 23, 1782. After dispensation has been obtained with the usual clauses, the pastor can assist at this marriage, Holy Office, December 20, 1838, the banns being omitted, unless they seem necessary and opportune in the judgment of the Ordinary for detecting impediments, with mention omitted in them of the religion of those who are to contract nuptials. Sacred Congregation de Propaganda Fide, May 11, 1871. The celebration of this marriage must take place before the pastor and two witnesses according to the prescription of the Council of Trent, and now of the decree *Ne temere*, but outside the church and without the blessing of the pastor. It can nevertheless be celebrated in the sacristy. Holy Office, January 17, 1877; *Monit. Eccles.*, vol. 12, p. 469. Hence it is clear that the priest cannot then wear stole

and surplice. Yet, where graver evils would be present, it is committed to the judgment of the Bishops that, with the other necessary cautions observed, "they judge when the mentioned conditions concerning contracting these mixed nuptials outside the church and without the blessing of the pastor can by no means be fulfilled, and when, in entering these mixed marriages, the custom can be tolerated of employing the rite legitimately prescribed in the Diocesan Ritual for contracting marriages, always excluding, however, the celebration of Mass." Pius IX, Instruction, November 15, 1858. *Collectanea* S.C. de Propaganda Fide, nn. 908, 1429, 1430, 1434, 1444.

The pastor cannot assist at the marriage: 1. If, without dispensation having been obtained, mixed nuptials are contracted, although the law prescribes his assistance, unless the pastor intervenes as a civil magistrate. Holy Office, December 20, 1838. Nevertheless the Supreme Pontiffs are accustomed to permit only the material assistance of the pastor where necessity requires it, after the promise of each party concerning the offspring to be educated in Catholicism has first otherwise been altogether required. Thus Pius VII granted the faculty to pastors living in Russia and Germany of assisting, if they were compelled, at mixed marriages entered without dispensation having been obtained. The aforesaid assistance is permitted for avoiding greater evils, lest marriage be contracted invalidly, lest the parties go to a heretical minister, etc. Nevertheless the presence of the pastor does not prevent the spouses contracting in this way from sinning gravely. Gregory XVI, May 22, 1841.

2. If each spouse is unwilling to consent to the Catholic education of the offspring, but the heretical party absolutely requires that the offspring of his or her sex follow his or her religion. Holy Office, June 17, 1829. But in the Instruction which was added to the Letters of Gregory XVI to the Primate and Bishops of Hungary, April 20, 1841, these things are contained: "His Holiness declared that it can be tolerated that, whenever from the condition of times, places, and persons the marriage of a non-Catholic man with a Catholic woman, and vice versa, although the necessary cautions have been omitted, cannot be impeded without graver danger, and moreover it seems to be expedient for the utility of the Church and the common good if that marriage, although forbidden and illicit, be contracted before a Catholic pastor rather than before a non-Catholic minister, to whom the parties would easily have recourse, the same Catholic pastor, or another priest acting in his place, may be present at the marriage itself by merely material presence, with no ecclesiastical rite employed, just as if the parties were treating him only as a mere qualified or authorizable witness, as they say; namely in such a way that, after hearing the consent of each spouse, he may afterwards, by his office, enter the validly performed act in the book of marriages." In Roskovany, vol. 2, p. 818.
3. If after the marriage the spouses also contract in a Protestant church, by Protestant rite. Holy Office, April 21, 1847. If already before marriage they contracted before a heretical minister, the pastor cannot assist at the marriage unless the Catholic party, repentant of the act, is absolved and repairs the scandal.

The other disparity of cult, which is between a baptized person and an unbeliever, dirimently impedes marriage, not from written law, but from custom having the force of universal law. Therefore it binds all who are received into the Church, even if they are in those places in which the Christian Religion is first preached. Benedict XIV, Const. *Singulari nobis*, sec. 10; Sanchez, book 7, disp. 71; Schmalzgrueber, book 4, tit. 6, nn. 121-124. And it dirimently impedes marriage although a baptized

man marries a catechumen woman, or a non-baptized man marries an apostate or heretical woman. Benedict XIV, Const. *Singulari nobis*, February 9, 1749.

The conditions to be observed in dispensations as regards marriages between Christians and unbelievers are found prescribed from several Instructions of the Sacred Congregation de Propaganda Fide as follows: 1. That cohabitation with the unbeliever bring either no insult to the Creator or danger of perversion. 2. That the offspring be instructed in the Christian religion. 3. That dispensation be granted only in places, understand province, vicariate, etc., not the village in which perhaps there would be many Christians, where there are more unbelievers than Christians. 4. That the dispensation be granted only for grave causes, so that rather dispensation should be granted in the impediments of consanguinity or affinity, if in this way marriages with unbelievers would be avoided. 5. Sometimes it is added that there be a probable hope concerning the conversion of the contracting unbeliever. *Collectanea*, cited, nn. 1261, 1263, 1270, 1301. This dispensation is granted with far greater difficulty with Jews.

But betrothals between a baptized person and one still a catechumen are valid, just as the betrothals of impubes are valid. For betrothals concern the future, and in the future marriage can subsist between them. Schmalzgrueber, book 4, tit. 6, nn. 130-131. But the form to be observed is that established in the decree *Ne temere*. Lugo, *de Poenit.*, disp. 16, nn. 336, 343; St. Thomas, Suppl., q. 59, a. 1; E.M.

It seems that the faithful who are so separated from others that they can neither marry a Christian nor ask for a dispensation are to be excepted from this impediment. Holy Office, June 4, 1851; *Collectanea* S.C. de Propaganda Fide, n. 1275.

Doubtful baptism, whether by doubt of law or doubt of fact, in relation to entering or having entered marriage, is to be held as valid baptism. E.M. And the marriage is valid, either insofar as this case is not comprehended in the law by legitimate epikeia, or insofar as the Church supplies the defect and tacitly dispenses.

1016 bis. Note: "A dispensation from the impediment of disparity of cult is never granted unless all the conditions or cautions have been expressed." Holy Office, April 16, 1890. "1. Whether a dispensation from the impediment of disparity of cult, imparted by one having power from the Holy See, when the prescribed cautions were not required or were refused, must be held valid or not? And insofar as negatively: "2. Whether in these cases, namely when it is evidently established concerning a dispensation thus invalidly granted, the Ordinary himself can declare by himself the nullity of the marriage from this head, or whether it is necessary each time to have recourse to the Holy See for a definitive sentence? "R. To 1. The dispensation, imparted as set forth, is null. "To 2. Affirmatively to the first part; negatively to the second part." Holy Office, June 21, 1912.

From the decree *Ne temere* and from the Sacred Congregation of the Council, July 27, 1908, the consent of the contracting parties must be sought and received by the Ordinary or the Pastor, for the validity of marriage, even in mixed marriages. Nevertheless, "The prescription of the decree *Ne temere*, n. IV, sec. 3, concerning the consent of the nupturients to be required and received by the pastor for the validity of marriage, in mixed marriages in which the parties obstinately refuse to furnish the due cautions, is not hereafter to have place; but one must stand strictly by the preceding concessions and instructions of the Holy See, and especially of Pope Gregory XVI of happy memory, Apostolic Letter

of April 30, 1841, to the Bishops of Hungary, concerning the matter: after word had been had with the Most Holy." Holy Office, June 21, 1912. Cf. n. 1016.

If there is question of a marriage between one Catholic party and another who has defected from the faith, or has been enrolled in a condemned sect, the Bishop will be able to permit the pastor to be passively present at the marriage as an authorizable witness, if the marriage can in no way be impeded, and if from the marriage there is no grave scandal or harm to be feared, provided that provision has been made for the Catholic education of all the offspring and that the danger of perversion for the Catholic party is absent, every ecclesiastical rite being excluded, and the celebration of Mass being altogether excluded, unless circumstances suggest otherwise. Thus from the Holy Office, February 21, 1883; April 23, 1873. But at present, unless there is place for the aforesaid exception, the consent must be sought by the pastor, as was just said, from the decree *Ne temere*.

1017. What is the impediment of crime? Crime dirimently impeding marriage is threefold, namely: 1. adultery; 2. homicide of a spouse; 3. both together, provided that certain conditions concur, which we set forth below. This impediment is an impediment only of ecclesiastical law.

1018. What is required for adultery alone? For incurring the impediment from this head it is required: 1. That the adultery be true, formal, consummated. True, that is, that at least one of the fornicators be joined by a marriage not merely putative, but legitimate and valid, even if perhaps not consummated. Formal, and indeed on the part of both, that is, that each know that one or the other is married. Therefore it suffices that someone knowingly approach a married woman, nor is it necessary that this married woman know that the one with whom she commits adultery is also married. Formal adultery is not present, even if only from culpable and gross ignorance the accomplice does not know that the other is married, provided that the ignorance was not affected. For malicious fraud is required for formal adultery. L. 44, *ad Leg. Iul. de adult*. Consummated, namely with perfect carnal copulation per se apt for generation intervening. In the external forum this is always presumed if the man inseminated within the vessel. But in the internal forum it will be difficult to define otherwise in the case; for the consummation of marriage is had through the mingling of seeds. St. Thomas, IV Sent., d. 41, q. 1, a. 1, q. 4, ad 2. But seed on the part of the woman is properly the ovum, which even without any sense of lust descends from the ovary into the uterus, almost every month. And this is proper insemination on the part of the woman. But that humor which in the act of copulation is usually secreted by the woman, but not always, is improperly seed; it is indeed very useful for fecundation, but not necessary. And from this there is had insemination improperly so called; the defect of which consequently does not prevent husband and wife from being able truly to become one flesh. Sanchez, book 7, disp. 79, n. 38; De Iustis, book 2, chap. 16, n. 38; Schmalzgrueber, book 4, tit. 7, n. 55; L. 1036.

2. That there be a promise of marriage made by one adulterer and accepted by the other at least by some sign, whether this promise precedes, accompanies, or follows the adultery; but if it precedes, it is required that it was not retracted before the adultery. Both the promise and the acceptance must be true, and therefore a feigned one does not suffice. L. 1039; Schmalzgrueber, book 4, tit. 7, nn. 22-24, who confirms this from C. *Significasti* 6, *de Eo qui duxit*, etc. Moreover a conditioned promise or acceptance does not suffice so long as the condition does not yet exist. It must be said otherwise if the added condition is fulfilled before

the death of the spouse, and much more if before the adultery was perpetrated. Schmalzgrueber, l.c., nn. 25-28. But because injury is needed for incurring the impediment, it is therefore necessary to have knowledge of the marriage of both parties or at least of one or the other; and ignorance excuses provided that it was not gross or supine. C. 2, *de Constit.*, in VI. Therefore both things, adultery and promise, must be understood formally. Hence adultery committed in ignorance does not avail, although afterwards a promise knowingly followed; nor adultery committed knowingly after a promise made in ignorance, so long as the promisor has not ratified it. This is the truer opinion. Sanchez, book 7, disp. 79, n. 34; Schmalzgrueber, book 4, tit. 7, n. 13, and others think otherwise, holding that, just as marriage, of which we must speak immediately, so also a promise entered in ignorance is tacitly confirmed by adultery afterwards knowingly committed. But the same reason does not hold, and just as a shameful promise is not easily presumed, so neither is a shameful ratification. Indeed, not even ratification suffices if it was made while the other was unaware. But more probably a renewed promise is not required. C. 6, 8, *de Eo qui duxit*.

Nevertheless, since probability is not lacking also for the opposite opinion, Schmalzgrueber, book 4, tit. 7, n. 30, in doubt whether a renewed promise has been added, the impediment can be judged merely probable, and therefore uncertain, which is the same as nothing. This is confirmed from the Praxis of the Apostolic Datary, n. 151, where it is said: "faith having been given to each other."

3. That both the promise of marriage and the adultery be made while the prior spouse is living, or while the same marriage remains. Namely, both the adultery and the promise of marriage must yield to the injury of one and the same spouse; this would not happen if Bertha, for example, while her first husband was living, promised marriage to Titius, but committed adultery with him when, after the death of the first husband, she had married Caius.

Adultery by Law dirimently impedes marriage, not only when a promise of future marriage is added, namely of contracting after the death of the spouse, for if marriage to be contracted while the other spouse was still living were promised, the reason for the impediment would cease, as Schmalzgrueber notes with the doctors, book 4, tit. 7, n. 9; but also if the adulterer, while the spouse is still living, contracts a marriage de praesenti with the adulteress, or rather truly and from the heart, not fictitiously, attempts it. This is clear from C. *Cum haberet* 5, *de Eo qui duxit*, etc. Nor does it matter whether they attempt to contract marriage before the pastor and witnesses, or clandestinely, and whether by civil marriage. Holy Office, December 22, 1880; *Collectanea* S.C. de Propaganda Fide, n. 1544. For in establishing this impediment, attention is not paid to the value of the marriage or of the betrothals, if only a promise intervenes, which are contracted invalidly, as is clear, but to the character of the crime. But if the accomplice did not know the legitimate marriage of the other when he or she entered marriage with that person; or, after learning of the other's marriage, commits adultery without retracting the marriage, then the impediment is introduced, because if after receiving knowledge he perseveres in the marriage and then adds adultery, he ratifies the marriage, which, joined with adultery, provokes no less to seizing upon the death of the other than if it had been contracted knowingly from the beginning. Or if he retracts the marriage before adultery, or also ceases from adultery, which previously had existed as material and not formal, as soon as he learns of

the marriage of the other, then the reason for the impediment is absent. Schmalzgrueber, l.c., nn. 12, 15. C. *Si quis vivente*, c. 31, q. 1; C. 1-8, *de Eo qui duxit*, etc.; L. 1031 ff.

German Civil Code, 1312, 1328: marriage cannot be contracted by a spouse juridically separated by divorce because of adultery with the person with whom the adultery was committed. A marriage of this kind is null. E.M.

1019. What is required for homicide alone? Three conditions are required so that from this there be an impediment: 1. Mutual conspiracy, by command, counsel, etc. Hence it does not suffice that a spouse kill his or her spouse if the person with whom he or she is about to enter marriage is ignorant of this action or contradicts it. Nor does it suffice that someone, hearing of the killing of the spouse, and much less by mere negligence, e.g., in caring for the sick person, approve and ratify it. Nor does consent alone seem to suffice, because the Laws require machination. C. *Laudabilem* 1, *de Conv. infidel.*; L. 1033.

2. Intention of marriage. Thus commonly, although it is not expressed in the Law. The reason is that the end of the law is lest someone, in hope of marriage, kill his own spouse or another's spouse. This intention is not required on the part of both, but more truly it is required that that intention, had by one, be manifested in some way to the other. But St. Alphonsus says, 1034, that it suffices that certain indications of this intention preceded, e.g., familiarities, love letters, etc. Therefore the impediment is not present if Titius, with Caia cooperating, kills his wife in order that he may enjoy Caia more freely, or marry her daughter.

3. Death really following from the physical or moral action of one or the other accomplice. C. 1, 3, 6, *de Eo qui duxit*; C. 1, *de Conv. infid.*; L. 1031 ff.; E.M.

1020. What is required for both together? When the crimes of adultery and spouse-killing are found joined, mutual conspiracy for spouse-killing is not required, nor a promise of marriage, but these things suffice: 1. Adultery, such as was explained above. But it must precede the spouse-killing, although it is not necessary that it precede the machination of death. It must precede the spouse-killing; for if the death of the spouse precedes, adultery, which consists in copulation with the spouse of another, will no longer be able to have place. For it is required that there be adultery both material and formal with respect to the spouse killed. Schmalzgrueber, book 4, tit. 7, nn. 49, 51; Sanchez, book 7, disp. 18, n. 12.

2. Machination of death by one of the adulterers from intention of marriage. But it suffices that this intention be had by one. Gousset, 824; Carriere, 739. St. Alphonsus moreover requires, more probably, that this intention be manifested to the other.

3. Death following from the machination of one of the adulterers, in the same way as was said above concerning homicide alone. L. 1036.

4. Adultery and spouse-killing committed while the same marriage remains. This impediment, which because of the double crime united is called "both together," constitutes one impediment. On the contrary, if both adultery and homicide separately have their own proper conditions, as they have been set forth, they introduce a double impediment. C. 1, 3, 6, *de Eo qui duxit*; C. 5, c. 31, q. 1; L. 1031 ff.

1021. Note: The impediment of crime is an impediment and a penalty. Insofar as it is an impediment, since it is an impediment of ecclesiastical law, it has no place among unbelievers, even if they afterwards come to the faith. Baptism wipes away all crimes. The same must be said, as regards adultery alone, if either one of the two things, namely adultery or only the promise, was made after baptism, Schmalzgrueber, book 4, tit. 7, n. 3; likewise, if the believer was not a participant in the killing which the unbeliever perpetrated; for then he does not incur the impediment from homicide alone. Or if he himself did not perpetrate the same things, but the unbeliever did, who is free from such an impediment, although he himself committed adultery, because adultery without homicide does not introduce the impediment "both together." Schmalzgrueber, ibid., n. 46. On the contrary, if a believer, having promised marriage, commits adultery with an unbeliever, and likewise if the believer was a participant in the machination or killing, or also perpetrated the killing with adultery, he incurs the impediment, by which consequently, although indirectly, the unbeliever too is bound, not otherwise than happens in the impediment of disparity of cult. Indeed this has place even if the believing wife did this for the reason that the unbelieving husband, after afterwards entering marriage with her, might be converted to the faith, as is expressly contained in C. *Laudabilem* 1, *de Convers. infid.*, where the Pontiff gives this reason, that the Church does not wish to compensate such loss by such gain. Schmalzgrueber, l.c., nn. 46-48.

Insofar as it is a penalty, since it certainly is an extraordinary penalty, ignorance of the impediment more probably excuses from the impediment. Yet more commonly they deny this, "but with principles neither certain nor evident." D'Annibale, 3rd ed., part 3, n. 442; Gury-Ballerini, 788; Krimer, in Decretals, book 4, nn. 1011-1029; Sanchez, book 9, disp. 32, nn. 17, 21. Nevertheless it can not without reason be denied that this impediment was constituted, at least more principally, as a penalty for the crime; but rather because, by the public sense of morality, it is indecent and dishonorable that marriage be contracted between these criminal persons. Schmalzgrueber, book 4, tit. 7, n. 61.

This impediment can be multiple, and therefore then it must be set forth in the supplicatory petition for dispensation. It is multiple by reason of adultery, if each party is married; by reason of homicide, if the spouse is killed by each; by reason of both together, if the circumstances just commemorated concur together.

Benedict XIV, Epistle *Aestas anni*, 1756, says that it is established by no example that the Pontiff dispenses in the public impediment of both together. "If the impediment arises from adultery, with both or one or the other plotting, and is occult, the Major Penitentiary indeed has the faculty of dispensing, but rarely, and always only for the internal forum, with these things also observed: that a grave necessity occur, or a grave danger threaten, and that the case be proposed in the full Congregation or signature of the Penitentiary." But dispensation is regularly given from the crime of adultery alone, whether public or occult. Bishops also have the faculty of dispensing from the occult impediment of crime, provided it is without any machination, by force of the quinquennial faculties; and approved confessors by force of the faculties of the Sacred Penitentiary, which see in the respective Forms. E.M. "It not rarely happens that those who have obtained from the Apostolic See a dispensation from a ratified and non-consummated marriage, or a document of liberty because of the presumed death of a spouse, wish, in order to consult the salvation of their soul, to celebrate a new marriage in the face of the Church with those with whom, while the prior bond remained, they

contracted a merely civil marriage, adultery having been committed. "Now since a dispensation from the impediment arising from adultery with attempted marriage, which stands in the way in the case, is for the most part not usually sought, Our Most Holy Lord Pope Pius X, lest marriages be exposed to the danger of nullity, after consultation with the Most Eminent Fathers of this Sacred Congregation concerning the discipline of the Sacraments, has established that in the future dispensation from the said impediment in the case is to be judged granted through the dispensation given by the Holy See either from a ratified and non-consummated marriage, or through the permission of transition to other nuptials. "But as regards the past, the same His Holiness has graciously deigned to revalidate and sanate marriages which perhaps were invalidly entered from this head. "And he ordered this to be promulgated by the present decree of the same Sacred Congregation, all things to the contrary notwithstanding." Sacred Congregation of the Sacraments, June 3, 1912.

1022. What is the impediment of error, condition, and fury? As regards consent, there are impediments of marriage from error, condition, fury, fear, and abduction. Error dirimently impedes marriage by natural law if it is concerning the person, since it is a substantial error in the present matter, even if it is gross and concomitant, e.g., if Titius, falsely thinking that he is marrying Caia, says within himself: I would marry this woman even if she were not Caia. It is otherwise if he said: I wish to marry this woman, even if perhaps she is not Caia. Error concerning the qualities of the person, or concerning the nature and properties of marriage, provided that it is not concerning the thing itself of the contract, does not dirimently impede marriage. For it is very much in the interest of the public good that marriages not be dissolved because of any other error besides a substantial one, e.g., if someone contracts marriage with an error of fact, thinking that he is marrying a virgin, healthy, noble woman, and on the contrary marries a prostitute, a leprous woman, one born in the street, although he errs through the efficacious fraud of the spouse and certainly would not have contracted with such a woman; for this is an interpretative will, which, since it does not exist, can effect nothing. The same is to be said if someone errs with an error of law, thinking, for example, that marriage can be dissolved. And the same must be said if someone contracts while ignorant of the nature of the use of marriage. For for the validity of the contract of marriage it suffices to wish to contract as others contract, to wish to enter marriage as it was instituted by God and by Christ the Lord. A certain confused knowledge of marriage suffices, the general will of marriage prevailing and absorbing the aforesaid ignorance or error. Benedict XIV, *de Syn.*, book 13, chap. 22, n. 7.

Three cases of accidental error must be excepted, which dirimently impedes marriage. The first case is when the quality is a condition under which consent is given; for it is manifest that when the condition is lacking, the conditioned thing, that is, consent, is also lacking.

The second case is when the quality is determinative of the person with whom one intends to contract; or when he does not know or determine the person with whom he contracts except from the indication and mark of that quality. Concerning this matter Pirhing, book 4, tit. 1, n. 163, says: "If by the quality in which there is error a certain and individual person is designated and conceived in the mind, who was previously unknown by sight, then error redounds into error of person." Likewise Sanchez, book 7, disp. 18, n. 38, says rather clearly: "To explain when error concerning a quality redounds into error of person dirimently impeding marriage, I say briefly that this happens when there is error concerning a quality which designates a certain person who was not previously known

to the contracting party apart from that quality, namely except from that quality; and it is not established that the mind of the contracting party was to consent to the person present to him, whoever that person may be."

The third case is error concerning the servile condition of the spouse, which dirimently impedes marriage by ecclesiastical law, as is established from book 4 of the Decretals, tit. 9. This impediment no longer has place in Europe, not because the law ceases, but because the occasion is commonly lacking, unless perhaps in parts of the Turkish empire, or if some persons still bound to slavery should come from elsewhere into other parts of Europe. But error in this matter, according to the common opinion of doctors, dirimently impedes marriage even if it was gross. L. 1019; Schmalzgrueber, book 4, tit. 9, nn. 29-31.

But if the contracting party knows the servile condition of the other, or if a marriage contracted in ignorance is afterwards ratified after the error has become known, according to the opinion of all it is certain that the marriage is valid. But from the disposition of Canon Law, C. *Si viduam* 15, d. 34, one knowingly contracting with a female slave becomes irregular, L. 1018; Schmalzgrueber, l.c., nn. 15-18. And in the second case consent would have to be renewed before the pastor and witnesses, unless perhaps the nullity of the preceding contract were so altogether occult that it could not be proved; for then consent again emitted by the free party would suffice. Schmalzgrueber, book 4, tit. 3, n. 121, and tit. 9, n. 18. This impediment, moreover, as is clear, has force only as regards the marriage of a free person with a slave; for, and this must be carefully noted for places in which slavery still flourishes, marriages between slaves, beyond controversy, Schmalzgrueber, l.c., n. 7, are to be held valid, cf. C. 2, q. 2, c. 29, and St. Thomas, II-II, q. 104, a. 5, even if they are contracted without the consent of the master, C. *Dignum* 1, *de Coniug. serv.*; Schmalzgrueber, l.c., n. 10. Therefore just as a slave licitly contracts marriage even against the will of his master, so the master sins gravely against justice if he either positively impedes a slave from marriage, or treats him more harshly for this reason after he has contracted. Leo XIII, Letter, May 5, 1888; Sanchez, book 7, disp. 21, n. 15; Schmalzgrueber, l.c., nn. 13, 14. Italian Civil Code, 105; French Civil Code, 180; Austrian Civil Code, 57-59; German Civil Code, 1332-1334. "It must be said that madness either precedes marriage or follows it. If it follows, it in no way dirimently impedes it; but if it precedes, then either the madman has lucid intervals, or he does not. If he has them, then although, while he is in that interval, it is not safe for him to contract marriage, because he would not know how to educate offspring, nevertheless if he contracts, it is marriage. But if he does not have them, or if he contracts when he does not have them, then because there cannot be a contract where the use of reason is lacking, it will not be a true marriage." St. Thomas, Suppl., q. 58, a. 3. German Civil Code, 1325; L. 1009 ff.; St. Thomas, Suppl., q. 51, q. 52.

1023. What is the impediment of force or fear? Light fear, even unjust fear, does not dirimently impede marriage. The reason is: 1. because light fear is not judged gravely and efficaciously to influence consent; 2. because from positive law only grave fear makes marriage invalid; 3. because otherwise innumerable marriages would become invalid, to the greatest detriment of society.

But grave fear certainly dirimently impedes marriage by ecclesiastical law. The following conditions are nevertheless required, namely that fear be struck: 1. by an external and free cause; 2. unjustly; 3. for the purpose of contracting marriage. C. 10, 14, 15, 18, 28, *de Spons.*; C. 2, *de Eo qui duxit*. By ecclesiastical law, or also by natural law? The matter is disputed among the doctors. Trent, sess. 24,

chap. 1, 2, *de R. M.*; St. Thomas, Suppl., q. 47, a. 3, 4; Sanchez, book 4, disp. 12, n. 3; Lugo, *de Iust. et Iur.*, disp. 22, n. 175 ff.; Schmalzgrueber, book 4, tit. 1, n. 399; L. 1050; Italian Civil Code, 105; French Civil Code, 180; Austrian Civil Code, 55; German Civil Code, 1335.

Whichever law you say this impediment dirimently impedes by, it does not admit dispensation; rather, it is necessary that the cause of fear be removed. C. *Cum locum* 1, *de Spons. et matr.* Therefore, while the cause of fear perseveres, marriage is not convalidated either by copulation or by cohabitation, for these are otherwise presumed to have been extorted by fear. For while fear lasts, just as marriage cannot be validly contracted, so neither can a marriage invalidly contracted be convalidated. It must be said otherwise if copulation is admitted entirely freely and with marital affection, as the doctors commonly hold after St. Thomas, IV Sent., d. 29, q. 1, a. 3, q. 2, ad 2, or also if cohabitation is spontaneous, which, C. *Ad id* 21, *de Spons. et matr.*, is taken as ratification of consent. In this case, if an occult impediment existed, it will certainly not be necessary to renew consent again before the pastor, according to the general doctrine which Benedict XIV confirms from decrees of the Sacred Penitentiary issued by the authority of St. Pius V, from Declarations of the Sacred Congregation of the Council, and from the practice of the Sacred Rota, Instruction 87, n. 62. Sanchez, book 2, disp. 36, n. 2.

Nor indeed is it necessary that the other spouse, who did not know the impediment, be informed of it when the marriage must be convalidated by new consent. For although this perhaps more probably is required when the consent of each contracting party is invalid because of an impediment by which each is by law itself incapable of contracting, Sanchez, l.c.; L. 895, nevertheless the opposite seems to be said concerning the present case, when the matter concerns only a defect of consent, just as also happens when one or the other contracting party consents fictitiously. Sanchez explains the reason thus, *de Matr.*, book 4, disp. 18, n. 2: "Secondly, it must be supposed that if, after a marriage extorted by fear, copulation spontaneously had with conjugal affection is added, the prior marriage is ratified and begins from then to be valid, if the other, who had consented without fear, perseveres in the original consent. And the reason is that, since the consents need not be simultaneous, and the consent of him who did not suffer fear was legitimate, only the spontaneous consent of him who had consented from fear was lacking for marriage, as I said, book 4, disp. 15, n. 2. But this consent is sufficiently expressed by copulation, etc., from C. *Is qui* 30, *de Spons.* Therefore when that has followed, the prior marriage is ratified." And in the same way a little later, ibid., n. 3, he reasons concerning consent expressed by long, mutual, and spontaneous cohabitation, confirming this from the explicit definition of the law in C. *Ad id* 21, *de Spons. et matrim.*

In doubt whether fear is to be judged grave, the common doctrine is that one must judge in favor of the validity of the marriage, both because the cause of marriage is favorable and because of reverence for the sacrament. Laymann, book 5, tract 10, part 2, chap. 5, n. 4. To this belongs that statement of Innocent III, C. *Licet* 47, *de Test. et attest.*: "It is more tolerable to leave some persons joined contrary to the statutes of men than to separate those legitimately joined contrary to the statutes of the Lord." Schmalzgrueber, book 4, tit. 1, n. 432. Sanchez, book 4, disp. 3.

But the disagreement of the doctors concerning the sufficiency of reverential fear is easily reconciled, if you consider that this fear also, according to the variety of circumstances, is deservedly judged now light, now grave. Thus with others Laymann, l.c., n. 3, who judges that one must reason similarly

concerning importunate prayers, which according to the different circumstances of persons may be easy or very difficult to contradict, as Sanchez, book 4, disp. 7, n. 7, Koninck, Lessius, etc., also note.

There is also disagreement among the doctors whether grave fear unjustly inflicted, but not for extorting consent, invalidates marriage, although the common opinion affirms this. Cf. n. 944; Sanchez, book 4, disp. 12, n. 3; Lugo, *de Iust. et Iur.*, disp. 22, n. 175; L. 1049.

When marriage was contracted from grave fear, one is not bound in the forum of conscience, speaking per se, to perfect it, and can withdraw, even against the will of the other. And this is valid also concerning the one who was free from fear, even if it was inflicted by him or by his fault. Thus Sanchez and others, and it is probable according to St. Alphonsus, 1057. Speaking per se, i.e., unless the harm inflicted could not be repaired except through marriage. L. 1045 ff.; E.M.

1024. What is the impediment of abduction? Abduction is the violent carrying away of a woman from a safe place to another, where she is detained under the power of the abductor, for the sake of entering marriage. Abduction dirimently impedes marriage by ecclesiastical law between the abductor and the abducted woman. Trent, sess. 24, chap. 6, *de R. M.*

Three conditions are required for incurring this impediment, namely: 1. that the abducted woman be led away from place to place. Woman, whoever she may be. Also a betrothed woman? It must be affirmed, because the law does not distinguish. Others, however, deny it, because a betrothed woman can be compelled to nuptials, unless perhaps she has a just cause for withdrawing from the betrothals. Cf. *Collectanea* S.C. de Propaganda Fide, n. 1418. She can indeed be compelled to nuptials; nevertheless betrothals do not give a right to inflict force upon her. An abducted woman; the impediment is not incurred if a woman abducts a man, because Trent speaks only of a male abductor. Be led away; not if she is unwillingly retained in the place to which she had gone spontaneously, since strict interpretation is needed here. It is the same whether the abductor executes the abduction by himself or through others; likewise whether he keeps the abducted person in his power by himself and with himself, or through others and with others. Sacred Congregation of the Council, June 25, 1864, A.S.S., vol. 1, pp. 15-24. But the impediment is incurred by the one who abducts for himself, not by those who abduct for another, although these can incur other penalties decreed against abductors both by civil and by canon law. Schmalzgrueber, book 5, tit. 17, n. 26. From place to place; the impediment is not contracted if she is led from room to room in the same house, because thus she is not properly constituted under the power of the abductor.

2. That the woman be abducted only for the sake of marriage; therefore the impediment is not incurred if the woman is led away for another cause, e.g., for satisfying lust. For Trent intends nothing else except to favor the liberty of marriage. Nor is the impediment incurred if marriage is contracted between the abductor and the abducted woman after she has been freed from the power of the abductor. This appears clearly from the text of Trent. On the contrary, this impediment lasts as long as the abducted woman is in the power of the abductor, even if she consents freely.
3. That the abduction be made while the woman resists, or is altogether unwilling, force being inflicted or fear being struck. Hence the impediment is not had if the woman consents to the carrying away; for then there is not abduction but flight, although those under whose power she is are unwilling. And, on the contrary, the impediment is present if, with these persons

consenting, she herself is led away unwillingly. Abduction by seduction, as it is called, by inducing a woman with flatteries or gifts to follow him, does not constitute the impediment, because no force and no fraud is employed against the one led away, nor is injury inflicted upon the parents. But if a woman, deceived by fraud, unknowingly comes into the power of the one contriving the abduction, abduction is still had and the marriage is dirimently impeded. Sacred Congregation of the Council, April 24, 1868; June 25 and August 27, 1864; A.S.S., vol. 1, p. 23; Riganti, *de Cancell. Reg.*, 40, n. 79 ff. L. 1107 ff.; St. Thomas, II-II, q. 154, a. 7, ad 4; Schmalzgrueber, book 5, tit. 17, nn. 37-40; E.M.

1025. Are betrothals valid when contracted while the abducted woman is under the power of the abductor? There are two probable opinions. The first opinion denies it, because betrothals require liberty, just as marriage itself does; for a penal law is extended where the same reason operates. The second opinion affirms it, and St. Alphonsus with La Croix, etc., calls this more probable. The reason for this opinion is that betrothals, since they are always rescindable, require less liberty than marriage. L. 1107.

1026. What was clandestinity of marriage formerly, according to the Council of Trent? Besides the thing, the cause, and consent, in marriage its solemnities are to be considered, namely that extrinsic form of marriage by which marriage as a contract is validly effected, and by which the sacrament is entered holily. Hence another impediment of marriage arises, namely clandestinity. We set forth here first those things which had to be observed from the preceding law, both because they can still serve practice and because they serve for an adequate knowledge of canon law. Afterwards we will set forth those things which are to be observed under the present law now in force.

A clandestine marriage is called that which is contracted without the solemnity required by the Church, i.e., without the assistance of the proper pastor and at least two witnesses. This impediment is of ecclesiastical law alone, since it was constituted by Trent, sess. 24, chap. 1, *de R. M.*

Here the proper pastor is the pastor of domicile or quasi-domicile, Benedict XIV, Const. *Paucis abhinc*; *Collectanea* S.C. de Propaganda Fide, n. 1409, not likewise of origin, unless perhaps someone has a domicile there; and as regards wanderers, the pastor of the place in which they are when they contract, although only one of the spouses is a wanderer. L. 1089. If someone has domicile in two places, or domicile in one and quasi-domicile in another, he can contract before any of these. But the proper pastor is that of either the bridegroom or the bride in his own parish. Indeed, "the pastor of the man suffices even in the parish of the woman, because marriages are matters of voluntary jurisdiction, and because the Council expressed nothing concerning place, and because the Council seems to have wished the presence of the pastor and witnesses for removing only clandestinity, for which one pastor, whether of the man or of the woman, suffices." Sacred Congregation apud Fagnan, in C. *Quod nobis, de Clandest. despons.*, n. 33; Barbosa, *de Offic. parochi*, part 2, chap. 21, n. 45; Benedict XIV, Notification 33, n. 5 ff.; *Quaest. Can.*, 182; L. 1087. Pastor; the marriage is equally valid if it is contracted before the Bishop or his Vicar General, Benedict XIV, *Quaest. Can.*, 182, or, while the See is vacant, before the Capitular Vicar. Cardinals also have the faculty of assisting at marriages, each in his own Title, and pontifical Legates in the provinces entrusted to them. For Cardinals in their Titles are Ordinaries and have episcopal jurisdiction; and likewise pontifical Legates, whether ordinary or extraordinary, whether a latere, whether merely sent, or even born, have ordinary jurisdiction in the provinces entrusted to them. Ferraris, v. *Matrimonium*, a. 3, nn. 12, 20, 45; v. *Cardinales*, a. 3, nn. 12,

20; v. *Legatus*, nn. 12, 45. Pastor; a pro-pastor also validly assists, or vicar, who from the Ordinary or from the pastor himself has absolute, full, and unrestricted power in the parish. Benedict XIV, *de Syn.*, book 13, chap. 23, n. 1.

Since the pastor is present as a qualified, authorized witness, no power of order or jurisdiction is needed. Therefore he is licitly present even if he is only a cleric; and validly even if he is suspended, irregular, excommunicated, vitandus, or non-Catholic, schismatic, even if the Bishop has prohibited this to him. The same must be said of the Vicar General if, against the prohibition of the Bishop, either he himself assists at the marriage, or gives to some priest the faculty of assisting. The same pastor is validly present, although he is falsely pastor, if he has a colored title and by common error is reputed pastor; and more probably even if only common error is present, without a colored title. The pastor is validly present even in another's territory, even against the will of the pastor or Ordinary of that place, although he cannot solemnly bless the marriage. He can likewise delegate another, provided that he delegates a priest, not a deacon, and validly any priest whatever, even a vitandus. Not a deacon, unless perhaps by common error he is held as a priest. Sanchez, book 3, disp. 22, n. 61. General delegation also suffices, even tacit or extorted by fear, but not presumed, e.g., for exercising parochial duties. But a vice-curate also can delegate another, since he himself is delegated for the universality of causes. Ferraris, v. *Matrimonium*, a. 2, nn. 179-181.

It makes no difference if the pastor and witnesses are present by chance, fraud, or induced by force. For it suffices that they know what is being done, whether from words, if they are blind and recognize the voices of the contracting parties, or from signs, if they are deaf, or through an interpreter, if they are ignorant of the language. Therefore the marriage is valid even if the pastor pretends that he does not hear, stopping his ears with his fingers, that he does not see, closing his eyes, or that he does not understand, provided that in reality from antecedent and consequent acts he has perceived the consent of the parties; if, for example, he did not at all hear the voice of the bride or bridegroom, but saw the bridegroom holding the bride by the hand, Sacred Congregation of the Council, January 12, 1715, or handing her a ring, Sacred Congregation of the Council, November 28, 1671. For it suffices that all be morally present as witnesses, who must give testimony concerning the matter performed. Benedict XIV, *de Syn.*, book 13, chap. 23; L. 899. For the validity of marriage any witnesses whatever suffice, whether men or women, even parents, nuns, unbelievers, whether adults or minors, provided they have the use of reason and are able to testify concerning the contracted marriage.

If marriage is contracted by proxy or by letters, the marriage is valid when the declaration of marriage is made by the proxy before the pastor and witnesses, or when the letters of each contracting party are read before the pastor and witnesses.

Domicile and quasi-domicile here are to be reckoned by Canon Law, not Civil Law, namely by the intention of dwelling in a place, i.e., in a parish, and not only in a diocese, perpetually or for the greater part of a year. Nor indeed is the fact itself of habitation for the aforesaid time needed, but as soon as one has come into that place, he acquires domicile or quasi-domicile and validly contracts.

But it was declared for the United States of America that habitation for the space of at least one month suffices, and inquiry need not be made concerning the intention of remaining in the place for the greater part of the year. Holy Office, May 6, 1886. This Declaration for the United States of North America, May 6, 1886, concerning sufficient residence of one month for the validity of marriage,

without inquiry needing to be made concerning the intention of remaining there for the greater part of the year, was extended to the Archdiocese of Paris. Holy Office, May 20, 1905, A.S.S., vol. 38, p. 210. As regards students, young men, girls in colleges and monasteries, foundlings, and the sick in hospitals, if they are to remain in that place for the greater part of the year, the proper pastor of quasi-domicile is not the rector, confessor, or chaplain of the college, monastery, or hospital, but the pastor in whose parish the college, monastery, or hospital is situated. Likewise as regards servants, the proper pastor is the pastor in whose parish the masters whom they serve have their domicile, although perhaps in the same city or town the servants themselves have a house and domicile. Persons detained in prisons, whose case has not yet been concluded and for whom the prison is only a place of custody, must be joined in marriage by the pastor of their proper domicile or quasi-domicile. But if their case has been concluded, and they have been condemned perpetually or for a determined time, and the prison is a place of punishment, then their proper pastor is the one in whose parish the prison is situated. Benedict XIV, Notification 33, 88; Pirhing, book 3, tit. 28, § 1, n. 12; Ferraris, v. *Moniales*, a. 1, n. 36; Lugo, *Responsa Moralia*, book 1, disp. 35, 37; D'Annibale, 457.

Clandestine marriages are altogether invalid in all places where the Decree of the Council has been promulgated, and, in doubt, where at some time it was observed in the parish as the Decree of the Council. Sacred Congregation of the Council, January 18, 1663. Indeed Trent renders those contracting clandestinely incapable of henceforth contracting thus, i.e., without pastor and witnesses. Therefore those also contract invalidly there who, both spouses or only one of them, have domicile or quasi-domicile in places where Trent is not in force.

But they are not invalid in places where this promulgation, whether culpably or inculpably, was omitted; or where the Decree went into desuetude, although only one of the spouses has domicile or quasi-domicile there, while the other has domicile or quasi-domicile in a place where Trent is in force, because of the indivisibility of the contract. Benedict XIV, *de Syn.*, book 6, chap. 6, n. 12; Clement XIII, 1762, to the Archbishop of Mechlin; *Collectanea*, cited, n. 1400. Therefore in these places the marriage called civil is ratified. In the same places the marriage is valid of those who have domicile or quasi-domicile in a place where Trent is in force, unless they came to that place in fraud, i.e., with the sole intention of contracting marriage without pastor and witnesses; but by no means if they also had first acquired domicile or quasi-domicile there; for then their marriage is valid. Sacred Congregation of the Council, September 5, 1626; Urban VIII, Brief to the Archbishop of Cologne, August 14, 1626; Benedict XIV, Const. *Paucis abhinc annis*, Notification 33. Indeed the more common opinion held that the marriage is also valid of those who, having domicile or quasi-domicile in a place where Trent is in force, come to another place where Trent is not in force, without the intention indeed of acquiring domicile or quasi-domicile, but at the same time without the intention of contracting clandestinely, if afterwards they contract clandestinely there. Nevertheless the decisions of the Sacred Congregation of the Council and of the Holy Office are now contrary to this, by which it has been declared that the Tridentine law is at once local and personal; and also because in the external forum fraud is presumed from the very fact. Cf. Sacred Congregation de Propaganda Fide, June 7, 1867, n. 1407; A.S.S., vol. 36, p. 222 ff.

Finally, the marriages are invalid of those who, having and retaining domicile where the Tridentine decree has not been promulgated, come into a place where it has been promulgated and contract there without any pastor or witnesses, or even before witnesses and the pastor of this place. For in

order that they contract validly there before witnesses and pastor, it is necessary either to acquire domicile or quasi-domicile in that place, or to contract before the pastor of the prior retained domicile, or a priest delegated by him. Sanchez, book 3, § 13, nn. 27, 28, 35; Lugo, *Responsa Moralia*, book 1, disp. 36; Pontius, book 5, chap. 9, nn. 2, 7; Engel, book 4, tit. 3, n. 20, "I say third"; Barbosa, *de Offic. Episc.*, part 2, alleg. 32, n. 153; Reiffenstuel, book 4, tit. 3, n. 123; Verricelli, tract *de Apost. miss.*, tit. 15, q. 251; A.S.S., vol. 32, p. 419.

A marriage contracted in the house of the legation of that nation in which the Decree of Trent is not in force is null if the legation is found in the place of a nation in which the Decree of Trent is in force, and the Tridentine form is not observed in that marriage. Holy Office, August 1, 1900.

Clandestine marriages are everywhere illicit and prohibited under grave obligation. For the Church has always detested them, as Trent declares and Benedict XIV clearly shows, *de Syn.*, book 8, chap. 12, n. 4. St. Thomas, Suppl., q. 45, a. 5.

The Tridentine Decree is acknowledged as received in Italy, Spain, Portugal, France, Holland, present-day Belgium, the Grand Duchy of Luxembourg, Austria strictly taken, Ireland, Bavaria, etc. But it was not received in England, Scotland, Sweden, Saxony, Denmark, Prussia strictly so called, and several federated Provinces of Switzerland, etc. Cf. Perrone, *de Matr.*, book 2, sec. 1, chap. 6; Zitelli, *Apparatus Iur. eccles.*, book 2, chap. 2, a. 7, list of places, etc.; Ferraris, Supplement, v. *Matrim. clandest.*; *Collectanea* S.C. de Propaganda Fide, nn. 1387, 1392, 1399, 1402, 1408, 1412.

Lastly Benedict XIV issued a Declaration on November 4, 1741, in which he established that clandestine marriages, entered or to be entered in Holland and in the federated Provinces of Belgium which had previously been subject to Spain, between heretics, or between one heretical party and the other Catholic, are valid. But he established nothing concerning marriages of Catholics among themselves. Indeed Benedict XIV expressly declared that that disposition in no way regards Catholics. "Let them know," he says, "that unless they have celebrated nuptials before a Catholic minister and two witnesses, they will never be true and legitimate spouses either before God or before the Church." Letter of September 17, 1746, to Simon, Missionary in Holland, § 3, *Bullarium*, vol. 3, Supplement, n. III; see also *de Syn.*, book 6, chap. 7. L. 1078 ff.; Pontius, book 5; A.S.S., vol. 23, p. 751; E.M.

The print's appendix has more on this paragraph: [Concerning Betrothals and Marriage] (/manuals/bucceroni/concerning-betrothals-and-marriage). (ed.)

1027. Note: The Benedictine Declaration cannot be extended to other provinces or dioceses without the judgment of the Holy See. Pius VII to the Vicar of the Diocese of Trier, April 23, 1817. For that Declaration was not made by reason of law, because those marriages were marriages of heretics and heretics are exempt from the Decree of Trent, but by a special reason of fact, from the condition of times and places, and because there was very great doubt in those provinces concerning the promulgation of the Tridentine Decree, and at the same time marriages of this kind were judged valid. And thus on the island of Malta it was declared that marriages of heretics among themselves are valid, but mixed marriages are not valid when the Tridentine form is not observed. Holy Office, June 3, 1892; otherwise than was declared for Holland and the federated Belgian provinces. Therefore by the aforesaid Declaration the question is in no way settled: whether marriages of heretics and mixed marriages entered without pastor and witnesses are valid or invalid in places in which Trent was promulgated, and in which, when heretics came together into a heretical society, heretical

parishes came into the place of Catholic ones. For the question can only be about these; since where heretics live together with Catholics and do not form a separate society, whether they have a civil status, their own churches and ministers, or not, they are bound by the Tridentine form, and they must contract marriage before a Catholic pastor and witnesses where the Tridentine Decree is in force. But in those places in which heretics had already, at the time of the publication of the Tridentine decree, coalesced into a separate and self-subsisting community or quasi-parish, they were not comprehended by the Decree published in Catholic parishes. Holy Office, March 18, 1884; cf. *Collectanea*, cited, nn. 1388, 1399, 1404, 1424; E.M.

1028. What is clandestinity according to present law? Clandestinity in marriage now is had when it is not celebrated in the face of the Church, that is, before the Ordinary of the place or the pastor and two witnesses, or before one delegated by either of them and two witnesses. It renders marriage illicit and invalid. The pastor and the local Ordinary validly assist at marriage only from the day when possession of his benefice has been obtained or office has begun, only within the limits of his territory, and if, invited and asked, without force and grave fear, he asks for and receives the consent of the contracting parties, whether his subjects or not subjects. But he assists licitly when the free state of the contracting parties is established, and when at least monthly residence is established; in the absence of this, the permission of the Ordinary or proper pastor of the contracting parties is needed, grave necessity being excluded. Otherwise, he does not make the stole fees his own and they are to be remitted to the proper pastor of the contracting parties. But the pastor and the local Ordinary can grant permission to another determined and certain priest that he assist at marriages within the limits of his territory. The pastor of the bride regularly assists at the marriage. But when the marriage has been celebrated, its celebration is to be noted in the book of marriages and of the baptized. If there is, in some region, common inability to have the local Ordinary, or pastor, or one delegated by either of them, and this condition of things has lasted for a month, marriage can be licitly and validly contracted before two witnesses.

When danger of death is imminent, where the pastor or local Ordinary or delegated priest cannot be had, marriage can be contracted validly and licitly before any priest and two witnesses. Clandestine marriages of heretics among themselves are valid. Mixed clandestine marriages, as also betrothals, are illicit and invalid. Decree *Ne temere* of the Sacred Congregation of the Council, August 2, 1907. From this the present law in force is constituted.

Monthly residence is to be attended to only for marriage, and not also quasi-domicile. But one validly contracts marriage who, in fraud of the law, betakes himself to a region from which the pastor or local Ordinary, or priest delegated by them, has been absent for a month.

As regards Catholics of the oriental rite, nothing was changed by the decree *Ne temere* as regards contracting marriage. Nevertheless the marriage contracted by a Catholic of the Latin rite with a Catholic of the oriental rite is not valid if the form established by the decree *Ne temere* has not been observed.

Non-Catholics, whether baptized or not baptized, even schismatics and heretics of the oriental rites, are nowhere bound to observe the Catholic form of betrothals and marriage.

Those who have passed over to a schismatic or heretical sect, or who, converted to the Catholic faith, afterwards defected from it, even in youthful or infant age, even in the German Empire, in order to

contract marriage validly with a Catholic person, must employ the form established in the decree *Ne temere*, namely so that they must contract before the pastor and two witnesses.

As regards marriages of those who, born from non-Catholic or unbelieving parents, but baptized in the Catholic Church, afterwards from infant age grew up in heresy or unbelief, or without any religion, whenever they contract with a non-Catholic or unbelieving party, whether they are bound by the decree *Ne temere*, art. XI, § I, recourse must be had in individual cases. Holy Office, March 31, 1911.

Pastors who have territory cumulatively with another pastor or other pastors can assist at marriage in the cumulatively held territory. A pastor who, in territory assigned to other pastors, has some persons or families subject to him can validly assist at marriage, as regards his own subjects only, everywhere in the said territory. Chaplains or rectors of pious places of any kind exempt from parochial jurisdiction can validly assist at marriages, without delegation of the Ordinary or pastor, as regards the persons entrusted to them, yet in the place where they exercise jurisdiction, provided it is established that full parochial power was committed to them. As regards military chaplains or pastors who have absolutely no territory, nor cumulatively with another pastor, and who exercise jurisdiction directly over persons or families, so that they follow these persons wherever they betake themselves, nothing was changed by the decree *Ne temere* as regards assistance at marriages of their subjects.

Those dwelling in places of the East Indies in which a double jurisdiction is in force contract marriage validly and licitly before the personal pastor, but by no means before the pastor of the territory. As regards delegation, in relation to marriage, nothing was changed except the necessity of making it to a determined and certain priest, and restricted to the territory of the delegating party. Exempt regular churches, according to the tenor of the decree *Ne temere*, can and do have power to be considered as the territory of the pastor or Ordinary in whose territorial district they are situated, for the effect of assistance at marriage there. As regards the quality of witnesses, in relation to marriage, nothing was changed by the decree *Ne temere*.

1029. Note: From the decree *Ne temere* an exception is had, unless for some particular place or region the Holy See has established otherwise. Hence in the whole German empire, clandestine marriages of heretics among themselves are valid, as in all other places, but mixed clandestine marriages, although they are also illicit, are nevertheless valid, as is drawn from the following Apostolic letters. Supplement I, E.M., n. 1026.

The Supreme Pontiff Pius X, by the Letters of January 18, 1906, *Provida sapientique*, declared, decreed, and commanded: "I. In the whole present-day Empire of Germany, the chapter *Tametsi* of the Council of Trent, although in many places it has not yet certainly been promulgated and introduced either by express publication or by legitimate observance, nevertheless from the feast day of Easter, that is, from the fifteenth day of April, of this year 1906, is to bind all Catholics, even those until now immune from observing the Tridentine form, so that among themselves they can celebrate a valid marriage in no other way than before the pastor and two or three witnesses. "II. Mixed marriages which are contracted by Catholics with heretics or schismatics are and remain gravely prohibited, unless, with a just and grave canonical cause intervening, the legitimate cautions having been fully and formally given on both sides, a dispensation by the Catholic party from the impediment of mixed religion has been duly obtained. These marriages indeed, although dispensation has been obtained,

must altogether be celebrated in the face of the Church before the pastor and two or three witnesses, so that those gravely offend who contract before a non-Catholic minister or before only the civil magistrate or in any other clandestine way. Indeed, if any Catholics in celebrating these mixed marriages seek or admit the service of a non-Catholic minister, they perpetrate another delict and are subject to canonical censures. "Nevertheless, mixed marriages in any provinces and places whatever of the German Empire, even in those which according to decisions of the Roman Congregations had until now been subject to the invalidating force of the chapter *Tametsi*, already contracted without the Tridentine form being observed, or, which God avert, to be contracted in the future, provided that no other canonical impediment stands in the way, and no sentence of nullity because of the impediment of clandestinity had been legitimately pronounced before the feast day of Easter of this year, and the mutual consent of the spouses persevered up to the said day, We will that they be held as altogether valid, and this We expressly declare, define, and decree. "III. But so that a safe norm may be ready for Ecclesiastical judges, We declare, establish, and decree this same thing under the same conditions and restrictions concerning marriages of non-Catholics, whether heretics or schismatics, among themselves in the same regions, contracted until now or to be contracted in the future without the Tridentine form being observed; so that if one or both of the non-Catholic spouses is converted to the Catholic faith, or if in the ecclesiastical forum a controversy arises concerning the validity of the marriage of two non-Catholics connected with a question of the validity of a marriage contracted or to be contracted by some Catholic, those same marriages, other things being equal, are likewise to be held as altogether valid. "IV. Finally, so that this Our Decree may come to public knowledge, We command the Ordinaries of the German Empire to communicate it through diocesan journals and other more opportune ways before Easter day of the current year to the clergy and faithful people."

The exception introduced in Germany by the Constitution *Provida*, as regards marriage, extended to the kingdom of Hungary, and which is still in force even after the decree *Ne temere* concerning betrothals and marriage, has force only when both spouses were born in Germany or both were born in the kingdom of Hungary. Therefore one born in Germany with one born in the kingdom of Hungary cannot validly contract a mixed marriage, whether in Germany or in the kingdom of Hungary, without observing the form of the decree *Ne temere*.

Concerning the marriages of the Christian faithful of the Ruthenian rite in the United States of North America. "Art. XXVII. Marriages between Ruthenian and Latin Catholics are not prohibited; but a Latin husband is not to follow the rite of his Ruthenian wife, nor a Latin wife the rite of her Ruthenian husband. "Art. XXVIII. But if a Latin man has married a Ruthenian woman, it will be open to the woman to pass to the Latin rite, either in the act of marriage or afterwards during the marriage, without being able to revoke the choice once made while the husband is living. "Art. XXIX. When the marriage has been dissolved, a Ruthenian woman who had embraced the rite of her husband will have free power of resuming her own rite. "Art. XXX. To a Ruthenian wife who has preferred to remain in her own rite, nevertheless it will be lawful in fasts and feasts to follow her husband. "Art. XXXI. A Ruthenian man can, if he wishes, follow the rite of his Latin wife, and it will likewise be lawful for him in fasts and feasts to conform himself to the rite of his Latin wife. When the marriage has been dissolved, he will be able to remain in the Latin rite or to resume the Ruthenian rite. "Art. XXXII. A marriage between a Latin man and a Ruthenian woman is to be contracted in Latin before the Latin pastor; but between a Ruthenian man and a Latin woman it can be contracted either in Ruthenian before the Ruthenian pastor, or in Latin before the pastor of the

wife. "Art. XXXIII. If each contracting party remains in his or her rite, it belongs to the priests of the respective rite to exercise the office of pastor toward them in the matters which are listed here, namely: in the administration of Easter communion, viaticum, and extreme unction, in assistance at the article of death, in the performing of funeral rites and in burial; except in a case of necessity, "Art. XXXIV. Those born in the United States of America from a Latin father and a Ruthenian mother are to be baptized in the Latin rite; for the offspring must altogether follow the rite of the father, if he is Latin. "Art. XXXV. But if the father is Ruthenian and the mother Latin, it will be free to the same father that the offspring be baptized either in the Ruthenian rite, or even in the Latin rite, if he consents to this in favor of the Latin wife. "Art. XXXVI. Infants belong to the jurisdiction of that pastor in whose rite they were legitimately baptized, since by baptism the profession of the Latin or Ruthenian rite received is made, so that those who were baptized in the Latin rite belong to the Latin rite; but those who were baptized in the Ruthenian rite are to be held among the Ruthenians. "The case is excepted when baptism in a foreign rite was conferred on them because of grave necessity, namely when they were near death, or when in the place in which the parents were staying at the time of birth the pastor of the proper rite was not present; for then they will belong to the pastor of the rite which the parents profess, according to the statutes established above." Pius X, June 14, 1907, Const. *Ea semper*.

Concerning the marriages of the Christian faithful of the Ruthenian rite in the Canadian Region. "Art. 34. Marriages between Ruthenian and Latin Catholics are not prohibited; but to avoid the inconveniences which usually arise in families from diversity of rites, the wife, during the marriage, can follow the rite of the husband, without a change of her native rite being introduced by this. "Art. 35. When the marriage has been dissolved, the woman can resume her own rite of origin. "Art. 36. Marriages both between faithful of mixed rite and between Ruthenian faithful must be contracted with the form of the decree *Ne temere* observed. "Art. 37. Nevertheless marriages of mixed rite are to be blessed in the rite of the husband and by his pastor. "Art. 38. Matrimonial dispensations in marriages of mixed rite, if any are to be given or sought, are to be given and sought from the bishop of the bride. "Art. 39. Those born in the Canadian region from parents of different rites are to be baptized in the rite of the father; for the offspring must altogether follow the rite of the father. "Art. 40. Baptism received in a foreign rite because of grave necessity, namely when the infant was near death or was born in a place in which at the time of birth the proper pastor of the father was not present, does not introduce a change of rite. "Art. 41. Infants belong to the jurisdiction of that pastor whose rite is that of their father." Sacred Congregation de Propaganda Fide, August 18, 1913.

Concerning the marriages of the Christian faithful of the Greek-Ruthenian rite in the United States of North America. "Art. 28. Marriages between Greek-Ruthenian and Latin Catholics are not prohibited; but to avoid the inconveniences which usually arise in families from diversity of rites, the wife, during the marriage, can follow the rite of the husband without a change of her native rite being introduced by this. "Art. 29. When the marriage has been dissolved, the woman can resume her own rite of origin. "Art. 30. Marriages both between Greek-Ruthenian faithful and between faithful of mixed rite must be contracted with the form of the decree *Ne temere* observed, and therefore are to be blessed in the rite of the woman by the woman's pastor. "Art. 31. Matrimonial dispensations in marriages of mixed rite, if any are to be given or sought, are to be given and sought from the bishop of the bride. "Art. 32. Those born in the region of the United States of North America from parents of different rites are to be baptized in the rite of the father; for offspring of each sex must altogether

follow the rite of the father. "Art. 33. Baptism received in a foreign rite because of grave necessity, namely when the infant was near death or was born in a place in which at the time of birth the proper pastor of the father was not present, does not introduce a change of rite; and the priest who baptized must send testimony of the baptism to the proper pastor. "Art. 34. Infants belong to the jurisdiction of that pastor whose rite is that of their father, except those born from an illegitimate bed, who follow the rite of the mother." Sacred Congregation de Propaganda Fide, August 17, 1914. "1. Whether, and under what cautions, assent is to be given that the petitioners may be able to contract marriage in the face of the Church, although they cannot fulfill the civil rite? "2. What dispensation concerning the form of celebrating marriage is to be granted, when, by reason of civil law, the pastor cannot assist at the marriage?"

R. "The Catholic pastor, having first established for himself that no canonical impediment intervenes between the contracting parties... may permit them to enter marriage even without his assistance, but nevertheless in the presence of three, or at least two, witnesses of unimpaired faith; and, when marriage has been celebrated in this way, the spouses are bound, as soon as possible, to signify it to the pastor, who is to note it in the marriage register at least secretly, with indication of the day and the names of the witnesses who were present." Sacred Congregation de Propaganda Fide, March 24, 1909, *Collectanea*, n. 571. "The Ordinary, having first established for himself, even, if there is need, through the sworn attestation of the contracting parties, that no canonical impediment intervenes between them, may permit marriage in the case to be validly and licitly entered without the presence of the pastor, formal consent being emitted by the spouses before two witnesses; with the burden imposed, according to n. IX of the decree *Ne temere*, on the witnesses jointly and severally with the contracting parties, of seeing to it that the marriage entered be signified as soon as possible to the pastor, who is to note it in the book of marriages at least secretly, with indication of the day and the names of the witnesses who were present. Moreover, the same Ordinary is not to omit exhorting the nupturients to approach the sacrament of Confession and the Most Holy Eucharist with the due dispositions before the celebration of marriage, and moreover he is to see that the same contracting parties bind themselves to fulfill the civil formalities as soon as this can be done; the document of this obligation is to be preserved in the Episcopal Curia." Sacred Congregation of the Sacraments, November 26, 1909.

From the preceding particular decisions it is clear that the faculty was made, in the cases set forth, by the Sacred Congregation itself; and consequently when a similar case of impossibility of civil marriage occurs, recourse must be had to the Sacred Congregation of the Sacraments. Cf. Second Supplement to the *Enchiridion Morale*, n. 1049, p. 103.

1030. Are spouses who, in the absence of the pastor, contracted clandestinely bound to receive the blessing when opportunity is given? They are not indeed bound, but they are to be exhorted to this. But priests must declare to the spouses that a blessing of this kind in no way pertains to the validity of marriage. Holy Office, July 6, 1817; January 15, 1874; *Collectanea* S.C. de Propaganda Fide, n. 1394; A.S.S., vol. 26, p. 254 ff.

1031. Is it lawful to contract marriage with a doubtful impediment? A twofold doubt must be distinguished: doubt of fact and doubt of law. Doubt of fact is had when the doubt concerns a particular fact from which an impediment arises, e.g., if there is doubt concerning the very fact of adoption, the office of sponsor, carnal copulation, etc. Doubt of law is had when the impediment

which arises from such or such a fact, otherwise certain, is doubtful; e.g., imperfect adoption is established, the office of sponsor exercised in private baptism is established, but whether an impediment arises from this is disputed among the doctors.

If the doubt is of law, it is lawful to contract marriage with an impediment doubtful by ecclesiastical law. The reason is that, in the case of doubt of law, if perhaps the impediment were actually present, the Church is judged to supply the defect of the contract invalid by canon law, just as she supplies the defect of jurisdiction whenever doctors commonly hold that she supplies jurisdiction in the sacrament of penance when doubt concerning it stands. Now the opinion teaching that the Church supplies the defect also in the present case of a doubtful impediment has generally been received as probable by innumerable doctors who favor it. But in a case of true doubt of fact, namely insoluble doubt, possession indeed stands for liberty. Nevertheless, in doubt of fact, it is more commonly not admitted that it is then lawful to contract without dispensation, namely lest the sacrament be exposed to the danger of nullity, and because of the danger of fornication, even if only material; and because the doctors more commonly hold this, the Church is not then judged to supply. La Croix, 534, 535; L. 901, 902.

But if, in doubt of law or fact, there is question of an impediment of natural and divine law, namely ligamen, kinship, impotence: in the first case, of doubt concerning ligamen, or a preexisting marriage, whether it had been validly contracted, whether the spouse had truly died, it is not lawful to enter another marriage unless it is morally certain concerning the invalidity of the prior marriage or concerning its dissolution. The reason is that, according to the various cases, either there is a certain acquired right of a third party, whom it is not lawful to despoil because of mere doubt, or certainly the matter of itself is liable to grave public scandal. C. *Dominus* 2, *de Secund. nupt.*; C. *In praesentia*, *de Sponsal.* In the other case, of kinship, it likewise is not lawful because of public scandal, since it publicly brings scandal perhaps to be mingled with a daughter or sister; and certainly the danger is present of greater public scandal if afterwards she is certainly discovered to be a daughter or sister. In the third case, of impotence, it is lawful to contract marriage, because it would be most grave to deprive someone of marriage because of doubt, and he possesses a certain right to it, unless impotence is proved; or certainly the presumption favors him, that he is naturally potent. "Nevertheless," says St. Alphonsus, 1102, "before marriage he ought to warn the spouse concerning such a doubt. Moreover, circumstances and experiences set aside, everyone is presumed capable, even if he has lived most chastely." L. 1102, 902.

These things are said speaking per se; "for when a most grave cause urges, marriage can be contracted, provided that the declaration of the Supreme Pontiff is added, as the sole interpreter of the divine law." L. 902. "Moreover they probably say... that in doubtful impediments the Bishop can well dispense. And the doctors very commonly say the same, speaking generally, concerning all cases or impediments reserved to the Pontiff, when it is doubted whether they need dispensation.... The reason is that, on the one hand, although dispensation from impediments of this kind is reserved to the Pope, nevertheless since reservation is odious, it must be interpreted strictly and restricted only to certain cases...; and also because, since in cases which frequently occur an inferior can dispense in the law of a superior, the Bishop will well be able to dispense in doubtful impediments, because in them it frequently happens that there is doubt concerning the need of dispensation." L. 902. But these things are to be understood concerning cases in which the Supreme Pontiff is accustomed to

dispense; by no means concerning others. Zitelli, *de Dispensationibus Matr.*, chap. 2, § 1, par. *Secundam*, Note.

1032. Is it lawful for spouses to use marriage if, after nuptials have been entered, doubt concerning some impediment arises? R. Negatively, until a sufficient inquiry concerning the truth has been made. If, however, only one doubts, although he cannot ask the debt, he must nevertheless render it to the other asking in good faith, lest he rashly deprive him or her of a right which he or she possesses. Affirmatively, if, after serious diligence has been applied to discover the truth, doubt still remains, because in doubt the condition of the possessor is better; in doubt one must stand for the validity of the act; in a favorable cause, as marriage is, one must incline in its favor. But if there is question of the doubtful marriage of unbelievers, one of whom is converted to the faith, in favor of the faith the marriage is held as null, and he will be able to marry anyone, provided she is baptized. C. *Inquisitioni* 44, *de Sent. exc.*; C. *Dominus* 2, *de Secund. nupt.*; L. 903-908, 1102; De Iustis, *de Dispens. Matrim.*, book 1, chap. 6, n. 456 ff.; Kenrick, tract 21, nn. 54, 55, 56; E.M.

1032 bis. Is it lawful for spouses to use marriage if they enter nuptials with doubt concerning some impediment? R. Negatively, as in the preceding question, until a sufficient inquiry concerning the truth has been made. Affirmatively, with sufficient probability, if the doubt remains after diligence has been applied. The reason is that, although the one doubting cannot use the principle of possession, he can nevertheless use other principles: In doubt, one must stand for the validity of the act, unless a contrary presumption stands in the way; In doubt, judgment is to be given for marriage, unless danger of public scandal is present. L. 903 ff.

1033. Is a marriage contracted with a supposed but non-existing impediment valid? If the contracting party is not altogether certain concerning the impediment, but in some way doubts concerning it, the marriage is valid. Thus commonly with La Croix, 525. The reason is that he contracts at least conditionally, namely, insofar as I can, although he does not reflect upon that condition; therefore, when the impediment does not exist, consent is already absolute.

If he contracts with certainty of an impediment, which he thinks little of, so that he determines to live in concubinage, it is certain that the marriage is invalid. The reason is that then the will of contracting marriage is not predominant. If indeed he contracts with certainty of an impediment, but grieving over the impediment and not daring to disclose it lest the marriage be impeded, or lest he be defamed, or from some inadvertence, or with some doubt such as is accustomed to be mixed with supposed certainty, it is controverted. More probably the marriage is valid because of the predominant will of contracting it. Thus La Croix, ibid. Nevertheless, for caution in practice he would have to be induced to renew consent. Sanchez, book 2, disp. 33; Pontius, book 4, chap. 23; cf. vol. 1, n. 9.

1034. What must be done if, after marriage has been contracted, it is established with certainty concerning an impediment? If the impediment is public, separation must be made to avoid scandal. Cf. L. 111. If it is occult, and the spouses are in good faith, they are regularly to be left in it, especially if danger of separation or fornication would be present, by reason of scandal, which ordinarily is not absent. C. *Quia circa* 6, *de Consang.*; Benedict XIV, Notification 87; Sanchez, book 2, disp. 38. If it is occult and the spouses do not ignore it, either a dispensation must be sought at once, and in the meantime they can neither ask nor render the debt, C. *Consultationi* 4, *de Frig.*, or they must be altogether separated even as regards cohabitation, by office of the judge, if scandals would otherwise

arise, C. *Porro* 3, *de Divort.*, unless they prefer to cohabit as brother and sister, C. 4 cited, *de Frig. et Malefic.*, with every danger of incontinence removed, which is not without difficulty. But they cannot enter other nuptials except after a legitimate sentence of the judge, which never passes into res judicata. Benedict XIV, Const. *Dei miseratione*. If only one or the other knows the impediment, he or she can neither ask nor render, C. *Dominus* 2, *de Secund. nupt.*; and either a dispensation must be sought at once, or separation must be made even as regards habitation. E.M.

The manner to be observed in judgments concerning the validity of marriage is prescribed by Benedict XIV, Const. *Dei miseratione*, November 3, 1741. A defender of the marriage must be designated by the Bishop, who, under oath, should endeavor to execute his office, strenuously defending all reasons which favor it. But if the Bishop, after the examination has been instituted, judges that the marriage is valid, and appeal has not been made to a higher judge, the sentence will obtain force. But if he has held it invalid, the defender must appeal to the superior, so that the matter be subjected to a repeated judgment. But when two concordant judgments have been issued, it will be lawful to pass to new vows, although it is always lawful to recall the matter to judgment if new reasons are available; for it never passes into a definitive matter. Moreover, in instituting the process, the Instruction of the Sacred Congregation of the Council, August 22, 1840, and the Instruction of the Sacred Congregation de Propaganda Fide, 1883, must also be observed. *Collectanea*, 2nd ed., 1907, n. 1587.

The tribunal in matrimonial causes is constituted of the judge, the chancellor, and the defender of the bond. Besides the plaintiff and defendant, there are witnesses of the seventh hand, indicated by husband and wife, and they are seven persons joined to them by blood or affinity, if they can be had; or otherwise seven neighbors of good reputation who can testify, seven on the part of the man and seven on the part of the woman. Others, however, are not excluded who know the matter and are worthy of faith. "When there is question of the impediment of disparity of cult and it is evidently established that one party is baptized and the other was not baptized; when there is question of the impediment of ligamen and it is certain that the first spouse is legitimate and still living; finally, when there is question of consanguinity and affinity from licit copulation, or also of spiritual kinship, or of the impediment of clandestinity in places where the Tridentine Decree *Tametsi* has been published or has long been observed as such, provided that from a certain and authentic document, or in its absence from certain arguments, it is evidently established concerning the existence of impediments of this kind, not dispensed by the authority of the Church, in these cases, the solemnities required in the Apostolic Constitution *Dei miseratione* being omitted, the marriage can be declared null by the Ordinary, yet with the intervention of the defender of the matrimonial bond, without need of a second sentence." Holy Office, June 5, 1889.

IV. On Dispensation from Impediments and Revalidation of Marriage

1035. Can all impediments be dispensed, and are they dispensed? Not all impediments can be dispensed, such as the impediments of impotence, infantile age, ligamen, consanguinity in the first degree of the direct line, error, and fear; nor do all need dispensation, such as abduction, clandestinity, defect or vice of consent. Likewise not all are usually dispensed, such as consanguinity in the first degree of the collateral line, affinity from licit copulation in the first degree of the direct line, public crime with both or one or the other plotting, and abduction while the woman remains

under the power of the abductor. But among those which are dispensed, some are dispensed more rarely, others more frequently. More rarely and for a graver cause are dispensed clandestinity, spiritual paternity and filiation, affinity from illicit copulation in the first degree of the direct line, solemn vow, sacred order, disparity of cult, age.

Concerning spiritual paternity and filiation cf. De Iustis, *de Dispens. matr.*, book 2, chap. 5, n. 7; Schmalzgrueber, book 4, tit. 11, n. 57; tit. 16, n. 144. But at present spiritual kinship of any kind is counted among impediments of lesser degree, although in the Forms of the Sacred Congregation of the Sacraments there is excepted, in the communication of faculties, dispensation between the one lifting and the one lifted, or vice versa between the one lifted and the one lifting, and between the baptizing person and the baptized person. Cf. the following numbers, 1036, 1038. Concerning affinity cf. *Collectanea* S.C. de Propaganda Fide, n. 1242. Concerning public honesty cf. Ferraris, Supplement, this word. Concerning solemn vow and sacred order cf. Benedict XIV, *Quaest. Can.*, 200.

Others which can be dispensed and are more frequently dispensed, such as consanguinity, affinity, public honesty, spiritual kinship, apart from the degrees already excepted, legal kinship, occult crime, are not usually dispensed without grave cause. Trent, sess. 24, chap. 5, *de R. M.* Hence for the validity of a dispensation to be obtained, it is required that there be no obreption or subreption falling upon the motive cause. For a Superior is not judged to dispense except under the tacit condition: if the prayers rest upon truth. Motive; for if falsity is brought forward, or truth is suppressed only concerning an impulsive cause, the dispensation is valid. C. *Super litteris, de Rescript.*

But now impediments of lesser degree do not need a special cause. Cf. the following number. Practice of Apostolic Dispensations of the Apostolic Datary according to the reformed Forms; Pyrrhus Corradus, *Prax. Dispens. Apost.*, book 8; L. 1118-1120, 1129; E.M.

1036. What are just causes for dispensing in diriment impediments? Some causes are honorable, others are notorious, for avoiding scandals. Formerly they were taken more strictly, today more broadly, because of changed circumstances of the times. Honorable causes are: 1. the age of the girl, who, having already passed the twenty-fourth year of age, has thus far not found a man of equal condition whom she can marry; 2. defect of dowry, if the girl has none, or not enough, to be able to marry a man of equal condition in her own place where she dwells; 3. narrowness of place, i.e., if the woman therefore cannot find a man of equal condition in the place of origin or domicile, by reason only of the female petitioner; 4. grave enmities to be settled between the parents, blood relatives, or relatives by affinity of the man and woman; 5. lawsuits to be ended concerning matters of great importance arising between the man and woman, or between their parents; 6. poverty of a widow who is burdened with numerous offspring; 7. prerogative of royal dignity; 8. preservation of an illustrious family; 9. preservation of goods in the same family; 10. excellence of merits toward the Church; 11. Christian virtues, which probably would not be found in another man; 12. a more generous alms to be poured into pious works.

Notorious causes are: 1. excessive familiarity, suspicious and dangerous, and also cohabitation under the same roof which cannot easily be impeded; 2. infamy of the woman, arising either from true or false suspicion, whence the woman is compelled either to remain defamed or unmarried, or to marry a man of unequal condition; 3. copulation having followed between those wishing to contract, and legitimation of offspring; 4. danger of civil marriage; 5. danger of mixed marriage, or marriage before a non-Catholic minister; 6. danger of incestuous concubinage; 7. cessation of public concubinage; 8.

removal of grave scandals, lest they fornicate again, lest enmities flare up; 9. danger of incontinence for a younger widow; 10. revalidation of marriage. Benedict XIV, Response to the Archbishop of Tours, September 26, 1754; A.S.S., vol. 2, p. 62; Instruction of the Sacred Congregation de Propaganda Fide, May 9, 1877; L. 1129, 1130; E.M.

Dispensation was said to be without cause when none of these causes was present which are usually alleged as canonical; or when, no proper cause having been alleged, dispensation is usually sought and granted from certain rational causes, namely because of a more abundant Composition in degrees somewhat remote, or in more remote degrees because of a cause of public good moving the mind of the Pontiff, or also because, since the cause is shameful, it is not expedient to reveal it. Those causes are called canonical which, from the style and approved custom of the Curia, are regularly accustomed to be admitted for matrimonial dispensations. By no means, however, is one prohibited from setting forth other causes also, by which either other causes may be strengthened, or even the defect of others supplied, e.g., deformity of the girl, infirmity, etc. Reformed Forms of the Apostolic Datary; E.M.

After the Constitution *Sapienti consilio* of Pius X, June 29, 1908, matrimonial dispensations are distinguished as of greater degree and of lesser degree. The former are granted from a legitimate cause; the latter from reasonable causes approved by the Holy See. "19. Dispensations of lesser degree are from impediments: "a) of consanguinity and affinity of the third and fourth degree of the collateral line, whether equal or unequal, that is, of the fourth degree mixed with the third, and of the fourth or third mixed with the second; "b) of affinity in the first degree, and in the second simple or mixed with the first, where this impediment proceeds from illicit intercourse; "c) of spiritual kinship of any kind; "d) of public honesty, whether through betrothals or through marriage, concerning which there has already been dispensation and it has been dissolved. "20. Dispensations of greater degree usually granted, when a legitimate cause intervenes, are from impediments: "a) of consanguinity of the second degree of the equal collateral line, and of the second or third degree touching the first; "b) of affinity of the first and second degree of the equal collateral line, and of the second or third degree touching the first; "c) of crime from adultery with promise of future marriage. "21. Dispensations from lesser impediments are all granted from reasonable causes approved by the Holy See. But when granted in this way, they will have force just as if they had been imparted by motu proprio and from certain knowledge; and therefore they will be subject to no challenge either by vice of obreption or of subreption." Order to be observed in the Roman Curia, Particular Norms, chap. 7, a. 3.

As regards simple vows emitted in some Religious Congregation, dispensation is given by the Sacred Congregation of Religious with this formula: "Since he feels himself wholly unequal to sustaining the burdens of common life, etc."

1037. What things must be expressed in the supplicatory petition for the validity of a dispensation? 1. The names, surnames, and diocese or dioceses of the petitioners, from which they have their origin, or of actual domicile or quasi-domicile, or of the place in which they now dwell. Error in the name or surname of the petitioners more probably does not harm the validity of the dispensation if the error is plausible and the person is established. If there was true error in name or surname, sanation must be sought. Form of the Sacred Congregation of the Sacraments. These things must be expressed when dispensation is sought from the Sacred Congregation of the Sacraments. "But when

it is sought from the Sacred Penitentiary, the names and other things are kept silent, but only the person and place to which the letters are to be directed are expressed." L. 1146.

2. The lowest species of the impediment or impediments, and their number, if there are several. Nevertheless the dispensation is valid if a material error has slipped in concerning the computation of impediments, provided, however, that the case is set forth as it is. Holy Office, February 22, 1899; Forms of the Sacred Congregation of the Sacraments.

3. The motive cause of the dispensation. Must the cause alleged be true both at the time when the rescript is issued at Rome and at the time when the dispensation is put into execution? It is enough that the cause exist at the time when the delegate executes the dispensation itself, because the Pontiff seems to commit the business according to those circumstances which the delegate will find. L. 1132. Cf. vol. 1, n. 283; here 1045. Nor is it necessary that the cause for dispensing precede the concession of the same, but it suffices that through the dispensation itself and its manner the cause itself be consummated. "For when a dispensation is given without cause, some satisfaction or fine is imposed for a pious work or for some other common utility of the Church; through which work there arises a cause of the dispensation, which then comes about by way of commutation, just as we said also happens in the concession of Indulgences." Suarez, *de Leg.*, book 6, chap. 18, n. 26; L. 1130.

4. The other things which by law, custom, or the style of the Curia must be set forth, lest the petition be subreptitious. And thus it must be set forth whether a null marriage has already been contracted, whether knowingly or even in ignorance. Forms VIII, IX of the Sacred Congregation of the Sacraments; Trent, sess. 24, chap. 5, *de R. M.*; C. *Cum inhibitio* fin., *de Clandest. despons.*

5. Legitimation of offspring must be explicitly sought and granted in the Rescript. Sacred Congregation of the Sacraments, January 29, 1909. Pius VII, Const. *Expositum nobis*, June 18, 1816; Benedict XIV, Const. *Magnae nobis*; Practice of Apostolic Dispensations, nn. 116, 117; Sanchez, book 8, disp. 21; Reiffenstuel, book 4, tit. 21, app., n. 210 ff.; L. 1131; Lugo, *Responsa Moralia*, book 1, disp. 43; E.M.

There are no determined Forms for seeking dispensations from laws, from impediments of marriage, and for obtaining various graces from the Supreme Pontiff.

1038. Resolutions: One impediment must not be expressed for another, although greater, e.g., consanguinity for affinity.

In a vow it must be expressed whether it is of perpetual chastity, or of not marrying, or of entering religion.

In crime, whether it is adultery, or homicide, or both together. Likewise in adultery, whether a promise of marriage was present, or also whether marriage was in fact entered while the spouse of the other was still living, since dispensation is usually granted far more difficultly. Dispensation is not given unless scandal has been removed. Adulterine offspring is excluded from legitimation of offspring. Forms V, VI of the Sacred Congregation of the Sacraments.

In public honesty, if it is in the first degree, whether from marriage or from betrothals. But whether it is from marriage or from betrothals, the line must be expressed, and if from marriage, the degree. Hence it must be expressed whether public honesty proceeds from betrothals entered by the bridegroom with the mother of the woman to be betrothed, because the difficulty is greater than if there were question of betrothals entered with the sister of the woman to be betrothed, since the dishonesty is greater; for the impediment in the first case is in the direct line, in the other in the oblique line. But in an unequal degree it suffices to express the more remote. C. *Vir* ult., *de Consang*. Moreover it must be added that the prior betrothals were dissolved; for otherwise dispensation is not given by the Sacred Congregation of the Sacraments. But it is given by the Sacred Penitentiary, yet under the condition, provided that the prior betrothals were dissolved by mutual consent. Corradus, book 8, chap. 7; Forms for the communication of faculties of the Sacred Congregation of the Sacraments.

In legal kinship it is necessary to express only the line and degree.

In spiritual kinship, previously it had to be expressed whether it was paternity or maternity, or compaternity; and, more safely, whether from baptism or from confirmation. Sanchez, book 8, disp. 24, n. 15; Corradus, book 8, chap. 8, n. 15. But now, from the Constitution *Sapienti consilio*, spiritual kinship of any kind is numbered among impediments of lesser degree. Nevertheless, in the Forms of faculties which are communicated, dispensation between the one lifting and the one lifted, and between the baptizing person and the baptized person, is excluded. Forms of the Sacred Congregation of the Sacraments.

In natural kinship it must be expressed: 1. whether it is consanguinity or affinity, and if affinity whether from licit or illicit copulation, if it is contained within the second degree; 2. the line and degree must be expressed; and if a nearer degree has been set forth for a more remote one, the dispensation is valid. If the kinship is not simple but mixed from consanguinity and affinity, this also will have to be expressed; and if the degrees are unequal, each must be expressed both in consanguinity and, more truly, in affinity. And if the nearer is the first, the dispensation otherwise is not valid. Likewise, if the kinship is multiple, this too must be expressed for validity. St. Pius V, Const. *Sanctissimus*, August 20, 1566; Benedict XIV, Const. *Etsi matrimonialis*, September 27, 1755; Holy Office, December 12, 1748. Cf. Sanchez, book 8, disp. 24, nn. 12, 13; Schmalzgrueber, book 4, tit. 16, nn. 190, 192. "Moreover Tournely rightly notes that in a mixed degree the sex which is in the first degree must be expressed, because it is granted with more difficulty that a nephew marry his paternal aunt than that a paternal uncle marry his niece; for it is a greater perversion of order that a nephew be constituted head of his aunt." L. 1136. Nor indeed for validity must "incestuous copulation, or counsel and intention through it of more easily obtaining dispensation... concerning any prohibited degrees whatever of consanguinity, affinity, spiritual kinship, and also public honesty" be expressed. Leo XIII, June 25, 1885, Circular Letter of the Holy Office. Incestuous copulation, namely had between those blood relatives, relatives by affinity, etc., who wish to contract marriage with each other, and which previously had necessarily to be expressed. Likewise it is not necessary to say in the petition how often copulation was had with a blood relative of the bride, because from various copulations one single affinity arises; nevertheless copulation had with various blood relatives of the bride must be expressed, because from these so many different affinities are contracted; and although these impediments are not different in species, nevertheless they are distinct in number.

This is manifest from the Declaration of Benedict XIV; L. 1138. Forms of the Sacred Congregation of the Sacraments.

Besides the affinity arising from licit copulation with one's own spouse, there need not be set forth in affinity the affinity also contracted from illicit prematrimonial copulation with the same spouse. Sacred Penitentiary, March 29 and June 7, 1842; December 10, 1874.

Dispensation is not usually given in a doubtful impediment of consanguinity in the first degree, both of the direct line and of the collateral line.

If someone labors under a double impediment, he must set forth together in the supplicatory petition each impediment, if they are not disparate, but several in number in the same species, or of diverse lowest species related among themselves, e.g., double consanguinity, both on the part of the father and on the part of the mother, double affinity, consanguinity and affinity, the vow of chastity and of entering Religion. And if one is public and the other occult, dispensation from the former must be sought from the Sacred Congregation of the Sacraments; but dispensation from both together must then be obtained from the Sacred Penitentiary, since the prior dispensation contains subreption and therefore must be revalidated. Benedict XIV, Const. *Pastor bonus*, § 41; *Collectanea* S.C. de Propaganda Fide, n. 1470; Suarez, *de Leg.*, book 6, chap. 24; Sanchez, book 8, disp. 23, n. 1; Lugo, *Responsa Moralia*, book 1, disp. 43; L. 1139.

If someone has previously obtained another dispensation and used it, he must mention it when there is question either of the same vow of chastity, because the later dispensation is as it were an extension of the prior one, or of the same crime, because crimes do not have remission of pardon unless committed once. Suarez, *de Leg.*, book 9, chap. 23; Sanchez, book 8, disp. 22, nn. 2, 20. Likewise it must be made manifest if the man abducted the woman, although he has already purged the abduction. Rule 49 of the Apostolic Chancery; De Iustis, book 2, chap. 15, n. 30 ff.

If a dispensation was to be granted for entering marriage because of illicit intercourse, it had to be expressed whether that intercourse was had by one or both under hope of more easily obtaining the dispensation. If a dispensation was to be granted after marriage had been entered, it likewise had to be expressed whether a null marriage had been contracted knowingly, and in bad faith at least on the part of one party, whether clandestinely, and whether afterwards it had been consummated; whether on the contrary it had been contracted in ignorance, and in good faith at least on the part of one party, whether the denunciations were neglected, and whether it had then again been consummated after the nullity became known; whether these things had been done under hope of obtaining the dispensation more easily. Trent, sess. 24, chap. 5, *de R. M.*; Paul IV, Const. *Ab ea ipso die*; Clement, un., *de Consang.*; Sacred Congregation de Propaganda Fide, May 9, 1877. But in the present Forms of the Sacred Congregation of the Sacraments these things are altogether passed over in silence. Sanchez, book 8, disp. 25, n. 21; book 3, disp. 42, n. 7; Schmalzgrueber, book 4, tit. 3, n. 85; Kenrick, n. 216.

If revalidation was sought of a dispensation null because of an occult vice of subreption in the first and second degrees or only in the second, it had to be expressed whether the dispensation had been issued in the form for the poor; otherwise either a composition of 50 ducats of gold of the Camera must be made, or a tax to be defined by the Major Penitentiary must be paid, according to the various cases expressed in the Constitution of Benedict XIV, *Pastor bonus*, §§ 41, 42. These things too are

altogether passed over in silence in the present Forms of the Sacred Congregation of the Sacraments. L. 1131 ff.; Practice of Apostolic Dispensations of the Apostolic Datary; E.M.

1039. Note: In a case of doubtful dispensation, it must be judged valid, because in doubt one must stand for the validity of the act. L. 1133. When the motive cause of the dispensation ceases, e.g., if the offspring to be legitimated has died before the dispensation is issued, or before dispensation is made by the Bishop or by another to whom it had been committed by the Pontiff, the dispensation is invalid. L. 1132. If the motive cause ceases after the dispensation has already been issued and communicated to the petitioners by the delegate, the dispensation is valid, even if that cause ceases before the celebration of marriage, because by the dispensation the impediment has already been removed. L. ibid.

In the Renewed Forms of the Apostolic Datary there is a new clause, by force of which dispensation is granted not only from the impediments set forth but also from others perhaps kept silent in good faith. Cf. Practice of Apostolic Dispensations of the Apostolic Datary, nn. 28, 29, 150. An explanation is had there. But in the present Forms of the Sacred Congregation of the Sacraments there is a special form for convalidating marriage because of a newly detected impediment.

1040. Does one who, after obtaining dispensation from the impediment of affinity from illicit copulation, e.g., with a blood relative of the bride, likewise sins with the same woman before marriage, need a new dispensation? R. Negatively, if the dispensation has not yet been put into execution by the delegate, because such dispensations do not obtain effect from the day of issue, but from the time of execution. Indeed, negatively also even if the dispensation has been put into execution. The reason is that the impediment of affinity has already been removed by the dispensation with respect to the effect of contracting marriage. But if, after marriage has been contracted, he sins again with the same blood relative of the wife, he is deprived of the right of asking the debt, because the dispensation, according to the style of the Curia, was granted for the effect of contracting marriage, not for sinning more freely. But he would need a new dispensation if he sinned with another blood relative of the bride before marriage, even after the dispensation had been issued, because a new affinity would be contracted. L. 1140.

1041. From whom must dispensation from diriment impediments be sought? It must be sought per se from the Roman Pontiff alone, since this faculty properly pertains to him alone. And reserved in a special way to the Apostolic See are all dispensations of matrimonial impediments, whether impedient or diriment, to be granted to kings or princes of royal stock. Sacred Congregation of the Sacraments, March 7, 1910.

The Supreme Pontiff dispenses chiefly through the Sacred Congregation of the Sacraments, as regards the external forum, and therefore from all impediments public by their nature or by fact, of consanguinity, affinity from marriage, or from illicit but public copulation, spiritual kinship, public crime, and others not reserved to the Holy Office. At present both poor and rich must have recourse to this Congregation for dispensation from a public impediment. Recourse must be had to the Holy Office for the impediment of disparity of cult and of mixed religion, and also for those things which regard the Pauline privilege.

Dispensation must always be sought through the Bishop or his Vicar General. And if there is question of the first degree of affinity or of the second degree of consanguinity or affinity mixed with

the first, the customary forms previously did not suffice, but it was required that the Bishops themselves, by letters written in their own hand, explain the canonical causes and the necessity of the dispensation; or at least add a recommendation in their own hand, especially where there was question of the first degree of consanguinity touching the second. Reformed Forms of the Apostolic Datary, at the beginning; Practice of the Apostolic Datary, n. 11. But in the present Forms of the Sacred Congregation of the Sacraments nothing of this kind explicitly appears.

The Supreme Pontiff also dispenses chiefly through the Sacred Penitentiary, in the internal forum and in occult impediments, as regards marriages either to be entered or already entered.

The Sacred Penitentiary by its own proper right dispenses: 1. In marriages to be contracted, in the forum of conscience only, from occult impedient impediments, and likewise from omission of denunciations, even for the effect of contracting secretly. Benedict XIV, Bull *Pastor bonus*, April 13, 1744, § 39.

2. In contracted marriages, it dispenses in the second degree of consanguinity or affinity, if the impediment has remained occult for at least ten years and the petitioners have contracted together and lived together and have been reputed as legitimate spouses. Likewise it dispenses in the third and fourth degrees of consanguinity or affinity when occult. Moreover it revalidates marriages in the same third and fourth public degrees, nullly contracted because of occult subreption or obreption of the Apostolic Letters, except if the falsity consists in the narration of preceding copulation which in fact had not previously intervened. Benedict XIV, ibid., § 40.
3. Likewise it revalidates marriages nullly contracted from a null dispensation because of subreption in the first and second, or in the second only, and also in the third and fourth degrees of consanguinity or affinity. Benedict XIV, ibid., §§ 41, 42.
4. It dispenses from the occult impediment of affinity from illicit copulation, in the forum of conscience, and in marriages both contracted and to be contracted. Benedict XIV, ibid., § 43.
5. It dispenses from the occult impediment of adultery, if it was only with faith given, with neither party plotting; or also, but rarely, with both or one or the other plotting, both in marriages to be contracted and in contracted marriages. Benedict XIV, ibid., § 44.
6. The Sacred Penitentiary dispenses, in the aforesaid cases, even if the impediments are multiple; and it decrees the offspring legitimate in the forum of conscience only, but not offspring conceived in adultery. Benedict XIV, ibid., § 45.
7. When the Apostolic See is vacant, the Sacred Penitentiary can still do whatever pertains to the forum of conscience. Benedict XIV, ibid., § 51; Pius X, Const. *Vacante Sede*, December 25, 1904, par. 16.

A dispensation from the Sacred Penitentiary can be sought immediately by the petitioner, or by another in his place, e.g., by a confessor. More securely and more easily, however, this dispensation too is requested through the Bishop or his Vicar General, the name of the petitioner being kept silent. There is no determined formula which must necessarily be used. It suffices to set forth the impediment for which dispensation is sought, and the cause of the dispensation. Cf. 1037.

The Supreme Pontiff also dispenses through the Holy Office in impediments of disparity of cult and mixed religion, and in those things which regard the Pauline privilege. The Sacred Congregation de Propaganda Fide must refer to the proper Congregations those things which regard marriage. It can nevertheless still grant the ancient formulas of faculties, several of which regard marriage, to distant eastern missions, the matter having however been discussed and arranged with the Sacred Congregation of the Sacraments. The Congregation for the affairs of the oriental rite preserves its duties entirely. It also has force in the future to grant matrimonial dispensations of mixed religion and disparity of cult, with the sole exception of the Pauline privilege, which pertains to the Holy Office. Second Supplement to the *Enchiridion Morale*, 178, 181. Trent, sess. 24, chap. 3; Innocent XIII, Const. *Romanus Pontifex*, April 3, 1692; Benedict XIV, Const. *Pastor bonus*, April 13, 1744; Notification 87, n. 7; A.S.S., vol. 7, p. 423 ff.; L. 1118, 1144.

It is prohibited under penalty of nullity, after one Congregation has been approached for obtaining a dispensation, to approach another; and, after dispensation has been denied by the Apostolic See, to seek it from the Ordinary on the same alleged cause. Innocent XII, Const. *Ut occurratur*, June 4, 1692; Pius X, Const. *Sapienti consilio*, Order to be observed in the Roman Curia, Particular Norms, chap. 1, n. 2; Zitelli, *de Dispens. Matr.*, Rome, 1887, p. 70.

From the Holy Office, August 11, 1887, all matrimonial dispensations for the external forum are committed either to the Ordinary of the petitioners or to the Ordinary of the place. For the forum of conscience the letters are directed to a confessor from among those approved by the Ordinary, to be chosen or designated by the petitioners. Zitelli, *de Dispens. Matr.*, p. 100; Practice of Apostolic Dispensations of the Apostolic Datary, n. 188 ff.; E.M.

1042. Note: Dispensation was formerly given by the Apostolic Datary either in the form for the poor, when dispensation was made gratis or with lesser expenses, or in common form, by exacting the established tax, which is called the composition, because it is variously defined according to the various impediments and petitioners. Therefore the state of fortune which is possessed and hoped to be possessed must be set forth. Dispensation was made entirely gratis with the miserable. *Collectanea* S.C. de Propaganda Fide, 2nd ed., n. 393. "The truly poor are judged to be no others than those who are so miserable that they live only by the labor of their hands and industry.... Those also can deservedly be called poor who... possess goods in capital of the value of 300 scudi, Roman money, if they dwell this side of the mountains, or, if beyond the mountains, of the value of 300 ducats of gold of the Camera, reaching the sum of 325 scudi of the said money. But if they have goods up to the quantity of 1000 scudi or respectively ducats of gold of the Camera, dispensation is nevertheless granted in the form for the poor, yet with an alms paid of four scudi for each hundred." Holy Office, September 26, 1754. These last are called almost poor. The Roman scudo equals 5.375 lire.

In the concession of dispensations from matrimonial impediments from dishonorable causes, there cannot be understood as tacitly granted to the Ordinary also the faculty of declaring legitimate the offspring received before the execution of the dispensation and the celebration of marriage; rather, it is required that legitimation of offspring be sought by the petitioners and granted in the Rescript. Sacred Congregation of the Sacraments, January 29, 1909. Instruction of Urban VIII, October 6, 1671; *Collectanea* S.C. de Propaganda Fide, n. 1477; Reiffenstuel, book 4, tit. 31, app., nn. 398, 402; Schmalzgrueber, tit. 16, n. 232 ff.; A.S.S., vol. 1, pp. 383, 446; E.M.

1043. Is a dispensation in the form for the poor valid when the petitioners are not poor? It is illicit, and gravely so, as is clear in itself; nevertheless it is valid, because since poverty is not the motive cause of the dispensation, it labors under neither the vice of obreption nor of subreption. But the petitioners are still bound to pay it, unless remission is obtained. *Sapienti consilio*, Order to be observed in the Roman Curia, Common Norms, chap. 11, n. 3. The taxes previously established by the Apostolic Datary and by the Sacred Penitentiary continue to have force. Const. *Sapienti consilio*, l.c., Temporary Dispositions, n. 12. But it would certainly be invalid if it were given by a Bishop having this special power of dispensing with the poor. Sacred Congregation of the Council, April 26, 1873; *Monit. Eccles.*, vol. 11, p. 388. Sacred Penitentiary, December 1, 1852; A.S.S., vol. 7, p. 423; L.H.A. 87.

1044. Can dispensation of impediments also be sought from the Bishop, at least sometimes? It can be sought from the Bishop if he has this faculty from a special indult and delegation of the Roman Pontiff. And then the Bishop cannot exceed the limits of the mandate; otherwise he acts invalidly. Sacred Congregation of the Council, April 26, 1873; A.S.S., vol. 7, p. 297. Cf. Lugo, *Responsa Moralia*, book 1, disp. 43; Sanchez, book 8, disp. 2, nn. 27, 28, disp. 23, n. 10.

Now Bishops and Vicars Apostolic, by force of quinquennial faculties or faculties for a longer time, can dispense in several impediments. The same can also be done by approved confessors having the schedule of the Sacred Penitentiary. Cf. the respective Forms. Nevertheless Bishops cannot cumulate dispensations from several impediments in one and the same case without a special faculty. But this prohibition does not extend to those cases in which, with an impediment public by its nature, there occurs another occult impediment, or impediment of the internal forum. But when Bishops dispense from a faculty delegated to them by the Holy See, they can dispense also in a case in which one person is of their diocese but the other of another, because the faculty then proceeds from the Pope, and when the impediment has been removed from one side it consequently vanishes also from the other. Holy Office, March 31, 1872; Sacred Congregation de Propaganda Fide, September 19, 1861.

Dispensation can likewise be sought from the Bishop in occult impediments and in a most urgent case of necessity, which does not allow delay in approaching the Roman Pontiff or his delegate, even by letter, whether in marriages to be contracted, if the celebration of the marriage cannot be deferred without grave danger of infamy and scandal, cf. 955, or in contracted marriages, if either separation cannot be made without grave harm, or dispensation cannot be deferred without danger of incontinence, provided that the marriage was entered not knowingly, i.e., with at least one of the spouses unaware of the impediment, and not with the publications despised. C. *Ubi* 2, *de Despons. impub.*; Trent, sess. 24, chap. 5, *de R. M.*; L. 611, 613, 1121 ff.; Sanchez, book 2, disp. 40; De Iustis, book 2, chap. 2, n. 182 ff.; Reiffenstuel, book 4, tit. 21, app., nn. 65, 509; Pignatelli, vol. 3, Cons. 33, n. 8.

This power is commonly restricted to occult impediments in a most urgent case of necessity. Nevertheless it seems that it must be enlarged, for the article of death, to public impediments. The argument is taken from the Response of the Holy Office, April 22, 1890. Cf. *Enchiridion Morale*, 4th ed., n. 1044. But scarcely today can there be place for the use of such a power, since Bishops and others have other special faculties from the Supreme Pontiff.

For dispensation can also be sought, in public diriment impediments of ecclesiastical law, not excepting clandestinity, but excepting priesthood and affinity of the direct line from licit copulation,

as regards the sick established in the gravest danger of death, living in civil marriage or concubinage, when there is not time to have recourse to the Holy See, according to the power made to local Ordinaries by Leo XIII through the Decree of the Holy Office, February 20, 1888, December 13, 1899. Cf. 1015. But Bishops can habitually subdelegate this faculty to pastors and others performing the duty of pastors, for cases in which there is danger in delay, Holy Office, January 9, 1889; April 23, 1890, and for a particular act to any priest. Included also is the faculty of legitimating offspring, adulterine and sacrilegious offspring being excluded. Holy Office, July 8, 1903.

Moreover "His Holiness... deigned to declare and decree that any priest who, according to the norm of art. 7 of the decree *Ne temere*, when danger of death is imminent, where the pastor or local Ordinary or a priest delegated by either of them cannot be had, can validly and licitly assist at marriage before two witnesses, in the same circumstances can also dispense from all impediments, even public, dirimently impeding marriage by ecclesiastical law, except the sacred order of priesthood and affinity of the direct line from licit copulation." Sacred Congregation of the Sacraments, May 14, 1909.

Therefore by force of this Decree there is only a natural obligation of sincere repentance and reparation of scandal. This faculty of dispensing from matrimonial impediments, when danger of death is imminent in the case of art. VII of the decree *Ne temere*, made through the Decree of the Sacred Congregation of May 14, 1909, has force not only for concubinarians, but also if there is not question of concubinarians, provided nevertheless that another cause is present, for consulting conscience and, if the case suggests it, the legitimation of offspring. Sacred Congregation of the Sacraments, August 16, 1909. By the same Decree of May 14, 1909, of the Sacred Congregation of the Sacraments, pastors also are comprehended, even if they were not habitually subdelegated by their proper Ordinaries according to the norm of the Declaration of the Holy Office, January 9, 1889. Sacred Congregation of the Sacraments, July 29, 1910.

Finally, dispensation can be sought from the Bishop in doubtful impediments, in which, although it is not then necessary where there is question of doubt of law, because a doubtful law does not oblige, nevertheless, where there is question of doubt of fact, the dispensation removes the impediment, if it truly exists. Therefore, if afterwards it appears that there was truly an impediment, a new dispensation is not needed; otherwise the dispensation would do absolutely nothing. Benedict XIV, *de Syn.*, book 9, chap. 2; Corradus, book 8, chap. 4, n. 34 ff.; L. book 1, n. 190; book 6, nn. 613, 902, 1103, 1121-1125, 1129; *de Priv.*, 54 ff.; Lugo, *Responsa Moralia*, book 1, disp. 39; E.M.

1045. How is a dispensation to be expedited? Dispensation is usually granted in commissory form, namely the dispensation is not given, but the power of dispensing is committed to the Ordinary of the petitioners, or to the Ordinary of the place, in the external forum, Trent, sess. 22, chap. 5, *de R.*, or to a confessor approved by the Bishop, in the internal forum.

As regards a dispensation of the Sacred Penitentiary, let it be made after absolution with these or similar words: By apostolic authority I dispense with you from the impediment N. which you incurred, so that you may be able to enter marriage, or perfect the marriage entered, and I render legitimate the offspring received, or to be received. In the name of the Father, etc. But if the dispensation is from a vow of chastity, it is said: Moreover, by dispensing I commute for you the vow of chastity which you emitted, so that you may be able to contract marriage and use it, into the works which I have prescribed for you. In the name, etc. No formula is prescribed under penalty of nullity,

indeed not even under precept; for none is contained in the Roman Ritual. If the confessor had omitted to legitimate the offspring, he could repair this omission; for then he would continue the cause committed to him and not yet completed.

If the impediment is known to both contracting parties and is common, each must be dispensed by his or her respective confessor. Sacred Penitentiary, November 15, 1748. The same Rescript can serve two confessors, and it is to be torn up by the one who later executes it with his penitent. But if the impediment is known to only one, one execution is required.

As regards a dispensation of the Sacred Congregation of the Sacraments, only after the Rescript has been received must: 1. the delegate for dispensing observe carefully that no error has crept in concerning the name and surname of the petitioners, in the name of the diocese or place; he must observe the various clauses inserted into the dispensation; and he must inquire concerning the truth of the causes. Nevertheless, more probably, this information is not required for validity. For from the Holy Office, August 28, 1885, in place of the words, "if through information you find that the prayers rest upon truth," which formerly were placed in the Rescript, the words to be placed are: "if the things set forth are true," and now other equivalent words are placed in the Forms of the Sacred Congregation of the Sacraments, with the cause kept before the eyes which is chiefly brought forward for obtaining the desired grace. Cf. vol. 1, n. 285. It suffices that the pastor or another be delegated for the verification of the causes; but "the dispensation and legitimation of offspring can be effected only by the executor himself." Sacred Penitentiary, April 27, 1886.

2. He must declare before the parties and witnesses that the impediment of marriage is removed, and command that attestation of this dispensation be written in the registers of the diocese.
3. He must transmit the Rescript to the pastor of one or the other party with permission that he may assist at the marriage.
4. It is altogether expedient to give the dispensation in express words, "We dispense," in writing, and "by Apostolic Authority," and "we declare the offspring legitimate." It should be noted that for this legitimation a special Indult is needed; and adulterine and sacrilegious offspring is excluded. And the dispensation is then perfected and the impediment is removed when the Ordinary declares this will of his to dispense, or when he signs and issues the written document. If it has been given, and the spouses, with their plan changed, have entered another marriage, after they have become widowed, they can still use it.
5. Although no censure is foreseen to have been contracted by the petitioners, nevertheless the Ordinary or confessor who, by force of Indult, grants a matrimonial dispensation "laudably premises absolution from censures." Sacred Penitentiary, July 2, 1891. But if the petitioners are bound by a censure, absolution must altogether be premised for the validity of the dispensation. Holy Office, December 18, 1872; A.S.S., vol. 26, p. 517. But from the Constitution *Sapienti consilio*, today censure does not stand in the way of the validity of a grace of the Holy See, unless there is question of those excommunicated by name or suspended from divine things by name by the Holy See. Order to be observed in the Roman Curia, Particular Norms, chap. 3, art. 1, n. 6. Pyrrhus Corradus, *de Disp.*, book 1, chap. 4; De Iustis, book 1, chap. 6; L. book 1, n. 197 at the end, 1131, 1146; Benedict XIV, Instruction 87, n. 34.

The dispensation must be put into execution by the Ordinary, that is, the Bishop, Administrator or Vicar Apostolic, Prelate or Prefect having jurisdiction with a separate territory, and their Officials or Vicars General in spiritual matters, and, when the See is vacant, the Capitular Vicar or legitimate administrator.

If the dispensation is granted in gracious form, that is, if the Supreme Pontiff directly dispenses and mere execution of communicating the dispensation is committed to a delegate, the delegate can execute the Apostolic Letters if the Supreme Pontiff dies in the meantime, because it is a grace already made. And the grace is then understood as granted, and the impediment removed, when the Rescript is signed and issued furnished with seal. But if the dispensation is granted in commissory form, and the Supreme Pontiff dies in the meantime, the delegate can still execute the Apostolic Letters if he is a necessary executor, for it is also a grace already made. For the Supreme Pontiff then, granting the petition, gives a mandate to the delegate of dispensing, or of executing the dispensation. For then he himself does not dispense, but after knowledge of certain conditions executes the dispensation of the Holy See, which, previously conditional, then becomes absolute while remaining the same. But he cannot execute it if he is a voluntary executor, for it is a grace to be made. For the Supreme Pontiff then simply confers on him the power of dispensing; and therefore the dispensation is not really had directly except from the delegate to whom such power has been given, and when it is dispensed by the delegate. Cf. vol. 1, nn. 251, 255, 283; Practice of Apostolic Dispensations, nn. 226, 229; E.M. 1044, 1045.

1046. What are the principal clauses which are usually placed in dispensations? It must be noted first that, from the various clauses contained in the Apostolic Rescript, some contain true conditions regarding the validity of the dispensation, while others contain precepts and admonitions pertaining only to the liceity of the dispensation.

Now the principal clauses are the following:

1. If it is so, if the prayers rest upon truth, or another equivalent clause. This pertains only to those things which would render the dispensation subreptitious or obreptitious. But faith, as regards the confessor, is to be given to the penitent, unless he certainly knows the opposite from knowledge outside confession.
2. Sacramental Confession having first been heard. This is required for validly dispensing for the internal forum, although the penitent has already previously confessed to another. It suffices that only one of the spouses has confessed, unless something else is clearly expressed, because an unjust condition ought not to be imposed on one through the other. *De R.I.*, in VI. In the tribunal of penance alone, after hearing the penitent's Confession, can the confessor execute a rescript of the Sacred Penitentiary for the internal forum. But the execution is valid, although the penitent confesses invalidly and sacrilegiously. Moreover, the dispensation must be manifested before absolution, and can be granted even if absolution is deferred. Sacred Penitentiary, May 19, 1834. And the same Sacred Penitentiary, January 4, 1839, declared: "In executing rescripts of the Sacred Penitentiary, care must indeed be taken that the penitent be disposed for absolution from sins; nevertheless absolutions from censures will be valid, provided that at least an accusation or confession of sins has preceded, which is sacramental."

3. The occasion of sinning having first been removed, namely the proximate and voluntary occasion; but if it is necessary, it suffices that it be removed in mind, by rendering it remote from proximate through the due means. It is an admonition, not a condition for the validity of the dispensation.

4. Scandal being removed, insofar as it is present, especially through separation, if this can be done. "Separation is to be preferred to other modes of repairing scandal; if this cannot be done, scandal is to be repaired, but the manner of repairing scandal is left to the prudent judgment and conscience of the Ordinary, according to the requirements of each case." Sacred Penitentiary, April 12, 1889.

5. Provided that the impediment is occult, namely if it is known to few, in a town to only five or six persons, in a city to only seven or eight, and from the circumstances it is prudently conjectured that it will not be divulged. But if it is known only to the contracting parties, or only to one who cannot prove it, then it is called altogether occult. L. book 1, app. 2, n. 33; book 6, nn. 593, 1111; book 7, nn. 76, 78, 141; Benedict XIV, Instruction 87, n. 39 ff.; D'Annibale, 3rd ed., part 1, n. 242.

6. With grave and long-lasting salutary penance; with grave salutary penance. "In defining beforehand the quality, gravity, duration, etc., of the penance, which are left to the judgment of the one dispensing or the delegate in conformity with law, neither the limits of severity nor of humanity are to be exceeded, and account must be taken of the condition, age, infirmity, office, sex, etc., of those upon whom the penalty is enjoined to be imposed." Sacred Penitentiary, April 8, 1890. Therefore a penance must be imposed, and it must be accepted and fulfilled under grave obligation. But "omitted fulfillment of it does not bring with it the invalidity of the dispensation." Sacred Penitentiary, December 14, 1891. "The clause prescribing the imposition of penance is judged satisfied, even if it is accepted with a feigned mind by those who are dispensed." Sacred Penitentiary, November 12, 1891. De Iustis, book 1, chap. 7, n. 137 ff.; Reiffenstuel, book 4, tit. 21, n. 409.

7. Some alms having been distributed, according to the judgment of the Ordinary. "Non-observance of this clause, which is usually placed in dispensations, does not bring with it nullity of the dispensation." Sacred Penitentiary, June 10, 1876. With the poor this clause can be omitted according to the judgment of the Bishop. Sacred Penitentiary, November 11, 1890.

8. The party having been informed concerning the nullity of the prior marriage; yet in such a way that the crime of the petitioner is not to be manifested. This clause imports two things, namely: 1. that the other party renew consent; 2. that he or she consequently be informed concerning the nullity of the prior consent.

9. And insofar as this notification cannot be made without grave danger, consent having been renewed according to the rules handed down by approved authors. Various modes are handed down. These are the principal ones assigned by various authors: 1. If the spouse simply says: Our marriage is null because of some impediment; or: The confessor told me that it is null..., and therefore let us renew consent. But in this way the other party now becomes altogether informed concerning the nullity of the marriage, and in this practically the whole difficulty consists. 2. If the spouse says: I did not have true consent when I contracted marriage; now I

wish to give new consent, do you also wish to give it? This mode is commonly admitted by authors, and can rightly be used without a lie, since null consent is not true consent; and otherwise the spouse ignorant of the impediment thus knows sufficiently the nullity of the marriage. 3. If he says: I am troubled by scruples concerning the validity of our marriage, and therefore let us renew consent. This mode can be admitted according to the more common opinion with St. Alphonsus, 1117. For it suffices that the other party place consent independent of the prior; and for this it is enough that he prudently doubt concerning the validity of the first marriage. 4. Various other modes are also offered by several theologians, e.g., if the spouse says to the spouse: Tell me, please, if our marriage were null, would you not wish to contract again? Or: If you had not married me, would you not wish to marry now? etc. But these modes are rightly rejected, because thus it is uncertain whether the other party intends to repeat consent in the preceding marriage, or to consent to a new one. L. 1117. "It is necessary to distinguish between nullity and the cause of nullity. The nullity is to be manifested. For a null act cannot be ratified unless its nullity is known, C. *Proposuit*, C. *Ad nostram*, *de Coniugio servorum*. But as regards the cause of the nullity, it would be an error to manifest it." Benedict XIV, Epistle *Accusiamo* to Cardinal de Sinzendorf, Bishop of Breslau, December 29, 1742. As is clear, practically the whole difficulty lies in having that knowledge of the nullity of the marriage.

If it is morally impossible to inform the party, and thus to renew consent, either a dispensation in radice must then be sought, or after a dispensation has been sought, and with urgent necessity standing, the clause can be held as not invalidating, so that only the one conscious of the impediment renews consent, while the other, unaware of the impediment, perseveres in the consent previously given. Cf. Benedict XIV, Notification 87, n. 74 ff.; cf. here n. 1050.

10. These presents having been torn up, under penalty of excommunication latae sententiae. The tearing up of the Letters of the Sacred Penitentiary, which places this clause, must be done immediately, but understand morally, namely at least within three days after the dispensation has been executed. But if the clause of tearing up has not been placed in the letters, as it is not placed when marriage has not yet been contracted, then there is no obligation to tear them up, but a dispensation of this kind must be carefully noted by the pastor in a book which cannot be seen by anyone else, so that he himself, when there is need, may be able to give proof concerning the dispensation obtained. L. 1143; Schmalzgrueber, book 4, tit. 16, n. 242 ff.; Benedict XIV, Notification 87; A.S.S., vol. 28, p. 512; Practice of Apostolic Dispensations; E.M.

1047. What is revalidation of marriage? It is to render valid that which is invalid because of an essential defect, by removing the aforesaid defect. But this defect can proceed from consent, from form, or from the incapacity of persons to contract.

1048. What about revalidation because of defect of consent? Consent remains habitually, and here also virtually, for as long as, once duly placed, it has not been revoked. Therefore: 1. if one of the contracting parties did not give consent, he must altogether give it, even without the other party knowing, and this alone suffices; otherwise marriage will never be had, nor can consent be supplied in any other way and manner. Consent of this kind is signified by cohabitation and other conjugal acts. And thus both are had, interior consent and its exterior signification, which does not necessarily

consist in words. Nor indeed is anything else per se required in the case for the validity of marriage. Nevertheless the one who renews consent must know that the prior consent was null, and that the marriage was null, because otherwise he does not really consent, since nothing is willed unless it is first known. And thus consent must altogether be given if it was never present, or was only simulated, erroneous, or coerced, after the error and fear have ceased. This holds if the defect is occult, although the pastor and witnesses were conscious of the impediment. The reason is that the assistance of the pastor and witnesses is required only so that they testify to the celebration of the marriage, so that it may be impeded lest the spouses contract another marriage; not so that they testify to the validity of the marriage. But if the defect was public, the marriage must then again be contracted before the pastor and witnesses, where Trent was in force, and where now marriage must be contracted according to the decree *Ne temere*; otherwise where the marriage is valid independently either of Trent or of the aforesaid Decree. Nor is it per se necessary that the other contracting party also renew consent. L. 1114; A.S.S., vol. 11, p. 346 ff.

2. If the consent of each contracting party was lacking, it is necessary that each consent. But is it necessary to place consent mutually, or does it suffice that it be placed separately? This is controverted. Some hold that it suffices if it is placed separately, because once the consent of one has been placed, the consent of the other can be added to it. Others say it must be placed mutually, because otherwise the contract is lacking. "It is certain," says St. Alphonsus, 1114, "that in the contract of marriage physical simultaneity of the consents of the spouses is not required, but moral simultaneity suffices, namely if the consent of one morally perseveres while the consent of the other is placed." And indeed it must again be renewed before pastor and witnesses if the aforesaid defect was public; but otherwise if occult, as in the preceding case.

3. But if the defect in each preceding case, although occult, is such that it must be dispensed in the external forum and can be proved, it is altogether necessary that the marriage be secretly revalidated before the pastor and witnesses; otherwise, if perhaps the impediment becomes manifest, the spouses could institute divorce. C. *Insuper* 4, *Qui matrim. accusa.*; C. *Propositum* 1, *de Eo qui dux.*; C. *Ad id* 21, *de Sponsal.*; Sanchez, book 2, disp. 32; L. 1109-1114; St. Thomas, Suppl., q. 47, a. 4, ad 2.

1049. What about revalidation because of defect of form? It is certain that a marriage invalid by reason of clandestinity must be entered before the pastor and witnesses, formerly according to the law of Trent, now according to the decree *Ne temere*, from which dispensation is rarely given. If both spouses do not refuse to present themselves before the pastor and witnesses, marriage must be contracted publicly or occultly according as its nullity is public or occult. The reason is that in the first case scandal must be removed, in the other it must be guarded against, and the whole reputation of the spouses must be preserved.

If one party or each refuses to go to the Church, they are to be joined in their own house or another place chosen by them, provided that grave witnesses are present, by whose aid convalidation of this marriage can be made public, if this is necessary for removing scandal, namely if the invalidity of the prior union is notorious. If one refuses to contract before the pastor, and the refusal arises from ignorance or some error against the laws or doctrine of the Church concerning impediments

invalidating marriage, the one refusing should be instructed with due prudence and in charity. And insofar as he still refuses to convalidate his marriage in the face of the Church, then one must strive that he constitute a special procurator, who in his name will contract marriage in the customary way; or at least, with express consent de praesenti by letter directed to the proper pastor or to another priest having the license of the Ordinary or pastor, the marriage should be renewed. Cf. 963. If the indisposed party does not wish to contract even through a procurator, one can come to dispensation in the root of the marriage, or to sanation of the marriage in the root, so that at least provision is altogether made for the salvation of the soul of the innocent party, the legitimacy of the offspring, and the tranquility of the families, and so that provision can as soon as possible also be made for the salvation of the soul of the one refusing. Instruction of Cardinal Caprara, Legate a latere in France.

If a marriage was invalidly contracted by reason of clandestinity, and the spouses then go into a place in which clandestine marriage is valid, and there continue conjugal life, the marriage is convalidated if, being conscious of the nullity, they renew consent at least through conjugal copulation. But if they are ignorant of the nullity, or do not attend to it, and conjugal life is continued, the marriage remains invalid, Holy Office, August 31, 1887, because the prior invalid consent always remains, and no new consent independent from the prior one, and altogether necessary, has been added. But this reason for the resolution is not without difficulty, since the consent of the parties is naturally consent, and consent remains in whatever place, and therefore, when the extrinsic impediment of observing the extrinsic form has been removed, the consent which was naturally valid and could not produce its effect while the impediment of the law stood, once this has been removed, produces its effect. And thus, when baptism has been received by unbelievers, their marriage remains and becomes a sacrament, although consent into marriage is not renewed. And so also, by the same consent altogether, and in no way renewed after the nullity of the marriage has become known, a marriage invalid from an occult impediment is sanated in the root. Therefore the reason for the Resolution does not seem to be able to be the invalidity of consent, but rather because from the Council of Trent, sess. 24, chap. 1, *de R. M.*, those who attempt to contract clandestinely are rendered incapable of contracting thus, and therefore even in another place they persevere incapable of contracting clandestinely. C. *Propositum* 1, *de eo qui duxit*, etc.; E.M. 859.

1050. What about revalidation because of defect of personal incapacity? If marriage must be revalidated because of the incapacity of a person, by reason of some diriment impediment which is dispensed, dispensation from the same impediment must certainly be sought. If each spouse is conscious of the impediment, each is bound to renew consent, after dispensation has been obtained for revalidating the marriage. The reason is that knowledge of the nullity of marriage because of a known diriment impediment had easily excluded true consent in the preceding contract of marriage. Cf. 1033.

If only one party knew the impediment, that party is bound to renew his or her consent, at least alone and separately. This follows from what has just been said.

The party ignorant of the impediment would not necessarily have to renew consent for the validity of the marriage if the impediment regarded only the other party. The reason is that the consent of that party was valid from the beginning, and therefore perseveres; therefore renewal of consent of the incapable party would suffice. Hence, if a believer had married a non-baptized woman who is ignorant of the impediment, it would suffice, when infidelity ceases or dispensation is obtained, that

the believer renew consent; because the consent of the unbeliever was valid, since the Church could not impress personal incapacity upon her. L. 1114; St. Thomas, Suppl., q. 47, a. 4, ad 2. Cf. *Monit. Eccles.*, vol. 11, p. 24 ff., p. 105 ff. Nevertheless, from various decisions of the Holy Office, if each party in the case was ignorant of the impediment, and the unbelieving party received baptism, and the marriage is not ratified by them, knowing its nullity, in a place where clandestine or mixed marriages are valid, the marriage remains invalid, although they persevere in conjugal cohabitation. Holy Office, May 8, 1899. In finding the reason for this Resolution, the same difficulty appears as in the preceding case, as can also be seen from the following question. The reason is brought forward that the consent which is gathered from marital custom arises from error, namely that the prior consent is judged to have force. But if this were true, whenever marriage had been contracted invalidly, marriage could never be sanated in the root without renewed consent, which is against the fact itself. Therefore it can better be said that the Church in such a case does not accept that prior consent as legitimate; and unless the Church accepts it, it remains subject to the invalidating power of the Church.

C. *Propositum, de eo qui duxit,* etc.; E.M. 959.

But must consent also be renewed by the party ignorant of the impediment when this touches both? There are two opinions. The first opinion affirms. The reason is that the impediment takes away the efficacy of consent from the beginning; therefore it remains ineffective, and accordingly can produce no effect, since it perseveres in the same way in which it was given; but a simple dispensation does not heal the vice which preceded, but only renders the parties capable of consenting in the future. The second opinion denies. The reason is that the prior consent, although it lacked its effect because of an impediment placed by positive law, nevertheless by natural law was valid, since it was given by a person capable by natural law toward a person capable by natural law of contracting. This is confirmed from dispensation in radice itself, which is sometimes given. For in it the Church certainly does not supply, nor can she supply, a defect of consent. Therefore, when the impediment has been removed, the prior consent suffices, which virtually perseveres in its effect, through conjugal copulation, cohabitation, or other external signs. Therefore, when the internal consent of the spouse conscious of the impediment is added, expressed at least through similar external signs, the consent of each is united, and the marriage is convalidated. C. *Si infantes* un., *de Despons. impub.*, in VI; Lugo, *Responsa Moralia*, book 6, disp. 2, n. 2.

But practically, consent must altogether be renewed not from the nature of the thing, but because of the clause contained in a simple dispensation: "the other party having been informed concerning the nullity of the prior consent." This clause contains not an admonition, but more probably a condition. L. 1115, 1116, 1117, 895, 1145; A.S.S., vol. 26, p. 421 ff. Consent, moreover, must be renewed publicly before the pastor and witnesses if the impediment is public; but privately if it is occult. The reason is that otherwise the marriage could not be sufficiently proved before the Church; and in the first case scandal must be removed, but in the other scandal and the defamation of the parties must be impeded. Indeed, if the impediment, although occult, can be proved in the external forum and must be dispensed, the marriage must be secretly revalidated before the pastor and witnesses, lest the spouses afterwards be able to separate if the impediment becomes known. Therefore, when the impediment is so occult that it can in no way be proved in the external forum, it is not then necessary to contract marriage again before the pastor and witnesses.

St. Alphonsus, book 6, n. 1116, speaking of the second opinion just reported, says that it can serve for practice in a case of urgent necessity. "For if from knowledge of the nullity of the marriage there can prudently be feared danger of death, grave infamy, or scandal to follow from separation; and on the other hand the spouse could not avoid rendering the debt, then he can well use the second opinion as probable; because in that case, by reason of necessity, even with danger of frustration of the sacrament, it is lawful to follow an opinion only probable, as they commonly teach." Cf. here n. 1046, 9. Benedict XIV, Epistle *Accusiamo* to Cardinal de Sinzendorf, Bishop of Breslau, December 29, 1742, *Bullarium*, Naples ed., 1885; Instruction 87, n. 62 ff.; Sacred Congregation of the Council, June 8, 1610; Sacred Penitentiary in Ferraris, v. *Matrimonium*, a. 8, n. 9; Pyrrhus Corradus, book 7, chap. 7, nn. 8, 9, 12, 13; book 8, chap. 3, n. 44; L. 1899.

If there is danger that the other, upon knowing the nullity of the marriage, will not wish consent to be renewed; or, when each spouse is ignorant of the impediment, the same danger is present and there would be other grave inconveniences of defamation, then the Apostolic See must be approached, so that it dispense from the aforesaid condition of renewal of consent and grant the dispensation which is called in radice. Rising up to the origin, or root, of the marriage, this both renders the person capable of contracting and heals the very vice of the consent given at the beginning. For the root of marriage is consent, and the root which is sanated is consent into marriage naturally valid; and therefore the marriage begins from now to be valid. Holy Office, March 8, 1900; *Monit. Eccles.*, vol. 12, p. 3. The marriage itself moreover is sanated as regards effects, and as regards the legitimation of offspring, from then, i.e., as if it had been valid from the beginning. Namely, in such a case that condition of renewing consent is relaxed; when this has been removed, and when the incapacity of the person has also been removed by dispensation, that consent, valid by natural law, exercises its moral force, and the marriage is perfected. But, as is clear, it is necessary that consent into marriage truly was present and perseveres, and that marriage truly was contracted, and in good faith on the part of both or at least on the part of one, and that it had and still retains the appearance of marriage. Therefore this dispensation is applied while one party, or even both parties, are ignorant of it.

Dispensation in radice is to be executed in the same way as a simple dispensation, by adding in the formula the words, "in the root." Thus, for example: "I, by apostolic authority granted to me, sanate and consolidate in its root the marriage contracted by you with N., and I declare legitimate the offspring received and to be received, in the name of the Father, and of the Son, and of the Holy Spirit." But no formula is contained in the Roman Ritual. Sanchez, book 2, disp. 35, 36, 37; book 8, disp. 7; Benedict XIV, Const. *Etsi*, Notifications 68, 80, 87; *de Syn.*, book 13, chap. 21; L. 1109, 1115 ff.; E.M.

Dispensation in radice is granted by the Sacred Penitentiary, by the Sacred Congregation of the Sacraments, and by the Holy Office for various cases, and regularly must be sought through the Ordinary. *Monit. Eccles.*, vol. 19, p. 4 ff.

According to the Holy Office, November 22, 1889, for sanation in radice it is required that the Catholic party acknowledge the nullity of the marriage. *Collectanea* S.C. de Propaganda Fide, n. 1721.

According to the Holy Office, March 11, 1868, marriages contracted with impediments of ecclesiastical law are revalidated in radice without renewed consent. *Collectanea* S.C. de Propaganda Fide, 2nd ed., 1897, n. 1326.

According to the Holy Office, August 22, 1906, a marriage null because of disparity of cult is sanated in radice after baptism has been received by the wife, without any prior admonition of the Catholic husband. *Collectanea*, cited, n. 2239.

Legitimation of offspring made by the Supreme Pontiff is extended by a certain consequence also to temporal effects. C. *Per venerabilem* 13, *Qui filii sint legitimi*. This is clear in two ways: as regards canonical and civil effects, and as regards the removal of the very stain and infamy of illegitimate birth.

The faculty was twice granted to me by the Supreme Pontiff Pius X of sanating in radice the marriage of two married women, without their husbands being forewarned, and with a document of this sanation left with the women themselves, if perhaps the necessity should occur of demonstrating that sanation had been obtained.

V. On the Use of Marriage

1051. Is the use of marriage licit and due? R. Affirmatively. And this is of faith from 1 Cor. 7:3: Let the husband render the debt to the wife; and likewise the wife to the husband. The reason is clear from the very nature of the contract of marriage, which the Apostle himself then expresses in the cited place. Due, i.e., mutually due, if it is at least tacitly asked, because one is not bound per se necessarily to use one's own right, but only sometimes per accidens, e.g., for averting a danger of incontinence threatening the spouse. Due, and therefore after the two-month period, and if the spouse has not lost the right of asking through adultery or through incest. L. 900, 938; St. Thomas, Suppl., q. 44, aa. 5, 6.

1052. Resolutions: Spouses are bound to cohabitation, and one cannot be absent for a longer time without the consent of the other or without necessity; for this obligation follows from the very obligation of rendering the debt. But just causes for going away for a long time are the public good, the family to be supported or protected, harm from enemies to be avoided, etc. Then the husband who must remain elsewhere for a long time must take his wife there, if he conveniently can, so that she may cohabit with him. C. *Pervenit, de Conv. lepros.*; St. Thomas, Suppl., q. 64, a. 6, ad 1; Quodl. 4, a. 11. Cf. vol. 1, n. 675.

A spouse sins gravely by denying the debt whenever there is danger of incontinence or grave annoyance on the other side. Likewise if he or she denies it to the other seriously asking. But otherwise if the spouse kindly remits it, or asks lukewarmly, or immoderately, e.g., after the third or fourth time in the same night; nor if one defers it for a short time, namely until night, or if from night he defers it to morning time, the danger of incontinence always being excluded. Likewise a spouse sins by doing something by which generation is per se impeded.

Likewise a man or woman sins gravely if he or she renders himself or herself impotent, even by means otherwise licit, against the will of the spouse. St. Thomas, Suppl., q. 64, a. 1, ad 3; a. 6, ad 4. Spouses can indeed do something from a grave cause from which the emission of seed follows per accidens; nevertheless they sin if in the use of marriage they do something by which per se either seed is poured out outside the vessel, or, once received, is rejected. Hence, perfect copulation being excluded, artificial fecundation is illicit. Holy Office, March 24, 1897. Artificial fecundation, namely by which art is substituted for nature, not by which nature is merely aided by art.

Art is indeed substituted for nature if the man is first polluted, and then the seed collected from this is introduced into the vagina by some instrument. But nature is only aided if copulation is first performed in the natural manner, and then, either by fingers or by a little tube, the seed already introduced into the vagina is driven further up to the opening of the uterus, for more certainly obtaining fecundation. "It is certain that it is illicit to have copulation for pleasure alone, as is clear from proposition 9 condemned by Innocent XI.... Yet it is common among all that this is not mortal, but nevertheless a venial sin.... But there will be no sin if the spouse principally intends the procreation of offspring and uses pleasure, intending it moderately, so that he may excite himself to copulation; just as likewise one does not sin who intends moderate delight in eating, for providing suitable nourishment for the body." L. 912, 938, 940, 942, 954. Finally, the use of marriage is licit as a remedy of concupiscence, for avoiding incontinence. Sanchez, book 9, disp. 11; E.M.

1053. "Is it lawful for spouses to copulate if because of old age or another disposition it generally happens that the seed is poured out outside the vessel? Bossius, etc., probably affirm, provided that there is probable hope of inseminating within the vessel; because whenever such hope is present, they have a right to copulation, and if the seed is poured out, this happens per accidens." L. 954.

Nor indeed is the use of marriage illicit for them because of old age; for although then in act it is not in the office of nature, nevertheless that act is still apt per se for it, and certainly is not against it. Hence it is lawful even for old persons to contract marriage. For zoosperms, on which in men the power of generating depends, and ova, on which in women the same power of generating depends, are first produced at the time of puberty and endure in men through the whole of life and in women until advanced age, nor can any time be defined at which that power is wholly extinguished, although it is diminished by old age. That generative power is diminished in men about the sixtieth year of age, in women about the fortieth to fiftieth year, at which age the menses ordinarily have an end. Diminished; for the absence of menses because of age is not an argument of impotence. For in women menstruation and ovulation are not always joined together: the former can cease and nevertheless the latter can endure; and pregnancy can also be had without menstruation. And when menstruation ceases, it is not therefore altogether extinguished, for after some longer or shorter interruption it can continue even in extreme old age. Moreover, the release of an ovum, since by its nature it is internal and hidden, is always presumed per se. Dominic Benetti, *Opus Medico-Morale*, Canon Eleventh, Annotations, n. 3; Francis Topai, *Importanza dell'utero*, Rome, 1900, pp. 44-45; St. Thomas, Suppl., q. 58, a. 1, ad 3.

Likewise copulation is licit if the woman cannot retain the seed. The reason is that copulation then is still per se apt for generation and sufficient for generation; and that emission of seed is only per accidens and by no means impedes generation. For whatever the quantity of seed emitted from the vagina, the vaginal mucosa always retains a quantity of seed most sufficient for generation. "Then, when ejaculation has been performed and the man has withdrawn, ordinarily the seed once poured into the vagina is no longer emitted, since then the vaginal walls adhere to each other in such a way that they touch one another, from which there is great difficulty of exit. Indeed, even if some part is emitted outside because of special conditions of the vagina, that which remains adhering to the mucosa and folds of the vagina is always far more abundant than the necessity of fecundation requires." Antonelli, vol. 2, p. 189, n. 381.

From these things it follows that a woman does not sin gravely if, after the act of copulation, she rises, walks, works, etc.; since, once copulation has been performed, the vaginal walls immediately adhere to each other and close the vagina, so that ordinarily nothing of the seed is emitted. Therefore there can be sin only because of a depraved intention of impeding generation. Antonelli, l.c., p. 220, n. 479.

The print's appendix has more on this paragraph: [Marriage of Old Persons](/manuals/bucceroni/marriage-of-old-persons). (ed.)

1054. Is the use of marriage licit for the sterile? R. Affirmatively, both because no positive law is present prohibiting it, and because the sterile are per se fit for perfecting the conjugal act. But if no generation follows from it, this is per accidens and from nature, altogether independent of that act duly perfected, insofar as it is from the spouses. Besides generation there are also other honorable ends of the conjugal act. Hence the use of marriage is also licit at that time and on those days on which generation is more difficult. Cf. 1077; E.M.

1055. "Is a man ever bound to ask? Speaking per se, he is not bound to ask; but he is bound per accidens, namely if the wife tacitly demands, for instance if she shows some indication by which she signifies a tacit petition; because in women, also because of innate modesty, such signs are held as a true petition. Thus commonly... from St. Thomas, Suppl., q. 64, a. 5, ad 2. Conversely Sanchez rightly says, etc., from the same St. Thomas, IV Sent., d. 22, q. un., a. 3, ad 2, that a woman is not bound to render to the man unless he expressly asks; for since men are not ashamed to demand expressly, wives can well presume that men who do not ask expressly do not wish to oblige them to asking." L. 928. This indeed holds likewise, speaking per se and ordinarily. L. ibid.; St. Thomas, Suppl., q. 64, a. 5, ad 2; n. 6, ad 3.

1056. "Is a wife ever bound to ask the debt? It is certain, first, that ordinarily she is not bound..., because this is notably immodest for women. It is certain, second, in danger of incontinence, that when the other spouse is in danger of incontinence, both husband and wife are bound to ask in order to free the other from the danger.... Third, however, doubt arises whether the wife is then bound to ask from charity or from justice? The first opinion... says that she is bound from justice. The reason..., then it is rather rendering than asking of the debt.... And St. Thomas seems to adhere to this opinion, Suppl., q. 49, a. 5, ad 1.... The second opinion, which seems more probable..., says that she is bound only from charity. The reason is that where there is no express or tacit petition of the other spouse, there is no obligation of justice for rendering.... Therefore this kind of petition is not called absolutely rendering by St. Thomas, but a certain rendering of the debt.... From this opinion it is inferred that the spouse, since he or she is not bound from justice, but only from charity, in that case to asking, is not bound to ask with great inconvenience; hence the wife is probably then excused from asking if in this she would have to undergo great shame." L. 929. Cf. St. Thomas, Suppl., q. 64, a. 5, ad 1; a. 6, ad 3.

1057. "If the man withdraws after his insemination but before the insemination of the woman, can she immediately excite herself by touches so that she may inseminate? The author of additions to Wigandt, etc., deny it. The reason is that the seed of the woman is not necessary for generation; likewise because that emission of the woman, as separate, does not become one flesh with the man. But more commonly Wigandt, Lessius, etc., affirm. The reason is both because the insemination of the woman pertains to completing the conjugal act, which consists in the insemination of each spouse; hence just as a wife can prepare herself by touches for copulation, so also she can perfect the

act of copulation... and because, as many think, the insemination of the woman is necessary, or at least greatly contributes to generation, for nothing is done fruitlessly by nature. But all concede that wives who are of colder nature can excite themselves by touches before copulation, so that they may inseminate in the marital congress immediately to be had." D. 919.

And indeed nothing in this matter is had against nature, if one considers what has already been noted elsewhere: that the female seed properly is in the ovum, which almost every month descends from one or the other ovary into the uterus without any heat of lust. When the mingling of the male seed and the ovum has been made, the man and woman become one flesh, and that is had which is required and suffices for generation. Another seed in the woman, improperly so called, which is situated in that humor which sometimes also comes forth externally, is indeed useful for rendering the conjugal act easier, useful also for generation itself, but not necessary. Hence women who are cold in the very act of copulation can very well conceive and frequently become mothers. Therefore, just as, if this improper insemination simply does not have place, nothing is done against nature, so also if it does not occur at the same time, in the act of copulation, together with the insemination of the man. "It is not necessary," says Sanchez, book 9, disp. 17, n. 9, "that each spouse inseminate at the same time."

Many women, says Antonelli, sometimes do not undergo the aforesaid distillation or secretion of humor or vulvo-vaginal mucus in copulation. But although this secretion is not necessary for generation, nevertheless it is very useful for it; for through it not only does coitus become easier, but also, since it is of alkaline nature, it is able to change the acidic action of the vaginal secretion, which for this reason could even kill the spermatozoa. But since it indicates that perfect pleasure has been attained, it is clear that it truly is the complement of copulation, since pleasure of this kind is ordered by nature to generative copulation.

Nevertheless, since its defect by no means impedes generation, a woman is excused at least from every grave sin if she withdraws from inseminating, that is, from the aforesaid distillation or secretion, when the man has already inseminated. For fecundation can altogether be effected without such insemination or emission of mucus. Nor indeed are spouses bound to coire in the more apt way, but it suffices that generation not be impeded by them. Consequently, neither does the man sin gravely if he withdraws from copulation when he has already inseminated, not waiting for the insemination of the woman. Indeed, ordinarily at least it is not even venial; for, when ejaculation has been performed, the member is almost immediately relaxed, wherefore it is impossible to prolong copulation longer. Antonelli, vol. 2, p. 217, nn. 471, 472; p. 219, n. 477; p. 220, n. 478. Cf. here the following number.

1058. "Do spouses sin mortally if, once copulation has begun, they restrain insemination? If both spouses consent in this, and there is no danger of inseminating outside the vessel, this, speaking per se, is not mortal; for that penetration of the female vessel is then reckoned like touching of the shameful parts, which is permitted between spouses, or at least is not mortal, when danger of pollution is excluded. Thus commonly.... If both consent, for if one withdraws without the consent of the other, he certainly sins gravely.... Speaking per se, for Sanchez wisely notes that this is ordinarily mortal, because ordinarily there is danger from such withdrawal of pouring out seed, unless the spouses have experienced the opposite; in which case, however, I think they can in no way be excused at least from venial sin.... But if the woman has already inseminated, or is in probable danger of

inseminating, the man indeed cannot deliberately withdraw from insemination without grave fault, because then he is the cause that the seed of the wife is wasted.... But if the man has already inseminated, doubt arises whether the woman sins mortally if she withdraws from inseminating. The first opinion affirms... The reason is because, as they say, the seed of the woman also concurs actively for generation..., at least according to all the seed of the woman greatly contributes to the formation of the offspring, since at least for this it was instituted by nature. The second, more common opinion denies... These rely on the contrary foundation, namely that the seed of the woman is not necessary for generation.... Nor does it stand in the way... that the seed of the woman contributes to the perfection of the offspring; for they answer that spouses are not bound to the more suitable mode of generating, but it is enough if they do not obstruct generation." L. 918, 954.

Although the Holy Doctor says that this second opinion is more common and more probable, nevertheless he judges the first to be sufficiently probable, and therefore to be held in practice for avoiding harm to the offspring. And immediately the Holy Doctor adds that it cannot practically be probable that a woman in the act of coitus may divert her mind to other things, lest she be excited to insemination. And at n. 954 he says that this is more truly mortal. But since that insemination of the woman, concerning which the question is properly made here, namely the pouring out of interior humor, is in no way essential to generation, and it is certain that generation is not therefore impeded, it does not seem that in practice the first opinion must necessarily be held. Therefore the sin is rather from the intention of impeding generation than from the thing itself, as also happens in other things which, although they do not impede generation, nevertheless if they are done with this depraved intention, sin will certainly be present. E.M. "But something must be noted concerning the manner of quieting lust through the beginning and breaking off of copulation, by which some Theologians judge that it can licitly be quieted. We say at once that the end of quieting lust cannot be had except through copulation with emission of seed into the vessel, namely one which is apt for generation on the part of each; for the quieting of concupiscence is necessarily had only in this way, while the introduction of the penis and breaking off of copulation before ejaculation in no way diminishes, much less extinguishes, but very greatly increases and inflames the heat of lust. Therefore the breaking off of copulation cannot serve for restraining lust, since, on the contrary, the ardor of concupiscence is vehemently increased by it." Antonelli, vol. 2, p. 222, n. 483.

1059. "Does the man sin mortally by beginning copulation in the improper vessel, so that afterwards he may consummate it in the due vessel? Commonly and more truly they affirm.... The reason is that coitus of this kind, even without insemination, is true sodomy, although not consummated; just as copulation itself in the natural vessel of another woman is true fornication, although insemination is not present." L. 916. The same Holy Doctor, ibid., affirms the same concerning simple touching of the male organs with the same improper vessel, "because at least such touching cannot morally be done without sodomitic affection."

1060. Is it lawful in the conjugal act to think of another person and to take delight in that person? "Sanchez and Sporer excuse from mortal sin the spouse who would excite himself to copulation by taking delight in the beauty of another person, but without shameful affection; yet they rightly say that this is very dangerous and not to be permitted. Just as I think it also is not to be permitted to excite oneself to coitus by looking at images of the different sex, especially if they were sacred, which La Croix and Sporer rightly say is mortal because of grave irreverence. But is it lawful for a husband

to take delight in the thought of another's copulation, namely had by others, so that he may excite himself to coitus with his wife? On the one hand it seems it must be denied, since the object in which he delights is per se shameful. On the other, such a spouse does not seem to be condemned.... But that... he, the husband, take delight in a thought of copulation between himself and another woman, I say is altogether to be rejected, since such delight is concerning an object intrinsically evil and altogether forbidden to the spouse himself." L. 913, 914.

1061. "Is it lawful to ask with danger to health, namely if one or the other spouse labors under leprosy, venereal disease, phthisis, or another contagious disease? Speaking per se, it is not lawful, since no one is master of his life or health. Nevertheless Busembaum, etc., probably say that if the disease were long-lasting and not proximately tending to death, namely one that is not accustomed shortly and easily to bring death..., then it will not be illicit for the healthy one to ask, if there is a just cause..., because otherwise it would be very burdensome to abstain for so long from the use of marriage, which could scarcely be without danger of incontinence. Nevertheless it must be noted that a spouse infected with venereal disease, or syphilis, or a similar contagious disease, will not be able to ask from the other who is unaware, unless he manifests his defect to that person, and by manifesting it the other can meet the disease with remedies. Indeed, he will not even be able to render unless the healthy one has been informed.... But otherwise he is not bound to manifest it, because he is not bound with such great detriment to his reputation to furnish the conjugal debt. For in all contracts a most grave inconvenience in payment excuses from rendering the debt." L. 909, 910, 950. "This is the natural order, that something first be perfected in itself, and afterwards communicate to another from its perfection; and this also is the order of charity, which perfects nature. And therefore since the wife has power over the husband only as regards the generative power, but not as regards those things which are ordered to the preservation of the individual, the husband is bound to render the debt to the wife in those things which regard the generation of offspring, yet with the safety of the person first preserved." St. Thomas, Suppl., q. 64, a. 1. C. *Quoniam, de Coniug. lepros.*

The danger is most grave of transmitting syphilis from a syphilitic spouse to the other spouse and to the offspring through copulation. But the effects of syphilis are horrible, and it is also a frequent cause of abortion. Since through medical care ordinarily after some time, if the disease is rather light, it can be removed, copulation during this time is not to be permitted. Antonelli, vol. 2, p. 203, nn. 423, 430. But as regards having copulation in phthisis, it must be noted that grave danger of infection is present through kisses, and, as it seems, sometimes also through copulation, although through this it is not proximate. But since the phthisical are often troubled by great concupiscence, and grave harm does not come to them from moderate use of copulation, it seems that this can be permitted to them. Antonelli, l.c., n. 433. As regards other non-contagious diseases, one must see whether from copulation the disease is aggravated and brings danger of death or not. In diseases joined with fever, and especially in acute and inflammatory diseases, such as peritonitis, pneumonia, pleurisy, pericarditis, meningitis, cerebral hyperemia, and in cardiac defects and in several similar things, copulation will always bring grave harm, and also sometimes sudden death can follow during or after copulation. Antonelli, l.c., nn. 434, 436. Copulation immediately after a meal does not become free from danger until at least two or three hours have passed from the meal. Antonelli, l.c., n. 439.

There is danger of most grave evils and of the death of the mother and fetus in extra-uterine pregnancy, since this constitutes a true anomaly and derogation of the laws of physiology. Cf. Joseph Antonelli, *Opusc. de Conc. impot. et steril.*, Rome, 1900, chap. 5, n. 104 ff.

1062. Resolutions: "It is common that the wife is not bound to render the debt if she has experienced that she cannot give birth without probable danger of death, because payment of the debt does not oblige with such detriment." L. 953. Nor is a spouse bound to render if he or she can reasonably fear harm or grave danger to health, because spouses are not judged to have bound themselves to rendering the debt with such inconvenience. St. Thomas, Suppl., q. 64, a. 6, ad 4. The conjugal act in time of illness, at least generally, is not illicit even under light sin, because often no harm comes from it to the spouses; but the labor which accompanies the act, at least commonly speaking, can hardly influence the illness. Nevertheless, because of notable weakness of body, those laboring under strong fever or another grave disease are excused from rendering the debt. The wife is not excused from rendering the debt because of the ordinary inconveniences of birth, pregnancy, or nursing, nor even because of pains that are grave but brief in time, nor because of long-lasting but moderate pains, e.g., of the head for several months after birth, nor because of health somewhat weakened; because all these are annexed to the matrimonial condition. It is otherwise, however, if danger of life or of grave disease were truly to be feared according to the judgment of a truly prudent physician. L. 952.

1063. "Can and must a spouse render when harm to the offspring to be born is feared? Commonly and more truly they affirm with St. Thomas, IV Sent., d. 32, q. un., a. 1, ad 4.... The reason assigned by St. Thomas is: A wife is bound to render the debt to a leprous husband, and although the offspring would be begotten infirm, nevertheless it is better for it thus to be than not to be at all." L. 951. What if the mother has experienced giving birth to dead children? In this case Laymann says that the wife can well render, indeed also ask, because that death of the fetus happens per accidens. Nevertheless Bossius and others hold that she can neither render nor ask, because from the death of the offspring the mother is exposed to great danger of life. Therefore, that danger excluded, it does not appear per se illicit to render and ask, although the spouse could for this reason be excused from rendering. And if danger of incontinence were present, as in fact it is, they almost commonly agree that then it is lawful to render and ask, and St. Alphonsus himself seems altogether to agree. L. 952, 953.

1064. "Is it a just cause for denying the debt if more children are born than the spouses can support? The first opinion denies.... The reason is both because the procreation of offspring pertains to the principal end of marriage... and because it would expose the other to danger of incontinence.... But the second opinion affirms.... The reason is both because the multitude of future offspring would yield to the harm of the children already begotten, and because in all debts great difficulty excuses from payment." L. 941. The first opinion pleases the Holy Doctor more because of the danger of incontinence, which in reality will scarcely be absent.

1065. Is it lawful to render to one asking illicitly with mortal sin? R. Negatively, if the fault holds itself on the part of the act, e.g., if the other asks in a sacred or public place. For the act itself is then illicit both for the one asking and for the one rendering. Affirmatively, if the fault holds itself only on the part of the person, e.g., if the person asks from a depraved end, because the act remains honorable in itself, and the other does not therefore lose the right to the act. Therefore, speaking per se, the spouse both can and must then render. Speaking per se; for if one can easily impede the other's sin, from charity one is bound to do this, or at least must admonish the other, if nevertheless

one can do this without grave inconvenience, which they say is present for the most part. But if the spouse has lost the right through incest, then the other spouse can indeed render per se, but is not bound. L. 944-946; book 2, n. 61; St. Thomas, Suppl., q. 64, a. 6.

With mortal sin. But with venial sin, if the act is venially illicit on the part of the act itself, the other is not bound to render to the one asking, because the other does not have a right to it, since it is per se illicit. Nevertheless the other can render when there is a just cause, "since any just cause excuses from venial sin" in this case. L. 946.

In the case of impotence supervening after marriage has been validly contracted, copulation by which a proximate danger of pollution is had consequently becomes illicit, since copulation then is not by reason of generation, and therefore cannot be had by reason of quieting concupiscence. For marriage is not ordered as a remedy of concupiscence except insofar as the union by which satisfaction is made to concupiscence is, from the nature of the thing, ordered to the more principal end of generation, such as is not the copulation of eunuchs.

The aforesaid impotence can be both on the part of the man and on the part of the woman. In impotence of this kind neither can ask nor render the debt by exercising copulation. Nevertheless spouses can in the case of the aforesaid impotence exercise touches, embraces, and kisses, yet apart from proximate danger of pollution, or consent in the case; without, however, pollution being able to impede the aforesaid acts if it follows only per accidens.

There is no lack of authors who permit the aforesaid spouses to exercise copulation, because, they say, they have a right to it. But this is the difficulty: for they indeed have a right to copulation which is according to nature; not to copulation from which pollution is had against nature.

1066. "Is it lawful for a wife to render the debt or ask it from her husband who wishes to seminate outside the vessel after copulation has begun? The first opinion affirms..., because when the woman renders or asks, she gives her effort to a licit thing, nor should she herself be deprived of her right because of the malice of her husband. The second opinion says that the wife can neither ask nor render unless there is a grave cause which excuses her in permitting the sin of the man and in cooperating with the material element of that sin; otherwise she is bound from charity, when she can without grave inconvenience, to impede the sin of her husband. But I think a distinction must be made.

If there is question of rendering the debt, I say the wife probably can and is bound to deny the debt if she can do so without grave inconvenience, because one who will abuse the thing due to him does not have a right to vindicate the thing for himself. But it seems more probable that the wife not only can render, but is also bound. The reason is that when the fault stands on the part of the person asking, since that person has a right to copulation, the other cannot without injustice deny the debt if she cannot turn him away from such fault by admonishing him; and then it is clear that the one rendering does not even materially cooperate with the semination outside the vessel, but only with the copulation begun, which per se is altogether licit for both. But if there is question of asking the debt, I say that the wife cannot ask unless there is a just and grave cause. For then she is truly bound from charity to impede the sin of her husband. But she will have a just cause of asking if she herself were in danger of incontinence, or if otherwise she would have to be deprived of her right of asking more than once or twice, with a perpetual scruple whether then to contain herself would be a grave

inconvenience to her, or not." L. 947. Cf. book 2, n. 53, par. *Si vero*; Sacred Penitentiary, November 16, 1816; February 1, 1823; June 8, 1842; E.M. "The sin of a married man with his own wife is not according to undue matter, but according to other circumstances, which do not constitute the species of the moral act." St. Thomas, II-II, q. 154, a. 1, ad 4. Therefore besides mutual scandal there remains the species of sin against nature, in whatever way after perfect copulation generation is impeded. Ferreres, 922, IV. This practice as regards the health of spouses is also fertile in very many grave evils. Antonelli, vol. 2, p. 351, n. 587.

The print's appendix has more on this paragraph: [Decisions of the Sacred Congregations Concerning Onanism] (/manuals/bucceroni/decisions-of-the-sacred-congregations-concerning-onanism). (ed.)

1067. Resolutions: The sin of the man in the preceding case is commonly called Onanism. It takes its name from Onan, second son of the Patriarch Judah, who after his brother Her had died was compelled according to custom to marry his widow Tamar, so that he might raise up seed to his brother; but entering to the wife of his brother, he poured the seed onto the earth, lest children be born in the name of his brother. And therefore the Lord struck him because he did a detestable thing. Gen. 38:9, 10. Voluntary Onanism is always a mortal sin, as being against nature; and therefore it can never be licit for spouses.

The wife can be excused from sin if for a grave cause she renders the debt to an onanist husband, provided that interiorly she does not consent to his sin, and exteriorly shows her repugnance by serious admonitions or other signs of displeasure. The wife does not sin by giving internal consent to pleasure when she can permit the conjugal act to an onanist husband, provided that she does not give assent to the sin of the man. The reason is that since she by no means sins by permitting an act of this kind, neither does she sin by admitting the pleasure coming from it, although she foreknows that the man will not perfect the copulation; for that act is in itself honorable and licit for the woman, and it is not through her that it is not perfected in the due manner.

But if the woman in that act has not inseminated, as is commonly said by the ancient theologians, she cannot after copulation excite herself to insemination, namely if the man withdraws without having performed insemination in the due vessel. For that act on the part of the woman is ordered by nature only to generative copulation. Therefore in the case it would be true pollution on the part of the woman, as it is on the part of the man. Likewise the man cannot excite himself by touches to insemination outside the due vessel, if the woman has already inseminated and has withdrawn from copulation without having waited for the man's insemination. The reason is the same, because such an act would be manifest pollution on the part of the man. L. 919.

Hence likewise it must consequently be said with the same St. Alphonsus, l.c., that the man cannot withdraw from copulation before he inseminates, if in it the wife has already inseminated or is in probable danger of inseminating. The reason is that otherwise that act of the woman would not attain the end intended by nature. "Vaginal washings, which women use for preserving the cleanliness of the genitals, are not to be done unless at least twelve hours after copulation, because otherwise the seed is lost with the emission of the washing employed, or life is killed and then lost, according to the nature of the washing." Antonelli, vol. 2, p. 186, n. 378. But, as far as time is concerned, a shorter time also suffices so that generation is not actually impeded.

The print's appendix has more on this paragraph: [Decisions of the Sacred Congregations Concerning Onanism] (/manuals/bucceroni/decisions-of-the-sacred-congregations-concerning-onanism). (ed.)

1068. "Can a spouse prohibited from asking by reason of a vow, or of affinity, or of spiritual kinship contracted after marriage, ever licitly demand the debt? The doctors commonly admit this if danger of incontinence is present in the other spouse. Indeed they say that then he is bound to ask, because this obligation arises from the institution itself of marriage. Likewise St. Thomas, IV Sent., d. 38, q. 1, a. 3, q. 2, ad 4, etc., also commonly admit that an impeded spouse can ask if the other asks interpretatively, namely when the woman, as St. Thomas says, is modest, and the man senses her will concerning the rendering of the debt. For then the impeded spouse can offer himself, because then it is rather rendering than asking." L. 930. Nevertheless as regards a spouse who, apart from necessity, baptized his own offspring, the opinion which denies that he is prohibited from asking the debt is sufficiently probable, and several grave doctors hold it, as the same Holy Doctor says, 150. But as regards a vow, it can be invalidated directly or indirectly by the spouse; indeed after the marriage has been made, without the consent of the spouse whose liberty of asking is restricted, it is judged illicit.

1069. "But is it lawful for an impeded spouse to ask if he himself is in danger of incontinence? Viguerius, etc., affirms, especially if he were impeded by reason of affinity or spiritual kinship, and a dispensation could not conveniently be had, and there would be danger in delay, because ecclesiastical law does not oblige in so great a danger. But Sanchez, etc., deny, because danger of incontinence is a just cause of dispensing, but not of coeundum. But the first opinion with respect to an impediment imposed by the Church does not seem improbable to me, if truly a dispensation cannot be obtained shortly, and there is great danger in delay." L. 930. Concerning spiritual kinship, cf. here 1068.

1070. "Is it lawful for an excommunicated spouse, although vitandus, to ask the debt, and to ask from one excommunicated, although vitandus? That it is lawful for a spouse to ask from an excommunicated person is certain from C. *Quoniam multos* 103, causa 11, q. 3. But is it also lawful for the excommunicated person to ask?... Commonly and more truly they affirm.... The reason is that ecclesiastical law does not oblige with so great a danger, in which the excommunicated person would indeed be if he could not be separated from the other spouse, as in fact he cannot, and could not ask." L. 931; C. *Inter alia, de Sent. exc.*

1071. "Is a spouse bound to render the debt to one insane or drunk? Busembaum, etc., most commonly and more probably deny. The reason is that although such persons retain dominion, nevertheless they are incapable of the use of dominion.... But although there is no obligation of rendering to an insane or drunk spouse, nevertheless it is lawful to render to him or her, as they commonly say, since the use of marriage is per se licit, and the offspring can be educated by the spouse of sound mind, provided the danger of scandal or abortion is absent. Hence it is not lawful to coire with a furiously insane wife, unless it is established that she is sterile." L. 948.

It must be added that those conceived in drunkenness are very easily born inclined to mental alienations, to insanity and scrofula; and alcohol can infect even the ovum itself and the seed. To this is added that the offspring can easily be born dull and deaf-mute. Therefore a spouse is not bound to render to a drunken spouse. Antonelli, vol. 2, p. 205, n. 438.

1072. "Whether and how do spouses sin by coeundum in an unnatural position? The natural position is that the woman be beneath and the man above; for this mode is more apt for the pouring out of the male seed and its reception in the female vessel for procreating offspring. But an unnatural position is if coitus is done otherwise, namely sitting, standing, from the side, or improperly after the

manner of animals, or if the man is beneath and the woman above.... Commonly they say that all these modes do not exceed venial fault. The reason is that although some disorder is present... change of position does not impede generation, since the seed of the man is not received into the womb of the woman through infusion or descent, but by attraction, while the womb naturally attracts the male seed to itself." L. 917; St. Thomas, IV Sent., d. 31, at the end, in the exposition of the text. And, as the same St. Alphonsus and St. Thomas have in the places cited, this also is done without any sin if it is done from a just cause; and, on the contrary, it is a grave sin if from experience it were established that, with the natural position changed, the woman retained none of the seed. Cf. 1053.

Change of position is not grave. The reason is that in change of position the end of generation is obtained. For the fecundation of the ovum one spermatozoon alone suffices. But in the ejaculation of seed many thousands are emitted. Therefore when some of the seed penetrates into the vagina, by the proper motion of the spermatozoa these proceed as far as the uterus, the tubes, and the ovaries; all the more because their vitality lasts for several days, and if they meet the ovum, fecundation follows. Moreover, once ejaculation has been completed, and when the man has withdrawn, ordinarily the seed once poured into the vagina is no longer emitted, since then the vaginal walls adhere to each other in such a way that they touch one another, from which there is great difficulty of exit. Antonelli, vol. 2, p. 189, n. 381.

1073. Note: The prudent confessor must beware lest he ask questions about the various modes of sexual congress which are not only useless, but also full of scandal. Hence, if the penitent introduces a doubt about these things, it will be enough for the confessor to know whether complete pollution was made outside the due vessel. If he introduces a doubt, or even if the penitent supplies an occasion of doubting; for no one fails to see that questions of this kind, in so slippery a matter, are never to be asked unless manifest necessity is present. L. 917.

1074. "Is it lawful for spouses to coire during pregnancy? It is common that this is not mortal unless danger of abortion is present... St. Thomas, IV Sent., d. 31, at the end, in the exposition of the text.... Commonly such danger is not present.... And therefore spouses are not to be troubled with importunate questions.... But whether, apart from danger of abortion, it is a venial fault? St. Antoninus, etc., affirm. Sanchez, etc., deny, because nowhere is it held to be forbidden per se.... In order that coitus be licit in marriage, it suffices that the act per se be suitable for generation; but that generation itself does not occur holds itself per accidens. For the rest, the opinion which Pontius, etc., hold pleases me, namely that coitus with a pregnant woman cannot be excused from venial fault unless there is danger of incontinence or another honorable cause." L. 924. Therefore there is question at least of an uncertain obligation. But an honorable cause can scarcely ever be absent. Moreover, conception does not always coincide with copulation, but often happens after several hours, or days, or even after a week. Hence it cannot be determined from which copulation conception followed. Nor indeed do women themselves, especially in the first days, know their state of pregnancy. Therefore for this reason also they cannot then be prohibited from the use of marriage. But to prevent abortion it would suffice not to repeat copulation several times at the same time, and not to perform it too vehemently and with force. Antonelli, vol. 2, p. 193, n. 394.

Pregnancy is the natural and physiological development of the fetus which occurs when the fecundated ovum descends into the uterus and there settles; pregnancy is then called uterine. But any

pregnancy which occurs outside the uterus constitutes a true anomaly and irregularity of physiological pregnancy, which, since it is outside the usual order and the physiological laws, is always the cause of very grave evils for the life of the mother and the fetus. Every pregnancy which has place outside the uterus, wherever the fetus develops, is called extra-uterine, and such fetuses are called extra-uterine or ectopic.

The whole time during which the fetus remains in the uterus is called pregnancy, and it ordinarily lasts for the space of nine months, or about 280 days. The fetus in the uterus is covered by several membranes and lies immersed in a certain whitish fluid, the amniotic fluid. In birth it is expelled from the uterus by contractions of the muscles of the uterus, which rupture the membranes enveloping the fetus, whereby the amniotic fluid begins to flow. The membranes of the fetus after birth are called the afterbirth.

A probable sign of pregnancy is the suppression of menstruation, when before this the woman had regular menstruation. Yet it must be noted that menstruation can cease also from other causes, and, even during pregnancy, can appear once or twice. To this are added changes in the genitals, and partly the size of the abdomen and uterus, which moreover can grow from other causes, a greater secretion of the vagina, and swelling of the breasts, which can also secrete milk.

Extra-uterine pregnancies for the most part end before the time because of the rupture of the membranes enveloping the fetus. Sometimes the fetus continues to complete development, but, as is clear, it cannot be born. In either case the life of the mother is placed in great danger. Extra-uterine pregnancy presupposes the uterus; for the uterus is the necessary way for the passage of sperm. Therefore when the uterus is absent, whether from birth or through a surgical operation, ectopic pregnancy is impossible. Antonelli, vol. 1, p. 142 ff.

The print's appendix has more on this paragraph: [Intercourse with a Pregnant Woman](/manuals/bucceroni/intercourse-with-a-pregnant-woman). (ed.)

1075. "Is it illicit to coire during the period of purification after birth? There are three opinions. The first says that it is mortal from the final chapter of Dist. 5. The second opinion says there is no sin.... Because, as they say, uncleanness of this kind is only material, not moral. The third opinion, more probable and more common,... says that it is venial, but not per se mortal. It is venial because such coitus contains some indecency. Hence, unless an honorable cause excuses, namely danger of incontinence, or of discord, or another similar cause, it cannot be excused from every fault. But it is not mortal, speaking per se, because such indecency does not seem so great that it induces mortal fault.... Per se, for sometimes it could be mortal if from intercourse grave illness or a notable aggravation of illness were imminent."

L. 926. But the disposition of the cited final chapter has either fallen into desuetude, or concerns fittingness, not precept. But even light fault is only an opinion. Yet this must be noted: that in the first two weeks it can very gravely harm the woman. But in the other two following weeks the danger of so grave a harm is diminished. Generally, therefore, only after six weeks is the woman bound to render, when all danger then ceases. Therefore account must be taken in this matter of probable harm. After this time has passed, the puerperal period has its end, and menstruations again appear, which indicate that the woman is now fit for a new pregnancy. Menstruations, however, appear much later if the woman herself nurses her infant. Antonelli, vol. 2, p. 195, nn. 399, 400, 401.

1076. "Is it lawful to ask the debt during nursing? Most commonly they affirm.... The reason is that no law prohibiting it exists." L. 911. Nor indeed is there any danger that the milk will be infected and corrupted.

Once nursing has begun, unless something impedes, it lasts for eighteen or twenty-four months. The secretion of milk suspends congestion of the uterus, or menstruation. If nursing is not done by the mother when she is able to nurse, not a few inconveniences follow, even grave ones for the mother and infant. For the breasts, since they cannot secrete the milk already prepared, exercise great action upon the uterus, which then acquires an easy disposition for contracting grave diseases. Yet there can be several physiological causes which impede the mother from nursing, e.g., great weakness on her part and various morbid affections, concerning which a physician must be consulted. Antonelli, vol. 1, p. 2, On the Fifth Precept, chap. 7.

During the time of nursing menstruation is suspended, and therefore it must be concluded that the time of nursing is less apt for a new fecundation. Yet this can still be had, and sometimes is had, and then the milk gradually diminishes until it ceases altogether. Antonelli, vol. 1, pp. 144-145; vol. 2, p. 196, n. 403.

1077. "Is it lawful for spouses to coire during menstruation? During an extraordinary flow it is certain that it is lawful both to render and to ask... from St. Thomas, IV Sent., d. 32, q. un., a. 2, q. 2.... But during the time of the natural flow there are three opinions. The first condemns it as mortal, and this is held by the same St. Thomas, l.c., q. 3, ad 1.... The second opinion says that it lacks all fault.... The reason is that today this is prohibited by no law.... Although there is then an easy danger of frustrating the seed, nevertheless in order to make coitus honorable it is not required that generation follow from it, but it suffices that that coitus per se be apt for generation, granted that per accidens the seed is scattered, as happens in access to a pregnant or sterile woman.... The third opinion, most common and more probable, says that coitus during menstruation is not mortal, but is not excused from venial fault. That it is not mortal is proved by the reason adduced for the second opinion. But that it is venial is proved because such intercourse... involves a certain shamefulness and disorder, since... coitus then is less fitting for the end of generation. But Navarre, Paludanus, etc., agree that there is no sin in coiring at such a time if some cause is present which makes that shamefulness honorable, namely for avoiding discord, or incontinence, in oneself or in the other, or other similar things.... But in the case in which no cause is present, can and must a menstruating wife render the debt if the husband, once admonished, refuses to desist? Paludanus, etc., affirm. But more probably it must be denied.... The reason is that since the fault, even venial, holds itself on the part of the act, more probably the spouse is not bound, nor can she licitly render the debt." L. 925.

But practically, when the husband asks, scarcely, or not even scarcely, is a cause absent for the wife by which she may render. And St. Thomas himself, Suppl., q. 44, a. 4, says: "If the husband does not desist from asking, the wife must render the debt to the one asking." But the reason adduced by the Holy Doctor for the third opinion is opposed to the opinions of more recent physiological science, since during menstruation the woman is per se more apt for generation.

For the monthly flow of this kind is nothing other than a flow of blood, which flows more abundantly to the uterus when the release of some mature ovum from the ovary occurs. With the aforesaid flow, the organs become erect, the small veins of the uterus are distended, and more or less abundant blood drips forth and goes out through the genitals. Hence the aforesaid flow is a sign of ovulation;

but its absence is a sign neither of impotence nor of sterility. For many women conceive without such a flow; and after it has ceased, even after a long time, it again appears. During a flow of this kind there is only danger of some local irritation for the woman, which can be lighter or graver according as that flow is more or less lasting and morbid. Regularly it lasts for two or three days. It begins from puberty, and around the forty-fifth to fiftieth year of age it usually ceases.

And in this matter it is now established as a principle that a woman can be fecundated at any time which intervenes from one menstruation to another, and sometimes cannot be fecundated in the times which are commonly held more apt for fecundation, such as the time which precedes or follows ovulation and the release of ova, and therefore menstruation. For the matter is not certain. And there are many causes which can change the time of maturation and release of ova, among which is coitus itself and the excitation of the genitals. Antonelli, *Pastoral Medicine*, ed. 2, part 1, chap. 15, nn. 219, 224. "Copulation during menstruation can bring many inconveniences to the health of the woman, and especially grave hemorrhages." Antonelli, vol. 2, pp. 190-191, nn. 387, 388. And if there is question of an extraordinary flow, it can be greatly feared that copulation will very much aggravate the disease. Hence, speaking per se, to perform copulation can be light or grave from this head. Antonelli, l.c., p. 191, n. 390.

1078. "Is the conjugal act illicit on feast days, fast days, or Rogation days? It is common that rendering the debt is not then forbidden, with St. Thomas, Suppl., q. 64, a. 9.... But is it forbidden to ask? The first opinion affirms, and this is held by St. Thomas, l.c., a. 7, etc. Yet this is under venial fault, as St. Thomas says there, a. 8, with others, not under mortal fault, as some improbably hold.... But the second, more common opinion denies that it is illicit.... The reason is that this is held to be forbidden by no law." L. 923. Hence it is also deduced that there is no reason why use of this kind should be prohibited during Advent or Lent. Cf. 603.

1079. "Are shameful touches and looks mortal between spouses on account of pleasure alone, without order to copulation? The common and truer opinion denies it.... The reason is that the conjugal state, just as it makes copulation honorable, so also makes touches and looks of this kind honorable. (Otherwise it would be exposed to very many dangers and scruples.) But just as pleasure sought in copulation does not exceed venial fault, so also in these touches and looks." L. 933. In truth, since incomplete acts of this kind are of themselves referable to the complete and perfect act, since this is licit for spouses, the former cannot per se be illicit for the same persons. L. 932, 933. A fortiori, acts of this kind are per se free from fault, whether they are less honorable or simply dishonorable, if they are immediately referred to copulation. For then they are a certain preparation for and beginning of copulation. Therefore, apart from the crime of voluntary pollution outside the vessel or of sodomy, nothing is done against the good of marriage. But the light fault which can be present in acts of this kind is easily excused by ends intrinsic to marriage itself or other extrinsic ends, e.g., because they are suitable for fostering affection or for calming concupiscence.

1080. What if spouses foresee that pollution will follow from these shameful acts in themselves or in the other? The resolution depends on the intrinsic nature of the act, on the manner in which it is exercised, on the cause, and on the other circumstances. For there is question of the voluntary in its cause; therefore if the act is such, or at least is exercised in such a way, that per se and proximately it influences pollution, and no just cause is present, there is certainly grave sin. But otherwise, if the act

is such, and is exercised in such a way, with due caution applied for preventing it, that pollution, if it follows, follows only per accidens, and there is a just cause.

Hence St. Alphonsus, after relating three opinions concerning the proposed question, says: "I think it more probable that it must be said that shameful acts between spouses with danger of pollution, both in the one asking and in the one rendering, are mortal; unless they are had so that the spouses excite themselves to copulation to follow proximately, because since they have a right to copulation, they also have a right to such acts, although pollution per accidens should precede copulation. But I also judge modest acts to be mortal if they are done with danger of pollution in oneself or in the other, in the case in which they are had for pleasure alone, or even for a slight cause; otherwise if for a grave cause, for instance if sometimes there is an urgent cause of showing signs of affection, for fostering love, or so that a spouse may avert suspicion from the other that he himself is inclined toward another person. Sanchez, etc., probably say that in the one rendering, even immodest touches, unless they are such that they seem to be pollution begun, are licit, although danger of pollution is present in either one, because then the one rendering applies himself to a licit thing to which he is bound by reason of the right of the one asking, who although he sins, nevertheless does not lose the right, since the fault holds itself on the part of the person." L. 934; Sanchez, book 9, disp. 45. Indeed St. Alphonsus himself, book 3, n. 484, says: "The common and more probable opinion teaches that pollution is not mortal unless it proceeds from a cause per se mortal in the genus of lust." And in book 3, n. 483, he says: "Yet exception is made if the aforesaid actions (gravely influencing pollution) are placed from a cause necessary, useful, or fitting for soul or body; for then pollutions proceeding from them, even foreseen, are not sins, provided that consent, or danger of it, is absent."

1081. "Is it always mortal if a man places his private parts in the mouth of his wife? Sanchez, Bossius, and Perez deny it, provided danger of pollution is absent. But Sporer, Tamburini, Diana, and Fagundez more truly affirm it; both because in this act... there is proximate danger of pollution, and because this per se seems to be a new species of lust against nature, called by some irrumation. For whenever another vessel is sought by a man besides the natural vessel instituted for copulation, there seems to be a new species of lust." L. 935.

1082. "Are the shameful touches which a spouse has with himself or herself, the other being absent, and apart from danger of pollution, mortal? The first opinion denies it.... The reason is that touches of this kind are made honorable by the conjugal state itself, since by their nature they are ordered to copulation; and therefore, apart from danger of pollution, they cannot be gravely illicit in a spouse, although he could not consummate copulation at present. But the second opinion, more probable, and altogether to be recommended in practice, affirms it.... The reason is both because a spouse does not have a right per se over his own body, but only per accidens, namely only so that he can dispose himself for copulation..., and because touches of the private parts, when they are done lingeringly and with commotion of the spirits, per se tend to pollution and are proximately connected with its danger." L. 936. And from the very reason of the second opinion, the first opinion rather certainly appears more probable.

1083. "Is morose delectation in a spouse concerning copulation had or to be had, which nevertheless could not be had at present, mortal? The first opinion affirms it.... The reason is that such delectation is, as it were, pollution begun.... But the second, more common opinion... says that such delectation

is not mortal if danger of pollution is absent, but only venial. It is venial because it lacks the due end, since it cannot be ordered to present copulation. But it is not mortal because delectation takes its goodness or malice from the object, and since copulation is licit for married persons, delight in it cannot be gravely illicit. And St. Thomas expressly favors this in *De Malo*, q. 15, a. 2, ad 17.... And Sporer admits this, even if venereal delectation is had, arising from commotion of the spirits. Finally the third opinion... distinguishes and says that if the delectation is without commotion of the spirits it will not be mortal; otherwise, if with commotion and titillation of the parts." L. 937.

It is indeed a grave sin if that delectation is proximately joined with danger of pollution; otherwise, however, if the danger of pollution is not proximately joined with that delectation. But this proximate danger of pollution, speaking per se, is not had according to the Holy Doctor from any commotion whatsoever of the spirits and alteration of the parts, but from a vehement and graver commotion of the spirits. But St. Thomas, in the place cited by St. Alphonsus, says: "Delectations in goodness and malice follow the pleasurable operations; and therefore, just as carnal union is not a mortal sin for one married, but is a mortal sin for one not married, a similar difference also exists concerning delectation and consent in delectation. For consent in delectation cannot be a graver sin than consent in the act, as is clear through Augustine."

But in truth this argument proves not only that consent in delectation (for this is what morose delectation means) is not mortal, but that it is not even a venial sin. Namely, it cannot be illicit to take delight in a licit thing, that is, to take delight with rational delectation; and similarly neither desire concerning future copulation nor approval concerning past copulation is per se illicit, because approval and desire of a licit thing cannot be illicit. L., book 5, nn. 23, 24, 25.

Therefore for spouses all those things are illicit which have the nature of pollution, or which by their nature contain its proximate danger. Hence several cases can be resolved which can occur from an abnormal state of the spouses. Sanchez, book 7, disp. 102, n. 6 ff.

On Censures

I. On the Nature of Censure

1084. What is censure? It is a medicinal spiritual penalty by which a baptized man, delinquent and contumacious, is deprived by ecclesiastical power of the use of certain spiritual goods. Penalty: i.e., chiefly of the external forum. Therefore only those can impose censure who have jurisdiction in the external forum. Spiritual: because it consists in a certain removal of spiritual goods; it is from spiritual or ecclesiastical power; for a spiritual good; and obliging in conscience. Medicinal: for it is properly imposed for this end, as a medicine for preventing sins not yet admitted and curing those admitted, namely so that one may not sin, and if he has sinned may return to better fruit. C. *Cum medicinalis* 1, *de Sent. exc.*, in VI.

Hence, in order that a censure truly be imposed by way of censure, and not generally by way of penalty, it is necessary that it not be imposed in perpetuity, nor at the discretion of the one imposing it, but it must be imposed simply, so that as soon as the guilty person has amended himself he can be absolved; for when the disease ceases, the medicine ceases. Baptized man: for one who has not been baptized is not subject to the power of the Church. But he must be capable of reason and a subject: for one who is incapable of fault is not liable to penalty; and the power of jurisdiction, of which censure is an act, is exercised only upon subjects.

He must also be some determinate person, and not a moral person, which can indeed be deprived of the rights by which it enjoys, but cannot be struck with penalties and censures so that it may repent, since it has only a moral existence. Yet the individual persons of a moral body can be punished with censures. Cf. Schmalzgrueber, n. 44-46. But Cardinals and Bishops are not liable to censures issued by the law itself unless they are expressly included, except for excommunication; likewise those not yet pubescent, except in the case of violation of the enclosure of nuns. C. *Apostolicae Sedis*. But by a special privilege legitimately introduced in the course of time, kings and queens cannot be bound by censure except by the Pope. By ecclesiastical power: for a penalty cannot be imposed except by one having power, and spiritual penalty pertains to spiritual power.

Of the use of certain spiritual goods: therefore censures do not take away the goods themselves, nor power or rights to them, but only the use of them from the guilty person, until he has returned to better fruit. C. *Ex litteris* 11, *de Const.* But it deprives him of the use of those goods which are in the power of the Church, such as public prayers, administration of the sacraments, offering of sacrifice, ecclesiastical burial, etc. Therefore it does not deprive him of merely internal goods, e.g., the sacramental character, the power of order, nor of proper and private goods, e.g., faith, hope, charity, etc. And if sometimes it deprives him of human intercourse, this is done only secondarily. E.M.

1085. What is the division of censures? According to the various goods of whose use censure deprives one, it is threefold, namely excommunication, suspension, and interdict. Excommunication and interdict touch all; suspension touches only clerics. Excommunication has the force only of censure, or medicinal penalty. Therefore it cannot be imposed upon a moral person. C. *Romana* 5, *de Sent. exc.*, in VI; Suarez, disp. 18, sec. 2, n. 3. But suspension and interdict can be imposed also by

way of mere penalty, or in vindication of fault, and by way of mere privation, which holds even without fault, and therefore both the guilty and the innocent. Hence suspension and interdict can be imposed for a merely past delict which has no successive continuance, without any preceding threat or warning, without any expressed cause, in perpetuity, or for a determinate time, or at the good pleasure of the one who imposed it. Likewise they can be imposed upon moral persons, e.g., a chapter, a city, etc., and with respect to the innocent they have the nature of mere privation. Violation of a censure imposed by way of censure brings irregularity if a cleric violates it by exercising an order; not likewise one imposed by way of penalty, unless something else has been specially provided by law.

Some censures are issued by law; others by man. The former are imposed by way of law, the latter by way of mandate or sentence. An example of the former kind is the censures contained in the constitution *Apostolicae Sedis*, and the censures contained in episcopal statutes. An example of the latter is if a Bishop, without judicial process, issues a mandate, or if a judge, after judicial process has been instituted, issues a sentence against an abductor, that he restore the abducted person to liberty within three days, otherwise he incurs excommunication. Suarez, disp. 3, sec. 1, n. 2. A censure issued by law still perseveres after the death of the author; not likewise one issued by man. Yet one who incurs the latter is held by it everywhere until he is absolved from it. Episcopal censures issued in synod are held as censures by way of law and, when the Bishop has died, they endure; but those issued outside synod are held as censures by way of simple statute, and when the Bishop has died, they cease. L. 6.

Likewise some censures are *latae sententiae*; others are *ferendae sententiae*. They are *latae sententiae* if they are established as to be incurred by the very fact by which someone acts against the law. They are *ferendae sententiae* if they are to be inflicted by the sentence of a judge. Therefore censures are *ferendae sententiae* if the words of the law require the ministry of a judge, or the action of another, for incurring the censure, e.g., if it is said: it is prescribed under penalty of excommunication; he will be excommunicated, etc. But they are *latae sententiae* if the words of the law do not include a condemnatory sentence, or at least a declaratory sentence of the crime, e.g., one doing such things is by that very fact, by the law itself, excommunicated.

1086. What is required on the part of sin for incurring censures? It is required that it be mortal, for censure is a very grave penalty which consequently presupposes mortal fault. Hence they must be imposed soberly and with great circumspection. Council of Trent, sess. 25, chap. 3, *de Ref.*; Benedict XIV, *De Synodo*, book 10, chap. 2. Therefore, unless there is question of some light censure, or at least one for a brief time, which is imposed because of light fault, censures of excommunication, suspension, and interdict, as they are ordinarily imposed, can in no way be imposed for light faults. L. 30; Schmalzgrueber, book 5, title 39, n. 59; Suarez, disp. 4, sec. 6, n. 12; Lugo, *De Iustitia et Iure*, disp. 16, n. 61; Lessius, book 2, chap. 12, n. 54; Sanchez, *in Decal.*, book 7, chap. 21, nn. 28, 29.

The sin must be external; for the Church judges in the external forum, to which censures pertain, not in the internal forum. Not only must the sin be exterior, but also grave in the nature of the external act. Therefore one who is excused from grave fault either as regards the internal act or at least as regards the external act is also excused from censure. It must be a sin consummated by deed, because penal laws are of strict interpretation. Namely, the sin must be complete in its own genus according to the proper meaning of the words which are contained in the precept or law. Schmalzgrueber, l.c.,

n. 64. It is required that the sin not be merely past, because censure is a medicinal penalty, which therefore cannot be imposed on those who have already returned to better fruit. Merely past; for if a past delict, such as theft, detraction, etc., has a successive continuance, censure can be imposed because of it, once it has first been denounced to the guilty person, unless he obeys the mandate to restore what was taken away, to repair reputation, etc., within a definite time. Merely past: namely, if the censure is truly imposed by way of censure, or medicinal penalty, and not by way of mere vindictive penalty. Therefore a superior who wishes to punish some sin with censure must first threaten this censure. L. 54. Finally contumacy is required. For by censures contumacy against the law of the Church is punished, and indeed against the Church threatening censure to the contumacious. C. *Pia* 1, *de Except.*, in VI; C. *Statuimus* 3, *de Sent. exc.*, in VI. Contumacy is from despising; hence it is contempt of censure. Therefore for incurring censure it is necessary that the censure first have already been imposed, either by way of general law, or by particular precept at least denounced as to be incurred unless the precept is obeyed. Hence if someone withdraws from contumacy before he actually incurs the censure to be incurred once the effect has followed, he by no means incurs it afterwards when the effect follows. Withdraws from contumacy, namely by confession, or sorrow, or retraction of the will, and in the way in which he can he tries to impede the effect, although the revocation cannot become known to him to whom perhaps he gave the command or counsel. L. 31, 39, 40; book 7, nn. 368, 373; book 6, n. 600.

1087. Is warning required beforehand for incurring censure? R. Affirmatively. The reason is that censure is imposed because of actual contumacy and disobedience. But one who has not been warned by the one imposing the censure is not rebellious and disobedient to him. Therefore. Hence among the doctors it is commonly received that a censure with no warning at all first given is regularly null. Now as regards a censure issued by law by way of law, or issued by man by way of mandate, the law itself and the mandate itself warn. Yet if the delict is occult, for declaring a censure incurred, citation of the guilty person is certainly needed; otherwise the sentence will be null and void. But if the censure is not contained in a law or mandate, then it is necessary to threaten it, or it is necessary to warn the guilty person, and indeed a threefold warning is needed, although this does not pertain to validity; or one for three, with the space of at least two days observed between them, or between this and the sentence the space of at least six days. But warning must be made to the guilty person before witnesses, and it is customarily and must be done in writing, but it is valid by living voice. Although a censure imposed without writing is valid, nevertheless, because this is grave, if it has been imposed orally, it is presumed to be penalty rather than censure.

If the censure has already been threatened by law, if indeed there is question of a censure *ferendae sententiae*, whether a new warning is needed is disputed: some affirm it, and it is more equitable, because censures of this kind are for the most part unknown; others deny it, and it is more probable, because the law itself warns sufficiently. C. *Reprehensibilis* 26, *de Appellationib.*, etc.; C. *Cum medicinalis* 1, *de Sent. excomm.*, in VI; L. 22, 51, 65, 317; St. Thomas, Suppl., q. 21, a. 3.

1088. Who can impose censures? By ordinary law, every and only ecclesiastical superior having ecclesiastical jurisdiction in the external or contentious forum can impose censure, whether ordinary or delegated, namely the Pope and a General Council with respect to all the faithful; Cardinals in the churches of their titles; Primates and Archbishops, both in their own dioceses and in the dioceses of suffragans during the time of visitation, and also when there is question of a case brought to their

tribunal, because then they have jurisdiction over the suffragans; Bishops in their dioceses, provided they have been elected and confirmed, although not consecrated; Legates of the Apostolic See in the provinces of their legation; Vicars General of Bishops, for they constitute one tribunal with the Bishops themselves; the Chapter, when the see is vacant and before the election of the Capitular Vicar, who afterwards enjoys such power exclusively; abbots, generals, provincials, rectors, conventual priors, guardians, etc., of religious orders with respect to religious subject to themselves; and all those to whom that power is specially committed by delegation from the aforesaid persons.

Therefore by common law both lay persons and all women, even abbesses, are excluded from this power, both ordinary and delegated. Likewise parish priests, since they do not have ordinary jurisdiction in the external forum, but only administration for the right ordering of the parish, do not have this faculty. As regards delegated power, this ceases with the death of the one delegating, when there is question of a case of justice, unless the case has already been begun by the delegate at least through citation. But one delegated to impose censures cannot subdelegate another, unless he has had express permission from the one delegating, or unless he is delegated at least for any causes whatsoever, or by the Roman Pontiff. CC. *Perniciosa* 1, *Cum ab Ecclesiarum* 3, *Pastoralis* 11, sec. *Praeterea*, *Conquerente* 16, *Grave gerimus* 19, *de Off. iud. ord.*; C. *Cum Episcopus* 7, e.t., in VI; C. *Transmissam* 15, *de Elect.*; C. *Si pro debilitate*, *de Off. Deleg.*; CC. *Cum in Ecclesiis* 10, *His quae* 11, *de Maior. et obed.*; C. *Ea quae* final, *de Statu Monach.*; C. *Quaerenti* 20, *de Verbor. signific.*; C. *Cum medicinalis* 1, *de Sent. exc.*, in VI; St. Thomas, Suppl., q. 22, aa. 1, 2; Schmalzgrueber, nn. 3, 12-21, 40; Engel, nn. 12-15; Pichler, *Ius Canonicum*, book 5, title 39, nn. 4, 5; Lugo, *Resp. Mor.*, book 6, disp. 6; E.M.

1089. What is required so that an ecclesiastical superior can impose censures? It is required: 1. That he be possessed of reason; indeed that he have the intention of binding him against whom he imposes the censure. The reason is that to impose censure is an act of jurisdiction, which has its whole force from the interior will. 2. That he have jurisdiction free as regards its use. Hence an excommunicated, suspended, heretical, or schismatic Bishop cannot impose censures; the same is to be said of his vicar. Yet an occult heretic or excommunicated person validly imposes censures, although illicitly, because for the public good, unless he is to be avoided, the Church preserves jurisdiction for him. Indeed there are not lacking those, and it seems today the common opinion, who hold that even one publicly excommunicated validly imposes censures if he has not been denounced by name, or if he is not a public striker of a cleric from the Extravagant of Martin V, *Ad evitanda*, where it is sanctioned that a tolerated excommunicated person is not to be avoided in those things which pertain to public office, nor even by those who know this. L. 12; St. Thomas, Suppl., q. 22, a. 3. 3. That the one imposing censure act freely, not under compulsion. But whether a censure imposed from grave fear is valid, some deny, others more truly affirm: because an act done from grave fear is of itself valid unless it is invalidated by special positive law. But a censure imposed from fear is not invalidated by positive law. Therefore. Schmalzgrueber, n. 23; L. 12; E.M.

1090. Can a Bishop impose censures if he is outside the diocese? R. Negatively. For no one can exercise contentious jurisdiction in another's territory. Yet the following cases are excepted: 1. If the censure is imposed not by way of sentence, but by way of precept or statute, for preventing future crimes. 2. If the censure is imposed by way of sentence which nevertheless does not need cognizance of the case and judicial commotion, either because the contumacy is manifest, or because the case has already been known in his own territory. If it needs judicial commotion, it is necessary that

permission be given by the Ordinary of the place and that the parties consent; for no one unwilling can be drawn outside his own territory. 3. If the Bishop has been unjustly expelled from his own territory, for then permission sought from the Ordinary of the place suffices, although not obtained. C. *Novit* 7, *de Off. leg.*; Clementine, single chapter, *de For. comp*.

1091. Can a Bishop existing in his own diocese impose censure on a subject existing outside the diocese? A Bishop, existing in his own diocese, can bind by censures through sentence a subject existing in another diocese, both for a crime committed in his own diocese and also if the subject commits a delict outside the diocese, but there is question of a matter which is in it, as if clerics who do not come to the synod are excommunicated. Nor indeed does it stand in the way that citation cannot be made outside the territory; for then it suffices that the guilty person be cited in his own house or in a public place. Likewise if a Bishop by special precept prohibited some delict to someone under censure, the absent person incurs this censure. For the precept is personal. Therefore, since a subject outside the territory is bound by the precept, he is also bound by the censure. Thus St. Alphonsus, n. 23, who calls the denying opinion probable when someone commits a delict outside the territory of the one administering law, and adds: But it is certain from C. *Ut animarum* 2, *de Const.*, in VI, that if the Bishop has previously given no precept to the subject under penalty of censure, he cannot punish him with censure if he commits a delict in another diocese. And the same must be said if he commits a delict in an exempt place, because in that place he remains as if he were in a place outside the diocese, from C. *Cum Episcopus* 7, *de Off. ord.*, in VI; C. *Volentes* 1, *de Priv.*, ibid.; Clementine *Archiepiscopo* 2, e.t.

Through sentence or special precept: for if the prohibition has been made by territorial statute, a censure imposed on delinquents does not affect one existing outside the territory of the one establishing the censure, as is expressly decided in C. *Ut animarum* 2, *de Const.*, in VI. But regular prelates can bind their subjects with censures in whatever place they exist, because their jurisdiction is more personal than territorial. L. 20; Engel, n. 31; La Croix, book 7, n. 28; Pichler, *Ius Canonicum*, book 7, title 39, n. 6.

1092. Can a Bishop bind by censure another's subject committing a delict in his diocese? Pilgrims probably, according to Lugo and others, do not incur censures issued by the special law of some place; for they are exempt from the very obligation of observing the laws of that place. But if there is question of censures issued by man through sentence, they can indeed be bound by censures by the Bishop of the place after they have committed a delict in that place by violating common law, and not only the law of his diocese, and after the Bishop has cited them, yet only if that common law prescribes or prohibits something under excommunication and other penalties to be inflicted by an ecclesiastical judge; for then by reason of the delict the pilgrim obtains the forum of the Bishop of that place in which he committed the delict. But if the Bishop himself by his own authority threatens excommunication against one violating the common law, e.g., stealing, not restoring, etc., the excommunication is null. For the immediate delict because of which excommunication is imposed is the contumacy and disobedience of a subject disobeying the Bishop who prohibits theft or prescribes restitution under censure. But the Bishop can neither command a pilgrim who is not a subject, nor consequently impose a special sentence on him as one not subject. Yet others, with Engel and La Croix, contradict this opinion, because just as laws can be imposed by which pilgrims are bound, e.g., concerning not carrying arms, so censure can be added to those laws, and such a pilgrim by reason of

the delict becomes subject to such a Bishop. Hence at least he can, as an inhabitant and stranger, be restrained by censures by the office of the judge, C. final, *de For. comp*. La Croix, book 7, n. 32; Engel, nn. 35, 112; Schmalzgrueber, nn. 47-48; L. 19, 26, 27; book 6, n. 591; Lugo, *Resp. Mor.*, book 6, disp. 22; Laymann, chap. 4, nn. 5, 6.

1093. Can Bishops impose censures on regulars? R. Affirmatively, if they are not exempt; for then they are subject to episcopal laws and censures in plainly the same way as other clerics. Moreover, if they have the Bishop as their proper prelate, they can be bound by censures by him just as other regulars by their proper superiors. Sanchez, *in Decal.*, book 6, chap. 1, n. 11; Schmalzgrueber, book 3, title 35, nn. 61, 62.

Affirmatively, if they are exempt and commit a delict concerning those things in which, by force of canons and Constitutions, they are subject to the jurisdiction of Bishops. And in such a case Bishops proceed not by ordinary but by delegated power. S.C.C., February 17, 1632; Benedict XIV, *De Synodo*, book 9, chap. 16, n. 5; book 7, chap. 41, n. 5; Barbosa, *De Off. et Potest. Episc.*, part 3, alleg. 105, n. 14 ff. Negatively, if the discussion concerns those regulars who in this matter enjoy special exemption. For a twofold exemption of regulars, or immunity from the censures of Bishops, must be distinguished. The first proceeds from this, that regulars in certain things are exempt from the jurisdiction of Ordinaries, and therefore as regards these things they cannot be punished either by censures or by other penalties. Yet since in other things they are subject to Bishops, when they commit delicts in these matters they can be punished by them, even by censures. But the other proceeds from this, that certain regulars enjoy a special privilege, namely Mendicants and Religious of the Society of Jesus, so that they cannot be punished by Bishops with censures, although they can be punished with other penalties if they commit delicts in those very things in which they are subject to the Ordinaries of places. The case from the constitution *Inscrutabili* of Gregory XV is excepted, namely "if in churches of others, which are not of their orders, without the license of the Bishop; and in their own churches or those of their orders, without having sought his blessing, or while he contradicts, they presume to preach." Innocent X, Brief *Cum sicut accepimus*, May 14, 1653, declaring another case in the cited constitution *Inscrutabili* of Gregory XV, added a case, namely that of hearing confessions. A third case must also be added concerning the form and habit of sacred images from the constitution *Sacramenta* of Urban VIII, March 15, 1642.

1094. Does ignorance excuse from incurring censure? Invincible ignorance, whether of fact, of law, or of penalty, i.e., of the censure attached, excuses from incurring it. For contumacy is lacking. Here forgetfulness and inadvertence operate the same as ignorance. Ignorance that is vincible and lightly culpable, or even gravely culpable if it is not crass or supine, also excuses from incurring censure; otherwise if it is crass and supine, from C. final, *de Const.*, in VI, where it is said, "we do not wish the ignorant to be bound, when nevertheless their ignorance has not been crass or supine." But whether there is truly given gravely culpable ignorance which nevertheless is not crass or supine is disputed. Commonly they deny it; yet many affirm it, because for crass ignorance a certain highest negligence is required, and negligence can be gravely culpable although it is not the highest.

A fortiori affected ignorance, whether of fact, of law, or of penalty, does not excuse from incurring censure. Vincible ignorance that is gravely culpable, whether it is crass or supine, or, probably, even affected, excuses from incurring censure if in the Decree there is a clause: whoever does this knowingly, deliberately, rashly; whoever has presumed to do this, etc. For one who acts with

ignorance of whatever kind surely does not act knowingly. And indeed, from the Holy Office, January 12, 1870, by these words, by rash daring, or from presumption, etc., it is signified that someone committed a delict not while compelled or ignorant, but prudently and knowingly; and moreover it ought not to be wondered that one devoid of every excuse is subject to censure. L. 43-45, 48.

1095. Does grave fear excuse from censure? R. Affirmatively, unless nevertheless observance of the law is necessary for preserving the public good, or violation of it yields to contempt of faith, or of law, or of ecclesiastical power. The reason for the response is that one who commits a delict from fear sins rather from weakness of nature than from contumacy. The reason for the exception is that in the aforesaid cases the obligation even of human law does not cease.

1096. Does an appeal legitimately interposed excuse from censure? R. Affirmatively, namely if it was interposed before the sentence, or after it indeed had been issued, but while the day from which, or the condition under which, it was issued, is pending. Likewise it ceases if, while the day or condition is pending, one ceases to be superior and the other ceases to be subject. But if the censure has already been issued absolutely, appeal does not suspend it, whence canonists say that the appeal is devolutive, not suspensive. Yet recourse to the Holy See is always given against its injustice. L. 63-65; Suarez, disp. 3, sec. 4, n. 10 ff.; sec. 5, n. 2; sec. 15, n. 18 ff.; Lugo, *Resp. Mor.*, book 2, disp. 6.

1097. Is one to be judged to have incurred censure who doubts whether he has incurred it? In a doubt of fact and in a doubt about the existence of the law, one is excused from incurring censure; not likewise in a doubt about the justice of the law, namely whether the censure is just. The first reason is that in doubt the condition of the possessor is better. But one who doubts whether by his act he has incurred censure possesses the right of using spiritual goods. Therefore he is not to be deprived of his right. Therefore. The second reason is that favors are to be enlarged and odious things restricted. Therefore a law inducing a doubtful penalty is to be taken in the more benign part; for penalty is odious. Therefore. The third reason is that in a doubt of justice, presumption favors the superior. When someone doubts whether he has been absolved from a censure which he incurred, in the external forum judgment must be made in favor of the censure, or bond, from C. *Sicut* 39, *de Sent. exc.*, and therefore absolution must be sought. Likewise in the internal forum absolution must be sought, lest perhaps one become deprived of the goods of the Church. Lugo, *De Poenit.*, disp. 20, n. 18; Sanchez, *in Decal.*, book 1, chap. 10, nn. 55, 56; St. Thomas, Quodlibet 4, a. 14; L. 32, 39, 67, 68.

1098. Is one bound by censure who knows it to be manifestly unjust? One is not bound by censure who knows it to be certainly unjust, whether because of a false presumption of fact, or because legal forms were omitted, or because the limits of jurisdiction were exceeded. Therefore he is not bound to observe it publicly, except by reason of scandal, if this is present. L. 68; St. Thomas, Suppl., q. 21, a. 4; Laymann, chap. 6, nn. 2-4; Schmalzgrueber, nn. 89-94; Engel, nn. 103-113; Lugo, *De Iustitia et Iure*, disp. 37, n. 188.

1099. Can someone be bound by several censures at the same time? Because of one and the same delict only one censure is incurred out of several perhaps imposed by one and the same legislator, namely that by which the others are eminently comprehended. Thus, e.g., those usurping goods pertaining to ecclesiastical persons by reason of their churches are bound only by the excommunication reserved to the Roman Pontiff, and not also by the Tridentine excommunication. Because of one and the same delict someone can indeed incur several censures imposed by different legislators, by the Bishop of the benefice and by the Bishop of domicile, by the Roman Pontiff and by

the Ordinary of the place; e.g., if clerics violating the enclosure of nuns are punished by suspension in an episcopal Statute, they would also be liable to the excommunication simply reserved to the Roman Pontiff through the constitution *Apostolicae Sedis*. Because of the same delict repeated, and because of diverse delicts, someone can incur several censures, namely the same one several times, and several diverse ones, of the same or of a different nature. And here it must be noted that if the censure is reserved to the Pontiff, through this reservation the faculty of reserving the same censure to themselves then seems to have been taken away from inferior Prelates.

1100. What is to be said generally about absolution from censures? "Absolution signifies an act of justice in which some case, or judgment, is terminated in favor of the guilty person.... But dispensation is an act of grace or mercy... by which something is relaxed from the common law in favor of someone." Thesaurus, *De Poenis*, part 1, chap. 20. For releasing a censure, absolution imparted by a legitimate judge or superior is necessary; and if the guilty person has ceased from his contumacy, justice itself requires that he be absolved from the censure.

And a censure cannot be released in another way, although satisfaction has already been made, if it was owed, and amendment has followed, except for censures imposed for a definite time: for when that has ended, they cease; and those which were imposed at the good pleasure of the one imposing them also cease when he has died, or when his right has been dissolved. This is established from C. *Qua fronte* 25, *de Appell.*; C. *Ex litteris* 11, *de Const.*; C. *Cum desideres* 15, *de Sent. exc.*; C. *Relatum* 37, ibid.; proposition 44 condemned by Alexander VII; L. 122. Absolution of this kind can be given by an ecclesiastical superior, or by his delegate, even if he is not a priest. And although the penalties of censure are especially of the external forum, absolution from them can nevertheless be given in the internal forum of conscience, as long as they have not been brought to the external forum; this is established by common doctrine and practice.

Absolution from censures, as removing an impediment, must be given first under grave obligation before absolution from sins; yet if it is given afterwards, it is valid; and if the penitent receiving this has not sinned gravely, the absolution from sins also is valid. But since it is not established that the penitent is bound by censure, it is prefaced only as a precaution. And from these things it is clear that absolution from censures is entirely distinct from absolution from sins, and one can stand without the other. St. Thomas, Suppl., q. 24, a. 2, ad 2; Laymann, chap. 7, n. 1; Schmalzgrueber, nn. 107, 111; E.M. 952.

1101. Who can absolve from the various censures? From a censure, whether issued by man by way of precept or by particular sentence, or reserved by law, only these can absolve: 1. the one who imposed the censure; 2. his superior; 3. his successor; 4. another delegated by one of these. The reason is that it belongs to the one to absolve to whom it belongs to bind. L. 63; Laymann, chap. 7; Schmalzgrueber, nn. 85-93, 97; St. Thomas, Suppl., q. 24, a. 1. A censure issued by man by way of precept or by particular sentence: for censures issued by man, but by way of statute or general sentence, according to the more probable opinion are equated with those issued by law which are not reserved. L. 73; Schmalzgrueber, 94; Engel, n. 124. From censures which are such less properly, namely those imposed until a certain day, in perpetuity, or at the good pleasure of the superior, only he or another having special faculty can absolve: since, although they are not expressly reserved, they are nevertheless implicitly reserved from their very nature. Cf. Suarez, disp. 29, sec. 1, n. 16.

Any confessor can absolve from censures issued by law and by no means reserved to the Pope or Bishop, both for the internal forum and for the external forum, C. *Nuper* 29, *de Sent. exc.*; formula of absolution in the Roman Ritual; Struggl, 29; St. Thomas, Suppl., q. 24, a. 1; L. 69-71, 126, 322, 339; book 1, n. 191; Schmalzgrueber, nn. 95, 96. "Yet in order that someone can use the absolution publicly, it is necessary that it be publicly established.... But in order that it be judged publicly established, it is enough that it be publicly established that he was confessed... to one having power... provided that the satisfaction which was necessary has also been publicly exhibited." Suarez, disp. 7, sec. 5, n. 29.

For this is required, although the censure has not been juridically denounced, for preventing scandal, and so that it be established that he has withdrawn from his contumacy and has returned to obedience to the Church. Cf. Leo XIII, *Monita pro Iubilaeo* for the year 1900, *Singulares*, Kalends of November, 1899, sec. 8 ff.

From Trent, sess. 24, C. *Liceat* 6, and from the constitution *Apostolicae Sedis*, paragraph *Firmam*, Bishops can, in the forum of conscience, absolve from occult cases and censures reserved to the Supreme Pontiff, except those which are reserved in a special manner. The Capitular Vicar also enjoys this power, S.C.C., December 3, 1632. Bishops can also delegate this Tridentine faculty generally to some priest, provided that they expressly specify it; for special deputation is required from Trent. And they can absolve even pilgrims, since they become subjects by submitting themselves in the forum of conscience. But by this faculty Bishops cannot absolve from occult cases reserved by other Bishops. S.C.C., January 24, 1711; November 20, 1712; Benedict XIV, constitution *Pias Christi*, August 21, 1752.

But those cases are reputed occult which have not been proved in judgment and can still be concealed in the neighborhood in some way, as if it is known only to a few discreet persons, e.g., five or six, or if the fact appears doubtful. Probably a crime public in one place can be absolved by a Bishop in another place where it is occult, provided there is no fear that it will easily be made public where it is occult. Likewise an occult crime can be absolved by a Bishop, whether it is materially occult, because the committed delict is publicly unknown, or formally occult, namely because although the crime is known, nevertheless it is unknown that a censure is attached to it. L. 76, 78; book 1, appendix II, *de Privil.*, n. 29 ff.; book 6, nn. 294, 593, 594.

That regular prelates by force of their privileges, as regards their subjects, 1. cannot absolve from censures imposed by the constitution *Apostolicae Sedis*, whether reserved in a special manner or simply to the Roman Pontiff; but 2. can absolve from censures reserved to Bishops, even if occult; and 3. as regards the faculty of the same prelates for absolving their subjects from censures reserved to the Roman Pontiff which are not contained in the aforesaid Constitution and which pertain to internal government, nothing has been innovated by the same Constitution; 4. regulars impeded from going to Rome cannot be absolved by their regular superiors from censures contained in that Constitution and reserved to the Supreme Pontiff, but must have recourse to the Holy See for the necessary faculties, was declared in the Holy Office, March 22, 1881. Synod of the Diocese of Ostia and Velletri, Rome, 1892, p. 122.

Those confessors who have the Pagella of the Sacred Penitentiary can also absolve from several censures, even reserved ones. Cf. the aforesaid Pagella.

Finally, as to who can absolve from papal cases and censures in the article of death and in the case of impediment from going to Rome, and how, cf. 773, 797, 799, 800.

1102. What special circumstances of absolution from censures are to be noted? Various circumstances of absolution from censures to be noted are declared in the following propositions. An absent and unwilling person can be absolved from censures. For absolution from censures is not sacramental, but a mere relaxation of a bond imposed by the Church, which can also be pronounced upon the absent and unwilling. But this is not licit without grave cause. L. 117, 130; St. Thomas, Suppl., q. 24, a. 2. One who is bound by several censures can be absolved from one, the others being left, because there is no necessary connection among them. C. *Cum pro causa* 27, *de Sent. exc.*; L. 118, 131; St. Thomas, q. 24, a. 3. Absolution extorted by force or grave fear unjustly inflicted is not valid, from C. single chapter, *de His quae vi*, etc., in VI; L. 119. The same is to be said if it is given by error concerning the motive cause. C. *Offic.* 42, *de Sent. exc.*; Schmalzgrueber, nn. 99, 100, 102; Thesaurus, *De Poenis*, part 1, chaps. 22-24.

1103. Absolution cannot be given unless first, where there was need, the one to be absolved has repaired scandal, satisfied the injured party, or, if he cannot, has furnished suitable security, or unless he has sworn or promised that he will make satisfaction as soon as he can; and, if the crime is among the more atrocious, or there is question of striking clerics, that he will never relapse into it. But oath and pledge-security pertain to the external forum. As regards the internal forum, a simple and sincere promise suffices concerning making satisfaction, standing by the mandates of the Church, etc. C. *Porro* 7, *de Sent. exc.*; C. *Per tuas* 40, 10, 11, ibid.; C. *Qua fronte* 25, *de Appell.*; C. *Odoardus* 3, *de Solut.*; C. *Ex parte* 23, *de Verb. sign.*; Sacred Penitentiary, July 5, 1857. But when the Pontiff gives faculty of absolving "the party having been satisfied," whether this clause is always added as a condition *sine qua non*, some probably affirm, others probably deny. L. 121, 129; Schmalzgrueber, nn. 100, 101; Roman Ritual, *de Absol. ab excomm.*; the warnings cited at n. 1101.

1104. Absolution can be given both absolutely and conditionally. Likewise absolution can be given with reincidentia, i.e., so that the absolved person, unless he performs something, for instance unless he has restored after such a time, falls back into the same censure by that very fact. Reincidentia is either by law or by man. It is by man only when it is added by the express will of the superior; but by law when it is contained in clear law. For we are in odious matters. Moreover the censure into which the absolved person is going to fall back is a new censure in number, although of the same species. Therefore reincidentia cannot be added to absolution except by one who has power of imposing censure, and it is not incurred without new fault and contumacy. L. 86, 87, 123-125; Laymann, chap. 7, n. 8; Lugo, *De Poenit.*, disp. 20, nn. 213-214.

1105. For validly absolving from censures, no determinate formula is prescribed in law. Therefore the will of the superior manifested by a sensible sign suffices, so that it becomes known to the other. Schmalzgrueber, n. 98. And although it can be given by the fact itself, speaking per se, nevertheless from the law it does not seem to be presumed that it was given thus. Cf. Clementine *Si summus* 4, *de Sent. exc.*; C. *Si aliquando* 41, e.t.; C. *In praesentia* 46, ibid.; Schmalzgrueber, nn. 77, 389; St. Raymond de Penyafort, *Summa*, book 3, *de Sententiis Praecepti*, etc., sec. 36. For licitly absolving in the sacramental forum, the formula must be used which is contained in the formula itself of sacramental absolution, and the same is used in the internal forum of conscience outside the sacrament. But in the external forum the formula prescribed in the Roman Ritual and Pontifical, and in C. *A nobis* 28, *de*

Sent. exc., must be used. For solemn and public absolution, as described in the Ritual, the mandate of the Bishop is needed, who is accustomed to prescribe this only when there was scandal of the whole community; and the other solemnities of law must be observed.

And thus, if there is question of an enormous crime, before absolution the delinquent must swear, unless perhaps he is not yet pubescent, that he will not relapse further into such a crime. C. *Ex tenore* 10; C. *De cetero* 11, *de Sent. exc.*; Roman Ritual, *de Absol. ab excomm.* One who has power of absolving in the forum of conscience from a censure can do this also outside Confession, except in a jubilee, in which it must be given in the sacramental forum. Benedict XIV, constitution *Inter praeteritos*, sec. 63.

Absolution given in the external forum also benefits in the internal forum; given in the internal forum it benefits the tolerated even in the external forum, but it does not prevent action from being taken against them according to the norm of law; not likewise those to be avoided, when this is licit, as in a Jubilee and in the article of death. Benedict XIV, constitution *Inter praeteritos*, sec. 61. L. 70, 116, 126-129; book 6, n. 536; Laymann, part 2, chap. 6; Pichler, book 5, title 39, n. 13; Roman Ritual, *de Absol. ab excomm.*

II. On Excommunication

1106. What is excommunication, and how many kinds are there? Excommunication is a censure through which someone is deprived of communion with the Church. "It is a penalty, the gravest which the Church can inflict, and in itself it contains by force the other censures of suspension and interdict, as those which deprive one not so fully, but only partially, of the goods of the Church, or of their use." Pichler, book 4, title 39, n. 23. An excommunicated person who, after legitimate warnings, has not repented, and has grown filthy in excommunication for a year, or has persevered obstinately, incurs suspicion of heresy, because he seems to despise the authority of the Church. Council of Trent, sess. 25, chap. 3, *de Ref.* It is twofold: one is minor, the other major. This major excommunication is evident in two ways. For one is that by which someone is an excommunicated tolerated person, whom the faithful are not bound to avoid; the other is that by which someone is an excommunicated person not tolerated, whom they are bound to avoid.

1107. What is to be said about an excommunicated tolerated person? As regards an excommunicated tolerated person, by canon law it is forbidden to anyone, even one secretly excommunicated, to communicate with others both in divine and in human things. But the faithful can communicate with him both in human and in divine things, even without necessity, although they are not bound to. Hence spiritual things, such as sacraments, can licitly be given to an excommunicated person; likewise sacraments can licitly be sought from an excommunicated person, even without necessity, precisely by force of excommunication; for if he is in mortal sin, a just cause is required. Therefore indirectly it has also been granted to an excommunicated person that he may be able to communicate without sin with those by whom he is asked. The same is to be said of one suspended and one interdicted, as regards those matters in which it is forbidden to communicate with them. Constitution of Martin V in the Council of Constance, *Ad evitanda*; Schmalzgrueber, nn. 121-125; L. 135, 138-140, 160.

1108. What is to be said about an excommunicated person to be avoided? Only two excommunicated persons to be avoided are reckoned. The first is anyone excommunicated by name who at the same

time has been specially and publicly denounced. By name, i.e., with the name expressed by words or indubitable signs, so that he cannot be confused with another. Hence we are not bound to avoid heretics, e.g., even if it is publicly known that they are excommunicated by law. Specially denounced, i.e., not denounced generally, but also denounced by name. Hence if it is said: We excommunicate Peter the arsonist and his accomplices, only Peter is to be avoided, but not the others, although they are publicly known; for the sentence as regards them is only general, and not special against a certain person. Publicly denounced, i.e., the denunciation must be made in a public place, according to the usage of the region. But here it must be noted that although it suffices that one excommunicated by law be denounced only as such, so that he is now to be avoided, nevertheless it does not suffice if the guilty person is declared by sentence only to have committed the crime to which excommunication is attached; rather, the excommunication itself must be denounced by the judge. The second is a notorious striker of a cleric. Notorious, i.e., according to St. Alphonsus, not only by notoriety of law, but also by notoriety of fact, at least commonly or ordinarily speaking. By notoriety of law: namely, that it is known either by sentence of the judge, or by confession of the guilty person in judgment, or by sufficient judicial deposition. By notoriety of fact: namely, that it is really known to many, so that the fact can no longer be hidden by any evasion. Otherwise the fact could always be excused by some favorable consideration. Hence probably the striker of a cleric, notorious in one place, is not to be avoided in another where he is not notorious. And the same is to be said of the former case, i.e., of one excommunicated by name and already publicly denounced in some place, who is entirely unknown in another place. And "unless at least it is publicly established by the fact itself that the striker advertently willed (knew and contemned) to incur the censure, he is probably never to be avoided" before the very sentence of the judge specially denouncing him. L. 144. This is established from the constitution of the Council of Constance, *Ad evitanda*; Holy Office, January 9, 1884.

L. 134, 146; Diana, tome 5, tract 1, *de Excommunic.*, resolution 50, nn. 4, 5; Lugo, *Resp. Mor.*, book 2, disp. 5; Laymann, chap. 4; Ferraris, *Bibliotheca*, v. Excomm., art. 9, nn. 5, 7; E.M.

1109. What is to be said about minor excommunication? Minor excommunication deprives one per se only of the passive use, or reception, of the sacraments, and consequently of passive election to benefices and dignities of the Church. C. *Si quem* 59, *de Sent. exc.*; C. *A nobis* 2, *de Except.*; C. *Si celebrat* 10, *de Cler. exc. min.* It was incurred for only one cause, namely if someone communicated with an excommunicated person to be avoided, and it could be absolved by any confessor. C. *Nuper* 29, *de Sent. exc.* Cf. St. Thomas, Suppl., q. 23, aa. 1, 2; L. 147, 156; Suarez, disp. 24; Laymann, chap. 3, n. 6; Schmalzgrueber, nn. 198-211. Minor excommunication today has been removed by the constitution *Apostolicae Sedis*.

Thus the Holy Office, December 5, 1883, Leo XIII approving and fully confirming. Yet this does not prevent "a Bishop (even at present) from being able, in penalty of some crime, to forbid someone by name the passive use of the sacraments, or at least of Communion." L. 148. But because of communication with an excommunicated person, in certain peculiar cases major excommunication, suspension, and interdict are now incurred. Constitution *Apostolicae Sedis*, art. 16 and 17 of Excommunications reserved simply to the Roman Pontiff, art. 1 of Excommunications reserved to no one, art. 6 of Suspensions, and art. 2 of Interdicts. Holy Office, January 9, 1884. Synod of the Diocese of Albano, year 1880, appendix n. 10, sec. XI, n. 3; Pichler, nn. 34, 35; E.M.

1110. What is to be said about major excommunication? Major excommunication has the following effects. It deprives one of receiving and of the passive use of the sacraments. C. *A nobis* 28, *de Sent. exc.*; C. *Cum illorum* 32, ibid.; C. *Sacris* 38, ibid.; C. *Si quem* 59, ibid.; C. final, *de Cler. excomm. ministr.* Hence "no excommunicated person, whether tolerated or not, can licitly receive them (but he validly receives them, except penance, unless he approaches in good faith) under mortal sin, unless invincible ignorance, fear of death, infamy, loss of goods, etc., excuses, because censure does not oblige with so great rigor." L. 158. Schmalzgrueber, nn. 146-153; Pichler, n. 29; Coninck, dub. 5.

1111. It deprives, at least the non-tolerated, of the common suffrages and prayers of the Church, namely those which are made in the name of the Church by her ministers; likewise it deprives one of the fruit of indulgences. Common suffrages and prayers of the Church: therefore it does not deprive one of private suffrages and prayers, namely those which are made in one's own name. "Hence not only any private person, but even a priest can pray as a private person for the excommunicated, even in public prayers and the sacred rite; indeed, he can offer the action of sacrificing insofar as it depends on the private merit of the one operating, or remember him in particular in the Memento. This is certain with St. Thomas." L. 162. At least the non-tolerated, because, as the same Holy Doctor teaches, probably sacrifices, etc., can be offered for an excommunicated tolerated person even in the name of the Church. "The reason is that favorable laws are to be understood with every amplitude; therefore, while it was granted to the faithful to communicate with tolerated persons, it was also granted to offer public prayers for them; for to communicate also imports this, etc." L. 164. CC. cited; Schmalzgrueber, nn. 126, 134-139; Pichler, nn. 29, 33; Coninck, dub. 6; Engel, n. 38; Laymann, chap. 1, n. 4; Salmanticenses, tract 10, chap. 3, n. 56; Suarez, disp. 9, secs. 4, 5; St. Thomas, III, q. 82, a. 7, ad 3; Suppl., q. 21, a. 1, ad 2; a. 3. Cf. 610.

1112. It deprives one of the active use, or administration, of the sacraments. C. *Latores* 4, *de Cler. excomm. ministr.*; C. final, ibid. Administration: for a non-tolerated person this is altogether illicit, except in the case of extreme necessity or grave inconvenience; nevertheless he validly confers the sacraments, except penance, which requires jurisdiction, and of this he lacks, unless there is common error of fact, or there is question of the article of death. But for an excommunicated tolerated person, it is sometimes licit, namely if he does not thrust himself in, but the faithful demand and ask; and thus he can celebrate if he is a pastor whose subjects are bound to hear Mass and there is no other who celebrates, for they are tolerated for the favor of the faithful, not in their own favor. Hence he also validly administers penance, since he is not deprived of jurisdiction; for this is expedient for the usefulness of the faithful. L. 165-170; St. Thomas, III, q. 64, a. 9; Schmalzgrueber, nn. 144-146; Laymann, chap. 2, n. 5; Ithur., case 42.

1113. It deprives one of the use of divine offices, so that an excommunicated person, whether to be avoided or tolerated, not only lacks their fruit, but also under mortal sin cannot celebrate them or assist at them in a notable part, so that morally he is judged to communicate with others, unless ignorance or necessity of avoiding scandal excuses. Although the same law applies to those to be avoided and to those tolerated, nevertheless as regards the latter, since today there is scarcely a confessor who keeps an excommunicated person away from the divine offices and there is no excommunicated person who thinks that he must abstain from the divine offices, the rigor of the law in this matter seems to some to have been tempered. Similarly others sin who participate with an excommunicated person to be avoided by assisting at divine things with him, e.g., at the same Mass;

and although this sin from its genus is mortal, nevertheless from smallness of matter it is venial, as if only a small part of the Mass, e.g., only up to the Gospel, is heard with him.

1114. Moreover, by divine offices are understood the sacrifice of the Mass, public prayer, procession, chanting of the hours, blessing of oil, water, candles, palms, ashes, and the other things annexed to the clerical order by the institution of Christ or of the Church, which are done publicly and solemnly with proper ornaments, excepting a sermon. L. n. 177. Hence an excommunicated person, whether tolerated or to be avoided, can also, during the time when divine things are not celebrated, enter the church to pray privately, and separately from others in a distinct chapel, and even in the same chapel where others pray, pray privately, because by praying privately he by no means communicates with others. Indeed, although from C. *Excommunicatos* 17, q. 3, c. 11, it is forbidden for an excommunicated person to communicate with others even in private prayer, nevertheless, scandal and contempt set aside, it does not seem to be grave matter to use him as a companion for privately reciting the office, just as for saying the Rosary. One obliged to the canonical hours is not free from reciting them. But in reciting them he must not say *Dominus vobiscum*, but *Domine, exaudi orationem meam*, because that formula imports a certain salutation to the people; whence otherwise he would sin venially. L. 173-178; Schmalzgrueber, nn. 131-133, 178; Pichler, l.c.

1115. Now if an excommunicated person assists at divine offices and is to be avoided, and when warned does not wish to withdraw from the Church, clerics are bound to expel him if they can; or, if they cannot, or if a graver inconvenience is feared, to cease from the office; otherwise they sin gravely. If the sacrifice of the Mass is being celebrated, the celebrant, if the Canon has not yet been begun, must break off the Mass; if he has begun, he can, with the others departing, continue the sacred rite or break it off, because of the probability of each opinion; if he has consecrated, he must, with only the minister remaining, proceed up to and including Communion, and complete the remaining things in the sacristy or another decent place. But the excommunicated person must be expelled by the work of lay persons if they are present; but if they are lacking, clerics also must expel him. As regards those assisting, some more probably say that they also sin gravely unless some necessity or smallness of matter excuses; others not improbably say that this communication of those standing by does not exceed venial fault, because such communication seems too remote and accidental, unless they themselves are also the cause that the excommunicated person is present. But the common doctrine is that if those standing by hear another Mass different from that which the excommunicated person hears, neither they nor the celebrant are bound to withdraw, because then there is no formal communication. C. *Veniens* 16; C. *Significavit* 18; C. *Nuper* 29; C. *Responso* 43, *de Sent. exc.*; Clementine *Gravis* 2, e.t.; Laymann, chap. 2, n. 6; Engel, nn. 57, 59; Pichler, n. 33.

1116. It deprives one of the conferral of a benefice, or ecclesiastical dignity having jurisdiction; and this conferral made to an excommunicated person, such as presentation, election, institution, confirmation, is null, and this even if the excommunication is unknown; for although ignorance can excuse from fault, it nevertheless does not supply the defect of a condition required for the validity of the act. For a benefice is given because of the office. But an excommunicated person, whether to be avoided or tolerated, is incapable of exercising office; for he cannot communicate in office. C. *Postulatis* 7; C. final, *de Cler. exc.* Hence he cannot make the fruits his own. But he is not deprived of another benefice already obtained, nor before the sentence of a judge is he bound to restore the fruits, if by himself or by another he fulfilled its burdens. For penalties requiring action on the part of

the delinquent always need the sentence of a judge, at least declaratory. L. 179-183; book 1, nn. 148-149; Schmalzgrueber, nn. 147-162; Engel, nn. 60, 61. It also deprives one of Apostolic Rescripts. An excommunicated person is incapable by the law itself of obtaining these rescripts both of grace and of justice, which consequently will be null. C. *Dilectus* 26, *de Rescriptis*; C. *Ipso iure* 1, e.t., in VI. Except unless they were granted knowingly, *motu proprio*, or after absolution from censures was prefaced, as is customary; which will also have to be understood concerning the conferral of a benefice, if in the concession there is a clause of absolution from censures. Pichler, n. 29; Coninck, dub. 9, 10; L. 180, 182; Laymann, chap. 2, nn. 7-12. Likewise the minor Rescripts of the Holy See are valid, although obtained by excommunicated persons, for the forum of conscience only. Sacred Penitentiary, September 9, 1898, A.S.S., vol. 35, p. 754; E.M.

Several, not improbably, deny that a tolerated person is incapable of obtaining benefices. Cf. Commentary, n. 103, 5.

From the constitution *Vacante Sede Apostolica*, for the effect of electing the Supreme Pontiff no Cardinal can be impeded from active or passive election by force of any excommunication, suspension, interdict, or other ecclesiastical penalty, which meanwhile all remain suspended. Sec. 29.

With those things observed which are prescribed by the constitution *Sapienti consilio*, "graces and dispensations granted by the Holy See, even to those entangled in censure, are ratified and legitimate, unless there is question of those who are excommunicated by name, or likewise by name struck by the Holy See with the penalty of suspension from divine things." Order to be observed in the Roman Curia, September 29, 1908, part 2, chap. 3.

1117. It deprives one of forensic communication, or every act pertaining to judgment, both in the ecclesiastical forum and, per se, also in the civil forum. C. *Decernimus* 8, *de Sent. exc.*, in VI. Per se: for today it has no place in the civil forum. Hence an excommunicated person cannot be judge, advocate, procurator, plaintiff, notary, witness, tutor, curator, executor of a will, etc. But one must distinguish between an excommunicated person tolerated and one to be avoided. An excommunicated tolerated person is deprived by the very fact of no forensic communication, whence he acts validly if he uses it, and also licitly if he is required. But he can be juridically repelled by exception, both by adversaries and by the judge. But an excommunicated person to be avoided acts illicitly; yet he can except, appeal, and defend himself. Besides, the sentence of a judge to be avoided is not only illicit but invalid, since he lacks jurisdiction. C. *Ad probandum* 24, *de Sent. et re iud.*; C. *Cum inter* 5, *de Except.*; C. *Pia consideratione* 1, ibid. Moreover he cannot licitly enter contracts or make a will, although he does so validly, even when he institutes an excommunicated person as heir.

1118. It deprives one of ecclesiastical jurisdiction. C. *Ad probandum* 24, *de Sent. et re iud.*; C. *Romana* 1, *de Suppl. negl. praelat.*, in VI; C. *Romana* 1, *de Offic. vicar.*, in VI; C. *Si is cui* 10, *de Off. deleg.*, in VI. But the reason is that the exercise of jurisdiction is the principal communication with the faithful. Hence an excommunicated person to be avoided would absolve, elect to benefices, etc., both illicitly and invalidly. But an excommunicated tolerated person, even a notorious one, also a heretic from a sect and a schismatic, validly exercises jurisdiction, but acts illicitly, unless either from a grave cause, or when asked, he exercises acts of jurisdiction; in which cases he is excused from mortal sin even while administering the sacraments. Illicitly; but his acts can be annulled through exception, by sentence of a judge. L. 185; Ithur., case 42; Laymann, chap. 2, n. 13; Schmalzgrueber, nn. 163-166; Pichler, l.c.; Coninck, dub. 10; Lugo, *De Iustitia et Iure*, disp. 37, n. 6 ff.

The crime of simony in the election of the Supreme Pontiff is subject to a most special excommunication; nevertheless the aforesaid simoniacal election is not invalid. Pius X.

Constitution *Vacante Sede*, December 25, 1904, secs. 51-79.

1119. It deprives one of ecclesiastical burial, namely that which is done in a sacred place destined for the burial of the faithful. Hence an excommunicated person to be avoided and one tolerated cannot be buried in a sacred place, and if they have been buried in a sacred place, they must be extracted from it. But this difference intervenes between one to be avoided and one tolerated: 1. if each, when dying, has given signs of repentance, the tolerated person can be buried in a sacred place, although it is fitting that he first be absolved from excommunication. Indeed a tolerated person, if he is occult, can certainly be buried in a sacred place; if known, he can still probably be buried in a sacred place, because if it is licit to communicate with them while living, it is also licit to communicate with them when dead, and because in practice, especially at present, several scandals are thus avoided. 2. If an excommunicated person to be avoided has been buried in a sacred place, that place is judged polluted by such contact and must be expiated; but if an excommunicated tolerated person has been buried in a sacred place, the sacred place is not judged polluted, and therefore does not need expiation. C. *Sacris* 12, *de Sepult.*; Pichler, n. 29; Coninck, dub. 8; L. 186, 187.

1120. It deprives one of civil society, which involves five things: mouth, prayer, greeting, communion, table. Therefore excommunicated persons cannot live together with other faithful, cohabit, converse, transact business, etc. This deprivation of civil association is to be understood only for those to be avoided; for tolerated persons, by today's custom, no longer sin by communicating with the faithful in civil matters, even if they have not been asked by them. Sacred Penitentiary, July 5, 1867. In civil matters: for in divine matters they can communicate only when asked. Pichler, l.c.

1121. Moreover, there are grave causes in which it is sometimes lawful to communicate even with one not tolerated. C. *Si vere* 34, *de Sent. exc.* These causes are: 1. Useful, i.e., usefulness whether spiritual or temporal, both of the excommunicated person himself and of another. 2. Law, i.e., the matrimonial bond, unless the spouses are separated by divorce; or this excommunication is because of doubt about the validity of the marriage; or also the other spouse is excommunicated because of heresy. But whether someone can communicate even in divine things with an excommunicated spouse, there is a twofold opinion. The first affirms; the second, truer, denies. 3. Humble, i.e., the state of subjection. Hence children, even emancipated and adoptive, grandchildren, great-grandchildren, and relatives by affinity in the same kind, can communicate with a parent. Likewise male and female servants can communicate with a master, if they were in service before the excommunication; religious with a prelate; soldiers with an excommunicated commander. And conversely parents, husbands, masters can communicate with excommunicated children, wives, and household servants. But this communication does not extend also to divine things, unless that communication is necessary for furnishing due service. Hence servants licitly accompany their master to Mass, and licitly, if commanded, minister to an excommunicated person celebrating, or recite the office with him, if by force of service they are bound to this. 4. Unknown matter, i.e., ignorance whether of law or of fact, both invincible and also quite probably vincible and crass. 5. Necessity, i.e., grave necessity whether of soul, of body, or of temporal goods; whether of the one communicating, or of the excommunicated person, or of others. For the laws of the Church of themselves do not oblige with grave inconvenience. C. *Responsio* 43, *de Sent. exc.*; C. *Inter alia* 31, ibid.; C. *Si vere* 35, ibid.; C.

Cum voluntate 54, ibid.; C. *Quoniam multos* 103, c. 11, q. 3; Schmalzgrueber, nn. 183-194; Pichler, n. 32; St. Thomas, Suppl., q. 23, a. 1; Engel, nn. 47-52; L. 200-206.

1122. Now *Os*, "mouth," means conversations, letters, and generally signs of benevolence, such as sending or accepting gifts, etc. But whether it is lawful to show signs of civility to an excommunicated person: the first opinion denies it, and it is probable; the second opinion, also probable, affirms it, provided that those signs, such as rising, uncovering the head, yielding place, are done so that a mark of discourtesy or the indignation of the excommunicated person may be avoided, and are not shown as signs of friendship or communication. *Orare*, "to pray," is any communication in divine things, e.g., to assist at Mass or at public offices of the church, concerning which above, or communication in private prayer. *Vale*, "greeting," comprehends all salutations shown by word or another sign for the sake of honor, unless these are done for avoiding harm and the indignation of the excommunicated person himself. Hence it is probably lawful to return the greeting of an excommunicated person; for returning a greeting is not an exhibition of honor, but rather the payment of a debt and merely an act of civility. But it seems more probable that it is not lawful to write back to an excommunicated person, according to St.

Alphonsus, who cannot acquiesce in the opposite opinion, "because writing back seems to be true communication." *Communio*, "communion," comprehends every contract, which nevertheless is valid if it is made, and every society, and therefore cohabitation and cooperation. *Mensa*, "table," comprehends banquets, yet by way of society and commerce, such as is certainly not had if by chance you fall into the same journey, lodging, table, indeed bed. L. 188-195; St. Thomas, Suppl., q. 21, a. 1; Laymann, chap. 2, nn. 16, 17; Schmalzgrueber, n. 177; Pichler, l.c., n. 31; Coninck, dub. 12.

1123. Is it grave to violate excommunication? Communication in divine things is judged mortal, unless smallness of matter, grave harm, custom, or the fact that they communicate only privately excuses. Cf. 1114, 1120. But although they sin, nevertheless neither the excommunicated person communicating with others nor others communicating with him incur any penalty, except in the cases already indicated. Cf. 1109. Communication in civil matters, contempt set aside but without just cause, is only venial. But this is understood, speaking per se and abstracting from contrary custom, which excuses tolerated persons from every sin; and therefore it still applies as regards those to be avoided. Holy Office, August 2, 1893. But whether frequently and continuously communicating in civil matters is again, speaking per se, mortal: there is a twofold probable opinion, one affirming, the other denying.

Finally communication in a criminal crime, i.e., in the same crime or contumacy because of which excommunication was imposed, is a mortal sin. It would be so, e.g., if, after excommunication imposed because of theft, someone still communicated with the excommunicated person in order to furnish counsel or help to him so that he would not restore those things. But the penalty of excommunication is incurred because of this communication in the case indicated in the constitution *Apostolicae Sedis*, Excommunications reserved simply to the Roman Pontiff, art. 17. C. *Significavit* 18, *de Sent. exc.*; St. Thomas, Suppl., q. 23, aa. 2, 3; Quodlibet 11, a. 9; L. 196-199, 207; Laymann, chap. 3, nn. 1-3; Schmalzgrueber, nn. 178-182, 195-197; Pichler, n. 31; Coninck, dub. 14.

III. On Suspension

1124. What is suspension? Suspension is a censure by which a cleric is deprived of the use of ecclesiastical power which he has by reason of order, office, or benefice. Therefore by it a cleric is not deprived of passive reception of the sacraments, nor of common suffrages, etc. Since suspension is a very grave penalty, it cannot licitly be inflicted without warning, whether by writing, and the other formalities of law. Therefore, if a prelate, either without warning first given, or with the cause not expressed, or orally, says: I suspend you, unless it has been issued by way of precept, namely by prescribing something, for instance to dismiss a maidservant within a certain time under penalty of suspension to be incurred by that very fact, it will rather be either a mere penalty or a simple prohibition of celebrating, and not a censure; for it is not presumed that the prelate wished to commit a delict by imposing a censure without previous warning, or without the cause declared, or orally. Cf. 1103. Whence one violating it would be guilty of grave disobedience, yet would not therefore become irregular. L. 317, 318. But imposed upon a community as such, it indeed holds all as regards common offices or benefices; but by no means as regards particular benefices or duties, nor as a censure, but as a privation, and as a certain canonical penalty, and as a particular incapacity of persons for those things. L. 317; Lugo, *Resp. Mor.*, book 1, disp. 18; Schmalzgrueber, n. 45.

Likewise it is not properly a censure if a Bishop, as a precaution, keeps a cleric from the exercise of the sacred ministry, not because he is guilty of crime, or already convicted of or confessed to a crime, but because it is not fitting that holy things be handled by one whom public report reports badly. Cardinal De Luca, *Opera*, tome 14, annotations to the Sacred Council of Trent, discourse 43, nn. 3, 4; Bonacina, tome 3, *de Cens.*, in part., disp. 3, q. 5, part 1; Pichler, nn. 39, 41, 42.

1125. What is suspension from informed conscience? Suspension can be imposed by the Ordinary from informed conscience, namely from causes known to him, and therefore extrajudicially, with no warning first given and with every appeal removed; nevertheless recourse to the Apostolic See will always remain free. The constant practice now is that only temporary suspension of this kind is permitted, by no means perpetual. S.C.C., April 8, 1848. But whether suspension of this kind can be imposed not only because of an occult crime, but also because of a public delict, is controverted. The affirmative opinion rests chiefly on the Council of Trent, sess. 14, chap. 1, *de Ref.*, whence it is established that the Bishop can "from any cause whatsoever, even because of an occult crime, in whatever way, even extrajudicially, forbid ascent to sacred orders to a cleric, or suspend him from his orders or grades or ecclesiastical dignities." But the denying opinion is established from the Instruction of the Sacred Congregation de Propaganda Fide, October 20, 1884, n. 7; S.C.C., April 26, 1853. This suspension is sustained, even if given orally; nevertheless it is better that it be done in writing. S.C.C., April 8, 1843; September 14, 1782. It can also be imposed by a Capitular Vicar, and in inflicting it this must be expressed, that it is done according to the faculty handed down by Trent. Since suspension of this kind is because of an occult delict, or one somehow past, or, if because of a delict which depends on the future, warning and contumacy are lacking, it does not have the nature of censure. Therefore according to some, one violating this suspension does not incur irregularity. But according to others, and more of them, he incurs it. The S.C.C. embraces this opinion, April 8, 1848; Instruction of the Sacred Congregation de Propaganda Fide cited, October 20, 1884, n. 11. Likewise if suspension is imposed for a definite time, whether one violating it incurs irregularity: some deny, others affirm.

More truly it must be affirmed from C. *Cum aeterni* 1, *de Sent. et re iud.*, in VI, if nevertheless this is because of a delict not merely past, but at least in some way future; namely if the suspension was imposed by way of precept, statute, or law because of a future crime, or also a past crime having successive continuance. For then it is now for preventing delicts, and not only for punishing past things. Therefore it then truly has the nature also of censure. L. 314; Salmanticenses, tome 10, chap. 5, n. 13; Benedict XIV, *De Synodo*, book 12, chap. 8, nn. 3-5; Bouix, *De Iudiciis*, vol. 2, Paris, 1885, p. 310 ff.; A.S.S., vol. 7; vol. 14, p. 299 ff.; E.M.

1126. How does suspension cease? Suspension imposed by way of censure ceases through absolution. But suspension imposed by way of mere spiritual penalty ceases through dispensation or remission of the superior, or also of itself without another declaration of the superior, namely when the appointed time has elapsed or the imposed condition has been fulfilled. If suspension has been imposed by way of censure, the guilty person amended asks by his right that he be absolved. But if it has been imposed by way of penalty, the guilty person can ask by no right that he be released from it, although he has already been corrected and amended. Suspension of this kind by way of penalty is suspension in perpetuity, or for a certain time, e.g., for three years, or until the guilty person has made satisfaction or restored, or at the good pleasure of the See or of the superior; in this last case suspension also ceases when the superior has died or been deposed, etc. "Although suspensions which are imposed as pure penalties ought rather to be removed by dispensation, nevertheless some doctors, observing no distinction, say that every suspension imposed because of a delict, whether in perpetuity or for a certain time, is removed by absolution; which word (of absolution) is also customarily used in the formula of relaxation.... And by the same reason the privilege granted by the Apostolic See to confessors of the Society of Jesus, that, after hearing the confessions of the faithful, they can absolve them in the forum of conscience from any sentences, censures, and ecclesiastical penalties resulting from sins, extends indistinctly to suspensions of law, as Avila signifies." Laymann, chap. 4, n. 4. Indeed in the constitution *Apostolicae Sedis*, both excommunication and suspension and interdict are comprehended under the common name of censures. L. 322.

1127. How many kinds of suspension are there? One suspension is total, by which a cleric is kept from every ecclesiastical function, and at the same time is deprived of the fruits and administration of a benefice; another is partial, by which he is deprived only of one or the other, wholly or even in part. If this is for a brief time and imposed by man, it can be inflicted for venial fault alone. L. 78, 321. One suspended from order simply is deprived of solemn exercise, or exercise by office, namely in that way in which it cannot be exercised by lay persons, of any order whatsoever, whether major or minor. Yet today lay persons also are accustomed to discharge the functions of minor orders. Hence suspension does not seem to extend as far as minor orders. Nor indeed is one suspended from order deprived of voice in chapter, nor is he prohibited from reciting the hours in choir. Likewise he is by no means deprived of jurisdiction and benefice. Hence he can also validly absolve. Yet others deny this, because it is also an act of order. One suspended from a higher order is not therefore suspended also from a lower order. One suspended from a lower order is not also suspended from a higher, unless the exercise of the higher order is contained in the exercise of the lower order. L. 314. One suspended from jurisdiction simply is deprived of all jurisdiction, both internal and external, but by no means of the exercise of order. Suspension from order holds the suspended person everywhere. Suspension from jurisdiction more truly has no force outside the territory of the one imposing it. One suspended from office simply is understood to be suspended from any office, whether it proceeds from order or

from jurisdiction. For office here is every spiritual power. Hence he is deprived of the use both of jurisdiction and of order, or of any ecclesiastical ministry; but he is by no means also held by suspension from benefice. Therefore he will still be able to receive its fruits, if nevertheless, at least through others, he fulfills the offices and burdens of the benefice. This suspension is also called suspension from divine things. C. *Medicinalis* 1, *de Sent. exc.*, in VI; C. *Inter sollicitudines* 10, *de Purg. Can.*; C. *Cum aeterni* 1, *de Sent. et re iud.*, in VI.

Hence a parish priest suspended from office can neither celebrate Mass, nor preach, nor preside over offices, nor administer sacraments. A canon suspended from divine things, from S.C. Bishops and Regulars, February 29, 1869, cannot receive choral distributions or the remaining emoluments. One suspended from benefice simply is deprived of the fruits and administration of the benefice, but by no means also of the functions of order or office. Yet he is still bound to furnish the burdens and offices of the benefice, and then he can retain the part of the fruits which he would have to give to a substitute, because it would be the stipend of labor. Finally, one suspended from office and benefice together, or simply suspended, unless some limitation is gathered from the adjuncts, is judged totally suspended. Laymann, part 3, chap. 1; L. 315, 316; Schmalzgrueber, nn. 266-269, 290-305; Engel, nn. 74-79.

1128. How does one sin who violates suspension? He sins gravely who, while suspended, exercises an act forbidden to him by the suspension; for he violates the precept of the Church in a grave matter. Indeed, one suspended from sacred order also incurs irregularity (which is incurred because of violation only of suspension from order, and not also from jurisdiction and benefice) if he knowingly and solemnly exercises the office of the same order, outside nevertheless the case of necessity or grave inconvenience. C. *Is cui* 20, *de Sent. exc.*, in VI; C. *Cum aeterni*, *de Sent. et re iud.*, in VI. Cf. also Lugo, *Resp. Mor.*, book 2, disp. 10, where he treats the question, "whether an occult suspended person can celebrate without danger of irregularity in order to feed himself and his needy mother." Lightness of matter can also excuse in this matter, both from grave sin and from irregularity, e.g., if he were to exercise a light act of jurisdiction; or were to bless the table; were to exercise sacred order not solemnly, or a non-sacred order, which nevertheless today, as has already been said, since it is also exercised by lay persons, no longer seems to be comprehended by suspension. Moreover, if a suspended tolerated person does not thrust himself into the functions by which he is prohibited through suspension, but is required by others, he in no way sins, nor does he incur irregularity. The matter stands otherwise with one suspended who is not tolerated, one denounced; for outside a most urgent cause, even if he is asked by the faithful, he cannot exercise those offices from which he is suspended. But others are not bound under mortal sin to avoid him, unless they are judged to cooperate in the act from which he is suspended; whence to hear his Mass will not be a sin, if you do not serve, scandal nevertheless being set aside.

1129. Are the acts of a suspended person valid? An act performed by a suspended person is null and void. "This penalty has place only in those things which depend on the Church, such as jurisdiction and benefice; therefore in these things a suspended person, if he administers a benefice and exercises jurisdiction, makes an invalid act, provided that he has been denounced as suspended; because, once denunciation has been made, he is deprived of every kind of power for exercising those acts. Before denunciation he is only impeded from their exercise when he is not required by the faithful; but when he is required by the faithful, he exercises those acts validly and licitly, and therefore it is

necessary that he retain jurisdiction." Schmalzgrueber, nn. 309, 306, 308; L. 313. Moreover, "one suspended from benefice, if he thrusts himself into it and receives the fruits, does not indeed become irregular, yet according to the common opinion he loses the benefice by the law itself. C. *Cupientes* 16, sec. *Ceterum*, *de Elect.*, in VI." Engel, n. 77. "Therefore, since a beneficed person thus suspended cannot administer the benefice by himself, an economus is customarily given to him, who collects the revenues and applies them by order of the Bishop to pious causes, with necessary support reserved to the suspended person." Schmalzgrueber, n. 308; Pichler, n. 43. Cf. here n. 1116 at the end.

1130. What is suspension from Pontificals? "If a Bishop suspended from Pontificals celebrates Mass solemnly in pontifical attire, it is certain that he sins.... But whether he also incurs irregularity, Angelus, etc., affirm. But Laymann, etc., more probably deny it. The reason is that a Bishop, in sacrificing, does not exercise a substantial act of the episcopal order, but an act of the priestly order, from which he is not suspended; and that the celebration is done with Pontificals holds itself per accidens. But irregularity is not incurred except in the exercise of an act of the prohibited order." L. 314.

1131. What is understood by the name of Pontificals? By the name of Pontificals is understood the authoritative use of Pontifical insignia, namely the miter, pastoral staff, and pallium. Therefore one suspended from Pontificals is consequently repelled from acts of the episcopal order which ought not to be done without the aforesaid insignia, such as conferring the sacrament of confirmation or orders, and consecrating virgins, Churches, and altars. Yet he can celebrate Mass in the manner of other priests, hear Confessions, baptize, indeed also impose censures, confer benefices, and exercise other acts of jurisdiction, since they by no means pertain to Pontificals. Laymann, chap. 1, n. 6; Giraldi, *Expos. Iur. Pontif.*, part 2, sec. 21, note 2, p. 826.

To perform sacred things in pontifical rite belongs to Bishops. But by privilege this is also granted to Protonotaries after the manner of Participants, and to other inferior Prelates, but with more moderate ornament. Pius VII, constitution *Decet Rom. Pontif.*, July 4, 1822.

1132. What are deposition and degradation? Deposition and degradation are usually placed under suspension because of the similarity which they have with it, since each is removal from ecclesiastical order, jurisdiction, and benefice, notwithstanding that the cleric had been ordained under its title or substituted in place of patrimony. Yet they differ far from it, since penalties of this kind proceed still further, and deprive not only of the use of ecclesiastical power but also of the radical right itself, insofar as this can be done, and this in perpetuity; whence they are not censures, but vindictive penalties. They deprive of radical right insofar as by deposition and degradation perpetual incapacity is had for every office and benefice, namely if the deposition is perfect, and not only from office or only from benefice. But if deposition is from office, then consequently it is also from benefice; for a benefice exists because of office. Likewise simple deprivation of benefice is not a censure, but a mere penalty. Once suspension has been removed, by the law itself the suspended person is restored to his office and benefice; but the deposed person needs a new title so that he may be newly placed in it. If deposition casts a cleric down from every office and benefice and clerical dignity, degradation is had; and it is verbal if by the mere sentence of a judge he is cast down from clerical privileges, real if a solemn rite is added by which the insignia of orders are taken away from the cleric, and, when these have been taken away, he is handed over to the secular court. Since penalties of this kind are most grave, they are not incurred before the sentence of a judge. L., book 3, n. 670; book 7, nn. 323, 327;

Suarez, *De Cens.*, disp. 13, sect. 2, n. 14; disp. 27, n. 5; Bouix, *De Parocho*, Paris, 1855, p. 365 ff.; Laymann, part 1, chap. 1, n. 3; part 3, chap. 5; Coninck, disp. 16; Schmalzgrueber, n. 7; Benedict XIV, *De Synodo*, book 9, chap. 6, n. 3 ff.; constitution *Quam grave*, August 2, 1757; C. *Degradatio* 2, *de Poenis*, in VI; Council of Trent, sess. 13, chap. 4, *de Ref.*; Roman Pontifical, form of Degradation.

IV. On Interdict

1133. What is interdict? Interdict is a censure by which the use of all divine offices, of some sacraments, and of ecclesiastical burial is prohibited, precisely insofar as it is use. Therefore interdict does not take away jurisdiction. Precisely insofar as it is the use of certain sacred things: because excommunication deprives one of the same use insofar as it is communication with the faithful; but suspension properly impedes not that use of the goods of the faithful, but the exercise of ecclesiastical power. And thus by a general interdict both clerics and lay persons are affected, and by it clerics are indeed prohibited from working sacred things, because these are prohibited in the time of interdict or in an interdicted place, but not as the exercise of sacred ministry. C. *Responso* 43, *de Sent. exc.*; C. *Permittimus* 57, ibid.; C. *Alma mater* 24, ibid., in VI; C. *Si sententia* 16, ibid.; C. *Non est* 11, *de Spons.*; C. *Cum et plantare* 3, sec. 3, *Quod si de Priv.*; C. *Episcoporum* 8, ibid., in VI; C. *Quod in te* 11, *de Poen. et rem.*; L. 328; Schmalzgrueber, nn. 340-349, 398-401; Engel, n. 91; Pichler, n. 45.

1134. What is required for the observance of interdict? In order that an interdict oblige others two things are required. The first is that the interdict has been denounced; otherwise after the Extravagant *Ad evitanda* we are bound neither to observe a local interdict nor to avoid one personally interdicted, although the person himself personally interdicted ought to abstain from divine things as soon as that censure binds, because no favor was made to those interdicted, just as to the excommunicated, by the cited Extravagant. The other is that a local interdict be commonly observed by those for whose sake it was established. For if they do not observe the interdict, the Church is judged to remit it. C. *Petistis* 20, *de Priv.*; Schmalzgrueber, n. 389; Pichler, n. 52.

1135. What is to be said about divine offices? The divine offices which cannot be performed in an interdicted place or by interdicted persons, and at which it is forbidden to be present, are those which are exercised solemnly by clerics alone in a designated place, excepting a sermon, such as the public celebration of Mass, the public celebration of the canonical hours in choir, public and solemn blessings, etc. And in a general local interdict these are prohibited on individual days, except the days of the Nativity of the Lord, Easter, Pentecost, the Assumption of the Blessed Virgin, the day and Octave of Corpus Christi; to these the feast of the Immaculate Conception must be added for all Spain. For then divine offices are permitted to be celebrated solemnly, with interdicted persons also admitted; these indeed are bound to hear Mass on those feasts, provided those who gave cause to the interdict do not approach the altar, either at the Offertory or at Communion. But on other days it is lawful for religious and all clerics, in a general local interdict, to celebrate offices, if they themselves are not interdicted, and they celebrate with doors closed, in a low voice, and without the sound of bells, with excommunicated and interdicted persons excluded, namely those who have been denounced as such, and in such a way that nothing can be heard or seen by those who are outside.

But if the interdict is general personal of the people, nothing prevents divine things from being celebrated daily in the churches, provided the conditions just related are observed. The reason is that by force of this interdict the churches are not interdicted, nor are the clerics. Finally, when the

interdict has been special local, it will only be lawful to celebrate Mass once in the week for renewing the Eucharist for the sick. Now although interdict is after the manner of excommunication, nevertheless it does not separate one from the communion of the faithful. Hence if an interdicted person celebrates Mass, we can assist at it; and if an interdicted person is present at divine offices, and when commanded to leave does not wish to do so, one need not therefore cease, unless perhaps the place itself is interdicted, because there the law does not give faculty of celebrating except with interdicted persons excluded. Nor likewise is the cemetery or church polluted by the burial of the same person. Indeed it is lawful to offer sacrifices and pour forth public prayers for him while living or after death.

C. *Responsio* 43, *de Sent. exc.*; C. *Permittimus* 57, ibid.; C. *Alma* 24, ibid., in VI; C. *Quod in te* 11, *de Poen. et rem.*; Clementine *Ex frequentibus* 1, *de Sent. exc.*; Martin V, constitution *Ineffabile sacramentum*; Eugene IV, constitution *Excellentissimum*; Sacred Consistorial Congregation, December 10, 1913; Schmalzgrueber, nn. 361-368; Laymann, part 4, chap. 2, n. 2; L. 333; Engel, nn. 83, 84, 92; Giraldi, *Expos. Iur. Pont.*, part 1, sec. 811; Pichler, nn. 50, 51.

1136. What is to be said about the sacraments? The sacraments which it is not lawful to administer or receive in an interdicted place, or by interdicted persons, are: the Eucharist, i.e., ordinary distribution of the Eucharist; Extreme Unction, outside the case of necessity, namely when another sacrament cannot be administered with certainty; sacred Order; Matrimony, namely with solemn blessing. C. *Quod in te* 11, *de Poen. et rem.*; C. *Non est* 11, *de Spons.*; C. *Responso, de Sent. exc.* By the Sacred Consistorial Congregation, December 10, 1913, the public administration of the sacraments is prohibited.

1137. Therefore 1. Baptism is lawful, and can be given even solemnly; but not by one specially interdicted, outside the case of necessity. C. *Non est* 11, *de Spons.*; Sacred Consistorial Congregation, December 13, 1913; Schmalzgrueber, n. 351.

1138.

2. Confirmation is lawful, even solemnly; but again by no means conferred by one specially interdicted, or in favor of one who has been specially interdicted, unless he first makes satisfaction, or, if he cannot, furnishes security concerning making satisfaction, or, if he can do neither, swears that he will make satisfaction when he can. C. *Responso* 43, *de Sent. exc.*; C. *Quoniam* 19, ibid., in VI; C. *Alma* 24, ibid.; C. *Clerici* 3, *de Cler. exc. min.*; C. *Latores* 4, ibid.; Schmalzgrueber, n. 352.

1139.

3. Penance is lawful, but not conferred by one specially interdicted outside the case of necessity, nor in favor of those who are specially interdicted unless they furnish satisfaction, or if they cannot, security, or if they can do neither, swear that they will make satisfaction when they can. C. *Quod in te* 11, *de Poen. et rem.*; C. *Alma* 24, *de Sent. exc.*, in VI. "Yet if it is administered by one interdicted, even specially denounced, the sacrament will more probably be valid, because interdict removes not jurisdiction but the use of divine things." Schmalzgrueber, n. 353.

1140.

4. Viaticum is lawful in danger or in the article of death, but not in favor of one specially interdicted unless he first makes satisfaction, or, if he cannot, furnishes security, or, if he cannot even do this, swears that he will make satisfaction. In this case the Most Holy Sacrament can and must be carried to the house of the sick person with the customary solemnity, with clerics accompanying, candles lit, and bells rung. Once the Sacrament has been carried, it is also lawful for the priest to show it to the people for adoration and to bless them with it; for these things are not prohibited by interdict, except in the sacrifice of Mass. But in order that the most holy Eucharist can be ministered to those existing in the article of death, it has been granted, as we have already said, to renew it once in any week by celebrating the sacrifice of Mass. C. *Quod in te* 11, *de Poen. et rem.*; C. *Permittimus* 57, *de Sent. exc.*; C. *Alma*, ibid., in VI; Sacred Consistorial Congregation, December 10, 1913; Laymann, part 4, chap. 2, n. 1; Schmalzgrueber, n. 354.

1141.

5. Extreme Unction is lawful "if the sick person can receive no other sacrament; for then extreme unction can be ministered to him from the presumed will of the Church, because it is not to be believed that the Church wishes to deny her faithful, and especially the dying, the aid of the sacraments, especially when the eternal salvation of the sick person, the sacrament not having been received, is not lightly endangered; this danger is for the greatest part tempered by the sacrament of extreme unction received." Schmalzgrueber, n. 355. "But religious," says St. Alphonsus, 334, "it is common, in the time of interdict, can receive Communion and extreme unction."

1142.

6. Order is lawful for those interdicted only generally and in a place not interdicted. The reason is that any reception and administration of the sacraments in an interdicted place, and to persons specially interdicted, is prohibited; but otherwise to those who are generally interdicted in a place not interdicted. Moreover, order is lawful if the case, which is entirely rare, should happen, "that in some province there is so great a lack of priests that the sacrament of penance and of the Eucharist could not conveniently be ministered to the sick.... The reason is that by C. *Alma* some sacraments are permitted to be administered and confected in the time of interdict; consequently, therefore, the ordination of ministers who will be necessary for this must be permitted, otherwise that concession would be useless. Confirm by parity: from the fact that in the time of interdict the ministration of baptism and confirmation is conceded, the blessing of the font and confection of chrism, without which those sacraments cannot be ministered, are also judged conceded. Therefore, since the sacrament of penance and of the Eucharist cannot be ministered without ministers either, from the concession of these the concession of the ordination of those ministers is rightly inferred." Schmalzgrueber, n. 356.

1143.

7. Matrimony is lawful. Since in law it is held that it can be contracted at any time, it is not comprehended in an interdict. Hence it can be contracted in an interdicted place and by

persons generally interdicted. "Indeed even those specially interdicted, if they are penitent and contrite, are in no way excluded from contracting it; because they are not prohibited by force of an obstacle, which is removed through repentance." Schmalzgrueber, n. 328. Yet the solemn blessing cannot then be given to the spouses. For this is contained under the divine office. Therefore just as this, so that blessing is prohibited in time of interdict. C. *Non est* 11, *de Spons.*; Sacred Consistorial Congregation, December 10, 1913; Schmalzgrueber, nn. 357-360; La Croix, n. 420; L. 334; Laymann, chap. 2, n. 1; Engel, n. 94; Pichler, n. 50.

1144. What is to be said about ecclesiastical burial? In a general local interdict, lay persons who have not been specially interdicted through their own fault, unless they are transferred to another sacred place not interdicted, from C. *Si sententia* 16, *de Sent. exc.*, in VI, must be buried in a non-sacred place, even if there is question of infants and the insane. But if they have been buried in a sacred place under interdict, they need not be exhumed, because this is not held established in law, although it is otherwise concerning the excommunicated. C. *Sacris* 12, *de Sepult.* But when the interdict ceases, all are to be replaced in a sacred place.

Clerics, if they are not interdicted by name and have observed the interdict, can be buried in a sacred place under interdict, but silently and without solemnity; indeed even in a Church interdicted by a special interdict. If the interdict is special local, no one doubts that ecclesiastical burial is prohibited to lay persons. But in a personal interdict, whether general or particular, both clerics and lay persons can be buried in a Church not interdicted if they have not been denounced. For those with whom we communicate while living, we can also communicate with when dead.

But an interdicted person denounced by name, if he dies without absolution and has given no sign of repentance, or there is no probable opinion that such a sign was given by him, must be buried outside a sacred place. But if it is established that he gave such a sign, he can, with indirect absolution from the interdict furnished, be handed over to ecclesiastical burial. C. *Quod in te* 11, *de Poen. et rem.*; C. *Episcoporum* 8, *de Priv.*, in VI; Clementine *Eos qui* 1, *de Sepult.*; Schmalzgrueber, nn. 369-378; Laymann, chap. 2, n. 3; L. 335; Engel, nn. 95-97; Salmanticenses, tome 10, chap. 6, part 6; Pichler, n. 50.

1145. What is to be said about interdict from entrance into the Church? Interdict from entrance into the Church is a certain special and partial interdict by which someone is prohibited from exercising sacred order in the Church, assisting at divine offices, and from ecclesiastical burial. Hence "it deprives only of participation in divine things in the Church..., so that one thus interdicted can neither celebrate in it, nor be buried, nor give or receive sacraments, nor exercise any sacred ministry, nor hear Mass or another divine office....

By Church is understood any temple deputed by the authority of the Bishop for sacred things to be done, whether it is blessed or not.... Therefore celebration or participation in divine things in such a Church is interdicted by this censure, not outside it.... Therefore outside the Church all other things which were otherwise lawful to such a person afterwards are lawful, such as to perform the sacred rite in an approved private oratory, to receive the sacrament of unction in his house, and any other sacraments outside the Church." Suarez, *De Cens.*, disp. 35, sec. 4. Likewise "by force of this interdict ecclesiastical burial is prohibited, even in a cemetery not contiguous..., yet one is not deprived of entrance into a cemetery even contiguous to the Church, nor of the celebration of divine offices in it."

Suarez, l.c. By force of this interdict entrance into the Church is not also prohibited for pouring forth only private prayers in it; indeed also more probably for receiving sacraments in it privately. Likewise it is not prohibited to hear a sermon in the Church. The reason is that these things are signified by no law. C. *Sacro* 48, *de Sent. exc.*; C. *Is cui* 20, ibid., in VI; Schmalzgrueber, nn. 379-388; Salmanticenses, n. 89; Engel, nn. 98-99; Bonacina, *De Interd.*, disp. 5, part 6, nn. 11-12; Coninck, disp. 17, dub. 2.

1146. How many kinds of interdict are there? One interdict is local, which immediately affects a place; another personal, which immediately affects persons; another mixed, which immediately affects place and person. But any one of these can be general or particular, according as it affects some whole region or community, or some determinate place, e.g., a given oratory, or some person in particular. A special personal interdict is a true censure; and local interdict and general personal interdict are not censures, but a certain privation, and therefore oblige all, even the innocent. For it can be imposed because of a very grave delict of the head or of the principal members, although the rest are free from fault. But it cannot be removed except by one having jurisdiction in the external forum. For a place and a community are not subject to the penitential forum. The same must be said for the same reason about suspension imposed on a community. When a city is interdicted, the suburbs, the cathedral church, and the exempt churches of regulars are also interdicted; and all are bound to observe it, even the Bishop who imposed it, with the one exception of the Pontiff. But it is lawful in this case to go elsewhere in order to assist at divine offices. Indeed religious, when an interdict is observed by the cathedral or mother, or parish, church, are bound to observe it, even if it is null from any head whatsoever. But if the interdict is general personal, these are excepted: 1. Bishops, who are also exempt from general suspension; 2. innocent persons, if they establish domicile elsewhere; 3. outsiders; 4. infants and the insane, incapable of malice, who nevertheless are still deprived of ecclesiastical burial. But all who gave cause to any local or personal general interdict remain interdicted by the law itself from the Decretals. But after the constitution *Apostolicae Sedis* this interdict, which is special personal, no longer has force. Moreover, when the people is interdicted, those who are not part of the people are not understood as interdicted, such as clerics, students, pilgrims. When the clergy is interdicted, lay persons are not interdicted, nor religious, indeed neither are other clerics who have no office or benefice there, for these do not constitute one body with the clergy. C. *Praesenti* 10, *de Sent. exc.*, in VI; C. *Si sententia* 19, ibid.; C. *Si civitas* 17, ibid.; C. *Alma mater* 24, ibid.; C. *Auctoritate* 4, *de Priv.*, in VI; C. *Licet* 11; Clementine *Ex frequentibus* 1, *de Sent. exc.*; Schmalzgrueber, nn. 324-333; L. 311, 322, 329-334, 338; Laymann, chaps. 1, 4; Engel, nn. 83-88; Suarez, disp. 33, sec. 1, n. 6; Bonacina, disp. 4, q. 1, part 1; disp. 2, q. 8, part 14; Pichler, n. 48; Coninck, dub. 1.

1147. What is to be said about violation of interdict?

Both clerics and lay persons violating an interdict, whether personal or local, whether general or special, sin gravely when there is question of a grave matter. Moreover, those who command or compel the ecclesiastical burial of a man interdicted by name incur excommunication reserved to no one. Constitution *Apostolicae Sedis*, Excommunications reserved to no one, par. 1. If clerics specially interdicted exercise sacred order, or knowingly celebrate in a place placed under interdict, they incur irregularity. Moreover, clerics violating an interdict incur suspension and interdict in the cases designated in the constitution *Apostolicae Sedis*, par. 6 of Suspensions and par. 2 of Interdicts. The

same clerics violating an interdict do not enjoy the privilege by force of which they can be buried in a sacred place in time of interdict. A cleric or religious, even a nun, violating a local interdict is rendered incapable of both active and passive election. This penalty is extended by most doctors also to violators of a personal interdict. C. *Cum medicinalis* 1, *de Sent. exc.*, in VI; C. *Is qui* 18, sec. *Is vero*; C. *Is cui* 20, ibid.; Clementine *Gravis* 2, e.t.; C. *Quod in te* 91, *de Poen. et rem.*; Council of Trent, sess. 25, chap. 12, *de Reg.*; Schmalzgrueber, nn. 390-397; Laymann, chap. 3; Coninck, dub. 3, 3; L. 336.

The city of Adria with its suburb was subjected to a general, local, and personal interdict by Decree of the Sacred Consistorial Congregation, September 30, 1909, which explained it thus: "By such censure there is prohibited in the churches of Adria and of Tomba: 1. the celebration of Holy Mass with all the other sacred functions; 2. the ringing of bells; 3. the public administration of the Sacraments; and 4. solemn funerals. Only these are permitted: 1. the administration of Baptism to children, and of the other Sacraments with the Most Holy Viaticum to the sick; 2. the private celebration of marriages; 3. one single Mass per week for the renewal of the Most Holy Eucharist. "It is then warned that, if violators of the interdict sin gravely, priests would incur irregularity. "Then by order of His Holiness, on Sunday, October 10, in all the other parishes of the diocese, public prayers of penance are to be made to implore the divine mercies upon the guilty." A.A.S., vol. 5, p. 517.

1148. What is cessation from divine things? Cessation from divine things is usually placed under interdict. It is not a censure, nor properly a penalty, but a mere prohibition and privation. For it is a prohibition made primarily to clerics, that they abstain from the sacrifice of Mass, the administration of the sacraments, and from divine offices to be celebrated in some sacred place. It is imposed because of a notorious and most grave delict perpetrated in the Church itself, if the guilty person has not wished to make satisfaction, as a sign of the Church's grief, for repairing the injury inflicted on the Church.

Since it is akin to a local interdict, the sacraments and several other things which are lawful in an interdict of this kind are also lawful in this cessation from divine things; yet those violating it incur no irregularity. But since ecclesiastical burial is prohibited by no law in the time of cessation from divine things, it is not to be asserted. Therefore not only clerics but also lay persons can be buried in a cemetery and church; yet without the solemnity of divine offices. It can be imposed by the same persons who can impose censures. The cause because of which it is imposed must be expressed in a public instrument through a notary, or in other patent letters furnished with an authentic seal, which must be handed over to him against whom the cessation is indicated.

Moreover, the delinquent must first be warned whether he wishes to furnish satisfaction and amendment, because it is not indicated except into contumacy. Since the matter is most grave, it obliges under grave obligation, and even exempt religious are bound to observe it. Clementine *Ex frequentibus* 1, *de Sent. exc.*; C. *Dilectis* 55, *de Appell.*; C. *Irrefragabili* 13, *de Off. ord.*; C. *Si canonici* 2, ibid., in VI; C. *Quamvis* 8, ibid.; C. *Non est vobis* 11, *de Spons.*; Schmalzgrueber, nn. 402-425; Pichler, n. 54; Engel, nn. 101, 102; Laymann, part 4, chap. 6; L. 340; Coninck, dub. 7.

V. On Ecclesiastical Burial

1149. What is ecclesiastical burial? Ecclesiastical burial, concerning which in the preceding paragraph it has often been said, consists of two things: a sacred or blessed place, which by the

Bishop or by use has been assigned for burying the faithful piously dying in Christ, and a sacred rite in carrying out and burying the dead person. It is tolerated that the bodies of the faithful be carried by carriage to the church and cemetery, and then also the parish priest and clergy, vested in sacred vestments and with the cross raised, can conduct the funeral. Sacred Congregation of Rites, March 5, 1870, n. 3212. Before the corpse is carried to the cemetery, it must be borne into the church, so that there it may at least receive absolution, and, insofar as this can be done, Mass may be celebrated for him with the body of the deceased present. Therefore the Mass can be postponed to another day. Nor indeed is there an obligation concerning it. Roman Ritual, *de Exsequiis*, *de Bened. Coem.*; C. *Ad haec* 4, *de Relig. dom.*; Suarez, disp. 12, sec. 4, n. 6; Salmanticenses, tract 10, chap. 3, n. 75. When a new cemetery is blessed, some outer part must be left without blessing for burying infants not baptized and others to whom ecclesiastical burial is denied. Nor indeed is it necessary that that part be separated by a wall, provided that it can be distinguished from the other. But if, because of civil law, all are to be buried indiscriminately in the cemetery, then the blessing of the cemetery must be omitted; but on each occasion on which a Catholic is to be buried, the place in which his body is to be deposited must be blessed as in the Ritual. E.M.

1150. What is to be said about the choice of burial? All can choose burial where they prefer, although outside their parish church or cemetery, provided they do not choose the churches of nuns, and choose a religious place, or at least one not profane, such as a private oratory, and the place has the right of burial. But these are excepted: 1. regulars, unless they die so far removed from their own monasteries that they cannot conveniently be carried to them; 2. those not yet pubescent, for whom the father can choose burial, or the mother, if he is dead. One who dies with no burial chosen for himself is to be buried in the tomb of his ancestors, namely the family tomb (which someone established for himself and his family), or the hereditary tomb (which he established for himself and his heirs). But otherwise someone is to be buried in that parish in which he died, if in it he had domicile or quasi-domicile. And if he died outside these places, he must be carried to the place of domicile or quasi-domicile; but if this is so remote that he cannot conveniently be carried there, he will be buried either in the cathedral church, if one exists there, or in the church of that parish in which he finished his day.

For acquiring the right of burial for oneself and one's family or heirs, with others excluded, the license of the Ordinary of the place is required, or of Regulars who can grant it from privilege for their churches, chapels, and cemeteries. Pirhing, book 3, title 28, sec. 3, n. 24.

By special law Bishops are to be buried in the cathedral church if they do not choose another place for themselves; a wife will be buried in the tomb of her last husband if she does not choose her own burial; but a husband, if he dies first without burial chosen, in that which the wife has chosen; exposed infants in the tomb of the hospital by which they were nourished; clerics in that church in which, when dying, they possessed a residential benefice; regulars in the church of their order, although they died outside the monastery, if they can conveniently be carried to it, and therefore all who enjoy the law of regulars, namely novices, servants, tertiaries, and female tertiaries who live perpetually in a monastery. But those who live apart can be buried in the church of the order whose habit they had assumed, if in these there exists their common burial and they have not died having chosen another; otherwise they are to be buried in the parish church. Women who, with license of the Apostolic See, had entered a monastery with the intention of remaining there perpetually are to

be buried there; not likewise girls who were staying in the monastery for the sake of education, who are to be buried in the parish where the monastery is. C. 1, 3, 5, 6, 7, 10, h.t.; C. 1-5, e.t., in VI; Clementine 2, e.t.; S.C. Bishops and Regulars, June 8, 1731; May 6, 1870; April 5, 1878; A.S.S., vol. 5, p. 568; vol. 11, p. 352; Ferraris, h.v., n. 102; v. *Moniales*, art. 1, nn. 61, 62, 63; Schmalzgrueber, book 3, title 28, nn. 1-38, 72-82; Giraldi, *Animadvers. ad Barbosa de Off. et Potest. parochi*, part 3, chap. 26, n. 25; E.M.

1151. What is to be said about the right of carrying out and conducting the funeral? "The rite of the Church commands that the bodies of the faithful, however they are carried (even by carriage), whether to the church or to the cemetery, always be accompanied by a priest." Sacred Congregation of Rites, July 15, 1876, Santander. The right of carrying out the dead and conducting the funeral to the church, as today they call the exposing church, as regards seculars, regularly belongs to the parish priest alone, namely the proper parish priest of each one by reason of domicile or quasi-domicile, if someone has died in his own parish and is buried in it; or if, although he died in his own parish, he is to be buried in another, although the church is of regulars; or, if he died in another parish and is to be buried in his own. To the church: for from this to the cemetery, without pomp and by a direct route, it belongs to those to whom, if cemeteries did not exist, the right of burying would belong. Cf. Decree on funerals of the Sacred Congregation of Rites, April 23, 1895, n. 3854. The canons of the Cathedral Church furnish these things to a Bishop; the prelate to regulars; the ordinary chaplain of the monastery, or confessor, to nuns, although the cemetery is outside their church and one must pass through the parish, "provided that the body is carried with stole and cross, but without pomp and by a direct route to the cemetery." S.C.C., February 24, 1872; August 12, 1872. Yet "dispersed Religious as regards funerals are subject to the parish priest of the place just as the other parishioners." S.C. Bishops and Regulars, February 26, 1864; A.S.S., vol. 1, p. 168. Roman Ritual, *de Exseq.*; S.C.C., August 21, 1869; A.S.S. cited, vol. 5, pp. 126, 221, 611; S.C. Bishops and Regulars, March 21, 1884; A.S.S. cited, vol. 16, p. 551; Ferraris, v. *Parochus*, art. 3; Benedict XIV, Notification 33, n. 16; Notification 105, n. 33 ff.; E.M.

Therefore, if the deceased is to be entombed or exposed outside his own parish, it belongs to the parish priest to carry the stole, to raise the body from the house, and to conduct the funeral up to the door of the entombing or exposing church, whether this is secular or regular. Regulars in whose church the deceased is to be entombed or exposed can go together with the parish priest from the parish church to the house of the deceased and, when the body has been raised by the parish priest, accompany it to their own entombing church; or they can wait at the door of their own church without going to the association of the funeral. A single Cross is to be carried in funerals, and it is that of the entombing or exposing church, under which the parish priest himself is bound to walk, if it belongs to regulars and the regulars accompany the funeral together with the parish priest. If the Chapter of the Cathedral or Collegiate church is present, it belongs privatively to it to raise the cross. Sacred Congregation of Rites, April 23, 1895, A.S.S., vol. 36, p. 421 ff.

Regulars can accompany and conduct the deceased, but by a direct route, from their own church in which he is exposed to the cemetery without the intervention of the parish priest. S.C. Bishops and Regulars, May 5, 1905, A.S.S., vol. 38, p. 207.

S.C.C., August 27, 1904, resolved: As regards strangers deceased elsewhere, who chose burial in the cemetery of some place, with no church designated by the deceased himself in which the solemn rites

of the funeral are to be fulfilled, the right of conducting the funeral and burying belongs to the parish priest of the cathedral or to the principal church of the place, with customs and particular constitutions preserved. As regards pilgrims who are staying perfunctorily in a city and die there without choosing burial, while they cannot be transferred to the place of their domicile, the right of conducting the funeral and burying belongs to the parish priest of the place in which the pilgrim completed his life, with customs and particular constitutions preserved. A.S.S., vol. 37, p. 462 ff.

Since a family tomb is not judged canonically erected unless the license of the Ordinary is added, hence tombs which in modern cemeteries have been instituted by civil authority alone, without the intervention of ecclesiastical authority, can in no way be said to have been founded in the sense of canon law. Therefore the right of conducting the funeral and receiving the emoluments of the funeral of that deceased person who is to be buried in a canonically erected tomb belongs to the entombing parish priest, the funeral fourth being reserved to the parish priest of domicile.

Conversely, if there is question of a tomb not canonically erected, the right of conducting the funeral of the aforesaid deceased person and of receiving all emoluments from it pertains to the parish priest of domicile; although in the case the parish priest of burial can, from the will of the deceased or of the parents, perform another funeral and receive its emoluments. From S.C.C., June 17, 1905, A.S.S., vol. 38, p. 230.

1152. In which church is the funeral to be performed? The funeral rites are to be performed in that church in which the deceased commanded; and if he commanded nothing, since they are part of ecclesiastical burial, in that church in which he is buried, or would be buried, if there are common public cemeteries there. But if a church of this kind is the parish church, the heirs cannot require that the exposition of the body and the funeral rites be done elsewhere; but if it is not the parish church, the parish priest likewise cannot require that they be done in the parish church. Nor indeed is it then lawful for the parish priest to perform the rites in another's church, Sacred Congregation of Rites, April 23, 1895, unless there is question of a public oratory of Confraternities, when the one to be entombed is a subject of the parish priest within whose parish boundaries the oratory is located. Sacred Congregation of Rites, July 7, 1877, n. 3423; S.C.C., March 24, 1821, A.S.S., vol. 5, p. 566.

It is lawful in another's church, even of Regulars, to sing a Mass of Requiem after the funeral rites have been fulfilled in the parish church, even if the exequial Mass was not celebrated in the parish church. Sacred Congregation of Rites, May 1879, n. 3494. From the Roman Ritual, Mass is not a necessary part of a funeral, and therefore it can be omitted. Thus also from the Sacred Congregation of Rites, May 13, 1879, n. 3474.

Regulars can celebrate exequies on the third, seventh, and thirtieth day. For parish priests cannot claim anything except the funeral right when burial is chosen elsewhere. Sacred Congregation of Rites, July 26, 1637, n. 643. Likewise Regulars can celebrate Masses of Requiem on anniversary days. Sacred Congregation of Rites, January 24, 1902.

The use can be tolerated of covering with branches and flowers the tombs which are erected in churches on the occasion of funerals. Sacred Congregation of Rites, June 16, 1893, Goana, ad 6; E.M.

1153. What is to be said about funeral emoluments? Funeral emoluments go to the church in which someone is buried or exposed, if he is buried in public cemeteries. From these, if the aforesaid church is not the parish church, some portion is owed to the parish priest in compensation for the work

which he sustains in administering the sacraments to his parishioners; this, because it has been established by Canon Law, is called canonical. But it is a fourth by common law, unless something else has been introduced by the custom of the place or by privilege. It is owed to the parish priest of domicile or quasi-domicile; and if someone has been laid in another church, it must be deducted by the burying or exposing church, unless a contrary custom or privilege is present. Council of Trent, sess. 25, chap. 13, *de Ref.*; St. Pius V, constitution *Etsi Mendicantium*, May 16, 1567, sec. 11; Paul V, Brief *Decet Romanum Pontificem*, IV Kalends of May, 1725; S.C. Bishops and Regulars, April 19, 1790; August 18, 1843; S.C.C., November 26, 1864, A.S.S., vol. 1, p. 86; S.C.C., February 16, 1867, A.S.S., vol. 3, p. 305; vol. 5, p. 209 ff.; vol. 9, p. 27; vol. 15, p. 553 ff.; vol. 11, p. 381; C. 1, 4, 8, 9, 10, h.t.; C. 2, e.t., in VI; Clementine 2, e.t.; Schmalzgrueber, l.c., nn. 83-93; Ferraris, v. *Quarta Funeralis*.

The celebration of funerals and the receipt of emoluments in families of mixed rite, Latin and Ruthenian, in the Canadian region and in the United States of North America, pertain to the parish priest of that rite to which the deceased belonged. Sacred Congregation de Propaganda Fide, August 8, 1913, art. 32; August 17, 1914, art. 26.

1154. What is the funeral fourth? The funeral fourth is that portion of emoluments to be paid to the parish priest when someone is buried outside his own parish. The aforesaid portion is determined by diocesan statutes or by custom. It is deducted only from those emoluments which come to the entombing church on the occasion of the funeral, from the candles and wax candles offered, but by no means from legacies for Masses. "The funeral fourth, or canonical portion, is owed from all things which come by reason of the funeral, namely on the day of the funeral." Barbosa, *De Parocho*, part 3, chap. 25, n. 36. Benedict XIII, constitution *Romanus Pontifex*, April 28, 1725, sec. 4, issued for Italy and the adjacent islands, established: "That... to the parish priests of the deceased who will be entombed in the churches of any regulars whatsoever, there be paid and actually handed over the fourth part of all torches and candles by which the body of the deceased will be accompanied on the journey to the entombing church, and also of all torches and candles which will be lit in the same church around the body, or also on the altars on the day of the funeral. Yet from the aforesaid funeral fourth are to be understood as excepted, and are excepted, the candles which priests, even regulars, or the confreres of pious sodalities accompanying the funeral will manually carry lit along the way.

But if the funeral is not done on the day of entombment, but is deferred to a different day or to another longer time, nevertheless to the parish priest there is to be assigned the fourth part of all torches and candles which on the very day of the funeral performed will have been lit in the church where the deceased was buried, around the cenotaph or honorary tomb, and also on the altars of the same church.... Under the aforesaid funeral fourth we do not intend legacies of Masses and anniversaries to be comprehended; indeed we expressly except from it these and similar pious things left in favor of the entombing or exposing church as disposed by the deceased," etc. It must be added that "a fourth is also owed to the parish priest from funerals performed in second place." S.C.C., August 3, 1621. Barbosa, l.c.; Ferraris, v. *Quarta funeralis*; A.S.S., vol. 5, p. 598 ff.

1155. Are rights changed by the constitution of a public cemetery? By the constitution of a public cemetery only the material place of burial is changed; but the rights of churches and of the faithful as regards burial and funerals are by no means changed. Likewise by the illegitimate suppression of regulars their ecclesiastical rights cannot be suppressed; nor do the same rights cease if regular families in some way persist and live together, although before civil law they are not recognized as

ecclesiastical institutes; for in that case the subject of those rights still persists. S.C.C., November 26, 1814; February 16, 1867; September 16, 1871; February 24, 1872; A.S.S., vol. 1, pp. 87, 124, 239; vol. 5, p. 569; vol. 13, p. 419; vol. 20, p. 587.

1156. Who are to be deprived of ecclesiastical burial? Burial is part of ecclesiastical communion, and therefore "no Christian who has died in the communion of the faithful ought to be buried outside a church or cemetery duly blessed." Roman Ritual, *de Exsequiis*. But those to whom it is not lawful to give ecclesiastical burial you have in the Roman Ritual, ibid.; E.M.

1157. What is to be said about suicides and duellists? As regards suicides, the Holy Office, May 16, 1866, has these things: "When it is certainly established either concerning anger or despair, ecclesiastical burial must be denied and the pomps and solemnities of exequies must be avoided; but when insanity is certainly established, ecclesiastical burial is given with the solemnities of exequies; yet when doubt remains whether someone gave death to himself through despair or through insanity, ecclesiastical burial can be given, with the pomps and solemnities of exequies nevertheless avoided."

Duellists, according to Benedict XIV, constitution *Detestabilem*, sec. 9, are deprived of ecclesiastical burial, although they have been absolved, and even before the sentence of a judge, whether they die in the place of the duel or afterwards outside that place. But duellists do not incur the penalties of duellists because of an unexpected encounter, although those fighting, from the same impulse of quarrel, have gone equally to some suitable place. S.C.C., October 5, 1744; E.M.

1158. What is to be said about sectarians and heretics? To sectarians, if they are notorious, "neither sacraments, nor exequies, nor ecclesiastical burial can be granted, unless, after due retraction has been emitted, they have been reconciled to God and the Church through absolution. But if sometimes the same persons, prevented by death, could not duly emit retraction, yet before death gave signs of repentance and devotion, then ecclesiastical burial can be granted to them, with ecclesiastical pomps and solemnities of exequies nevertheless forbidden." Sacred Congregation de Propaganda Fide, May 10, 1898.

Likewise heretics to whom ecclesiastical burial must be denied are not occult heretics, but public and manifest ones, although not yet declared by the Church. This is established from the constitution of Martin V *Inter cunctas*, and the Response approved by Urban VIII, Holy Office, November 6, 1641, and also from the constitution *Apostolicae Sedis*, art. 1 of Excommunications reserved to no one. E.M.

1159. What is to be said about notorious excommunicated persons and about those whose bodies are subjected to cremation? If a notorious excommunicated person dies before he is reconciled to the Church, but before his death has given signs of repentance, "when the signs of repentance have been made known, ecclesiastical burial can be given, with ecclesiastical pomps and solemnities of exequies nevertheless forbidden. But if in some case extraordinary circumstances concur, the parish priest should consult the Ordinary and stand by his mandates." Holy Office, July 6, 1898.

Ecclesiastical burial must be denied to those who by their own will chose cremation, and who certainly and notoriously persevered in this will up to death. It is otherwise if cremation occurs by the will of others. Holy Office, December 15, 1886; E.M.

Cremation of bodies is illicit. Therefore it is illicit to command it, to cooperate formally in it, and to give one's name to societies which promote it. To those who commanded it, it is lawful neither to

administer the sacraments nor to give ecclesiastical burial. But if their bodies are cremated by another's will, the rites of the Church can be used both at home and in church, but not as far as the place of cremation, scandal being removed.

1160. What is to be said about public sinners? Ecclesiastical burial is not to be denied to the guilty who are punished with death, if they have given signs of repentance; but they are to be buried without solemnity. The same must be said of prostitutes who die in a public brothel, and who have satisfied public scandal and have confessed their sins. Ecclesiastical burial can be given to them, with the pomps and solemnities of exequies nevertheless avoided, Holy Office, September 19, 1877. Nor is it to be denied to actors and comedians, provided they have not refused the sacraments; for this is prohibited by no law. Those who have not satisfied the precept of Easter Communion or annual confession today are not deprived of ecclesiastical burial, unless after an edict proposed, which is no longer customarily proposed, and after the Ordinary has been consulted.

Likewise it is not to be denied to impenitent sinners if the priest alone was witness of impenitence of this kind, in order to avoid scandals. Hence the priest, doubtful about the dispositions of the dying person, should speak to him without witnesses and induce him to confession, provided public scandal is not to be repaired. E.M.

1161. What is to be done in a case of doubt? "Where doubt occurs, the Ordinary should be consulted." Ritual, l.c.; Holy Office, May 16, 1866, etc. If recourse cannot be had to him, the principle holds: in doubt, odious things are to be restricted; nor indeed, because of the grave inconveniences which could arise from it, is burial to be denied to anyone unless it is certain that this obligation exists. La Croix, book 7, nn. 254-256. "Moreover," says St. Alphonsus, *de Priv.*, n. 91, "no one is to be deprived of burial in any case without the sentence of the Bishop, or of the superior, if the body is that of a religious." Since there is question of positive law, which does not oblige with grave inconvenience, in such a case it is lawful to carry out the dead person with Catholic rite and to pay the solemn funeral rites to him, provided that these are not extorted in contempt of the Church, and provided that the deceased is not carried out with Masonic signs placed on the bier or on banners. The Holy Office, July 13, 1609, judged that the burial of heretics is to be tolerated if it cannot be resisted without scandal. And the Sacred Penitentiary, December 10, 1860, concerning those notoriously excommunicated says, "care must be taken that all things be done according to the norm of the sacred canons; but insofar as this cannot be obtained without danger of disturbances and scandal, the parish priest should in no way concur in the burial either by himself or through other priests," i.e., he should conduct himself passively. E.M.

Masonic or anti-Catholic banners can in no way be admitted in funerals and in churches. Indeed in churches only blessed banners are to be admitted, unless otherwise disturbances and dangers are feared. Sacred Congregation of Rites, July 14, 1887, ad 1, n. 3679; Sacred Penitentiary, April 3, 1887; Holy Office, April 4, 1887.

On the Constitution Apostolicae Sedis

1162. What censures are in force at present? These things are in the constitution *Apostolicae Sedis* of Pius IX on Censures: By Our own motion, certain knowledge, mature deliberation, and from the fullness of Our Apostolic power, by this Constitution to remain in force perpetually, We decree that from any censures whatsoever, whether of excommunication, suspension, or interdict, which by way of *latae sententiae* and to be incurred by the very fact have hitherto been imposed, only those which We insert in this very Constitution, and in the way in which We insert them, shall henceforth have force; at the same time declaring that these same censures must receive their force entirely not only from the authority of the old canons, insofar as they agree with this Our Constitution, but also from this very Constitution of Ours, no differently than if they had first been issued by it. By force of the present Constitution, only those *latae sententiae* censures now have force by common law which either are expressly contained in it, or have already accrued to it after its promulgation, or will afterwards accrue. But all those censures which are clearly and certainly contained in the same Constitution, even if they could previously have been said to be obsolete, or to have gone into desuetude, or to be universally ignored, now admit no such exception, and obtain full force of obliging. Holy Office, June 15, 1870. In the following numbers we will explain them step by step, declaring the text itself of the praised Constitution. E.M.

1163. We declare subject to excommunication *latae sententiae* reserved in a special manner to the Roman Pontiff:

In a special manner. The following excommunications are said to be reserved in a special manner for four reasons. The first is because for them "a general concession of absolving from cases and censures, or excommunications, reserved to the Roman Pontiff in no way suffices." Paragraph *A quibus*. But here it must be noted that even if someone has a special faculty of absolving from these cases reserved in a special manner to the Apostolic See, for this reason the faculty is not also judged conceded for the case of absolution of an accomplice, which needs most special mention. Holy Office, June 17, 1866; April 4, 1871. But in that special faculty is contained absolving heresy, since it has not now been excepted most specially as before. Giraldi, *Exp. Iur. Pont.*, tome 2, part 1, title 7, sec. 809. The second is because they are also excluded from the faculty of absolving granted to Bishops by the Council of Trent, sess. 24, chap. 6, *de Ref.*, although the same faculty, namely of absolving from all occult censures, even those reserved to the Pope, remains firm in any other censures reserved to the Apostolic See by this same Constitution. Paragraph *Firmam tamen*. The third is because "those presuming to absolve without due faculty, even under any pretext whatsoever, are bound by the bond of excommunication reserved to the Roman Pontiff, provided there is not question of the article of death." Paragraph *A quibus*. The fourth is because those absolved in the article of death by one not having power, if they recover, are held by the special obligation of standing by the mandates of the Church. Cf. 799.

1164. I. All apostates from the Christian faith, and all and each heretics, by whatever name they are reckoned, and of whatever sect they exist, and those believing them; and their receivers, favorers, and generally any defenders of them.

Apostates are those who, utterly defecting from the Christian religion, pass over to the Mohammedan sect or another, or even to none. But understand an apostate not only by exterior work or sign, but also in soul. For he is called an apostate from the Christian faith. But one who is only externally an apostate is an apostate not from faith, but from confession of faith. Moreover the discussion is of apostasy from the Christian faith, not only inwardly conceived, but also outwardly solemnly professed in baptism.

Heretics. In order that this excommunication, imposed precisely because of heresy, be incurred, it is required, 1. that the heresy be formal, i.e., with error of the intellect and pertinacity of will. But he is called pertinacious who adheres to his opinion notwithstanding that he knows it to be opposed to the doctrine of the Roman Church sufficiently proposed to him; or who is so disposed in soul that, even if that doctrine should be sufficiently proposed to him, nevertheless he would not wish to be moved from his opinion. The reason for this last member of the disjunction is that any ignorance, even crass and affected, according to the truer and more common opinion excuses from heresy and the penalties of heretics. For someone can very well have the will of believing all things which are sufficiently proposed to him as revealed by God and as dogmas of the Church, although he does not have the will of applying diligence so that he may know what things have been revealed by God and what defined by the Church. Hence although he sins gravely against faith, nevertheless he is not formally an infidel and heretic, but a faithful and Catholic person believing all things which have been revealed by God and defined by the Church, and which are sufficiently proposed to him. De Lugo, *De Fide*, disp. 20, sec. 6; L. 301. It is required, 2. that the heresy of the mind be betrayed exteriorly by an external sign manifestative of internal error, from itself or from the circumstances, with a gravely culpable manifestation, although the matter becomes known to no one. L. 303-305. Hence these do not incur excommunication: 1. a merely mental heretic, or one who abstains from hearing Mass; 2. one who manifests his heresy in order to seek counsel. But a positive doubt outwardly betrayed by no means excuses, because one doubting thus judges that the truth proposed by the Church can be false. L. 302. Cf. Struggl, tract 4, q. 2, n. 12; Lugo, *De Fide*, disp. 20, n. 17. It is required, 3. that the heresy has not been brought to the judicial forum of the Bishop. For Bishops by themselves or by a delegate can absolve in each forum from any heresy, if it has once been brought to their judicial forum. L., appendix *de Priv.*, n. 39; Benedict XIV, *De Synodo*, book 9, chap. 4. But the Constitution of Pius IX does not seem to derogate from this faculty of Bishops. Therefore Bishops have no faculty of absolving only from heresy, whether occult or notorious, which has not yet been brought to their forum. Hence all Protestants who wished to abjure their heresy, and consequently to bring it to the external forum, need not have recourse to Rome, but can be absolved by the Bishop, both for the external and for the internal forum, either by himself or by a delegate.

By whatever name they are reckoned, namely by some peculiar name of heretics. Of whatever sect they exist, "even if they do not adhere to heresy in soul, they enroll themselves even only by name in a sect, whatever name it may have, heretical or schismatical, from whatever cause this is done," according to the Declaration of the Holy Office. Diocesan Synod of Albano, year 1886, part 1, art. 6, n. 2.

Those believing, namely those truly believing heretics, whether explicitly or implicitly; those believing either in particular some false dogma of heretics, although they do not adhere to them in all things, nor are called by a particular name, e.g., Calvinists, Lutherans, etc., nor are judged enrolled in

some particular sect, e.g., the Reformed Church, etc.; or those believing only generally that heretics have the true faith and religion, although they believe nothing distinctly and in particular against faith; those believing them when they say that the Catholic religion is false.

Receivers: to receive is to furnish refuge for the sake of hiding in one's own or another's place. Therefore receivers are those who receive by hospitality or conceal, even once, a heretic so that he may escape the penalties of his heresy. Favorers: to favor generally is to furnish any work to someone for his advantage and usefulness, whether by doing something, e.g., by recommending, by giving money, or by omitting what someone by office ought to have done. Therefore favorers are those who in the cause of faith favor heretics, either negatively, namely by omitting, when they can and are bound by office, to capture, guard, or punish a heretic; or positively, by helping him, as such, with praises, recommendations, money, etc., e.g., so that he may flee, etc. Hence the Holy Office, May 11, 1892, declared that excommunication is contracted by those who enter marriage before a heretical or schismatic minister assigned to sacred things. Defenders: to defend is to protect someone, so that he can do something safely and freely, or to protect something against contrary attacks. Therefore defenders of errors or of the person are those who defend their errors by words, writings, etc., although inwardly they think otherwise, or who prevent them from being captured or punished because of heresy.

Therefore these words, receivers, favorers, defenders of heretics, must be understood formally of those who favor heretics insofar as they are heretics, namely either because they profess such doctrine, or also in order to teach, defend, or do something of this kind concerning that heresy. The reason is that penalty must be understood strictly, according to the subject matter. Besides, receivers, favorers, defenders: understand reception, favor, defense as completed. And so, if you have received, defended, and favored a heretic lest he be captured, yet he was captured, you have not incurred the excommunication imposed on receivers, favorers, and defenders of heretics. Bull *In Coena Domini*, sec. 1; C. *Sicut ait* 8; C. *Excommunicamus* 13, 15, *de Haereticis*; Suarez, disp. 21, sec. 2, first excommunication; Bonacina, *De Censur. in partic.*, disp. 1, q. 2, parts 1, 2, 3; L. 300 ff.; Ferraris, v. *Haeresis*, *Haereticus*; Schmalzgrueber, book 5, title 7; St. Thomas, II-II, qq. 10-12; Quodlibet 10, aa. 15, 16; E.M.

Public abjuration of heretics who desire to return to the faith is not necessary, but their abjuration can be made before someone delegated by the Bishop as notary, and some persons as witnesses. But they must abstain altogether from communication in spiritual things with heretics, and from every thing protestative of heresy. Holy Office, March 28, 1900; *Monitor Ecclesiasticus*, vol. 12, pp. 49-50.

1165. II. All and each persons knowingly reading without authority of the Apostolic See books of the same apostates and heretics defending heresy, and also books of any author prohibited by name through Apostolic letters; and those retaining, printing, and in any way defending the same books.

Knowingly: this clause placed at the beginning affects, in the obvious and natural sense, not only those reading, but also those retaining, printing, and defending. Therefore ignorance, whether of fact or of law, even crass, and not improbably also affected, excuses from this censure. L. 296. Reading: by the name of reading here is understood reading in the proper sense, and in a human way, so that one understands the things which he reads. Moreover, reading strictly such is understood; whence it is indeed prohibited to read, but it is not prohibited to hear one reading, who perhaps has faculty; nor to recite part of the book from memory, because these things are not comprehended strictly under

the name of reading. Ithur., case 39; L. 292. Reading, in a notable quantity and sufficient for grave sin. Thus commonly the doctors, who nevertheless disagree in determining the quantity of this kind. But it seems more rightly to be distinguished, because if by reading a prohibited book you immediately fall into heresy, you can incur excommunication by reading even a few lines, because there is great danger of perversion, which the prohibition of the Church intends to remove. But if you fall into matter altogether indifferent and infected by no error, even by reading a whole page, you are excused from mortal sin and therefore from excommunication. Ithur., l.c., nn. 30, 31; L. 284, 294. Say the same concerning those retaining; for one who retains a book for a moderate time, e.g., one or another day, even if he has the intention of always retaining it, does not incur excommunication. For the reason is the same for time as for matter. Nor are theologians lacking who excuse one who retains a book for a longer time while awaiting a suitable time to hand it over to a superior, or to another having license. Without authority of the Apostolic See. Therefore the Pope alone, or those to whom he has committed or delegated this faculty, can dispense concerning the reading of books prohibited by the present censure.

Books: letters, sermons, public newspapers, Holy Office, April 27, 1880, pamphlets, are not books. Nor are manuscripts books. Sheets separated from a prohibited book, fragments of a book, are not a book. Cf. St. Alphonsus, 293; Suarez, *De Cens.*, disp. 23, sec. 7, n. 3. For a book properly is a volume of several sheets collected together, not of an altogether slight bulk, treating of one and the same argument, or even of various arguments. Whence those knowingly reading periodic publications bound into fascicles, defending heresy and having a heretical author, incur excommunication. Holy Office, January 13, 1892. Of apostates and heretics: the same is added; therefore there is question of those of whom the discussion is in the preceding excommunication, namely by whatever name they are reckoned and of whatever sect they exist; but those believing them are omitted, wherefore it seems to be required for incurring this excommunication that the heretical author be known from elsewhere, and it does not suffice that he be first manifested as such through the book itself. For such a person would rather be a Catholic believing the errors of heretics than a heretic, as is distinguished in the preceding excommunication. Yet if the author evidently and certainly defends heresy, and evidently with a pertinacious mind against the authority of the Church, by that very fact he will be judged a heretic by right and deservedly. Hence if the book is anonymous, from the book itself it can be known whether its author is a heretic, L. 283, and then the censure is incurred. This is confirmed from the constitution *Officiorum* of Leo XIII, *de Prohib. et cens. libr.*, sec. 47. Defending heresy: "even if only one error is contained in the whole book, the whole is prohibited; nor, even with that error deleted, will it be lawful to retain the book, because it is absolutely prohibited by force of this clause." Suarez, l.c. La Croix, n. 330, and others deny this last point, and indeed probably, because then the book no longer contains heresy, nor does it induce any danger. L. 283. But it must be carefully noted that to defend heresy is not simply to contain heresy, but to undertake patronage of heresy intentionally and, as it were, with one's powers. Therefore books of heretics which only incidentally contain heresy are not comprehended under this excommunication, since they do not treat professedly of faith. L. 287. Nor do the books of the primitive heretics seem to be comprehended, since their heresy no longer harms, and knowledge of them is very useful for ecclesiastical history. La Croix, book 7, n. 333.

Through Apostolic letters. Apostolic letters are those which proceed immediately in the name of the Roman Pontiff, whether in the form of a Brief, or in the form of a Bull, or in any other form, provided

that in them is read, by Apostolic Authority, or something equivalent. Prohibited by name, i.e., with the title of the book expressed in particular. Therefore all books which are condemned only in a general way through Apostolic letters are not comprehended by this censure. Prohibited by name: the words indeed are general; nevertheless the doctors commonly understand them of prohibition under penalty of excommunication reserved to the Roman Pontiff. Otherwise the Supreme Pontiff seems to relax to others what he does not reserve to himself, and therefore then there will not be an excommunication reserved to himself in a special manner. But by this same argument it is shown that that excommunication, although reserved to the Supreme Pontiff, is nevertheless not reserved to him in a special manner. For if the Supreme Pontiff reserves it to himself only simply, he seems by that very fact to remove the special reservation. Therefore it would rather have to be said that there is question of prohibition under penalty of specially reserved excommunication. But then this second article of the Constitution would be entirely useless. Therefore it seems that it must be said that there is question of prohibition simply made under penalty of excommunication, although no reservation is added to it. It is said under penalty of excommunication, because if the prohibition is made either with no penalty added, or with another penalty, it surely does not pertain here. For here there is question of censures. Cf. 1178.

Retaining. "He is said to retain who has a book with himself, whether he has it borrowed, deposited, belonging to another, for binding, for selling, for adorning a library, whether in his own or another's house; so that in whatever way, and wherever he has the book, he incurs the censure imposed against those retaining. And so it is not lawful for you to sell or give them.... Yet I myself would think this must be limited, unless you sell or give to one having faculty to read them; for then I believe that the tacit or interpretative faculty of superiors is present, who are not reasonably judged unwilling.... You would not sin if, accommodating another who has faculty, you yourself were to carry with you some prohibited book bought at Rome, e.g., to Fano; just as the bookseller would not sin who kept the book longer in his shop for binding, because all these things are accessory to the faculty itself conceded and are understood as conceded through it." Ithur., case 39, n. 40. Printing: in the obvious sense, those printing are generally all who cooperate proximately in printing, such as those who compose the type, ink it, moisten the sheets, turn the press, etc. Those who arrange sheets and books already printed are not properly printers; those selling and carrying elsewhere are rather retainers. The owner of the typography and the publisher, in the obvious sense, are not printers, but those commanding printing. Regularly they are both readers and also retainers. Defending in any way, namely defending either by words or by deeds; either the depraved doctrine which they contain, or the material book itself, namely if they prevent the book from being burned or handed over to the Bishop or Inquisitor. L. 285. But one who approves and praises good and true doctrine contained in the book is not comprehended by this censure, provided nevertheless that he is not judged absolutely to approve the book itself; nor even one who praises the style, eloquence, phrase, or genius, provided that this does not argue praise and approval of the book. Bull *In Coena Domini*, sec. 1; Lugo, *De Fide*, disp. 25, n. 94; L. 281-299; Bouix, *De Cur. Rom.*, part 3, sec. 3, chap. 11; Suarez, disp. 21, sec. 2, first excommunication; Bonacina, disp. 1, q. 2, part 4; E.M.

1166. III. Schismatics, and those who pertinaciously withdraw themselves from or recede from the obedience of the Roman Pontiff existing for the time.

Schismatics properly are those who, either only from malice of will, or also from error in the doctrine of faith, deny subjection to the Roman Pontiff, by separating themselves from the body of the Church and by constituting a new and separate Church, or by adhering to one already constituted. Those who pertinaciously withdraw themselves from the obedience of the Roman Pontiff existing for the time, i.e., totally separate themselves from his ecclesiastical authority, although they adhere to no other Head or supreme ecclesiastical authority. Nor indeed is it necessary, for incurring this censure by force of this clause, that they be rebels against the authority of the Roman See considered generally; but it suffices that they be rebels against the authority of the Person who actually occupies the Roman See. And recede, namely partially: in some one thing only they are boldly rebellious against the spiritual authority of the Roman Pontiff existing for the time, by resisting the same authority in a particular matter, namely those who in a particular matter reject the spiritual command and authority of the Roman Pontiff, such as, e.g., certain liberal Catholics. Therefore one does not incur this excommunication who would not wish to obey the Roman Pontiff in some particular matter because of the difficulty of the matter, or even because of hatred toward the Person, while nevertheless recognizing his spiritual authority; for by his disobedience he would not truly recede pertinaciously from the Roman Pontiff existing for the time, but would only transgress his laws or precepts. Pertinaciously, i.e., knowingly and willingly; therefore one does not incur excommunication if he denies his authority and does not submit himself to him because he does not think him legitimate, since his election is doubtfully valid. C. 5, Dist. 19; Bull *In Coena Domini*, sec. 1; St. Thomas, II-II, q. 39; Suarez, disp. 21, sec. 2, first excommunication; disp. 23, sec. 2, second excommunication; sec. 3, par. *Melius*; Bonacina, disp. 1, q. 2, part 5; E.M.

1167. IV. All and each persons, of whatever state, grade, or condition they may be, appealing from the ordinances or mandates of the Roman Pontiffs existing for the time to a future universal Council; and also those by whose help, counsel, or favor the appeal was made.

As regards persons, this censure is most general: for it is imposed on all of whatever state, grade, and condition. But because excommunication is not imposed on a community, but on individual persons, therefore if a community commits such a delict, the censure of interdict is imposed on it. Cf. 1334. From ordinances or mandates, namely concerning spiritual things. Existing for the time, namely still living, since these "words ought to effect something" from C. *Si Papa* 10, *de Priv.*, in VI. Future Council, not a future Roman Pontiff, nor a present Council. But as is clear from the very form of the excommunication, those who furnish help, counsel, or favor do not incur excommunication unless the effect follows, namely unless the appeal was actually made. Hence help, counsel, or favor must precede or accompany the appeal; for if it only follows, and is given for resisting pontifical decrees under the appearance of such an appeal, then this censure will not be incurred by force of this clause, because favor was not truly given for appealing, but for the actions afterwards following, which are far different. Nor by any means must appeal from a just or unjust mandate be distinguished, because the Constitution speaks absolutely and indistinctly, and it is not founded on the fact that the thing is just or unjust, but on the fact that one appealing thus does injury to the authority of the Roman Pontiff; for by the very fact he professes that a General Council is superior to it. For to appeal is a provocation from an inferior judge to a superior.

Counsel, favor: although counsel seems to be some favor or moral help, for he who furnishes right counsel helps not a little toward acting well; nevertheless they are distinct

influences ordered to distinct ends. For counsel is for the instruction of the mind and the motion and impulse of the will; but help and favor are for execution. He gives counsel who persuades, and by persuading impels another to do something. For there is question of practical counsel, not of merely doctrinal counsel. To furnish help is to bring aid, assistance, support to the very act or external work. But favor, from "I favor," which is "I am zealous for, I love, I embrace," extends help also to moral assistance, e.g., by helping with praises and recommendations. Hence, when in laws an extension is made to those counseling and favoring, express mention of them is made. Pius II, constitution *Exsecrabilis*; Bull *In Coena Domini*, sec. 2; C. *Significasti* 4, *de Electione et Electi Potest.*; Suarez, disp. 21, sec. 2, second clause; Bonacina, disp. 1, q. 3, parts 1, 2.

1168. V. All killing, mutilating, striking, seizing, imprisoning, detaining, or hostilely pursuing Cardinals of the Holy Roman Church, Patriarchs, Archbishops, Bishops; and Legates or Nuncios of the Apostolic See; or expelling them from their dioceses, territories, lands, or dominions; and also those commanding these things, or ratifying them, or furnishing help, counsel, or favor in them.

All: understand of whatever sex or state. Killing, in whatever way, by poison, sword, etc. Mutilating, i.e., cutting off a member. Striking: striking is ordinarily done by hand, either immediately or by means of an instrument, namely a staff. Seizing, i.e., apprehending, by impeding freedom of going away. Imprisoning, i.e., thrusting into prison. Detaining, i.e., guarding someone violently shut up in prison, or in another place, from which he cannot freely go out. Hostilely pursuing are those who pursue one fleeing and taking care for himself with a hostile mind, in order to inflict evil on him, namely by killing, mutilating, etc. For this pursuit is punished, even if no other effect follows, insofar as it is the attempt of another crime prohibited by this law. Nor is it likely that the law prohibits the attempt of some delict which it itself does not prohibit or punish. Therefore those are not hostilely pursuing who pursue only for the sake of dishonoring or plundering.

Bishops, namely consecrated; for penalties are of strict interpretation. Legates. They are those who are deputed by Supreme Princes for conducting graver business or for the generality of business. Delegates are those who are deputed by Supreme Princes for certain particular business, yet not graver business, or not for all business. Nuncios, Apostolic, are Legates of the Supreme Pontiff residing among various nations. Expelling, namely expelling one previously received. Expelling generally speaking, whether by public or private authority, with force applied. From their dioceses, territories, lands, or dominions: namely from places where they have right of jurisdiction, domicile, property, dominion, by reason of their office and dignity. Therefore by this censure are punished injuries against the body: killing, mutilating, striking; against liberty: seizing, imprisoning, detaining, hostilely pursuing; against dignity: expelling from their own places, etc.

Commanding. One commanding is he who orders or asks that something be done in his name. Ratifying: these conditions are required for ratification: that the striking was done in your name or in your favor; this then happens when those things preceded which could give others cause for thinking that another would freely consent that the delict be done in his name; that you externally signify the ratification; that when the striking happened you were capable of mandate or counsel concerning the striking at least habitually; for if you were insane, you do not incur; otherwise if drunk or sleeping: thus commonly. L. 267; Suarez, disp. 21, sec. 2, n. 71; Schmalzgrueber, n. 244.

Those commanding these things, etc.; those furnishing help, etc., in them. Therefore commanding, helping, counseling, favoring are all indeed to be understood of mandate, help, and favor that is

effective, and that has gravely influenced, and indeed in those things which have been mentioned, not in another action different from them. Help: one who only promises help does not seem able to be said to furnish help. Counsel: e.g., by showing usefulness, by suggesting suitable means. Favor: either positively by exhorting, inciting, or negatively by not impeding when he can and ought. Ought, i.e., when he is held by office or justice, as kings, judges, etc. But if he is held only by charity, the censure more truly is not incurred. C. *Felicis* 5, *de Poenis*, in VI; Clementine 1, *de Poenis*; Extravagant single chapter, *de Consuetud.*; Bull *In Coena Domini*, sec. 11; Suarez, disp. 21, sec. 2, eleventh censure; disp. 22, sec. 3, third excommunication; Bonacina, disp. 1, q. 12; disp. 2, q. 3, part 7; disp. 4, qq. 3, 4; L. 268, 269; Ithur., case 41, n. 16; case 43, nn. 1-3.

1169. VI. Those directly or indirectly impeding the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and those having recourse for this to the secular forum, and procuring, issuing, or furnishing help, counsel, or favor for its mandates.

Impeding in reality; otherwise they will not truly be impeding, but trying to impede. Impeding, even if for this they do not have recourse to the secular forum. Directly, e.g., by force or fear inflicted on ecclesiastical judges themselves wishing to exercise jurisdiction. Indirectly, if someone obstructs them in another matter, or in another person, e.g., if force or fear is brought upon their blood relatives, officials, etc. For to impede is to do something by which someone unwilling is kept from acting or ceases from acting. Therefore if someone uses counsels, prayers, or deceits, he is rather understood to persuade, obtain, or deceive. The exercise of ecclesiastical jurisdiction. Therefore for someone to incur this censure, it is necessary that he resist one who is marked with jurisdiction, e.g., a Bishop, parish priest, etc.; otherwise he will not be impeding the exercise of jurisdiction, but something else, e.g., if someone impedes a plaintiff from approaching a judge, he impedes not the exercise of jurisdiction but the petition of the plaintiff. Exercise of jurisdiction, namely from law, lest someone begin it or continue in it. There is question of the exercise of ecclesiastical jurisdiction, which flows from Christ the Lord or from his Vicar, insofar as he is Roman Pontiff, and belongs to clerics insofar as they are clerics. There is question of the exercise of jurisdiction to which it belongs, e.g., to commit things to be performed, those things which are of order, and to depute to ecclesiastical offices; by no means of the exercise of order itself, e.g., to perform the sacred rite, or of the exercise itself of ecclesiastical office, e.g., to preach, teach, etc. Of ecclesiastical jurisdiction, whether ordinary or delegated. But jurisdiction is the power of ruling and governing others. Of the internal forum, as is that which the Sacred Penitentiary uses, and that which pertains to the forum of conscience. Of the external forum, which regards Christian society, whether it is contentious, which is exercised between parties contending in judgment, or voluntary, which is exercised without any judicial process and sentence, as, e.g., to visit a diocese, send preachers, impose censures, etc.

And is to be understood disjunctively from the obvious sense and the whole context, so that another class of persons who incur this censure is denoted. For this, i.e., for impeding the aforesaid exercise, not for something else, e.g., for not delaying the exercise of that jurisdiction and the rendering of justice, for decreeing justly, etc. For this: therefore those having recourse and all others of whom there is question in what follows do not incur this censure unless the effect follows. Having recourse to the secular forum: to have recourse is to implore the aid of another against someone or something, as if someone suffers injury from him. Forum in the proper meaning is the place of exercising judgments. Therefore the patronage of those must be implored who exercise jurisdiction in the

forum, such as the Prefect of a city is not, e.g. Yet it seems that secular forum can also be taken more broadly for any civil magistrate by opposition with the internal and external forum of the first part, which from common acceptance is very broadly evident. Procuring mandates are those who cooperate proximately toward this. Issuing, namely establishing, are civil magistrates, or those who by judicial or even other civil power issue the mandates themselves by decreeing such things. Help, etc. Cf. what has been said in the preceding censures. And its, namely of the secular forum. Or: therefore this last clause, or help, etc., in the obvious sense seems to refer only to the last class of persons, i.e., to those procuring and issuing mandates. But others refer it also to the first, second, and third class of persons whom the present censure touches, namely to those impeding, having recourse, procuring mandates, and issuing them. C. *Clericis* 3, *de Immun. eccles.*, in VI; Bull *In Coena Domini*, sec. 16; Suarez, disp. 21, sec. 2, sixteenth censure; Bonacina, disp. 1, q. 17.

1170. VII. Those compelling, whether directly or indirectly, lay judges to draw ecclesiastical persons to their tribunal, apart from canonical dispositions; likewise those issuing laws or decrees against the liberty or rights of the Church.

Compelling. To compel here is through force or grave fear unjustly to induce someone to do something. Hence those are not compelling who denounce a criminal cleric to a judge, or who sue a debtor cleric before a lay judge. Compelling... judges: note that here the one compelling is distinguished from the judge compelled; therefore the judges themselves who only issue sentence against ecclesiastical persons brought to their tribunal by others do not incur this excommunication. In the Instruction of the Sacred Universal Inquisition, June 15, 1870, it is said: "Compelling... indicates that excommunication does not touch those who are subordinate, even if they were judges, but has been imposed only on those who, compelled by no one, either do such things or compel others to do them." And in the Circular Letter of the same Sacred Universal Inquisition, January 23, 1886, these things are had: "This Supreme Congregation of the Holy Roman and Universal Inquisition has more than once declared that the heading Compelling does not affect any except legislators and other authorities.... Moreover, in those places in which the privilege of the forum was not derogated by the Supreme Pontiffs, if in those places it is not possible to pursue one's rights except before lay judges, individuals are bound first to seek permission from their proper Ordinary, so that they can sue clerics in the form of lay persons; and the Ordinaries will never deny this, especially when they themselves have given work in vain to reconciling controversies between the parties. But it is not lawful to sue Bishops in that forum without permission of the Apostolic See. And if anyone should have dared to draw either a cleric without permission of the Ordinary, or a Bishop without permission of the Holy See, to a lay judge or judges, it will be in the power of the same Ordinaries to proceed against him, especially if he was a cleric, with penalties and censures *ferendae sententiae*, as a violator of the privilege of the forum, if they shall have judged this expedient in the Lord."

But the present excommunication was afterward enlarged thus: "We... by Our own Motion establish and declare: whoever among private persons, of lay or sacred order, men or women, summons any ecclesiastical persons whatsoever, whether in a criminal cause or in a civil one, without any permission of ecclesiastical power, to the tribunal of lay persons, and publicly compels them to be present there, all these also incur excommunication *latae sententiae* reserved in a special manner to the Roman Pontiff." Pius X, Motu Proprio *Quantavis diligentia*, October 11, 1911. "It is not lawful, without

the permission of the ecclesiastical Power, without incurring the censure threatened in the Motu Proprio *Quantavis Diligentia*, to constitute oneself a civil party in a penal cause of public action against an ecclesiastical person. It is not lawful, as above, to cite ecclesiastics before the lay forum so that they may give testimony, whether in civil causes or in penal causes." Holy Office, March 11, 1912; *Monitor Ecclesiasticus*, vol. 37, p. 4.

But those compelling, whether directly or indirectly, are those who, by force or fear inflicted on the judges themselves or on other persons who have connection with them, compel them to draw ecclesiastical persons to their tribunal in a cause whether criminal or civil. Lay judges, namely those who by office administer law for a lay tribunal, not other magistrates. To draw, as if the accused, not as a witness, expert, etc. But cf. the aforesaid Motu Proprio of Pius X. To their tribunal, namely so that he may draw him into court, not that he may prescribe something to him, admonish him, correct him. But cf. the cited Motu Proprio. Ecclesiastical persons, namely those who enjoy the privilege of the forum. Apart from canonical dispositions. For there are several cases in which a lay judge, both in civil and in criminal matters, licitly proceeds against ecclesiastical persons. Cf. on this matter Schmalzgrueber, book 2, title 2, par. 6, *de Foro comp. rat. pers. eccl.*, n. 80 ff.; Bizzarri, *Collect.*, p. 178 ff., ed. 1885. Apart from canonical dispositions: understand also Concordats of the Kingdom with the Apostolic See. Issuing: authors of laws and decrees, not the others. Laws: general and in perpetuity, e.g., concerning the royal placet, the royal exequatur, etc., which proceed from supreme authority; or decrees, which are from any power, even inferior, but are put forth generally, not for a particular case, for then they would rather be mandates or sentences of judges. Liberty or rights: said most generally, and therefore it comprehends all things, e.g., by expelling religious families, inhibiting sacred ministries, keeping clerics from the instruction of the people, etc. Of the Church, namely universal. C. *Clericis* 3, *de Immun. eccles.*, in VI; Bull *In Coena Domini*, sec. 15; L., *de Priv.*, nn. 18-24; Suarez, disp. 21, sec. 2, fifteenth censure; Bonacina, disp. 1, q. 16; disp. 2, q. 6, part 1; Benedict XIV, Instruction 40; E.M.

1171. VIII. Those having recourse to lay power for impeding letters or any acts whatsoever proceeding from the Apostolic See, or from any Legates or Delegates of the same; and those directly or indirectly prohibiting their promulgation or execution; or, because of them, injuring or terrifying either the parties themselves or others.

Having recourse: whoever, in whatever way. Therefore those having recourse will be those giving a petitionary libel, citing or provoking, appealing, etc. To lay power, whatever it may be, prefects of cities, presidents of tribunals, judges, and all others exercising jurisdiction over citizens. For impeding: in reality; for although the excommunication is directly imposed not on those impeding, but on those having recourse, nevertheless since recourse of this kind is for impeding, and an external action must be perfect and consummated in order that someone incur excommunication, this recourse must be understood with the effect following. The same must be said for the same reason about prohibition, injury, and terrifying. Yet others think otherwise, since the recourse itself, the injury itself, and the terrifying itself are directly condemned.

Letters, given in any form, provided nevertheless that they proceed from Apostolic Authority, whence it is soon said: proceeding from the Apostolic See. Any acts whatsoever, namely whether they are of grace or of justice; whether they regard spiritual or temporal business, yet of ecclesiastical or spiritual law. Acts of the Apostolic See are called those which are done by authority of the Roman Pontiff,

whether immediately or mediately. Whence it is said: any acts whatsoever proceeding from the Apostolic See, or from any Legates or Delegates of the same. "Even those things which mediately proceed from the sacred Roman Congregations" are comprehended. Holy Office, January 13, 1892. Acts of the Holy See are warnings, citations, processes, sentences, etc., made by mandate of the Holy See. Legates "are said to be those who are deputed for conducting some business by supreme Princes (and in our case by the Supreme Pontiff); they commonly differ from Delegates, to whom one peculiar business, and not a very complex one, or even peculiar businesses, are committed, while a Legate has entrusted either the generality of business or at least a very complex office handed over." De Angelis, *Praelect. Iur. Can.*, book 1, title 30, n. 1. Proceeding, not, lest they proceed. Therefore those who impede Letters or Acts of this kind from being obtained are not subject to this excommunication.

Promulgation, namely publication in the customary form and manner. Execution, i.e., whatever things are necessary so that Apostolic Letters and Acts may have effect, e.g., if someone prohibits notaries from drawing up instruments concerning them, or from handing over to the parties those drawn up, or prohibits the parties from using those handed over. Prohibiting, namely by public authority. For just as the Pontiff speaks in the first part concerning recourse to lay power, so in this second part he consequently speaks of prohibition flowing from that recourse to lay power. Yet the contrary opinion is also well sustained, because the law does not distinguish. Parties are those whose interest it is that the Letters or Acts of the Apostolic See be promulgated or committed to execution. Others, for instance the patrons of the same parties, because of the acts obtained, or executors, or other persons to whom the acts obtained are in some way referred and pertain; for it is said, because of them, either the parties themselves or others, etc. Injuring properly and strictly are those who inflict some grave harm on someone in the goods of the body. Terrifying are those who threaten to inflict very grave harm. For to terrify is to make one very afraid, to make very grave fear.

C. *Clericis* 3, *de Immun. eccles.*, in VI; Bull *In Coena Domini*, sec. 13; Suarez, disp. 21, sec. 2, twelfth, thirteenth, and fourteenth censure; Bonacina, disp. 1, q. 14; E.M.

1172. IX. All falsifiers of Apostolic Letters, even in the form of a Brief, and of Supplications concerning grace or justice signed by the Roman Pontiff, or by the Vice-Chancellors of the Holy Roman Church or those acting in their place, or by mandate of the same Roman Pontiff. And also those falsely publishing Apostolic Letters, even in the form of a Brief, and also falsely signing Supplications of this kind under the name of the Roman Pontiff, or of the Vice-Chancellor or of those acting in the place of the aforesaid.

Falsifiers: falsifiers of Apostolic letters are those who with evil deceit, even once, adulterate true Apostolic Letters by adding, subtracting, or changing something, in such a way that they can deceive another; but this must be estimated not materially but formally, namely according to the sense principally intended by the Roman Pontiff. With evil deceit: therefore if you corrupted true letters, about to tear them up immediately, harming no one and affecting the authority of the Roman Pontiff with no injury, it is truer that the excommunication ceases. Castropalao, tract 29, *de Cens.*, disp. 2, p., n. 4. But by no means are they falsifiers who fabricate entire false letters. For these are not falsifiers, since they do not change the truth in the thing itself, but are fabricators of false letters, as was held in the Bull *In Coena Domini*, where falsifiers and false fabricators were distinguished. Suarez, *De Cens.*, disp. 21, sec. 1, sixth Censure. Falsifiers: therefore the present excommunication is incurred, by force

of this clause, as soon as the falsity has been completed, although someone afterwards by no means uses the falsified letters. But one who uses them incurs another excommunication reserved to the Bishop, concerning which below.

Of Apostolic Letters. Therefore the letters of any others whatsoever do not pertain here, such as those of an Apostolic Nuncio, Legate *a latere*, Major Penitentiary, Sacred Congregations, etc. Indeed neither Apostolic Letters nor Rescripts not yet signed, or furnished with seal or lead, because since they are not yet authentic, they do not yet have force; nor those which have ceased to have force and can no longer have force, for instance a dispensation from service of choir for a time, this time having elapsed; a matrimonial dispensation, the dispensed person having died, etc.

Even, and therefore even in another more solemn form, such as Bulls. In the form of a Brief. Briefs are Letters of the Roman Pontiff for business of lesser moment, written on thin and white parchment or ordinary paper, and in Latin character. They are inscribed with the name of the Supreme Pontiff: Pius P. X, and they report the date according to the common Calendar. They are expedited by the Secretariat of State, or also by the Sacred Congregation of the Sacraments as regards matrimonial dispensations. They have a seal of red wax in which is impressed the image of blessed Peter fishing. Therefore they are said to be expedited under the ring of the Fisherman. Bulls are Letters of the Supreme Pontiff for graver business, which are now written on parchment paper and in Latin character. They bear a leaden seal, whence they are called Bulls, and the date according to the Roman Calendar, the beginning of the year now being taken from January 1. The hanging seal is now retained in Bulls of greater moment. In others there is an impression of a red seal bearing the images of St. Peter and Paul. They are inscribed with the name of the Supreme Pontiff: Pius, Servant of the Servants of God. New formulae of Bulls were made and approved by the Motu Proprio of Pius X, December 8, 1910. They are expedited through the way of the Chancery, and Apostolic Protonotaries sign Bulls, from the constitution *Sapienti consilio*. And by special mandate of Pius X, April 15, 1910, for validity the Cardinal Chancellor of the Holy Roman Church must sign, and the Cardinal who presides over the office to which the matter treated in the Constitutions belongs. But Bulls of non-consistorial benefices are expedited through the Datary. Of Supplications: supplications properly are petitions directed to the Pontiff for obtaining grace or right. But according to the style of the Curia they signify rather the response of the Pontiff, whether it is made by simple application of the seal to the petition, or by subscription of the name, or by Rescript in which the petition is mentioned. They are taken here in this second sense, for the discussion is of supplications signed by the Roman Pontiff, etc. Concerning grace or justice: those are said to contain grace which contain some benefit or liberality of the Roman Pontiff; justice, however, those which pertain to lawsuits, and therefore to the cognizance or definition of some case. Signed by the Roman Pontiff, or by the Vice-Chancellor of the Holy Roman Church, or those acting in their place, or by mandate of the same Roman Pontiff: namely Apostolic Letters signed by the proper hand or proper seal of the Pontiff, or indeed by another hand, but in his name or by his mandate. For there is question of Apostolic Letters. The Vice-Chancellor of the Holy Roman Church today, after the constitution *Sapienti Consilio*, is called Chancellor, and is one of the Cardinals of the Holy Roman Church, who in Consistories by office discharges the function of notary. To the office of Chancery this one thing pertains: to expedite letters under lead concerning the greater business of the Church.

Falsely publishing are: 1. those who in any manner spread among the people true but adulterated Apostolic Letters; 2. those who spread simply false or entire falsely fabricated letters. Therefore if someone should show only to a few Apostolic Letters simply invented, so that they cannot yet be called published, he would not incur this excommunication. Some require the customary mode for authoritative promulgation; but publication is not the same as promulgation; and in this Constitution one is very clearly distinguished from the other. Apostolic Letters even in the form of a Brief; it is not added, and supplications, as in the first part. Falsely signing supplications are those who apply a false subscription or false seal to them, so that they may be held authentic. Supplications: therefore this part is restricted only to supplications. C. *Ad falsariorum* 7, *de Crim. falsi*; Bull *In Coena Domini*, sec. 6; Bonacina, disp. 1, q. 7.

1173. X. Those absolving an accomplice in a shameful sin, even in the article of death, if another priest, although not approved for Confessions, can hear the Confession of the dying person without any grave infamy and scandal about to arise.

Those absolving: here the excommunication already imposed by Benedict XIV is changed and enlarged; he imposed it against those daring, presuming to absolve, absolving by rash daring. Cf. 1280 ff.; E.M.

1174. XI. Those usurping or sequestrating jurisdiction, goods, revenues pertaining to ecclesiastical persons by reason of their churches or benefices.

Those usurping ecclesiastical goods here are those who authoritatively occupy them from the owner as their own, i.e., as if they had right in them. Hence thieves are not comprehended, who, although they themselves invade another's thing, nevertheless invade it as another's, claiming no right in it by which they might retain it as occupied and belonging to themselves. Holy Office, March 9, 1870; Roncaglia, *de Cens.*, tract 4, chap. 4, q. 2, resp. 1. Nor indeed are those comprehended who acquire ecclesiastical goods usurped by others by purchase, donation, or any other contract, although they sin gravely both against justice and against religion; yet they incur the censure imposed by Trent, Holy Office, July 8, 1874, which moreover declared: "usurpers of ecclesiastical goods of this kind are bound only by the excommunication specially reserved to the Roman Pontiff," by force of the present Constitution *Apostolicae Sedis*, and not also by the excommunication simply reserved by force of the Council of Trent. Sequestrating here are called those who by judicial office and jurisdiction unjustly commit a thing to some third person to be guarded, or guard it themselves, and thus impede it from remaining under the power of him to whom it pertains, and from being freely used by him. Sequestrating: therefore judges are excommunicated. For sequestration has all its force from the mandate of a judge. Sequestrating here are also those who detain a thing by force of sequestration. The plaintiff also seems to be comprehended, for according to common usage he is well said to sequester.

Jurisdiction, even temporal, as is clear from the whole context and because it is said absolutely. Goods, whether immovable or movable. Revenues, whatever the thing bears, or whatever is received with regard to the thing; but by no means proceeds and income from elsewhere, such as daily distributions. Pertaining to ecclesiastical persons: hence those usurping or sequestrating the goods of pious places, namely hospitals, lay confraternities, etc., do not incur this censure, although they are subject to the Tridentine censure. The same must be said of goods which pertain to churches, but not

to ecclesiastical persons, e.g., goods destined for repairing a church, performing divine things, relieving the poor, dowering girls, etc.

By reason of their churches or benefices, whether secular or regular; therefore the present excommunication is not incurred if there is question of goods pertaining to ecclesiastical persons, but for another reason. Nor is it incurred if someone usurps or sequestrates these same things while the benefice is vacant; for the present excommunication seems to provide first of all for the ecclesiastical persons themselves: pertaining to ecclesiastical persons.

Of churches: hence those usurping or sequestrating the goods of monasteries do not incur the present censure by force of this clause. Universally and speaking per se, the goods of monasteries do not pertain to ecclesiastical persons, namely to religious, by reason of their churches or benefices, for instance the goods of a College of religious in which boys are educated, etc. The goods of monasteries pertain to no ecclesiastical persons, but pertain either to the Monasteries themselves or to the Roman Church. Of benefices: hence again those usurping or sequestrating the goods or revenues of lay chaplaincies do not incur this censure. For they are not benefices in the true sense, and are resolved into pious foundations or pious legacies. But those usurping or sequestrating the goods or revenues of benefices which are of lay patronage do incur it. For they are benefices accepted in the strict sense, although they are liable to the servitude of patrons, who have the right of presenting the beneficed person when they have become vacant, the right to certain prerogatives of honor, and some right to support if they should tend toward want. C. *Generali Constitutione* 13, *de Electione et elect. potest.*, in VI; Bull *In Coena Domini*, sec. 17; Bonacina, disp. 1, q. 18; Suarez, disp. 21, sec. 2, seventeenth censure; Ferraris, v. *Bona*, art. 1, n. 13 ff.; E.M.

1175. XII. Those invading, destroying, detaining by themselves or through others, cities, lands, places, or rights pertaining to the Roman Church; or those usurping, disturbing, or retaining supreme jurisdiction in them; and also those furnishing help, counsel, or favor for each of the aforesaid things.

Invading, namely by force applied; for to invade is to enter by force or by an attack, although it is not intended to withdraw that city from the dominion of the Pope, nor to injure the right of the Church in anything. Destroying, in whole or in part. Detaining, whether they themselves invaded, or retain what has been received from others, as e.g., heirs, if nevertheless without greater public harm and without greater harm of the temporal Principate itself of the Roman Pontiff they can at once abandon it; and unless at least tacit consent of the Roman Pontiff himself is added, as seems to have been added for several places enumerated in the Bull *In Coena Domini*. In this matter the one legitimate judge is the Roman Pontiff himself. Either by themselves or through others refers to the three preceding things. From this head, only male Princes incur this excommunication; not likewise Senators and Deputies, since they retain not as individuals, but as Orders. Rights, i.e., temporal and supreme, principal rights, such as the right of imposing taxes, creating magistrates, etc. Pertaining to the Roman Church, not to private persons, even of the Supreme Pontiff.

Usurping, i.e., ascribing to themselves as their own supreme jurisdiction. Disturbing, e.g., those who directly impede laws from being made, promulgated, and committed to execution in these places; those who promote rebellion, etc., striving to change the established government or to weaken and diminish supreme jurisdiction; not others. Retaining, i.e., exercising supreme jurisdiction de facto in place of the legitimate Prince, thus impeding his jurisdiction. Supreme temporal jurisdiction, namely

that which belongs only to the Prince, or supreme governor, that which belongs to the Supreme Pontiff as he is Prince, concerning matters of greater moment, such as cases of State, blood, confiscation of goods, etc. In them, i.e., in the aforesaid cities, lands, and places.

For each of the aforesaid things, namely for invading, destroying cities, etc., usurping, disturbing, retaining supreme jurisdiction, etc. Furnishing help, namely by proximate cooperation, and with all grave fear, coercion, and proportionate grave inconvenience excusing set aside, whether one's own or public. Those furnishing help or favor in retaining are by no means those who stand for the usurpers only in opinion, without doing anything by actual and formal cooperation or adhesion. Encyclical of Pius IX, November 1, 1870; March 26, 1860; Sacred Penitentiary, December 10, 1860. But those furnishing help or favor in retaining are those who furnish some work which proximately confirms the usurpers in detention, e.g., by giving money, by denouncing persons influential among the people, by spreading writings among the people for changing popular opinion, etc.

But here the question is whether those who hold public offices furnish help and favor in retaining. Now these are of two kinds: for some are merely civil, namely those which pertain to the necessities and usefulness of citizens; others are political, which look to protecting the government itself of the whole nation. It is lawful to take up offices of the first kind, since they directly and per se do not tend to approving or confirming the usurper, but only to preserving public order, which the usurper himself ought to preserve from the very nature of society, which cannot ruin itself. But as regards offices of the other kind, the Sacred Penitentiary, October 10, 1860, to the thirteenth general question, "Whether offices can be retained and taken up under an intruded Government," responded that "it can be tolerated, provided there is not question of offices which directly and proximately influence the spoliation, or the maintenance of the same spoliation, and provided they can be exercised without danger of injury to divine and ecclesiastical laws." And thus those directly and proximately influence the maintenance of the spoliation by office who hold the first or supreme magistracy in any province, etc. Instruction of Pius VII, May 22, 1809; June 10, 1809. The cited Encyclical of Pius IX, *Respicientes*, November 1, 1870, which was issued after the constitution *Apostolicae Sedis*, explicitly extends excommunication also to other cooperators: to those commanding, favorers, helpers, counselors, adherents, procurers, executors. Bull *In Coena Domini*, sec. 20; Bonacina, disp. 1, q. 21.

1176. From all these excommunications listed up to this point, We declare that absolution is reserved, and is to be reserved, to the Roman Pontiff existing for the time in a special manner; and that for it a general concession of absolving from cases and censures, or excommunications, reserved to the Roman Pontiff, in no way suffices; moreover, with any indults whatsoever revoked with respect to them, granted under any form and to any persons, even Regulars of whatever Order, Congregation, Society, and Institute, even worthy of special mention and established in any dignity. But those presuming to absolve without due faculty, even under any pretext whatsoever, should know themselves bound by the bond of excommunication reserved to the Roman Pontiff, provided there is not question of the article of death, in which nevertheless the obligation remains firm, as regards those absolved, of standing by the mandates of the Church if they recover. Cf. 799; E.M.

1177. Excommunications *latae sententiae* reserved in a special manner to the Roman Pontiff, which accrued to the constitution *Apostolicae Sedis*.

XIII. From the constitution of Pius IX, *Romanus Pontifex*, August 28, 1873, paragraph *Confidimus* and following, A.S.S., vol. 7, p. 104, excommunication *latae sententiae*, specially reserved to the Roman Pontiff, is imposed: 1. on the Dignities and Canons of vacant Cathedral Churches, and on those who, Chapters being lacking, depute Vicars of the vacant Church, or legitimately administer vacant Churches, who, the Capitular Vicar having been removed, before exhibition of the Apostolic Letters, have dared to concede and transfer to one nominated and presented by the lay power to the same Church its care, governance, and administration under any title, name, or sought color. 2. On those nominated and presented to vacant churches, who dare to assume their governance and administration from the aforesaid concession and transfer performed to them by Dignities and Canons and others of whom above. 3. And also on those who have obeyed the foregoing, or have furnished help, counsel, or favor, of whatever state, condition, preeminence, and dignity they may be.

Bishops are excluded from this excommunication. Cf. n. 1237, 1246; A.S.S., vol. 7, p. 401.

Those violating the Pontifical secret, or the so-called secret of the Holy Office, are bound by excommunication *latae sententiae* reserved to the Supreme Pontiff, with even the Major Penitentiary excluded, except in the article of death. Among others, examiners of the writings and books of Servants of God are bound to observe this secret, and those who discharge some office in the Consistorial Congregation. Order to be observed in the Roman Curia, particular norms, art. 2, n. 4; E.M., On the Second Precept of the Decalogue, 555.

The same penalty of excommunication, reserved exclusively to the Supreme Pontiff, is incurred by those violating secrecy in all those things which pertain to the election of the Roman Pontiff, and in those things which are done in the Conclave or place of election. And the same excommunication is also incurred by all those who incur some excommunication imposed and inflicted by the constitution of Pius X, *Vacante Sede*, concerning the vacant Apostolic See and the election of the Roman Pontiff, December 25, 1904, such as, e.g., those who, in the aforesaid election, would receive the office of proposing a Veto or Exclusive of some civil power, and would reveal it in any way, nn. 51, 81.

1178. We declare subject to excommunication *latae sententiae* reserved to the Roman Pontiff:

I. Those teaching or defending, whether publicly or privately, propositions condemned by the Apostolic See under penalty of excommunication *latae sententiae*; likewise those teaching or defending as licit the practice of inquiring from a penitent the name of an accomplice, as it was condemned by Benedict XIV in the constitutions *Suprema*, July 7, 1745; *Ubi primum*, June 2, 1746; *Ad eradicandum*, September 28, 1746.

Teaching: to teach, as to believe, is not the same as to put into practice; these two can very well be distinguished in reality or in fact. To teach properly is simply to hand down and persuade some doctrine, whether by private or public teaching. Therefore, if someone only says that he holds that this or that proposition ought not to have been condemned, he does not incur this excommunication. Defending: to defend is to undertake patronage of them, by vindicating them from attacks and contrary reasons, as if they were unworthy of condemnation. Publicly, by public school, university, conference, disputation, etc. This twofold addition, whether publicly or privately, placed at the end, affects each thing which precedes, teaching or defending, as is established from the obvious sense. By the Apostolic See, namely by the Supreme Pontiff, not by the Index, not by the Sacred Congregation

of the Index, not by an Ecumenical Council. Under penalty of excommunication *latae sententiae*. Therefore there is question here of the Roman Pontiff condemning *ex cathedra* under penalty of excommunication *latae sententiae*, although reservation is not added; for first, this is not held in the Constitution; then, this part of the article would become useless.

Likewise those teaching, etc. Benedict XIV in the constitution *Suprema* thoroughly reproves the practice of seeking the name of an accomplice, with denial of sacramental absolution also denounced unless it is revealed; there is question of an accomplice not only in a shameful matter, but in any sin. For the law speaks absolutely. In the constitution *Ubi primum*, the penalty of excommunication by the very fact and reserved to the Roman Pontiff is imposed on anyone who "has dared to teach that a practice of this kind is licit." In the constitution *Ad eradicandum*, the Pontiff decrees and declares "that the mentioned practice in itself, and everywhere in places and times, has been reproved and condemned by Apostolic Authority and must be judged such." Therefore two things, as is clear, are required so that someone incur excommunication of this kind: 1. that he teach or defend that this practice is licit; 2. that he teach or defend that each together is licit, i.e., both to inquire into the name of the accomplice and to deny absolution to one keeping silent. But it is not necessary that he teach or defend these things with daring and presumption. For it is said, as it was condemned by Benedict XIV, etc., namely the practice; not, to teach or defend.

If confessors by threats of absolution to be denied have compelled penitents to reveal the accomplice, Benedict XIV ordered that they be denounced to the Sacred Inquisition as suspected in faith, yet not by the penitents themselves, but by others who knew it from elsewhere than from their own Confession.

But to this matter pertain the things which are had in the Motu Proprio of Pius X: "Besides these things, in order to repress the daily more daring spirits of many modernists, who by sophisms and artifices of every kind strive to take away all force and efficacy not only from the Decree *Lamentabili sane exitu*, which the Holy Roman and Universal Inquisition, by Our command, issued on July 3 of the current year, but also from Our Encyclical Letters *Pascendi Dominici gregis*, given on the eighth day of September of this same year, by Our Apostolic Authority We repeat and confirm both that Decree of the Sacred Supreme Congregation and those Our Encyclical Letters, with the penalty of excommunication added against contradictors; and We declare and decree this: if anyone, may God avert it, should advance to such boldness as to defend any one of the propositions, opinions, and doctrines reproved in either document of which We spoke above, he is struck by that very fact with the censure imposed in the heading Teaching of the Constitution *Apostolicae Sedis*, which is the first among excommunications *latae sententiae* simply reserved to the Roman Pontiff. But this excommunication is to be understood with the penalties preserved into which those who commit anything against the mentioned documents can incur as propagators and defenders of heresies, if sometimes their propositions, opinions, or doctrines are heretical; this has indeed happened more than once concerning the adversaries of either of those documents, and especially when they defend the errors of the modernists, that is, the collection of all heresies." Pius X, Motu Proprio *Praestanti Scripturae*, November 18, 1907.

1179. Is it so forbidden by the aforesaid letters of Benedict XIV to ask the name of an accomplice that this is lawful in no case? R. Negatively, 1. because Benedict XIV himself supposes cases in which this is lawful according to true and sound doctrines; 2. because sometimes the confessor ought to ask

about circumstances from which, although per accidens, he comes into knowledge of the accomplice; and sometimes the penitent himself is bound to manifest the accomplice to the Superior, or to another, and yet he cannot furnish this except through the confessor. L., book 6, nn. 491, 499; Ithur., case 31; Lugo, *De Poenit.*, disp. 16, nn. 432, 433.

1180. Is this lawful also for correction or for the public good? R. To the first, negatively. This is established 1. from the constitutions of Benedict XIV in the places cited; 2. because even correction of this kind would render the sacrament of penance odious to the faithful, is harmful to the reputation of neighbors, and contains danger of violation of the sacramental seal. To the second, one must distinguish: if there is question of impeding public harm, affirmatively, namely if this is the one necessary means; but if there is question of merely promoting the public good, negatively, for the same reasons.

1181. Does a confessor sin gravely if he asks the name of an accomplice, but not under penalty of absolution to be denied? An imprudent question of this kind from curiosity, levity, or another similar cause would be excused from mortal sin, grave defamation of the neighbor and grave scandal of the penitent nevertheless set aside. The reason is that those grave reasons would then be lacking which have just been explained, cf. 1180, and which Benedict XIV enumerates in his constitution *Suprema*.

1182. II. Those, with the devil urging, laying violent hands upon clerics or monks of either sex, with exception, as regards reservation, of cases and persons concerning whom by law or privilege it is permitted that a Bishop or another absolve.

Violent hands: by this is understood any injurious exterior action by deeds, not words, mortal against the person of a cleric; whether by it someone injures his body by striking him, wounding him, giving him poison, when an action of this kind has begun to harm; or injures his liberty by thrusting him into prison, C. *Nuper* 29, *de Sent. exc.*, etc.; or injures his dignity by bringing force against him in any way, e.g., if he stops the carriage in which he is carried, violently takes away his hat, fouls him, etc. L. 272-275, 280. But an injurious striking would be had even if the cleric consented to it, since this law is in favor of the state. C. *Contingit* 36, *de Sent. excomm.* On the contrary, they do not incur excommunication if some strike a cleric for the sake of defense, or in jest; or if parents, teachers, superiors strike a cleric for the sake of correction. C. *Cum voluntate* 54, sec. 2, ibid.; C. *Ex tenore* 10, ibid.; C. *Si vero* 3, ibid.; C. *Super eo* 1, ibid.

With the devil urging: this "only imports a striking with grave sin." L. 275, 48; Suarez, *De Cens.*, disp. 22, sec. 1, n. 2; Schmalzgrueber, n. 228; Elbel, n. 132. Laying: not those commanding, counseling, consenting, ratifying, or not impeding the laying on. Clerics: by this name is understood everyone initiated at least by first tonsure, even if married, provided he is married to one virgin only and wears the clerical habit and tonsure, C. single chapter, *de Cler. coni.*, in VI; likewise, even one excommunicated, suspended, interdicted, only verbally deposed, or irregular. Monks: "understand any religious, even a lay converse, novice, of either sex. Likewise Tertiaries of St. Dominic and St. Francis if they wear the habit and live in community. Likewise hermits subject to some rule or superior.... Fagnanus says the same of women living together in conservatories, although the religion has not yet been approved.... And Renzius says the same of seminarians, etc." L. 271; Schmalzgrueber, n. 219.

Excepted, etc. Therefore the cases and persons are excepted concerning which by law or privilege it is permitted that a Bishop or another absolve. Cases: a threefold striking must be distinguished:

enormous, moderate or grave, light. Striking is enormous if by it someone has mutilated a cleric or monk, put out his eye, broken a limb, inflicted a huge wound, caused a great quantity of blood to be poured out from somewhere other than the nose. It is moderate if the striking brings contusion or deformity, for instance if a tooth is extracted, if an amount of hair is plucked out, if bruising of the flesh is made, if a quantity of blood is poured out, yet without a graver injury of the body. Finally, striking is called light here, not because it imports venial sin, but because, although it is mortal, by the judgment of the prudent it is considered light compared with enormous striking, e.g., if it is done with the palm, fist, staff, stone, without leaving a trace. But it must be observed that light striking can become grave or enormous by reason of circumstances, namely by reason of the person injured, the person injuring, the person before whom the striking is done, and by reason of scandal, place, time, and injury. L. 276-278; Extravagant *Perlectis* apud the Holy Doctor, n. 277. From light striking, even public, Bishops can absolve from C. *Pervenit* 17, C. *Si vero* 3, *de Sent. exc.* And likewise their Vicars General can do this, because Bishops have this by ordinary law. The same can be done by others having quasi-episcopal jurisdiction. L. 79, 279. From enormous or moderate striking, if it is public, only the Pope or a Legate *a latere*, who enjoys pontifical authority, can absolve, from C. *Ad Eminentiam* 20, *de Sent. exc.* The same can be done by Legates sent to some province from C. *Excommunicatis*, penultimate, *de Off. Legati*, but only in their province, and not as regards outsiders. But if the striking was occult, Bishops also can absolve from it by Trent, C. *Liceat* 6, sess. 24. L. 88, 279.

Persons: Bishops can absolve nuns and all other women from striking, even public, from CC. *Mulieres* 6, *Ea noscitur* 13, *De monialibus* 32, *de Sent. exc.*; Ithur., case 43, n. 29. "And this even if the striking was enormous.... Likewise those who live collegially, if the striking was grave, but not if enormous.... Likewise all impeded from going to Rome." L. 279; C. *Canonica* 50, *de Sent. excomm.*; C. *Quoniam* 9, *de Vit. et hon. cl.* Add also regulars, "if the striking was light or enormous but occult..., with the license of their prelates." L. 107; appendix *de Privil.*, n. 97. Cf. Suarez, *De Relig.*, tome 4, book 2, chap. 3.

Or another: therefore regular prelates can absolve their subjects, even novices: 1. if they have struck a fellow member of the same order, unless the striking is enormous or hands have been laid upon a Bishop or Abbot. 2. If they have struck a religious of another order, provided the judgment of the prelate to whom the one struck is subject is also applied. But they cannot absolve them if they have struck a secular cleric, but they must be absolved by the Apostolic See, except in the case of light striking, in which they can be absolved by the Bishop. CC. *Monachi* 2, *Cum illorum* 32, *Canonica* 50, *de Sent. exc.*; *Religioso* 21, e.t., in VI; St. Alphonsus, n. 107, where he adds: "It must be noted... that the aforesaid things proceed according to common law; for when privileges are considered, religious can well be absolved by their prelates even if the striking was enormous, from several privileges..., even if a religious struck another of another order, or a secular cleric..., even if the striking was public." Cf. Lucidi, *de Visitat.*, etc., chap. 4, *de Clero regul.*, sec. 4, nn. 96-98; Scavini, book 1, n. 954. Or another: "when the penitent is impeded from approaching the superior, or in danger of death, he can be absolved by any confessor." D'Annibale, *Summ.*, part 1, n. 368, 3rd ed. C. 29, cause 17, q. 4; Suarez, disp. 22, sec. 1; Schmalzgrueber, nn. 97, 243-262; Elbel, nn. 125-149; Bonacina, disp. 2, q. 3, part 6.

1183. Does one incur excommunication who, wishing to kill Peter the cleric, by invincible error kills Anthony the cleric? Several grave doctors deny it, because that real striking with respect to Anthony the cleric was not voluntary, but merely accidental. Others, more probably and commonly, as St. Alphonsus says, book 3, n. 628, affirm it, because although there is error in the person, nevertheless

he truly wills to injure a cleric, and in fact injures one. Therefore he truly injures the clerical state. Therefore. Suarez, l.c., n. 54; Molina, *De Iustitia et Iure*, tract 3, disp. 3, n. 2; Sanchez, *De Matr.*, book 9, disp. 32, n. 27; Schmalzgrueber, nn. 229, 234.

1184. Does he incur excommunication who strikes someone, being ignorant that he is a cleric, but with such a mind that if he knew, he would still strike him? "Sanchez, Suarez, etc., more commonly and more probably deny it, because with concomitant ignorance there is present only an interpretative will, which is not a true will." L. 275; Schmalzgrueber, n. 233; C. *Si vero* 4, *de Sent. exc.*

1185. III. Those perpetrating a duel, or simply provoking to it, or accepting it, and any accomplices furnishing any work or favor whatsoever; and also those deliberately watching it, and those permitting it, or, insofar as it is in them, not prohibiting it, of whatever dignity they may be, even royal or imperial.

A duel, insofar as it is punished by this penalty of excommunication, is an illicit war or fight of two persons, by agreement, at an appointed time, in an agreed place, and with lethal and equal arms, even if "it has been agreed that not individuals with individuals, but two, three, or more on each side, should fight," Clement VIII, constitution *Illius vices*, secs. 3, 5, namely one against one, even if several have successively engaged with the same person. Those perpetrating a duel, i.e., those committing a duel, whether privately or publicly, namely with seconds employed, placards affixed and signed, or a libel of provocation, etc. Also comprehended here are those among whom agreements have been entered about ending the contest as soon as either one has been wounded, or has shed blood, or a certain number of blows has been inflicted by each side. For these truly perpetrate a duel, provided nevertheless that the duel is of itself lethal. Simply provoking to it, whether they provoke by writing or another exterior sign. The present excommunication is incurred even if the duel does not in fact follow, nor the approach, nor any other act proximate to the fight. For since it is said, simply provoking, the censure is imposed precisely because of the provocation, and not also because of the duel. Accepting it: the same observation must be made as for those provoking.

Any accomplices, or those furnishing any work or favor whatsoever. Therefore those commanding, giving counsel, accompanying, messengers, those dictating provocative libels, or writing or affixing them; seconds, witnesses, masters of arms, etc., are excommunicated. But whether accomplices and cooperators incur excommunication if the fight is not brought to effect? Some affirm; others deny; for then it is not verified that they were accomplices and cooperators of a duel. Deliberately watching, i.e., those who intentionally go to the place of the duel and assist at the duel. Hence one who, passing by the place of the duel by the way and by chance, looks, led by curiosity, does not incur excommunication. Likewise those who watch from afar, or in secret, or in another way inducing nothing toward sharpening the fight, do not seem to incur this excommunication. Finally, one who goes to the place of the duel in order to impede it does not incur this excommunication, for they furnish a very good thing. Those permitting it, or, insofar as it is in them, not impeding it: therefore those civil or military authorities who, when they can, by no means impede a duel are subject to this excommunication. Temporal lords, not prohibiting them in their lands, etc. Gregory XII, constitution *Ad tollendum*; Clement VIII, constitution *Illius vices*; Benedict XIV, constitution *Detestabilem*; L. 220; Reiffenstuel, book 5, title 14; Schmalzgrueber, book 5, title 14; Lugo, *Resp. Mor.*, book 2, disp. 1, 2; Bonacina, disp. 2, q. 3, part 48; E.M.

1186. IV. Those giving their name to the Masonic sect, or Carbonari sect, or to other sects of the same kind which plot against the Church or legitimate powers, whether openly or secretly; and also those furnishing any favor whatsoever to the same sects; or those not denouncing their occult ringleaders and leaders, until they have denounced them.

Those giving their name are whoever knowingly and willingly are admitted into it, by whatever rite, or are initiated even without a rite. Masonic sects are assemblies or societies of men which propose to themselves to contrive something against the Church or against legitimate Government, "whether they have done this secretly or openly, whether they have exacted or not from their followers an oath of preserving secrecy." Holy Office, January 12, 1870; May 10, 1884; August 15, 1846. Or to other sects of the same kind: sects plainly religious, heretical, and schismatic do not pertain here. Legitimate powers, whether civil or religious. But here it must be noted that those who have given their name to the aforesaid sects cannot be absolved if, although they repent of the oath emitted, they nevertheless externally communicate with the same associates, by reason of the scandal which is present. Holy Office, July 5, 1837; June 27, 1838; Sacred Penitentiary, November 8, 1821. Any favor whatsoever: whatsoever is very broad; whether negatively, when someone ought and can act; or positively, whether someone acts physically or morally; whether by himself or through others; whether directly or indirectly, whether openly or occultly. Occult ringleaders and leaders: not all whatsoever who have given their name to condemned sects. Occult: therefore if they are publicly known, denunciation can be omitted, as is drawn from the cited Instruction of the Holy Office, February 1, 1871.

Ringleaders and leaders. By the present Constitution there is indeed no censure as regards those omitting denunciation of other sectarians. But there always remains the obligation of denouncing them either from ecclesiastical law, if this is in force, or from natural law, which obliges gravely when there is question of avoiding grave harm.

Until they have denounced. The denunciation must be made to the Inquisitor or Bishop of the place, or to one exercising a quasi-episcopal office there, or to another delegated by them for this effect, as is drawn from the cited Instruction. But grave harm to oneself or one's own can excuse from it, unless there is danger of common harm, which always prevails over private harm, or unless the denunciation is useless because the prelate will apply no remedy. But a notable lapse of time is required for excommunication because of omitted denunciation. Such is an entire month, from the time when someone knew the obligation and was able to fulfill it, according to the common rule. But once denunciation has been made, at least the reservation of the censure ceases, since it is imposed conditionally, until they have denounced. Indeed "the censure itself ceases through denunciation. Holy Office, February 1, 1871." But if for a just cause someone is absolved, before he makes denunciation, by one having power for this, and afterwards he does not keep the promise made of denunciation to be made, he falls back into the same excommunication by force of this clause: until they have denounced. Clement XII, constitution *In eminenti*; Benedict XIV, constitution *Providas*; Pius VII, constitution *Ecclesiam*; Leo XII, constitution *Quo graviora*; Gregory XVI, constitution *Inter*; Pius IX, Allocution *Qui pluribus*, November 9, 1846; Encyclical Letter of Leo XIII, *Humanum genus*, April 20, 1884; Instruction of the Holy Office, May 10, 1884; Ferraris, v. *Denuntiatio*; E.M.

1187. V. Those commanding the violation of the immunity of ecclesiastical asylum by rash daring, or those violating it.

The immunity of ecclesiastical asylum is the right which belongs to sacred or religious places, so that those who flee to them are not extracted from them by force. C. *Inter* 6, *de Immun. eccles.* Yet from the constitution *Cum alias* of Gregory XIV and from the Bull *Ex quo divina* of Benedict XIII, public robbers, highwaymen, ravagers of fields, murderers, heretics, rebels guilty of injured majesty against the person of the Prince, and others whom Benedict XIII excepts in the cited constitution, are excepted, with the formalities nevertheless observed which are prescribed by these two Constitutions. Cf. A.S.S., vol. 2, p. 49 ff., 120, 486. This right belongs to churches, even not yet consecrated, polluted, interdicted, and their sacristies, bell towers, roofs, atria, cemeteries, even separated from the Church; to oratories erected by the Bishop; to hospitals in which there exists some public chapel; to a house of religious; to seminaries; to palaces of Bishops or of Cardinals of the Holy Roman Church. CC. 9, 21, 35, 36, final, *de Imm. Eccl.*; C. 4, *de Relig. dom.*; L., *de Priv.*, nn. 25-27. With account indeed taken of places and times, several acts to the contrary are excused from sin per accidens, because they cannot morally be avoided, and positive law does not oblige with so great an inconvenience. Yet per se this right still obtains, notwithstanding contrary custom introduced, namely so that reverence for sacred things may be consulted. Holy Office, December 22, 1880.

By rash daring comprehends each member. From this it is understood that only he incurs excommunication who, by no means compelled by others, prudently and knowingly, either commands the violation of the immunity of ecclesiastical asylum or violates it by executing. Holy Office, February 1, 1871, A.S.S., vol. 15, p. 539. Those commanding violation: hence all those commanding that a delinquent be extracted from ecclesiastical asylum incur excommunication, the effect of violation having followed. Violating are those who in fact extract the guilty person from asylum by force, not those who only attempt it. C. 6, cause 17, q. 4; title 49, *de Immun. eccles.*, book 5 of the Decretals; Gregory XIV, constitution *Cum alias*; Benedict XIII, constitution *Ex quo divina*; Clement XII, constitution *In Suprema*; Benedict XIV, constitutions *Alias felicis*, *Officii nostri*, *Elapso proxime*; Ferraris, *Bibliotheca*, v. *Immunitas eccles.*; Reiffenstuel, book 3, title 49; Bonacina, disp. 2, q. 3, part 16.

1188. VI. Those violating the enclosure of nuns, of whatever kind or condition, sex or age they may be, by entering into their monasteries without legitimate license; and likewise those introducing or admitting them; likewise nuns going out from it outside the cases and form prescribed by St. Pius V in the constitution *Decori*.

Those violating the enclosure of nuns are, as is established from what follows, those who enter into their monasteries without legitimate license. Enclosure is called that whole space which is contained by the enclosures of the monastery. Of nuns, i.e., those who profess religion strictly by true and proper profession. For the discussion here is of that enclosure of which the Council of Trent speaks, sess. 25, *de Reg.*, chap. 5, and Pius V in the constitution *Decori*. Hence more recent nuns are not bound to canonical and pontifical enclosure, nor are they liable to this censure. S.C. Bishops and Regulars, August 1, 1839. Of whatever kind or condition. Persons of the royal family do not seem also to be comprehended, who by reason of their supreme dignity are worthy of more special mention; nor do prelates, whether secular or regular, seem to be comprehended if entering without necessity, for it cannot be said of them that they enter without faculty. Sex or age. Hence not only men, but also women; not only adults, but also seven-year-old children capable of malice.

Monasteries: by the name of monastery is understood a house in which religious women gathered together regularly live. L. 231.

Without legitimate license. Therefore it does not seem that, by reason of incurring this excommunication, it is necessarily required that this license be obtained in writing, as is held in Trent, l.c.; and it seems that even a general license suffices. And indeed he who enters with license received from the superior, although neither had in writing nor special but general, does not indeed enter without legitimate license. This license can be granted: 1. Bishops by their own authority, or delegated authority, according as the monasteries are subject to the Bishop or immediately subject to the Supreme Pontiff. 2. Vicars General, only as regards monasteries subject to the Bishop. 3. Capitular Vicars, the see being vacant, both as regards monasteries subject to the Bishop and also as regards those which are subject to the Apostolic See. 4. The Bishop, and besides him the regular prelate, i.e., General, Provincial, or immediate Superior of the monastery, as regards monasteries subject to regulars, unless a contrary custom is in force, that it be given by the Bishop alone. Benedict XIV, *De Synodo*, book 13, chap. 12, n. 23. 5. The Abbess, confessor, or another prudent man by delegation or commission of the Bishop. S.C.C., November 26, 1722; L. 223, 224, 228.

But this license cannot be given except in necessary cases, and therefore for a grave cause; and a lesser cause is required for the entrance of a woman than of a man, for daytime entrance than nighttime, of a female blood relative than of a stranger, and for entrance into the outer enclosures than into the inner. But in urgent necessities which do not suffer delay, as in the case of death, fire, violence, etc., no license is required for entering. L. 225. The ordinary physician cannot enter except with license renewed every three months; nor ought he to be accompanied by two senior nuns and enter alone. An extraordinary physician cannot enter at the pleasure of the nuns, but only in defect of the ordinary physician, or when a consultation must be had with the ordinary. Moreover craftsmen and other necessary persons can enter with license, who must exercise their craft within the enclosure. L. 226. A confessor can enter to administer to the sick the sacraments of penance and Eucharist, not only in danger of death, but as often as Communion is distributed by prescription of the rule, and as often as that nun is accustomed to communicate; likewise to administer extreme unction, and to commend the souls of the dying, vested in stole and surplice, S.C. Bishops and Regulars, January 1714, but not to perform the exequies of a deceased nun. A secular confessor must enter without a companion, but a regular must have a companion of approved life and mature age. But while he hears Confession, female attendants must stand by at the door, so that they see him. L. 227. Finally Bishops can enter the monasteries of nuns in case of necessity or visitation, but accompanied by a few persons, and those senior and religious; likewise regular prelates for the sake of visitation, once in the year, and if he is General, he can himself have with him two companions of his order, who are exemplary and of mature age; but if another, only one; and moreover four nuns from the senior ones must assist, who are not separated from the Visitor. L. 221; Bizzarri, *Collectan.*, p. 262, ed. 1885. Although one who entered the monastery with license and, after the business is finished, does not immediately go out, does not incur the censure, nevertheless he sins mortally if the delay is notable.

By entering: to enter is to go inside, to stay inside, and not only to put a foot inside. Introducing are those who cooperate positively toward entrance by sending inside, or by opening the door to one wishing to enter. Admitting are those receiving, who do not prohibit entrance when they can and

ought by office, namely the Prefects and Portresses. Likewise those introducing or admitting them: them, namely those violating. Outside the cases, etc. From the cited constitution of St. Pius V, "going out is excused if there is a just cause, namely (as is said there) of great fire, or illness, leprosy, or epidemic." Hence similar causes suffice for going out, such as imminent war, attack by robbers, flooding of a river, or ruin of a building. And form, etc. For when access is available, and time, namely if the danger suffers delay, from the aforesaid Bull of St. Pius V license had in writing from the Bishop is altogether required for going out, and also from the regular prelate if the monastery is exempt. But even in the aforesaid cases it is not lawful to remain outside the monasteries except for the necessary time. Going out, i.e., going out beyond the enclosure with the whole body. St. Alphonsus with others does not admit smallness of matter. Therefore, if a nun goes out from the enclosure, or someone enters the enclosure, even by one step, he incurs this excommunication. Yet others cited by the same Holy Doctor deny this, n. 229. Gregory XIII, constitution *Dubiis*, December 23, 1581; Alexander VII, constitution *Felici*, November 10, 1664; Giraldi, *Exp. Iur. Pont.*, part 2, sec. 140; Lugo, *Resp. Mor.*, book 3, disp. 18; E.M.

1189. Note: For the greater custody of chastity, frequent access to speak with nuns at the grates without special faculty and without reasonable and manifest cause, and where there is no legitimate custom to the contrary, is prohibited under grave obligation both to clerics and to lay persons. But this frequency consists in this, that someone goes to the monastery on three continuous days, or four times in a week, or once in each month for about a year. But for regulars, this conversation with nuns is specially prohibited, even if it is done once and for a quarter of an hour and a half, indeed "for any small space of time whatsoever, they sin mortally." Thus the Sacred Congregation, May 1, 1669. "Regulars approaching to speak with nuns without license sin mortally; even from a reasonable cause, when license is not present," etc. Sacred Congregation, November 26, 1672. But from the Decree of the Sacred Congregation issued by order of Sixtus V in 1590, on regulars speaking with any nuns whatsoever, whether of their own or of another order, or with any woman living in a monastery, there is imposed the penalty of deprivation of office, of active and passive voice, to be incurred by the very fact. More probably an abbess outside Rome is excepted. But those joined in the first and second degree of consanguinity are exempt from this prohibition, after permission has first been obtained from the Ordinary, who can give it in the prescribed form and for four times at most in any year. S.C. Bishops and Regulars, 13 Kalends of December, 1623. C. *Monasteria, de Vit. et honest. cleric.*; C. *Periculum, de Stat. regul.*, in VI; L., book 6, nn. 332-243; Bonacina, tome 1, *de Claus.*, q. 3; Lezana, *Summa Quaest. Regular.*, vol. 2, v. *Moniales*, n. 17 ff.

From Trent, sess. 25, chap. *de Reg.*, a secular magistrate is excommunicated, with excommunication reserved to no one, if, at the request of the Bishop, he does not furnish help against the disobedient and those contradicting the enclosure of nuns. Bonacina, disp. 2, q. 10, part 7, *de Clausura*, q. 4; Ferraris, v. *Moniales*, arts. 3, 4; Lucidi, *de Visit.*, etc., vol. 2, chap. 5, sec. 2; vol. 3, Document LV ff., 4th ed.; Bizzarri, *Collect.*, pp. 301, 311, 319, 329, 347, 410, 438, 454 ff., 546 ff., 596 ff., 723 ff., ed. 1885; Benedict XIV, *De Synodo*, book 9, chap. 15; Schmalzgrueber, book 3, title 35; Reiffenstuel, ibid.

1190. VII. Women violating the enclosure of male regulars, and superiors or others admitting them.

Women. Since this same excommunication was previously in force and nothing new is now added, it seems the same exception must be made as before. Therefore "queens, electresses, and similar women, and their daughters" are excepted. L. 231, 225. Women, namely having the use of reason and

pubescent. Violating, namely by entering, even if at that time no religious is inside; for this is per accidens. Of regulars, i.e., religious who emit solemn vows; for those who emit only simple vows, at least from the sacred canons, are not subject to enclosure.

Enclosure is that whole space which is contained by the enclosures of the monastery, and therefore workshops, dining rooms or refectories, infirmaries, dormitories, kitchen, etc., cloisters, gardens, meadows, orchards, unless they are separated by key and a suitable wall; but not the sacristy, if access to it is open from the church; indeed not even the first cloisters, to which women go to draw water, provided the monastery has other cloisters inaccessible to women. S.C. Bishops and Regulars, April 21 and May 16, 1582; Ferraris, v. *Conventus*, art. 3, n. 9 ff. In some orders of regulars which have within the monastery a room of the Holy Founder or of another Saint, there is a legitimate custom of admitting there the faithful of either sex on the feast day of the same. "Elbel says, n. 671, that as regards the manner of observing enclosure, legitimate and reasonable customs approved by the authority of Superiors are to be attended to; but not those which should rather be called abuses and corruptions." L. 231. But under the name of monastery or convent do not come private houses or residences where one or another religious is accustomed to dwell; nor a house which is being built, unless there are already sufficient dwellings, so that the community can now live regularly. L. 231.

Or others: therefore even inferiors and subjects admitting them incur this excommunication. Religious violating their enclosure by the introduction of women for an evil end incur by that very fact the penalty of deprivation of offices, and besides, for the future, incapacity for obtaining dignities and offices of their order. Warnings concerning the use of the faculties of the Jubilee, Kalends of November, 1899, sec. VII. Them, namely women violating. Admitting, i.e., receiving, approving admission, or not impeding it when they can and ought by office. Benedict XIV, constitution *Regularis disciplinae*, constitution *Decet Rom. Pont.*; Suarez, disp. 22, sec. 6, sixth excommunication; Bonacina, disp. 2, q. 3, part 38, *de Clausura*, q. 5; Pellizzarius, *Man. Reg.*, tract 5, 6, nn. 36, 37.

1191. VIII. Those guilty of real simony in any benefices whatsoever, and their accomplices.

Those guilty, namely those conferring and receiving a benefice simoniacally. Those guilty: here there is not held, of whatever dignity they may be. Hence some exclude Cardinals, but others also wish them comprehended. For this clause is not held in the following article so that they may be understood as excluded here, but so that in that article even Cardinals and prelates may be understood as included, who previously, according to the opinion of many, were punished only by interdict from entrance into the Church. Pius IV, constitution *Romanum Pontificem*, sec. 4. Simony, i.e., such properly and strictly, or of divine law. Real simony, by each side giving and receiving the thing and the price. But although it is required that the simony be real, fulfillment from each side, nevertheless, if only part of the promised thing is paid, real simony is now understood to be perfected from each side and sufficient for incurring this excommunication.

In benefices, i.e., in benefices properly so called, of which kind pensions, or temporary vicarships, etc., offices, dignities, etc., in religious orders are not. Therefore one who sells a spiritual pension, although he commits simony, does not incur the present excommunication. For a benefice is: a perpetual right, constituted by ecclesiastical authority, of receiving revenues from the goods of the Church because of a sacred office. Perpetual, i.e., both objectively, insofar as the benefice itself of itself is so perpetual that it remains with the beneficed person until it is taken away from him for a legitimate cause, and so that by the death of the beneficed person, or by his removal from the

benefice, the benefice itself is not extinguished, but is vacant of possessor, so that it is to be conferred on another, and therefore endures perpetually in itself; and subjectively, insofar as the beneficed person ought to have it perpetually, as long as he lives, irrevocably. Hence under the name of benefices, properly and strictly, do not come parishes which are conferred in a revocable manner. But others, for incurring this censure, do not require subjective perpetuity also. In benefices, i.e., in buying or selling the benefices themselves; in conferral, election, presentation, and other acts which pertain to provision of benefices. Whatsoever: namely whether they are double benefices or simple; whether of right of patronage or of free collation, etc. Accomplices: therefore this penalty is incurred, e.g., not only by one conferring and receiving a benefice, but also by those by whose cooperation, mediation, or favor the simoniacal contract is perfected. Extravagant 2, h.t.; Lugo, *Resp. Mor.*, book 2, disp. 3, nn. 2, 3; disp. 7, n. 8; Suarez, disp. 22, sec. 5, fourth excommunication; Bonacina, disp. 2, q. 3, part 24; Thesaurus, *De Poen.*, part 2, Simony.

1192. IX. Those guilty of confidential simony in any benefices whatever, of whatever dignity they may be.

Those guilty, namely those giving and receiving benefices and their fruits; and likewise those resigning. For those guilty of confidential simony are those who enter into a confidential pact among themselves. Those guilty: not also accomplices, as in the preceding article. Confidential, which has place only in ecclesiastical benefices; hence is added, in any benefices whatever, etc. But this excommunication is incurred both because of real confidential simony and because of mixed confidential simony, namely completed from one side only; for it is true confidential simony. Nor indeed is it required that the promised thing be fulfilled from each side. Of whatever dignity they may be: and therefore the present excommunication holds also Cardinals of the Holy Roman Church and other prelates. Pius IV, constitution *Romanum*; St. Pius V, constitution *Intolerabilis*; Council of Trent, sess. 25, chap. 7; Suarez, disp. 22, sec. 6, seventh excommunication; Bonacina, disp. 2, q. 3, part 25.

1193. X. Those guilty of real simony because of entrance into religion.

Those guilty: therefore in the case of simoniacal entrance into religion, both those giving and those receiving incur the present excommunication. Because of entrance. "It is very probable that excommunication is not incurred in simple entrance, but in profession." L. 108. Because of entrance: this simony is of divine law; but because of support of novices there is no simony; of professed persons, there is either none or only simony of human law, and therefore, where it is still in force, by no means subject to this excommunication.

In religion, strictly and properly so called. Extravagant 1, h.t.; Suarez, disp. 22, sec. 5, second excommunication; Bonacina, disp. 2, q. 3, q. 29.

1194. XI. All who, making gain from Indulgences and other spiritual graces, are struck with the censure of excommunication by the constitution of St. Pius V *Quam plenum*, January 2, 1569.

All who, etc. By the aforesaid constitution of St. Pius V, it is decreed only that inferiors to Bishops incur the sentence of excommunication, sec. 6. Making gain: therefore it is necessary that at least part of the price be received. Making gain, etc., namely 1. by dispensing indulgences and other spiritual graces, not to be conferred with any temporal thing, to those paying a certain sum of money, so that this payment of money is a condition owed for that concession, as if its price, although this is

done under pretext of promoting a pious work; 2. by presuming to publish letters which contain graces of this kind, or by commanding an index of cases and indulgences to be hung in sacred buildings, by which they seem to hunt buyers, since it is openly signified that the aforesaid things are conceded to those paying, although again this is done under pretext of a pious work. Cited Constitution, secs. 1, 2, 3, 4.

And other spiritual graces: these are enumerated in the aforesaid Constitution: 1. the faculty of choosing any priest whatsoever by whom someone may be absolved not only from non-reserved cases, but also from reserved cases, sec. 1; 2. "remissions of enjoined penances," sec. 2; the sacrifice of Mass, burial in the time of interdict; the use of prohibited foods; the assumption of two or more godparents at sacred baptism, contrary to the Tridentine Decree, besides those who are chosen, as they say, by synodal Constitutions; absolution from the guilt of simony reserved to the Apostolic See, sec. 3.

Of excommunication, etc. Therefore the suspension imposed in the same Constitution of St. Pius V against Bishops and Cardinals, sec. 6, has by no means been renewed by the constitution *Apostolicae Sedis*. Bonacina, disp. 2, q. 3, part 20.

1195. XII. Those collecting alms of a greater price for Masses, and from these seeking profit, by making them be celebrated in places where Mass stipends are accustomed to be of lesser price.

Collecting: collection indicates an abundant quantity of those alms and a deliberate search after the manner of trade. Therefore one would not incur this censure who collected only one or another stipend; or to whom Masses to be celebrated by himself are spontaneously committed. Collecting is said generally, whether they are lay persons or clerics. Collecting alms, etc... where Mass stipends, etc. Therefore the present censure is to be understood only of manual Masses, by no means of those which are owed because of foundation or benefice, or in perpetuity. L., book 6, n. 321, third excommunication. Cf. A.S.S., vol. 4, p. 39; vol. 8, n. 84. Of a greater price, of a lesser price: therefore one does not incur this censure who has Masses celebrated in a place where they are celebrated for the same stipend, although he retains part of the stipend.

From these seeking profit: hence they do not incur the censure who by office collect alms for Masses to be celebrated, if from these they retain for themselves an equitable remuneration of labor, L., l.c., n. 332, dub. 3; or retain them for themselves as alms, if they are truly poor; or simply retain them for themselves as another's thing, for then they must not be regarded as merchants, but as true thieves. Nor indeed do those incur the censure to whom the excess is remitted liberally and altogether spontaneously. Liberally and altogether spontaneously: for they incur it if they ask the priest to remit it, or ask him whether he consents that they retain part; for Benedict XIV, l.c., reckons this among execrable abuses. Finally, those also do not incur the censure who subtract part from the stipend so that it may be spent on certain pious uses, although the S.C.C., September 9, 1874, disapproved this. And from these seeking profit: therefore excommunication is not incurred when someone collects alms, but when, with a lesser stipend handed over to another, he retains a part of it for himself, in grave matter, namely by reason of profit.

In places where, etc.: the word is general; therefore subject to this excommunication is not only one who in another place, but also one who in the same place in which he collects alms commits Masses to be celebrated for a lesser alms, Holy Office, January 13, 1892, namely if he collected the stipends

themselves exceeding the tax, and handed over to others only the established stipend, retaining the excess for himself. Exceeding the tax: otherwise it would not be verified that he collected alms of greater price and made Masses be celebrated in a place where Mass stipends are accustomed to be of lesser price, i.e., commonly speaking, whether from the diocesan tax or merely from custom and common practice. E.M.

1196. XIII. All who are struck with excommunication in the Constitutions of St. Pius V *Admonet nos*, March 29, 1567; of Innocent IX *Quae ab hac sede*, November 4, 1591; of Clement VIII *Ad Romani Pontificis curam*, June 26, 1582; and of Alexander VIII *Inter ceteras*, October 24, 1660, concerning alienation and infeudation of cities and places of the Holy Roman Church.

All absolutely altogether, with no exception made, constitution *Admonet nos*, sec. 3. Those who are struck with excommunication, etc. Moreover, in the cited constitution of St. Pius V *Admonet nos*, l.c., first those treating, consulting, or otherwise making words about infeudations or alienations of cities and places immediately pertaining to the Holy See are struck with excommunication. Likewise the aforesaid are struck with excommunication who treat, consult, or otherwise make words about petitioning from the Holy See any persons as Dukes, Vicars, Governors, or under any other title, for life, or in perpetuity, or for a long time, or even at the good pleasure of the Apostolic See, of the aforesaid cities and places. Treating, whether publicly or privately. Concerning infeudations or alienations, to be made in any way whatsoever, e.g., under annual census or rent; in perpetuity, for life, for a long time, at the good pleasure of the Holy See; under any title, e.g., of government, vicariate; from any cause, even of necessity or evident usefulness. Hence it is clear that there is not question here of alienation properly so called, which consists in the perpetual transfer of direct and useful dominion to another, as in donation, sale, etc.; but of alienation improperly such, by which direct dominion or some right in the alienated place is always retained by the Holy See. Sec. 1.

Immediately pertaining: immediately subject places are those in which the Supreme Pontiff exercises temporal jurisdiction either by himself or through his delegated ministers, governors, judges. Now all the aforesaid are struck with excommunication who propose choosing envoys to be sent to the Holy See concerning the foregoing or on occasion of them, both they themselves and envoys receiving an office of this kind, or any others whatsoever insinuating or persuading alienations of this kind to the Roman Pontiff existing for the time, by themselves or by another or others. To insinuate is the same as to declare that one's mind is that the Supreme Pontiff alienate and infeudate the aforesaid places. To persuade is to move by reason or motive to making alienations of this kind. By oneself or another or others: therefore not by letter.

Innocent IX approves this Constitution and extends it in the cited constitution to places not only devolved, but also to be devolved, subject to the Holy See both immediately and mediately. Mediately subject places are those in which the Supreme Pontiff does not exercise temporal jurisdiction, and has transferred it to another, reserving direct dominion to himself. Such are states conceded in fief.

Clement VIII in the cited Constitution approves, confirms, renews, and declares the Bull of St. Pius V as extended by Innocent IX, revoking the Constitution of Gregory XIV, September 13, 1591, by which he had declared that the Constitution of St. Pius V was not to be understood of a fief not yet devolved, when evident usefulness or necessity of the Church demanded that it again be handed over in fief.

Finally, Alexander VII in the cited Constitution not only approved, confirmed, and renewed the three explained Constitutions, but also added by declaring that under the same Constitution of St. Pius V are comprehended principalities, duchies, cities, etc., acquired and to be acquired in whatever way by the Holy Roman Church and the Apostolic See and Camera, after it up to that time and in future successive times in perpetuity, whether by title of devolution or by any other title whatsoever. Likewise he asserted how the Constitutions of Gregory XIII, July 11, 1580, and Sixtus V, July 1, 1585, issued for confiscated goods, and also other Letters of Clement VIII given on May 26, 1596, were to be understood. Avanzini, annotations (35); Bonacina, disp. 22, q. 3, part 41; E.M.

1197. XIV. Religious presuming, outside the case of necessity, to minister to clerics or lay persons the sacrament of extreme unction or the Eucharist as Viaticum without the license of the parish priest.

Religious: novices of any order or congregation are not judged such here. Nor are religious of those congregations comprehended in which only simple vows are emitted. The reason is that in penal matters the law is to be interpreted strictly. For the same reason neither are religious of those orders comprehended in which solemn vows are indeed emitted, yet they themselves have emitted only simple vows. But under this name are comprehended all solemnly professed religious, although they themselves are parish priests. For these are held strictly by common law as true religious, but by no means others, although they emitted simple vows in a Religion in which solemn vows are emitted. This was positively declared by special privilege concerning Scholastics of the Society of Jesus. Bizzarri, *Collectanea*, p. 745, ed. 1885; Suarez, disp. 22, sec. 2, second excommunication; Lugo, *Resp. Mor.*, book 4, disp. 44, nn. 2, 3.

Presuming: therefore excommunication ceases if you falsely thought that a case of necessity was present, or that the license of the parish priest was not lacking; for if you thought thus, you did not presume. To clerics and lay persons. Yet Religious can from Trent, sess. 24, chap. 11, *de Ref.*, minister the last sacraments to clerics and lay persons who "actually serve and reside within their enclosures and houses, and live under their obedience." Nor indeed is excommunication incurred if they ministered to regulars. Outside the case of necessity, namely as often as danger of death is present and the parish priest cannot or will not minister the sacraments to the sick person. Or the Eucharist as Viaticum: therefore there is no censure if not as Viaticum, but to one who has already received Viaticum, they have ministered it again from devotion; this also is not prohibited, unless one must go along public ways.

Without the license of the parish priest, at least presumed. Of the parish priest, namely one who has care of souls, or who takes his place, by whatever name he is called, and of whom the sick person is a subject by domicile or quasi-domicile. Therefore pilgrims and vagi are excluded. Clementine 1, *de Privil.*; Bonacina, disp. 2, q. 9, part 5.

1198. XV. Those extracting relics from the sacred Cemeteries or Catacombs of Rome and its territory without legitimate permission, and those furnishing help or favor to them.

Of relics which are found in the Crypts and Cemeteries of the City, it is established that some are of the Holy Martyrs, e.g., "when glass or earthenware phials stained with blood are found at the tombs of the buried in the sacred cemeteries, either inside or outside them"; Sacred Congregation of Relics and Indulgences, December 10, 1863. But it is established that some are not of martyrs, such as

those which are found in open loculi. Finally, concerning some it is doubtful whether they are of Martyrs or not. The present excommunication is incurred by one who extracts those former relics of Holy Martyrs, but by no means by one who extracts the rest, whether it is certainly established that they are not of Saints, or whether it is doubted. Relics, namely bones and ashes. Paul V, decree of August 23, 1613, and May 16, 1614, prohibited under grave obligation to take away without permission even the smallest particle of these, and at the same time declared that theft of this kind is never excused because of smallness of matter. Legitimate permission must be given by the Eminent Cardinal Vicar, with the form preserved which was established by Paul V in the places cited and by Clement X in the Brief *Ex commissae nobis*, January 13, 1672. Namely written permission is required, subscribed by the Eminent Cardinal Vicar of the City, furnished with his seal, and extraction from the catacombs must be done in the presence of a delegated priest. And to them, those extracting. Bonacina, disp. 2, q. 3, part 13, sec. *Incidens*.

1199. XVI. Those communicating with an excommunicated person named by the Pope in a criminal crime, namely by furnishing help or favor to him.

Those communicating, both clerics and lay persons. With an excommunicated person named by the Pope, namely one whom the Supreme Pontiff excommunicates by name by particular excommunication, or denounces by name as excommunicated by a general excommunication *latae sententiae*. Therefore one who is excommunicated by anyone else is by no means comprehended here, nor one who, after he has incurred papal excommunication, is afterwards denounced by name as excommunicated by some other Ordinary. In a criminal crime, "That is, in the same crime or contumacy because of which excommunication was imposed, after the excommunication imposed and known to him; e.g., if someone again knows his excommunicated concubine after excommunication, as is held from C. *Si Concubinae* 55, *de Sent. exc.*, or if someone, after excommunication imposed on someone because of theft, concubinage, etc., furnishes help or counsel to him, lest he restore, lest he dismiss the concubine, or lest he go out from excommunication." L. 197. Namely by furnishing help or favor to him: therefore not any communication whatsoever is comprehended here, but communication 1. with an excommunicated person named by the Pope; 2. in a criminal crime; 3. by furnishing to him help or favor in that crime; counsel is not added. Therefore the crime here, as is clear, is a crime already committed, for one who furnished help or favor in committing a crime would be communicating with one not yet excommunicated. C. *Nuper* 29, *de Sent. excomm.*; Bonacina, disp. 2, q. 3, part 21; E.M.

1200. XVII. Clerics knowingly and willingly communicating in divine things with persons excommunicated by name by the Roman Pontiff, and receiving them in offices.

Clerics: therefore lay persons and Bishops do not incur this censure; it is disputed concerning regulars. Knowingly and willingly: therefore any ignorance, even affected, and any fear or compulsion excuse. Note this clause, which is lacking in the preceding article. Communicating in divine things: therefore it is not incurred because of communication in civil matters. But this communication in divine things must be grave, so that smallness of matter does not excuse. By the Roman Pontiff excommunicated by name: the same must be said as in the preceding article. And receiving them in offices: this part is understood by authors as explanatory and determinative of the former, so that the communication in divine things which is interdicted to clerics under penalty of reserved excommunication is only that by which they admit those excommunicated by name by the Pope to

performing divine offices. For this is to receive someone in divine offices. But divine offices or divine things are the same here, namely the sacraments, the sacrifice of Mass, public prayers, etc. For divine offices are those which clerics perform as ministers of the Church, or which are accustomed to be done by clerics alone. C. *Significavit* 18, *de Sent. excomm.*; L. 33; Suarez, disp. 10, sec. 2; Bonacina, tome 3, disp. 2, q. 5, part 3, n. 3.

1201. XVIII. "Those presuming to absolve without due faculty, even under any pretext whatsoever (from excommunications reserved in a special manner to the Roman Pontiff)... provided there is not question of the article of death." Paragraph *A quibus*. Cf. 1177.

Those presuming to absolve, not simply those absolving. To absolve, not to feign absolution. From excommunications reserved in a special manner to the Roman Pontiff, not from others. Provided there is not question of the article of death, or of a more urgent case, or it is very hard for the penitent to remain longer in the state of mortal sin. Cf. 800; Suarez, disp. 22, sec. 5, fifth excommunication.

1202. XIX. From the Council of Trent, sess. 22, chap. 11, *de Ref.*, those occupying the goods of any Church or pious place incur excommunication simply reserved to the Roman Pontiff, confirmed by the present Constitution, paragraph *Praeter hos*: "If greed, the root of all evils, has so occupied any of the clerics or lay persons, with whatever dignity he shines, even imperial or royal, that he should presume, by himself or through others, by force or fear inflicted, or even through supposed persons of clerics, or by any art, or under any sought color, to convert to his own private uses, and to usurp, the jurisdictions, goods, revenues, and rights, even feudal and emphyteutic, fruits, emoluments, or any income whatsoever of some Church, or of any secular or regular benefice, montes pietatis, and other pious places, which must be converted to the necessities of ministers and of the poor; or to impede them from being received by those to whom they pertain by law, let him lie under anathema as long as he has not integrally restored to the Church and to its administrator or beneficed person the jurisdictions, goods, things, rights, fruits, and revenues which he occupied, or which have come to him in any way whatsoever, even by donation of a supposed person, and then obtained absolution from the Roman Pontiff. But if he was patron of the same Church, beyond the aforesaid penalties let him also exist deprived by that very fact of the right of patronage. But the cleric who was fabricator or consenting party of this kind of wicked fraud and usurpation is subject to the same penalties, and also...."

This Tridentine censure must be compared with articles 11 and 12 of the excommunications of this Constitution reserved in a special manner to the Roman Pontiff. In those there is question of goods and rights pertaining to ecclesiastical persons by reason of their Churches or benefices, and of places and rights pertaining to the Roman Church. And occupiers of ecclesiastical goods of this kind "are bound only by excommunication specially reserved to the Roman Pontiff," Holy Office, July 8, 1874, and not also by the Tridentine censure. This latter comprehends all other goods or rights which can in any way be called ecclesiastical. But since this censure is very broad, hence of itself it extends to occupiers of all ecclesiastical goods.

If any of the clerics or lay persons: therefore regulars are not comprehended. If any, etc., with whatever dignity, even royal or imperial... to usurp or impede. Therefore this decree pertains not to any occupations whatsoever, but to authoritative and powerful occupations. Therefore not everyone who converts any thing in any way to his own uses, e.g., a tenant who does not pay rent, a borrower

or depositary who does not restore the thing, a debtor not paying debts, S.C.C., February 27, 1569, incurs excommunication, Council of Trent, sess. 23, chap. 3; nor those who subtract or impede tithes, Council of Trent, sess. 25, *de Ref.*, chap. 12, which is plainly decretorial. Nor indeed are those alienating comprehended, concerning whom a special censure is held here. To convert to one's own uses, not to another's, for instance if the rector of a pious place were to cut trees pertaining to the same place and convert them not to his own advantage, but to another's. To convert to one's own uses and to presume to usurp them: each must be taken copulatively, not disjunctively. For "thieves stealing the goods of a church or of pious places do not incur the excommunication of the Council." S.C.C., February 27, 1596. Or to impede them from being received by those to whom they pertain by law. Therefore there is question of outsiders, and not of the possessors themselves. Therefore "this Decree has no place when the Lord of a benefice cuts fruitful trees and converts them to his own advantage." S.C.C. apud Pignatelli, tome 7, cons. 11.

Goods, as elsewhere in Canon Law, are immovable or precious movable goods. C. 13, *de Elect.*, in VI; Extravagant *Ambitiosae, de reb. Eccl. non alien.* But understand goods of which dominion and possession are already had, and right in the thing, not also those not yet possessed, such as pious legacies, etc., or those of which there is only a right to the thing. Emoluments signify any utilities whatsoever proceeding from some thing in whatever way. Of pious places, namely those which have been erected by ecclesiastical authority, destined to a pious work, and which are ruled and administered dependently on the Church; whence it is said: let that usurper lie under anathema as long as... he has integrally restored... to the church and its administrator or beneficed person.

By himself or through others. Therefore those commanding are also comprehended, even clerical cooperators and those consenting, for it is said at the end: The cleric who was fabricator or consenting party of this kind of wicked fraud and usurpation, etc., and therefore with the effect following, which also applies to others. Sacred Penitentiary, April 15, 1873. By force or fear, etc. Therefore the action which is restrained by this Decree is to convert goods, revenues, etc., to one's own uses, to usurp them or impede them from being received by those to whom they pertain, and this not in any way whatsoever, but by force or fear inflicted, or by any art, namely fraud, or under any sought color, i.e., title or pretext, and not only by occupying them as one's own and due. But it does not matter whether someone usurped or impeded by himself or through others, or even through supposed persons. Nor indeed are only those excommunicated who convert these goods to their own uses, usurp, and impede them from being received by those to whom they pertain, or command these things, by occupying through others, etc., whether clerics, lay persons, beneficed persons, or patrons do these things; or even counsel or merely consent, if clerics, by positive consent; but also those to whom those goods have come from these in any way whatsoever, by inheritance, legacy, donation, leasing, purchase, etc., yet in a quantity not simply grave, which would be foreign to the same Council of Trent, sess. 23, chap. 3, *de Ref.*, but notable. Allocution of Pius IX *Quod praenuntiavimus*, July 25, 1875; Holy Office, July 8, 1874, ad 2. But presumption is required. For it is said, should have presumed to usurp. Therefore fear and ignorance excuse.

Let him lie under anathema as long as, etc. Therefore a special faculty is needed for absolving these penitents. It must be sought either from the Sacred Penitentiary or from the Ordinaries, to whom extraordinary faculties for this effect are conceded. The Holy See granted to Ordinaries in Italy, for one year, the faculty of making equitable composition for those who unjustly acquired ecclesiastical

goods, or alienated those acquired. Sacred Penitentiary, April 15, 1892. Faculty was also granted to the Ordinaries of France of admitting the faithful to composition because of goods unduly acquired after the law of separation. Secretariat of State, September 21, 1907. Cf. the second Supplement to the *Enchiridion Morale*. Suarez, disp. 22, sec. 6, ninth excommunication; disp. 23, sec. 4, fourth excommunication; Bonacina, disp. 1, q. 18, part 4; Cardinal De Luca, appendix, tome 14, annotations to S.C.C., discourse 23; E.M.

If a patron has committed such a crime, he also incurs deprivation of the right of patronage; if a cleric, he incurs incapacity for obtaining benefices, deprivation of a benefice obtained, and suspension from order, at the discretion of the Ordinary.

The indult for admitting to composition, which previously was given by the Sacred Penitentiary for one year, is now given by the Sacred Congregation of the Council for five years. *Monitor Ecclesiasticus*, vol. 25, p. 66 ff.

1203. We declare subject to excommunication *latae sententiae* reserved to Bishops or Ordinaries:

Excommunication, etc. The excommunications are papal, from which the faculty of absolving by ordinary law is conceded to Bishops, who therefore absolve by delegated power by the law itself. Confessors in Rome do not need special faculty of the Eminent Cardinal Vicar as regards the following cases to be absolved, from ancient custom. Holy Office, December 1, 1875.

I. Clerics established in Sacred Orders, or Regulars or Nuns after a solemn vow of chastity, presuming to contract marriage; and also all presuming to contract marriage with one of the aforesaid persons.

Clerics: not all, but those established in sacred orders. Regulars, nuns: not all, but after the solemn vow of chastity; nor indeed all these, but those presuming, and therefore ignorance excuses, even if afterwards, the matter having become known, they persevere in cohabitation, because then they do not contract, but have already contracted before. But there is question of marriage to be contracted, and therefore the present censure is not incurred for betrothals. The Holy Office declared on December 22, 1880: "Clerics established in sacred orders, or regulars or nuns after a solemn vow of chastity has been emitted, presuming to contract so-called civil marriage in places where the Tridentine law concerning clandestinity is in force, incur excommunication *latae sententiae* reserved to Bishops or Ordinaries." Similarly, the Holy Office, January 13, 1892, declared that they also incur this excommunication if besides the impediment of the solemn vow of chastity they have other impediments, e.g., of affinity or consanguinity. But it is by no means required that this attempted marriage also be consummated; for it is imposed against those presumptuously contracting marriage. And also all, etc.: therefore this excommunication is incurred not only by clerics established in sacred orders, regulars, or nuns, but also by those who contract with them. Clementine single chapter, *de Consang. et affin.*; Suarez, disp. 11, sec. 3, n. 15; disp. 4, sec. 3, n. 3; disp. 23, sec. 5, seventh excommunication; Sanchez, *De Matr.*, book 7, disp. 48; E.M.

1204. II. Those procuring abortion, the effect having followed.

Those procuring are properly said to be those who directly intend abortion and by an exterior work of itself efficacious deliberately strive so that it really follows. Procuring by immediate and proximate action. Procuring: nothing is distinguished; therefore all, and accordingly pregnant women themselves if they procure abortion in themselves. Lugo, *Resp. Mor.*, book 2, dub. 4; L., book 3, n.

395. Procuring either by themselves or through others; therefore also those commanding, but not also those counseling, helping, etc. Abortion is the ejection of an immature fetus. Therefore surgeons exercising craniotomy, although they sin gravely, do not incur this censure. Abortion: said absolutely; therefore at whatever time it is done after conception, whether the fetus is animated or inanimate, namely in the first days of conception. L., book 3, n. 396. The effect having followed. Therefore the present censure is not incurred if, although someone procured abortion, he nevertheless did not procure it efficaciously. L. 40, 368; Lugo, *De Poenit.*, disp. 16, n. 444; Paludanus, disp. 4, part 7, n. 15; Bonacina, disp. 2, q. 2, part 10; Ithur., case 21, n. 30 ff.

1205. III. Those knowingly using false Apostolic Letters; or those cooperating in the crime in this matter.

Apostolic Letters, in whatever form. False, whether partly true and changed, or wholly substituted. Knowingly: therefore ignorance excuses. Using: namely those who exhibit them so that they can have effect, although in fact they do not have it, for instance because the falsity is discovered; whether lay persons or clerics. Those cooperating in the crime in this matter, namely those who supply proximate work in their use to the one using them, not those who supply counsel or exhortation, nor those who falsify them. For to cooperate is to furnish help to another. C. *Ad Falsariorum* 7, *de Crim. falsi*.

1206. IV. To the preceding excommunications reserved to Bishops must be added excommunication against lay persons committing delicts against the Decrees of S.C.C., September 9, 1874, and May 11, 1904. Cf. 1238.

1207. We declare subject to excommunication *latae sententiae* reserved to no one:

I. Those commanding or compelling notorious heretics, or persons excommunicated by name, or interdicted by name, to be handed over to ecclesiastical burial.

Commanding or compelling: therefore not those burying, nor those simply admitting to ecclesiastical burial. Therefore a parish priest obeying the commands of civil authority and admitting one excommunicated by name to ecclesiastical burial does not incur this censure. Yet he falls into an interdict *latae sententiae*. Commanding, namely those who order or ask that the thing be done in their name. Compelling, those who compel by applying force. For coercion is not properly present unless force intervenes, and injury if it is unjust. Commanding or compelling, from the subject matter, seem to be restricted to those commanding or compelling by public power or force. For there is question of public and common burial.

To be handed over to ecclesiastical burial, i.e., to be placed in a tomb, to be conceded. Therefore those who command and compel do not incur excommunication unless after burial has been handed over. But ecclesiastical burial is a sacred place assigned for burying the Christian faithful, or at least for performing divine offices, by the designation of the Bishop, or also by common use and custom. Whether episcopal blessing is necessarily required, some affirm, others deny. Therefore one does not incur this excommunication who would command or compel someone to be buried with Catholic rite, but in a profane place; conversely, one incurs it who would command or compel someone to be buried in a sacred place, even with no rite applied.

Notorious heretics, and not only those to be avoided. As is clear, notorious schismatic heretics and apostates from the Catholic faith who are true heretics are also comprehended. By name, etc., with

the name expressed by words or indubitable signs. Excommunicated or interdicted, publicly denounced as such. For no one is bound to avoid one censured if the censure has not been publicly denounced, C. *Ad Evitanda*. C. *Quicumque* 2, *de Haeret.*, in VI; Clementine 1, *de Sepult.*; Ferraris, v. *Sepultura*; Suarez, disp. 12, sec. 4, n. 6; Bonacina, *De Cens.*, disp. 2, q. 2, part 3, sec. 3, n. 3; Reiffenstuel, book 3, title 28, n. 2.

1208. II. Those injuring or terrifying Inquisitors, denouncers, witnesses, or other ministers of the Holy Office; those plundering or burning the writings of its Sacred Tribunal; or those furnishing help, counsel, or favor to any of the aforesaid.

Injuring are those inflicting harm on a person. Terrifying are those causing more than simply grave fear, but very grave fear. Ministers, who are deputed by office for the service or business of the Holy Office, e.g., Consultors, Advocates, Notaries, Executors, etc. Of the Holy Office, wherever it is, whether at Rome or elsewhere; the law does not distinguish. Of the Holy Office, not of Bishops, although these are born Inquisitors. Writings, not Scripture. Writings, i.e., instruments whether public or private, whether printed by type or manuscripts, pertaining to the acts of the Holy Office. For it is said: the writings of its sacred Tribunal. To plunder properly is to snatch into different parts, and as it were to pillage; but to snatch is to take away by force. Therefore they do not incur this excommunication who secretly steal the writings of the Holy Office, or who take away by force only one or another. Plundering, burning, not otherwise destroying. St. Pius V, constitution *Si de protegendis*; Bonacina, disp. 2, q. 2, part 13; E.M.

1209. III. Those alienating and those presuming to receive ecclesiastical goods without Apostolic Beneplacitum, according to the form of the Extravagant *Ambitiosae*, *de Reb. Eccl. non alienandis*.

Those alienating: all, no one excepted; this law does not distinguish. Nor in the obvious sense are Bishops and Abbots excepted in the Extravagant *Ambitiosae* because from the cited Extravagant *Ambitiosae* they are punished not with excommunication, but with the penalty of interdict from entrance into the church. For for them another penalty is rather added, because of the greater gravity of the delict, with attention to the quality of those persons, an interdict from entrance into the church, which has been abrogated by the present Constitution. If Bishops and Abbots were excepted from excommunication by that Extravagant, all other inferior prelates also, and other administrators of ecclesiastical goods, would have to be excepted, since these also are punished with another penalty, deprivation of benefices. And thus no one alienating would any longer be excommunicated from that Extravagant. But under the regime of the present Constitution this most grave inconvenience would follow, that Bishops and Abbots, who sin more gravely, would be punished by no penalty, and only those who sin less would be punished. Alienating, not destroying, stealing, plundering. Nor indeed are all alienating comprehended, but only those to whom administration of ecclesiastical goods is entrusted, such as parish priests, rectors, etc., in whose name and by whose mandate the alienation is made, not their mandataries. For in the obvious sense they are here illegitimately alienating who, with the form of the Extravagant *Ambitiosae* preserved, would legitimately alienate. Presuming to receive: therefore ignorance excuses.

Alienation here, however, is taken broadly, as is established from the Extravagant *Ambitiosae* itself, which is found in book 3, title 4 of the Common Extravagants, single chapter, *de Reb. Eccl. non alienandis*. For the Supreme Pontiff says: "We prohibit by this Constitution, to remain in force perpetually, alienation of all things and ecclesiastical goods, and every pact through which their

dominion is transferred, concession, mortgage, leasing and renting beyond three years, and also infeudation or emphyteutic contract, except in cases expressed by law, and concerning things and goods which from ancient times were accustomed to be conceded in emphyteusis, and with evident usefulness of the Churches, and concerning fruits and goods which cannot be preserved by being preserved because of the demand of the present time." Then it is added: "If anyone, against the series of this prohibition of ours, has presumed to alienate anything concerning the same goods and things, alienation, mortgage, concession, leasing, renting, and infeudation of this kind shall be of no force or moment at all." Except concerning things and goods accustomed from ancient times to be conceded in emphyteusis: this exception, from present practice, is no longer admitted. Of no force or moment in the external and internal forum, according to the obvious sense, although several deny it for the internal forum if a just cause underlies. Finally, the penalty of excommunication is imposed on those alienating and receiving, and it is prescribed that alienation of these goods never be done without the Roman Pontiff being consulted. Those alienating and receiving: therefore the alienation must be perfected from each side, the thing handed over and accepted; nor does it suffice if it has been sold, e.g., under a suspensive condition.

Ecclesiastical goods, etc., namely those which have already been duly and rightly acquired, according to the form of the same Extravagant *Ambitiosae*. For to alienate is to cast away from oneself things already acquired, by no means to renounce things to be acquired. Whence, per se, to receive or give borrowed money is not alienation. Cf. Decree of S.C.C., March 21, 1626; L., book 4, n. 187. But ecclesiastical goods are the goods of monasteries, churches, and any pious places whatsoever, although administered by lay persons, provided nevertheless they have been erected by ecclesiastical authority; likewise ecclesiastical benefices, but by no means merely lay chaplaincies. Ecclesiastical goods, i.e., immovable and precious movable goods, as is held in the cited Extravagant. But under the name of precious things come gold or silver vessels, gems, abundant libraries. Likewise flocks and herds totally considered. Likewise cutting of trees and forests, if it is done with deterioration. A great sum of money donated and destined for buying immovable or precious movable goods also comes under this; for then it is judged something immovable or precious movable. Not likewise money generally; and much less precious relics, which is foreign to the mind of Paul II and to the property of the words, for no one would say that they are in our patrimony. Cf. vol. 1, n. 1173. Nor indeed is any sale or leasing beyond three years of an immovable thing or precious movable thing forbidden by this Extravagant. Ordinaries still alienate, by their own right as before, estates of slight value, C. *Terrulas* 53, cause 13, q. 2; indeed also those not slight, if necessity urges which does not suffer delay. Leases also lack both fault and censure if they were made under this law, that, at the end of each three years, it is lawful for the lessor to withdraw from the lease. Likewise the promise of renewing a lease is not a lease. Nor is it illicit to sell the revenues of one's benefice for a yearly wage or pension beyond three years, because it is prohibited by no law, provided they are not sold or leased for represented, that is, anticipated, payment. Council of Trent, sess. 25, chap. 11, *de Ref.* Moreover, the Sacred Congregation of Bishops and Regulars, May 1, 1840, determined for estates of slight value the sum of 25 gold scudi of the Camera, namely about 225 Italian lire, which, because of the changed value of money, can at present be doubled by proportionate reason. A gold scudo differs little from the value of 9 Italian lire. Likewise things can be alienated without permission of the Pontiff which probably do not last for three years without notable deterioration, or which are consumed by use, such as fruits, garments,

individual beasts of burden, etc.; things worn out by age, useless, harmful; any thing acquired by the Church under this pact, that it must be alienated.

Without the beneplacitum of the Apostolic See. Besides a just cause, in order that alienation of immovable and precious movable things can be done, it is also necessary that it be done with the solemnities required by law, all of which, however, the Apostolic beneplacitum supplies; without this, alienations are liable to excommunication if performed without a just urgent cause. Moreover, those inferior to Bishops and Abbots "exist deprived by that very fact only of the benefices whose things and goods they alienated, and these are judged vacant without any declaration." Extravagant *Ambitiosae*. L., book 4, n. 187; La Croix, book 4, n. 1363 ff.; Suarez, disp. 22, sec. 6, second excommunication; Schmalzgrueber, book 3, title 13; Reiffenstuel, ibid.; Lugo, *Resp. Mor.*, book 3, disp. 9, 10, 12, 13; Bonacina, disp. 2, q. 5, part 11; Bizzarri, *Collectan.*, pp. 298, 299, 527 ff., 544 ff., etc., ed. 1885; E.M.

The same excommunication is incurred by those selling and acquiring bearer securities belonging to ecclesiastical entities, vol. 1, n. 1173, and also those who violate the prescriptions of the Instruction *Inter ea* concerning debts and economic obligations to be assumed by Religious Families. Sacred Congregation for Religious, July 30, 1909, A.A.S., vol. 1, p. 699.

1210. IV. Those neglecting, or culpably omitting, to denounce within a month confessors, or priests, by whom they have been solicited to shameful things, in any of the cases expressed by Our Predecessors Gregory XV in the constitution *Universi*, August 20, 1622, and Benedict XIV in the constitution *Sacramentum Poenitentiae*, June 1, 1741.

Neglecting, etc. Cf. On the constitution of Benedict XIV *Sacramentum Poenitentiae*, 1249 ff.; E.M.

1211. V. Besides those thus far listed, We likewise declare excommunicated those whom the Sacred Council of Trent excommunicated, whether with absolution reserved to the Supreme Pontiff or to Ordinaries, or without any reservation, excepting the penalty of anathema established in the Decree of Session IV, concerning the Edition and use of Sacred Books, to which We will that only those be subject who print, or cause to be printed, books treating of sacred things without the approval of the Ordinary.

The censures of the Council of Trent confirmed by the present Constitution are those which were imposed directly by the Council itself, which either were first imposed by the Council of Trent, or, having already been imposed before, were distinctly and expressly commemorated and were inflicted anew by its authority; of which kind, e.g., is the censure concerning which mention is made in the present paragraph. For it is expressly said to be taken "from the Canon of the most recent Lateran Council." Moreover the cited Council of Trent, sess. 4, has this: "Let it be lawful for no one to print, or cause to be printed, any books concerning sacred things without the name of the author, nor to sell them in the future, or even retain them with himself, unless they have first been examined and approved by the Ordinary, under penalty of anathema.... And if they were regulars, beyond examination and approval of this kind, they are also bound to obtain license from their Superiors, the books having been reviewed by them according to the form of their ordinances. But those who communicate them in writing or publish them, unless they have first been examined and approved, are subject to the same penalties as printers."

This Tridentine excommunication, which is reserved to no one, is now restricted and extended. It is restricted only to those "who print, or cause to be printed, books treating of sacred things without the approval of the Ordinary," by no means comprehending those retaining, selling, publishing, if they are not the publishers of the same books. But it is extended to all books, whether the book does not have the name of the author or does have it. Concerning sacred things: although these words, concerning sacred things, are very broad, nevertheless they must be contracted to those books concerning which there is question in the cited Decree, namely "to books of the sacred Scriptures, and also to annotations and commentaries on them, but by no means to be extended to any books whatsoever treating of sacred things in general, that is, of things pertaining to religion." Holy Office, December 22, 1880. Without approval of the Ordinary: only approval of the Ordinary is required under the said censure, namely so that the book may be printed; not that the approval obtained also be printed in the book itself. Constitution *Officiorum* of Leo XIII, *de Cens. et prohib. libror.*, sec. 48; Suarez, disp. 23, sec. 7, first excommunication; Bonacina, disp. 2, q. 2, part 16; E.M.

1212. VI. The remaining Tridentine excommunications, reserved to no one, which are retained by the present Constitution, are the following: 1. The abductor, and all those furnishing counsel, help, and favor to him, are excommunicated by the law itself. Sess. 24, chap. 6, *de Ref. Matr.*

The abductor, namely of a woman for contracting marriage with the abducted woman. For there is question of abduction as a diriment impediment of marriage. And all those furnishing counsel, help, and favor to him, namely for the abduction; not likewise if they furnish these after the admitted abduction, so that the abducted woman may more easily marry the abductor. Are excommunicated by the law itself. The diriment impediment ceases if the abducted woman is no longer detained under the power of the abductor; but the excommunication perseveres and has an end only by absolution. Suarez, disp. 31, sec. 5, final paragraph; Bonacina, disp. 2, q. 2, part 9, and *de Susp.*, disp. 3, part 5, par. 1, n. 38; E.M.

1213. VII. 2. The Holy Synod commands all, of whatever grade, dignity, and condition they may exist, under penalty of anathema which they incur by that very fact, that in no way, directly or indirectly, are they to compel their subjects or any others from freely contracting marriages. Sess. 24, chap. 9, *de Ref. Matr.*

All, of whatever grade, dignity, and condition they may exist: nevertheless not all simply incur excommunication, but only all temporal lords and magistrates of whatever grade, dignity, and condition. For concerning these there is question in the cited chapter. Under penalty of anathema, not reserved. Directly, when force is exercised on the very person whom someone wishes to compel to marriage, and is immediately brought in order to marriage. Indirectly, when force is exercised on another person who influences the person whom someone wishes to compel to marriage, or when force is exercised on this very person not immediately in order to marriage, but in order to something else which compels the one suffering to marriage. Their subjects or any others, living under their jurisdiction, as is held in the same cited chapter, or at least subject in some way and at some time to their jurisdiction. Compel: by grave and unjust coercion. From freely contracting marriages: therefore coercion must regard marriage actually contracted; nor does it suffice for incurring excommunication to compel only to betrothals, or to compel to marriage if nevertheless marriage does not follow. Suarez, disp. 23, sec. 7, fourth excommunication; Ithur., case 14, n. 14 ff.; case 24, n. 14 ff.; Cardinal

De Luca, *Opera*, tome 14, annotations to the Sacred Council of Trent, discourse 26, n. 35 ff.; Bonacina, disp. 2, q. 2, part 6.

1214. VIII. 3. Against all and each persons, of whatever quality or condition they may be, both clerics and lay persons, seculars or regulars, and also those discharging any dignity, if in any way they have compelled some virgin, or widow, or any other woman unwilling, except in cases expressed in law, to enter a monastery, or to receive the habit of any religion, or to emit profession; and those who have given counsel, help, or favor; and those who, knowing that she does not spontaneously enter the monastery, or receive the habit, or emit profession, in any way have interposed their presence, consent, or authority to the same act. Likewise against those who in any way without just cause impede the holy will of virgins or other women of receiving the veil or emitting a vow. Sess. 25, chap. 18, *de Reg*.

A virgin or widow, or any other woman: if therefore coercion is done to some man, that he enter religion, this censure is not incurred. Since the Council excepts cases expressed in law, a delinquent woman can licitly be compelled to enter a monastery, as penalty of her crime, or as caution lest she fall into some incontinence; but rarely or never to the habit or profession. L. 212; C. 18, *de Convers. coniugator.*; C. 19, e.t.

To enter a monastery, or to receive the habit, or to emit profession. "Three members are distinctly enumerated, namely coercion to enter a monastery, to receive the habit, and to emit profession.... The Council twice enumerates these three as altogether distinct. And therefore in that first member it does not say to enter religion, but a monastery, because namely through that it prohibits women from being compelled to live there, even with their own habit retained." Suarez, disp. 23, sec. 7, sixth excommunication. Therefore according to Suarez and others the present censure is incurred even if someone compels a woman to enter a monastery, not so that she may profess, nor so that she may take the habit, but so that she may be honorably educated there. But Bonacina, disp. 2, q. 2, part 2, n. 6, and others do indeed distinguish those three things, whence they assert that excommunication is incurred by one who compels a woman even only to entrance, although she neither receives the habit nor emits profession. But they say that entrance must be understood in order to receiving the habit or emitting profession. Therefore one would not incur this excommunication who would compel a woman to enter a monastery for another end, e.g., that she may be educated there. St. Alphonsus, n. 212, judges the first opinion more probable. To receive the veil, or to emit a vow, seems to be the same as to profess religion; nevertheless because no one can profess unless the habit has first been received, one who impeded this reception would a fortiori impede profession, and consequently would incur this censure. Suarez, l.c.; Bonacina, l.c., part 3, n. 3. But Sanchez and others deny it, "because the decree of the Council must be taken with rigor." St. Alphonsus, n. 212.

In any way without just cause: therefore, if with just cause, this excommunication is not incurred. Impede: to impede is not to compel; to impede is to oppose oneself or to place obstacles, so that someone cannot attain what he justly desires. Ithur., case 24; Sanchez, *in Decal.*, book 4, chap. 4.

1215. IX. 4. Lest so great a Sacrament (of the Eucharist) be received unworthily and therefore unto death and condemnation, the Holy Synod itself establishes and declares that for those whom consciousness of mortal sin burdens, however much they may judge themselves contrite, with the supply of a confessor had, sacramental confession must necessarily be premised. But if anyone shall

have presumed to teach, preach, or pertinaciously assert the contrary, or even to defend it by public disputation, let him exist excommunicated by that very fact. Sess. 13, canon 11.

Must necessarily be premised: it is not added, by divine law. Therefore if someone defends that confession must be premised by merely ecclesiastical law, he in no way incurs this excommunication. But if he defends that "the command of Trent made to a priest sacrificing from necessity with mortal sin, of confessing as soon as possible, is counsel, not a precept," or that "that particle as soon as possible is understood when the priest will confess in his own time," he incurs excommunication simply reserved to the Roman Pontiff by force of article 1 of that series. For those two propositions are the thirty-eighth and thirty-ninth, which Alexander VII condemned with the others under penalty of excommunication reserved to the Apostolic See on March 18, 1666. Suarez, disp. 23, sec. 7, second excommunication; Bonacina, disp. 2, q. 12, part 14.

1216. X. 5. Although it is not to be doubted that clandestine marriages made by the free consent of the contracting parties are ratified and true marriages as long as the Church has not made them invalid, and therefore those are rightly to be condemned, as the Holy Synod condemns them with anathema, who deny that these are true and ratified, and who falsely affirm that marriages contracted by children of families without the consent of parents are invalid, and that parents can make them ratified or invalid: nevertheless the Holy Church of God has always detested and prohibited them for most just causes. Sess. 24, chap. 1, *de Ref. Matr.*

Contracted without the consent of parents are invalid, and parents can make them ratified or invalid: therefore there is no question here of the power of civil authority. Concerning this there is discussion in sess. 24, chaps. 3, 4, 9, 12, and the propositions condemned of the Synod of Pistoia, 53, 59, 65. Bonacina, disp. 2, q. 2, part 8.

1217. Other Tridentine excommunications which exist have already been enumerated in their proper place; namely 1. concerning enclosure, which is also reserved to no one, cf. 1189; 2. concerning duellists, which has been transferred in the present Constitution among the excommunications simply reserved to the Roman Pontiff, cf. 1185; 3. concerning usurpers of ecclesiastical goods, which is also reserved simply to the Roman Pontiff, cf. 1202; 4. finally, as regards Tridentine censures which are declared under anathema at the end of individual canons, all indeed are implicitly contained, by reason of heresy, in the first article of the excommunications reserved in a special manner to the Roman Pontiff. The same must be said of the anathema of sess. 25, decree on Indulgences.

1218. An excommunication has accrued to the constitution *Apostolicae Sedis*, reserved to no one, against missionaries giving work to business and trade, and against their immediate superiors who have not punished delinquents, according to the constitution of Urban VIII *Ex debito*, February 21, 1633, and Clement IX *Sollicitudo*, July 17, 1669, from the Declaration of the Supreme Pontiff. Sacred Congregation de Propaganda Fide, March 29, 1873; Holy Office, December 4, 1872.

Clement IX has these things in the place cited, sec. 3: "To all and each ecclesiastical persons, both secular and regular, of whatever state, grade, condition, and quality, and of any Order, Congregation, and Institute... and to any of them who shall have been sent for the time to the islands, provinces, kingdoms of the East Indies... and to the parts of America, both southern and northern, by the Apostolic See, or by the Congregation of Our venerable brothers, Cardinals of the Holy Roman Church, placed over the business of the Propagation of the Faith, or by their Superiors under the

name of missionaries, or under any other title, or who in any way shall be staying in those parts, under penalties of excommunication *latae sententiae*, and deprivation of active and passive voice... and also loss of all goods and profits, to be incurred by that very fact... by the tenor of the present letters We strictly prohibit... that they, under any pretext, title, color, device, cause, occasion, and form, even once, by themselves or through ministers or other subsidiary persons, directly or indirectly, both in their own name and in the name of their respective religions... or of any others whatsoever, and otherwise in any way and however, should thrust themselves into or mix themselves with such secular trades and businesses. And from now... after the case has happened, We apply, by the series of these letters, any goods and profits whatsoever which have proceeded from trades and businesses of this kind... to the use and advantage of the poor, hospitals, seminaries, etc.; delinquents are bound to consign goods and profits of this kind to the Ordinaries of the places... who ought to distribute and spend them as above, and not for other uses.... Sec. 4. Moreover by the same censures and penalties We bind, and declare to be bound, immediate Superiors, and Provincials and Generals of the aforesaid Orders or Congregations, who have not punished their respective subjects committing delicts in the foregoing... in any way even for one single time, at least by removing them from the places of the delict committed by them. But from the sentence of excommunication of this kind no one from the aforesaid delinquents can be absolved by Superiors or another or any others whatsoever, even supported by any authority, except those constituted in the article of death, unless profits of this kind have first been restored."

Kingdoms of the East Indies, parts of America: the praised Declaration of the Holy Office and Sacred Congregation de Propaganda Fide also comprehends Chinese missionaries. Holy Office, January 17, 1883. Or who in any way shall be staying in those parts: "the same prohibition and penalty, according to the mind of Clement IX, affects not only European missionaries, but also any ecclesiastical men whatsoever, who under the name of missionaries or under any other title shall have been sent for the time, or shall in any way be staying in those parts." Holy Office, January 17, 1883. Business is to buy something so that it may be sold dearer unchanged, e.g., oil, grain, books, etc. But trade also comprehends those things which, naturally changed, are customarily resold, e.g., must which, having become wine, calves which, having become oxen, swine which, having been fattened, are resold. Naturally: for if they are resold changed by the art and industry of men, it is craftsmanship, which does not pertain here, e.g., if from bought wool you make garments, from iron arms, from wood vessels. But if these things also are furnished in public workshops, with workers hired, they are something gainful, and differ little from business, nor consequently are they regularly exercised without lethal fault. L., book 3, n. 836. In any way and however they thrust themselves into or mix themselves with it; even once; even giving work to trade and business for others.

No one from the aforesaid delinquents, i.e., from those who give work to business or trades, or thrust and mix themselves into them. Therefore Superiors, even with profits not restored by delinquents, can be absolved, nor does the delay of delinquents harm them. Unless profits, etc. Therefore, with profits of this kind restored, someone can be absolved by another than the Supreme Pontiff. Condonation of profits is to be obtained only from the Holy See. But restitution is to be made "to the Ordinaries of places, or their Vicars in spiritual things, or Officials, or Apostolic Vicars or Pro-vicars." These must "distribute and spend the restored profits for the use and advantage of the poor, hospitals, ecclesiastical seminaries and workers (yet not of the religions... of those who have

committed a delict in the foregoing or concerning them, but of other non-delinquents...), and not for other uses." Sec. 3; E.M.

1219. "After the Bull *Apostolicae Sedis*, are the censures prescribed in the two Constitutions of blessed memory Benedict XIV concerning the Chinese and Malabar rites still in force? R. The Constitutions of Benedict XIV of blessed memory on the above-mentioned Chinese and Malabar rites, issued in the years 1742 and 1744, are altogether in force, except only the censures *latae sententiae*, of which no mention is made in the Constitution of the Most Holy Lord Pius IX, issued on October 12, which begins *Apostolicae Sedis moderationi*; and therefore at the end of the formula of the oath which is prescribed and confirmed by Benedict XIV in the same Constitution, between the words, 'I acknowledge and declare myself subject to the penalties imposed by the aforesaid Constitutions,' after the word imposed, this addition is to be inserted: 'and still in force.'" Holy Office, March 3, 1873.

Suspensions Latae Sententiae Simply Reserved to the Supreme Pontiff

1220. I. Chapters and convents of churches and monasteries, and all others who receive Bishops or other Prelates to the governance and administration of those churches or monasteries provided in any way concerning the aforesaid churches or monasteries by the same Holy See, before they themselves have exhibited the Apostolic Letters concerning their promotion, incur by that very fact suspension from receiving their benefices, at the good pleasure of the Holy See.

From receiving their benefices. "When a chapter or convent is suspended, the individual persons are not judged suspended, unless they are at fault. When suspension is imposed on the community alone, it does not affect individual persons as regards particular duties, but only as regards offices or benefices of the whole community." L. 317. But benefices of the whole community are those which pertain to the community as a community, although their fruits are distributed to individual persons. Benefices: those things which are of order and jurisdiction remain intact. Receiving, not administration; namely receiving the fruits. At the good pleasure of the Holy See: therefore this suspension is not going to endure for some determinate time, but as long as it shall please the Holy See, i.e., the Roman Pontiff existing for the time and his successors, namely until the suspended persons have deserved to obtain the grace of the same See concerning this. Therefore, when the will of the Holy See to remit or revoke the suspension has been declared, without another absolution absolution it expires. Laymann, part 3, chap. 3, n. 3.

And all others: these words, in their obvious sense, do not seem to be understood of the individual persons of chapters and convents, but seem to be referred to others who are not members of chapters and convents. Hence chapters and convents are indeed suspended from common benefices, which those chapters and convents, as such, possessed, but by no means from the benefices which the individual persons possess. But others besides chapters and convents, all indeed are punished by deprivation of the reception of those things which they individually hold. This suspension, as regards chapters and convents, is partly a penalty, partly a privation; and those also incur it who, from among the chapters and convents, have not received. But as regards others it is simply a penalty; hence they do not incur it unless they are not free from mortal fault.

They receive to the governance and administration: a Bishop or Prelate is judged to be received into the governance and administration of a church as soon as his authority is acknowledged as legitimate by receiving and admitting him. Therefore, once the Prelate has been received, those who render obedience to him when already received and in peaceful possession of his office do not incur this suspension. Bishops: some understand this of consecrated Bishops; because, since we are in odious matters, we use strict interpretation. Others, however, understand also those simply elected or confirmed, though they have not yet received episcopal consecration, because it is said, provided in any way, and there is question of promotion. Cf. Ferraris, v. *Episcopus*, art. 2, nn. 32, 36, 38. Prelates: those who possess quasi-episcopal and external jurisdiction, not those who are sent as merely administrators. Provided in any way at the same Holy See, namely "who are promoted at the said See, or receive the office of confirmation, consecration, or blessing." Extravag. comm. *Iniunctae nobis*, chap. 1, *de Electione*. Bonacina, disp. 3, q. 4, part 40.

1221. II. Those ordaining anyone without title of benefice or patrimony, with an agreement that the one ordained shall not seek support from them, incur by the law itself suspension for three years from the conferral of orders.

Suspension for three years: therefore, when the three years have passed, the suspension expires of itself. Laymann, part 3, chap. 3, n. 3. Those ordaining without title of benefice or patrimony: therefore there is question of the conferral of major orders; for to receive these, a title of benefice, or, this failing, of patrimony, is required. Anyone, whether another's subject or one's own subject, cf. chap. *Si Episcopus* 37, *de Praeb.* in 6; whether secular, though regulars are excepted, as having a privilege in this matter. Cf. 1222. Without title: therefore they incur this censure if they ordain someone with a false title, from which no right of receiving fruits passes to the one ordained. But by no means do they incur it if they ordain someone with a title, though insufficient, although this is forbidden by the Council of Trent. Patrimony: perpetual pensions, perpetual legacies of Masses, and manual chaplaincies under condition until the ordained person is provided for are counted as patrimony. L., book 6, n. 825; Benedict XIV, Notification 26.

With an agreement, etc. "Innocent III, in chap. *Cum secundum Apostolum*, *de Praeb.*, imposed on those ordaining, who promote clerics to sacred orders without title, the burden of supporting them until through them they obtain ecclesiastical benefices. This was also confirmed and explained in chap. *Si Episcopus*, *de Praeben.* in 6; but in the Lateran Council under Alexander III, part 1, chap. 5, a limitation was added: Unless the one ordained can have support from his own or paternal inheritance. Yet this is now to be observed according to the prescriptions in the Council of Trent, sess. 21, chap. 2, *de Ref.*" Suarez, disp. 31, sect. 1, seventh suspension. Chap. *Si quis* 45, *de Simon.*; Card. De Luca, works, t. 14, Annotations to the Sacred Council of Trent, disc. 14; Bonacina, disp. 3, q. 1, part 8.

1222. III. Those ordaining another's subject, even under the pretext of a benefice to be conferred immediately, or already conferred but by no means sufficient, without the dimissorial letters of his Bishop; or one's own subject who has stayed elsewhere for so long a time that he could have contracted a canonical impediment there, without testimonial letters of the Ordinary of that place, incur by the law itself suspension for one year from the administration of orders.

Those ordaining: even those conferring only minor orders, even according to some tonsure; for the word is general and is extended to every ordainer. Yet with reason first tonsure is excluded, since it is not an order. Holy Office, April 18, 1888. Another's subject: one who consequently is not one's own

subject, neither by title of birth, nor of origin, nor of domicile, nor of benefice, nor of familiarity, nor of incardination. Even under the pretext: therefore the present censure is incurred even if someone ordains another's subject without such pretext, without dimissorial letters of the Bishop whose subject he is.

Dimissorial letters are those which contain in writing the express consent and permission of the proper Bishop that his subject may be ordained by another Bishop. Testimonial letters are those which make trustworthy proof that someone is worthy to whom orders may be conferred. Therefore commendatory letters in general concerning someone's life and morals are not sufficient without any respect to receiving orders. But the aforesaid permission and testimony can also be given by living voice from Trent, sess. 14, *de Ref.*, chap. 2, except for Ultramontanes dwelling in Italy, chap. 1, *de Temp. ord.* in 6. Testimonial letters must be given by the Bishop of domicile, by the Bishop of origin, by the Bishop of the place where someone was born by chance, and by the Bishop of the place where someone has stayed for some time, if he has stayed in such a place for so long, namely beyond six months, and at such an age, namely after the seventh year, that he could have contracted a canonical impediment. But what is here prescribed concerning dimissorial and testimonial letters also pertains to those who have given their name to Pious Societies or Congregations in which simple vows are emitted. Sacred Congregation of Bishops and Regulars, May 6, 1864. But for those religious who today emit simple vows before solemn vows, during the triennium of these vows after the novitiate, dimissorials are given by Regular Superiors only as regards tonsure and minor orders. Sacred Congregation of Bishops and Regulars, January 12, 1858; but after solemn vows have been emitted, as regards all orders.

Of his Bishop: namely, the one who could have conferred orders on him, or granted dimissorials for orders. But by the name Bishop here is also understood the Vicar General, when the Bishop is acting in remote places; and the Vicar Capitular, when the See is vacant, and indeed even within the year for those who are pressed, namely those for whom, by reason of a benefice either received or to be received, it is necessary that the conferral of sacred order or tonsure not be deferred; after the year, for those not pressed. For so long a time, i.e., as in marriages according to the truer opinion, beyond six months, or beyond three for clerics assigned to military service. Cf. 893. A canonical impediment, for example censures, irregularity, etc. Chap. *Eos qui* 2, *de temp. ordin.* in 6; Innocent III, chap. *Speculatores*, November 4, 1694; Card. De Luca, loc. cit.; Bonacina, disp. 3, q. 1, q. 11, q. 2, part 7; Giraldi, *Expos. Iur. Pont.*, part 2, sect. 96; Honorante, *Prax. Secret. Urb. Vicar.*, chap. 1, n. 9; E.M.

1223. IV. He who, except in the case of legitimate privilege, has conferred sacred order without title of benefice or patrimony on a cleric living in some Congregation in which solemn profession is not emitted, or even on a religious not yet professed, incurs by the law itself suspension for one year from the conferral of orders. "Pius V, by the motu proprio of the year 1568, which begins *Romanus Pontifex*, extended the decree of the Council of Trent, sess. 21, chap. 2, *de Ref.*, insofar as it requires the title of benefice or patrimony, even to religious clerics or those living after the manner of religious, who have not emitted profession and solemn vows; and he suspends by the law itself those otherwise ordained, and if they minister he makes them irregular." Suarez, *de Cens.*, disp. 31, sect. 1. This extension of St. Pius V is preserved by the Constitution *Apostolicae Sedis*, as is clear from the present suspension. Except in the case of legitimate privilege: hence the Religious of the Society of

Jesus are excepted, although they have emitted only simple vows, from the Constitution of Gregory XIII *Ecclesiae catholicae*, June 28, 1591. Cf. Sanchez, *Consil. Mor.*, book 7, chap. 3, dub. 35, n. 9.

A cleric in some Congregation, etc.: therefore, apart from a special privilege, they cannot be ordained by the title of poverty: 1. religious who have emitted simple vows in a Congregation to which simple vows only were granted; 2. religious who now emit simple vows by pontifical mandate, although they belong to orders in which formerly only solemn vows were emitted. Sacred Congregation, January 20, 1860. He who has conferred sacred order: therefore a single class of persons incurs this suspension, namely those themselves conferring the order, or ordaining. Card. De Luca, loc. cit.; Bonacina, disp. 3, q. 1, part 8, q. 2, part 10.

1224. V. Religious who have been ejected and are living outside religion incur by the law itself perpetual suspension from the exercise of orders.

Religious. The aforesaid suspension touches only religious admitted to solemn profession, 1. because the Sacred Congregation of Cardinals for interpreting the Council of Trent, on September 21, 1624, after counsel had been communicated with Urban VIII and by his faculty, issued among other things the following Decree: "Those ejected and living outside religion are perpetually suspended from the exercise of orders, the faculty of the Ordinaries of places to relax or moderate the said suspension having been removed." But the aforesaid suspension, according to the common opinion of theologians, did not touch religious not admitted to solemn profession. 2. For by the name religious in odious matters only religious strictly so called, or professed, are customarily meant. Therefore neither novices nor religious who have emitted only simple vows incur this censure. Ejected: therefore apostates or fugitives do not incur this suspension, because they have not been ejected. Nor do the unjustly ejected incur it. Therefore it is necessary that someone be ejected for a just cause and with the order of law observed. Otherwise he will not truly have been ejected. Living outside religion: therefore those ejected persons who are received again, or who pass canonically to another religion, are no longer bound by this suspension, because they are not living outside religion. Bonacina, disp. 3, q. 8, part 12; *de Claus.*, q. 2, part 12; Lucidi, vol. 2, p. 36 ff., ed. 3.

1225. From the Decree of the Sacred Congregation of Bishops and Regulars, November 4, 1892: "Alumni of solemn or simple vows, perpetual or temporary, constituted in sacred orders, who shall have been expelled or dismissed, are to remain perpetually suspended until the Holy See provides for them in another way; and besides this, until they find a benevolent receiving Bishop and provide for themselves concerning ecclesiastical patrimony. Those who, constituted in sacred orders and bound by simple vows, whether perpetual or temporary, have spontaneously sought and obtained dismissal from the Apostolic See, or otherwise by Apostolic privilege have been dispensed from simple vows, whether perpetual or temporary, are not to leave the cloister until they find a benevolent receiving Bishop and provide for themselves concerning ecclesiastical patrimony; otherwise they remain suspended from the exercise of the orders received. This is extended also to alumni of simple temporary vows who would already be released from every bond of profession because the time for which the vows were pronounced by them has elapsed." Therefore the ejected are always to be dispensed by the Holy See, even if they have found a receiving Bishop and provided for themselves concerning patrimony. The dismissed and others, if they have found a receiving Bishop and provided for themselves concerning patrimony, by that very fact their suspension ceases.

According to the most recent Decree concerning the expulsion or dismissal of Religious, Sacred Congregation concerning Religious, *Quum singulae*, par. 20: "20. All Religious, of whom there is question, constituted in Sacred Orders, who shall have been expelled or dismissed, remain perpetually suspended until from the competent Authority, after amendment of life, they have obtained dispensation. Religious or Clerics not in Sacred Orders, expelled or dismissed, are prohibited from ascending to higher Orders without permission of the Holy See. But all expelled or dismissed, even if they have truly amended themselves, will not be able to be admitted to their own or to another Order or Congregation without special permission of the Apostolic See."

Furthermore, attention must be paid to the new clauses, though not expressed, which must be understood as annexed to Rescripts of secularization or of dispensation from perpetual vows, which are granted to religious clerics constituted in sacred orders. Cf. vol. 3, n. 254.

1226. VI. Those who have presumed to receive the same order from one excommunicated or suspended or interdicted, if these have been denounced by name, or from a notorious heretic or schismatic, incur by the law itself suspension from the order received; but one who in good faith has been ordained by any one of them, We declare not to have the exercise of the order so received until he is dispensed.

Suspension from the order received, i.e., validly received; otherwise suspension could not even be understood. Those who receive the same order, etc.: therefore it is not a total suspension from every order received, but a partial one only from the order received from one excommunicated, suspended, or interdicted. From the order received: therefore this suspension is not extended also to first tonsure; but it is extended to the consecration of a Bishop, for the text speaks generally. From one excommunicated, or suspended, or interdicted from the conferral of orders. Denounced by name, or from a notorious heretic or schismatic: therefore the present suspension is not incurred if the order is received from one interdicted, suspended, or excommunicated, but tolerated; or from a heretic or schismatic, but occult.

They have presumed: therefore ignorance, even crass or supine, and grave fear excuse from this suspension.

But one who in good faith... not to have the exercise: the opposition which is here established between him who presumes to receive order and him who in good faith is ordained by an excommunicated person; likewise that different manner of speaking, for of the first it is said that he incurs suspension, of the later that he does not have the exercise of the order so received, seems openly to imply that this privation of the order received is not imposed as a censure on the ordained person, but as a privation and penalty to the injury of the ordainer acting without due power, and as a kind of irregularity from defect. Hence the same must be said also in the case of coercion and of fear falling on a steadfast man. For that defect of power is not removed because of fear; indeed, in some way it is increased, especially if it is instilled by the very ordainer. Until he is dispensed: this dispensation, as is clear from law, is not reserved to the Supreme Pontiff; nor indeed is it reserved here, since it is put indefinitely; hence it is to be understood with the clause, according as by law. Until he is dispensed by his Bishop. Before dispensation he sins by ministering in the orders received. Chap. *Quoad* 1, *de Schism.*; chap. *Fraternitati* 2, ibid.; chap. unic. *de Ordinatis ab Episc. qui ren. ep.*; Bonacina, disp. 2, q. 1, parts 9, 10; Thesaurus, *de Poenis eccles.*, part 2, *Ordo*, chap. 24, n. 1, v. *Limita et advertendum*.

1227. VII. Secular clerics who are foreigners, staying more than four months in the City of Rome, ordained by someone other than their own Ordinary without permission of the Cardinal Vicar of the City, or without a previous examination completed before the same, or even by their own Ordinary after they have been rejected in the aforesaid examination; and also clerics belonging to one of the six suburbicarian bishoprics, if they are ordained outside their own diocese, with dimissorials of their Ordinary directed to another than the Cardinal Vicar of the City, or without spiritual exercises having first been made for ten days, before receiving sacred order, in the urban house of the priests called of the Mission, incur by the law itself suspension from the orders thus received at the good pleasure of the Holy See. But the Bishops ordaining incur suspension from the use of pontificals for one year.

Secular clerics: these things therefore do not pertain to regulars, nor to laymen who receive tonsure and, with it, minor orders at the same time. More than four months: not before this time; namely those who have stayed in the City for a shorter time. Foreign clerics here are said to be those who belong neither to the Roman diocese nor to one of the six suburbicarian bishoprics. This is clear from that other added part: foreign secular clerics... and also clerics belonging to one of the six suburbicarian bishoprics, etc. Staying in the City, and still continuing to stay there; for it is said staying in the City, not who have stayed, ordained by another, etc.; therefore these things do not pertain to those who indeed depart to be ordained, but are no longer going to return. Proper Ordinary, by reason of origin, or domicile, or incardination, or benefice, or familiarity. After they have been rejected in the aforesaid examination; not likewise without the aforesaid previous examination. And also clerics belonging, etc.: it is not added, staying more than four months in the City of Rome. Therefore they incur this suspension, although they are staying in their own diocese, if, etc. The suburbicarian bishoprics are Ostia, Porto and Santa Rufina, Albano, Palestrina, Sabina, Tusculum, Velletri. Cf. motu proprio of Pius X *Edita a Nobis*, May 5, 1914.

Or without the exercises having first been made: namely unless they enjoy a privilege. Before sacred order, not any order whatsoever. Priests of the Mission, commonly called Lazarists, are those who have St. Vincent de Paul as founder. Bishops ordaining: not those conferring simple tonsure. Suspension from the use of pontificals. Cf. 1130, 1131. Edict of the Cardinal Vicar issued by order of Benedict XIV, March 20, 1743; Declaration issued by order of Alexander VII in 1668; Honorante, *Prax. Secret.*, chap. 16.

1228. The preceding suspensions are not all censures in the strict meaning; for some are simply penalties, namely those which are imposed at good pleasure, in perpetuity, or for a determinate time, e.g., for three years, for one year. But one is simply a privation, such as that which is imposed on clerics receiving orders in good faith from a Bishop excommunicated by name, etc. Finally, one is a privation and a penalty, such as that which is imposed on Chapters and Monasteries. Hence violation of suspension in innocent persons, in moral persons, in Chapters, Monasteries, Universities, etc.; and in individual persons indeed who are gravely guilty, either in perpetuity or at good pleasure, induces no irregularity. Whether the same holds when suspension is imposed to a fixed day, for a year, for three years, some deny, because it does not have the nature of censure, namely of a medicinal penalty; others affirm from chap. *Cum aeterni* 1, *de Sent. et re iud.* in 6; and more truly, since from the very fact that it is imposed by the law itself it is already for preventing future delicts, and not only for punishing past ones. Therefore from this head it truly also has the nature of censure. Cf. L., book 7, n. 314; Salm., t. 10, chap. 5, n. 13.

1229. The Tridentine suspensions to be added to the preceding suspensions of the Constitution *Apostolicae Sedis* are the following:

VIII. "It shall not be lawful for Chapters of Churches, when the See is vacant, within one year from the day of vacancy, to grant permission to ordain, or dimissorial letters, or reverends, as some call them, whether from the disposition of common law or even by force of any privilege or custom, to anyone who has not been pressed by reason of an ecclesiastical benefice received or to be received. If otherwise is done, the Chapter contravening is subject to ecclesiastical interdict, and those thus ordained, if they have been constituted in minor orders, shall enjoy no clerical privilege, especially in criminal matters; but if in major orders, they are suspended by the law itself from the execution of orders, at the good pleasure of the future prelate." Sess. 7, chap. 10, *de Ref.*

If they have been constituted in minor orders. "For those receiving minor orders another penalty is established, namely that they are not to enjoy clerical privilege, especially in criminal matters; therefore they are not suspended, as the Congregation of the Council declared... The penalty imposed on those ordained in minor orders does not comprehend this one receiving first tonsure; because under the designation of minor orders, especially in a penal and odious decree, only the four minor orders are understood, and not first tonsure, which is distinguished from them... But one pressed by reason of a benefice received is said to be he who holds a benefice by reason of which he is obliged to have himself promoted; as he who holds a parochial church is pressed to be promoted to priesthood within a year... But one pressed by reason of a benefice to be received is said to be he who has been called to a vacant benefice requiring a certain order which he lacks." Castropalao, *de Cens.*, disp. 4, part 10, par. 1, n. 11; Suarez, *de Cens.*, disp. 31, sect. 1, second suspension; Bonacina, *de Suspens.*, disp. 3, part 5, par. 1, n. 5. Within one year from the day of vacancy: because if after a year the See is still vacant, it is permitted that the Chapter provide for new priests by granting dimissorials. But to grant dimissorial letters after a year pertains to the Vicar Capitular, not to the Chapter. The Vicar of the Supreme Pontiff, when the See is vacant, is by no means comprehended in the Tridentine decree. Permission to ordain: for tonsure to be conferred, dimissorials can be granted even within the year. Sacred Congregation of the Council, February 10, 1594.

This penalty "imposed on those who, contrary to this Decree of the Holy Synod under Paul III (sess. 7, chap. 10, *de Ref.*), obtain dimissorial letters from the Episcopal Chapter when the See is vacant, it commands to be extended to those who obtain the same letters not from the Chapter but from any others succeeding to the place of the Chapter in the Bishop's jurisdiction when the See is vacant. But those granting dimissorials contrary to the form of the Decree are by the law itself suspended from office and benefice for one year." Council of Trent, sess. 23, chap. 10, *de Ref.* Bonacina, disp. 3, q. 1, part 11.

1230. IX. Let each one be ordained by his own Bishop. But if anyone seeks to be promoted by another, let this by no means be permitted to him, even under pretext of any general or special Rescript or Privilege, even at the stated times, unless his probity and morals are commended by the testimony of his Ordinary. If otherwise is done, let the ordainer be suspended from the conferral of orders for one year, and the ordained from the execution of the orders received for as long as it shall seem expedient to his proper Ordinary. Sess. 23, chap. 8, *de Ref.*

Unless his probity and morals are commended by the testimony of his Ordinary. Therefore this suspension is incurred by the foreign Bishop ordaining, and by the one ordained by him without

testimonial letters of the proper Ordinary. Therefore here there is no question of the lack of dimissorial letters. "A cleric who has obtained a Rescript or Privilege from the Pope to receive orders from any Bishop, if he receives them without commendatory letters of his proper Bishop, incurs the same suspension from the same Tridentine decree, because that rescript excludes dimissorial letters but not commendatory letters, i.e., testimonial letters concerning life and morals." Bonacina, n. 22; Mazzotta, tract. 8, disp. 3, q. 2, chap. un., par. 1, n. IX. But this censure is incurred "by reception of both major and minor orders, because the text speaks generally of all, as the Sacred Congregation of the Council declared there. But by reception of first tonsure this suspension does not seem to be contracted." Castropalao, *de Cens.*, disp. 4, part 10, par. 1, n. 4.

For one year. "How is a suspension imposed for a determinate time, or under some condition, removed? Resp. If the time has elapsed, or the condition has been fulfilled, it ceases without any absolution, because it cannot proceed beyond the intention of the one imposing it... But in the intervening time, or before the condition has been fulfilled, such a suspension can be removed by dispensation by him who imposed it, or by his Superior or successor, but not by an inferior. And therefore if it has been imposed by common law for a certain time, only the Pontiff can remove or relax it before the time is finished... The reason is that otherwise the intention of the Pontiff would be frustrated." Schmalzgrueber, book 5, tit. 39, nn. 311, 312. For as long as it seemed expedient to the proper Ordinary. This suspension is to be removed by the proper Bishop, to whom the injury was done. Bonacina, disp. 3, q. 1, part 11.

1231. X. It shall not be lawful hereafter for Abbots and any others whatsoever, however exempt, who are situated within the boundaries of any diocese, even if they are said to be of no diocese or exempt, to confer tonsure or minor orders on anyone who is not a regular subject to them; nor may the same Abbots and other exempt persons, or any Colleges or Chapters whatsoever, even of Cathedral Churches, grant dimissorial letters to any secular clerics so that they may be ordained by others. But the ordination of all these, with all things observed which are contained in the decrees of this Holy Synod, shall pertain to the Bishops within whose diocesan boundaries they exist, notwithstanding any privileges, prescriptions, or customs, even immemorial. It also commands that the penalty imposed on those who, contrary to the decree of this Holy Synod under Paul III (sess. 7, chap. 10, *de Ref.* Cf. 1229), obtain dimissorial letters from an episcopal Chapter when the See is vacant, be extended to those who obtain the same letters not from the Chapter but from any others succeeding to the place of the Chapter in the Bishop's jurisdiction when the See is vacant. But those granting dimissorials contrary to the form of the Decree are by the law itself suspended from office and benefice for one year. Sess. 23, chap. 10, *de Ref.*

To anyone, etc. "Hence it follows that the aforesaid Abbots and other exempt persons are subject to this penalty when they make dimissorial letters for a secular cleric, although he otherwise pertains to their jurisdiction. The reason is that the Council speaks of those granting dimissorials to secular clerics." Bonacina, *de Susp.*, disp. 3, part 5, par. 4, n. 12. Colleges or Chapters, i.e., when the See is not vacant, which by a certain special right have jurisdiction in some part of a diocese. For another Decree exists concerning Chapters when the See is vacant. Cf. 1229. The penalty also, etc. Cf. 1329; Benedict XIV, *de Syn.*, book 2, chap. 11.

Therefore Abbots, exempt Prelates, and Vicars Capitular, who grant dimissorial letters to secular clerics so that they may be ordained by someone other than their proper Bishop, incur suspension

from office and benefice for one year. Those ordained, with dimissorials of the Vicar Capitular, incur suspension from the execution of orders at the judgment of the future Prelate. Cf. 1299.

1232. XI. No Bishop of those called titular, even if he shall have resided or stayed in a place of no diocese, even exempt, or in some monastery of any Order, by force of any privilege granted to him for the time of promoting any persons whatsoever coming to him, is able to promote or ordain another's subject, even under pretext of familiarity of his continuous table-fellowship, without the express consent or dimissorial letters of his own proper prelate, to any sacred or minor orders, or first tonsure. The one acting contrary is by the law itself suspended from the exercise of pontificals for one year; and the one so promoted, from the execution of the orders thus received until it shall seem good to his own prelate. Sess. 14, chap. 2, *de Ref.*

Titular Bishops are said to be those who indeed have been consecrated for some diocese. But because a diocese of this sort has been invaded by infidels, by heretics, or by schismatics, the Bishop has in it neither clergy nor people subject to him. Cf. Giraldi, *Iur. Pont. Expos.*, part 1, sect. 64. To promote to any sacred or minor orders, or first tonsure. "It has been provided that this faculty is by no means to be granted to a titular Bishop, so that no competency enters in them. For that of origin cannot enter, much less that of domicile or benefice, since in Titulars none of these remains verifiable, although someone from a Church occupied by infidels comes to Catholic places so that he may live in a Catholic manner, since he is made a subject of that diocese, as is insinuated above. Hence for this reason there would remain only the title of familiarity, which was removed by this Conciliar Decree, since under this pretext many frauds were committed, and many who because of lack of learning, or because of life and morals or other just causes, were rejected by the Ordinary, thus assumed orders." Card. De Luca, loc. cit., disc. 14, n. 19. E.M.

1233. XII. It is lawful for no Bishop, under pretext of any privilege, to exercise pontificals in another's diocese, unless with the express permission of the Ordinary of the place, and only upon persons subject to that Ordinary. If otherwise has been done, the Bishop is by the law itself suspended from the exercise of pontificals, and those thus ordained from the execution of orders. Sess. 6, chap. 5, *de Ref.*

For no Bishop: what has been said of a Bishop is to be understood of an Archbishop, because it is not given to him to exercise pontificals in the diocese of suffragans except in some cases. And upon persons, etc. This Decree does not prevent a Bishop existing in another's diocese, with the previous permission of the Ordinary of that diocese, from being able to confer orders both on his own subjects and on those of the Bishop granting permission. Sacred Congregation, February 22, 1630; indeed also on the subjects of another Bishop, if they have this one's dimissorial letters and if the permission of the Bishop of the place again is added. If otherwise: neither of the suspensions which follows is reserved to the Supreme Pontiff. Bonacina, disp. 3, q. 1, part 12, q. 2, part 12; Lugo, *Resp. Mor.*, book 1, dub. 32; E.M.

1234. XIII. Bishops, if, which God forbid, they shall not abstain from a crime of this sort, and, after being admonished by the provincial Synod, shall not amend themselves, are by that very fact suspended; and if they persevere... Sess. 25, chap. 14, *de Ref.*

From a crime of this sort, i.e., concubinage. Admonished: a threefold admonition is not required, but one is sufficient. Shall not amend themselves: namely, unless, morally speaking, they immediately

remove the occasion of delict and scandal. Suspended: "this suspension is imposed absolutely, and without limitation of time, office, or benefice; and therefore it comprehends all these things." Suarez, disp. 31, sect. 5, penultimate par. Trent, sess. 15, chap. 12, *de Ref.*; Bonacina, disp. 3, q. 6, part 1, q. 7, part 4.

1235. XIV. If any pastor or other priest, whether regular or secular, even if he contends that this is lawful to him by privilege or immemorial custom, shall have dared to join or bless in marriage betrothed persons of another parish, without the permission of their pastor, he remains suspended by the law itself for so long as until he is absolved by the Ordinary of that pastor who ought to have assisted at the marriage, or from whom the blessing ought to have been received. Sess. 24, chap. 1, *de Ref. Matr.* "The Council does not explain from what such priests are suspended on account of such a crime; yet since it is not likely that he is suspended from every office and benefice, as that word, pronounced simply, seems to indicate, both because that sin does not seem worthy of so great a penalty, and also because that penalty is imposed indifferently on pastors and on simple priests, both regular and secular. And thus the suspension seems only to be from a thing common to all those.

Therefore I judge it to be suspension from the priestly office, or at most from the priestly function; because, according to the common understanding of the canons, the penalty is determined from the subject matter, so that someone is punished in that in which he offended. Likewise because, when a priest is suspended on account of abuse of the priestly function, he is rightly understood to be suspended formally insofar as he is a priest, and therefore from the priestly function." Suarez, *de Cens.*, disp. 31, sect. 3. Filliucius, tract. 17, n. 101; Bonacina, disp. 3, q. 3, part 5.

1236. XV. Lest the Bishop be ignorant of the time of profession (as regards nuns), so that he may examine them, the superior of the monastery is bound to make him certain one month beforehand. But if the superior shall not have made the Bishop certain, she is suspended from office for as long as it shall seem good to the Bishop. Sess. 25, chap. 17, *de Reg.*

This suspension is not a censure, but a mere penalty. There is question, however, of nuns properly so called, namely those who emit solemn vows.

Here may be added the penalties to be incurred by that very fact by superiors of regular Institutes, whether of men or women, not observing the dispositions of the Decree *Quemadmodum* of the Sacred Congregation of Bishops and Regulars, December 17, 1890, concerning the account of conscience to be rendered, concerning Confession, concerning Communion; namely the penalties against Superiors violating the mandates of the Apostolic See.

The penalties against Superiors violating the mandates of the Apostolic See are those which are enumerated in the Apostolic Constitutions to be read by Regulars at the public table or chapter, namely deprivation of active and passive voice, of offices, dignities, and incapacity for the aforesaid.

1237. Suspensions which have accrued to the Constitution *Apostolicae Sedis*, reserved in a special manner to the Roman Pontiff.

XVI. If, however, any of the aforesaid are marked with the episcopal character, they fall by that very fact, without any declaration, into the penalty of suspension from the exercise of pontificals... likewise reserved to the Holy See. Pius IX, Constitution *Romanus Pontifex*, August 28, 1873, par. *Confidimus* ff.

If, however, any of the aforesaid: namely those who rashly undertake the governance of a Church, presented or nominated by the lay power, with the vicar capitular removed, and those who rashly grant it or cooperate toward it, before the Bulls of provision have been presented to the one to whom by law, cf. 1177. If they are marked with the episcopal character: therefore Bishops incur not excommunication, but suspension. For an exception is made for them. Likewise reserved, namely in a special manner. *Acta Sanctae Sedis*, vol. 7, p. 401.

Canons and dignities are besides deprived by the law itself of the fruits of benefices and of other ecclesiastical revenues which they individually possess. Pius IX, Constitution *Romanus Pontifex*, August 28, 1873, par. *Confidimus*.

XVII. "Priests who, the law of the Sacred Consistorial Congregation of March 20, 1914 not having been observed, have rashly and arrogantly emigrated to America or to the Philippine Islands, remain suspended from divine things by that very fact; those who nevertheless dare to perform sacred functions incur irregularity; and they cannot be absolved from the penalties except by the Sacred Consistorial Congregation." Sacred Consistorial Congregation, March 25, 1914.

1238. Other reserved and non-reserved suspensions also accrued.

XVIII. "He who shall have dared in any way or under any pretext to break the statutes in articles 8, 9, 10, and 11 of the Decree *Ut Debita* of the Sacred Congregation of the Council, May 11, 1904, concerning commerce in Masses and the diminution of stipends, if he is of the priestly order, is liable to suspension from divine things reserved to the Holy See and to be incurred by that very fact; if a cleric not yet initiated into priesthood, he will likewise be subject to the same suspension from the orders received, and besides will become incapable of attaining higher orders; but if a layman, he will be bound by excommunication *latae sententiae* reserved to the Bishop." Cf. n. 623. E.M. nn. 627, 1238.

XIX. "20. All Religious, of whom there is question, constituted in Sacred Orders, who shall have been expelled or dismissed, remain perpetually suspended until from the competent Authority, after amendment of life, they have obtained dispensation. Religious or Clerics not in Sacred Orders, expelled or dismissed, are prohibited from ascending to higher Orders without permission of the Holy See. But all expelled or dismissed, even if they have truly amended themselves, will not be able to be admitted to their own or to another Order or Congregation without special permission of the Apostolic See."

1239. XX. Any Latin missionary from the secular or regular clergy who by counsel or aid induces any Eastern person to the Latin rite, besides the suspension from divine things which he will incur by that very fact, and the other penalties inflicted by the same Constitution *Demandatam* (Benedict XIV, December 24, 1743), is to be deprived of and excluded from his office. That this prescription may stand certain and firm, We command that a copy of it lie open, published at the churches of the Latins. Leo XIII, Bull *Orientalium dignitas*, the day before the Kalends of December, 1894, concerning the discipline of the Easterns to be preserved and protected. *Acta Sanctae Sedis*, vol. 27, p. 260.

1239 bis. XXI. "The sharp controversies concerning the use of the liturgical palaeoslavic or glagolitic language, which for a long time now in the provinces of Gorizia, Zadar, and Zagreb have disturbed several dioceses, ought to have been composed and therefore entirely removed after those things which this Sacred Council, and likewise that one placed over the extraordinary affairs of the Church, had decreed in the name and by the authority of the Supreme Pontiff. But nevertheless it is to be

grieved that they have not yet quieted down; for this language is even now used in many ways contrary to prescription in the performance of sacred rites. This brings not only great astonishment and offense to public piety, but also, with grave harm to Christian charity and peace, makes Christ's faithful hostile, even within domestic walls. "How great a sorrow so great an oblivion of due obedience is to the Most Holy Lord Pius PP. X can easily be judged; and he, understanding that it belongs to his Apostolic office to put an end to controversies of this kind, recently commanded this Sacred Congregation that, by letters given to the Most Reverend Archbishops, Bishops, and other Ordinaries of the aforementioned provinces, it should recall all things whatsoever that had been prescribed by the Decree of August 15, 1898, and afterwards by others, with certain things suitably changed, and should order them to be observed holy and inviolably, the consciences of the same Prelates being burdened. "First therefore, since by that very Decree it had been provided that the individual Ordinaries should draw up and exhibit a list of all churches of their diocese which it was certain presently used the privilege of the glagolitic language; and since satisfaction has not been made to that prescription, since such a list, though earnestly sought, is still lacking, this Sacred Congregation commands that all Ordinaries exhibit the same to the Apostolic See within the month of July of the next year, drawn up according to these laws: "that only those churches be noted as endowed with this privilege in which it has been established not by some conjecture, but by certain records and witnesses, that the glagolitic language from the year 1868 to the present time has been used without interruption in the performance of sacred rites; "that, under the name of the same privilege, no churches be enrolled among these where the custom has been to sing the Epistle and Gospel in glagolitic while solemn Masses are celebrated in the Latin language, and still less where these are sung in the common Croatian tongue. "Furthermore, this Sacred Congregation, with the Supreme Pontiff likewise approving, declares that the things written below are to be most religiously observed: "I. Since the Apostolic See, concerning the liturgical use of the glagolitic language, judged it opportune to limit by certain boundaries what it had once granted, use of this kind must be considered and held by all as a local privilege, adhering to certain churches, and by no means as a personal one which belongs to certain priests. Wherefore priests who are skilled in the palaeoslavic speech will not be able to use it when offering the Holy Sacrifice in a church which lacks this privilege. "II. Once the list of privileged churches has been drawn up and published, it will be lawful to no one at all, in others, for any cause or pretext whatsoever, to introduce the palaeoslavic language into the sacred liturgy. But if anyone, a secular or regular priest, shall do otherwise or shall attempt it, he remains by that very fact suspended from the celebration of Mass and of the other sacred rites until he obtains pardon from the Apostolic See. "III. In churches which enjoy the privilege, it will be permitted exclusively in the palaeoslavic idiom to offer the Holy Sacrifice and to perform the Office in a public and solemn manner, any admixture of another language being excluded, while nevertheless preserving the prescriptions at § XI of this Decree. But the books to be used for the Sacred Rites and for the Office are to be printed in glagolitic characters, and recognized and approved by the Apostolic See; but any other liturgical books whatsoever, whether printed in another character or without the approval of the Holy See, are entirely forbidden and interdicted. "IV. Wherever the people are accustomed to respond to the celebrating priest, or to sing some parts of the Mass, this also will be lawful only in the palaeoslavic language in privileged churches. And that this may happen more easily, the Ordinary will be able to permit to the faithful exclusively the use of a manual book written in Latin characters instead of glagolitic ones. "V. In the aforesaid churches which indubitably enjoy

the grant of the palaeoslavic language, the Ritual, printed in the Slavic idiom, can be used in the administration of Sacraments and Sacramentals, provided that it has been recognized and approved by the Apostolic See. "VI. Let Bishops diligently take care to promote in their Seminaries the study both of the Latin language and of the palaeoslavic, so that the priests necessary for each diocese may be available for ministry in each idiom. "VII. It will be the office of Bishops, before sacred Ordination, to designate the clerics who are destined for Latin churches or who are destined for palaeoslavic churches, the will and disposition of those to be promoted having first been examined, unless the necessity of the church requires otherwise. "VIII. If a priest assigned to a church where the Latin language is used must serve another church which enjoys the privilege of the palaeoslavic idiom, he will be bound to celebrate solemn Mass there and to sing the Hours in the palaeoslavic language; nevertheless it will be lawful to him privately to perform the Sacred Rites and to perform the canonical Hours in the Latin language. "But a priest enrolled in a church of the palaeoslavic idiom, to whom it may happen to serve a Latin church, will be bound to celebrate not only solemn but also private Mass, and likewise to sing the Hours, in the Latin language; only the faculty of privately performing the Office in glagolitic being left to him. "IX. It will likewise be lawful for priests enrolled in a church of Latin speech to celebrate private Mass in the Latin idiom in another church which possesses the privileges of the palaeoslavic language. But priests assigned to churches of the palaeoslavic language will not be able even to offer the private Holy Sacrifice in that same idiom in churches where the Latin language is used. "X. Where the usage has prevailed of singing the Epistle and Gospel in Slavic in solemn Mass, after the singing of the same has been completed in the Latin idiom of the church itself, this practice can be preserved. But in parochial Masses it will be lawful, after the recitation of the Gospel, to read it through in the common idiom for the pastoral instruction of the faithful. "XI. In the very parishes where the privilege of the palaeoslavic language is in force, if any of the faithful shall show that he desires or wills that Baptism or the other sacraments, not excepting Matrimony, be administered to himself or to his own according to the Latin Roman Ritual, and indeed publicly, and that the ritual prayers in the burial of the dead be held in the same language, priests are strictly forbidden in any way to oppose this desire or will. "XII. In the preaching of the word of God, or in other actions of worship which are not strictly liturgical, the common Slavic language is permitted to be used for the convenience and advantage of the faithful, while nevertheless preserving the general Decrees of this Sacred Congregation of Rites. "XIII. Let the Bishops of those regions where the same vernacular language is in use strive to provide a uniform version of the prayers and hymns which the people use in their own church, so that those who pass from one diocese or parish to another may encounter no diversity of prayers or canticles. "XIV. Pious books in which is contained a common version of liturgical prayers, only for the private use of Christ's faithful, are to be duly recognized and approved by the Bishops." Sacred Congregation of Rites, December 18, 1906.

1240. XXII. "Our Most Holy Lord Leo PP. XIII, after all things had been maturely weighed, and according to those things which at another time he had ordered to be issued through the Eminent Vicar of the City, prescribed and established through the Sacred Congregation of the Council these things which follow: "1. Clerics and secular priests of another diocese, or even regulars living outside cloisters, will hereafter be unable to establish a stable domicile in the City without the express permission of the Supreme Pontiff, to be obtained through the office of the Sacred Congregation of the Council. "2. But those who at present are living at Rome, if they are not bound to reside by any

title of benefice or office, nor have acquired domicile at Rome by long residence and by tacit or express permission of their Bishops, must return to their diocese after one month has elapsed from the day of this decree. "3. No one of the clerics and priests of another diocese will hereafter be able to be chosen by anyone to an ecclesiastical office, whatever it may be, or to another function which requires residence in the City, unless, besides testimonial commendatory letters of his Bishop, he also exhibits permission already obtained from the Supreme Pontiff for remaining at Rome; likewise a benefice is conferred on no one unless he has obtained the consent of his Ordinary for this; and a conferral of a benefice otherwise made will be null and void. "4. Those who, to devote themselves to the studies of letters and sciences, or to transact honorable affairs, or from another just cause, are present in the City with permission of the Ordinary, as soon as a temporary cause of this kind has ceased, or when they are recalled by their own Bishop, must return to their own diocese, with every futile excuse excluded, and especially, on account of the special condition of dioceses in these times, the exception drawn either from studies undertaken or from the alleged slenderness of support offered by the Bishop by no means aiding them. But if during this stay of theirs in the City they have not conducted themselves as is fitting, through the Vicariate of the City they will be denounced to their proper Ordinaries and will be compelled to depart from the City. "5. Finally, whoever in any way has not conformed himself to the present dispositions, or, which God avert, has contravened them, will by that very fact become liable to suspension from divine things." Sacred Congregation of the Council, December 22, 1894.

XXIII. "Those who (priests departing for a brief time) have departed for a temporary cause, when the span of time granted to them has elapsed, are to return, and the Ordinaries have no faculty of extending the permission once given. "But if either sickness or some other peremptory cause unexpectedly impedes return, after the truth of the matter and the necessity of dispensation have been established, it is lawful for the Bishop of the place to extend the time to the first following month; beyond a month, even if the causes of the Indult remain, it is lawful only for the Nuncios or Apostolic Delegates who are staying there to extend the Indult to a suitable but brief time, under this law, that they not delay to inform either the proper Bishop of the Priest or this Sacred Congregation. "But those Priests who shall have offended against this rule remain suspended from divine things." Sacred Consistorial Congregation, March 25, 1914.

XXIV. "We absolutely prohibit clerics and priests from giving their name to any society which does not depend on the Bishops. In a more special manner, and by name, We prohibit them, under penalty for clerics of incapacity for sacred orders, and for priests of suspension from divine things by that very fact, to be enrolled in the national democratic federation whose program was given at Rome-Torrette on October 20, 1905, and whose Statute, even without the name of the author, was printed in the same year at Bologna by the Provisional Commission." Pius X, Letter to the Bishops of Italy, July 28, 1906.

XXV. "... Our Most Holy Lord Leo PP. XIII... established and decreed that hereafter anyone of the clergy who, in order to bring aid in any way to internal wars and political contentions, shall have deserted his proper place of residence without a just cause recognized by legitimate ecclesiastical authority, or shall have put off clerical dress, although he has not taken up arms and has by no means shed human blood; and still more he who in civil war has spontaneously given his name to military service, or has presumed in any way to direct warlike actions, even if he continues to retain

ecclesiastical habit, shall immediately and by that very fact remain suspended from the exercise of orders and grades, and from any ecclesiastical office and benefice; and besides this shall become incapable of obtaining any ecclesiastical offices or benefices hereafter, until he has been restored by the Apostolic See; to this effect any power of dispensing being removed from the respective Ordinaries of dioceses, even if they enjoy the amplest faculties, whether ordinary, as they call them, or extraordinary, of rehabilitating clerics; anything contrary notwithstanding." Sacred Congregation of the Council, July 12, 1900. *Monit. Eccles.*, vol. 12, p. 294.

Interdicts from the Constitution Apostolicae Sedis

1241. I. Universities, Colleges, and Chapters, by whatever name they may be called, appealing from the ordinances or mandates of the same Roman Pontiff existing for the time to a future universal Council, incur by the law itself an interdict reserved in a special manner to the Roman Pontiff.

Universities, Colleges, and Chapters: therefore this interdict is not imposed on all and each, but on the communities themselves. The present interdict, therefore, is not a special interdict, but a general one of persons, affecting not singular persons but moral bodies. Hence it does not have the nature of censure, and therefore clerics who did not give cause for it, violating it by exercising order, do not contract irregularity. Nevertheless it binds the individual members of them, otherwise it would be useless, whether clerics or laymen, whether guilty or innocent. By whatever name they may be called: other similar communities of particular persons are comprehended, called by any other name, Confraternity, Congregation, etc., whether secular or ecclesiastical. Appealing: to incur this interdict it is not necessary that all from that community appeal, but it is enough if several appeal, yet in the name of the community. Bull *In Coena*, § 2; Bonacina, appendix, tom. 1, *de Interdicto*, disp. 5, part 8, nn. 8, 9, tom. 3, *de Cens. in part.*, disp. 4, q. 1, part 5.

1242. II. Those knowingly celebrating, or causing divine things to be celebrated, in places interdicted by the Ordinary, or by a delegated Judge, or by law, or admitting those excommunicated by name to divine offices, or ecclesiastical sacraments, or ecclesiastical burial, incur by the law itself an interdict from entrance into the Church, until they have competently made satisfaction at the judgment of him whose sentence they have contemned.

Knowingly: this adverb, placed at the beginning, affects all the following members. But spontaneously is omitted; therefore not any fear or coercion whatsoever excuses, but only grave fear. Celebrating or causing to be celebrated: therefore the interdict is special and personal. But celebrating, etc., is understood to be unlawful except on the excepted days and places, and unless the conditions are observed under which by law it is permitted. Cf. 1135. Divine things, namely those which it is lawful for ministers of the Church alone to undertake. In interdicted places, by a general or particular local interdict, denunciation of the interdict having been made. Martin V, Constitution *Ad evitanda*. Those excommunicated by name: therefore the penalty is imposed against those participating with persons excommunicated by name, but not with the suspended and with the interdicted. Likewise with those excommunicated by name, not with any excommunicated whatsoever. Besides, the penalty is not imposed against all participating, and in any things whatsoever, but against those admitting, and participating in three sacred things, namely divine offices, sacraments, and ecclesiastical burial. But that special participation which is denoted by the words causing to be celebrated and admitting pertains only to those to whose care and office it

belongs to prohibit or admit someone to acts of this sort. These are pastors, rectors, and others to whom the care of Churches or cemeteries has been committed, priests, clerics. Sacraments: namely except Penance and Viaticum in the article of death. Until, etc. Therefore an interdict of this kind can be absolved by anyone, but after those liable to the interdict have competently satisfied, at the judgment of him whose sentence of excommunication or interdict they contemned. Perhaps even then the interdict ceases by that very fact. Cf. 1186. Chap. *Episcoporum* 8, *de Privil.* in 6; Suarez, disp. 22, sect. 4, fourth censure; Bonacina, disp. 3, q. 3, part 1, disp. 4, q. 2, part 6.

1243. Finally, whatsoever others the Sacrosanct Council of Trent has decreed to be suspended or interdicted by the law itself, We in like manner will and declare the same to be liable to suspension or interdict.

We have reviewed the Tridentine suspensions above. Cf. 1229 ff.

But the Tridentine interdicts are the following, which do not have an annexed reservation; nevertheless it is gathered from the subject matter.

1244. III. The Metropolitan is bound, under penalty of interdict of the church, to be incurred by that very fact, to denounce absent suffragan Bishops to the Roman Pontiff within three months by letter or messenger; but if the Metropolitan is absent, the older resident suffragan Bishop is bound to denounce him. Sess. 5, chap. 1, *de Ref.*

This obligation of denouncing the absent one under penalty of interdict is present when the absent prelate has already been absent without any just and reasonable cause for an entire year, and his contumacy perseveres beyond the year. For after the Council decreed the penalty of deprivation of a fourth part of the fruits of one year if the prelate was absent for six months, and deprivation of another fourth part of the fruits if the same prelate was absent for another six months, it adds: "But with contumacy increasing, that he may be subjected to the severer censure of the canons, the Metropolitan is bound to denounce the suffragans, etc." Therefore that obligation is not present except, with contumacy increasing, after a year of absence has already elapsed.

1245. IV. A Chapter of churches, when the See is vacant, granting within a year from the day of vacancy permission to ordain, or dimissorial letters or reverends, to someone who was not pressed by reason of an ecclesiastical benefice received or to be received... is subject to ecclesiastical interdict. Sess. 10, chap. 10, *de Ref.*

Pressed by reason of a benefice... Cf. 1229.

1246. An interdict which accrued to the Constitution *Apostolicae Sedis*, reserved in a special manner to the Roman Pontiff.

V. But if any of the aforesaid are marked with the episcopal character, they fall by that very fact, without any declaration, into the penalty... of interdict from entrance into the church, likewise reserved to the Holy See. Pius IX, Constitution *Romanus Pontifex*, August 28, 1873, par. *Confidimus* ff.

Into the penalty of interdict, etc.: namely besides suspension. Cf. 1237. But if any of the aforesaid: cf. 1177. Likewise reserved: namely in a special manner.

1247. But what censures, whether of excommunication, or suspension, or interdict, have been imposed by Our Constitutions or those of Our Predecessors, or by sacred canons, besides those

which We have reviewed, and have hitherto remained in their force, whether for the election of the Roman Pontiff, or for the internal governance of any Orders and regular Institutes whatsoever, and also of any Colleges, Congregations, assemblies, and pious places whatsoever, of whatever name and kind they may be, all these We will and declare to be firm and to remain in their strength.

By Constitutions or sacred canons. Therefore censures imposed by superiors of regulars, or by chapters, whether provincial or general, for the subjects of their own Order do not pertain here.

For the election of the Roman Pontiff. Today the election of the Pontiff is made by the Cardinals, according to the Constitution of the Supreme Pontiff Pius X *Vacante Sede*, December 25, 1904. Therefore the censures which are present for the election of the Supreme Pontiff are to be sought from this constitution. Commentary on this Constitution, n. 133; Constitutions of Pius IX *In hac sublimi*, August 23, 1871, *Licet per Apostolicas*, September 8, 1874, *Consulturi*, October 10, 1827; Benedict XIV, Constitution *Pastor bonus*, n. 12.

For the internal governance, i.e., for promoting the spiritual good of these Orders, Institutes, etc., insofar as they are such. Censures of this kind for regulars are: 1. excommunication imposed on regulars who rashly put off the habit of their religion, from Constitution *Ut periculosa* 2, *Ne clerici monachi* in 6. Cf. Sanchez, *in Decal.*, book 6, chap. 8, n. 45. 2. Excommunication on monks holding arms within the enclosure of monasteries without permission of the abbots, from Clementina 1, § 9, at the end, *de Stat. monach.* 3. Excommunication on those who violate enclosure or permit it to be violated. Gregory XIII, Constitution *Inscrutabili*, Constitution *Ubi gratia*; St. Pius V, Constitution *Decori*. 4. Excommunication on those who do not denounce to the Supreme Inquisition their subjects who are heretics or suspected of heresy; or who deter their subjects wishing to denounce; or who do not denounce, or draw back those wishing to denounce, persons suspected concerning the faith, whether confreres or superiors. Paul V, Constitution *Romanus Pontifex*; Alexander VIII, Constitution *Licet alias*. 5. Excommunication on those who approach the courts of Princes so that they may inflict some harm on their Prelates or Monasteries. Clementina 1, *de Statu monach.* 6. Excommunication against apostates and the ejected if they have put off the habit; for by it crimes are both punished and prevented. Cf. Suarez, disp. 22, sect. 5, third excommunication; disp. 23, sect. 3, second excommunication; sect. 4, tenth excommunication, fourteenth excommunication; sect. 5, fourth excommunication, fifth excommunication, tenth excommunication; disp. 31, sect. 6. From the Decree *Quum singulae* of the Sacred Congregation concerning Religious, May 16, 1911, the penalty of expulsion or dismissal against apostates from the Catholic faith is considered as if imposed by law, unless the religious returns within three months; likewise against one fleeing from a monastery, having taken a woman with him; one celebrating or attempting marriage, or contracting even merely civil marriage. "Likewise the censures imposed for the internal governance both of Orders and regular Institutes in general, and particularly of individual Orders and Institutes, remain in their force." Holy Office, March 22, 1881. Diocesan Synod of Albano, year 1886, Appendix n. 10.

And of pious places, namely those which possess their own internal governance and have been erected by ecclesiastical authority. All these firm, etc. Therefore the Supreme Pontiff does not renew such censures, but merely declares that they are not abrogated by this Constitution, and that they remain in their force, namely remain in that state in which they were found before the present Constitution. Therefore, if any have ceased by desuetude or another cause, it can by no means be considered renewed by force of the present Constitution. Bonacina, t. 2, *de Cens. in part.*; E.M.

"Whether, after the Constitution of Pius IX *Apostolicae Sedis*, the excommunication *latae sententiae*, reserved to no one, imposed by Clement XI by Brief of August 21, 1711, is still in force against those who, without the previous permission then of the Patriarch of Aquileia, but now of the Archbishop of Udine, dare or presume to extract, carry away, lend, etc., books, gatherings, or leaves existing in the then Patriarchal, now Archiepiscopal Library of Udine? R. Affirmative." Holy Office, September 7, 1898.

1248. Moreover We decree that, in any new concessions and privileges whatsoever which it may happen are granted by the Apostolic See to anyone, the faculty of absolving from cases and any censures whatsoever reserved to the Roman Pontiff must never be understood in any way or by any reason to be or to be able to be comprehended, unless formal, explicit, and individual mention has been made of them. But whatever privileges or faculties, whether by Our Predecessors or even by Us, have been granted up to this time from any time whatsoever to any Assembly, Order, Congregation, Society, and Institute, even regular of any species, even if endowed with a peculiar title and also worthy of special mention, all these and all such We will to have been revoked, suppressed, and abolished by this Our Constitution, as We in fact revoke, suppress, and abolish them, privileges whatsoever by no means opposing or obstructing, even special ones, comprehended or not in the Body of Law or Apostolic Constitutions, and strengthened by any Apostolic confirmation, or even immemorial custom, or any other firmness whatsoever, in any forms and tenors, and with any derogatory and other more efficacious and unusual clauses, all of which, insofar as there is need, We intend to derogate and do derogate.

A twofold revocation of privileges is contained in the present Constitution: the first in the paragraph "From which," cf. 1176; the other in this paragraph, Moreover. Each revocation, if there is speech at least of the privileges of regulars or of any assemblies whatsoever, is most full, as is clear from the clauses inserted in both cited paragraphs, which are most fully derogatory. This derogation of privileges is restricted to those privileges alone which pertain to the absolution of censures of common law, or of excommunications, suspensions, and interdicts in force by common law and reserved to the Holy See. This is openly clear from the two cited paragraphs. All other privileges whatsoever remain entirely intact. Therefore the faculty of absolving from papal cases, whose absolution by the present Constitution is reserved not to the Supreme Pontiff but to Bishops, has not been revoked. By the old law, for Italy outside the City, the Clementine cases are excepted from the faculty given to Regulars of absolving from papal cases; among these is also slight striking of clerics, or grave striking committed by a woman, the absolution of which even now remains reserved to Bishops in the aforesaid places. Cf. n. 1182. Nor indeed are any extraordinary faculties whatsoever, granted for a time to some person or community before the said Constitution, derogated by the present Constitution. Sacred Penitentiary, December 5, 1873; Instruction of the Holy Office, February 1, 1879. By a special decree of the Holy Office, March 9, 1870, Pius IX confirmed the faculties which all priests, whether secular, enjoyed who furnished spiritual care to the sick in any hospitals of the City. *Acta Sanctae Sedis*, vol. 6, p. 284 ff.; E.M.

1249. Nevertheless We will that the faculty of absolving granted to Bishops by the Tridentine Synod, sess. 24, chap. 6, *de Ref.*, be firm in any censures whatsoever of the Apostolic See reserved by this Our Constitution, except only those which We have declared reserved in a special manner to the same Apostolic See.

Now the Tridentine faculty is of the following tenor: "It is lawful for Bishops to dispense in all irregularities and suspensions arising from occult delict, except that which arises from voluntary homicide and except others brought into the contentious forum; and in any occult cases whatsoever, even those reserved to the Apostolic See, to absolve gratuitously in the forum of conscience, by themselves or by a vicar to be specially deputed for this, any delinquent subjects whatsoever in their own diocese, with a salutary penance imposed."

1250. Decreeing, etc. (the customary clauses follow here). Given at Rome, in the year 1869, on the fourth day before the Ides of October.

On the Constitution Sacramentum Poenitentiae

1251. What about solicitation in Confession? As regards solicitation, three things concerning it are established in the cited Constitution of Benedict XIV, June 1, 1741. The first is that Inquisitors and Ordinaries of places "severely punish by condign penalties," § 1, confessors soliciting in Confession, who are to be denounced to the same Inquisitors or Ordinaries. The second is that confessors "warn their penitents, whom they know to have been solicited by others, concerning the obligation of denouncing," § 2. The third is that "those falsely accusing innocent priests before ecclesiastical judges of solicitation" are deprived of the benefit of absolution, which is reserved to the Supreme Pontiff, § 3. E.M.

Benedict XIV, Constitution *Etsi Pastoralis*, May 26, 1742, § 9, n. 5, has these things: "Then subjection to all and singular Constitutions of the Roman Pontiffs, especially those issued against persons soliciting in Confession, which extend their force universally into individual Nations, and comprehend Latins as well as Greeks by their breadth."

1252. Who are to be denounced? Indeed "all and singular priests, both secular and regular, exempt in any way... of whatever dignity and preeminence, or fortified by any privilege and indult," §§ 1 and 2, soliciting to shameful things in Confession, are to be denounced. All and singular priests, "even if they are priests who lack jurisdiction for validly imparting absolution," § 2; Holy Office, February 11, 1661. "But interpreters and messengers of solicitation, or those commanding it, or giving counsel, are not comprehended under these Constitutions, even if they are priests. For these are not properly those soliciting or having dishonest treatment in sacred Confession, nor are those actions priestly actions, nor as such do they come under the name of priests... Thus also is comprehended a priest or another who solicits a penitent while he is confessing not to himself, but to another." Pignatelli, *Consult. Canon. Noviss.*, chap. 117, par. *Non vero*. Nor indeed is the penitent who in Confession solicits the priest to be denounced. L. 689. E.M.

1253. What is the crime of solicitation, on account of which confessors are to be denounced? It is that by which confessors of this sort shall have attempted to solicit or provoke some penitent, whatever person that may be, either in the act of sacramental confession, or before or immediately after confession, or on the occasion or pretext of confession, or even outside the occasion of confession in the confessional, or in another place destined or chosen for hearing confessions, with simulation of hearing confession there, to dishonest and shameful things, whether by words, or signs, or nods, or touch, or through writing to be read either then or afterwards; or shall with rash daring have had illicit and dishonest conversations or dealings with them, § 1. Whatever person that may be, "whether males or females, whoever they may be." Instruction of the Universal Inquisition to all Bishops, February 20, 1867.

1254. In the act of sacramental confession, not of other sacraments. The act of sacramental confession is verified between the beginning of confession and absolution given. Solicitation has place in the act of sacramental confession either when the confessor then simply has illicit and dishonest conversations or dealings, or when he then only applies means by which he afterwards

solicits. And this distinction of formal solicitation, or only causal solicitation, or of solicitation in itself or in the means then placed, is to be understood as regards all the other clauses: immediately before, immediately after, etc. L. 676. Nor indeed is it required that absolution be given. Gregory XV, Constitution *Universi Dominici gregis*, August 30, 1622, § 4, says that one soliciting on the occasion of confession is to be denounced, even when confession itself did not follow.

1255. Or before, or immediately after confession. "That phrase immediately before they more commonly think must be understood strictly, so that no interval intervenes." L. 677. Thus one who solicits a woman kneeling before his feet to confess, even if she has not yet fortified herself with the sign of the cross, is said to solicit immediately before. "That phrase immediately after is commonly understood by the doctors when after confession neither the confessor nor the penitent turns aside to other things, so that the solicitation occurs before any other action has intervened." Nevertheless, if some action intervenes, "it must be judged from the circumstances whether solicitation was principally intended and the business as a means, or whether the business was principal and the solicitation accidental." L. 677.

1256. On the occasion or pretext of confession. Occasion and pretext here signify two distinct things. To solicit on the occasion of confession is to take the opportunity or motive of provoking from a true confession. But he solicits under pretext of confession who puts forward confession as a pretext, or fictitiously incites to confession, so that he may provoke more freely. A pretext is a false cause, and to pretext is to bring forward some cause which is not true. Therefore a confessor of this sort is to be denounced, even when confession did not follow. Under pretext, that is, if the priest uses confession as a pretext so that he may solicit the penitent; not if the penitent uses it as a pretext so that he may solicit the confessor; nor if each does so by agreement to deceive others. L. 679. On the occasion of confession someone seems able to solicit in three ways: 1. when from an express or tacit petition for confession he takes the motive of soliciting. L. 677. 2. From confession itself, i.e., when, understanding, for example, in the very confession the penitent's inclination to venery, he obtains an occasion to provoke him then to dishonest things; or by interrupting the penitent lest he begin confession, or lest he continue it, meanwhile soliciting the same, the opportunity of confession having been taken. 3. When he uses knowledge which he had from confession for afterwards soliciting the penitent. But this use of knowledge of confession must be sufficiently established from circumstances in order to impose the obligation of denunciation. L. 678. But there is difficulty concerning the first way, since then the confessor seems to solicit rather on the occasion of the petition for confession than on the occasion of confession, if nevertheless confession at present neither immediately follows nor ought to follow. Pignatelli, Cons. 104, n. 14. The same must be said of the promise of confession. Pignatelli, Cons. 117, par. *Ratio autem*. Likewise there is difficulty concerning the third way. For he does not seem to solicit on the occasion of confession who, having learned in confession the frailty of the penitent, approaches him at home and urges him, since he takes knowledge from confession and from knowledge the handle of soliciting. Pignatelli, Cons. 117, par. *Unde multo et ratio autem*.

1257. Or even outside the occasion of confession in the confessional. "Whether a confessor is to be denounced who, sitting in the confessional, solicits a woman standing before the confessional, without simulating confession? The Qualifiers judged that the negative opinion does not lack probability." Holy Office, February 11, 1661, to the fifteenth. This resolution is certainly to be

compared with the resolution of the same Sacred Congregation on the same day, to the fourth: "Whether a confessor who solicits a woman saying in the confessional that she wishes to confess tomorrow, and dissuades confession, is to be denounced? If the solicitation is made outside the place of confession, and without pretext of confession, the Qualifiers judged that the negative opinion is probable; otherwise in the confessional or in the place of confession."

1258. Or in another place destined or chosen for hearing confessions, with simulation of hearing confession there. Therefore a threefold place for hearing confessions is distinguished. The first is the ordinary confessional. The second is any other place distinct from the confessional where confessions are heard, e.g., a kneeler which is in the sacristy, where confessions are received.

The third is any place chosen for hearing confessions. That clause, with simulation of hearing confession there, placed in the last place, is referred to all the antecedents, and therefore also to that first member, whether outside the occasion of confession in the confessional, according to the common rule that a clause placed in the last place is referred to all connected antecedents. The whole difference seems to be in this: that as regards the first and second place, it is indeed required that both the confessor and the penitent be in the confessional, or in another place in which confessions are heard, but by this very fact then, regularly speaking, there is simulation of confession, and the obligation of denunciation presses, as is clear from the cited Response of the Holy Office to the fourth. But as regards the third place, it is not sufficient that the confessor and penitent be in the same place or converse together; rather it is necessary that they positively simulate confession. Pignatelli, *Cons. Can. Noviss.*, chap. 117, par. *Tertio* ff.; E.M.

1259. To dishonest and shameful things, i.e., obscene things, namely touches, looks, etc. Gregory XV adds in the cited Constitution, § 4: "whether to be perpetrated among themselves, or with others in any way." Hence a confessor is to be denounced who solicits a penitent so that he may induce some person to sin with him. L. 691. Likewise from Benedict XIV, denunciation presses even if the solicitation has been performed by the confessor not for himself but for another person, § 2. "Whether a confessor who solicits a penitent to illicit acts outside venereal acts is to be denounced? The Qualifiers judged that the negative opinion is probable." Holy Office, May 11, 1661, to the eleventh; L. 684; Benedict XIV, *de Syn.*, chap. 11, n. 14.

1260. Whether a confessor soliciting to acts only venially dishonest is to be denounced? "The more probable opinion denies." L. 683. This is clear from the whole tenor of the Constitution of Benedict XIV. Venially dishonest, namely outside the venereal matter. Hence the Holy Office, February 11, 1661, to the third: "Whether a confessor, when soliciting because of smallness of matter, is to be denounced. Since in venereal matters there is no smallness of matter, and if there were, it would not be present in the present matter, the Qualifiers judged that he is to be denounced, and that the contrary opinion is not probable." But it must be diligently observed here that it is one thing to solicit to light acts, another to solicit to graver things through light acts; in which case, without any doubt, denunciation must be made, provided the interior intention appears. Castro-Palao, tract. 4, disp. 9, part 3, n. 4.

1261. Shall have attempted to solicit or provoke, etc., or shall with rash daring have had illicit and dishonest conversations or dealings with them. Solicitation generally is a crafty inducement and movement of another's will to doing or suffering something. Solicitation or provocation here is any invitation and incitement to venereal things made by a priest as confessor, or as quasi-confessor, even

if he immediately repented of the solicitation, or desisted in the very solicitation. Holy Office, May 11, 1661, to the second; hence it is said: shall have attempted to solicit or provoke; namely priests abusing confession in any way to the aforesaid effect. To have dishonest conversations or dealings. This is an explanation of the previous clause, and it is declared that solicitation or provocation to be denounced is had through any dishonest conversations or dealings whatsoever between confessor and penitent, whether the confessor begins first or the penitent begins, so that each in fact has those dishonest conversations and dealings, and rests in them, without proceeding further; for then mutual solicitation is had. Hence confessors are commanded that "they warn penitents whom they know to have been solicited by others, as above, cf. 1253, concerning the obligation of denouncing the solicitors," § 2. But although the Supreme Pontiff openly adds in the same place the case of mutual solicitation, nevertheless he adds nothing concerning the case of a confessor who bears himself merely passively with respect to solicitation on the part of the penitent, although consenting to it.

1262. "Whether a confessor is to be denounced who gives the penitent a letter in confession, to be read afterwards at home, in which he solicited to venery? The Qualifiers judged that he is to be denounced, and that the negative opinion is not probable." Holy Office, May 11, 1661, to the first. This is also clear from proposition 6 condemned by Alexander VII, confirmed by Benedict XIV, § 1, together with proposition 7 concerning this same matter. The same is had in so many words in the Constitution of Benedict XIV, § 1: "whether through writing to be read either then or afterwards." Cf. 1253.

1263. "Whether a confessor is to be denounced who, while hearing confession, gives a gift to a woman, so that he is said to have solicited her? The Qualifiers answered the same as to the twelfth." Holy Office, February 11, 1661, to the sixteenth. Speaking in itself, to give something is not dishonest, nor does it tend to dishonest things, but to conciliating benevolence, or to satisfying gratitude for some received benefit. Now these things are to the twelfth: "Whether a confessor, if he praises a penitent for beauty and attractiveness, is said to solicit her, and therefore is to be denounced? The Qualifiers judged that, if that praise is serious and gives no odor of depraved intention, the negative is probable. But if otherwise, it is not probable." To praise the beauty of a woman, even in confession, is not of itself by its object a mortal sin, nor is it an act of itself directed to solicitation to shameful things.

1264. Whether a confessor is to be denounced if his solicitation is doubtful? "If it is doubted whether his deed or word was true solicitation, then with the more common and truer opinion it must be said that there is no obligation of denouncing... The reason is both because doubtful things are to be taken in the better part, and in ambiguous words the more benign interpretation must be made; ... and because in doubt no one is to be deprived of the reputation which he possesses; and because the Bulls command solicitors to be denounced, but he cannot be called a solicitor concerning whom it is doubted whether he truly solicited; for a doubtful crime is not a crime." L. 702.

If "the deed or word is true solicitation, and it is only doubted whether that confessor or another did or said it, then it is to be denounced, because while the crime is certain, judges can duly proceed to inquiring into the person concerning whom there is doubt. Nevertheless I judge that this must be said only in the case in which the judges can easily, by their diligence, become certain concerning the soliciting person; because otherwise that priest, since he can be innocent, would remain in some way defamed, and in doubt the reputation of one's neighbor, who possesses it, must be preserved

uninjured." L. 702. As regards the various cases of doubtful solicitation, and others in which the doctors more commonly judge that the confessor is to be denounced, cf. L. 704.

1265. Must confessors warn penitents concerning the denunciation to be made? Confessors are altogether obliged "diligently to warn their penitents whom they know to have been solicited by others, as above, according to the circumstances of occurring cases, concerning the obligation of denouncing to Inquisitors or Ordinaries of places the person who has committed solicitation... Let them moreover diligently take care that they not impart sacramental absolution to penitents whom they know already to have been solicited by another, unless first, bringing the aforesaid denunciation to effect, they have indicated the delinquent to the competent Judge, or at least pledge and promise that they will report him as soon as they can." § 2.

1266. Their own solicited penitents: not others, not solicited; these they are not bound by a positive precept to warn, but by force of the natural precept, insofar as this precept obliges in a particular case. Nor does their good faith excuse from warning them. But the confessor is not bound to ask penitents whether they have been solicited and to warn them concerning the obligation of denouncing, unless he prudently judges from the confession heard that they have been solicited.

By others, not by himself. Hence the confessor who solicited is not himself bound to warn the solicited person concerning the obligation of denouncing, in the supposed case that this penitent afterwards confesses to him, because by natural law no one is bound to procure that his own shamefulness be revealed. To warn: but although the confessor ceases to warn the penitent concerning the obligation of denouncing, nevertheless the obligation in the penitent does not yet cease of denouncing him or another soliciting confessor, if from elsewhere he knows that he is obliged to this by pontifical law, just as the burden of restitution does not cease in a penitent because the confessor ceases to warn him of such an obligation, if from elsewhere he knows it and is not invincibly ignorant of it. Proposition 7 condemned by Alexander VII.

1267. If the confessor certainly foresees that the penitent, existing in good faith, will not denounce, must he nevertheless warn him of his obligation and dismiss him if he is unwilling to denounce? In the case of death, namely when the death of the penitent is imminent, negatively. For no one is bound to do a useless and harmful thing. Now according to the hypothesis, that warning is useless for procuring the common good, and harmful to the private good of the penitent, since then it casts him into bad faith and into eternal damnation. Besides, if the clause appended by the same Benedict XIV has any force, namely of warning penitents according to the circumstances of occurring cases, cf. 1265, 1278, there is not always and in every case an absolute obligation of warning. Therefore at least in the stated case, truly extreme. Outside danger of death, affirmatively. The reason first is that it can always rightly and deservedly be hoped that a penitent of this kind, with the confessor insisting and the grace of God helping, will at least later do what today perhaps, frightened by difficulty, he refuses to do. Hence also nothing then prevents the confessor, if the penitent is certainly going to return to him, opportunely deferring absolution, or even granting it in a case of necessity, from awaiting a favorable occasion when he will be more disposed and foreseen to be going to do what today would be demanded from him in vain. But if the penitent is not going to return to the same confessor, it is enough that he be warned of the obligation of speaking about such a matter with his Ordinary or another confessor because of the difficulty of the matter still to be untangled, and meanwhile that he be prepared in soul to fulfill the obligation, if perhaps there is one and it is made manifest to him by

the same confessor. Besides, to this case also is extended the aforesaid clause of Benedict XIV concerning penitents to be warned according to the circumstances of occurring cases, which is not to be restricted to the single extreme case of death. Cf. Benedict XIV, encyclical letter *Apostolica Constitutio*, n. 20. Moreover the difficulty which can frighten the penitent in making denunciation is surely not such that it has no remedy, since the Sacred Congregation itself indicates various ways by which the fulfillment of this most grave obligation can become much easier. Cf. 1270, 1278.

1268. Is not only the solicited person bound to denunciation, but also one who from elsewhere knows the solicitation certainly? R. Affirmatively, "if he knows the crime from persons worthy of faith; otherwise, if he knew it from persons unworthy of faith, or from frivolous women. But this must be said, not now from the Bull of Gregory, but from the Edict of the Holy Inquisition, March 10, 1677, where it is said that one who has known or heard that he solicited is bound to denounce the confessor." L. 695. These things from the Holy Office, May 11, 1661, to the fourteenth: "Whether someone is bound to denounce a soliciting confessor if he heard this not from persons worthy of faith, but only from frivolous persons? The Qualifiers judged that the negative opinion does not lack probability." Nevertheless it must be noted here that the affirmative resolution is inferred rather from the proposed Question than from the Response of the Sacred Congregation.

1269. Is one who knows of solicitation under a natural secret bound to denunciation? R. Affirmatively, "because no one is bound to a secret, even promised by oath, when the secret turns to common harm. But otherwise, if the solicitation has been manifested for seeking counsel; for the disclosure of the secret would then be against human intercourse, and also against the public good, which certainly intervenes in seeking counsels." L. 698. And this last point is founded besides on the Decree of Alexander VII, July 8, 1660, which obliges Regulars from whom counsel is sought concerning the obligation of denouncing only to this, that they warn and oblige to denounce.

1270. Is absolution to be denied to a penitent who refuses to denounce a soliciting priest? R. Affirmatively. "Penitents who have been warned and altogether refuse cannot be absolved; but those who because of a just cause must defer denunciation, and who pledge and seriously promise that it is to be made as quickly as they can, can be absolved... If necessity presses, the solicited person is to conduct himself according to the counsels and warnings of his confessor," namely when there is grave difficulty standing in the way of making denunciation. Cited Instruction, nn. 5 and 7; L. 693.

1271. Do those omitting denunciation incur excommunication? From the Constitution *Apostolicae Sedis* of Pius IX, October 15, 1869, those incur an excommunication *latae sententiae* reserved to no one: "Those neglecting or culpably omitting to denounce within a month confessors or priests by whom they have been solicited to shameful things, in any of the cases expressed by Our predecessors Gregory XV, Constitution *Universi*, August 20, 1622, and Benedict XIV, Constitution *Sacramentum Poenitentiae*, June 1, 1741." Neglecting or culpably omitting to denounce, and therefore when they could and ought to have done this. Within a month: to be computed from this obligation having become known; therefore after the month has elapsed they fall into excommunication. Moreover, if they have promised that they will denounce, and faith can be had in them, they will be able to be absolved, and not only from sins before the month has elapsed, which is expressly provided in the Constitution of Benedict XIV, cf. 1265, 1270, but also from excommunication after the month has elapsed. For the present excommunication is not reserved. Nor indeed does a penitent of this kind seem to relapse into the same excommunication if afterwards he has deceived the faith placed in him,

since absolution here is granted absolutely; and when the Constitution *Apostolicae Sedis* willed otherwise, it openly expressed it. By whom they have been solicited: therefore only solicited penitents are subject to this excommunication, by no means all whatsoever who learned of the solicitation. Pignatelli, *Cons. Can. Noviss.*, chap. 117, par. *Terminus autem*.

1272. What causes excuse from making denunciation? If truly and reasonably, from denunciation, grave harm is feared in life, reputation, and temporal goods, the penitent could be excused from denouncing. The reason is that a natural right is given for preventing these harms, against which the positive law of the Church does not prevail; for the Church is not accustomed to oblige further with grave inconvenience for the observance of her laws. It is added that laws imposing denunciation of their nature do not oblige with grave inconvenience, because they do not have that annexed to them of their nature, as, for example, precepts given to a soldier concerning not leaving his station, or to a pastor concerning assisting the sick laboring under plague.

But when a law of its nature does not demand to be fulfilled with grave inconvenience, it ceases to oblige if that grave inconvenience supervenes, as is clear concerning a law imposing fasting, hearing Mass, etc. But denunciation is to be made even with any harm whatsoever as often as from that crime contempt of this sacrament and destruction of souls would arise. But although this could be absent when it was certainly known that someone solicited once, not from contempt of the sacrament but from mere momentary lust, nevertheless it would indeed happen when solicitation arose from making light of the sacrament, or if the solicitor were a powerful man and solicited frequently. Therefore in these cases the reason of the common good and of preventing harm to Religion outweighs any private harm whatsoever, and therefore denunciation should never be omitted. L. 699; Pignatelli, *Cons. Can. Noviss.*, chap. 117, par. *Denique* ff.; E.M.

1273. Note: Those who cannot denounce because of the aforesaid causes are still bound when these cease. Holy Office, February 21, 1630; Giraldi, p. 640, note *qui*, p. 641. E.M.

1274. Is a woman bound to denounce a soliciting confessor to whom she herself consented? R. Affirmatively. For Benedict XIV commanded denunciation to be made "whether the penitent consented to the solicitation, or by no means gave consent." The reason is that denunciation can be made without any danger to one's own reputation, since one cannot be questioned about this by the Bishop, and therefore even if someone is questioned he can deny his own consent. L. 700. In the cited Instruction, n. 6, it is said: "Care must also be taken that those denouncing are not asked whether they consented to the solicitation; and it would be most fitting if concerning consent of this kind, however spontaneously manifested, nothing at all were noted in the records. From the Declaration of Urban VIII, Thursday, April 17, 1624."

1275. Must a woman constituted in good faith and simplicity, who did not understand the solicitation, be warned concerning denunciation, and must she denounce? R. Negatively, by reason of scandal. Nevertheless "the Sacred Congregation on May 11, 1707 declared that a girl solicited while constituted in simplicity and without knowledge of dishonesty is bound to denounce the soliciting confessor after she has become capable and has acquired knowledge of the past solicitation." Giraldi, p. 641.

1276. Is the solicited person bound to denounce solicitation had a long time ago, or occult solicitation, or one which cannot be juridically proved? R. To the first, affirmatively, from the open

Declaration of Benedict XIV, Constitution *Sacramentum Poenitentiae*, § 2. L. 697. To the second, it must altogether be affirmed; otherwise this most grave law would be completely useless, since this crime of itself is occult. L. 696. To the third, "it must altogether be affirmed." L. 695. The reason is that juridical proof is not necessary here.

1277. Is a soliciting confessor to be denounced if he has already been amended, or judged and punished, or is dead? R. To the first: affirmatively. And St. Alphonsus judges this absolutely more probable, and it seems practically and regularly to be held. For the primary and principal reason of the law of denunciation is not the amendment of a particular person, but the public security of the sacrament and of souls, by the certain chastisement of so abominable a crime, and by unavoidable fear of penalty, even for one act, or for one repeated only once; indeed also the indemnity of the Church, namely lest plagues of this sort creep into public offices, than which nothing is more harmful to the common good of the Church. Benedict XIV, *de Synod.*, book 6, chap. 11, n. 10.

To the second: it is certain that, if he himself offends again after he has been punished for the first crime, he must again be denounced. And the same must be said if he was not fully convicted of solicitation, because then he would not have been punished. If concerning the same solicitation he has already been sufficiently convicted and punished, it must far more probably be affirmed, L. 637, from the Holy Office, May 11, 1661, to the thirteenth: "Whether a confessor who abjured on account of the solicitation of another is to be denounced? The Qualifiers judged that the negative opinion is not probable, and therefore that he is to be denounced, which was also resolved on July 26, 1628." Abjured, that is, one who on account of another preceding solicitation appeared before the Inquisitor and abjured, namely detested heresy; for since abjuration is detestation of heresy, someone was bound to abjure insofar as he was a heretic or suspected of heresy; and such a solicitor was held to be, who therefore had to abjure at least for caution; and if the suspicion of heresy was slight, he was said to abjure *de levi*; if vehement, to abjure *de vehementi*. Nevertheless it must be observed that in the preceding Response there is question of the solicitation of another penitent, on account of which the confessor abjured, not of that same penitent on account of whose solicitation he spontaneously appeared. But in another Decree, July 26, 1628, cited in the aforesaid Response, as that Decree is had in Albitius, *de Inconst. in Fid.*, chap. 35, n. 50, it is established generally that "the solicited person is bound to denounce the solicitor, although he knows that the same appeared in the Holy Office." In the same general sense the same Decree is reported by Giraldi, p. 641.

To the third: negatively, because then the whole end of the law ceases, namely both the punishment and the amendment of the guilty party. Holy Office, March 6, 1839; Sacred Penitentiary, April 24, 1884; L. 692. E.M.

1278. When, to whom, and how is denunciation to be made? Denunciation must be made within a month from the time when its obligation became known. Holy Office, March 10, 1677; L. 693. Cf. 1271.

It is to be made "to Inquisitors or Ordinaries of places," § 2. Of places, i.e., of the place in which the penitent is present, even if the penitent and the soliciting confessor pertain to another diocese. It pertains to the Ordinary or Inquisitor of the place to receive the sworn denunciation and to transmit it to the Bishop of the guilty priest. In the cited Instruction, n. 1, it is said: "they must report the matter to the Holy See or to the Ordinary of the place." He satisfies the obligation who denounces delinquents of this kind to the Supreme Tribunal of the Sacred Roman and Universal Inquisition.

Pignatelli, *Cons. Can. Noviss.*, chap. 117, *Ex parte vero*. Vicars Apostolic can also receive denunciation, but they must remit "to the Holy Office through the medium of the Sacred Congregation de Propaganda Fide in a closed letter the names of the solicitors."

Holy Office, June 20, 1882. As regards Regulars, Regular Superiors cannot receive this denunciation, nor take cognizance of this cause. Decree of Alexander VII *Licet alias*, July 3, 1660. Cardinals, Bishops, and the Inquisitors themselves, who are truly delegates of the Apostolic See, in the case of solicitation, if it is to be denounced, are to be denounced not to the Inquisitor or Ordinary of the place, but either to the Holy See or to the Sacred Congregation of the Holy and Universal Inquisition. "If they cannot, or do not wish immediately, to denounce them to the Supreme Tribunal, they are bound to denounce them to the Inquisitors or Ordinaries of places, so that the delict may become known to the Holy Office; because the obligation of denouncing requires in the judge only the faculty of receiving juridical denunciations. For this suffices so that the delict may become known to the Sacred Tribunal, so that afterwards according to its laws proceeding may be made against the delinquent." Pignatelli, *Cons. Can. Noviss.*, chap. 117, par. *Ideoque*.

As regards the manner of making denunciation, the cited Instruction, nn. 6-8, has these things: "6. Anonymous denunciations against those soliciting to shameful things have no force; for denunciations must be made in judgment, namely before the Bishop or his delegate with the intervention of an ecclesiastical man who holds the parts of notary, and with oath, and with expression and subscription of one's own name. Nor is it sufficient if it is made by notes, or by letters without the name and surname of the author. Moreover it is prohibited that, in receiving denunciations, besides the judge and the notary, each an ecclesiastical man, furnished with the special and written deputation of the Bishop, witnesses be present." "7. The burden of denunciation is personal, and to be fulfilled by the solicited person himself. But if he is impeded by most grave difficulties from being able to perform this himself, then either by himself, or by letter, or through another person well disposed to him, let him approach his Ordinary, or the Holy See through the Sacred Penitentiary, or even through this Supreme Inquisition, all the circumstances having been set forth, and then let him conduct himself according to the counsels and warnings of his confessor. But if, detained by no impediment, he altogether refuses denunciation, in this case and in the other mentioned cases the confessor is to be praised who has not denied his labor to the penitent, and has consulted either the Ordinary or the Holy See for opportune provisions, the name of the penitent nevertheless being suppressed. But approved authors hand down the formulas to be used in these cases, among whom are Pignatelli, *Cons. Can. Noviss.*, t. I, chap. 104; Carena, Albitius, etc." "8. It not infrequently occurs that a confessor or another ecclesiastic is deputed by Bishops, whose power this indeed is, to receive denunciations in a matter pertaining to the crime of solicitation, without the intervention of a notary. Men especially suitable are to be destined to this most grave function; they must be instructed concerning the act of denunciation to be assumed in a judicial manner, and warned that immediately after the denunciation has been received they are at once to transmit it cautiously to the Bishop himself by whom they were deputed, and that they are to retain for themselves no copy or any trace of the act drawn up. And in about this manner the function of denouncing is fulfilled without great difficulty. Certainly it must be brought about by Ordinaries of places that it not be necessary to apply to places subject to their jurisdiction what was declared for the missions of Pernambuco in America, on June 22, 1627: namely that solicited women are not

bound to denunciation if the ministers of the Inquisition and the Vicars of the Bishop dwelling in distant regions cannot be approached without grave inconvenience."

Therefore, if a woman cannot even be induced to make the denunciation in writing and with oath to a confessor deputed for this, recourse must be had to the Holy See for an opportune remedy, and meanwhile such a penitent is not to be absolved, as being indisposed.

All Ordinaries of places are deputed judges for inquiring and proceeding against solicitors. Therefore they can delegate to others the faculty of admitting juridical denunciations, not only for an act but also habitually. L. 695; E.M.

1279. What about the crime of false denunciation? "Since certain wicked persons are found who, moved either by hatred, or anger, or another unworthy cause, or incited by the impious persuasions, or promises, or flatteries, or threats of others, or in any other way, the dread judgment of God being set aside and the authority of the Church contemned, falsely accuse innocent priests of solicitation before ecclesiastical judges: Therefore, that so wicked an audacity and so detestable a crime may be restrained by fear of the greatness of the penalty, whatever person has stained himself with an execrable crime of this sort, either by himself impiously calumniating innocent confessors, or by wickedly procuring that this be done by others, is forever deprived, by any priest whatsoever, fortified by whatever privilege, authority, and dignity, except by Us and Our successors, unless at the end of life and except in the article of death, of the hope of obtaining absolution, which We reserve to Us and to the aforesaid successors." § 3.

The present case is a papal reserved case, but without censure. The reservation is penal. But that procuring must be efficacious of the unjust denunciation which followed. There is question, however, not of any false denunciation, but of a juridical denunciation, i.e., made before ecclesiastical judges, namely before the Ordinary of the place or the Inquisitor. L. 693.

1280. What about absolution of an accomplice? In the same Constitution of Benedict XIV *Sacramentum Poenitentiae*, there is also treatment of absolution of an accomplice, of its unlawfulness and invalidity, and of the excommunication imposed on the absolver.

1281. What about the unlawfulness and invalidity of absolution? Benedict XIV has these things in the cited Constitution, §§ 4 and 2: "To all and singular priests, both secular and regular, of whatever order and dignity, although otherwise approved for receiving confessions, and supported by any privilege and indult, even one worthy of special expression and of most special note and mention, by Apostolic authority and the plenitude of Our power, We interdict and prohibit, lest any of them, outside the case of extreme necessity, namely in the very article of death, and then when any other priest who can discharge the office of confessor is lacking, dare to receive the sacramental confession of a person who is an accomplice in a shameful and dishonest sin committed against the sixth precept of the Decalogue, any authority and jurisdiction whatsoever for absolving any person from guilt of this kind being for this reason removed from him by the law itself; indeed so that the absolution, if he shall impart any, is altogether null and void, as imparted by a priest who exists deprived of the jurisdiction and faculty necessary for validly absolving, which We intend to remove from him by these Our present letters.

And nevertheless, if any confessor shall have dared to do otherwise, he incurs also by that very fact the penalty of major excommunication, the power of absolving from which We reserve to Us alone

and only to Our Successors. Declaring also and decreeing that not even by force of any Jubilee whatsoever, or even of the Bull which is called of the Holy Crusade, or of any other Indult, can anyone receive the confession of the said accomplice of this kind and bestow sacramental absolution upon him: since for this effect, and in this case, no confessor, as one who in this kind of sin and penitent lacks jurisdiction, as was said above, and exists deprived by Us of the faculty of absolving, is to be held as a legitimate and approved confessor.

Notwithstanding Apostolic Constitutions and Ordinances, especially those which are called of the Holy Crusade, or of Universal and plenary Jubilee, and also any Statutes and Customs whatsoever, Privileges also, Indults, and Apostolic Letters... To all of which... for this time only We specially and expressly derogate, and to other things whatsoever to the contrary."

1282. Is absolution of an accomplice always unlawful, always invalid? Absolution of an accomplice will always be unlawful outside the case of extreme necessity, namely in the very article of death, and then when any other confessor who can discharge the office of confessor is lacking. But it will always be invalid outside the article of death. In the article of death it will always be valid, even short of necessity.

For thus Benedict XIV, in the Constitution *Apostolici*, declared his mind concerning a case of necessity of this kind. 1. Thus an accomplice is interdicted and prohibited from hearing and absolving an accomplice in the aforesaid article of death "so that if some other priest is not lacking, even if perhaps this other was only a simple priest, or otherwise not approved for hearing confessions, nevertheless that simple priest can receive the Confession and impart absolution." 2. "If the quality of an urgent case and the concurring circumstances, which cannot be avoided, are such that another priest cannot be called or approach to hear the confession of a person constituted in the said article without some grave infamy or scandal likely to arise; then another priest can be held and considered just as if he were really absent and lacking; and therefore in that state of things, the priest who is partner of the crime is not prohibited from imparting absolution to the penitent also from that crime. But let an accomplice priest of this kind know and seriously observe that he will in fact be guilty before God, who cannot be mocked, of grave disobedience against Our aforesaid Constitution and liable to the penalties imposed in it, if he voluntarily invents for himself the aforesaid dangers of infamy or scandal where they do not exist. Indeed let him understand that he is gravely bound to forestall or remove dangers of this kind, insofar as it is in him, suitable means being employed, whence it may happen that a way lies open for any other priest to hear that confession without anyone's infamy or scandal." 3. "But if the same priest either in any way thrusts himself in, compelled by no grave necessity, or, where danger of infamy or scandal is feared if the labor of another priest must be required, he himself has deliberately neglected to employ suitable means to avert that danger, and thus has presumed to receive the sacramental Confession of the person who is an accomplice in the said crime and constituted in that article, as was said above, and to bestow absolution from that crime, no necessary cause compelling as is premised; although absolution of this kind will be valid, provided that on the part of the penitent the dispositions required by Christ the Lord for the validity of the sacrament of penance have not been lacking, for We do not intend in the fearful article of death to take away from the same priest, however unworthy, the necessary jurisdiction, lest by this very occasion someone perish; nevertheless that priest will by no means escape the penalties of the law

violated by such rash daring; and therefore he incurs the major excommunication imposed in the said Constitution and reserved to Us and to this Holy See in exactly the same way as is decreed there."

1283. If an accomplice priest, necessity standing, begins to hear the confession of an accomplice in the article of death, and another priest arrives, can he complete the confession begun? R. Affirmatively. "The reason is that when he began to hear, this was lawful through the Pontiff giving him jurisdiction; but this jurisdiction does not expire by the arrival of another, because the confession for which jurisdiction was conferred, since it is only begun, is not yet whole or perfect." Ithur., Case 49, n. 17.

1284. If an accomplice priest begins to hear the confession of an accomplice in the article of death, necessity standing, can he then, after the danger of death has passed, complete the confession and absolve? R. Affirmatively. The reason is the same as in the preceding case. For jurisdiction valid at the time of the confession begun is judged to remain so long as the confession begun has not been completed by absolution. For confession is ordered to this, and has its completion in this. Ithur., Case 49, nn. 21, 22, 23.

1285. After the accomplice has been absolved by the accomplice priest in the article of death, necessity pressing, can the priest then, when that danger has passed, complete his confession by reason of integrity? Either the penitent sufficiently expressed by nods all the sins of complicity, or not. If the former, the accomplice priest can complete the confession by reason of integrity; otherwise he cannot. The reason of the first is that by valid absolution the sins of complicity were directly remitted, and therefore the complicity itself has been directly destroyed, and the accomplice priest, like any other, can absolve from other sins. For those sins are no longer necessary matter of confession, but only free matter, like venial sins or mortal sins already disclosed. The reason of the second is that then the bond of complicity still endures; for the remaining sins were remitted only indirectly, as omitted in confession. Therefore those sins remain necessary matter of confession. Ithur., Case 49, nn. 19, 20.

1286. Can an accomplice absolve an accomplice not only in the article, but also in the danger of death? The article of death is distinguished in this from the danger of death: the article of death denotes certain nearness, the danger denotes probable impending death. R. Affirmatively. The extrinsic reason is that the article of death and danger of death, by canon law, by the most common opinion of theologians, and by the practice of confessors, are altogether equated in order to receiving the sacraments of penance, Eucharist, and extreme unction. But the intrinsic reason is that, morally speaking, the necessity of the sick person is nearly the same.

Therefore, lest he perish, the Church confers jurisdiction on all priests for the article of death, even if there is question of an accomplice priest absolving an accomplice, as is openly clear from the Constitution of Benedict XIV *Apostolici muneris*. Ithur., Case 49, nn. 4-10.

1287. Note: The same must be said even if the danger of death was prudently indeed, but falsely, judged to be present. Ithur., Case 49, nn. 11-15. For since it is sometimes difficult to distinguish a true and real danger from a danger only judged and apparent, jurisdiction is given absolutely to all for the article or danger of death prudently judged to be present, lest someone perish.

1288. What if a dying person is unwilling to confess to anyone other than the priest who is his partner in sin? In that case he can be absolved by the accomplice priest, if he is otherwise disposed,

namely lest he perish or be endangered. Gousset, *Theol. Mor.*, vol. 2, n. 489. The same must be said if another priest who has been called is unwilling to come, or, though already present, is unwilling to hear the confession. The reason is that then it is the same as if there were no supply of another confessor.

1289. When is complicity had here? Complicity is had here when there is an externally, reciprocally or mutually declared consent, agreement, or conspiracy of two or more persons into a shameful and dishonest sin, indeed a mortal one, against the sixth precept of the Decalogue, although not consummated by copula. Externally: certainly complicity cannot be had without an external act. Mortal: for the Supreme Pontiff speaks of a sin which must necessarily be destroyed by sacramental absolution. But mortal is understood both by reason of the internal act and by reason of the exterior work. Therefore the aforesaid law does not have place where there is question of sins only grave but doubtful, whether the doubt be of law or of fact; or where there is question of simply venial sins, or of sins venial only as regards the external act, although either one or each has internally sinned gravely. But how great an imprudence and rashness it is, because of the danger of scandal, to approach an accomplice confessor, even if there is question only of venial sins in this matter to be manifested to the same accomplice confessor, there is no one who does not see. Reciprocally or mutually. Therefore "1. if a priest, having taken an occasion from sleep or drunkenness, were to use some woman to satisfy lust, he would not for this reason lose jurisdiction for absolving her, because since both the drunken woman and the sleeping woman are unequal to sinning, neither would be held formally as an accomplice, although each could be called materially a partner of the crime in the sin against the sixth precept perpetrated by the priest... 2. If some priest by the greatest crime were to induce a woman to believe that it was altogether free from sin if she allowed herself to be shamefully touched by him, and she, deceived by him, in good faith suffered herself to be shamefully touched by him, without admitting formal sin in herself, she would not be an accomplice, and could subject herself to the sacramental judgment of the same priest for obtaining absolution not from a venereal sin, from which we posit her to be immune, but from other sins." Ithur., Case 41, nn. 25, 26. Likewise the complicity of which there is question in this law is not present if the woman with whom the priest sins, although she consents interiorly, nevertheless externally resists. But under the name of shameful sin comes every grave external sin against the sixth precept, even if it is only touch or conversation. The reason is that the words of the Bull, "in a shameful and dishonest sin against the sixth precept," without doubt comprehend any shameful sins whatsoever. Holy Office, May 28, 1873; L. 554.

1290. Does the aforesaid complicity comprehend the shameful sin of the confessor with the partner of the crime, committed even before he had been initiated in sacred orders? R. Affirmatively. The reason is that the Supreme Pontiff speaks altogether indefinitely of sin committed with an accomplice, and does not restrict it to sin committed by the confessor himself when already having the faculty of hearing confessions, or already constituted in sacred orders. Sacred Penitentiary, January 22, 1879; Ithur., Case 47, nn. 2-6.

1291. Is the absolution valid at least of other sins, if the penitent was in good faith, as happens whenever there is question of reserved sins? R. Affirmatively. The reason is that in the Bull jurisdiction is indeed removed from the confessor, but from the accomplice confessor, as regards the

accomplice penitent, and, what is especially important, from guilt of this kind, in this kind of sin. Therefore not from other sins, not in other matters. Sacred Penitentiary, May 16, 1877.

1292. Does the error of the penitent supply jurisdiction when absolution is unduly imparted to an accomplice? R. Negatively. The reason is that the Church, supplying jurisdiction in the case of error, intends to provide not only for certain persons who, deceived, thought that jurisdiction was present in this priest, but for the multitude of men falsely thinking that very thing by a common persuasion. Hence error supplying jurisdiction regards the multitude, whom the Church intends to favor; it does not regard a few. But where there is question of absolving an accomplice, only two are present, namely the confessor and the accomplice, whom the Benedictine Constitution wishes to punish. Therefore error can contribute nothing at all to the validity of absolution imparted by an accomplice. Ithur., Case 51, n. 26; Case 47, nn. 10, 11.

1293. What if a confessor absolved an accomplice inadvertently? Many affirm that the absolution is valid. The reason is that the Constitutions of Benedict XIV require rash daring and presumption. Many on the other hand deny that the absolution is valid. For two things must be distinguished in the Constitution of Benedict XIV: the removal of jurisdiction and the penalty of excommunication. This indeed, both in the Constitution *Sacramentum Poenitentiae* and in the Constitution *Apostolici regiminis*, is imposed against those daring and presuming; but the former is simply removed from the accomplice confessor, as is clear from the very tenor of the Bull. Hence it is clear that the removal of jurisdiction is not constituted properly as a penalty, but as an invalidating law for averting danger, lest an accomplice priest dare to absolve an accomplice, and for removing from the sanctity of the sacred tribunal every occasion of shamefulness and contempt of the sacraments, as is said there at the beginning of § 4. Hence the absolution will be invalid as regards the very sin of complicity, but valid as regards other sins, if the penitent is in good faith. Cf. 1291.

1294. Can a priest doubting whether the penitent is his accomplice absolve him? R. Affirmatively. Gury, Case 619. The reason is that it is not to be presumed that the legislator prudently wished to proceed against the confessor with so great a doubt concerning the matter on the one hand, and with so great a detriment to reputation and perhaps a new scandal on the other. Therefore the present case seems to fall back into the question of probable or doubtful jurisdiction, in which, when a grave cause stands, it is more probably lawful to absolve. Cf. 770.

1295. Does an accomplice priest have jurisdiction over a sin of complicity destroyed by perfect contrition, or remitted only indirectly by the keys? R. Negatively. The reason is that from Benedict XIV the confessor is simply deprived of the jurisdiction necessary for the remission of the sin of complicity, necessarily to be obtained through the keys. Ithur., Case 48, nn. 2, 7, 8, 11-16.

1296. Does an accomplice priest lack jurisdiction over a sin of complicity even already directly remitted? R. Negatively. The reason is that that sin is no longer necessary matter of confession, but free matter. Holy Office, May 29, 1867.

1297. Can an accomplice confessor absolve an accomplice by force at least of some privilege or Jubilee? R. Negatively. This is clear from the Constitution of Benedict XIV, § 5. But it must be noted here that one invalidly absolves a penitent who by force of privilege could be absolved from any sin reserved to the Supreme Pontiff, because this sin is not reserved, since any non-accomplice confessor

can absolve from it. From this it follows that a confessor having the power of absolving from cases reserved to the Supreme Pontiff cannot absolve an accomplice.

1298. Can a priest seeking the faculty that some priest absolve an accomplice absolve his own accomplice himself? Can a Bishop grant this faculty of absolving his own accomplice? R. To the first: affirmatively. The reason is that the faculty of absolving an accomplice was requested in general for some priest. Therefore it ought to be valid as much for the petitioner himself as for another. R. To the second: negatively. The reason is that the law prohibiting a priest from absolving an accomplice is a general law of the Church and of most grave moment. But Bishops cannot dispense by their own authority in general laws of the Church except in cases of lesser moment and frequently occurring in practice. This is also clear both from the practice of the Church, which is accustomed to grant to Bishops seeking the faculty of absolution of an accomplice, by particular Indult, that faculty for certain cases of necessity few in number; and especially from the Constitution *Apostolicae Sedis*, by which that case is reserved to the Pope in a special manner, indeed according to the Decree of the Holy Office, January 17, 1866, in a most special manner.

1299. What about excommunication? The excommunication constituted by Benedict XIV, cf. 1281, is retained in the Constitution *Apostolicae Sedis* and enlarged. For excommunication is not imposed on those daring to absolve, but simply on "those absolving an accomplice in a shameful sin, even in the article of death, if another priest, although not approved for confessions, can receive the confession of the dying person without any grave infamy and scandal likely to arise." Those absolving: therefore it is not enough merely to hear the confession without absolving. Nevertheless confessors pretending and simulating absolution of an accomplice in a shameful sin do not escape excommunication. Sacred Penitentiary, March 1, 1878; Holy Office, December 5, 1883. Those absolving, even with crass or supine ignorance. Holy Office, January 13, 1892.

An accomplice, namely formal, and therefore by mutual consent externally manifested on each side. In a shameful sin, namely 1. against the sixth precept of the Decalogue; 2. formal, for if either one sinned only materially, he cannot be called an accomplice; 3. external; 4. grave on each side, not only in the nature of the internal act, but also in the nature of the external act; 5. not already directly absolved by another confessor. In a shameful sin: nevertheless the confessor would still incur excommunication if he directly or indirectly induced the penitent to keep silent about that sin. Directly, by persuading him that that sin is to be omitted. Indirectly, by persuading him that the shamefulness committed with the priest was not a sin, etc. Even in the article of death, a fortiori outside it.

If another priest, although not approved, i.e., when "any other priest who can discharge the office of confessor is not then lacking." Cf. 1281. Hence one suspended, or even excommunicated, is to be preferred to the accomplice, speaking in itself; otherwise, if infamy and scandal would follow. In the article or danger of death. Cf. 1286.

This case is so held as reserved that even in the general and very broad concession of faculties, which is granted by the Holy See for various places for absolving from all cases even under censure reserved in a special manner, it is expressly excepted. Holy Office, April 4, 1871. Cf. 1298. Its absolution belongs privatively, and only in the internal forum, to the Sacred Penitentiary, to which recourse must be had.

1300. Does an accomplice priest evade censure who, short of necessity, hears the confession of an accomplice in the article of death, if before he absolves he repents of the deed, but afterwards absolves because of the circumstance of the confession begun? The author of *Cas. Consc. Bonon.*, year 1759, month of May, Case 2, and others deny. The reason is that there was no jurisdiction of the confessor at the beginning of the confession, since it was not juridically begun, and none remains in its prosecution. Nor indeed is there another necessity of imparting absolution than the article of death, another confessor being lacking, or danger of scandal and infamy pressing. But others affirm. For "1. he does not incur the penalty for the confession begun alone, because that penalty is not incurred unless the confession is completed by absolution. 2. Nor would he incur it by absolving after a will changed for the better, and contrition elicited concerning that sin; for no one incurs excommunication by an act which on the one hand can no longer be omitted, and on the other hand lacks all fault, indeed has become obligatory. For excommunication is incurred then when absolution is imparted by an accomplice without any necessity (of avoiding scandal and infamy). But the confessor, after hearing the penitent's confession, is compelled to absolve him; therefore he does not incur excommunication." Gury, Case 628; Ithur., Case 50, nn. 25, 26. As regards the reason of the first opinion, cf. 1282.

On the Constitution Officiorum ac munerum

1301. What prohibition of books exists? The prohibition of books is one thing by natural law, another by positive law. The reading of books, for example, handing down false religion, superstitious or lascivious matters, and attacking any virtue whatsoever or defending vice, speaking in itself, is prohibited by natural law.

The reason is that the reading of these books, speaking in itself, has annexed to it the danger of perversion. Therefore unless such reading is done by learned men, and from an honorable intention of attacking, extirpating, etc., these books, it will be sinful in proportion to the danger of perversion.

As regards positive law, there is no doubt that the Church has the power of prohibiting harmful books. Now "to prohibit books throughout the whole world pertains to the Supreme Pontiff, and for him to the Sacred Congregation. But Bishops and Inquisitors can prohibit books in their own territory," even under penalty of censure to be undergone. L. 290. "Let Ordinaries," says Leo XIII in the cited Constitution, § 29, "even as Delegates of the Apostolic See, strive to proscribe books and other harmful writings edited or spread in their diocese, and to remove them from the hands of the faithful. Let them refer to Apostolic judgment those works or writings which demand a more subtle examination, or in which the sentence of supreme authority seems to be required for obtaining a salutary effect." Therefore there is an obligation for Ordinaries to proscribe not all harmful books and writings, but only those edited or spread in their diocese, and therefore with a certain regular number of copies. But other books or writings to be examined more deeply, or requiring the judgment of a higher authority, are all to be denounced. And because Ordinaries of places can proceed in this matter by power delegated from the Holy See, by their prescriptions they can oblige even exempt regulars.

Ordinaries, even as Delegates of the Apostolic See... let them strive to remove them. "By these words a right indeed, but also an office, is mandated... It is the office of Bishops to see that the writings of modernists, or those which savor of and promote modernism, if published, are not read; if not yet published, to prohibit their being read." Pius X, Encyclical Letter *Pascendi dominici gregis*, September 8, 1907.

The Supreme Pontiff condemns modernism, that is, rash and false novelties which not a few bring forth in this our age as regards Theology, Philosophy, Exegesis and Biblical History, and also ecclesiastical History. Namely, pervaded by an intemperate zeal for novelty, the doctrines constantly handed down by the Fathers and by Catholic Doctors being set aside, they assert opinions little founded, and, prescinding from the supernatural character of facts and from the inspiration of Sacred Scripture, they seem to overturn Religion itself. The Supreme Pontiff indeed condemns modernism, not any modern discovery whatsoever which is approved by solid reason. The Supreme Pontiff himself is author of this matter in his Brief to Ernest Commer *Summa nos*, June 14, 1907. "Indeed," he says, "it is calumny to assert that the Apostolic See, 'adhering to more obsolete studies, obstructs the progress of disciplines, clips the wings of every keenest genius, and resists those teaching the truth. Yet nothing more false or more unjust can be devised in thought; for indeed the Church disapproves

a certain liberty of erring, and watches that the faithful not allow themselves to be entangled in fallacies; but she does not prohibit this in any way, indeed by urging commends and persuades it, that the truth handed down divinely, for the guarding of which she herself was given, be more openly explained according to the character of peoples and ages, and be unfolded by legitimate interpretation.'"

Now, as regards the common law in force, at present one must stand by the Index of prohibited books, most recently recognized by order of Leo XIII, Brief *Romani Pontifices*, September 17, 1900; and also by the General Decrees already established by the same Leo XIII in the cited Constitution *Officiorum ac munerum*. These alone have the force of law, "the Rules issued by order of the Holy Synod of Trent, the Observations, Instruction, Decrees, Warnings, and any other statute and command of Our Predecessors concerning this matter being abrogated, with the one exception of the Constitution of Benedict XIV *Sollicita et provida*, which, just as it has hitherto been in force, so We will to remain entire in force hereafter." Par. *Itaque*. The Rules being abrogated, etc., simply, and therefore as regards obligations and as regards penalties. Contrary customs likewise remain abrogated, although in the cited Constitution a clause abrogating them is not had. For this is openly deduced from the purpose of this Constitution, namely that provision be made for the necessities of the present time. The Constitution of Benedict XIV *Sollicita et provida* prescribes the method to be observed in the examination and proscription of books in the Sacred Congregations of the Holy Office and of the Index. But the aforesaid Constitution *Officiorum ac munerum* has obligatory force everywhere, even in regions of the British idiom. Sacred Congregation of the Index, May 23, 1898. Cf. here 1312. Therefore the Index of prohibited books also is to be observed everywhere. Leo XIII, Constitution *Romani Pontifices*, September 17, 1900. Pius X, motu proprio *Sacrorum antistitum*, September 1, 1910; E.M.

Bishops are bound to interdict in their own Diocese all harmful books and especially those of the Modernists, nevertheless restraining the prohibition, if it suffices, to the clergy alone; while the duty of Catholic booksellers remains intact, that they by no means have for sale books marked by the Bishop. If these refuse obedience, Bishops, after a warning has first been given, are to deprive them of the title of Catholic booksellers, and with stronger right if they are called episcopal; but those who are adorned with the pontifical title, they are to report to the Holy See. Pius X, motu proprio *Sacrorum Antistitum*.

By Decree of October 20, 1907, the book *Il programma dei modernisti* was proscribed in the City. "Therefore it is lawful for no one of whatever grade and condition subject to Our jurisdiction to sell or read or retain the same book under mortal fault. "Moreover, since the authors and writers of this book in the asserted Response sharply defend the system which in the Encyclical *Pascendi dominici gregis* is affirmed to be 'the collection of all heresies,' Our Most Holy Lord Pius PP. X, by this Decree, strikes with the penalty of excommunication the authors and writers, and all others whatsoever who in any way contributed labor to the making of this book, absolution from which he reserves to himself alone. Our Most Holy Lord adds that this Decree is valid just as if it had been delivered into the hands of each one of the said authors and writers; and if they are priests and exercise an act of Order, they will incur irregularity. "But nothing would be more satisfactory," says the Most Holy One, "than that all Bishops, each in his own diocese, should impose this prescription and promulgate the

censure. Given at Rome, on October 20, 1907." Peter Respighi, Cardinal Vicar. First Supplement to the *Enchiridion Morale*, 3rd ed.

And by Decree of December 28, 1908, the periodical booklet *Nova et Vetera* and *Rivista di cultura* was prohibited in the City. "Therefore let no one print it or cause it to be printed, let no one sell or read it. If anyone does otherwise, let him know that he has sinned gravely. Besides, clerics of whatever order who associate themselves with the same periodical, or if they have already made the association, do not retract it as soon as possible, let them know that they have incurred suspension from divine things by that very fact." Given at Rome, on January 28, 1908. Peter Respighi, Cardinal Vicar. First Supplement to the *Enchiridion Morale*, 3rd ed. Cf. 1313.

1302. What does the prohibition of books import? It imports the prohibition of reading those books, translating or rendering them into another language, retaining, defending, printing, publishing, selling, and donating them. For books proscribed by the cited Constitution are simply prohibited. "All booksellers, especially those who glory in the Catholic name, are neither to sell, nor lend, nor retain books treating explicitly of obscene things; let them not have other prohibited books for sale unless they have obtained permission from the Sacred Congregation of the Index through the Ordinary; nor are they to sell them to anyone unless they can prudently judge that they are legitimately sought by the buyer." § 46. Cf. nn. 1304-1307, 1311. If at any time all the works of some author are expressly prohibited in the Index, this prohibition does not pertain to those books which either in no way touch, or only incidentally touch, the truths of faith, and are proscribed by no general or special decree. Preface to the Index of Prohibited Books. By the reading or retention of prohibited books excommunication is incurred only in the two cases already related above, §§ 47, 48. Cf. 1165, 1212. Cf. also the preceding number at the end. Absolutely, the book is to be handed over to Inquisitors or Ordinaries. The reason is that superiors may know what poisons are offered to the faithful, and prepare the antidote. But as the practice of many places is today, and so that such books may be extirpated more safely and quickly, they can also be burned. But they cannot be torn up so that afterwards things may be wrapped with their leaves.

To wait a few days either to hand the book to a superior or to seek permission is not grave, and consequently not liable to censure. Finally, books are understood to be books printed with type and of some regular bulk, not manuscripts, lithographs, etc.; nor booklets of slight bulk or flying leaves. This distinction is indeed openly made in the present Constitution. Cf. n. 1165; Sanchez, *in Decal.*, book 2, chap. 10, n. 56; La-Croix 349; Laymann, *de Fide* XV, 7; E.M.

1303. Are harmful books to be denounced? "Although it belongs to all Catholics, especially those who excel in doctrine, to denounce pernicious books to Bishops or to the Apostolic See, nevertheless this pertains by special title to Nuncios, Apostolic Delegates, Ordinaries of places, and Rectors of Universities flourishing by praise of learning." § 27. It belongs to all Catholics, i.e., from charity obliging when grave danger is present, and denunciation is not made by others, and it can be done without grave inconvenience. Pernicious, as regards faith or morals. To the Apostolic See, i.e., to the Sacred Congregation of the Index, or of the Holy Inquisition, or de Propaganda Fide, or of Extraordinary Ecclesiastical Affairs. By special title of office and justice, whence the aforesaid obligation presses the aforesaid more gravely.

1304. What about editions of the original text, and of non-vernacular and vernacular versions of Sacred Scripture? "Editions of the original text and of the ancient Catholic versions of Sacred

Scripture, even of the Eastern Church, published by any non-Catholics whatsoever, even if they appear to have been edited faithfully and integrally, are permitted only to those who devote their work to theological or biblical studies, provided nevertheless that the dogmas of Catholic faith are not attacked in the prolegomena or annotations." § 5. Ancient: there is question here only of ancient versions, not of more recent ones. By non-Catholics: therefore editions of the original text and of the ancient Catholic versions of Sacred Scripture published by Catholics are permitted to all.

Only to those: therefore they are not permitted to others. Who devote their work to theological or biblical studies, whether by private study or in a public school, whether teachers or students. Sacred Congregation of the Index, May 23, 1898. To attack properly is not simply to deny, but to deny with the reason of denial added. Dogmas of Catholic faith, not any opinions and views whatsoever of theologians. "In the same manner and under the same conditions other versions of the Sacred Bibles, whether in Latin or another non-vernacular language, edited by non-Catholics, are permitted." § 6.

In the same manner, etc.: namely any other non-vernacular versions whatsoever made by non-Catholics are permitted only to students of theological or biblical matters, provided nevertheless that dogmas of faith are not attacked in the prolegomena or annotations. "All versions in the vernacular language, even made by Catholic men, are altogether prohibited unless they have been approved by the Apostolic See, or edited under the vigilance of Bishops with annotations taken from the Holy Fathers of the Church and from learned and Catholic writers." § 7. Unless they have been, etc.: therefore vernacular versions without notes must be approved only by the Apostolic See; with notes they can also be approved by Bishops.

"All versions of the Sacred Bibles in any vernacular language whatsoever, made by any non-Catholics whatsoever, are interdicted, and especially those which are spread by Bible Societies more than once condemned by the Roman Pontiffs, since in these the most salutary laws of the Church concerning the editing of divine books are fundamentally set aside. These versions nevertheless are permitted to those who devote their work to theological or biblical studies, while observing those things which were established above." § 8. The most salutary laws, i.e., concerning tradition, which non-Catholics altogether contemn. These versions nevertheless, whether made by non-Catholics or by Catholics. While observing those things: namely provided that the dogmas of Catholic faith are not attacked in the prolegomena or annotations. Decree of the Holy Office *Lamentabili*, July 3, 1907, proposition 1; E.M.

1305. What about books of apostates, heretics, schismatics, and other writers? "All books which before the year 1600 either the Supreme Pontiffs or Ecumenical Councils condemned, and which are not reviewed in the new Index, are to be held condemned in the same way as they were formerly condemned, with the exception of those which are permitted by these General Decrees." § 1. Before the year: for in the Index of prohibited books, almost no books are inserted except those condemned afterwards. Examples of those condemned books are had in the same Constitution at the beginning of the paragraph *Praecipue vero*. In the same way: for the prohibition of many ceases to be in force both because of the age of the errors, concerning which no one cares any longer; and because of sufficient knowledge already propagated and becoming prevalent concerning the same errors, whence they have ceased to harm; and because of the utility which is had from the reading of such books, from which many things can be established that pertain to the practice and doctrine of the Church. Such are, for example, the books of Tertullian, Origen, etc. With the exception of those: cf. §§ 3, 4, 5, 6, 8, 10, etc.

Hence "those works now which either do not treat explicitly of religion, or, even if they treat of it, nevertheless contain nothing against faith, are permitted, unless perhaps they are found prohibited by some general or special decree." Preface to the Index of Prohibited Books. "Books of apostates, heretics, schismatics, and writers of any kind whatsoever, defending heresy or schism, or in any way overturning the very foundations of religion, are altogether prohibited." § 2. Books, not all, but those defending heresy or schism; not merely containing, but defending with proofs added. Of any writers whatsoever, even Catholics. Foundations of religion, namely the motives of credibility of revealed Religion, and its fundamental truths, such as the spirituality and immortality of the soul, the existence of the one and triune God, the creation of the world, Sacred Scripture, the Divinity of Jesus Christ, the Catholic Church, the Roman Pontiff, etc. In any way, whether by false proofs, or even by ridicule and another manner; whether by writing or by images. "Likewise books of non-Catholics which explicitly treat of religion are prohibited, unless it is clear that nothing against Catholic faith is contained in them." § 3. Of non-Catholics, namely of those not pertaining to the Catholic religion: heretics, schismatics, Jews, infidels. Explicitly, not incidentally and in passing. Concerning religion, i.e., concerning sacred matters, concerning the Sacred books, concerning the mysteries of Faith, concerning Dogmatic or Moral Theology, concerning the Rites or Canons of the Church, concerning the cult of the Saints, etc. Against Catholic faith: hence books of Roman Antiquities and others of that kind are not prohibited. "Books of the same authors which do not explicitly treat of religion, but only touch the truths of faith incidentally, are not to be held prohibited by ecclesiastical law until they have been proscribed by special decree." § 4. Of the same authors, non-Catholics. Explicitly: therefore books of heretics which do not treat of religion by design, but only incidentally, even though perhaps they err concerning Catholic doctrine, are not positively prohibited, and much more if they contain nothing at all concerning religion.

1306. What about liturgical and prayer books? "In authentic editions of the Missal, Breviary, Ritual, Ceremonial of Bishops, Roman Pontifical, and other liturgical books approved by the Holy Apostolic See, let no one presume to change anything; if otherwise has been done, these new editions are prohibited." § 18. And other liturgical books: such as those which mark liturgical chant and which cannot differ from the authentic and typical Vatican edition, and therefore are to be approved by the Ordinary of the place. Pius X, motu proprio, April 25, 1904; Sacred Congregation of Rites, August 11, 1905; February 14, 1906. Anything of some moment. For if the matter is altogether slight, it will pertain to the ecclesiastical superior to permit or prohibit the use of the book. To change: not to correct a typographical error. To change: not to report something more fully, not abbreviated, for greater clarity and convenience, or to repeat it in its proper place. Let him presume: and therefore from intention, not inadvertently. If otherwise: namely if anything whatever has been changed from the typical and approved editions, whether there is approval or there is not; lacking that, the book is not by that very fact prohibited. Cf. E.M. 125. "All litanies, except the most ancient and common ones which are contained in Breviaries, Missals, Pontificals, and Rituals, and except the Litanies of the Blessed Virgin which are customarily sung in the sacred House of Loreto, and the Litanies of the Most Holy Name of Jesus already approved by the Holy See, are not to be edited without the review and approval of the Ordinary." § 19. Except, etc. By Decree of April 2, 1899, the Litanies of the Most Sacred Heart of Jesus were also approved. By Decree of March 18, 1909, the litanies in honor of St. Joseph, Spouse of the Blessed Virgin Mary, were likewise approved. *Acta Apostolicae Sedis*, vol. 1, p. 290 ff. Are not to be edited: here only the publication of those litanies is prohibited. But by force of

the following paragraph the books themselves containing them, published without legitimate approval, are prohibited. From the Decrees of the Sacred Congregation of Rites, June 20, 1896, and February 11, 1898, Dub., the public recitation in churches or public oratories of litanies which the Holy See has not yet approved is prohibited, although the Ordinary approved them, even if that recitation is made without the intervention of a sacred minister. "Books or booklets of prayers, devotion, or religious, moral, ascetical, mystical doctrine and instruction, and others of this kind, although they seem to conduce to fostering the piety of the Christian people, let no one publish without permission of legitimate authority; otherwise, they are to be held prohibited." § 20. Books or booklets, not flying leaves. Or of doctrine... although, etc.: therefore there does not seem here to be question of books in which that doctrine is set forth merely speculatively. Of legitimate authority, namely of the Ordinary, who can also permit books of devotion containing a version of the Epistles, Gospels, and Canon of the Mass. Sacred Congregation of Rites, August 4, 1877. Collection of the Sacred Congregation de Propaganda Fide, n. 1890. Let him publish: otherwise. Therefore all books reviewed in this paragraph, to be edited from now on without authentic approval of the Ordinary and not previously edited, are to be held as prohibited. Cf. n. 1308, § 13; n. 1312, § 41. E.M.

Prayers for obtaining the intercession of Servants of God are to be approved by the Ordinary. Sacred Congregation of Rites, March 21, 1914.

1307. What about obscene books? "Books which explicitly treat, narrate, or teach lascivious or obscene matters, since account must be taken not only of faith but also of morals, which are easily corrupted by the reading of books of this kind, are altogether prohibited." § 9. Lascivious or obscene matters: therefore there is no question of "loves," as they call them, with the narration of which merely erotic novels linger. Explicitly, i.e., not lightly, but by design. Treat, i.e., by disputing, defending, or simply discoursing about matters of this kind, so that they are either the object of the whole book or only the special argument of some chapter. Narrate, by relating facts, histories, or fables.

Teach, by explaining, declaring, etc., the nature of lascivious things to be done. Treat, narrate, teach: namely by insinuating these things, certainly not by showing their unlawfulness and persuading their abomination, or by scientifically explaining medicine, surgery, etc.; for it is said: which of this kind, etc. "Books of authors, whether ancient or more recent, which they call classics, if they are infected with this very stain of shamefulness, on account of elegance and propriety of speech, are permitted only to those whom the reason of office or teaching excuses; nevertheless they must in no way be handed over or read before boys or adolescents, unless they have been expurgated with diligent care." § 10.

If they are infected with this very stain of shamefulness: i.e., if they explicitly treat, narrate, or teach lascivious or obscene matters, as is had in the preceding § 9. They are permitted, unless nevertheless they are related by name in the Index. The reason of office or teaching excuses. Therefore professors of humane letters and others can read these books insofar as this is demanded by the reason of office or teaching, namely insofar as it is necessary or useful to them for that reason. But they are by no means permitted to students unless they have been expurgated of that stain of shamefulness.

1308. What about other books of special subject matter? "Books are condemned in which God, or the Blessed Virgin Mary, or the Saints, or the Catholic Church and her worship, or the sacraments, or the Apostolic See, are disparaged. Works in which the concept of the inspiration of Sacred Scripture is

perverted, or its extension is too much restricted, are subject to the same judgment of reprobation. Books also are prohibited which deliberately afflict the ecclesiastical hierarchy, or the clerical or religious state, with insults." § 11. Books of any authors whatsoever, whether non-Catholic or Catholic. Disparage: namely speak ill, although not explicitly, but in grave matter. Inspiration of Sacred Scripture, which, "written under the inspiration of the Holy Spirit, has God as author." Vatican Council, Constitution *Dei Filius*, chap. 2; Decree of the Holy Office *Lamentabili*, July 3, 1907, prop. 9. Is perverted: if, for example, the concept of inspiration were constituted in a subsequent approval of the Sacred Books by the Church; or in a certain concomitant direction of the Holy Spirit, if necessity demands; or in divine assistance for preventing errors. Cited Decree, props. 10, 12, 19, 20. Is restricted: namely to only some books of Sacred Scripture, not to all; or to only some part of the books, not to the entire books; or only to dogmas of faith and morals, not also to the remaining matters, to historical matters, to profane matters, to matters pertaining to the natural sciences; or only to matters concerning which they treat explicitly, not also to others said only incidentally. Cited Decree, prop. 11. Deliberately: and therefore not if there is only some injurious expression, but if either the whole book, or a notable part of it, or some entire chapter afflicts the ecclesiastical hierarchy, or the clerical or religious state with insults; not some private person, unless from this vituperation turns against the hierarchical order itself, or a part of it, or against the clerical or religious state itself. "Let it be forbidden to edit, read, or retain books in which sorceries, divination, magic, evocation of spirits, and other superstitions of this kind are taught or commended." § 12. Are taught, for exercising them. Are taught or commended: not if they merely narrate superstitious facts, or treat or discourse concerning them, for reproving them and showing their malice and danger. "Books or writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private, if they are published without legitimate permission of the Superiors of the Church, are proscribed." § 13. Writings, although they are not books, but booklets or leaves; although they are manuscripts, for they are most properly writings. If they are published: therefore the prohibition does not affect books published before this Constitution. Without legitimate permission: if this is had, it now no longer seems to be required, by force of the present Constitution, that there be a protestation according to the Decree of Urban VIII. But cf. what is had here at the end of the number. Without legitimate, etc. All books concerning sacred things and morals are indeed to be subjected to ecclesiastical censure so that they may be licitly edited; but not for that reason are all prohibited if they have been edited without legitimate approval, § 41; while on the contrary books of which there is question in this paragraph, published without permission of the superiors of the Church, are proscribed, and consequently can neither be read nor retained. Cf. 1306. "Likewise books are prohibited which establish as lawful duel, suicide, or divorce; which treat of masonic sects or other societies of the same kind, and contend that they are useful and not pernicious to the Church and civil society; and which defend errors proscribed by the Apostolic See." § 14. Books of authors of any kind, non-Catholics or Catholics. Establish, contend, defend: therefore they do this not incidentally but deliberately. Errors proscribed by the Apostolic See, e.g., errors proscribed in the Syllabus. Sacred Congregation of the Index, May 23, 1898. E.M. "Concerning sacred Relics these things are to be held. If Bishops, who alone can in this matter, know certainly that a Relic is spurious, let them remove it from the worship of the faithful. If the authenticating documents of some Relic, perhaps because of civil disturbances or from any other case, have perished, let it not be proposed publicly unless duly recognized by the Bishop. The

argument of prescription or of founded presumption will then only be valid if the cult is commended by antiquity; namely according to the decree issued in the year 1896 by the sacred Council for examining indulgences and sacred Relics, by which it is declared: Ancient Relics are to be preserved in that veneration in which they have been up to now, unless in a particular case certain arguments are present that they are false or supposititious. But when there has been a judgment concerning pious traditions, it is necessary to remember this: the Church uses so great prudence in this matter that she does not permit traditions of this sort even to be narrated in writing unless much caution has been employed and the declaration sanctioned by Urban VIII has been prefaced; and although this is duly done, nevertheless she does not assert the truth of the fact, but, unless human arguments for believing are lacking, only does not prohibit it from being believed.

Thus plainly the sacred Council for guarding legitimate rites, thirty years ago, declared by Decree of May 2, 1877: Apparitions or revelations of this kind have neither been approved nor condemned by the Apostolic See, but have only been permitted as piously believable by human faith alone, according to the tradition which they bear, confirmed also by suitable testimonies and records. He who holds this will be free from every fear. For the religion of any apparition, insofar as it regards the fact itself and is called relative, always has the implicit condition concerning the truth of the fact; but insofar as it is absolute, it always rests on truth, for it is borne toward the very persons of the Saints who are honored. Similarly it must be affirmed concerning Relics. Finally We entrust this to the Council of vigilance, that they assiduously and diligently keep their eyes also on social institutions and on any writings concerning the social matter, lest anything of modernism lie hidden in them, but that they correspond to the precepts of the Roman Pontiffs." Pius X, Encyclical Letter *Pascendi dominici gregis*, September 8, 1907.

1309. What about newspapers, sheets, and periodical booklets? "Newspapers, sheets, and periodical booklets which deliberately attack religion or good morals are to be held proscribed not only by natural law, but also by ecclesiastical law. But let Ordinaries, where there is need, opportunely warn the faithful concerning the danger and harm of reading of this kind." § 21. Revealed religion, and consequently also natural religion. Deliberately, i.e., by design, expressly, and therefore not incidentally, not lightly, but habitually they gravely attack religion and good morals, by whomever they may be written, whether by Catholics or, a fortiori, by heretics.

Are to be held proscribed: therefore it is not lawful to read, retain, or subscribe to them. Where there is need: with that warning omitted, it is not therefore lawful with impunity to read the aforesaid newspapers, which remain proscribed by this general law. Where there is need: and therefore the warning is not always to be made, but only in a particular case in which a special reason is present. The Cardinal Vicar of the City, by Letter of May 16, 1903, prohibited by name the newspaper *Asinus*. "Let no one of the Catholics, especially of ecclesiastical men, publish anything in newspapers, or sheets, or periodical booklets of this kind, unless a just and reasonable cause persuades." § 22.

In newspapers of this kind, namely those of which there is question in the preceding § 21. Anything, whether it is an article, as it is called, or even some simple notice of some matter. "Men of the secular clergy are prohibited from undertaking the direction of newspapers or periodical sheets without the previous permission of the Ordinaries." § 42. Newspapers, etc., not periodical booklets. Direction: therefore the permission of the Ordinary is required only for the direction of a newspaper, not for writing some article, or, as it is said, for collaboration.

1310. What about images and indulgences? "Images of Our Lord Jesus Christ, the Blessed Virgin Mary, Angels and Saints, or other Servants of God, printed in any way whatsoever and differing from the sense and decrees of the Church, are altogether forbidden. But new ones, whether they have prayers annexed or are edited without them, are not to be published without permission of ecclesiastical power." § 15. Images, not statues, not medals, not paintings. Printed in any way whatsoever, for they can be printed in various ways. Already printed ones are forbidden if they differ from the sense and Decrees of the Church. Cf. Trent, sess. 25, *de Sacr.

Imag.*; Benedict XIV, Constitution *Sollicitudini*, October 1, 1745. Altogether forbidden: therefore they can neither be publicly exposed nor privately retained. Except unless they are retained as a mere historical monument of art. New ones, or those to be printed hereafter, and new as regards their form, cannot be printed and published without permission of ecclesiastical power. Published without it, they were indeed illicitly published, but they are not proscribed unless they differ from the sense and Decrees of the Church. "It is interdicted to all in any way to spread indulgences which are apocryphal and proscribed or revoked by the Holy Apostolic See.

Those which have already been spread are to be removed from the hands of the faithful." § 16. Apocryphal, namely false. Cf. true indulgences in authentic Collections of Indulgences approved by the Sacred Congregation, *Raccolta delle Indulgenze*, etc. Proscribed by the Holy Apostolic See: cf. Ferraris, v. *Indulgentia*, art. 4. To spread: reading in itself is not interdicted, but it is prescribed that those spread, whether in print or in manuscript, be removed from the hands of the faithful, which especially pertains to ecclesiastical superiors. "All books of indulgences, summaries, booklets, leaves, etc., in which grants of them are contained, are not to be published without permission of the competent authority." § 17.

Of the competent authority, namely either of the Sacred Congregation of Indulgences or of the Bishop; of the Sacred Congregation, if there is question of new indulgences and of new summaries of them; of the Bishop, if there is speech of indulgences and summaries already approved by the Sacred Congregation, according to the norms established before the new Constitution *Officiorum ac munerum*. Sacred Congregation of the Index, Constitution, August 7, 1897. Permission: without it they are illicitly published, but those published are not for that reason proscribed by that very fact. E.M. 1310, 1355.

1311. What about the faculty of reading and retaining prohibited books? "Only those will be able to read and retain books proscribed either by special Decrees or by these General Decrees who have obtained opportune faculties from the Apostolic See, or from those to whom it has delegated its authority." § 23. By special Decrees, namely those inserted in the Index of prohibited books. By General Decrees, that is, those proscribed by these General Decrees. "The Roman Pontiffs have placed the Sacred Congregation of the Index over the granting of permissions to read and retain any prohibited books whatsoever. Nevertheless, the Supreme Congregation of the Holy Office and the Congregation de Propaganda Fide enjoy the same power for regions subject to their governance.

For the City only, this faculty also belongs to the Master of the Sacred Apostolic Palace." § 24. Since those who are referred to in this paragraph enjoy ordinary power in the case, they can delegate it to others. "Bishops and other prelates possessing quasi-episcopal jurisdiction can grant permission for individual books, and only in urgent cases. But if the same have obtained from the Apostolic See a

general faculty to impart to the faithful permission to read and retain proscribed books, let them grant it only with selection and from a just and reasonable cause." § 25.

Therefore the aforesaid have ordinary and delegated power in the case. Each can be subdelegated. By ordinary faculty they can permit the reading of individual books, and in an urgent case in which recourse cannot be had to the Roman Pontiff or another having power from him. But by delegated faculty, when they have obtained it, they can permit prohibited books generally. With selection, not generally to any person whatsoever, but to an upright and prudent person for whom there is no danger of perversion. With selection, not indeterminately and indefinitely for any book whatsoever, but with individual or at least specific indication of the books having been made, the more pernicious ones being excluded. From a just and reasonable cause, e.g., by reason of studies, of a book to be written, etc.

"All who have obtained an apostolic faculty of reading and retaining prohibited books cannot on that account read and retain any books whatsoever, or newspapers proscribed by the Ordinaries of places, unless in the apostolic indult the power of reading and retaining books condemned by anyone whatsoever has been expressly given to them. Moreover, let those who have obtained permission to read prohibited books remember that they are bound by a grave precept to guard books of this kind so that they do not come into the hands of others." § 26. Proscribed by the Ordinaries of places: cf. n. 1301, § 24 of the Constitution. Do not come: therefore they cannot give them to others. Lugo, *Resp. Mor.*, book 4, dub. 42.

1312. What about previous approval of books? "All the faithful are bound to subject at least those books to previous ecclesiastical censure which regard the divine Scriptures, Sacred Theology, Ecclesiastical History, Canon Law, Natural Theology, Ethics, or other religious or moral disciplines of this kind, and generally all writings in which religion and honesty of morals are specially involved." § 41. All the faithful, namely those who print or cause books to be printed, such as printers and editors or the authors of books themselves. All the faithful; but "if an author dwelling in Rome wishes to print a book not in the City but elsewhere, besides the approval of the Cardinal Vicar of the City and of the Master of the Sacred Apostolic Palace, no other is required." § 37. Those books, etc.: therefore those books which do not treat of religion and morals, such as literary books, books of profane history, of the mathematical sciences, etc., can be freely published. Books, namely those which are published and spread by type or in another manner. All writings: therefore not only books, but also booklets, newspapers, and flying leaves. Specially: therefore it is not enough that some allusion only to religion and morals be had, unless they properly treat of arguments of this kind. "Men of the secular clergy are prohibited from publishing even books which treat of merely natural arts and sciences without having consulted their Ordinaries, so that they may furnish an example of an obedient soul toward them." § 42. Men of the secular clergy, not others. Men of the secular clergy. "Regulars, besides the permission of the Bishop, should remember that they are bound, by decree of the sacred Council of Trent, to obtain from the prelate to whom they are subject the faculty of publishing a work. But each concession is to be printed at the beginning or at the end of the work." § 36. The Tridentine Decree concerns the editing and use of Sacred Books. Some think that Clement VIII extended it to all books to be published by regulars. But that Instruction, as the present Decree, only asserts that Regulars are bound, by Decree of the sacred Council of Trent, to obtain permission for publishing a work also from their own Prelate. Nevertheless Pius X, in the motu proprio *Sacrorum*

Antistitum, September 1, 1910, says: "We warn the moderators of religious concerning the most grave duty of never permitting anything to be printed by their subjects unless first the faculty of themselves and of the Ordinary has intervened." § IV. Even books, etc.: therefore all books both concerning sacred matters and morals, and concerning merely natural matters. What is had concerning newspapers in particular, cf. 1309. Without having consulted their Ordinaries: therefore permission is to be had from the proper Ordinary, and this is distinct from the ecclesiastical censure which the book must undergo from the Ordinary of the place in which the book is published, § 35, which censure touches only books treating of religion and morals, § 41. It is doubted whether this rule of § 42 is preceptive. "Without the previous consent of the Ordinary no one from the clergy can publish any writing of religious or moral argument, or merely technical. In the foundation of circles and societies, Statutes and Rules must be previously examined and approved by the Bishop. Conferences on popular action or on any other argument whatsoever can be held by no priest or cleric without the permission of the Bishop of the place. Every manner of speaking which can inspire in the people aversion from the higher classes is to be held as contrary to true Christian charity. Likewise, in Catholic publications every assertion is to be reproved which, containing unhealthy novelty, ridicules the piety of the faithful, and suggests a new direction of Christian life, a new governance of the Church, new aspirations of the modern soul, a new social vocation of the clergy, a new Christian civilization." Pius X, Letter to the Bishops of Italy, July 28, 1906.

Books having been subjected to previous ecclesiastical censure, and "the examination having been completed, if nothing shall seem to stand in the way of publication of the book, the Ordinary is to grant to the author in writing and altogether gratuitously permission to publish it, to be printed at the beginning or at the end of the work." § 40. If nothing... permission... The Ordinary who, after examination of some book has been completed, denies permission, is bound to give the author the reason for the denied permission, if the book seems capable of correction. Sacred Congregation of the Index, Constitution, September 1, 1898. "No book subject to ecclesiastical censure is to be printed unless at the beginning it bears the name and surname both of the author and of the editor, and besides the place and year of printing and publication. But if in some case, for just causes, the name of the author seems to be kept silent, the power of permitting this belongs to the Ordinary." § 43. Editor here is said to be the one who undertakes the printing of the book to be performed in his typographical workshop. Cf. the following § 44. "Let printers and editors of books know that new editions of the same approved work require a new approval; and moreover, that approval granted to the original text does not support its translation into another language." § 44.

New editions: not excerpts from some edition and edited separately, *tirature a parte*. Sacred Congregation of the Index, May 23, 1898. "Books condemned by the Apostolic See are to be judged prohibited everywhere among the nations, and into whatever language they are translated." § 45. By the Apostolic See: not by Ordinaries of places. Everywhere among the nations: the law is universal for any place; and all the other laws contained in the present Constitution are universal. For concerning them it is said in the same Constitution, par. *Itaque matura*: "which Catholic men throughout the whole world are to obey religiously."

Books to be edited by Religious. Religious assigned to an Institute of simple vows, just as Religious of solemn vows, are bound according to the laws to request from their Superiors the good pleasure or imprimatur for manuscripts to be printed. And if at any time the legitimate Superior has denied this

approval of which we speak, Religious will not be able to hand over the manuscript to any printer for editing, who would publish it with the Imprimatur of the Ordinary of the place, the name of the author being suppressed. Sacred Congregation concerning Religious, June 15, 1911.

But it is altogether prescribed that in "all episcopal curias there are to be censors from office, who examine things to be edited. These are to be chosen from the twofold clergy, commended by age, learning, prudence, and who in approving and disapproving doctrines proceed by a middle and safe way. To them is to be referred the examination of writings which, from articles XLI and XLII of the mentioned Constitution, are subject to previous examination. The Censor will give his judgment in writing.

If this has been favorable, the Bishop will give the power of editing by the word *Imprimatur*, to which nevertheless the formula *Nihil obstat* will be set before, with the name of the censor subscribed. In the Roman Curia, no otherwise than in all the others, censors are to be instituted from office. The Master of the sacred Apostolic Palace will designate them, the Cardinal Vicar of the Pontiff in the City first having been heard, and then with the Supreme Pontiff himself agreeing and approving. It will belong to him to designate a censor for examining individual writings. The faculty of editing will be given by the same Master and also by the Cardinal Vicar of the Pontiff or by the Prelate acting in his place, the formula of approval having first been set down, as We said above, and the name of the censor added. Only in extraordinary circumstances and very rarely, by the prudent judgment of the Bishop, can mention of the censor be omitted. The name of the censor will never be open to authors before he has issued a favorable judgment, lest any annoyance be presented to the censor either while he is examining the writings or if he has not approved the edition. Censors are never to be chosen from religious families unless first the secret opinion of the moderator of the province is heard; and he will testify according to the conscience of his office concerning the morals, knowledge, and integrity of doctrine of the one to be chosen. We warn the moderators of religious concerning the most grave duty of never permitting anything to be printed by their subjects unless first the faculty of themselves and of the Ordinary has intervened. Finally We declare and decree that the title of censor, with which someone is adorned, has no value at all and can never be brought forward for confirming the private opinions of the same. "These things having been said universally, We command by name that those things be observed more diligently which are declared in article XLII of the Constitution *Officiorum* in these words: Men of the secular clergy are prohibited from undertaking the direction of newspapers or periodical sheets without the previous permission of the Ordinaries. If any use this permission perniciously, after first being warned, let them be deprived of it. As regards priests who commonly come under the name of correspondents or collaborators, since it more frequently happens that they publish in newspapers or journals writings infected with the stain of modernism, let Bishops see that these do not attempt anything contrary to what they have permitted, and let them retract the power given if necessary. We most gravely warn the moderators of religious that they do the same thing; if they act too negligently, let the Ordinaries provide by authority of the Supreme Pontiff. Newspapers and journals which are written by Catholics, insofar as it can be done, are to have a designated censor. His office will be to read through integrally and attentively individual sheets or booklets after they have been edited; if anything has been said dangerously, let him order it to be corrected in the following sheet or booklet. Moreover let the same faculty belong to Bishops, even if perhaps the censor has favored it." Pius X, motu proprio *Sacrorum Antistitum*, September 1, 1910.

1313. Who can approve books? "With whom the power is to approve or permit editions and versions of the sacred Bibles is clear from those things which were established above (§ 7)." § 30. With whom, namely with the Holy See or Bishops. The aforesaid editions and versions are to be approved by the Holy See. But if annotations are added to them taken from the Holy Fathers and other Catholic writers, they can also be approved by Bishops. Cf. 1304. "Let no one dare to publish again books proscribed by the Apostolic See; but if for a grave and reasonable cause some singular exception in this matter seems to be admitted, this shall never be done unless permission of the Sacred Congregation of the Index has first been obtained, and the conditions prescribed by it have been observed." § 31. Proscribed, namely simply. Cf. 1304 ff., whether by general decrees or by some special decree. This shall never be done, etc.: therefore it is not sufficient to correct the books and publish them again without the aforesaid permission. "Those things which pertain in any way to the causes of Beatification and Canonization of Servants of God cannot be published without the good pleasure of the Congregation placed over safeguarding Sacred Rites." § 32. Pertain in any way, namely as regards procedural acts. Sacred Congregation of Rites, July 11, 1821, General Decree; February 12, 1909. Cf. *Monit. Eccles.*, vol. 21, p. 18. "The same is to be said concerning Collections of Decrees of individual Roman Congregations; namely these Collections cannot be edited unless permission has first been obtained, and the conditions prescribed by the moderators of each Congregation have been observed." § 33. They cannot be edited, but, if illicitly edited, their use is not for that reason interdicted. Concerning Collections, not concerning individual Decrees, which are customarily published by special periodicals, e.g., by the *Acta Sanctae Sedis*. "Vicars and Missionaries Apostolic are faithfully to observe the Decrees of the Sacred Congregation placed over Propagation of the Faith concerning the editing of books." § 34. Decrees, etc. Therefore they cannot commit a work, whether their own or another's, to print without the express and written permission of the Sacred Congregation de Propaganda Fide, to be printed at the beginning of the work. Sacred Congregation de Propaganda Fide, December 6, 1655, Collection n. 1869. Cf. E.M. They are to observe faithfully; but as regards penalties inflicted in them, at present one must stand by the Constitution, § 47 ff. "The approval of books whose censure, by force of the present Decrees, is not reserved to the Apostolic See or to the Roman Congregations, pertains to the Ordinary of the place in which they are made public." § 35. To the Ordinary of the place, etc.; not of the author; not of the editor. In which, etc.: not where they are printed, but where they are brought to light, namely where they are first edited, although from there, namely from that place, the book is also published in other places, as is customarily done. For the sale of approved books is not customarily restricted to the diocese by whose Ordinary the book was approved. Moreover, it is not said to the Ordinary of the places, but of the place.

By Decree of December 28, 1908, the periodical booklet *Rivista di Cultura* is prohibited at Rome. "And if anyone from the secular or regular clergy reads it or associates himself with it, let him know that he has incurred suspension from divine things by that very fact." *Monit. Eccles.*, vol. 20, p. 528. Cf. here n. 1301.

As regards regulars, and as regards authors dwelling in Rome, cf. 1312. E.M.

Approval of the Ordinary of the place in which the book is published. The Bishop of the place in which some author, not subject to him, desires to make public a book already examined by his proper Ordinary and judged worthy of the press, can permit the printing of that book by appending the

judgment *Nihil obstat* transmitted to him by that Ordinary from the censor of another diocese. Sacred Congregation of the Index, May 9, 1912.

Concerning liturgical books to be edited. So that the norms concerning liturgical books to be edited, handed down several times by the Sacred Congregation of Rites on August 11, 1905, February 14, 1906, and January 25, 1911, may be observed more widely and fully, the Sacred Congregation of Rites, to prevent and impede abuses, decreed that these things are to be observed: "Editions of Books pertaining to the Sacred Liturgy, whether they contain Rites and Prayers to be performed in Sacred functions, or prescribe Sacred Ceremonies accompanying the aforesaid Rites and Prayers, or report the Decrees of this Sacred Congregation collected into one, are either Typical or according to the Typical. "Only the Pontifical Vatican Polyglot Press, or other Pontifical Printers who have obtained permission from the Sacred Congregation of Rites, can print Typical Editions. "Individual leaves of the typical edition will be submitted to the review of the Sacred Congregation of Rites, which will seek the opinion either of the Liturgical Commission or of the Commission on Sacred Music and Chant, according to opportunity. "Any typical edition will report the Decree of approval, declaring such edition to be typical, and at the same time prescribing to all editors that they conform future editions altogether to the aforesaid typical edition. "Editors, once some typical edition has been completed, will hand over two copies to this Sacred Congregation of Rites, to be preserved in the Archive of the same Sacred Congregation with the greatest care and diligence. "Any printer, with the consent and approval of the respective Ordinary having been added, can print Editions according to the typical, namely those which correspond exactly to the aforesaid typical editions. "The Most Reverend Ordinaries of places, having appointed a diligent reviewer skilled in liturgical matters, who is to see whether the aforesaid editions agree completely with the typical ones, are to declare such agreement and append the imprimatur. "As regards editions of Masses or Offices Proper to some Diocese, concerning which a typical edition does not exist, if they are to be printed in the Diocese itself, the Most Reverend Ordinaries of places are to declare their agreement with the originals and append the imprimatur. But as regards editions both of another Diocese and of Orders Regular or Congregations, the Most Reverend Ordinaries of places, to whose jurisdiction the Printers are subject, are to append the imprimatur after either the Ordinary of the Diocese, or the Superior of the Order or Congregation to which the aforesaid Offices or propers pertain, has remitted to them concerning the agreement of these editions with the originals approved by the Holy See a Rescript, which is likewise to be edited. "Among Books pertaining to the Sacred Liturgy, for the effect of the present Decree, the following are especially to be numbered: "The Roman Breviary, Missal, Ritual, and Pontifical and excerpts from them; the Roman Martyrology; the Ceremonial of Bishops; Propers both of Offices and of Masses of some Diocese, Order, or Religious Congregation; the Memorial of Rites of Benedict PP. XIII for smaller Churches; the Clementine Instruction for exposition of the Most Holy Sacrament; the Collection of Decrees of the Sacred Congregation of Rites." Sacred Congregation of Rites, May 17, 1911.

Faculty of editing the New Psalter. By Decree of the Sacred Congregation of Rites, January 15, 1912, Bishops were forbidden to grant to printers of their diocese the faculty of printing the new "Psalter." For already by Decree of the Sacred Congregation of Rites, November 15, 1911, reported in the very typical Vatican edition of the new Psalter, it declared this edition typical, "and established that new editions of the same Psalter are to be in all things conformable to this one and are not to be printed

except by printers of this Sacred Congregation, with the prescriptions to be handed down by this Secretaryship observed."

On Irregularity

1314. What is irregularity? Irregularity is defined: a canonical impediment by which someone is directly and primarily interdicted from the reception of orders, and consequently from their use. Impediment, i.e., a certain incapacity, not invalidating but merely prohibiting, since it is only an incapacity for receiving and exercising orders with due honor and reverence. St. Thomas, supplement, q. 39, art. 4, ad 2. Therefore irregularity is not a censure. Nor is it properly a penalty, but an impediment arising from a stain and mark against the dignity of divine ministry. And if at any time it is imposed also by way of penalty, it is not medicinal, but merely punitive. Chap. *Quaerenti* 20, *de Verb. Sign.*; L. 341. Canonical: for the impediments which prohibit someone from orders are some by natural law, as in the mute; some by divine law, as in women; and finally some by canonical law, as in illegitimate persons. Now irregularities properly consist not from the former, nor from the latter, but from these. Chap. *Is qui* 18, *de Sent. exc.* in 6. From the former there is rather impotence and incapacity, or even unworthiness, than merely an impediment. Canonical: therefore irregularity supposes a person capable by natural and divine law. Nevertheless irregularity is often taken more broadly also for unworthiness and for incapacity properly so called.

By which someone is directly and primarily interdicted from the reception of orders: hence irregularity is distinguished from excommunication, which directly deprives of the communion of the faithful; from interdict, which directly deprives of divine offices; from suspension, which directly deprives of the functions of order. Interdicted from the reception, i.e., only from the licit reception of orders; therefore those conferred are valid. Chap. *Innotuit nobis* 3, *de Eo qui furt*. Consequently it prohibits from their use, namely from the exercise of major orders.

Chap. *Henricus* 2, *de Cleric. pugn.*; chap. *Quaesitum* 17, *de Temp. ordin.* And indeed it would be absurd to exercise with impunity an order which someone is prohibited from receiving. Of major orders, because minor orders today are customarily exercised even by laymen. L. 342. St. Thomas, supplement, q. 39, art. 1; Suarez, *de Censur.*, disp. 40, sect. 1, n. 2.

1315. You will resolve: Irregularity, in itself, bars from the clergy; and therefore, if it cannot effect this, it then bars from the exercise of clerical ministry, namely so that the irregular person is barred from the clergy at least insofar as he does not bear himself as a cleric.

As incapacitating laws do, so irregularity, as making one stained, renders one incapable by the law itself and before any sentence of a judge, although it may seem to be imposed by words of future time, e.g., he will be irregular. But if the words require the office of a judge, suspension rather than irregularity is understood. Hence as often as in Canon Law someone is only prohibited from the use and exercise of orders, suspension rather than irregularity is understood. Likewise irregularities are not laws which only remove from benefices and ecclesiastical dignities. Nor are irregularities those which bar even from the reception itself of orders, yet not on account of the reverence of divine ministry, but on account of any other cause, as for example that no one receive orders from someone other than his own Bishop. "It is certain that no irregularity is incurred unless it is expressed in Law. Chap. *Is qui, de Sent. exc.*, in 6... But under the name of this Law come only Decrees of the Pontiff, or

of a Council approved by the Pope, not of others, nor does custom come under it... Hence it is inferred that, for incurring irregularity, an argument from the similar, nor from the greater to the lesser, has force, as they commonly teach." L. 345. For irregularity properly is only that which is constituted from positive Law. That which is from natural law is rather a certain natural unworthiness and incapacity than irregularity. Nevertheless they are often used promiscuously by the doctors. Likewise there are not lacking irregularities which by the common opinion of the doctors are constituted without express law, perhaps confirmed by use and custom.

An irregular person, although illicitly, nevertheless validly absolves. Illicitly, because he exercises an order from which he is prohibited; validly, because to absolve is an act of jurisdiction, which irregularity in itself does not prohibit. "Irregularity in no way deprives of those actions which do not require the exercise of order, and which even laymen can exercise, such as receiving sacraments, singing offices, and likewise conferring benefices, because these pertain to the use of jurisdiction, not of order; likewise assisting at marriage, or furnishing permission to another to assist, dispensing in vows, absolving from censures, giving the faculty of hearing confessions." L. 342, 358. "He sins gravely who in irregularity exercises an act of order or receives orders, although the orders conferred on him are valid... And thus an irregular person receiving first tonsure also sins gravely." L. 342. For irregularity renders one incapable even for first tonsure. For he is prepared for orders in vain who is prohibited from orders.

Someone can be entangled by several irregularities, whether from diverse objects or from repeated acts. L. 353.

1316. Of how many kinds is irregularity? Irregularity is twofold: one which proceeds from delict; another from some inculpable defect. Likewise one is total, which impedes every order to be received and every exercise of order already received, such as homicide and bigamy; another partial, which prohibits only from some ministry of order, or only from ascent to a higher order. Besides, one is for a time, which ceases of itself; another perpetual, which endures indefinitely of itself. Irregularity which is total and perpetual is irregularity properly. For irregularity in itself bars from the clergy. It follows the person everywhere, and is destroyed only by the authority and dispensation of the Church. But that which is partial, or for a time, is only improperly irregularity; for it does not simply bar from the clergy. It is rather a certain prohibition, as for example defect of knowledge or of age. Cf. 1214. L. 341, 1318.

1317. Does irregularity also deprive of benefices? R. Negatively as regards a simple benefice, which imports no exercise of sacred order; for then no reason of deprivation is present. Affirmatively as regards a benefice to be obtained, to which an office is annexed which it is not lawful for an irregular person to discharge. For a benefice is given for the sake of the office; but an irregular person is incapable of the office, since he cannot exercise order. Therefore at least licitly he cannot receive the benefice. At least licitly: for if it has been conferred on him, it is probable that the conferral is valid, and therefore after the irregular person has begun possession of it, if he fulfills the burdens of the benefice through another, he makes the fruits his own, which not even Suarez himself and St.

Alphonsus, patrons of the contrary opinion as more probable, deny. The reason is that penalties are not to be imposed unless they are clearly expressed in Law, but nowhere is it expressed that irregularity renders a man incapable of a benefice. Others nevertheless press the place of Trent, sess. 22, chap. 4, *de Ref.*, where it is said that provision made to those who lack due qualifications is

invalid. L. 343. But as regards a benefice already obtained before irregularity, which requires the exercise of sacred order, if the irregularity proceeds from defect of infirmity, there is no doubt that the benefice can be retained, if the burdens are fulfilled through another. Chap. *Ex parte*, *de Cler. aegr.* But if it is from delict, the irregular person must be deprived of it by sentence of a judge; and although he is not deprived by that very fact, chap. *Ex litteris*, *de Excess. praelat.*, nevertheless he is bound to seek dispensation.

But if he does not seek it, or cannot obtain it, he is bound to renounce the benefice. The reason is that if he cannot licitly satisfy the burdens of the benefice, neither can he licitly retain it. Nevertheless he will be able to defer this renunciation if he labors under great poverty and has already delegated another for fulfilling the burdens of the benefice. Thus they commonly interpret the law. Nevertheless, by that very fact a sentence of deposition from the benefice is had if it is a case excepted by name in law, such as homicide in chap. *Pro humani* 1, § 2, *de Homic.* in 6. L. 342, 343, 344; Lugo, *Resp. Mor.*, book 2, dub. 11.

1318. What is to be established concerning one who doubts about irregularity incurred? He is bound under grave obligation first to investigate the matter, unless perhaps grave harm could follow from the delay of inquiring. For there is question of a grave law of the Church on account of the honor and reverence owed to the sacrament of order.

Due diligence having been applied, if the doubt still perseveres, generally speaking, he is not to be held as irregular, whether the doubt is negative or positive, whether it is of fact or of law. Chap. *Is qui* 18, *de Sent. exc.* in 6. The reason is that odious things are to be restricted; and no one in doubt is to be despoiled of his own right. Generally speaking, because, as St. Alphonsus with the common opinion affirms must more truly be held, doubt concerning homicide is excepted, not concerning mutilation; for such a case is expressly declared in Law. Yet understand this if someone is certain of the homicide having followed, and only doubts whether by his own action he was the cause of it, namely whether he or another killed. Indeed they observe that this is valid only for clerics; and according to several, only for priests, and only as regards celebration of Mass, because the Law speaks only of this: lest if perhaps afterwards he is certainly known as a homicide, he be found to have celebrated, with scandal of the people. Chaps. *Ad audientiam* 12, *Significasti* 16, 18, *Petitio tua* 24, *de Hom.*; L. 346, 347, 371.

1319. How is irregularity removed? Irregularity can be removed in four ways: 1. by cessation of the cause, if the irregularity is less properly and perfectly such, from defect, e.g., of age, ignorance, etc.; 2. by baptism, if the irregularity is from delict. But baptism rather prevents irregularity than removes it. For an infidel is not irregular, since he is not subject to the law of the Church; 3. by dispensation. And this is the proper way of removing irregularity. For irregularity is constituted by canon law. Therefore its removal, since it is a grace, is verified only by dispensation; 4. by religious profession, which removes not every irregularity, but only one, which is from defect of birth, and not even in order to prelacies, although regular. But this privilege granted to religious profession is equivalent to dispensation.

Irregularity is removed by this or a similar form: I dispense with you concerning the irregularity, or irregularities if there are several, into which, on account of such a cause or such causes, expressing them, you have incurred, etc. Cf. Roman Ritual, *de Sacr. poenit.*, etc. No dispensation needs a form of words; indeed it can be given without words by the thing itself and fact, e.g., if a Bishop knowingly and prudently grants to one irregular from occult delict dimissorial letters for orders, or ordains him.

A confessor can dispense in no irregularities unless he has a special faculty. Nevertheless he can dispense concerning an occult irregularity, when it occurs, in the cases comprehended in the Decree of the Holy Office, June 23, 1886, namely in truly more urgent cases in which dispensation cannot be deferred without danger of grave harm, scandal, or infamy. Holy Office, September 6, 1909. A Bishop can, from Trent, sess. 24, chap. 6, dispense in irregularities proceeding from occult delict, unless nevertheless it is voluntary homicide, or unless the irregularity has been brought into the contentious forum; not likewise, regularly, in irregularities from defect. A Bishop can also dispense in all doubtful irregularities. Regulars generally can, from various privileges, dispense in the same irregularities in which Bishops can dispense, whether with their own subjects or with seculars. *Comp. Priv. S. I.*, v. *Dispensatio*, n. 164 ff. The Supreme Pontiff dispenses in every irregularity of ecclesiastical law. For the external forum recourse must be had to the Sacred Congregation of the Council for irregularity from delict, to the Sacred Congregation of the Sacraments for irregularity from defect; and for the internal forum recourse must be had to the Sacred Penitentiary. Benedict XIV, Constitution *Pastor bonus*, April 13, 1744. L. 352-355, 396, 400, 469; Sacred Consistorial Congregation, February 27, 1909; November 28, 1911.

1320. What is required for incurring irregularity from delict? In order that irregularity from delict be incurred, i.e., from one's own delict, the human act must be: 1. external, for this irregularity is a penalty in the external forum; 2. mortally evil, because it is a grave penalty, to which light fault does not correspond; 3. fully consummated, for odious things are to be restricted. L. 348. But it is by no means required that the crime be public. Rather irregularity is incurred because of a crime even occult. Trent, sess. 24, chap. *Liceat* 6; L. 349. But is knowledge of the law of the Church prohibiting required? The most common and more probable opinion affirms; because this irregularity is a true penalty. Chap. *Proposuisti*, Dist. 82; L. 350. Is knowledge of the penalty, or of the irregularity, also required? It is controverted; and it must be affirmed with sufficient probability, because irregularity is as it were an extraordinary penalty. L. 351; book 6, n. 705. But as ignorance excuses from irregularity as from a penalty, so fear also excuses. Irregularity, however, is not had from any delict whatsoever, although enormous, but only from delicts constituted in Law, namely from the following:

1321. From bad reception of baptism he is irregular who in adult age is baptized by a declared heretic without any necessity; for he seems to communicate in his error. Chap. *Ventum est* 18, causa 1, q. 1; chap. *Qui in qualibet* 10, causa 1, q. 7. This irregularity impedes the reception of all orders and consequently their exercise.

Besides, he is irregular who defers being baptized until the danger of death, for it is a sign of weak faith; hence it is rather an irregularity from defect, i.e., from defect of faith, as regards which otherwise the Bishop will judge. They were called *clinici* who deferred receiving baptism until the bed of death. Chap. *Si quis* un., Dist. 57; Suarez, disp. 43, sect. 3, n. 6.

1322. From repetition of baptism, he becomes irregular who is rebaptized. Chap. *Confirmandum* 65, Dist. 50; the acolyte who ministers to one rebaptizing, chap. *Ex litterarum* 2, *de Apost.*; and therefore also he who rebaptizes, as the common opinion has it. L. 356. But there is need of baptism: 1. true and perfect; therefore it is not contracted if anything is lacking to it, whether matter or form, or the intention of the one receiving or conferring; and therefore not even if either one has appended the condition, if I am not, or if you are not, baptized, although he who applies the condition is not ignorant that baptism was in reality conferred and was duly conferred; because thus in reality he is

not rebaptized. Yet others deny this, because the condition is appended in fraud of the law, and therefore is held as not appended. This also is held by the Roman Catechism, *de Sacram. bapt.*, n. 57. 2. Notorious, each, given and repeated, and solemn, chap. *Ex litterarum* 2, *de Apost.*; for there it is said: "If what is proposed is public." Many interpret public as notorious, many as solemn. Therefore the matter is doubtful as long as each has not been present.

But this irregularity prohibits only from the reception of orders, not from the exercise of those already received. Others nevertheless extend it also to exercise. But culpable ignorance does not excuse from it, chap. *Qui bis* 107, *de Consecr.*, Dist. 4; otherwise if it is inculpable. L. 356, book 6, n. 122; Benedict XIV, Inst. 84, n. 14 ff.

1323. Because of exercise of order, a cleric becomes irregular who knowingly and solemnly exercises a sacred order which he does not have. Chap. *Si quis* 1, chap. *Ex litteris* 2, *de Cler. non ord. min.*

He who has exercised an order which he does not have is irregular as regards the reception of that order, and from the exercise of the principal order which he has he is suspended for two years or three years at the judgment of the Bishop, by whom he will be able to be dispensed in benefice. Cited chap. 2.

A cleric who is not a deacon incurs this irregularity by singing the Gospel with stole, or if one who is not a priest absolves sacramentally, etc. On the contrary, a layman exercising an act of order which he does not have does not incur irregularity. Nor does a simple priest incur irregularity by receiving Confessions, because here he truly exercises an act of order which he already has, although he lacks jurisdiction. Hence he indeed sins, but does not incur irregularity. For the same reason a deacon solemnly baptizing without the delegation of a priest outside the case of necessity indeed sins, but does not incur irregularity. L. 359; book 6, n. 116.

1324. From bad reception of orders, several irregularities indeed are reviewed by theologians and canonists. Namely, the following are irregular: 1. he who is ordained by a Bishop excommunicated, suspended, interdicted, heretical, schismatic, simoniacal. L. 358. 2. He who receives order from a Bishop who has renounced the episcopate as regards place and as regards dignity. Navarrus, *Man. conf.* 241. 3. Those liable to censure who receive order. Cf. L., book 6, n. 799, par. *Utrum*. 4. He who, after marriage contracted and before consummation, receives sacred order against the will of his wife. L. 361. 5. He who is ordained by another's Bishop without the dimissorial letters of his Bishop. 6. He who is ordained furtively, namely while the Bishop does not know, does not approve, and he has not been examined by him. L. 361. 7. He who is ordained by leap, or before the legitimate age. Cf. L. 360. 8. He who receives major orders without title. 9. He who on one and the same day receives several orders, one of which is sacred. L. 361; book 6, nn. 796, 797; Navarrus, loc. cit. But here canonists and theologians mix irregularity with suspension. Insofar as suspension was constituted by the old law, it is not in force at present unless it is found renewed in the Constitution *Apostolicae Sedis* concerning censures. But as regards irregularity, since it is at least very doubtful, and as regards penalties, in obscure matters what is least must be held; as regards irregularities, they must be established by certain law, and certainly it is not to be affirmed. Cf. Suarez, disp. 31, sect. 1; disp. 42, sect. 3.

Among the penalties against those ordained simoniacally was formerly also incapacity or suspension from the hope of ascending to higher orders. Constitution of Sixtus V *Sanctum et salutare*, January 5, 1589, § 3. This suspension from the hope of ascending to higher orders does not seem to be a

censure, but an irregularity; and from this irregularity, if the crime is occult, the Bishop cannot dispense by force of the Constitution *Liceat* of Trent, since Sixtus V derogated from this faculty as regards the crime of simony. But others also deny this irregularity. Certainly Sixtus V, loc. cit., says that those who, promoted simoniacally and thus suspended, presume to minister become irregular. Whence suspension rather than irregularity is understood. Suarez, *de Simon.*, book 4, chap. 56, n. 20; D'Annibale, Commentary on the Constitution *Apostolicae Sedis*, 4th ed., n. 211, note 15. L., book 6, n. 799; book 7, nn. 160, 361.

1325. Because of violation of censure, he becomes irregular who exercises the sacred order which he has while he is entangled by major excommunication, or interdict, or suspension, by which he is prohibited from the exercise of orders, provided nevertheless that he does this knowingly and seriously and solemnly. Chaps. 1, 18, 20, *de Sent. exc.* in 6. Exercises; not likewise he who receives. Interdict, special personal, not general, which is not a censure in the proper and strict meaning. Suspension; not one which is rather a privation or mere penalty.

A priest also incurs this irregularity who knowingly celebrates in a place interdicted by name. Chap. *Is qui* 18, *de Sent. exc.* in 6, § 1. Interdicted; not polluted. According to the common opinion a censured Bishop or priest compelling another to celebrate before himself also incurs this irregularity, from chap. *Tanta* 18, *de Exc. prael.* and from chap. *Illud* 5, *de Cler. exc. min.* L. 175, 358; Suarez, disp. 12, sect. 1, n. 5 ff. Others nevertheless deny this irregularity. Diana, part 4, tract. 2, res. 57; Suarez, disp. 34, sect. 4, n. 17. Approved confessors having the faculty-list of the Sacred Penitentiary can dispense from this irregularity. Cf. this faculty-list; Lugo, *Resp. Mor.*, book 2, dub. 10.

1326. You will resolve: He does not incur this irregularity who exercises an act of major orders, but not solemnly, i.e., a deacon without stole, a subdeacon without maniple; nor he who exercises an act of minor orders, even from office and solemnly; nor he who preaches, or exercises an act of jurisdiction, as if a Bishop excommunicates and a pastor assists at marriage; otherwise, however, if he solemnly blessed the marriage; and likewise neither he who sings in choir, singing *Dominus vobiscum*. L. 358. Cf. Benedict XIV, Constitution *Inter praeteritos*.

1327. From inflicted mutilation of a member irregularity is had if someone, namely by grave fault, mutilates either himself or another, or positively and efficaciously cooperates toward mutilation of this kind. Chaps. 3, 4, 5, *de Corp. vit.*; Clementina *Si furiosus* un., *de Hom.*; L. 365, 379, 388. Most commonly and more probably they say that by the name of member are understood only those parts of the body which have their own office, distinct from others, such as hand, foot, eye, tongue. But mutilation is understood here when the aforesaid member is separated from the body. L. 365, 379. In this irregularity because of mutilation Bishops can well dispense, if it is occult and from delict, from the faculty of Trent, sess. 24, chap. *Liceat* 6, where only irregularity on account of voluntary homicide is excepted. L. 381, *de Priv.* 51; Suarez, disp. 44, n. 2, n. 4.

1328. You will resolve: He does not become irregular who in a quarrel cuts off another's ears, nose, finger, thumb, nail, teeth, beard, hair, because these are not properly members. Nor does he become irregular who has blinded a man by depriving him only of sight but not by drawing out the eye; nor he who only weakens a member and does not cut it off, because it is not mutilation. He who cuts off something from himself becomes irregular because of cruelty, even if he cuts off part of a member, e.g., a finger, indeed part of a finger.

Eunuchs also are irregular, namely those who culpably, by themselves or through others, have amputated for themselves the virile parts or testicles, even out of zeal for chastity. Chap. *Si quis* 4, 7; chap. *Qui partem* 6, Dist. 55; chap. *Ex parte* 3, chap. *Significavit* 4, chap. *Ex parte* 5, *de Corp. vit. ord. vel non*; L. 365, 378-382, 415-419.

In the occurring case of a cleric who laid hands upon himself and castrated himself, judging that in this way he would provide for the safety both of his body and of his soul, the Sacred Congregation of the Sacraments, December 18, 1908, responded: It is not expedient that the petitioner be promoted to orders.

1329. Irregularity is incurred from homicide. In this matter homicide can occur in three ways: justly, accidentally, unjustly. For just homicide no irregularity is incurred, since then no fault is had. L. 382, 388, 389. For merely accidental homicide no irregularity is also incurred, whether it happens while giving work to a lawful thing or to an unlawful thing. The reason is that such homicide then is not voluntary. But laws establishing irregularity from homicide intend to punish those truly delinquent by the fault of homicide. Clementina *Si furiosus* un., *de Hom.* But irregularity is incurred first, if the action is lawful, but the effect is foreseen, and sufficient diligence is not applied to prevent it, namely such diligence as would excuse from grave sin. L. 366, 377, 382, 383-386. Second, if the action is unlawful and commonly dangerous of death, although all diligence is applied lest the foreseen death follow, because since the work is of itself proximately dangerous, no diligence can make it not dangerous. L. 386, 387; book 3, n. 398. If the homicide is unjust, whether directly willed in itself or indirectly willed in a cause inseparably and proximately joined with homicide, irregularity is incurred. Chap. *Si quis* 1, *de Hom.*; Trent, sess. 14, chap. 7, *de Ref.*; L. 365; book 3, n. 628.

All those incur irregularity who by their own action kill a man. Chap. *Si quis* 1, *de Hom.*; Trent, sess. 14, chap. 7; L. 367, 368, 369. Likewise all those incur irregularity who command homicide, or counsel it, truly influencing the homicide, and others cooperating in any way efficaciously and positively. Chap. *Si quis viduam* 8, Dist. 50; chap. *Significasti* 18, *de Hom.*; chap. *Sicut* 6, same title; L. 370-376.

Irregularity contracted through homicide is removed by baptism; or rather, sin having been destroyed by baptism, irregularity is not had. Chap. *Si quis*, Dist. 50; and by dispensation of the Supreme Pontiff. L. 390. But Bishops, if the homicide was voluntary, can in no way dispense in the irregularity, even if it was occult. Trent, sess. 24, chap. *Liceat* 6; sess. 14, chap. 7; L. 391, 392. But if the homicide was accidental, it is very probable that the Bishop can dispense in the irregularity contracted from it when the crime was occult, since the Council in the said chap. *Liceat* denies to Bishops the faculty of dispensing only if the homicide was voluntary, as distinguished from accidental. L. 393. Besides, they most commonly teach that Bishops can dispense in irregularity from accidental homicide, even notorious, for receiving minor orders and simple benefices; because Bishops already could do this by the old law. But Trent reserved only irregularity from voluntary homicide, not public accidental homicide. L. 393, 394, 395, *de Priv.* 51, 52; book 3, n. 397. As regards regular prelates, cf. L. 396. St. Thomas, II-II, q. 64, art. 8; supplement, q. 39, art. 4; D'Annibale, part 1, n. 424, 3rd ed.; Lugo, *Resp. Mor.*, book 2, dub. 8, 9, 11.

1330. You will resolve: "It is certain that if someone wounds mortally, however much, if death does not follow, he does not incur irregularity, because none is assigned in Law because of an attempt at killing, but only because of homicide or mutilation." L. 368. One commanding or counseling, in

doubt whether the command or counsel was or was not the efficacious cause of the homicide, does not incur irregularity, because irregularity is not incurred unless it is expressed in Law.

But the laws speak of those who certainly are the cause of homicide by commanding or counseling, or who doubtfully commit homicide, not of those who only doubtfully concur toward it. L. 371. "He who kills another in defense of himself with the moderation of blameless defense, it is certain that he is excused from irregularity, as is clear from chap. *Significasti* 18, § fin., *de Hom.* and from Clementina *Si furiosus*, same title...

He is also excused from irregularity who kills the unjust invader of another innocent person... because irregularity from private homicide is not incurred except with mortal sin." L. 388. Hence irregularity is not incurred if another is killed unjustly for the defense of liberty, honor, chastity, or temporal goods with the moderation of blameless defense. L. 389. Nor does a physician become irregular if by chance the sick person dies from the medicine furnished, without grave negligence of the physician. Chap. *Ad aures*, *de Aet. et qual. ord.*; L. 384. If homicide is committed by chance, or by repelling force with force, the matter is committed to the Ordinary of the place, who, after knowing the cause, can dispense for sacred orders, for the ministry of the altar, and for any benefices and dignities whatsoever, from Trent, sess. 14, chap. 7, *de Ref.* They become irregular: "all who excite themselves to homicide, although one alone kills; all who fight in an unjust war, if someone is killed in it, even if they do not intend this, for then at least they incur the irregularity of accidental homicide; all who furnish arms or money for perpetrating homicide or an unjust war; all who unjustly accuse, or testify, or judge, so that a man is killed; all who accompany the killer by increasing his courage." L. 374, 459. He becomes irregular who procures the abortion of a fetus animated with a rational soul; otherwise if it is not animated, or if it is doubtful whether the fetus is animated, since in this case irregularity is nowhere found expressed. Chap. *Maiores* 32, q. 2; L., book 3, nn. 395, 396; Benedict XIV, Inst. 101, n. 8.

1331. What about irregularity from defect? Since irregularity of this kind is traced back not to delict but to defect, it makes no difference whether it arises from one's own fault or another's, committed voluntarily or from fear, before or after baptism, with knowledge or with positive ignorance of the law of the Church, or even is contracted short of every fault. But not any defect whatsoever, but only defects noted in Law, induce irregularity, irregularity properly such, as is defect of birth, liberty, reputation, sacrament, gentleness. But to this irregularity in the proper meaning there is counted as irregularity in a less proper meaning that which flows from some vice of soul or body. Now the aforesaid defects are the following.

1332. From defect of birth, all illegitimate persons are irregular who are known to be illegitimate, because by reason of origin they are reputed base. Therefore exposed children are not irregular, nor illegitimate persons born in marriage, concerning whom illegitimacy is not established by law. L. 432; *Acta Sanctae Sedis*, vol. 1, p. 252; chap. 1 and final, *de Fil. presb.*; Trent, sess. 25, chap. 15, *de Ref.*

But such persons are legitimated by common law first through a subsequent marriage between their parents, provided that these, at the time of conception, and very probably at the time of birth, could validly contract marriage; promotion to the episcopate or cardinalate nevertheless excepted. Chap. *Tanta*, *qui fil. sint leg.*; L. 420-423. Children born from a marriage invalid because of some occult impediment, yet judged valid at least by one of the spouses, are considered legitimate. Chap. *Cum inter* 2, *Qui fil. sint leg.*; chap. *Ex tenore*, same title. But otherwise, if both parents at the time of

marriage were in bad faith. Chap. *Cum inhibitio* 3, § *Si quis*, *de Cland. desp.* Likewise illegitimate are children born before a marriage invalidly contracted, although both parents judged it valid, because by no law are they approved as legitimate. L. 425. Children also born from a null, clandestine marriage, i.e., entered into without denunciations and without permission of the Bishop, even though before the pastor and witnesses, are reputed illegitimate, even if the parents contracted in good faith, from the same § *Si quis* of said chap. 3. L. 425.

They are legitimated second through religious profession as regards orders only, not as regards prelacies. Chap. 1, *de Fil. presb.* But from other privileges regular prelates can dispense in irregularity with their illegitimate subjects. L. 354, 426. But the aforesaid prohibition of illegitimate persons, that they can by no means have prelacies, also has place in nuns. Illegitimate persons not duly legitimated cannot enter a religious Institute of simple vows, from the Norms of the Sacred Congregation, without dispensation of the Holy See. They are legitimated third through pontifical dispensation. But if there is question of minor orders and of benefices not having the care of souls annexed, the Bishop can by his own authority dispense with an illegitimate person. Chap. *Is qui* 1, *de Fil. presb.* in 6; L. 427-429, *de Priv.* 49; Benedict XIV, *de Syn.*, book 13, chap. 24, n. 11 ff. If someone cannot reveal himself as illegitimate without infamy, he needs no dispensation. Laymann, n. 1. St. Thomas, supplement, q. 39, art. 5, q. 68; Lugo, *Resp. Mor.*, book 2, dub. 7; book 6, dub. 2, nn. 4, 5.

1333. From defect of liberty, slaves are irregular where slavery is still in force, unless their masters have consented to ordination. Chap. 1 ff., *de Serv. non ordin.*; chap. *Nulli* 2, chap. *Si servus* 20, Dist. 24. To this somehow pertain, although in reality they are not irregular, married men, unless their wives consent and vow chastity, cf. 899; curials, i.e., those bound to a secular court by an oath having been given, as judges, advocates, etc., as long as they have such offices; soldiers, as long as they are bound by oath; treasurers, public depositaries, and those who administer the Republic, until they have renounced the office and rendered accounts, or satisfied creditors. Since these are not properly irregular, although they are prohibited from receiving sacred orders, if nevertheless they have received them, they are prohibited by no law from exercising them. Chaps. 1, 2, 3, Dist. 51; chap. *Magnus* un., *de Oblig. ad rat. ord.*; L. 455, 456; book 3, n. 838. St. Thomas, supplement, q. 39, art. 3; Pichler, book 1, tit. 17, n. 4 ff.; Schmalzgrueber, book 1, tit. 17, n. 2 ff.

1334. From defect of body, irregularity is had either because it impedes the fitting exercise of order, or because it brings notable indecency or horror. This irregularity, if it brings an impediment, apart from positive law, is rather a certain incapacity by natural or divine law than irregularity. But if the impediment is had only from positive law, then it is true irregularity. Title *de Corp. vit. ord. vel non*; L. 403; St. Thomas, supplement, q. 39, art. 6.

1335. You will resolve: Because of impediment of exercise, the following are irregular:

1. A blind man, who altogether lacks sight. Chap. ult., Dist. 55. But if someone is already a priest, and it is established that he cannot err, he will be able to obtain dispensation from the Supreme Pontiff; and several times dispensation has already been given in such a case. But then he must use the assistance of another priest. Sacred Congregation of Rites, April 12, 1822. If someone lacks the sight of the right eye, he is not irregular; otherwise if of the left, unless he can read the Canon with the right eye without great deformity. If someone is not altogether blind, but so weak-sighted that he cannot read in the missal, he also is irregular for

receiving orders. Dispensation has also been given several times to the weak-sighted even as regards receiving orders. But as regards exercising them, "Lugo, Palao, etc., probably say that a priest licitly celebrates who, because of weakness of sight, recites the Mass from memory, provided he discerns the chalice and host as much as suffices for avoiding irreverence, and provided that, to escape notice, he has a missal on the altar, or another book in place of it." But he needs an Apostolic Indult to celebrate the votive Mass of the Blessed Virgin or of Requiem. L., book 6, n. 390. He is not irregular who is weak in sight so that he needs spectacles, or who looks obliquely. Therefore the cross-eyed are not irregular, unless the deformity is great. But he is irregular who has a spot in the eye. Chap. *Cum de tua* 2, *de Corp. vit. ord.*; L. 404; Navarrus, chap. 27, n. 199; Laymann, book 1, tract. 5, chap. 7, n. 2; Pirhing, book 1, tit. 20, n. 6.

2. A deaf man, who hears nothing at all from either ear, because such a priest, since he cannot hear the voice of the minister, cannot celebrate without indecency. If nevertheless deafness supervenes after priesthood has been received, celebration is not interdicted to the priest; for a defect supervening in one promoted is more easily tolerated than in one to be promoted, as was said of the weak-sighted. But one somewhat deaf, or hearing with difficulty, is by no means irregular. L. 405.

3. A mute, who cannot speak or pronounce entire words, so that he cannot pronounce any voice without omitting something, or except with great difficulty. But the lisping or stammering, or those lacking teeth, are not irregular, even if they pronounce words with some difficulty, unless they bring cause for laughter or contempt. L. 406.

4. A lame man, who cannot go to the altar without a staff, chap. *Nullus episcopus* 57, *de Cons.*, Dist. 1, if he cannot be supported at the altar without a staff. A lame man who does not need a staff is by no means irregular, just as neither is he who has crooked legs; because such a defect can easily be covered by the cassock; otherwise if great deformity were present in this. But if someone is equipped with a wooden foot, he is irregular because to celebrate with a wooden foot has great indecency. But if the defect is moderate and in some way the indecency can be repaired, celebration can be permitted by the judgment of the Bishop. L. 407. Dispensation has already been given several times to infirm priests so that they could celebrate while sitting, when they could not while standing.

5. He who lacks a hand, or all fingers, or the thumb is irregular. Chap. ult., *de Corp. vit.* They say the same of him who lacks the index finger, or part of the thumb or index finger, or who has them so weak that he cannot elevate or break the host. Whence he is irregular whose right or left arm has become stiff. *Acta Sanctae Sedis*, vol. 7, pp. 81, 82. Otherwise, if someone lacks the nail of the thumb or index finger, as is said in the said final chapter. But if someone has already been ordained and has the thumb impeded, in a case of necessity he could probably minister the Eucharist with the later fingers. If someone lacks the three later fingers, he is also irregular. But if he lacks only one smaller finger, he is not irregular, and the same holds if he lacks two. Nor likewise is he irregular who has six fingers, provided the sixth finger does not impede the use of the others. L. 408. Dispensation has several times been given, both after priesthood had been received and before it, when the left arm, or even the right, had been amputated, or only part of it had been amputated, or the thumb or index finger had been amputated.

6. No disease induces irregularity unless it either impedes the exercise of order or brings notable indecency and scandal. Hence he is irregular who labors under paralysis or coughing in such a way that, because of trembling of the hands, there is danger of spilling the chalice or ejecting the Eucharist. Likewise he is irregular who is an abstainer, who cannot take wine except with danger of vomiting. L. 409. Cf. *Acta Sanctae Sedis*, vol. 7, p. 80 ff.

But by reason of deformity the following are irregular: 1. those to whom some member is lacking, namely those who lack a nose or have it too deformed; those whose eye has been plucked out, unless it can be repaired by a glass eye; those who lack ears, unless such defect can be hidden by hair. 2. Lepers, chap. *Tua nos*, *de Cler. aegr.*, unless scandal is absent, e.g., if they celebrate in a private place; those who have corroded or cut lips, or a very spotted face. 3. Monstrous persons, namely those who have an enormous hump; pygmies or dwarfs, so short in stature that they move to laughter, or cannot extend their arms sufficiently for the ministry of the altar; giants, who by very great stature excite a certain terror; Ethiopians, who would beget horror if they exercised the ministry habitually among us; hermaphrodites, although the male sex predominates. But those are not irregular who are of dusky or reddish color. Chaps. 2-5, this title; L. 410-412, 416.

1336. Note: When the defect ceases in any way, the irregularity ceases by that very fact, whatever it may be, and whether it was contracted before or after order had been received. If any of the aforesaid defects of body supervenes after orders have already been received, the priest is not impeded from acts of that order which he can exercise without incongruity and indecency, so that a blind or lame priest can well receive confessions, sing the Gospel, etc. Chap. 7, *de Cler. aegrot*. But if such a defect comes before orders, it absolutely induces irregularity, not only for that order whose exercise it impedes, but for all the others. The reason is that, since all orders regard priesthood, one excluded from priesthood is judged also repelled from all orders. L. 413. Others nevertheless think otherwise. And thus minor orders, indeed even subdiaconate and diaconate, could be conferred on one abstaining from wine, so that he could, e.g., obtain a benefice and relieve his own poverty. Navarrus, Manual, chap. 27, n. 204. But one must distinguish between that which brings impotence and that which brings deformity. The former bars only from the orders which someone cannot fittingly exercise; the latter prohibits from all. L. 343, 390, 408, 413; La Croix, book 7, n. 438.

1337. In this irregularity proceeding from defect, only the Pope can dispense. Bishops can in doubt declare and judge whether a defect of body notably impedes the exercise of order, or whether it brings great indecency. Regular prelates can likewise judge concerning this; indeed "they can well also dispense in irregularity of this kind." L. 414. Nevertheless they can in no way dispense those who are naturally incapable, and those who are not customarily dispensed even by the Holy See itself. Cf. vol. 1, n. 278; chap. 2, this title.

1338. From defect of age, irregularity for a time is customarily reviewed. But it, like many other prohibitions of this kind, is not properly irregularity; and without dispensation it ceases by that very fact. Cf. 1234. L. 434.

1339. From defect of soul irregularity is had, namely from defect of use of reason, knowledge, and faith. From defect of use of reason the following are irregular: 1. The insane. Such a defect of soul either arises in a man after ordination or before. If after, when the defect has ceased for a long time, by judgment of the Ordinary, or of the Prelate if he is a regular, he will be able to exercise again the

order received. If before, it must be seen whether the defect depends on a permanent and habitual cause, e.g., on a lesion of the organs; and then he will no longer be able to be promoted to orders, because those laboring thus easily relapse into the same disease. Chap. *Maritum* 2, Dist. 33. Or whether it depends on a transitory and accidental cause, e.g., on fever or wound; and then he will indeed be able to be promoted. L. 398. 2. Epileptics and demoniacs. If epilepsy precedes ordination, they are perpetually irregular; nevertheless, if someone was affected by this disease before puberty and afterwards is perfectly freed, a long trial having been added, he is not judged irregular. But if one laboring under such a disease has already been ordained, although he is not altogether free, provided that he suffers the access of the disease rarely, and is not accustomed to fall suddenly to the ground, to break out into great cries, and to vomit foam, he will be able to celebrate privately, with a fasting priest joined, who in the case of the access of the disease may complete the Mass. And if he is altogether free, he will then be able, by judgment of the Bishop, to return altogether to the exercise of order.

Chap. *Communiter* 3, chap. *Clerici* 4, Dist. 33; L. 399. Those possessed by a demon, when possession has fully ended, can probably be ordained; probably, for there are not lacking those who deny it. In this irregularity, while the defect lasts, not even the Pope can dispense, because those laboring under it are incapable by divine law. L. 400. St. Thomas, supplement, q. 39, art. 2.

1340. From defect of knowledge, the illiterate are altogether irregular. "Those who are so rude that they are ignorant even of the first rudiments of grammar, so that they do not know how to perform those things which pertain to the exercise of order, for which knowledge of the Latin language is indeed required, are altogether irregular, and sin gravely both by receiving orders and by exercising them... Chap. *Illiteratos*, Dist. 36... This irregularity, when the cause of ignorance has been removed, is removed of itself without dispensation." L., book 6, n. 791; Trent, sess. 23, chap. 4, *de Ref.*; chap. *Illiteratos* 1, Dist. 36.

1341. From defect of faith, neophytes, or those recently converted to the faith in adult age, contract irregularity; they need Apostolic dispensation. But it is disputed by the doctors for how long one converted to the faith is called a neophyte, whether up to one year, to two, or to ten. Benedict XIV, *de Syn.*, book 12, chap. 1, n. 6. "Toletus thinks," says St. Alphonsus, n. 402, "that after ten years a neophyte is no longer irregular, indeed before, if the Bishop judges that he has advanced well in morals." Busembaum agrees there. Neophytes are not, and therefore neither are irregular, those baptized in infancy; nor are the children of Jews and infidels irregular. Benedict XIV, *de Syn.*, book 12, chap. 1, nn. 4-4. Heretics indeed are irregular; nevertheless if the heresy is occult, there is a question among the doctors. Lugo, *de Fide*, disp. 23, sect. 4, n. 124. But the sons of heretics are irregular up to the second degree through the paternal line, up to the first through the maternal. If nevertheless the parents have abjured heresy, the children are freed from irregularity. Benedict XIV, *de Syn.*, book 13, chap. 24, n. 21; chaps. 2, 15, *de Haer.* in 6; Holy Office, December 4, 1890; *Acta Sanctae Sedis*, vol. 25, p. 579; Collection of the Sacred Congregation de Propaganda Fide, n. 1696. To this also pertain those who defer baptism until death. Cf. 1321. E.M.

Dispensation concerning irregularity from defect of birth on account of the heresy of parents once conceded for receiving tonsure and minor orders is valid also for receiving major orders. Holy Office, December 5, 1906.

1342. From defect of sacrament, namely from bigamy, irregularity arises, as is clear from the whole title *de Big.* And this has been inferred from that saying of the Apostle, 1 Timothy 3: A Bishop must be the husband of one wife. From defect of sacrament, because he who has led two wives cannot aptly signify the union of Christ with the Church, his one spouse. L. 435, 436.

1343. Bigamy is threefold: true, interpretative, and similitudinary. True bigamy is when someone has successively contracted and consummated true marriage with two virgins. Therefore each marriage must be valid and consummated. Chap. *Debitum* 5, *de Big. non ord.*; L. 435, 436.

Interpretative bigamy is had when someone by interpretation of Law, or by a certain fiction, is judged to have had two wives, although in reality he has not had them. This bigamy occurs in three ways. First, when someone marries and knows a widow already known by her prior husband, even if he marries invalidly. Chap. *A nobis* ult., *de Big.*; chap. *Debitum*, same title; L. 437. Likewise when someone marries and knows a woman corrupted by another. Chap. ult., Dist. 51; chap. *Curandum*, Dist. 34; and according to the more common opinion, although he contracts invalidly because of some diriment impediment. But otherwise if someone married a woman previously corrupted by himself. L. 438, 439, 440. Second, when someone knows his wife after she has committed adultery. Chap. *Si cuius* 11, chap. *Si laici* 12, Dist. 34; L. 441, 442, 443. Third, when someone contracts and consummates two marriages, one valid, the other invalid, from chap. *Nuper* 4, *de Big.*; likewise when someone contracts two marriages, both invalid, and consummates with marital affection. L. 444, 445, 446, 447.

Similitudinary bigamy is contracted from the attempt of marriage, although invalid, with a corrupted woman or a virgin after a solemn vow emitted in an approved Religion, or after the reception of sacred order. For those marrying in this way are similar to those contracting a double marriage, insofar as after the spiritual marriage entered into with Christ, departing from him, they attempt to contract marriage, provided that such marriage is consummated.

Now irregularity is certainly had in true bigamy; but doubtful from interpretative and similitudinary bigamy. For there are several authors who deny each, except in the case that someone, after a valid marriage contracted and consummated, receives sacred orders, and then attempts and consummates marriage with another woman, even a virgin; or after ordination in sacred orders marries a widow. But a layman who marries a professed nun is not irregular, because the Laws speak only of one contracting after his own vow. Chap. *Nuper* 4, chap. *A nobis* 7, *de Big. non ord.*; chaps. 24, 32, causa 27, q. 1; L. 448, 449. St. Thomas, supplement, q. 66; Suarez, disp. 49; Sanchez, *de Matr.*, book 7, disp. 85; Schmalzgrueber, book 1, tit. 21, n. 1 ff.; D'Annibale, part 1, n. 416 ff., 3rd ed.; Authentic Collection IV, tit. 1, Novella XXII, chap. XLII.

1344. True bigamy is not removed by baptism, nor by religious profession. Chap. *Deinde* 3, Dist. 26; chap. *Si quis viduam* 13, Dist. 24. The Supreme Pontiff can dispense in irregularity from true and interpretative bigamy. L. 455. A Bishop cannot dispense in true and interpretative bigamy for receiving sacred orders, nor for ministering in them, nor for receiving benefices annexed to them. L. 451. And, more truly, also not for receiving minor orders and simple benefices. L. 452. But in similitudinary bigamy from occult delict, and from a double marriage, one spiritual, the other carnal, Bishops can well dispense, even for receiving and ministering in sacred orders. Chap. 4, *de Cler. coniug.*; chap. *Qui cler. vel vov.*; L. 452, *de Priv.* 50.

"It has been handed down that prelates of regulars can dispense in interpretative bigamy from the privilege of Paul III." Thus D'Annibale, loc. cit., n. 420, who declares similitudinary and interpretative bigamy somewhat otherwise, departing from the common opinion of the doctors. From St. Alphonsus, Prelates of Regulars dispense their subjects in every bigamy. But it does not seem that the Supreme Pontiffs, by general concessions, wished also to grant the faculty of dispensing in those irregularities, e.g., from defect of soul, from infamy, from directly voluntary homicide, from true bigamy, in which they themselves either cannot dispense or dispense only very rarely, and from the gravest causes, according to Rule 81 of Law in 6. Cf. *Compendium Privilegiorum Soc. Iesu*, v. *Dispensatio*. L. 453; St. Thomas, Quodlibet 4, art. 13; supplement, q. 66, art. 4.

1345. From defect of gentleness he is irregular: 1. who kills or mutilates in a just offensive war, but not if others kill; nor he who kills in a just defensive war; nor he who exhorts to killing, even if the war is offensive, provided it is just. Chap. *Petitio tua*, chap. *Dilectus*, chap. *Significasti*, *de Homic.*; Benedict XIV, Notification 191; L. 457-460; La-Croix 528. 2. In a just judgment those become irregular who cooperate toward death or mutilation actively, efficaciously, and proximately by an action of its nature ordered to this. Clementina *Si furiosus*, *de Hom.*; chap. *Clericis*, chap. *Sententiam*, *Ne Cler. vel Mon.*; chap. *Ex litteris*, *de Exc. prael.* Therefore judges become irregular, advocates or procurators acting against the accused, notaries, apparitors, lictors, executioners, voluntary witnesses, otherwise coerced witnesses, accusers or denouncers; otherwise nevertheless if they accuse the guilty person only so that they may prevent their own harm, or that it may be repaired for them, protestation being made that they do not will the penalty of blood, chap. *Praelatis*, *de Hom.* in 6, in their own cause or even that of relatives up to the fourth degree; or unless the cause is that of their own Church; or if harms are to be inflicted in the future on others, so that they cannot be impeded by another way. L. 461, 468. 3. Clerics constituted in sacred orders, or monks, practicing medicine with cutting and burning, are also irregular from defect of gentleness, chap. *Sententiam* 9, *Ne Cler. vel Mon.*, if from such cutting or burning mutilation or death follows. If nevertheless another skilled person is absent, then a cleric or monk will well be able, without sin and consequently without danger of irregularity, to apply cutting or burning. L. 384, 385, 389. St. Thomas, supplement, q. 39, art. 4; D'Annibale, part 1, nn. 426, 427, 3rd ed.

1346. Bishops cannot dispense from irregularity from defect of gentleness, but dispensation must be sought from the Supreme Pontiff, although the irregularity is occult. L. 469. "But regular prelates can well dispense with their subjects in this irregularity." L. 469.

1347. From defect of good reputation all infamous persons are irregular, chap. *Infames* 17, causa 6, q. 1, whether the infamy is of fact or of law. Infamy of fact is had in two ways. It is had first through the confession of the accused in judgment, or through at least a declaratory sentence of a judge concerning a crime inferring infamy among honest and upright men, although no infamy is expressly noted in Law. Second, infamy of fact is merely of fact, or popular, and it is likewise from any public crime and from the condition or office of the person obscuring him and rendering him base in the common estimation of men, even without any judicial act. Infamy of law is also had in two ways. For it is had first through a sentence of a judge inflicting the mark of infamy. It is had second without sentence of a judge, by the Law itself, by which the mark of infamy is inflicted; namely, from crime or from the condition of the person it is noted in Law as staining and infaming. Infamy of fact properly

renders one unworthy; infamy of law properly renders one irregular; and it is this which properly induces a canonical impediment.

Infamy by the law itself is had first through a qualified, evident, and public delict, or at least one so notorious that it cannot be hidden by any evasion, or when the sentence of a judge accedes, declaring or imposing the penalty of infamy. Qualified, i.e., to which infamy is annexed by Law, either by that very fact or after sentence of a judge. But the crimes to which infamy is annexed by law are the giving of gifts by regulars against the Constitution of Clement VIII *Religiosae Congregationes*, June 19, 1594; theft; homicide; sacrilegious homicide, chap. *Petrus* 17, *de Homic.*; perjury made in judgment; apostasy from the faith, heresy, chap. *Excommunicamus* 13, § 5, *de Haeret.*; simony; to practice sodomy, St. Pius V, Constitution *Horrendum illud*, August 30, 1568; the crime of lese-majesty, chap. *Felicis* 5, *de Poenis* in 6; adultery; incest, chap. *Coniunctiones* 2, q. 2, can. 35; bigamy, chap. *Nuper* 4, *de Bigamis*; betrayal; robbery; procuring; the exercise of usuries; Lateran Council II, can. 13; invasion of Cardinals, cited chap. *Felicis*, or of Bishops; abduction of women, or cooperation toward it, Trent, sess. 24, chap. 6, *de Ref.*; duel, as regards duellists and their seconds, not others, Trent, sess. 25, chap. 19, *de Ref.*; preparation of arms against parents; the exercise of actors with shameful representations, so that it is not done without mortal sin; not likewise the trade of butcher, executioner, lictor, etc., since these offices can well be exercised without sin; and other things which induce infamy from Law. Cf. Suarez, *de Simon.*, book 4, chap. 56, n. 21; La-Croix 562 ff.; Salm., chap. 8, n. 78 ff.; Pichler, book 1, tit. 11, n. 21; Trent, sess. 24, chap. 6, *de Ref. Matr.*, sess. 25, chap. 19, *de Ref.*; Can. 6, q. 1, chap. 17; chap. 4 and final, *de Temp. ordin.*

Second, irregularity can be incurred by the law itself because of another's infamy, as is incurred by the sons of those who have been condemned for the delict of lese-majesty, the sons born from a prostitute, the sons of heretics, and also grandchildren descending from them through the male line, provided nevertheless that it is notorious that the parents were heretics and died in heresy. Chap. 2, § 2, chap. 15, *de haeret.* in 6. But in order that all these incur irregularity, it is necessary that they were born after the delict. Sanchez, book 2, chap. 27, n. 14. Benedict XIV, *de Syn.*, book 13, chap. 24, n. 21, reports the Constitution *In quibusdam*, *de Poenis*, in which the sons of a patron killing the rector of a Church, up to the fourth generation, become irregular beyond the loss of the right of patronage for all. The sons also and grandsons of those attacking or striking Cardinals of the Holy Roman Church are prohibited from receiving and exercising orders. Constitution *Felicis* 12, *de Poenis*. But this is valid only concerning sons born after the crime committed by the father. L., book 1, *de His qui not. inf.*; Lugo, *de Fide*, disp. 23, sect. 4; *Resp. Mor.*, book 2, dub. 12; Benedict XIV, *Quaest. can.*, q. 449; Bizzarri, p. 470 ff.

1348. Infamy merely of fact is removed either by baptism, or by notorious amendment, or even by change of place. Infamy of fact from a judge's sentence is removed either by dispensation or by another sentence by which his reputation is restored to the guilty person. Infamy of law, which properly is irregularity, is removed only by dispensation. And whether it is of law or of fact, if the guilty person has been condemned by sentence of a judge, dispensation can be made by the Roman Pontiff alone. Trent, sess. 24, chap. 6, *de Ref.* A Bishop cannot dispense that one infamous by infamy of fact ascend to sacred orders; nevertheless he can dispense that he minister in orders received, if the crimes are less than adultery and the guilty person has done penance. Chap. *Et si clerici* 1, *de Iudiciis*, book 2, tit. 1.

Irregularity on account of the crime of parents, or on account of an infamous office, is removed by entrance into religion. Regulars can also, from privileges of Pius IV and St. Pius V, dispense with their subjects in this irregularity. L. 352, 362-364, 454; Suarez, disp. 48, H.; Sacred Congregation of the Council, August 9, 1890; Holy Office, July 11, 1884; *Acta Sanctae Sedis*, vol. 23, p. 619 ff., 700.

On Indulgences

1349. What is an indulgence? "Indulgence is accustomed to signify remission and facility, or, so to speak, condescension, in the holy Scriptures and in other authors..." Bellarmine, *de Indulg.*, book 1, chap. 1. Hence Indulgence, taken theologically, is defined: the remission of temporal punishment owed to God for sins remitted as regards guilt, granted by a legitimate minister outside the sacrament of penance, through the application of the satisfactions of Christ and of the Saints.

Remission of temporal punishment: for remission of eternal punishment together with remission of mortal guilt is not obtained except through the sacrament of penance, or through charity and perfect contrition with the vow of the sacrament. But when guilt and eternal punishment have been remitted, temporal punishment, also owed to sin, is not always remitted. St. Thomas, III, q. 80, art. 4. Now this temporal punishment is that which is then remitted through satisfactory works and through Indulgence in this life; otherwise it will be paid after this life in Purgatory. The same must be said, by proportionate reasoning, of venial sin, to which only temporal punishment is owed. St. Thomas, loc. cit. Its guilt is remitted by charity and other pious acts, by which temporal punishment is also remitted; but again this is not always wholly remitted, whence it must be remitted either by other satisfactory works or by Indulgence in this life, otherwise it too will have to be paid in Purgatory after this life. Trent, sess. 6, canon 30; sess. 14, canons 5, 8, 9, chaps. 12, 15; St. Thomas, IV Sent., dist. 16, q. 2, art. 2, q. 4; dist. 17, q. 2, art. 5, q. 2; supplement, q. 15, art. 3. Therefore indulgence is neither remission of the guilt, Benedict XIV, *de Syn.*, book 13, chap. 18, n. 7; Suarez, *de Poenit.*, disp. 50, sect. 1, n. 14, nor is it remission of the debt of eternal punishment; rather it is only remission of the debt of temporal punishment still owed to sin. Of temporal punishment, namely to be inflicted by God in Purgatory, and therefore it is remission before God. It is by no means a mere remission either of penance imposed or to be imposed on the penitent by the confessor, or of canonical penance, which the Church formerly inflicted. Indulgence would not then be most salutary for us. Trent, sess. 25, Decree on Indulgences. "This opinion," says St. Thomas, IV Sent., dist. 20, q. 1, art. 3, q. 1, "does not seem true, first because it is expressly against the privilege given to Peter, that what he would remit on earth would be remitted also in heaven; whence remission which is made as regards the forum of the Church is valid also as regards the forum of God; and besides, the Church, granting or giving Indulgences of this kind, would harm rather than help, because she would remit to graver penalties, namely of Purgatory, by absolving from imposed penances." But although indulgence is remission of temporal punishment, and from this head frees us from other satisfactory works, nevertheless we cannot for that reason absolutely neglect these; since they serve at the same time both for satisfying for sins committed and for preventing sins in the future. St. Thomas, Quodlibet 2, art. 16, ad 3.

This remission of temporal punishment is made through application of the satisfactions of Christ and of the Saints, by force of the communion of Saints which is present in the Church, and of the power by which one can satisfy for another. "The work of one," says St. Thomas, Quodlibet 2, art. 16, "can be satisfactory for another, to whom it is referred by the intention of the one doing it. But Christ poured out his Blood for his Church, and did and sustained many other things, the valuation of

which is of infinite value because of the dignity of the person... similarly also all the other Saints had the intention in those things which they suffered and did for God, that this would be for the utility not only of themselves, but also of the whole Church." Cf. *Contra Gentiles*, book 3, chap. 158, n. 4. Now the satisfactions of infinite price of Jesus Christ, to which accede the satisfactions of the Blessed Virgin and also the superabundant satisfactions of the Saints, constitute the treasury of the Church, of which we participate through indulgences. Extravagant *Unigenitus* 2, *de Poenit. et remiss.*; Benedict XIV, Constitution *Pia Mater*, April 5, 1747, at the beginning. Superabundant: "And therefore," says St. Thomas, IV Sent., dist. 20, q. 1, art. 3, q. 1, "it must be said that [indulgences] are valid both as regards the forum of the Church and as regards the judgment of God, for the remission of the punishment remaining after contrition and absolution and confession, whether it has been imposed or not. But the reason why they can be valid is the unity of the mystical body, in which many have supererogated by works of penance beyond the measure of their debts; and many have also patiently sustained unjust tribulations, through which a multitude of punishments could be expiated, if they were owed to them; and the abundance of their merits is so great that they exceed every punishment owed by those now living, and especially because of the merit of Christ, which, although it operates in the sacraments, nevertheless its efficacy is not included in the sacraments, but by its infinity exceeds the efficacy of the sacraments. But it was said above, art. 2, q. 3, that one can satisfy for another. But the Saints, in whom a superabundance of works of satisfaction is found, did not perform works of this kind determinately for this man who needs remission; otherwise he would obtain remission without any indulgence. But they did so commonly for the whole Church, as the Apostle says to the Colossians 1, that he fills up those things which are lacking of the Passion of Christ in his body for the Church to which he writes. And thus the aforesaid merits are common to the whole Church. But those things which are common to some multitude are distributed to individuals of the multitude according to the judgment of him who presides over the multitude. Whence just as someone would obtain remission of punishment if another had satisfied for him, so also if the satisfaction of another is distributed to him by one who can do it." Cf. Quodlibet 2, art. 16; supplement, q. 25; L., book 6, n. 531; E.M.

1350. Does the Church have the power of granting indulgences? R. Affirmatively, and it is of faith. Trent, sess. 25, Decree on Indulgences; Pius IV, Bull *Iniunctum nobis*, November 18, 1564. But indulgences cannot be granted without cause, neither licitly nor validly. The reason is that the prelates of the Church are nothing other than delegates of Christ for dispensing the treasury of the Church. L., book 6, n. 532. Now "whatever cause is present which turns to the utility of the Church and the honor of God is a sufficient reason for bestowing indulgences." St. Thomas, IV Sent., dist. 20, q. 1, art. 3, q. 2. Indulgences can be granted "principally by the Pope; but by others insofar as they receive power from him, whether ordinary or committed, or delegated." St. Thomas, Quodlibet 2, art. 16; Suarez, *de Poenit.*, disp. 53.

The Supreme Pontiff can delegate this faculty both to Bishops and to simple priests. Indeed, as St. Thomas says, Quodlibet 2, art. 16, ad 2, "an indulgence does not extend to the remission of guilt, because it is not sacramental; whence it does not follow order, but jurisdiction; for even one who is not a priest can make an indulgence, if it has been committed to him." Hence 1. the application of indulgences is made outside the sacrament. 2. A Bishop-elect and canonically instituted, although not yet consecrated, can grant indulgences, but by no means a titular Bishop, or coadjutor, or resigned Bishop. Sacred Congregation of Indulgences, January 12, 1878, to 4. 3. Personal indulgences granted

by a Bishop can be acquired only by diocesan subjects, since no one can be bound or absolved by a judge not his own. Chap. *Quod autem* 4, *de Poenit. et remiss.* But a Bishop can grant indulgences to his subjects staying outside his diocese, because he has personal jurisdiction over them. St. Thomas, supplement, q. 26; L., book 6, nn. 532-533.

1351. Who in particular can grant indulgences? 1. The Supreme Pontiff can grant any indulgences whatsoever for the whole Catholic world, for the living and for the dead. A General Council also has this faculty together with the Supreme Pontiff. But a Provincial Council does not have this power. St. Thomas, Quodlibet 2, art. 16.

2. Bishops can grant a year of indulgence on the day of dedication or consecration of a Church; and fifty days at other times; and these indulgences are not applicable to the dead. Chap. *Cum ex eo* 14, *de Poenit. et remiss.* A Bishop cannot grant indulgences to the faithful of another diocese. Nevertheless pilgrims can gain local indulgences by visiting, for example, a Church or oratory to which an indulgence has been granted. But a successor Bishop cannot add to the same object or act of piety other fifty days of indulgences. Nor indeed can Bishops grant fifty days of indulgences to individual parts of some pious work, or to individual words of some prayer. Sacred Congregation of Indulgences, January 12, 1878. Archbishops can grant a year of indulgence on the day of dedication or consecration of a church as Bishops can, and besides at other times an indulgence of one hundred days, both in their own dioceses and in those of their own province. Chap. *Nostro* 15, *de Poenit. et remiss.* Besides this, Archbishops and Bishops have the faculty of giving the blessing with plenary Indulgence in the article of death, and of delegating this faculty to others. Benedict XIV, Constitution *Pia mater*. For this blessing the rite prescribed in the Roman Ritual is to be observed.

3. "A Bishop in the lands of infidels, although auxiliary of the Ordinary of some diocese, cannot grant an Indulgence of fifty days, as a diocesan can." Sacred Congregation of Indulgences, January 12, 1878.

4. Nuncios and Apostolic Legates, by force of the concessions which are made to them by the Supreme Pontiff, can grant indulgences in the places of their own Nunciature or Legation for some pious work of one hundred or three hundred days, provided they do not reach a year. They can grant to a Church or Chapel indulgences of seven years and seven quarantines for all the faithful who have received the sacraments of penance and Eucharist, and who have visited the aforesaid sanctuaries and there prayed according to the intention of the Supreme Pontiff.

5. Cardinals can grant indulgences of two hundred days in their own dioceses and in their own titular Churches. By at least the tacit consent of the Supreme Pontiff, the Cardinal Major Penitentiary can grant at Rome one hundred days of indulgences.

6. Vicars Apostolic, Vicars General, Vicars Capitular, Abbots, Generals, Provincials of religious orders, penitentiary canons, pastors, and confessors can grant no indulgence without a special faculty of the Holy See. Chap. *Accedentibus* 12, *de Excess. prael.*; Sacred Congregation de Propaganda Fide, August 24, 1852. Cf. Sacred Congregation of Indulgences, August 28, 1903; Suarez, disp. 55, sect. 5, n. 2; St. Thomas, supplement, q. 26; La-Croix 1317 ff.; E.M.

7. Priests enrolled in the Eucharistic Priestly Federation can grant to their penitents a plenary Indulgence for each week, if the aforesaid penitents receive the Most Holy Eucharist daily or almost daily. Pius X, Brief, May 10, 1906. The aforesaid Priests can likewise bless beads with the indulgences of the Fathers Crucigeri. Pius X, September 15, 1908.
8. "Whenever, the ordinary confessor being absent, any other priest is duly called to minister the last sacraments to religious women of both solemn and simple vows, he can also impart the apostolic blessing to the same as they are dying, even if otherwise he does not possess this faculty, according otherwise to the norm of the Constitution of Benedict XIV *Pia mater*, and with the form prescribed in the Roman Ritual observed." Holy Office, April 1, 1909. *Acta Apostolicae Sedis*, vol. 1, p. 490.

1352. Note: Those who obtain general concessions of indulgences, general not personal, for the recitation, for example, of prayers, etc., must, under penalty of nullity, bring a copy of the same concessions to the Secretary of the Sacred Congregation of Indulgences. Same Sacred Congregation, January 28, 1756; April 14, 1856. He who has obtained the faculty of blessing Beads, Crosses, Rosaries, Medals, etc., with application of Apostolic Indulgences and of St. Bridget, cannot validly exercise it unless he has been approved for receiving sacramental confessions, at least of men. Sacred Congregation of Indulgences, June 14, 1901. And the same faculty must be recognized by the Holy Office. Pius X, motu proprio, April 7, 1910. *Acta Apostolicae Sedis*, vol. 2, p. 225 ff. All confessors can commute the abstinence of Wednesday and Saturday, to which those who do not know how to read are bound, in place of reciting the little office, for the effect of enjoying the Sabbatine privilege of the scapular of the Blessed Virgin Mary of Mount Carmel. Sacred Congregation of Indulgences, June 14, 1901. Trent, sess. 21, chap. 9, *de Ref.*; E.M.

Privileges of Cardinals. "6. Of gaining in their own chapels the indulgences for acquiring which the visit of some church or public chapel of the city or place in which the Cardinals are actually staying is prescribed; their familiars can also enjoy this privilege. "7. Of blessing everywhere, by the sign of the cross alone, with all indulgences customarily granted by the Holy See, rosaries and other prayer beads, crosses, medals, statues, scapulars approved by the Apostolic See, and of imposing these without the burden of inscription. "8. Under one blessing, of erecting in churches and oratories, even private ones in which Mass can be celebrated, and in other pious places, the Stations of the Way of the Cross with all indulgences which have been imparted to those performing an exercise of this kind; and also of blessing for the faithful who, because of infirmity or another legitimate impediment, cannot visit the sacred stations of the Way of the Cross, images of the Crucified with application of all the indulgences annexed by the Apostolic See to the devout exercise of the same Way of the Cross. "14. Of granting an indulgence of two hundred days in places or institutes and for persons of their jurisdiction or protection; likewise in other places, but to be gained only by those present, each time." First Supplement. E.M.

1353. What do the words *in forma Ecclesiae consueta*, in the accustomed form of the Church, signify in Concessions of indulgences? The words *in forma Ecclesiae consueta*, which are used in Concessions or Indults, signify nothing other than that the indulgences are granted to the faithful truly penitent, or truly contrite. Lavorius, tract. *de Iubilaeo et Indulg.*, part 2, chap. 14; Theodorus a Spiritu Sancto, part 1, p. 284. Nor indeed do they signify that some special formula is to be used in the blessing of pious objects so that indulgences may be applied to them. For this the simple sign of the cross suffices,

except for Rosaries of the Fathers Preachers and Servites, for which the prescribed formula is required. Sacred Congregation of Indulgences, April 11, 1840; January 7, 1843; February 29, 1864. The prescribed formula is also required for the Crosses of Stations of the Way of the Cross, for aggregation to various Confraternities, for a plenary Indulgence in the article of death through the Apostolic Blessing, and for the Apostolic Blessing besides the aforesaid.

Several objects can be blessed at the same time, and indulgences can be applied to them. Sacred Congregation of Indulgences, March 12, 1855. Several indulgences can be applied to the same object. And thus Apostolic indulgences, those of the Fathers Preachers, Crucigeri, and St. Bridget can be applied to the same beads. Nevertheless, to gain them, the imposed repeatable works must be renewed. Sacred Congregation of Indulgences, February 29, 1820. Indulgences can generally be applied to any solid and durable things, but by no means to fragile ones. Sacred Congregation of Indulgences, January 24, 1846. But specifically beads or rosaries can be blessed if made from polished steel (*acciaio polimentato*), from iron, tin, lead, and from solid and compact glass. Sacred Congregation of Indulgences, February 29, 1820; March 22, 1839. But whether someone can gain the same indulgences several times in a day, by several times repeating the imposed works, must be determined from another clause of the Concession, *toties quoties*, as often as, or if the Concession determines nothing. Holy Office, June 24, 1914, *Acta Apostolicae Sedis*, vol. 6, p. 379. On the same day the indulgences of Stations, or of the Visitation of a Church, cannot be obtained several times. On the contrary, indulgences of the Rosary, acts of Faith, Hope, Charity, etc., can be obtained several times. E.M.

For the Way of the Cross to be erected, a written faculty obtained from the General of the Order of St. Francis or from the Holy See is required. It is to be exhibited to the Ordinary, who must give consent in writing, as also the Superior of the place. The customary form must be used, and the document of erection is to be kept in the place. Thus several decrees of the Sacred Congregation of Indulgences.

Apostolic Blessing to be imparted at the end of sermons. This blessing is given by one sign of the cross with a Crucifix, with the following formula: *Benedictio Dei Omnipotentis Patris et Filii et Spiritus Sancti descendat super vos, et maneat semper.* R. Amen. Sacred Congregation of Rites, May 11, 1911.

General Absolution and papal Blessing to Secular Tertiaries. "Regular Superiors can delegate Priests of their own Order, even those not approved for hearing confessions, to impart General Absolution and the papal Blessing to secular Tertiaries in their own churches." Holy Office, May 27, 1914, *Acta Apostolicae Sedis*, vol. 6, p. 347.

Manner of blessing certain devotional things by Apostolic authority. Declaration. "In blessing several similar or diverse objects of religion which are offered to a priest furnished with several faculties, joined or mixed together, and in enriching them with indulgences by force of diverse faculties, one sign suffices for several blessings and annexations of indulgences. And the declaration is not extended to metallic medals to be substituted for scapulars, concerning which in the Decree of the Holy Office, December 16, 1910." Holy Office, May 18, 1914, *Acta Apostolicae Sedis*, vol. 6, p. 346.

Blessing of medals for scapulars. Several medals, to be substituted for scapulars, can be blessed at the same time, by one sign of the cross, by a Priest having the power. Nor is it necessary that the persons

to whom they are distributed have already been enrolled in the Scapulars. Holy Office, June 4, 1903, *Acta Apostolicae Sedis*, vol. 5, p. 303 ff.

Indulgence *toties quoties*, annexed to Crucifixes. "The faculty of blessing Crucifixes with application of the Plenary Indulgence called *toties quoties*, whether obtained personally from the Supreme Pontiff, or in any way from the Apostolic See through the channel of any Office or person, is to be understood thus and not otherwise: that any of Christ's faithful, constituted in the article of death, who shall have kissed or in any way touched one of these blessed Crucifixes, even if it does not belong to him, provided that, confessed and refreshed by holy Communion, or, if he could not do this, at least contrite, he has devoutly invoked the Most Holy Name of Jesus by mouth, if he could, otherwise by heart, and has patiently accepted death from the hand of the Lord as the wages of sin, can acquire the Plenary Indulgence." Holy Office, June 10, 1914, *Acta Apostolicae Sedis*, vol. 6, p. 348.

1354. To whom can indulgences be applied? Since the living are subject to the authority of the Church, the Church directly remits temporal punishments to them through indulgences; and consequently indulgences are said to be granted by way of payment and absolution, namely by paying those penalties through the application of the satisfactions of Christ and of the Saints. St. Thomas, IV, dist. 20, q. 1, art. 3, q. 1, ad 2. Indulgences can also be applied to the dead dwelling in Purgatory, and they are applied to them by way of suffrage, since the Church no longer has jurisdiction over the souls which are detained in Purgatory. By way of suffrage, namely by offering to God a part of the satisfactions of Christ and of the Saints which corresponds to the granted indulgence, asking God that he will console the souls of Purgatory by remitting to them as much punishment as corresponds to the obtained indulgence. But the real effect of such an indulgence cannot be infallibly affirmed, namely whether it is applied totally and to such a soul. For God has made no formal promise of this matter. But, the communication of the Saints being considered, it can very piously be believed and hoped. Sacred Congregation of Indulgences, July 28, 1840. Hence it is very useful to apply to the dead as great a number of indulgences as we can. Therefore "although the effect of indulgences for the living is infallible, nevertheless it is not infallible for the dead, since for them there is no promise present, whence God accepts them only according to his good pleasure." L., book 6, n. 534. And this is confirmed from the use and practice of the Church of celebrating Masses for several years and for the same souls, e.g., anniversaries, even on privileged altars, or those to which the privilege of plenary indulgence adheres.

But that practice would be vain if it were established with infallible certainty that immediately, when the first Mass was applied to them, they would be freed. All and individual indulgences which are reviewed in the Collection of prayers, etc., commonly *Raccolta di orazioni*, etc., are applicable also to the faithful departed. Sacred Congregation of Indulgences, September 30, 1852. St. Thomas, supplement, q. 27, art. 4, q. 71; Lugo, disp. 27, n. 58; La-Croix 1336; Billuart, Appendix, art. 6; E.M.

1355. Of how many kinds is Indulgence? One Indulgence is plenary, another partial. Plenary is that by which the whole temporal punishment owed to sins is remitted. But partial is that by which some certain quantity of the aforesaid punishment is remitted. St. Thomas, Quodlibet 2, art. 16. Now a partial indulgence, e.g., of forty days or one year, does not import remission of forty days or one year of the punishment of Purgatory, but only remission of that punishment of Purgatory which someone would once have obtained before God through canonical penance of forty days or one year. But how great is the remission of the punishment of Purgatory corresponding to the aforesaid canonical

penance is a matter unknown to us and is reserved to divine mercy. Benedict XIV, *de Syn.*, book 13, chap. 17; St. Thomas, supplement, q. 28; L., book 6, nn. 530, 535.

Besides, one Indulgence is local, another personal, another real. Local is that which is affixed to a determined place, e.g., to a determined church, to a determined chapel and altar, statue or image, placed in some Sanctuary. Personal in the stricter sense is that which is granted to some person or persons, without being granted to all the faithful. But less strictly it is that which is granted to the faithful independently of place or of a determined object, on account of some act of piety. Finally, real is that which is annexed to portable objects or things of devotion, e.g., a crucifix, medal, rosary, small statue, etc. This real Indulgence is regularly also personal, since regularly only the owners of these things, to whom the aforesaid things were first handed over, can gain the indulgences. And if the same things are lent to others so that they may gain the indulgences, or are given to them, the indulgences are lost. Sacred Congregation of Indulgences, February 6, 1657; February 3, 1745. Blessed objects can neither be sold nor exchanged, otherwise the indulgences are lost. Sacred Congregation of Indulgences, June 4, 1721; December 4, 1722. Indeed, if someone buys them so that he may then distribute them blessed, he can neither seek back their price, nor anything even under the title of alms, without the indulgences being lost. Sacred Congregation of Indulgences, February 22, 1847; January 31, 1837; July 16, 1887. But real indulgences of this kind endure as long as the object is not at least morally destroyed; and thus, if a rosary is repaired because some beads have been lost, the indulgences are not for that reason lost. Sacred Congregation of Indulgences, January 10, 1839.

Moreover one Indulgence is perpetual, another temporary. The former endures until it is revoked; the latter endures only for a determinate time, e.g., three, five, seven years. But indulgences granted at the good pleasure of the Roman Pontiff or of the Apostolic See are judged perpetual, because they are referred not to the person, but to the dignity. Rule 16 of Law in 6.

Finally, one Indulgence is only for the living, another only for the dead, another for the living with the faculty of applying it to the dead. This Indulgence granted for the living and also applicable to the dead does not signify that someone can gain the indulgence twice, for himself and for the dead, but only that he can gain it at his choice either for himself or for the dead. Sacred Congregation of Indulgences, January 15, 1839. Therefore, in order that an indulgence can really be applied to the dead, it is required: 1. that in the Pontifical Indult it be granted as applicable to the dead; 2. that there be an intention of making such application. Suarez, disp. 53, sect. 14. But it can be applied either generally to all souls dwelling in Purgatory, or in particular to some or to one only. E.M.

1356. Is intention prerequired for gaining indulgences? R. Affirmatively, for an indulgence is a grace which is made to those willing to enjoy it; and therefore certain works to be fulfilled are always prescribed. But it is not necessary that this intention be actual; rather a virtual intention suffices, namely one once had and not revoked, which moves us to fulfill the prescribed works. But whether even a merely habitual intention suffices, i.e., once had and not retracted, without it moving us to fulfill the prescribed works, is controverted. Grave doctors affirm, because an indulgence is granted by the Church by way of payment for the work imposed. Therefore, this having been furnished, the power of the keys of the Church pays the penalty. Cf. Schmalzgrueber, book 5, tit. 38, n. 133. In the book of indulgences *La Raccolta*, p. XII, it is said: "it is necessary to have at least in general the intention of gaining indulgences." Therefore it suffices if someone in the morning forms the intention

of gaining, during the day, all indulgences which are annexed to the pious works which he is going to do. Nor indeed is it necessary to know determinately what these indulgences are, and whether in fact they are. Laymann, book 5, tract. 7, chap. 6, n. 5; Diana, tom. 4, res. 18; Billuart, Appendix *de Indulg.*, art. 5; Lugo, *de Poenit.*, disp. 27, n. 80.

1357. Is it required, for gaining indulgences, that someone be in the state of grace? R. Affirmatively. "No punishment can be remitted to anyone unless guilt has already been remitted to him." St. Thomas, IV Sent., dist. 20, q. 1, art. 5, q. 1; L., book 6, nn. 533, 534. Besides, an Indulgence depends on the intention of the one granting it. Now an indulgence is granted only to the contrite and confessed. St. Thomas, supplement, q. 27, art. 1. Nevertheless, if a plenary indulgence requires several works of piety, it is enough that the last be performed in the state of grace. *Raccolta*, p. XII; L., loc. cit. If, when Confession is prescribed, after Confession someone falls into grave sin, an act of contrition suffices, and a new Confession is required only in a Jubilee. Sacred Congregation of Indulgences, March 14, 1852.

1358. Can someone who is in the state of mortal sin gain indulgences at least for the souls of Purgatory? The Sacred Congregation of Indulgences responded, February 22, 1847: Let him consult approved authors. But approved authors, some affirm, because it is necessary that someone first make the Indulgence his own; others deny, because for gaining an Indulgence it suffices only to do what is prescribed, in order that it be applied by the Church to the Souls of Purgatory. L., book 6, n. 534; Bellarmine, *de Indulg.*, book 1, chap. 14; Suarez, *de Poenit.*, disp. 53, sect. 4, n. 6; Lugo, *de Poenit.*, disp. 27, n. 75.

1359. Is venial sin an obstacle to gaining an indulgence? "It is certain that venial sin not remitted as regards guilt cannot be remitted as regards punishment. Thus St. Thomas, supplement, q. 27, art. 1, whom Viva, Sporer, and others everywhere follow. Nevertheless that venial sin does not prevent the punishment owed to other sins already remitted from being remitted...

Nor does it obstruct that the plenary indulgence was granted under the notion of total remission, so that if it does not remove the punishment of that venial sin not remitted, it removes none. For it is answered that just as it is not repugnant that the guilt of some venial sin be remitted without the guilt of others being remitted, so also with punishment. But the Pontiff, in granting a plenary indulgence, is not presumed to wish to restrict it only to those to whom all venial sins are remitted, but rather to grant it according to the capacity of the subject, so that at least the punishment of those venial sins whose guilt has been remitted may be remitted." L., book 6, n. 534. "No one obtains a plenary indulgence who is not free from every venial sin, since punishment is not remitted while guilt remains; but he can obtain full pardon of the others who is held only by affection for some one, and therefore the effect is greater according to the more perfect disposition of soul; for the Pontiff is judged to grant plenary remission to be obtained according to the capacity of the subject, so that the punishment of remitted venial sins may be remitted." Kenrick, 2nd ed., Mechlin, 1860, tract. 18, n. 253. And hence it is clear that someone can acquire several plenary indulgences on the same day. Sacred Congregation of Indulgences, May 27, 1841. Nevertheless no one can gain a second plenary indulgence if after the first no further punishment to be paid remains.

1360. What is generally required as regards the fulfillment of the works imposed for acquiring indulgences? Someone must fulfill them piously and devoutly, personally and integrally, at the time and place and with the other circumstances established in the indult. Sacred Congregation of

Indulgences, March 21, 1820. Personally; nevertheless the alms prescribed in a Jubilee can be fulfilled through another. Integrally: a small omission does not impede gaining the indulgence; a small thing is reputed as nothing. But they need not be fulfilled among themselves in any determined order.

That formula, those who, truly penitent, confessed, and refreshed by holy communion, have visited the church, indeed imports that Confession must be performed even by those who are not conscious to themselves of lethal sin; which Confession nevertheless can also suffice if it is completed on the vigil of the festivity. But the visitation of the church can be fulfilled either before or after the fulfillment of the other pious works. Sacred Congregation of Indulgences, May 19, 1859. When in partial Indulgences the clause is added, with heart at least contrite, contrition is required only as a disposition, not as an imposed work, and therefore it is not necessary that an act of contrition be elicited by those who are in the state of grace. Sacred Congregation of Indulgences, December 17, 1870. A work which must be performed from obligation from elsewhere cannot suffice for gaining an indulgence without the express concession of the Supreme Pontiff, unless it is a work imposed by the confessor as penance. Benedict XIV, Constitution *Inter praeteritos*, § 53; Sacred Congregation of Indulgences, May 29, 1841; March 7, 1888. Cf. Benedict XIV, Inst. 53, § 11. Cf. here 734. But by the same pious work, to which indulgences are annexed under various titles, all can be gained, provided that the imposed works truly cannot or are not accustomed to be repeated, such as Confession, unless it is necessary from elsewhere. Sacred Congregation of Indulgences, January 12, 1878, to 3. In the recitation alone of the Marian Rosary, the cumulation of Indulgences called those of the Fathers Preachers and of the Fathers Crucigeri was granted, provided the Beads have received each blessing. Sacred Congregation of Indulgences, June 12, 1907. In the recitation alone of the Rosary, etc.; for the Indulgence of five hundred days, which is annexed to Beads blessed by the Fathers Crucigeri, or by others having the faculty, is acquired as often as with the said Beads the *Pater noster* or *Ave Maria* is recited. *Acta Sanctae Sedis*, vol. 40, p. 443. The Most Holy One granted "that the sick or those worn out by old age in a community and living under a rule, who cannot visit churches or oratories or execute other things prescribed for indulgences, may nevertheless be able to gain indulgences by fulfilling other pious works to be prescribed at the judgment of the confessor." Leo XIII, January 16, 1886. Pius IX had already granted the same privilege earlier, on September 18, 1862, to the habitually sick outside a community, unable to leave the house. St. Thomas, supplement, q. 27, art. 3; L., book 1, s., nn. 533, 534; E.M. "The faithful of each sex who, for zeal of perfection, or for the sake of instruction or education, or even of health, live a common life in houses lacking a church or public chapel, but established with the consent of the Ordinaries, and also all persons staying there to minister to them, whenever the visitation of some church in general is prescribed for gaining indulgences, i.e., not of a determined church, or of some indeterminate public oratory, can visit the chapel of their own house, in which by law they can satisfy the obligation of hearing Mass, provided that they have duly performed the other works imposed." Holy Office, January 14, 1909, *Acta Apostolicae Sedis*, vol. 1, p. 210.

1361. When are Confession and Communion to be performed? For an indulgence of Jubilee, or in the form of a Jubilee, all the prescribed works, and therefore also Confession and Communion, must be performed during the time designated for the duration of the Jubilee. For other indulgences, Confession and Communion are not always required. And thus they are not necessary for indulgences of the Way of the Cross. Nevertheless they are ordinarily required as regards most plenary indulgences. Now Confession and Communion can be performed on the vigil of the festivity,

or of the day to which the indulgences are affixed; and even eight days before the feast, where because of the scarcity of confessors the faithful frequently cannot confess. Sacred Congregation of Indulgences, May 19, 1750; June 12, 1822; October 6, 1870; *Raccolta*, p. XXI; L., loc. cit., n. 534.

When Confession is prescribed for gaining an indulgence, it is necessary for all, even for those who already are in the state of grace; but for these only Confession without absolution suffices. Sacred Congregation of Indulgences, May 19, 1759; August 20, 1822; December 15, 1841; May 6, 1852. All those who have the custom of making Confession at least once in each week can gain all and any indulgences whatsoever which occur from one Confession to another, except the indulgence of Jubilee, and others granted after the likeness of a Jubilee. Confession would then be necessary only if they have sinned gravely. Sacred Congregation of Indulgences, December 9, 1763; March 5, 1855; December 4, 1843; November 23, 1878; February 25, 1886; *Raccolta*, pp. XVII-XVIII. Besides, all who daily approach Communion, although they abstain from Communion once or twice during the week, gain all occurring Indulgences without the obligation of weekly Confession. Sacred Congregation of Indulgences, February 14, 1906. Easter Communion suffices for gaining indulgences affixed to the same day or to the following day. Nevertheless the same does not suffice for gaining the indulgence of Jubilee. And the same must be said of annual Confession. Sacred Congregation of Indulgences, May 10, 1844; March 19, 1841; December 15, 1841; May 10, 1884.

Outside Jubilee the same Confession and Communion suffice for gaining several plenary indulgences on the same day or the following, provided nevertheless that the other prescribed works are fulfilled. Sacred Congregation of Indulgences, May 29, 1841; February 29, 1864. When for gaining a local or personal indulgence a determined church is to be visited, it is not necessary to receive Communion in the same church, unless this also has been prescribed. But if Communion is received in it on the same day to which the indulgence is annexed, and prayers are poured forth according to the intention of the Supreme Pontiff, it is not necessary to make another visitation. *Raccolta*, p. XXV. Since in the article of death it is not possible to receive Communion, then to gain a plenary indulgence it suffices to invoke, with contrition and at least by heart if one cannot by mouth, the Name of Jesus. E.M. "... It is granted that the Confession to be performed for gaining an Indulgence, if this has been granted several times on the same day, can be anticipated during the three immediately preceding days; but if it has been granted once in a day, only two whole days beforehand... yet in such a way that besides Communion permitted on the day before the day to which the Indulgence is annexed, in fulfilling the other imposed works the general rule concerning the manner and time prescribed in the concessions is observed." Sacred Congregation of Indulgences, March 11, 1908, *Acta Sanctae Sedis*, vol. 41, p. 359 ff.

All who daily approach Communion, although they abstain from Communion once or twice during the week, gain all occurring Indulgences without the obligation of weekly Confession, nothing nevertheless being innovated concerning Indulgences of Jubilee. Sacred Congregation of Indulgences, February 14, 1906.

With regard to those who are refreshed daily or almost daily by the Bread of Angels, the broader concessions already made remaining firm, and by name that of February 14, 1906, sacramental confession made within the last eight days before the day designated for gaining the Indulgence suffices for gaining any Indulgences whatsoever. Sacred Congregation of Indulgences, April 23, 1914, *Acta Apostolicae Sedis*, vol. 6, p. 309.

1362. What prayers are to be recited? The prayers regularly to be recited according to the intentions are often not determined. Therefore someone is free to recite whatever prayers he wishes. Sacred Congregation of Indulgences, May 29, 1841; September 13, 1888. From accepted use, five *Pater* and *Ave* suffice. Nevertheless vocal prayers are to be recited. Sacred Congregation of Indulgences, September 13, 1888; Benedict XIV, *Convocatis*, November 25, 1749, § 51; Encyclical to the Roman Penitentiaries *Inter praeteritos*, December 3, 1729, § 83. Prayers are to be recited in the church if it is prescribed to visit the church and pour forth prayers there; otherwise they can be recited in any place. *Raccolta*, p. XXIV. Prayers are not to be recited on bent knees unless this also is prescribed. Sacred Congregation of Indulgences, September 18, 1862; *Raccolta*, p. XV. But someone can recite them alone, or alternately with a companion according to custom. Sacred Congregation of Indulgences, February 29, 1820. Prayers are to be recited as many times as there are diverse indulgences which someone wishes to gain on the same day. *Raccolta*, p. XXV. The intentions of the Supreme Pontiff, which he almost always requires, are the exaltation of the Catholic Church, the propagation of the faith, the extirpation of heresy and schism, the conversion of sinners, peace and concord among Christian Princes, and other necessities of the Christian people. It is not necessary to have these intentions explicitly; it suffices generally to pray according to the intention of the Supreme Pontiff. Sacred Congregation of Indulgences, July 12, 1847. Prayers to which indulgences are annexed can be recited in any language, provided the translation is faithful. So that the faithfulness of the translation may be established, the Declaration of the Cardinal Prefect of the Sacred Congregation of Indulgences, or of the Bishop of the place to whom that translation is a vulgar language, suffices. Sacred Congregation of Indulgences, December 29, 1864. The Little Office of the Blessed Virgin Mary is excepted, which is to be recited in Latin. Sacred Congregation of Indulgences, September 13, 1888. The same must be said of the Office of the Dead. The recitation of the Little Office of the Blessed Virgin Mary in the vernacular language is valid only for private recitation. Sacred Congregation of Indulgences, August 28, 1903. But that is still private "although its recitation takes place in common within the enclosure of a religious house, indeed even in the church itself or public oratory annexed to the aforesaid house, but with doors closed." Sacred Congregation of Rites, December 18, 1906. For deaf-mutes, when visitation of a church is prescribed, it suffices devoutly to visit the church; when public prayers are prescribed, it suffices to pray by heart, provided they are found together with other faithful in the same place; when private prayers are prescribed, the confessor can commute them into other pious acts in some way sensible. Sacred Congregation of Indulgences, March 15, 1852; *Raccolta*, p. XVI. And by a general Decree it was conceded to them to acquire indulgences by pouring forth the imposed prayers by signs or by mind, or only by reading the same without any pronunciation. Sacred Congregation of Indulgences, July 18, 1902. E.M.

A daily plenary indulgence for those visiting some church, unless otherwise expressly declared, signifies that each one of Christ's faithful can gain that indulgence only once in the year. Pius IX, March 15, 1852.

1363. How is the visitation of a church to be performed? Visitation of a church is to be performed for gaining indulgences when it is prescribed, and it must be effected in a determined church if it is determined by the indult. *Raccolta*, p. XXI. It is not necessary to enter the church. If the church is closed or it is impossible to enter it for another reason, it then suffices to pray at the door. "One existing near the doors of the church is judged to be in it." Lavorius, *de Iubilaeo*, part 1, chap. 18; L., book 6, n. 534. Chapels of monasteries, seminaries, and other pious societies, to which there is not

free access for all the faithful from the public way, are not judged public oratories in order to gaining indulgences. Sacred Congregation of Indulgences, August 22, 1842. Visitation of a church can be made on foot or by carriage. In order that someone gain several indulgences prescribing visitation of a church, he must effect several visitations by going out and again entering the church. Sacred Congregation of Indulgences, February 29, 1864; *Raccolta*, p. XXIII. E.M.

1364. At what time must the prescribed works be fulfilled? They must be fulfilled at the time determined in the indult itself. Sacred Congregation of Indulgences, September 25, 1841. Nevertheless Confession and Communion, as was said, can always be made on the vigil. The time of an indulgence granted for one determined day begins from midnight to midnight, unless something else is expressed. Sacred Congregation, January 12, 1878. "When in the concession the words are had, from first vespers, the visitation can be made on the preceding day, but not before the hour at which vespers are commonly accustomed to be publicly recited." Authentic *Raccolta delle Indulg.*, p. XXII. Cf. 1370. But afterwards, from the Holy Office, January 26, 1911, the time for the visitation of a church, when this is prescribed, begins from noon of the day preceding that to which the Indulgence is affixed until midnight of the following day. When a plenary Indulgence is granted once in a month, the month is not necessarily to be computed from its first day, but a continuous space of thirty days suffices. Pius IX, August 9, 1852, by Decree *Urbis et Orbis*, "benignly commanded that all indulgences which up to now have been granted to certain feasts, and will be granted hereafter, or which for the same feasts have likewise been granted to some churches and public oratories and will be granted hereafter, or even, if it please, with the consent of the Ordinary, those granted in sacred supplications, or in novendial, or septenary, or triduan prayers before or after the feast, or while its octave endures, are to be understood as transferred for that day on which feasts of this kind, even only as regards solemnity and external celebration, but not as regards office and Mass, are legitimately transferred in some places, or churches, and public oratories, whether perpetually, or on some occasion, or for a time and while it endures. But when only the office with Mass is transferred, but not the solemnity and exterior celebration of the feast, he decreed that no transfer of indulgences is made." E.M.

1365. When the faculty is granted of commuting the works imposed for gaining indulgences, must the commutation be made in Confession? One must stand, says Gury, n. 1016, by the rule which Benedict XIV hands down in the Constitution *Inter praeteritos*, § 63, where he establishes that commutations of this kind must be made in Confession alone. For, after reviewing the controversy concerning the commutation of vows, absolution from censures, and the power of dispensing in other matters, or of commuting the prescribed works, whether all these must be done by the confessor in the act of sacramental confession or not, he thus concludes: But We, to remove every difficulty, in the Instruction, Constitution *Convocatis*, enjoined that no absolutions, commutations, and dispensations can be given by the penitentiaries outside the act of sacramental confession; and this seemed to Us both fitting and suitable to the gravity of the matter and the quality of the ministry, and removes every occasion of controversy, and is conformable to the practice of Our Apostolic Penitentiary. But Ballerini there observes that Benedict XIV, loc. cit., speaks of faculties conceded and of the mode of using them on the occasion of the Jubilee of the year 1750, but does not establish a general law. Whence he concludes that only then must commutations, etc., necessarily be made in Confession, when in the concession a condition of this kind is expressly provided. Indeed, from various Responses of the Sacred Penitentiary, March 16, 1865, January 30, 1886, the matter is

one which depends on the will of the one granting the Indulgence. If it is not positively granted, since in Jubilees the cited Constitution of Benedict XIV is for a norm, this faculty in reality is not had. Sacred Congregation of Indulgences, March 15, 1852.

In the Warnings for the Jubilee of the Holy Year 1900, § II, it is said: "Let confessors observe that absolutions and commutations, the power of which has been conferred on them, cannot be exercised by them outside the act of sacramental confession." Nevertheless for confessors outside Rome delegated by the Bishop by force of the Bull of Jubilee, as regards those impeded from coming to Rome, the Sacred Penitentiary declared, May 10, 1900, that they can use the faculties of commuting the visitations of the Basilicas outside Confession, but toward their own penitents.

On Jubilee

1366. What is Jubilee? The word *Jubilee* is derived, according to many, from the Hebrew *iobel*, which signifies fiftieth, because among the Hebrews the year of Jubilee recurred in the fiftieth year; or, according to others, from the same word signifying the sound of the trumpet, by which the fiftieth year was announced. According to others also, Jubilee is derived from *iubai* or *iobal*, which signifies to germinate, because in the fiftieth year the land was not cultivated, and the inhabitants fed on fruits springing up of themselves.

In imitation of the Jubilee of the Old Testament, the ecclesiastical Jubilee was instituted, which first was celebrated at Rome, but afterwards began to be celebrated in the whole world, with the fullest indulgence of sins, with great joy and solemnity. It was instituted by Boniface VIII, Constitution *Antiquorum habet*, February 23, 1300, and was to be celebrated in every hundredth year. But Clement VI, by a Constitution of the year 1343, decreed that thereafter it should be celebrated in every fiftieth year. By decree of Urban VI it began to be celebrated in every thirty-third year; and by the statute of Paul II, in every twenty-fifth year.

Jubilee is defined: a solemn plenary indulgence, which the Supreme Pontiff sometimes grants to all the faithful, with the obligation of performing certain pious works, at the same time giving to confessors special power of absolving from reserved sins and censures, of commuting most vows, and of dispensing in other matters. Hence Jubilee does not differ except accidentally from an ordinary plenary indulgence, namely by reason of the solemnity and of the privileges annexed to it; and also by reason of the most abundant and extraordinary graces which accompany it. For the wonderful and astonishing effects which Jubilee is accustomed to produce point to these altogether special graces, even if solemn gatherings of the faithful are not held, nor the divine word preached, by reason of the prayers of the whole Church.

1367. Of how many kinds is Jubilee? Jubilee is distinguished in many ways: the greater Jubilee, which regularly occurs every twenty-fifth year, which year is called holy. It is also called the ordinary Jubilee, because it is fixed and determined by law. The lesser Jubilee, which is accustomed to be granted by the individual Supreme Pontiffs after each one's exaltation, and in other particular circumstances, and is called an extraordinary Jubilee. General, which is granted to the whole world, such as the greater Jubilee always is, and sometimes also the lesser Jubilee; but it is accustomed to be granted first to the City, that is, to Rome alone, before it is granted to the world. Particular, which is granted to some province, city, or particular place, as is the most celebrated Jubilee granted to the

Church of Le Puy, whenever the feast of the Annunciation of the Blessed Virgin falls on the sacred day of Parasceve, that is, Good Friday.

A whole year is ordinarily granted at Rome for gaining the greater Jubilee; and in the following year six months are accustomed to be granted, by extension, to all other regions of the Christian world. The lesser Jubilee also first takes place at Rome, but for a few weeks, and then is extended to the whole world, so that, as the year runs, it can take place during the time to be determined by the Bishop. But both for the ordinary and for the extraordinary Jubilee, attention must above all be paid to the tenor of the Indult granted. Pius IX granted it for a very long time on the occasion of the Vatican Council. Leo XIII appointed the entire year 1886 and for all the faithful for gaining the Jubilee.

The ordinary Jubilee at Rome can be acquired *toties quoties*, as often as the imposed works are repeated. In the rest of the world it is acquired only once, unless the Supreme Pontiff in his Bull expressly declares otherwise. Benedict XIV, Constitution *Benedictus Deus*. But whether an extraordinary Jubilee can be acquired several times is to be determined from the Bull of concession. In the Jubilee of the year 1913 the Sacred Penitentiary declared, as on other occasions of preceding Jubilees, that the plenary indulgence could be acquired several times; but that someone could enjoy the other favors only once. Sacred Penitentiary, June 6, 1913.

In more recent times Jubilee has been proclaimed several times. Most memorable of all is the Jubilee of the Holy Year 1899, proclaimed by Leo XIII, Bull *Properante ad exitum*, May 11, 1899.

In the Jubilee of the holy year, or greater Jubilee, while it is being celebrated at Rome, not in the following year in which the Jubilee is extended to the whole world, there are suspended at Rome and outside Rome for the whole year all other indulgences of the Apostolic See, both plenary and particular, granted for the living, but not those which are granted for the dead. Indeed all indulgences, even those which otherwise were not applicable to the dead, can be applied to them in this year. Sacred Congregation of Indulgences, December 16, 1749; Benedict XIV, Constitution *Inter praeteritos*, § 24; Constitution *Cum nos*, May 17, 1749. Cf. the Invitation of the Cardinal Vicar of the City, 1900.

From the suspension of indulgences for the living are excepted: 1. indulgences for the dying; 2. indulgences for the prayer *Angelus*; 3. indulgences for the visitation of the Most Blessed Sacrament solemnly exposed; 4. indulgences for those who accompany the Most Blessed Sacrament when it is carried to the sick; 5. all indulgences which are granted by someone other than the Pope, by Legates *a latere*, Nuncios, Archbishops, Bishops. Benedict XIV, Brief *Cum nos*. But the indulgence of the papal blessing remains suspended, which Archbishops, Bishops, etc., give twice in the year. Clement XIII, Constitution *Inexhaustum*, September 3, 1762. Nevertheless in the Jubilee Constitution *Quod Pontificum* of Leo XIII, September 30, 1899, those indulgences remained intact "which Bishops are accustomed to bestow in the use of pontificals, or in imparting a blessing, or in another customary form."

Likewise, but outside Rome, faculties granted by the Holy See are suspended: of absolving from reserved cases and censures, of commuting vows, and of dispensing in irregularities and impediments, but not other faculties. Benedict XIV, Brief *Cum nos*, §§ 3-4; Constitution *Inter praeteritos*, § 32; Constitution *Convocatis*, §§ 55-56. But the faculty granted to Bishops by Trent, sess.

24, chap. *Liceat*, 6, *de Ref.*, is excepted, and also other faculties which they enjoy by common law, or by special indult, in particular cases for determined persons. The same exception is to be made for faculties granted to regular prelates in favor of their subjects. Also intact remain the faculties of the Holy Office, of missionaries and ministers who have been deputed by the same Holy Office or by the Sacred Congregation de Propaganda Fide, and other faculties granted by the Sacred Penitentiary to missionaries to be exercised in mission places and on occasion of them. Benedict XIV, Brief *Cum nos*, § 3; Sacred Penitentiary, 1875; *Acta Sanctae Sedis*, vol. 8, p. 486.

But since the same conditions of this suspension are not always observed, attention likewise must always be paid to the tenor of the Bull of Jubilee. L., book 6, nn. 535-536. For the Jubilee of the holy year 1900 the Sacred Penitentiary declared, December 21, 1899, that the suspension of faculties "does not extend to those penitents who, at the time of Confession, in the judgment of the Ordinary or confessor, cannot here and now go to the City without grave inconvenience." And on December 26, 1899, the same Sacred Penitentiary declared that that suspension does not extend to faculties granted to Ordinaries for the external forum.

Now this suspension of indulgences and faculties outside Rome, while the Jubilee is being celebrated at Rome, has this purpose: that the faithful may be invited to go to Rome. Benedict XIV, Constitution *Inter praeteritos*, § 17. Nevertheless many who cannot come to Rome can still gain the Jubilee in their own place of habitation, namely nuns, anchorites, the aged and infirm, and those detained in prisons. Leo XIII, Constitution *Aeterni Pastoris*, October 24, 1899. Those who have gained the Jubilee of the holy year at Rome can still gain the Jubilee when it is afterwards extended to the whole world. *Monitore Ecclesiastico*, vol. 11, p. 467, vol. 12, p. 315 ff.; *Acta Sanctae Sedis*, vol. 33, p. 219 ff.; E.M.

1368. What is required for gaining Jubilee? It is necessary to have the intention of gaining Jubilee, virtual or at least habitual. Moreover the prescribed works must be exactly fulfilled, and they cannot be commuted without the express faculty of the Supreme Pontiff. This faculty the Pontiff ordinarily grants to confessors for those impeded. Laymann, book 5, tract 8, chap. 8, n. 12.

In the general lesser Jubilee, the following works are regularly enjoined: fasting, alms, visitation of churches, with pious prayer according to the intention of the Supreme Pontiff, Confession, Communion. In the general greater Jubilee the prescribed works are: Confession, Communion, visitation of churches. Benedict XIV, Brief *Inter praeteritos*, December 3, 1749, for the Jubilee of the holy year; L., book 6, n. 536. For a particular Jubilee attention must be paid to the tenor of the Indult granted. Cf. Benedict XIV, Constitution *In suprema*, November 20, 1744, and Constitution *Nullis verbis*, February 20, 1745.

Works already owed from some other obligation cannot serve for gaining Jubilee, unless this is granted by the Supreme Pontiff. Benedict XIV, Encyclical *Inter praeteritos*, § 53; L., book 6, nn. 536, 538. They can be fulfilled in whatever order, as one wishes. Nevertheless it is necessary that one be in the state of grace when he fulfills the last one. Benedict XIV, Encyclical *Inter praeteritos*, §§ 73, 77. There is no obligation of completing the same works in one and the same week. Sacred Penitentiary, March 16, 1865; *Acta Sanctae Sedis*, vol. 1, p. 176.

They can be fulfilled in one's own diocese, or in another diocese, conforming oneself to the prescriptions of the Ordinary of the place. Sacred Congregation of Indulgences, November 28, 1759; *Acta Sanctae Sedis*, vol. 8, p. 486, vol. 18, p. 334. Likewise someone can perform Confession and

Communion in a foreign diocese, and the other works in his own, again conforming himself to the prescriptions of the Ordinary of the place. Sacred Penitentiary, 1875; January 15, 1886; *Acta Sanctae Sedis*, vol. 8, p. 486, vol. 18, p. 334. If Jubilee is prolonged for those traveling by sea, they can gain the Jubilee after their return to their homeland, by fulfilling the prescribed works, or gain it when they have arrived at some place of station. Sacred Penitentiary, 1875; *Acta Sanctae Sedis*, vol. 8, p. 485; L., n. 538. E.M.

1369. What of Confession and Communion? For gaining Jubilee, Confession is necessary even for those who do not have consciousness of grave sin. Nevertheless absolution is not necessary, unless it is prescribed in the Bull of Jubilee. In this Confession of Jubilee also, the confessor must impose a sacramental penance. Benedict XIV, Constitution *Convocatis*, §§ 46, 64, 65; Sacred Congregation of Indulgences, May 6, 1852.

If, after Confession has been performed and before the other works have been fulfilled, someone falls into grave sin, he must confess again in order to gain Jubilee, and it does not suffice that he be contrite. Benedict XIV, Constitution *Convocatis*, § 47; *Inter praeteritos*, § 79. Nevertheless the other works already fulfilled are not to be repeated. Sacred Congregation of Indulgences, November 23, 1759.

Annual Confession from obligation, even if someone approaches Confession twice and then is absolved once, does not suffice for gaining Jubilee without the express faculty of the Supreme Pontiff. The same is to be said of Easter Communion. Both the Confession and the Communion of Jubilee can be made in any church. Sacred Congregation of Indulgences, December 9, 1763; May 10, 1844; Sacred Penitentiary, January 25, 1875; February 26, 1875; February 26, 1879; March 25, 1881; January 15, 1886; *Acta Sanctae Sedis*, vol. 8, p. 555. Confession can be made on the day preceding the first day of Jubilee, namely if it is made when the ecclesiastical day has already begun, that is, at first vespers of the first day of Jubilee. Benedict XIV, Constitution *Inter praeteritos*, § 8. E.M.

1370. What of the visitation of a church? The number of visitations and the number of churches which must be visited are indicated by the Bull of Jubilee. When in some place a sufficient number of churches is not had, the Bishop can prescribe the visitation of one or two churches as many times as there are churches to be visited for the acquisition of Jubilee. Sacred Congregation of Indulgences, Decree *Urbis et Orbis*, March 15, 1852.

For the visitation the Bishop can also designate a public oratory in which Mass is habitually celebrated. Sacred Penitentiary, 1879; March 25, 1881; January 15, 1886; *Acta Sanctae Sedis*, vol. 11, p. 528, vol. 13, p. 423, vol. 18, p. 334. The Bishop of the diocese can also lessen the number of visitations for those who make them processionally with the chapter, congregations, confraternities, and also with the pastor or another priest designated by him. Sacred Penitentiary, February 26, 1879; March 25, 1881; January 15, 1886; *Acta Sanctae Sedis*, vol. 11, p. 527, vol. 13, p. 423, vol. 18, p. 333.

In the last Jubilee, on the occasion of the Constantinian feasts, it was said in the Constitution *Universus Christifidelibus*, March 8, 1913, that outside Rome the church or churches to be visited were to be designated only once by the Ordinary. Therefore, once designated, he could not change them further.

Regulars cannot perform the visitations in their own domestic chapels, nor can regular prelates designate these for their subjects; but they must perform the visitation in the churches prescribed by

the Bishop. Regulars who are impeded can in particular obtain commutation from their own confessor. Sacred Penitentiary, 1875; *Acta Sanctae Sedis*, vol. 8, p. 554; April 24, 1886; December 15, 1886.

Someone who has performed some visitations in his own diocese, if he goes into another diocese, can complete the remaining visitations there, according to the prescription of the Ordinary of the place. Sacred Penitentiary, 1875; January 1886; *Acta Sanctae Sedis*, vol. 8, p. 486, vol. 18, p. 324; Sacred Penitentiary, June 5, 1901; *Monitore Ecclesiastico*, vol. 13, p. 202.

When in the Bull of Jubilee four visitations of churches in a day are prescribed, the day is taken either as natural, from midnight to midnight, or as ecclesiastical, from first vespers up to the end of twilight of the following day. "After the visitation of the four Basilicas has been completed on the same natural or ecclesiastical day, immediately, when a new ecclesiastical day begins, a new visitation of the four Basilicas can be begun again by entering again into the Basilica visited last." Sacred Penitentiary, January 31, 1900; February 20, 1900.

From first vespers means from the hour, namely, at which vespers are recited publicly or in choir, or at which according to custom they can be recited, or at which vespers begin according to approved authors, namely at about the second hour after noon. Benedict XIV, *Inter praeteritos*, § 3, n. 13; Sacred Penitentiary, January 25, 1875; February 20, 1900; *Acta Sanctae Sedis*, vol. 8, p. 266, vol. 32, p. 512; *Raccolta*, p. XXII; Theodore of the Holy Spirit, *de Indulgentiis*, II, p. 74; Martinucci, *Manuale Ecclesiasticorum*.

When several visitations of churches are to be made and nothing is prescribed as to time, then all the visitations can be made either on the same day or on different days. Sacred Penitentiary, 1879; March 25, 1881; January 15, 1886; *Acta Sanctae Sedis*, vol. 11, p. 528, vol. 13, p. 423, vol. 18, p. 334.

Several visitations to be made cannot be fulfilled by remaining longer in the church; rather, it is necessary to go out and enter again, although someone may enter again immediately afterwards. And when there was a great concourse of people, the visitation would be fulfilled even outside the church, by uniting oneself with the whole people. Sacred Penitentiary, January 25, 1875; *Acta Sanctae Sedis*, vol. 8, pp. 268, 485; Theodore of the Holy Spirit, *de Iubilaeo*, chap. VI, § 1, n. 3.

The prayers to be recited in visitations of this kind according to the intention of the Supreme Pontiff must be vocal, and they can be any prayers, since they are not determined. According to the common opinion it suffices to recite five *Pater*, *Ave*, *Gloria*. Benedict XIV, Constitution *Convocatis*, § 51; Constitution *Inter praeteritos*, § 83.

One who in the City, or on the very journey to Rome for gaining the Jubilee, is seized by mortal illness or is prevented by another legitimate cause, can gain the Jubilee by Confession and Communion with the due dispositions. Benedict XIV, Constitution *Inter praeteritos*, § 14; Bull *Properante ad exitum* of Leo XIII, May 11, 1899; L., book 6, nn. 536-537; E.M.

1371. What of the fast of Jubilee? For gaining Jubilee the fast must be observed, even by those who by the law of the Church are not bound to fasting, or who for a legitimate cause are dispensed from the law of fasting or from abstinence. If someone is legitimately impeded, he must obtain commutation from the confessor.

But one who has obtained from the confessor, for a just cause, the faculty of eating flesh-meat during the Jubilee fast could not at the same meal also eat fish. This permission granted by the confessor of eating flesh-meat cannot be extended to the evening collation, unless the confessor, having the due faculty, judges that someone ought to be dispensed altogether from the fast. But one who, by legitimate permission, can eat eggs and milk-foods can also eat fish at the same meal. Sacred Congregation of Indulgences, July 10, 1869; Sacred Penitentiary, February 26, 1879; March 25, 1881; *Acta Sanctae Sedis*, vol. 11, p. 527, vol. 13, p. 422; Benedict XIV, Letter to the Archbishop of Compostela, June 10, 1745.

The fast prescribed in Jubilee is the ecclesiastical fast, according as it is observed by the law of the Church. Therefore the evening collation and the morning morsel are permitted, besides the one meal. But the use of flesh-meat is prohibited, and in Lent also the use of milk-foods, if that still has force. St. Thomas, II-II, q. 147, a. 8, ad 3; Sacred Penitentiary, January 20 and April 28, 1865; *Acta Sanctae Sedis*, vol. 1, pp. 174-175.

And if outside the time of Lent a stricter fast is expressly prescribed, then a double abstinence from flesh-meat and from milk-foods must be observed, even outside the time of Lent, notwithstanding an Indult, Privilege, or general custom permitting milk-foods or even flesh-meat on days of fasting and of precept of the Church. Sacred Penitentiary, January 16, 1886; February 26, 1879; March 4, 1879; March 31, 1879; March 25, 1881; August 31, 1881; *Acta Sanctae Sedis*, vol. 11, p. 527, vol. 13, pp. 422-423, vol. 18, p. 333.

If the Bull of Jubilee designates the days on which the fast is to be observed, the designated time is to be observed, and the fast is valid for gaining Jubilee, although at the designated time the fast falls on one to be observed by precept. But if the Bull of Jubilee does not designate the time of the fast, the fast cannot be made on the same day on which, from another source, there is a fast to be observed by precept of the Church, unless this is expressly conceded in the Indult of Jubilee, or is permitted by a special concession. Sacred Penitentiary, July 2, 1881; January 15, 1886; April 10, 1886; L., book 6, n. 537.

If three fasts are prescribed on Wednesday, Friday, and Saturday, almost all readily agree that these three fasts are to be fulfilled in the same week, since they are prescribed after the manner of the fasts of the Ember Days. Cf. Sacred Congregation of Indulgences, July 10, 1869. E.M.

1372. What of almsgiving? Alms can be given by oneself and by another, provided that if it is given by another, one's own consent and intention are added. And thus the father of a family can give alms for himself, for his wife, for his children, for his servants. The superior of a convent or monastery can give alms for the whole convent or monastery, etc.

If nothing is prescribed, any alms suffices for the rich and for the poor. But if alms proportioned to one's fortune are prescribed, then indeed that which suffices for the poor does not suffice for the rich. Theodore of the Holy Spirit, I, p. 323; L., book 6, n. 538; La-Croix, nn. 1428, 1430; Laymann, chap. 8, n. 12; E.M.

1373. What of the faculty of confessors for commuting the imposed works? Confessors can, for a just cause, commute the imposed works of Jubilee into other pious works which are not already owed, and therefore into others almost equal. Confession and Communion, and likewise prayers according to the intention of the Supreme Pontiff, when they are separated from the visitation of the church,

are excepted from this commutation. But for children who have not yet been admitted to First Communion, commutation into another pious work at the judgment of the confessor is permitted. Benedict XIV, Constitution *Inter praeteritos*, §§ 53, 80; Constitution *Convocatis*, § 48.

One who without his own fault, from whatever cause, was impeded from approaching Communion can also obtain a delay from his own confessor. Thus commonly. Bouvier, *Opusculum de Indulgentiis et Iubilaeo*, chap. 3, § 4; Gury, n. 1066; Ballerini-Palmieri, *Opus Morale*, 3rd ed., vol. 5, n. 817.

A commutation of this kind seems to be made in Confession, cf. n. 1365, unless something else is declared, as in the Jubilee of the year 1865. Benedict XIV, Constitution *Convocatis*, § 25; Constitution *Inter praeteritos*, § 63; Leo XIII, January 30, 1886; Sacred Penitentiary, March 16, 1865; *Acta Sanctae Sedis*, vol. 1, p. 176; L., book 6, n. 534, 15th. But if the Jubilee can be gained several times, then also for a legitimate cause the prescribed works can be commuted several times. Sacred Penitentiary, July 2, 1881; March 18, 1886; *Acta Sanctae Sedis*, vol. 18, p. 512.

Nevertheless in the Jubilee of the Holy Year 1900 the contrary was declared by the same Sacred Penitentiary, February 20 and May 10, 1900; *Acta Sanctae Sedis*, vol. 12, p. 637, vol. 13, p. 64. And at the same time it was declared that although someone cannot obtain several commutations from the confessor, he can nevertheless gain Jubilee again by repeating the works imposed in the first commutation. Sacred Penitentiary, May 10, 1900; *Monitore Ecclesiastico*, vol. 12, p. 167. E.M.

1374. What of other faculties of confessors? A confessor can absolve anyone from all sins and censures, even those reserved in a special manner to the Supreme Pontiff or to the Bishop, whether occult or public; whether the censures have been imposed by law or by man, with only the absolution of an accomplice and a false accusation of solicitation excepted. Benedict XIV, Constitution *Inter praeteritos*, §§ 56-61; Constitution *Sacramentum Poenitentiae*, § 5; Constitution *Convocatis*, §§ 5-6; Sacred Penitentiary, June 1, 1865; *Acta Sanctae Sedis*, vol. 8, p. 360; Pius X, Brief *Universis*, March 8, 1912; *Acta Apostolicae Sedis*, vol. 5, p. 93.

Nevertheless in the Jubilee of the holy year 1900 a false accusation of solicitation was not excepted. And the absolution of an accomplice was excepted which had been given three times or more. Leo XIII, Bull *Quoniam divinae*, October 21, 1899.

But this absolution can be given only once, and only in the forum of conscience, after satisfaction has been made to the injured party and scandal repaired, and only in favor of those who wish to gain Jubilee and to fulfill the prescribed works. Benedict XIV, Constitution *Inter praeteritos*, §§ 62, 86; Sacred Penitentiary, June 1, 1869; January 15, 1886; *Acta Sanctae Sedis*, vol. 5, p. 33, vol. 18, p. 334; L., book 6, n. 537.

Formerly heresy also was excepted; Benedict XIV, Constitution *Convocatis*, § 53; Constitution *Inter praeteritos*, §§ 38, 85; Holy Office, March 23, 1656. But at present heresy also is comprehended, after it has first been retracted and abjured. Sacred Penitentiary, June 1, 1869; January 25, 1875; *Acta Sanctae Sedis*, vol. 5, p. 32, vol. 8, p. 266.

One who, after he has been absolved from reserved matters or has obtained a commutation of vows, afterwards, with changed will, does not wish to fulfill the imposed works of Jubilee, although he sins, but not gravely according to the common opinion, nevertheless remains absolved from reserved

matters and dispensed from the vows. Benedict XIV, Constitution *Inter praeteritos*, § 86; Constitution *Convocatis*, § 54; L., book 6, n. 537; Lugo, disp. 20, n. 100; Salmanticenses, chap. 13, n. 57.

Likewise one who has been absolved from reserved matters and dispensed from vows, and who received no absolution or a sacrilegious one, remains absolved from reserved matters and dispensed from vows. St. Alphonsus, book 6, n. 537, indeed denies this. But other grave doctors probably affirm it, and therefore, since the reservation would now be doubtful, it practically ceases. Cf. n. 806; Lugo, disp. 20, nn. 111-113; Benedict XIV, Constitution *Inter praeteritos*, § 62.

One who during the time of Jubilee has rightly completed Confession, although in it he forgot reserved sins, can afterwards, after the Jubilee, be absolved from those same sins, since he was then at least absolved from the reservation, or acquired a right to absolution. The same is to be said of dispensation from vows. L., book 6, n. 531, 537, q. 4; Ferraris, v. *Iubilaeum*, art. 2, n. 27; La-Croix, n. 1449.

Likewise the confessor can absolve the penitent from censures and from the reservation of sins, and dispense his vows, although the confessor must defer absolution to him, if nevertheless the penitent fulfills the admonitions of the confessor and performs the other prescribed works of Jubilee, being about to obtain absolution thereafter even after the Jubilee. L., book 6, nn. 535, 537.

If someone, in a Confession made for Jubilee which he has already gained, had no reserved cases, nor vows to be dispensed, he can still once be absolved from reserved matters and be dispensed from vows, if he can again gain Jubilee by again performing the prescribed works. Sacred Penitentiary, January 1, 1873. Hence the same Sacred Penitentiary, June 5, 1901, declared the contrary, having regard to the Constitution *Temporis quidem*, December 25, 1899, for the extension of the Jubilee of that year, by which the Jubilee could be acquired only once. *Monitore Ecclesiastico*, vol. 12, p. 489, vol. 13, p. 202.

In the Jubilee of the holy year the indulgence can be obtained several times, the imposed works being repeated; but someone can use the other graces only once. Therefore one who has already once been absolved from reserved sins and censures, and has gained Jubilee, although he afterwards repeats the imposed works in order again to gain Jubilee, cannot any longer be absolved from reserved matters.

But whether he can be absolved again if he has not yet gained Jubilee even once, since he has not yet performed all the imposed works, so that he may gain it at least once: some deny it, from Sacred Congregation of Indulgences, July 10, 1869; Sacred Penitentiary, June 1, 1869; January 25, 1875; January 15, 1886; *Acta Sanctae Sedis*, vol. 5, p. 32, vol. 8, pp. 267, 359, vol. 18, p. 333; but others affirm it, unless the contrary is expressed in the Bull of Jubilee. When the doubt was proposed: "Whether during the time of the present Jubilee of 1901 it is lawful for confessors to use several times the extraordinary faculties granted to them toward the same penitent, who has not yet fulfilled all the works imposed for gaining the indulgence of Jubilee," the Sacred Penitentiary, January 25, 1901, answered: "In the affirmative." *Acta Sanctae Sedis*, vol. 33, p. 375. It answered the same on April 3, 1904; *Monitore Ecclesiastico*, vol. 16, p. 169; D'Annibale, part 3, n. 190, 2nd ed., and part 1, n. 348, 3rd ed. Cf. Benedict XIV, Constitution *Convocatis*, § 52; Constitution *Inter praeteritos*, §§ 67, 73, 77, 78, 79, 84, 85; *Acta Apostolicae Sedis*, vol. 5, p. 279.

During the time of Jubilee, Regulars can, without any permission of their Superiors, confess to any regular or secular confessor approved by the Ordinary of the place, or approved only by his own

Prelate; and they can be absolved by him even from cases reserved in their Order. Benedict XIV, Constitution *Inter praeteritos*, §§ 35-36; Sacred Penitentiary, January 30, 1886.

But nuns can also confess to any confessor, but one approved by the Ordinary of the place for nuns. L., book 6, n. 236; Ferraris, v. *Approbatio*, art. 2, n. 21. And the Sacred Penitentiary, January 11, 1900, declared: "The benefits of the Bull *Aeterni Pastoris* (of the Jubilee of the Holy Year) also pertain to nuns professed of simple vows, and it is lawful for them once to choose for themselves a confessor from those simply approved to hear the Confessions of secular persons." "The free choice of confessor, which is granted to regulars and nuns for the effect of the Jubilee, that is, if there is the intention of gaining Jubilee, can be exercised by them several times, until they have completed the works required for Jubilee." Sacred Penitentiary, June 9, 1901, ad 3.

Finally confessors can commute vows, or by commuting dispense vows, even sworn vows and vows reserved to the Apostolic See, except vows of chastity and of religion, and those in favor of a third party, and penal vows or vows preservative from sin; and they can dispense from irregularity arising from violation of censure, but not from others, in which, as in all the rest, the tenor of the Bull of Jubilee is to be attended to. Benedict XIV, *Inter praeteritos*, § 45; L., book 6, n. 536. And in those matters in which the Bull of Jubilee is not opposed, the rules handed down by Benedict XIV in the same Constitution *Inter praeteritos* are to be observed. Sacred Congregation of Indulgences, March 15, 1852; Leo XIII, Bull *Temporis quidem*, December 25, 1899; E.M.

On the Privileged and Gregorian Altar

1375. What is a privileged altar? A privileged altar is an altar to which the Supreme Pontiff has annexed a plenary indulgence, which, if the mind of the one granting and the use of the power of the keys are considered, would immediately free a soul from all the punishments of Purgatory; but if the effect of application is considered, it is understood as an indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy. Sacred Congregation of Indulgences, July 28, 1840; Benedict XIV, Instruction 56, n. 15.

This indulgence does not differ from other plenary indulgences which are applied to the departed, except insofar as it has a more certain effect. For, according to the common opinion of the doctors, it does not depend on the personal dispositions of the priest, but on the offering of the divine victim, since it is attached solely to the celebration of the divine sacrifice on such an altar. Hence a priest who, from a stipend received, must celebrate at a privileged altar, does not satisfy the obligation undertaken by celebrating at another altar and gaining a plenary indulgence annexed to some pious work or object; but he does satisfy if he enjoys the privilege of a personal privileged altar. Those who make the heroic act of charity have such a privilege. Sacred Congregation of Indulgences, February 13, 1745; February 22, 1847; May 2, 1852.

For a privileged altar is one thing local, another personal, according as the privilege adheres either to a determined altar or to a person, in whatever altar he celebrates, whether privileged or not, whether fixed or portable. Sacred Congregation of Indulgences, March 15, 1852; March 20, 1846.

1376. What are the required conditions for a local privileged altar? It is necessary that the church or oratory in which it is present be blessed; it is not required that they be consecrated. But it is necessary that the altar be fixed, that is, that it cannot be moved from the place. Therefore, to

establish the quality of a fixed altar, it suffices that in the middle of a stable and immovable altar, although not consecrated, there be placed a consecrated stone, even one that is movable. It suffices that the altar be wooden, by no means fastened to the wall, with a stone consecrated in the middle of the mensa, and specially dedicated to some Saint.

The indulgence is granted to the fixed altar itself, not to the movable consecrated stone, which can be substituted one for another as necessity or opportunity requires. Nor can the aforesaid indulgence be transferred from one fixed altar to another fixed altar in the same church or oratory without a special faculty. And the indulgence is lost even if the fixed altar itself is transferred from one church to another; but not at all if it is transferred from one place to another in the same church, while nevertheless remaining under the same invocation; or if because of age it is constructed anew, or is repaired as to the greater part, provided it is constructed again under the same title or invocation. Sacred Congregation of Indulgences, April 22, 1752; January 30, 1760; November 17, 1764; December 15, 1841; April 24, 1843; March 20, 1846; March 26, 1867; September 27, 1843; September 16, 1723; June 27, 1836; April 24, 1843; July 15, 1902.

1377. What are the conditions required for gaining the indulgence of a privileged altar? 1. The indulgence of a privileged altar cannot be separated from the application or fruit of the sacrifice of the Mass. Sacred Congregation of Indulgences, August 25, 1897.

2. It is necessary to apply the Mass for the same soul for whom the Mass is celebrated. Holy Office, July 8, 1846; Sacred Congregation of Indulgences, January 31, 1848; December 18, 1885.

3. The indulgence cannot be applied except to one soul only, although someone celebrates Mass for several. Sacred Congregation of Indulgences, July 28, 1840; February 29, 1864; June 19, 1880; December 19, 1885; *Acta Sanctae Sedis*, vol. 13, p. 139, vol. 18, p. 340.

4. On days not impeded, the Mass of Requiem had to be read. Sacred Congregation of Indulgences, April 11, 1840; February 22, 1847. On other days impeded by reason of the rite, one gained the indulgence by reading another Mass corresponding to the day. And this was valid also if someone did not read the Mass of Requiem by reason of the exposition of the Most Blessed Sacrament, whether of the station of the church or of another solemnity. Sacred Congregation of Indulgences, April 11, 1840; April 22, 1847; June 30, 1760; November 27, 1764; February 29, 1864, etc. But now from the Decree of the Holy Office, February 19, 1913, "for gaining the indulgence of a privileged altar, in the future there is no longer required, under pain of nullity, that a Mass of Requiem, or of a Feria or Vigil, be celebrated with the prayer proper for the departed; nevertheless this is laudably done, when it is lawful and fitting, by reason of piety toward the departed."

1378. Note. When someone celebrates Mass at a privileged altar for some departed person, the Mass is of itself privileged, and it is not necessary that either the one offering the alms or the priest intend to apply the privilege. For an explicit intention of application is not required; an implicit one suffices. But when someone celebrates for several departed persons, if he does not explicitly apply the privilege to one determined soul, the aforesaid privilege does not thereby become useless. For then it is applied either to some soul as it shall please God, or to all, not fully to all, but partially to each. Sacred Congregation of Indulgences, March 5, 1855; June 19, 1880; *Acta Sanctae Sedis*, vol. 13, p. 141.

A Mass of the departed is to be celebrated only in black vestments: violet vestments cannot be used except in the case in which, on November 2, the sacrament of the Most Holy Eucharist is exposed for the public adoration of the faithful for the solemn Prayer of the Forty Hours. Sacred Congregation of Rites, June 27, 1868, General Decree.

A priest who has celebrated Mass for a departed person at a privileged altar, and has applied to him the indulgence of the privileged altar, can on the same day, by force of the sacred Communion performed in the sacrifice, gain another plenary indulgence for himself or for the souls of Purgatory; indeed he can gain several plenary indulgences for the souls of Purgatory, if sacred Communion is prescribed for gaining them. Sacred Congregation of Indulgences, May 10, 1844. E.M.

1379. What of Gregorian Masses and the Gregorian altar? When a monk named Justus had died, St. Gregory pitied his state, because he had confessed that he had gravely offended the rule. Hence St. Gregory called another monk and said to him: Go therefore from this present day and for thirty continuous days offer the sacrifice for him; take care that no day be omitted on which the saving Victim is not offered for his absolution.

From this fact flowed the use of Masses which are named from St. Gregory, and which have special efficacy from the intercession of St. Gregory and from the particular destination of the Church.

But Gregorian Masses and the Gregorian altar are distinguished. The Gregorian altar is the altar of St. Gregory, on the Caelian Hill, in the City, which also is specially efficacious for the liberation of a soul from Purgatory when Mass has been celebrated upon it. And this same efficacy is also had by other Gregorian altars *ad instar* from a special concession of the Church.

A privileged altar is not to be confused with a Gregorian altar. A privileged altar has its effect for freeing a soul from the punishments of Purgatory from the use of the power of the keys. But a Gregorian altar has a special title to divine acceptance, namely the mediation of St. Gregory and the particular destination of the Church; but a concession of a plenary indulgence for Gregorian altars is not established. Sacred Congregation of Indulgences, August 24, 1888; *Acta Sanctae Sedis*, vol. 1, p. 254 ff.

Hence the confidence by which the faithful hold that the celebration of Mass at the altar of St. Gregory, in his church on the Caelian Hill, is specially efficacious, from the good pleasure and acceptance of divine mercy, for the liberation of a soul from the punishments of Purgatory, is pious and rational, and the practice of celebrating these same Masses is approved in the Church. The same is to be said of Gregorian altars *ad instar*. Likewise the confidence by which the faithful hold that the celebration of thirty Masses, which are commonly called Gregorian, is specially efficacious, from the good pleasure and acceptance of divine mercy, for the liberation of a soul from the punishments of Purgatory, is pious and rational, and the practice of celebrating these same Masses is approved in the Church. Sacred Congregation of Indulgences, March 15, 1884; *Acta Sanctae Sedis*, vol. 16, p. 508 ff. E.M.

The privilege of a Gregorian Altar was granted to the high altar, dedicated to Saints Benedict and Scholastica, of the Benedictine Crypt at Monte Cassino. Pius X, Brief *Archicoenobium Casinense*, February 10, 1913.

Gregorian Masses are to be celebrated on thirty continuous days, and laudably as Requiem Masses, when they can be celebrated.

It is not necessary that the aforesaid thirty continuous Masses, without any interruption, be celebrated by the same priest and at the same altar, although they must be applied for one and the same soul, whose liberation is implored. Sacred Congregation of Indulgences, January 14, 1889. "Decree, December 11, 1912. The following doubts were presented concerning the thirty Masses which are called Gregorian, and also concerning the Altars, both of the church of St. Gregory on the Caelian Hill of the City and those existing elsewhere, which after the likeness of that one are called Gregorian:

I. Whether it is necessary that the thirty Masses which are called Gregorian be celebrated on thirty continuous days without interruption? And insofar as affirmative:

II. Whether in the case a priest satisfies who on the same day, twice or three times, either by himself, for example on the day of the Nativity of the Lord, or through others, resumes the celebration, so that all the Masses are celebrated within the space of thirty days? And insofar as negative:

III. Whether the same priest is bound to substitute another for himself who will celebrate some Mass of the tricenary?

IV. Whether someone satisfies the obligation of seeing to a Gregorian tricenary if he commits thirty Gregorian Masses, distributed to several priests, to be celebrated on the same day or within the space of a few days, for the said intention?

V. Whether on days occurring in the tricenary, on which a Mass of Requiem is permitted by the rubrics, it must itself be read in order to satisfy the burden of the Gregorian tricenary?

VI. Whether the Altar of St. Gregory on the Caelian Hill in Rome is truly and properly privileged?

VII. What conditions are required for obtaining the privilege of a Gregorian Altar *ad instar*?

VIII. Whether a personal privilege of a Gregorian Altar *ad instar* is granted? And insofar as negative:

IX. What is to be said of concessions of a personal Gregorian Altar perhaps already made?

Response. To I: In the affirmative, as in the decisions of the Sacred Congregation of Indulgences, January 14, 1889.

To II: In the negative. To III: In the affirmative. To IV: In the negative. To V: In the negative; nevertheless it can laudably be read, by reason of piety toward the departed, on days on which it is lawful and fitting. To VI: In the affirmative, according to the Rescript from the audience of His Holiness, dated February 18, 1752. To VII: Henceforth Gregorian Altars are not to be granted. To VIII: In the negative. To IX: Let them be considered as mere concessions of a simply privileged personal Altar."

1380. What of the heroic act of charity with regard to the privileged altar? A personal indult of a privileged altar on each day of the year, as also the faculty of applying to the departed all indulgences granted and to be granted for the living, has been granted for the heroic act of charity toward the souls of Purgatory. Sacred Congregation of Indulgences, Decree *Urbis et Orbis*, November 20, 1854.

This act consists in this: that one of Christ's faithful, either using some formula or only mentally, offers to God for the souls of Purgatory all satisfactory works which he himself will perform as long as he lives, and all indulgences which he can gain, and also all suffrages which in any way can come to him after death. Sacred Congregation of Indulgences, December 18, 1885.

But an heroic act of this kind does not prevent someone from satisfying the obligations which he has, and from offering suffrages for this or that soul. The heroic act of charity can be revoked. Sacred Congregation of Indulgences, February 20, 1907; *Acta Sanctae Sedis*, vol. 40, p. 370 ff. E.M.

Principal Other Indulgences

1381. The Stations of the nurturing City. The Stations at Rome are those sacred places distinguished by relics of the Saints, which the faithful are accustomed to visit for gaining the indulgences which are determined for the appointed days. Sacred Congregation of Indulgences, July 9, 1777. The days are found in the Roman Missal. And Regulars who have the privilege that, by visiting the churches of their own Order, they may gain the indulgences of the Stations, acquire them on the aforesaid days noted in the Roman Missal, and not also on others. Sacred Congregation of Indulgences, March 7, 1678. The indulgences of the Stations of the nurturing City are contained in the Rescript of the Sacred Congregation of Indulgences, July 9, 1777, February 28, 1827.

1382. Portiuncula. This is a plenary indulgence which those who visit churches of the Order of St. Francis gain *toties quoties* on August 2, from first vespers, from noon, by praying for some time in them, confessing sins, and approaching Communion, although in other churches, and on the vigil, indeed even on July 31 and 30. This indulgence in the church of St. Mary of the Angels near Assisi is not suspended during the Jubilee of the holy year.

It was granted that Christ's faithful could gain this indulgence also in other churches. And the concessions made have been prolonged without a day. Likewise provision for new concessions, also without a day, is committed to the respective Ordinaries, who can also, in place of August 2, establish the Sunday next following for gaining the aforesaid indulgence. Holy Office, May 26, 1911; *Acta Apostolicae Sedis*, vol. 3, p. 234.

1383. Scapular. Those wearing the scapular of the Blessed Virgin Mary of Mount Carmel are piously believed to be preserved from eternal fire. Moreover they enjoy the Sabbatine privilege: that the Blessed Virgin frees those wearing it, on the Saturday after their death, from the punishments of Purgatory.

Soldiers can be aggregated to the confraternity of the Holy Scapular of the Blessed Virgin Mary of Mount Carmel, and gain its indulgences and graces, provided they impose upon themselves the aforesaid scapular already previously duly blessed, and also pour forth some prayers to the Blessed Virgin Mary. Pius X, January 4, 1908.

In place of a scapular, for gaining the respective indulgences, not excepting the Sabbatine privilege, there can be worn a medal of metal, around the neck or otherwise decently upon one's person. On the front side it must bear Our Lord Jesus Christ showing His Most Sacred Heart, and on the reverse the Blessed Virgin Mary. It must be blessed with as many distinct blessings as there are imposed scapulars, by a single sign of the cross, by any priest who has the respective ordinary or delegated faculty of blessing scapulars.

But it is not necessary that someone already be enrolled in the Scapulars; rather he can be enrolled afterwards. Also several medals can be blessed together, which the faithful have together in some assembly, by one sign of the cross, for each scapular. Holy Office, June 4, 1913.

1384. Indulgences of Confraternities are acquired from the day of admission. Admissions to pious Confraternities made without the inscription of names and their transmission have been sanated. And His Holiness "declared that, while the obligation in conscience of inscribing and transmitting the names remains firm, according to the decrees and other prescriptions of the Holy See, the faithful, by the very fact that they are admitted by one legitimately deputed, are to be considered duly enrolled for this effect only: that they may be able to gain indulgences and become participants in other spiritual graces, even if their names, from whatever cause, have not been entered in the register of the sodality." Sacred Congregation of Indulgences, April 23, 1914; *Acta Apostolicae Sedis*, vol. 6, p. 308.

1385. Way of the Cross. The indulgences for the pious exercise of the Way of the Cross are those which someone would obtain if he personally visited the stations of the Way of the Cross in Jerusalem.

For acquiring the indulgences of the Way of the Cross, its legitimate erection is required, made by one having such faculty, either from the Holy See or from the Minister General of the Friars Minor. The aforesaid faculty must be given in writing for validity. The Friars Minor can erect them, namely either the superior of the place or another of his subjects by his commission.

Regularly it can be erected in churches and public or private oratories, and by special indult it can also be erected outside churches or oratories. The written consent of the pastor and of the superior of the church, religious house, or other pious place where the erection is to be made is required. But the consent of the pastor is not necessary if the place is exempt from him by law or in fact. Likewise the written consent of the Ordinary of the place is required for validity, unless it is a question of churches and houses of Regulars.

Fourteen crosses for the fourteen Stations are to be blessed, as is had in the Appendix of the Roman Ritual; and a document of the erection is to be drawn up and is to be preserved in the episcopal archive or in the archive of the place in which the erection was made.

According to the decrees of January 30, 1839, and November 23, 1878, the indulgences of this most holy exercise are annexed only to the crosses. Hence, according to the ancient and received practice, the crosses must stand out completely and conspicuously above the painted tablets. Sacred Congregation of Indulgences, March 27, 1901, Congregation of Priests of the Heart of Jesus.

For gaining the indulgences, only this is required: to go from one station to another, meditating on the Passion of Our Lord Jesus Christ, insofar as this is possible from the multitude of the faithful and the narrowness of the place. Sacred Congregation of Indulgences, February 20, 1841.

Those who are legitimately impeded from visiting the stations of the Way of the Cross can gain their indulgences by reciting fourteen *Pater*, *Ave*, and *Gloria*, and at the end five *Pater*, *Ave*, *Gloria* in memory of the Holy Wounds of Christ, and finally one *Pater*, *Ave*, and *Gloria* according to the mind of the Supreme Pontiff, while at the same time holding in the hand a Crucifix blessed by some Superior of the Friars Minor, or by another Priest who has obtained this special faculty from the Holy See. E.M.

Besides the indulgences which are acquired by going through the regularly erected Stations, or, when there is a just impediment, by shorter prayers before a Crucifix blessed by the Friars Minor, all other concessions are revoked, and by name those which regard the beads called beads of the Way of the Cross. Holy Office, July 24, 1912.

1386. Crosses called "from Missions." By Decree of the Holy Office, August 13, 1913, all preceding Indults and Privileges having been revoked, uniform indulgences were established for Crosses which are called "from Missions." *Acta Apostolicae Sedis*, vol. 5, p. 429.

1387. Indulgences and privileges annexed to the Exposition of the Most Blessed Sacrament. Cf. *Acta Apostolicae Sedis*, vol. 6, p. 74 ff.

1388. Apostolic Indulgences. The indulgences which the Supreme Pontiff is accustomed to annex to objects presented to him by the faithful are only those which are called Apostolic, and which are contained in the list edited by the Sacred Congregation of Indulgences. Holy Office, June 2, 1913; *Acta Apostolicae Sedis*, vol. 5, p. 305.

The indulgences which His Holiness Our Lord Benedict XV imparts by the blessing of devotional objects. Cf. *Acta Apostolicae Sedis*, vol. 6, p. 503 ff.

Warnings. In order that someone may be able to gain the indulgences which the Supreme Pontiff Benedict XV imparts to all Christ's faithful of either sex who retain one of the beads, rosaries, crosses, crucifixes, small statues, and medals blessed by His Holiness, it is required:

1. That Christ's faithful wear on their own person one of the objects mentioned.
2. But if this is not done, it is required that they keep it in their own room, or in another decent place of their dwelling, and devoutly recite before it the prescribed prayers.
3. Printed images, painted images, and likewise crosses, crucifixes, small statues, and medals made of tin, lead, or any other fragile or consumable material, are excluded from the concession of the apostolic blessing.
4. Images must represent Saints who have either already been canonized in the customary form, or have been entered in duly approved martyrologies.

The indulgences which the Supreme Pontiff is accustomed to annex to various pious objects are only those which are enumerated in the list edited by the Sacred Congregation of Indulgences, unless the Supreme Pontiff himself expressly declares otherwise. Sacred Congregation of Indulgences, June 12, 1913; *Acta Apostolicae Sedis*, vol. 5, p. 305.

1389. Plenary indulgence *toties quoties* on November 2. "On November 2 of any year, Christ's faithful, having confessed and been refreshed by Holy Communion, as often as they visit some church or public or semipublic oratory to give suffrage to the departed, and there pray according to the mind of the Supreme Pontiff, so often can gain a plenary indulgence, to profit only the souls subject to expiatory flames." Holy Office, June 25, 1914; *Acta Apostolicae Sedis*, vol. 6, p. 378.

1390. Apostolic Blessing in the article of death. The faculty of imparting the Apostolic Blessing, with a plenary indulgence in the article of death, is granted to all Bishops who request it. Bishops can

subdelegate it to other Priests. It is to be imparted to all the sick who request it, even to children not yet admitted to First Communion, when they are constituted in danger of death.

The formula prescribed by Benedict XIV is to be used, and it is found in the Roman Ritual. It is necessary that the sick person have received the Sacraments of Penance and Eucharist; but if this cannot be done, it suffices that, at least contrite in heart, he devoutly invoke the Name of Jesus, and receive death from the hand of the Lord with an even and willing soul.

The sick person does not gain this indulgence unless he is in the true article of death and consequently dies. Therefore this indulgence can be acquired only once and is to be given only once by the Priest, even if someone received it in the state of mortal sin or afterwards fell back into mortal sin. It will be enough that before death the aforesaid sick person duly fulfill the required conditions for gaining that indulgence. It can be repeated only if the sick person recovers and falls into a new danger of death. E.M.

Appendix

On Priestly and Religious Vocation

To nn. 246, 255, 256. "Monsignor,

By reason of the dissensions which have arisen on the occasion of the twofold work of Canon Joseph Lahitton on *The Priestly Vocation*, and of the importance of the doctrinal question raised there, Our Most Holy Father Pope Pius X has deigned to appoint a special Commission of Eminent Cardinals.

This Commission, after maturely examining the arguments in favor of one and the other thesis, pronounced, in its plenary meeting of last June 20, the following judgment:

"The work of the distinguished man, Canon Joseph Lahitton, whose title is *La Vocation Sacerdotale*, is in no way to be reproved; indeed, insofar as it maintains: 1. that no one ever has any right to ordination antecedently to the free election of the Bishop; 2. that the condition which, on the part of the one to be ordained, must be attended to, and which is called priestly vocation, by no means consists, at least necessarily and by ordinary law, in some internal aspiration of the subject or invitations of the Holy Spirit to entering the priesthood; 3. but on the contrary, that nothing more is required in the one to be ordained, so that he may be rightly called by the Bishop, than a right intention together with suitability, placed in those gifts of grace and nature, and approved through that probity of life and sufficiency of doctrine, which make a founded hope that he will rightly undertake the duties of the priesthood and be able to observe its obligations holily: it is to be praised exceedingly."

His Holiness Pius X, in the audience of June 26, fully approved the decision of the Most Eminent Fathers, and he charges me to give notice of it to Your Excellency, who will kindly communicate it to the one concerned, Canon Joseph Lahitton, and have it inserted in full in the *Semaine Religieuse* of the Diocese..." Rome, July 2, 1912. R. Cardinal Merry del Val.

For rightly embracing the religious state, besides the general invitation made to all, a special divine vocation is required. This same divine vocation also is necessary for embracing the priestly state. Matthew 19:11.

Now this divine vocation is had by supernatural internal illuminations of the intellect and inspirations of the will, by which someone judges such a state to be suitable, useful, or even in some way necessary for himself in order to attain holiness of life and eternal salvation, and conceives and constantly fosters the desire of embracing this state. St. Thomas, II-II, q. 189, a. 10, ad 1.

And this will, since it is a will of the end, is that right and efficacious intention which is altogether necessary for actually embracing the priestly and religious state.

But the aforesaid judgment of the intellect and rational aspiration of the will, proceeding from special divine providence, can be had in various ways. St. Ignatius of Loyola, *Spiritual Exercises*, on Election. Moreover this divine vocation is shown by various signs. For it is together with aptitude, both internal and external, for the aforesaid state.

But it must be recognized by legitimate Superiors through positive proof, and must be held ratified for its effect, after an examination duly made beforehand concerning the divine vocation itself. And this legitimate admission or election fully and adequately constitutes the divine vocation. Roman Catechism, on Orders, n. 3.

Wherefore, according to the common opinion of St. Alphonsus, a cleric who up to this point has been in shameful sin, whether relapsing or customary, although he has sincere sorrow for his sins and the purpose of not sinning thereafter, and can be absolved, nevertheless cannot be admitted to sacred orders unless beforehand, from other indications, he gives morally certain hope of himself, that he will live constantly in holy chastity. St. Alphonsus, book 6, n. 64 ff.

1. The question concerning divine vocation to the ecclesiastical state has been debated, and various opinions of authors are found. There are those who place it in legitimate admission to sacred orders made by ecclesiastical superiors. There are those who place it in an inclination and a certain attraction which someone experiences in himself toward the priesthood. Others are content with the simple will of ascending to the priesthood or of embracing the religious state, together with the will then of carrying out the obligations of the same state. Others place it in aptitude for the ecclesiastical state. Others establish it in the various ways by which the will and purpose of embracing the ecclesiastical state is had. Finally, others deny that any divine vocation is necessary, since it is free to all to embrace any state whatever.

2. What is to be thought of these various opinions is shown sufficiently and more than sufficiently by the Decision of the Most Eminent Fathers and by the proposed thesis, which looks at divine vocation taken adequately and completely, and which we shall soon try to declare and demonstrate. Let it only be permitted to note beforehand that, in our very humble opinion, a special vocation of God to the state of the counsels, such as the religious state is and also the priestly state, can in no way be denied. And this is established from the very Decision of the Most Eminent Fathers related at the beginning, and from the declaration and demonstration of the proposed thesis, which was publicly defended in the Academy of Moral Theology held in the Pontifical Gregorian University on May 24, 1912, with His Eminence Cardinal Casimiro Gennari presiding, who publicly approved and praised it in most ample words. And that thesis in reality is nothing but a certain explanation and declaration of that Decision, although it preceded it in time.

3. Certainly in the aforesaid Decision of the Most Eminent Fathers it is asserted that, antecedently to the free election of the Bishop, as regards priestly ordination a right intention is required together with suitability for the aforesaid state. But this right intention, or will of embracing the ecclesiastical or religious state, together with suitability for it, is precisely that which constitutes divine vocation, since that intention and will is from God.

Hence Pius X, in the Catechism published at Rome by his command in the year 1913, n. 404, to this question: "Would one who entered the Priesthood without vocation do wrong?" gives this answer, which, like the question, altogether supposes a prior vocation to the Priesthood: "One who entered the Priesthood without vocation would do very great wrong, because etc." And in the same Catechism, n. 405, to this other question: "What duties do the faithful have toward those called to Orders?" this answer is added: "The faithful have the duty of leaving to their children and dependents full liberty to follow the vocation, etc." Therefore, in order that someone rightly enter the Priesthood, he must have a prior vocation to it, namely a DIVINE VOCATION. And this as regards the priestly state.

4. As regards the religious state, in the Norms of the Sacred Congregation of Bishops and Regulars, approved in General Congregation on June 28, 1901, and which constitute the law in force in the Church for Institutes of simple vows, article 56 asserts that divine vocation is altogether required, and in the first place, for admitting someone into the Institute: "The conditions required in those to be received are: first of all, A TRUE VOCATION PROCEEDING FROM A SUPERNATURAL END." Behold that RIGHT INTENTION, or DIVINE VOCATION.

5. Other things being omitted, the stated assertion is confirmed from innumerable documents, especially of the Supreme Pontiff Pius X, and from the Constitutions continually approved by the Sacred Congregation of Bishops and Regulars and now by the Congregation on Religious. Pius X, Constitution *Susceptum inde*, March 25, 1914, says: "The perpetual care of the Church, that unworthy or not sufficiently suitable ministers be kept away from the Priesthood; the constant solicitude of the same, that those who have been approved AND CALLED BY GOD may be prepared for it in such a way that, etc."

"Let the Bishops promote..., as the Tridentine prescribes, according to the necessity of the dioceses; and in promoting in this way they will be able to choose only those who are truly suitable, sending away those who would show inclinations contrary to the priestly vocation, chief among them lack of discipline, and that which generates it, pride of mind." Pius X, Encyclical Letter *Pieni l'animo*, July 28, 1906.

And the same Supreme Pontiff Pius X wrote to the Master General of the Order of Preachers on August 4, 1913: "Let the Prelates of the Order take complete care that they do not hastily, nor in groups, admit young men concerning whom it is uncertain whether by divine breath they choose that most holy manner of life." Is this not a divine vocation prerequired for rightly embracing the priestly and ecclesiastical state? Cf. the first Supplement to the 4th and 5th ed. of the *Institutiones Theologiae Moralis*, and 4th ed. of the *Enchiridion Morale*, 3rd ed., p. 62 ff.

Likewise Pius X, writing to the same Father General of the Dominicans on May 7, 1907, expressed himself thus: "The Chapter Fathers will understand how important is the enlightened choice of young novices, and their gradual formation. If it is true that Vocation comes from God, it is no less true that God deigns to make use of second causes to effect the designs of His eternal wisdom."

Likewise by a chirograph dated June 1, 1914, concerning the Canossian Virgins to be educated for their sacred missions, the Supreme Pontiff Pius X established that "a certain house be established for educating and forming, for so great a task and burden, those Canossian virgins who, God calling, shall have willed to undertake it." *Acta Apostolicae Sedis*, vol. 6, p. 341.

And by an autograph of January 28, 1912, to the students of the Seminary of Reggio, in Emilia, Pius X prays God that "they may show most certain proofs of the divine vocation to the priestly state... through piety, discipline, and study."

6. Benedict XIV, *de Synodo*, book 11, chap. 2, n. 12, likewise prescribes that clerics who cannot be received in the Seminary be taught "with what gifts and virtues those who desire worthily to approach the ministry of the sanctuary ought to be furnished; what are the true indications of an ecclesiastical vocation; what manner of life, etc." And n. 16: "nor let any be admitted into the clergy except those who are recognized as both deserving and endowed with the required qualities, and, so far as it is permitted to man to judge concerning interior things, called by divine vocation to ecclesiastical ministries."

7. The spiritual director in Seminaries will give suitable admonitions to the students, especially as regards priestly vocation. Confessors of Seminaries must impose the obligation of withdrawing from the ecclesiastical state on those who would show that they are not called to it. And to the higher courses none are to be admitted except those young men who have given signs of vocation to the ecclesiastical state. Articles 54, 56, 86 of the Norms for the educational and disciplinary ordering of Seminaries in Italy, Sacred Congregation of Bishops and Regulars, January 18, 1908, which the Supreme Pontiff Pius X ordered to be observed and put into execution by all whom it concerns.

It is decreed that one is to be kept from sacred orders "who does not present certain signs of vocation, or does not seem furnished with the qualities required for the ecclesiastical state." Sacred Consistorial Congregation, Decree *Vetuit S. Tridentina Synodus*, December 22, 1905.

The Sacred Congregation on Religious, Decree of January 1, 1911, established several things as regards lay brothers for promoting in them with more earnest care the holy purpose of vocation. *Acta Apostolicae Sedis*, vol. 3, p. 30. And it also established several things for Religious bound to military service, lest they lose the gift of holy vocation. *Acta Apostolicae Sedis*, vol. 3, p. 37. And again, in the Decree of September 7, 1909, concerning certain persons not to be admitted into Religious Families, it begins thus: "Although the Church of Christ is affected with spiritual joy when the faithful, by mature deliberation and right intention, embrace the state of perfection in Religious Families, nevertheless solicitous of quality rather than number, she has so regulated entrance into the Novitiate and profession of vows, that she decreed that only those be admitted to observe the evangelical counsels in religious houses who would give proofs of divine vocation." *Acta Apostolicae Sedis*, vol. 1, p. 709.

And coherently with the Norms, in article 8 of the Constitutions of the Sisters Reparatrixes of the Most Sacred Heart of Jesus, which very recently were definitively approved by the Sacred Congregation on Religious, as in others, it is established: "No persons shall be admitted into the Institute of the Sisters Reparatrixes unless they have a true supernatural vocation."

Nor is the following Decree of the Holy Office to be passed over in silence, which openly presupposes and affirms a prior divine vocation to the ecclesiastical state.

"DECREE. Sodalities established for promoting and assisting ecclesiastical vocations are enriched with spiritual graces. Certainly most provident God is present to His holy Church, that He may send laborers into the harvest at the opportune time; but He does not disdain that His faithful very often undertake to be cooperators in a mission of this kind. He is indeed the author of the most pious counsel by which many Sodalities have arisen throughout the world for fostering, protecting, and assisting ecclesiastical vocations... All and each of the sodalities whose principal and immediate end is to promote ecclesiastical vocations and to help them by suitable means..." Holy Office, May 28, 1913; *Acta Apostolicae Sedis*, vol. 5, p. 236 ff.

8. The Most Reverend Bishop John Régine, Bishop of the Diocese of Newcastle, in his Pastoral Letter for the Lent of the present year 1915, p. 7, says that bad priests are present in the clergy because "some, NOT CALLED, entered the sanctuary by the window as a thief and robber."

And the Most Reverend Bishop of Arezzo, John Volpi, in his Pastoral Letter of the year 1914, distinguishing between internal and external vocation, says that this latter is the authentic and official vocation, but that for it an internal divine vocation is altogether presupposed, either from divine revelation, or from some extraordinary motion of the Holy Spirit, or from one's own free supernatural election, namely made in the spirit of faith and with the help of ordinary grace; and this purpose indeed must often be renewed, so that finally in effect it may really attain the end. "It is enough that the vocation arise from an intention, which is the fruit of a deliberation and of an election proceeding from our free will, which never excludes grace, of course, but instead always supposes it." Pp. 8, 18, 19, 28, 30.

And the same Most Reverend Bishop of Arezzo, loc. cit., p. 15, says: An efficacious means for having good priests is to ordain only truly good priests, because these "will work with great zeal in rightly cultivating the souls of young boys, and by such a means they will cause the seed, that is, the natural and supernatural predispositions, of the divine vocation to unfold in a good number of them... in contrast with a priest who is not good, who... because he has never experienced in himself so sublime a vocation, or has not corresponded to it, is unfit to discern it, to nourish it, to develop it in others."

Moreover the praised Bishop of Arezzo excellently insists in his Pastoral Letter on this preparation of young men of good disposition for the priesthood. But how finally will young men be able to arrive at the priesthood without any aspiration to it?

And this aspiration, if it is truly had in them, certainly is not without grace, which is in the supernatural illumination of the intellect and inspiration of the will by the Holy Spirit. "It is God who works in us both to will and to accomplish, according to good will." Philippians 2:13.

See also *Monitore Ecclesiastico*, vol. 25, p. 125 ff., May 31, 1913; vol. 25, p. 221 ff., July 31, 1913.

9. Now the general vocation of all to the state of perfection, and consequently to the religious and priestly state, is established from the very words of Christ, inviting all to follow Him perfectly, by the observance proposed to all not only of the precepts, but also of the evangelical counsels. To all Our Lord Jesus Christ even now says what He said to that young man who from his youth had kept all the commandments: "If thou wilt be perfect, go, sell what thou hast, and give to the poor,... and come, follow me" (Matthew 19:21). The Apostle also repeats to all the invitation of Jesus Christ: "Concerning virgins I have no commandment of the Lord, but I give counsel.... She shall be more blessed if she so remain, according to my counsel" (1 Corinthians 7:25, 40).

10. But another special divine vocation is required for embracing the aforesaid state, as is asserted in the first part of the proposed thesis. For, as Our Lord Jesus Christ Himself said to the Pharisees: "Not all take this word, but they to whom it is given" (Matthew 19:11). *Not all take it* is not said only of intellectual cognition, by which someone judges celibacy to be superior to matrimony, but is said of such an intellectual cognition by which he approves that virginity to be preserved, and by which consequently the will is efficaciously impelled to embrace it.

Therefore, after Christ said, "Not all take this word," He immediately adds: "but they to whom it is given." Therefore a special benefit of God is required, a special gift of God, "but they to whom it is given"; and this gift is a special divine vocation.

11. After the Apostle in 1 Corinthians (7:1 ff.) had affirmed matrimony to be good and virginity to be preserved as better, he immediately thereafter says: "Except to each one as the Lord hath divided, each one as God hath called him, so let him walk." And again: "Let every one remain in the vocation in which he was called." And a third time: "In what state every one was called, brethren, in this let him remain with God."

According to the Apostle, not all are called to matrimony, nor all to preserving virginity. Nor likewise are all called to the religious state, to the priesthood, and to the apostolate. Therefore if virginity is far more excellent than matrimony, if the religious state excels the secular state, if the priestly state far excels the lay state, then for this and for that there is a special vocation from God, a special grace. If according to the same Apostle "every one hath his proper gift from God, one indeed after this manner, and another after that" (ibid., v. 7), one, as the same Apostle says, "bound to a wife," another "loosed from a wife" (v. 27), one woman "joined in matrimony" (v. 10), another "unmarried and a virgin" (v. 24), is it not a special gift of God that someone fortunately embraces virginity, and more fortunately the priestly and religious state, "having obtained mercy from God, that he may be faithful" (1 Corinthians 7:25), which God in His wisdom grants to some and does not grant to others?

12. "Divine vocation," says St. Alphonsus, "is especially necessary for assuming the ecclesiastical state.... However learned, prudent, and holy someone may be, he cannot of himself enter the sanctuary unless first he is called to it by God and is introduced into it by God" (in the work *Selva di materie predicabili*, chap. 10 of the first part). This divine vocation is interior, as is evident of itself.

13. Now who are those to whom this has been given from heaven, or in what does this divine interior vocation consist? The other part of our thesis responds to this second question. This divine interior vocation consists in supernatural internal illuminations of the intellect and inspirations of the will, by which someone judges such a state to be suitable, useful, or even in some way necessary for himself in order to attain holiness of life and eternal salvation, and conceives and constantly fosters the desire of embracing this state; and thus he takes that word, with docile intellect and efficacious will, which not all take. For we are treating of a full and perfect divine vocation, which is brought through to its effect.

14. After Christ uttered these words: "Not all take this word, but they to whom it is given," He Himself at once explains to whom it has been given, and how. For He says: "There are eunuchs who were so born from their mother's womb," namely from a defect of nature, and consequently from natural necessity; and therefore that supernatural gift is not to be sought in these. But Christ proceeds, saying: "And there are eunuchs who were made by men," that is, by the violence of others, the malice of others. Therefore neither are these those to whom the heavenly gift of virginity and chastity has been bestowed from above.

And finally Christ added: "And there are eunuchs who have castrated themselves for the kingdom of heaven." To understand this literally would indeed be absurd, just as it would be altogether absurd to understand literally those other words: pluck out thy right eye and cast it from thee... cut off thy right hand and cast it from thee (Matthew 5:29-30), cut off thy foot and cast it from thee (Matthew 18:8). For Christ says: "and there are eunuchs who have castrated themselves for the kingdom of heaven." Physical impotence contributes nothing at all to acquiring the kingdom of heaven for oneself and to preaching the kingdom of heaven to others.

Therefore the eunuchs who have castrated themselves are those who, by judgment of the intellect and by firm or constant purpose of the will, contain themselves, so that they may be free from the care and solicitude of a family and may be able to expend themselves wholly in divine service. For that phrase "for the kingdom of heaven" signifies this: that someone may please God more readily, more surely, and more fully. St. Paul expressly declared this: "He that is without a wife is solicitous for the things that belong to the Lord, how he may please God. But he that is with a wife is solicitous for the things of the world, how he may please his wife, and he is divided; and the unmarried woman and the virgin thinks on the things of the Lord, that she may be holy in body and in spirit; but she that is married thinks on the things of the world, how she may please her husband" (1 Corinthians 7:32 ff.).

15. That Christ designates a perpetual state for the whole course of life, and not a passing one for some brief time, the words themselves show clearly: those "who have castrated themselves." For by these words are designated those who are perpetually impotent, and who perpetually by their own will have rendered themselves impotent for marriage. And these are those who, by judgment of reason and by firm purpose of the will with the grace of God, are withdrawn in perpetuity from all marriage. And this is not fully fulfilled except by those who, by the solemn vow of sacred orders or of religious profession, render marriage illicit and invalid for themselves.

Certainly, in order that someone attain this holily in fact, it is altogether necessary that in his mind he consider the excellence and superiority of that state, its suitability, utility, and necessity, for the kingdom of heaven, for acquiring its goods, and that he conceive a constant, firm, efficacious desire for that virginal, religious, priestly state. And these indeed are supernatural illuminations of the intellect, supernatural inspirations of the will, and both the former and the latter are supernatural gifts of God, "to whom it is given."

And this indeed is that right intention required by the Decision of the Most Eminent Fathers, which right intention indeed is certainly a supernatural intention or supernatural will; for intention is an act of the will, before which there precedes a prior cognition of the intellect. Therefore that right intention is contained precisely in the aforesaid illuminations of the intellect and inspirations of the will. But in order that someone truly embrace the ecclesiastical state, it is necessary not only that he conceive that right intention, but also that he foster it constantly. Without this constancy, that right intention will be without effect. And this constant right intention appears still more clearly if it is considered that embracing the priestly and religious state does not happen in an instant, but lasts from first tonsure to priestly ordination, from postulancy to profession.

16. The Angelic Doctor, although he does not use the term divine vocation to sacred orders, nevertheless implicitly requires it, by requiring for them, besides knowledge, a holiness that is not common. Knowledge is required, says St. Thomas, "because one receiving order is set over the people to repel ignorance." Excellent holiness is required because, he says, "just as those who receive order are constituted above the people by the grade of order, so also they should be superior in the merit of holiness."

But explicitly, as regards the state of perfection, St. Thomas affirms divine vocation, and indeed as it is proposed in our thesis, namely by affirming divine inspiration, without raising any doubt concerning it; and he uses a still more significant word, namely divine motion. "It must be said," he says, "that when it is said, 'Prove the spirits, whether they are of God,' this has place in those things which are doubtful, whether they are OF THE SPIRIT OF GOD; just as there can be doubt in those who already are in religion whether he who offers himself to religion IS LED BY THE SPIRIT OF GOD, or feignedly. And therefore those who approach must be proved, whether THEY ARE MOVED BY THE DIVINE SPIRIT. But for him who approaches religion there can be no doubt whether the purpose concerning entrance into religion, having arisen in his heart, IS FROM THE SPIRIT OF GOD, whose office it is to lead man into the right land" (II-II, q. 189, a. 10, ad 1).

17. Now Our Lord Jesus Christ established in His Church a state of counsels and perfection, or the religious state; likewise He established in His Church a state of counsels and apostolic zeal, or the priestly state, by which priests themselves would more easily and abundantly attain the kingdom of heaven, and would promote the kingdom of heaven among others, by announcing the Gospel among the nations and serving their spiritual good. To this religious and priestly state the same Christ does not oblige all, but only invites and exhorts all, setting before all the excellence and superiority of the religious and priestly state.

Yet most certainly God moves not all, but many, by internal illuminations of the intellect and inspirations of the will, so that they in fact embrace the aforesaid state. And from this also it is that

God by His divine providence so distributes His natural and supernatural gifts that those whom He calls to the religious and priestly state are furnished with those gifts which are necessary for this kind of life.

Wherefore in *Monitore Ecclesiastico*, vol. 24, it is very aptly observed: "Those whom the Lord calls to a state of such holiness, He so disposes and prepares with natural and supernatural graces that they may be found suitable for it. Those whom God chooses for some office He so prepares and disposes that they may be found suitable for it. St. Thomas.

"Nor does He only make them suitable, but He renders their vocation sufficiently knowable, chiefly from that same suitability, Guerra, etc.," namely especially by probity of life and sufficient doctrine. "These two things are altogether required for clerics to be promoted: innocence of life joined with soundness of doctrine." Pius X, Motu Proprio *Sacrorum Antistitum*, September 1, 1910, par. VII. Cf. also *Monitore Ecclesiastico*, vol. 24, p. 318 ff.

And this divine motion and divine providence is divine vocation to the religious state, to the ecclesiastical state; it is certainly an internal divine vocation, according to the word of the Apostle.

18. And divine vocation, the voice of God calling, is so called by the Sacred Consistorial Congregation itself.

In the Circular Letters of the Sacred Consistorial Congregation dated July 16, 1912, that is, shortly after the praised Decision of the Most Eminent Fathers, concerning the Seminaries of Italy, to the Most Reverend Ordinaries, first the defect is noted in Seminaries of students who aspire to the ecclesiastical state, and then, as regards our matter, the following is had:

"Since by the divine promises it is certain that the Levitical stock will never dry up in Israel, and that divine assistance and vocations to the ecclesiastical state will not be lacking in the Church, even to the consummation of the age, nor will there ever be lacking generous souls who respond to the voice of the Lord even when He calls them to privations and sacrifice: there is no need to lose heart over the present difficulty from which the dioceses suffer. But rather it is fitting to think of the remedy.... Let them seek... young boys of good disposition... inclined toward the things of the Church,... let them cultivate them in piety... so that, if the voice of God should call them, they may be fit and prepared to respond to it and to enter the Seminaries at the proper time."

And afterwards, according to the same Sacred Congregation, due precautions are to be used in admitting them to the Seminary. "Let at least this be required... that they manifest an initial inclination toward the ecclesiastical state.... The mixing of students not called and others called to the ecclesiastical state always proves fatal to the latter, and... causes the loss of many vocations.... As regards the schools, care will be taken that they be internal and for seminarians alone or for aspirants to the ecclesiastical state.... They must have a character and direction proper to themselves, such as is required for aspirants to the Priesthood.... All the students of the gymnasium must compete for the State license.... Exceptions in this regard must be only in very rare cases of advanced age, distinguished piety, and certainty of vocation."

Behold, therefore, divine vocation prerequired not only for admission to the Priesthood, but for admission itself into Seminaries. This divine vocation indeed, according to the same Sacred Consistorial Congregation, is a special divine grace, which is manifested by the aforesaid inclination

toward holy things and aspiration to the ecclesiastical state, and therefore is not without some aspiration of the subject or invitations of the Holy Spirit to entering the Priesthood.

And here it must immediately be noted that the aforesaid inclination, which is manifested either from the first years of life or later and is fostered for a longer time, absolutely speaking is not altogether necessary for having a divine vocation, as is asserted in the Letter of the special Commission of Cardinals, and as will soon be clear from the various ways by which divine vocation can be had.

But it is one thing that priestly vocation does not require this inclination, from a certain internal almost continuous aspiration of the subject, or from almost continuous invitations of the Holy Spirit, at least necessarily and by ordinary law, as is had in the Declaration of the Most Eminent Fathers cited at the beginning; and it is another thing that, if the aforesaid inclination is had, by an almost continuous internal aspiration of the subject, or by almost continuous invitations of the Holy Spirit to entering the priesthood or the religious state, this is not a divine vocation. Certainly, by the very fact that it is asserted in the Decision of the Cardinalitial Commission that priestly vocation does not consist in it, at least necessarily and by ordinary law, it is implicitly affirmed that nevertheless it is a true priestly vocation, although not necessarily and extraordinarily.

And here, before we declare the aforesaid various modes of divine vocation, certain other very grave words of the Sacred Consistorial Congregation are to be noted, to whose letter the thesis established beforehand altogether corresponds. "The liceal State license," it says, "will not be obligatory for all, but indeed... for those OF WHOSE VOCATION the Ordinaries were not entirely certain." And this certainty certainly is not had as regards those who show themselves inclined to worldly things; on the contrary, it is had as regards those who show themselves inclined to sacred things, to piety, to the worship of God, which St. Jerome very beautifully describes in his Nepotian, still a cleric: "He was solicitous whether the altar was shining, whether the walls were without soot, whether the floors were clean, whether the porter was frequently at the door, whether the veils were always at the entrances, whether the sacristy was clean, whether the vessels were bright, and whether pious solicitude was disposed for all ceremonies; he neglected neither the lesser nor the greater duty." If in the Seminary all the students showed this same most pious inclination, would it not render the Bishop secure concerning their divine vocation?

19. Nevertheless God does not move and call all in the same way, as the doctors and teachers of the spiritual life teach. According to the commonly received doctrine handed down by St. Ignatius of Loyola in his *Spiritual Exercises* (Second Week, on Election), divine power so impels the will of some that all doubt, indeed even the faculty of doubting, has been taken away from the soul so that it does not fail to follow such an impulse, as we read happened to Blessed Paul and Matthew, and to certain others, when Christ called them.

Others God moves and attracts not with so great evidence and certainty, but He allures them by frequent, and often almost continuous, experience of interior consolation or desolation, by which the divine good pleasure concerning the election of this state becomes sufficiently clear and known.

Finally, God so most sweetly moves others that, as though left to their natural faculties, they themselves begin to seek and await the will of God, until the Creator Himself and Our Lord communicates Himself to the soul devoted to Him (Annotation 15). Considering first the end, for

what man was born, namely to praise God Our Lord and to save his soul, and desiring this, someone thinks and feels that this more excellent state of life is more useful and necessary for himself, so that by it he may be helped in the service of his Lord and in the salvation of his soul.

The first motion is extraordinary; the second is more ordinary, from a certain supernatural inclination; the third, simply ordinary, is from a prior consideration of the end and of the means to it, yet it is always a supernatural motion. For man cannot conceive heavenly desires by the powers of nature without grace.

Wherefore, since grace is situated in the supernatural illumination of the intellect and inspiration of the will, that third motion also is had, as is said in the proposed thesis, in supernatural illuminations of the intellect and inspirations of the will, by which someone judges such a state to be suitable, useful, and necessary for himself for obtaining holiness of life and the eternal salvation of his soul, and determines himself by a constant and efficacious will to desiring and embracing that same state. But this varied manner of having divine vocation is certainly not the vocation itself. Rather, interior divine vocation is in that supernatural will itself, in whatever way at last it is conceived.

20. This supernatural vocation does not exclude natural repugnance, which someone could easily experience. But then, with the grace of God assisting, the will is strengthened to do violence to nature. Likewise the same supernatural vocation does not exclude some natural affection; for grace, accommodating itself to human weakness, not rarely also uses the occasion of some natural advantage which could be had from such a state.

And if the end is not primary, but altogether secondary, subordinated to that end of supernatural good, of greater security of one's own salvation, of promoting divine glory, and of procuring the salvation of souls, then indeed the supernatural determination to embrace the religious and ecclesiastical state is not impeded by this, nor that right intention which must be had in it. Finally, that supernatural vocation which is had from consideration of the end and of the means can well first have its origin from exterior grace, from the counsel of others, from Spiritual Exercises made, from the reading of the lives of the Saints. "For God by His common Providence directs each one through parents, companions, confessors, teachers, and other occasions and second causes, by which it happens that this one devotes himself to matrimony, that one to the priesthood, but freely." Cornelius a Lapide, Commentary on 1 Corinthians 7:7.

21. This supernatural will, if it is truly from God and is efficacious, is together with internal and external aptitude for the aforesaid religious and ecclesiastical state. This internal and external aptitude, which is affirmed in the third part of the thesis, consists in those gifts of body and soul, of health and talent, by which someone is fit for fulfilling the obligations and for exercising the offices proper to the aforesaid state.

And among gifts of this kind there is especially numbered that honesty of morals by which someone gives good hope of himself, whether as regards his own sanctification, or as regards the good edification of his neighbor. By this aptitude are also removed all impediments which arise from extrinsic circumstances, as, for example, if someone were held by the obligation of supporting his own parents and of taking care of his own family.

The Letter of the Special Commission of Cardinals very knowingly joins this aptitude with the aforesaid right intention. In this aptitude, divine vocation is present only materially. And from it a sign of true vocation is had; as also from that right intention of seeking not the things which are one's own, but the things which are Jesus Christ's, another sign of true divine vocation is had. Let St. Alphonsus be heard: "For receiving orders divine vocation is required.... But the principal signs are: suitable knowledge,... probity of life... right intention, namely the desire of devoting oneself to divine glory and the salvation of souls." L., book 6, n. 802.

22. These things St. Doctor says in the Moral Work. And in another work, *Homo Apostolicus*, St. Alphonsus likewise altogether distinguishes divine vocation from its signs and indications.

"Concerning the state," he says, *Homo Apostolicus*, last tract, point 4, nn. 39-40, "to be chosen by some young man, let the Confessor not dare to determine it for him, but only from indications let him take care to persuade him of that state to which he can prudently judge him to be called by God. Especially speaking of those who wish to enter Religion.... Let the Confessor well test the vocation of his penitent, inquiring whether he has any impediment to it from inability, infirm health, poverty of parents?... If the end were worldly... that is not a true vocation.... But if the end is good, and an impediment is absent, the Confessor, nor another, neither ought nor can, without grave fault, impede or dissuade him from the vocation.

"If some young man wished to assume the state of a secular priest, let the Confessor not be easy in agreeing, without long and proved experience of a right end, and of knowledge, or of sufficient capacity. Secular priests indeed have the same, indeed a greater obligation than Religious; and on the other hand they remain in the same dangers of the world. Hence, in order that someone become a good priest in the world, it is necessary that beforehand he have led a very exemplary life, remote from games, from idleness, from wicked companions, and given to prayer and the frequenting of the sacraments."

23. Now in order that someone in fact embrace the religious and ecclesiastical state, it does not suffice that he have a divine vocation to it. Since each of those states is a state in the Church, and a state of no ordinary holiness, it is necessary that his vocation be recognized and approved by legitimate Superiors in the Church, and then that he be legitimately admitted and received by them into that state.

24. As regards the religious state, the matter is most clearly evident from the previous required information, probations, and examinations which have been established in the Rules of all Religious and in the Norms of the Sacred Congregation of Bishops and Regulars, and now of the Congregation on Religious, and also in the Apostolic Constitutions, especially of Pius IX, which are well known to all. Nor is this matter new in the Church, since it flows from the very nature of the thing.

25. In the Rules treated more fully for Cenobites among the works of St. Basil, Migne, vol. 31, cols. 943, 946, Question X, it is said in the Response: "Since the benign God, and the same Our Savior Jesus Christ, proclaims and says: Come to me all you who labor and are burdened, and I will refresh you, it is dangerous to repel those who, by our work, approach the Lord and wish to undergo His sweet yoke and the burden of the precepts, by which we are lifted up to heaven.

"Nevertheless it must not be permitted that anyone come with unwashed feet to the holy teachings; but just as Our Lord Jesus Christ questioned the young man who had approached Him concerning his past life, and when He had learned that it had been rightly lived, commanded him besides to obtain what was lacking for perfection, and then gave him the opportunity of following Him: so certainly also by us the past life of those approaching is to be weighed, and to those who have done anything rightly, more perfect teachings are to be handed down. But those who are converted either from a wicked life, or from an indifferent state pass over to the perfect life situated in the knowledge of God, these it is fitting to scrutinize, namely with what morals they are endowed, whether unstable, whether prone to making judgments....

"For these, besides the fact that they themselves receive no advantage, also become authors of detriment to the rest.... While they are still outside, let us send them away, lest the experiment bring some harm and destruction to the brethren.... But after each one has been declared, by every test being applied, as some vessel useful to the Lord and prepared for every good work by those who can skillfully scrutinize such things, then at last let him be numbered among those who have dedicated themselves to the Lord."

26. And as regards sacred orders, the discipline in force in the Church is that each one be ordained by his own Ordinary, who cannot do this unless, after previous testimony of approved persons, there is certainty concerning the sufficiency of knowledge, the honesty of morals of the one to be ordained, and also the absence of any canonical impediment, and concerning his true divine vocation to the ecclesiastical state.

27. These and other things, affirmed in the thesis and already explained, the Roman Catechism embraces thus, declaring who are to be considered divinely called to the priesthood and ecclesiastical ministries. "Just as," it says, "our Savior was sent by the Father, and the Apostles and Disciples into the whole world by Christ the Lord, so daily priests, endowed with the same power as they, are sent for the consummation of the Saints, unto the work of ministry, unto the building up of the body of Christ.

"Therefore the burden of this so great office is to be imposed rashly on no one, but only on those who can sustain it by holiness of life, doctrine, faith, and prudence. Nor indeed let anyone take the honor to himself, but he who is called by God as Aaron. But they are said to be called by God who are called by the legitimate ministers of the Church. For those who arrogantly introduce and intrude themselves into this ministry, concerning these it must be said that the Lord understood them when He says, I did not send the prophets, and they ran; and nothing can be more unhappy and miserable than this kind of men, nothing more calamitous to the Church of God." On the Sacrament of Order, n. 3.

Here, as is evident, the Roman Catechism is properly treating of mission, or of divine vocation adequately taken, by which those called by God to exercise the sacred ministry ARE SENT. And note that the Catechism asserts that those are called by God who are called by the legitimate ministers of the Church; that is, not all, but those alone. Those alone, because the election of the Bishop is the condition without which there is no legitimate vocation; but by no means all of those, because the Bishop can well be deceived by the fraud of one not called, or even through his own fault. Therefore those alone are said to be called by God who assume this ministry from legitimate superiors, not by

the suffrages of the people, nor by the power of any secular magistrate, nor by their own rashness, as the Council of Trent has it against the Innovators.

28. Then, proceeding to explain who are divinely called to the priesthood, who are to be chosen for the priesthood by the ministers of the Church, the Roman Catechism says: To aspire to the priesthood for the sake of gain is sacrilege; to proceed to the priesthood from hope of honors or riches is most pernicious; by the ambition and avarice of those who truly are hirelings, the priesthood is debased. Those alone are "LEGITIMATELY CALLED BY GOD who undertake ecclesiastical duties FOR THE SAKE OF THAT ONE THING, that they may serve the honor of God," loc. cit., n. 4. The priest to be created should be one who is greatly recommended by integrity of life and morals and by fitting knowledge, "because he must hold before others the light of virtue and innocence," loc. cit., nn. 31-32.

29. Wherefore rightly and deservedly it is said in the often-praised Letter of the special Commission of Cardinals: "No one ever has any right to ordination antecedently to the free election of the Bishop." Here it must be carefully noted that no one antecedently to the aforesaid election has a right to it, but antecedently to it he must altogether have right intention together with suitability, and the required gifts of probity of life and of approved sufficient doctrine, that is, divine vocation to the ecclesiastical state.

The required suitability and required gifts certainly are not had in some natural inclination to worldly things; and certainly those are not suitable "who positively aspire to the secular state." But on the contrary, suitability and required gifts certainly are had in a certain supernatural inclination to the sacred things of the Church, together with zeal for a holy life and sufficient talent for learning sacred doctrine, as is had in the praised Circular Letters of the Sacred Consistorial Congregation. And suitability, from what has been said, is generally had from a sincere intention and firm will of dedicating oneself to divine worship, to the glory of God, to the salvation of souls, to the salvation of one's own soul. Namely, he is not suitable who lacks divine vocation.

"Let them not be initiated to First Tonsure... concerning whom there is no probable conjecture that they have chosen this kind of life not by deceit to flee secular judgment, but in order to offer faithful worship to God." Council of Trent.

The author of the dissertation which is found in *Monitore Ecclesiastico*, vol. 27, p. 76, speaking of priestly vocation adequately taken, says: "Ecclesiastical vocation is a sufficient manifestation of the divine will that such a person become His minister. And this manifestation is made by full and certain suitability for the priesthood, opportunity of adding another priest to the clergy, necessity or utility of the Church, and the election of the Bishop." And certainly the chief condition of that suitability is the will and desire of such a state, not the will and desire of worldly things.

30. From the very words of the Roman Catechism which have been related, it is evident that each can be called a divine vocation: both the will inspired by God of living for God in this state of counsels and perfection, and the admission or election to it by legitimate Superiors, and at the same time also the mission to exercise the sacred ministry. And in reality, divine vocation, taken adequately and fully, embraces this whole thing. And if a distinction is made between one and the other, and that expression divine vocation is taken more strictly, then indeed in

ecclesiastical documents, and almost always among Theologians, it is very often restricted to that supernatural will divinely inspired, "to whom it is given."

As Benedict XIV proclaimed: "those who are called into the portion of the Lord are to be formed from their earliest age to piety and integrity of morals" (Encyclical Letter *Ubi primum*, December 3, 1740, § 2); so Pius IX says: Let no one be admitted to the priesthood unless, from the manner of his past life, he feels that he is called to the priesthood, Rule for the Pio Seminary, June 28, 1853. Leo XIII enjoins that among boys and adolescents there be discerned those to whom God has given a vocation, To the Clergy of France, September 8, 1899.

But Pius X commands: The vocation of the students is to be observed, and is to be nourished with due counsels; those are to be removed from theological studies and repelled from Seminaries who do not show that they are called, who do not show an ecclesiastical vocation, Rule for Seminaries, nn. 30, 54, 56. And in the Catechism of the Roman Province, also prescribed by the Supreme Pontiff Pius X, June 14, 1905, it is said that for embracing the priestly state divine vocation is first of all necessary, to be recognized from one's own suitability for the studies and obligations of this state.

And the same acceptance of divine vocation is often had in the historical Lessons of the Roman Breviary. Thus, for example, in Lesson IV of the Office of St. Fidelis of Sigmaringen, divine vocation is affirmed according as it is set forth in our thesis. For it is said: "When Fidelis had experienced the dangers of the forum, he resolved to enter upon a safer way of eternal salvation, and, enlightened by a heavenly vocation, a little later asked to be enrolled in the Seraphic Order among the Capuchin Friars Minor."

And in Lesson IV of the Office of St. Peter Martyr, it is said of him: "called by the Holy Spirit to a more sublime form of life, he undertook the Institute of the Order of Preachers." And in Lesson V of the Office of St. Bernardine of Siena, his vocation to the Order of St. Francis is narrated thus: "Tried by a grave illness, and after bearing it most patiently for four months, finally restored to health, he began to deliberate about undertaking the institute of religious life; and to prepare the way for himself in this, he rented a little dwelling at the far end of the city, and when he had hidden himself in it, he lived a life most austere in every respect, constantly praying God that He would show what he should follow. Therefore it came about divinely that he chose the Order of Blessed Francis before the rest, in which he excelled in humility, patience, and the other virtues of a religious man."

This certainly was an interior divine vocation. And it was also joined with an external vocation in St. Aloysius Gonzaga, who "was called to the Society of Jesus by a heavenly voice at Madrid." Lesson V of the Roman Breviary. On the feast of the Blessed Martyrs Mark Crisinus and Companions, September 7, Lesson IV says of Mark Crisinus: "When by divine instinct he felt himself impelled to the priesthood, he put on the clerical habit and applied his mind to theological studies." And of his companion in martyrdom it is said in Lesson V: "When he grew up, he felt himself called to enter the Society of Jesus, especially with this intention, that he might come to the aid of his homeland, infected by the heresy of Luther and Calvin and troubled by civil disturbances."

But as regards theologians, it suffices to recall to memory the very question which they commonly treat: namely, whether someone who omits to follow a divine vocation sins gravely and is in a bad state. St. Alphonsus, book 4, n. 78; book 6, n. 785.

30. But assumption to sacred orders, made by legitimate authority, is called election in the Roman Pontifical, as can be seen in the rite of ordination of a subdeacon, deacon, priest, and bishop. In the rite of ordination of a deacon it is said by the Bishop: "With the assistance of the Lord God and Our Savior Jesus Christ, we choose these present subdeacons into the order of the diaconate." And the rite of episcopal consecration is inscribed: "On the Consecration of One Elected Bishop"; and throughout that whole rite, in which there would especially be place for the text which is always brought forward, "He who is called by God as Aaron," the one to be consecrated is never called "called," but always "elected," from the beginning to the end of the consecration in the Pontifical.

And well known is what St. Alphonsus says, book 6, n. 804: "But if divine vocation is necessary for the Priesthood, it will be more necessary for the offices of Bishops and Pastors." But this admission or election made by legitimate ministers of the Church is also well both a vocation and is called a vocation, as we heard from the Roman Catechism. And in the Sacred Scriptures themselves divine election also is called vocation. Christ Himself in John (15:16) says to the Apostles: "You have not chosen me; but I have chosen you." And in Mark (3:13-14) it is said: "And going up into a mountain, He called unto Him whom He willed; and they came to Him, and He made that twelve should be with Him, and that He might send them to preach."

31. Nor indeed is it to be passed over in silence that the word vocation is found in the Roman Pontifical also in the prior meaning. In the Ordination of a Subdeacon the Bishop says: "Let us pray God and Our Lord, most dear brethren, that upon these His servants, whom He has deigned to call to the office of the subdiaconate, He may pour forth His blessing and grace." And in the blessing and consecration of Virgins the word inspiration also is found. For the Bishop thus asks a blessing from God upon the garments of the virgins: "that they may keep, with Thee protecting, the habit of blessed chastity which, with Thee inspiring, they receive."

Nor finally is the word of constant purpose lacking in the Pontifical. For in the ordination already mentioned of a subdeacon, the Bishop thus addresses those to be ordained: "While there is time, consider; and, if it pleases you to persevere in the holy purpose, in the name of the Lord come here."

32. Since these things are so, it is evident that although admission and election to the religious and ecclesiastical state is well and can also be called vocation, nevertheless, precisely taken, it is neither vocation adequately considered, nor is it divine interior vocation formally accepted, but it is external, authentic, official vocation, as the Most Reverend Bishop of Arezzo well says, which altogether presupposes the former.

And thus St. Thomas, in I-II, q. 108, a. 4, ad 1, asserts that the evangelical counsels are not expedient except for him "WHOSE AFFECTION IS INCLINED TO THESE THINGS. And therefore the Lord, when proposing the evangelical counsels, always makes mention of the suitability of men for the observance of the counsels." And II-II, q. 189, a. 1, ad 4, he teaches that no one ought to induce others to enter religion "before they are inwardly urged to this by the Holy Spirit."

But once this internal urging of the Holy Spirit has been had, the same Angelic Doctor, in the same question, article 1, unhesitatingly asserts that "children are bound rather to obey the Father of spirits than parents of the flesh. Hence the Lord reproved the disciple who was unwilling to follow Him

because of his father's burial." Therefore the Father of Spirits had already inwardly urged the aforesaid young man. Already before that external vocation of Christ an interior vocation of the Holy Spirit was present. "For vocation," says the same St. Thomas (I-II, q. 113, a. 1, ad 3), "refers to the help of God inwardly moving and exciting the mind."

Nevertheless someone can well fail to follow this vocation. Christ "called not only the innocent young man, but also Matthew the sinner. But Matthew followed Him calling, while the young man did not" (St. Thomas, II-II, q. 189, a. 1, ad 1).

33. The teaching of St. Alphonsus is twofold: he asserts, book 6, n. 802, that those who intrude themselves into the sacred ministry without vocation, explored by the aforesaid signs, cannot be excused; and that Bishops who promote those not called to sacred orders are to be reproved. Wherefore, as from St. Thomas...

...so from St. Alphonsus divine vocation is not conferred by the Bishop, but the Bishop is bound altogether to presuppose and verify it. After the prayer of Peter in the midst of the brethren, "Praying they said: Thou, Lord, who knowest the hearts of all men, show which one of these two Thou hast chosen" (Acts 1:15, 24). And in the Ordination of a Subdeacon the Bishop likewise prays: "Holy Lord, Almighty Father, eternal God, deign to bless these Thy servants, whom Thou hast deigned to choose for the office of the Subdiaconate." Roman Pontifical.

34. It is pleasing here to relate what His Eminence Cardinal Gasparri has concerning divine vocation to the clerical state, *de Ordine*, vol. 1, chap. 3, sect. 1, art. 1, n. 110 ff., Paris ed. 1893, p. 64 ff.

"All admit, except those who reject divine providence or the supernatural order, that God, independently of the merits of the creature, chooses some before others for the priestly state... and prepares the same by gifts, whether of body or of soul, suitable for worthily and laudably undertaking the sacred ministries. THIS ACT OF DIVINE SUPERNATURAL PROVIDENCE IS DIVINE VOCATION TO THE CLERICAL STATE.... From what has been said it is evident that one not called by God to the priestly state ought not to receive the priesthood.... On the contrary, it is evident that one called by God ought to embrace the clerical state....

"Except in evident cases, no one by his own private judgment, unless rashly, can define that he is not called by God, and much less that he is called by God to sacred orders.... Therefore, for exploring our vocation, we must usually seek counsel from others.... Namely, in the first place it belongs to the Bishop to explore vocation.... The Confessor supplies the place of the Bishop for the internal forum... the rector of the seminary for the external forum....

"Moreover the indications of vocation are sometimes extraordinary.... The ordinary sign of ecclesiastical vocation is indeed a supernatural sense inclining a man to embrace the clerical state, with regard to the glory of God and the salvation of neighbors. For God does not commonly call a man to the clerical state without inwardly inclining him by a certain supernatural aspiration, which is not sensible, and sometimes is resisted by affections contrary to nature, or even by fear, which the grave burden of the priestly ministry impresses upon souls.

"This inclination is necessarily accompanied by ardent charity toward God and toward neighbor on account of God, zeal for sacred studies, care for divine things.... If this constant and strong inclination from a right end is present, with the other affections indicated, and with due knowledge and due holiness, and no other impediment stands in the way, and if finally the Bishop, after making scrutiny, admits the candidate and judges him necessary or useful, divine vocation is morally certain."

35. After these things, it ought to seem very easy to all to take the step to proving the last part of the thesis, by which a cleric habituated in shameful sin or another similar sin is excluded from sacred orders as unworthy, unless from grave indications, either of a sufficient experiment already made or of some extraordinary grace, there is moral certitude that he will live holily thereafter, as the holiness of the priestly state demands.

36. This last part of the thesis reports the doctrine of St. Alphonsus in his dissertation on this matter, which moral Theologians commonly follow. Nevertheless, there are not lacking those who, on the contrary, opine that such a cleric can at the same time both receive absolution and be admitted to sacred orders. For, they say, if he has sincere sorrow and purpose by which he can be absolved, he can also be promoted to sacred orders, since that purpose contains the will not to relapse into sins and to employ the due means.

37. But this reasoning is not right. For to receive absolution it suffices to have sorrow in the present and the purpose of not sinning thereafter; and it is not required that a future relapse into sin, vice, and evil habit not be foreseen. Indeed, in the present, sincere sorrow for committed sins and a sincere purpose of not sinning thereafter can be had, and at the same time a future relapse into sins is foreseen. These things are not mutually incompatible, and they are proved by daily fact itself.

38. But for receiving sacred orders, on the contrary, it is necessary that there be some moral certitude that the one to be ordained will live chastely and holily. Concerning those to be initiated with first tonsure, the Council of Trent, sess. 23, chap. 4, *de Reform.*, says that those are not to be initiated with first tonsure "concerning whom there is no probable conjecture that they have chosen this kind of life in order to offer faithful worship to God," but from another human motive.

According to the same Council of Trent, loc. cit., chap. 5, those are not to be promoted to minor orders concerning whose good morals there is no certainty from diligent inquiry made beforehand. But as regards sacred orders, the same Council, loc. cit., chap. 8, first says that the honest morals of those to be ordained must be commendable; and then again, chap. 13, concerning the subdiaconate and diaconate, it expressly says that those are not to be promoted unless they hope, with God as author, that they can keep continence. Finally, chap. 14, concerning the priesthood, it decrees that those are to be assumed who have conducted themselves piously and faithfully... with good testimony of their life; and that these, after diligent examination preceding, be proved suitable, and be so conspicuous in piety and chaste morals that a shining example of good works and counsels of life can be expected from them.

39. Now one habituated in shameful sin has not conducted himself piously and faithfully, nor can he have good testimony of life, although here and now he has sincere sorrow for his past life

and a purpose for the future; and therefore he certainly cannot be proved suitable for the priesthood after diligent examination preceding. And since he is not conspicuous in piety and chaste morals, a shining example of good works undoubtedly cannot be expected from him.

Only then can there be had concerning him a probable conjecture and rational hope that, with God as author, the virtue of continence and chastity will remain in him, when, as St. Alphonsus has it, either from an experiment already made or from an extraordinary grace of God, he appears now clothed with the new man, who according to God is created in justice and holiness of truth. And in the cited Decision of the Most Eminent Fathers it is said that there is required for sacred ordination, besides sufficiency of knowledge, that probity of life which may make a FOUNDED HOPE that someone will rightly undertake the duties of the priesthood and be able to observe its obligations holily.

40. Wherefore, although a confessor cannot oblige a penitent to approach sacred orders (Sacred Penitentiary, August 27, 1829), nevertheless he can and must declare to him the obligation of withdrawing from them if he is unworthy.

Nor indeed is there to be fear that from this it will come about that a sufficient number of ministers will be lacking in the Church of God. For the Angelic Doctor thus refutes this objection: "God never deserts the Church so that there are not found suitable ministers sufficient for the necessity of the people, if worthy men are promoted and unworthy men rejected. And if so many ministers could not be found as there now are, it would be better to have few ministers than many bad ones, as Blessed Clement says" (Supplement, q. 36, a. 4); and Benedict XIV and Pius X also say this to the Archbishop of Caracas.

These things the Supreme Pontiff Pius X wrote very recently to the Archbishop of Caracas; and, addressing the Bishops of that Church, he says these things which regard the Venezuelan Church:

"You will give attention that your Seminaries be such as the Tridentine Synod ordered, that is, dwellings of religion and doctrine, in which clerical youths may be duly instructed for the offices and duties of the priesthood. First of all, therefore, as regards the discipline of morals, let a grave and austere discipline reign there, with you insisting on it; and let the students for sacred things be deeply formed in those virtues which are especially those of a priest: piety, chastity, solicitude for souls, and Christian humility, which moreover is the foundation of the virtues.

"But concerning the plan of studies which ought to flourish in your Seminaries, you can take a model from those things which are the foundation of the other virtues.... Permit Us to inculcate in your ears and souls that most grave word of the Apostle: lay hands hastily on no one. For if, after all the things which pertain to the proper education of students of the Clergy have been procured and prepared, you nevertheless do not take care that you give access to the priesthood only to the worthy, consider that all your labor has been in vain.

"But it is unworthy for a priest to be rude or not sufficiently instructed in doctrine, who ought to instruct others unto salvation; but far more unworthy is one who exercises among the people the teaching of Christian virtues, while he himself sticks in the mud of vices. Therefore know that it will not be lawful for you to admit anyone into sacred orders unless within the enclosures of the Seminary he has completed the legitimate course of studies with praise for diligence. But if someone, although he has done well in studies, nevertheless seems to be of morals not altogether upright, you

yourselves understand that it will be a great crime for him to be initiated into sacred things. For it is altogether better that somewhere there be no priest who has care of souls, than that there be one of such a kind who, offending by perversity of life, prepares pest and destruction for the Christian people instead of salvation." Letter *Sollicitis nobis*, December 8, 1910, *Acta Apostolicae Sedis*, vol. 4, p. 25.

Constitution of Pius X, Divino Afflatu

November 1, 1911.

Reform of the Divine Office

To n. 124.

By the new reform of the Office, at the individual greater and lesser hours the Psalter is recited, so distributed through the various hours and days that from Sunday to Saturday it is recited entire; for this reason a division of the longer psalms into various parts has been made, whether the office is of Sunday and of a feria, or whether it is of Saints. Nevertheless certain more principal Offices of the Lord, of the Blessed Virgin Mary, and of the Saints are excepted, for which the old order is to be observed. But the feasts of Saints retain their proper hymns, chapters, and prayers. Pius X, Constitution *Divino afflatu*, November 1, 1911; Rubrics to be observed.

The obligation of the Little Office of the Blessed Virgin Mary has been abrogated. Rubrics to be observed, title VII, n. 2.

The obligation of the Office of the Dead has been abrogated. November 2 is excepted, on which one complete Office of the Dead is to be recited, the Office of the Octave of All Saints, or any other office transferred to that day, being omitted. But any other Office, accidentally impeded, even of the first class and *a fortiori* of inferior rite, cannot be transferred to that day. Only an occurring Office of the first class is admitted, and a Sunday; in which case the Commemoration of the Dead is transferred to the third day, which will be held as the second, if nevertheless it is not similarly impeded. Rubrics to be observed, title XIII, nn. 1-2.

All votive Offices have been abolished. Rubrics to be observed, title VII, n. 1; Sacred Congregation of Rites.

The obligation of the Gradual and Penitential Psalms has been abrogated. Rubrics to be observed, title VII, n. 2. The psalms *Miserere* and *De Profundis* are no longer recited at ferial prayers.

Finally, the special rubrics of the Breviary and Missal were adapted to the new dispositions of the Motu Proprio of Pius X concerning feast days and of the Decrees of the Sacred Congregation of Rites, July 24 and 28, 1911, by Decree of the Sacred Congregation of Rites, January 23, 1912; *Acta Apostolicae Sedis*, vol. 4, p. 57 ff. Afterwards the Offices were ordered in a somewhat new way by the Motu Proprio of Pius X *Abhinc duos annos*, October 22, 1913, and by the Decree of the Sacred Congregation of Rites, October 28, 1913; *Acta Apostolicae Sedis*, vol. 5, p. 449 ff., p. 457 ff.

The Ordinary of the Breviary

The Ordinary of the Divine Office is distinguished from the Psalter and precedes the Psalter, distributed entire through the whole week, so that the 150 Psalms are recited in the week. In the Ordinary of the Divine Office is contained the general manner of reciting the Divine Office, together with the due changes for the various Offices to be recited at various times. This Ordinary of the Divine Office is like the Order of Mass, which is had in the Missal, which marks the general order to be kept in any Mass whatever.

The Manner of Reciting the Divine Office

Generally in the recitation of the Divine Office, unless it is of a privileged rite, the psalms with antiphons in all the hours, and the verses at Matins, are to be taken from the Psalter, from the occurring day of the week; but the rest either from the Time, or from the Proper, or from the Common, and the antiphons at *Magnificat* or *Benedictus*, as in the Proper or Common.

Offices of Privileged Rite

Offices of the Proper, or of the Common insofar as the Proper is lacking, still retain:

The Vigils of the Nativity of Our Lord Jesus Christ, from Lauds to None, Epiphany, Pentecost; Doubles of the first and second class; Feasts of Our Lord and of the Blessed Virgin Mary;

Feasts of the Angels, of St. John the Baptist, of St. Joseph, of the Holy Apostles; Entire Octaves whose Office is recited;

Sundays within the Octaves of the Nativity, Epiphany, Ascension, Most Holy Body of Christ, and Friday after the Octave of the Ascension, when the office is to be discharged concerning them.

Nevertheless Lauds in these Offices, and the lesser Hours, Prime, Terce, Sext, None, Compline, are taken from Sunday, as in the New Psalter and in the first schema of Lauds. At Prime, in place of Psalm 117, Psalm 53 is said, and the short Lesson is the Chapter of None. The antiphons are proper or from the Common. The rest is as in the Ordinary at Prime and Compline, proper or from the Common in the remaining lesser Hours.

But Lauds on the last three days of Greater Week, which are doubles of the first class, are of the current feria, in the second schema; and on Saturday the Canticle of Ezekiel is said: *Ego dixi: In dimidio dierum meorum*.

The antiphons of Lauds are repeated in the Hours, because they remain, as before, unchanged. Constitution *Divino afflatu*, Rubrics, title 1, n. 2.

Offices of Ordinary Rite, or Non-Privileged

The Offices of the occurring day of the week take the ferial Offices, or festive Offices not comprehended in the preceding, which are of the rite of greater or lesser double, semidouble, or simple. The psalms with antiphons are to be recited in all the Hours as in the Psalter.

The versicles before the Lessons of Matins are those which are designated through the year, outside Paschal time, or in Paschal time. The antiphons and psalms of the third Nocturn of Matins on Wednesday, and also the antiphons, psalms, and Canticle of Lauds of each feria, are taken from the

first schema. The antiphons of Prime, Terce, Sext, and None are those which are designated through the year or in Paschal time.

From Monday after Low Sunday up to Friday after the Octave of the Ascension, and in all Offices of three Lessons up to and including the Vigil of the Ascension, under one antiphon *Alleluia* are said the three psalms of each Nocturn in doubles or semidoubles, or the nine psalms of the single Nocturn in other Offices.

Feasts of rite lower than a double of the second class keep proper antiphons and psalms, and versicles of Matins, if they have them and where they have them. But the antiphons of Lauds are not repeated in the lesser Hours.

The whole Office is to be ordered in this way in non-privileged feasts:

In feasts of nine Lessons, at Matins, the Invitatory and Hymn are from the Proper or from the respective Common. The antiphons, psalms, and versicles of the three Nocturns are of the current feria; but on Wednesday the antiphons, psalms, and versicles of the third Nocturn are taken from the first Schema in the office of Saints. The Lessons of the first Nocturn are from the occurring Scripture, with responsories of the Time unless otherwise noted. The Lessons of the second and third Nocturns are as in the Breviary concerning the feast, with responsories from the Common or proper ones. But if in the first Nocturn there are proper Lessons and proper responsories, these are read.

At Lauds, the antiphons with psalms are of the current feria. The Chapter and the rest are from the Proper or respective Common. The antiphons and psalms are as in the first Schema for the office of Saints.

At Prime, the Hymn is as in the Ordinary. The antiphons and psalms are of the current feria; the Chapter is *Regi saeculorum*; the brief Responsory with *Gloria*, and the rest as in the Ordinary; at the end the short Lesson is the Chapter of None.

When, in a festive office, the psalms of Sunday are prescribed at Lauds and the Hours, then at Lauds the psalms are in the first place, and at Prime in place of Psalm 117, *Confitemini*, Psalm 53, *Deus in nomine tuo*, is said, without the Creed.

At Terce, Sext, and None, the Hymns are as in the Ordinary. The antiphons and psalms are of the current feria. The Chapter and the rest are as in the Proper or respective Common.

At Vespers, the antiphons and psalms are of the current feria. The Chapter and the rest are from the Proper or respective Common.

At Compline, the antiphons and psalms are of the current feria. The rest is as in the Ordinary. Nevertheless attention must be paid whether the preceding Vespers were entire, or at least from the chapter, of another feast or Office which requires psalms and antiphons in Compline from Sunday.

But in feasts of three Lessons, and in the Office of the Blessed Virgin Mary on Saturday, at Matins the Invitatory and Hymn are from the Proper or from the Common. The antiphons and psalms are of the current feria, the versicles and the rest in the first and second Nocturn being omitted, and the psalms with antiphons thus continued up to the versicle of the third Nocturn. The versicle designated for Paschal time is said also in the Office of the Blessed Virgin Mary on Saturday. The first and second

Lessons are of the current feria; the third is of the Office or feast, with two joined into one if there are two in the Breviary.

At Lauds and the other Hours, as in the office of nine Lessons. Constitution *Divino afflatu*, Rubrics, title 1, n. 3 ff.

Both the simple Office and that of St. Mary end at None and therefore lack second Vespers; nevertheless they can have first Vespers, which, together with Compline, are to be ordered as in the ordinary Office of a feast.

The simple Office "has only first Vespers, in which the ferial psalms are said, and from the Chapter it is of the feast, unless an office of nine Lessons concurs with it, because then only a Commemoration is made of it; and its office terminates at None, and nothing further is made of it, nor a commemoration." General Rubrics of the Breviary, title 3, n. 3.

In simple feasts which have at Lauds proper antiphons taken from another feast, as in the second feast of St. Agnes, at Lauds the antiphons and psalms of Lauds of the occurring feria are to be said, and from the Chapter and thereafter it is of the simple feast. Sacred Congregation of Rites, January 26, 1912.

In the Office of St. Mary on Saturday, at Lauds the antiphons and psalms of the occurring Saturday are to be said, and from the Chapter and thereafter it is of St. Mary. Sacred Congregation of Rites, January 26, 1912.

Sunday Offices

The Offices of Sundays are regularly to be retained. Pius X, Motu Proprio *Abhinc duos annos*, October 23, 1913, I.

From Matins up to Compline all things are as in the Psalter or in the Ordinary.

At Lauds the psalms are taken in the second place from Septuagesima Sunday to Palm Sunday, and then at Prime, in place of the psalm *Confitemini*, the psalms *Dominus regnavit* and *Iubilate* are said.

In first Vespers, the antiphons and psalms are taken from Saturday; but on Sundays of Advent the antiphons are said from the Lauds of the same Sunday, with the psalms from Saturday. Compline after first Vespers is of Saturday.

Ferial Offices

All things are as in the Psalter, unless proper things of the Time are to be said. They are said continuously under one Nocturn; the Lessons are from the occurring Scripture, or proper Homily, or from the preceding Sunday. At Lauds and all the Hours, as in the Psalter or in the Ordinary; the prayer is proper or from the preceding Sunday.

The Office of a feria in Advent, Lent, Ember Days, Vigils, and the first day of Rogations begins from Matins; but on other ferias through the year, the feria begins where the Office of the preceding day ends. Cf. General Rubrics of the Breviary, title 5, n. 2.

Octaves

"Only doubles of the first class which have entire Octaves preserve them. But in these Octaves, excepting privileged ones, the psalms of the current feria are used. But the Octaves of doubles of the second class are celebrated only on the octave day, and indeed with simple rite." Pius X, Motu Proprio *Abhinc duos annos*, § II, October 23, 1913.

Concerning the Feast of Dedication and Octaves

"

I. Whether the anniversary Feast of the Dedication of all churches of some diocese is to be understood in such a way that, because of the stated Feast, the individual churches celebrate their own proper Dedication?

"

II. Whether Octaves granted by law or from privilege to Feasts occurring from December 19 to December 23 revive, since they are thereafter no longer impeded by the Feast of the Nativity of Our Lord Jesus Christ?

"Response. To I: In the affirmative; namely, so that in individual consecrated churches the Feast of the Dedication of the proper church is kept. To II: In the affirmative." Sacred Congregation of Rites, February 12, 1914.

Translation of Offices

"No translation of feasts which are celebrated in the universal Church, not even perpetual, is to be made, except of doubles of the first and second class." Pius X, Motu Proprio *Abhinc duos annos*, § IV, October 23, 1913.

Occurrence, Concurrence

Occurrence is had when on the same day two Offices occur; and then from title IV of the Rubrics to be observed, and from the table of occurrence which was drawn up by the Sacred Congregation of Rites, Decree of January 23, 1912, it is to be determined concerning which Office is to be made, and whether nothing is to be had concerning the other, or whether only a commemoration is to be made of it, or whether it is to be placed on another free day.

Occurrence of feasts can be had in two ways: by their accidental translation, or by their perpetual replacement. Rubrics to be observed, titles III-IV.

"The concurrence of an Office is always to be attended to in second Vespers, how the Office is to be ordered with the following day. Therefore, when some Office is said to concur with another, it is understood of the preceding in second Vespers with the following in first." General Rubrics of the Breviary, title XI, n. 1.

The aforesaid ordering of Offices is to be determined according to the table of concurrence drawn up by the Sacred Congregation of Rites in the cited Decree.

Antiphons, Verses, Lessons, Responsories, Te Deum

Antiphons are doubled in greater and lesser doubles, at Matins, Lauds, and Vespers. In Paschal time, at Matins all the psalms of any Nocturn, even ferial, excepting the feasts and octaves of Easter, Ascension, and Pentecost, are said under one antiphon; this in an office of privileged rite is to be taken from the feast, and is the first in each Nocturn; but in an office of ordinary rite it is as noted in the Psalter.

Likewise in Paschal time, at Lauds and Vespers all the psalms, in ordinary, Sunday, and ferial Offices, are said under one antiphon, as in the Psalter. If some Feast has proper antiphons, as for example St. Agatha, St. Elizabeth, etc., then they are to be said together with their psalms at Matins and Vespers; but at Lauds with the psalms of Sunday; and at the lesser Hours the antiphons and psalms of the current feria are said.

On ferias of Advent, during the time from Septuagesima to Easter, on ferias of Ember Days, and on Vigils through the year, the antiphons and psalms at Lauds are said as in the second schema; and likewise at the Nocturn on Wednesday the last three psalms are said in the second place. But at Prime, after the other psalms, the first psalm of Lauds is said, from the first schema. The verse is said of the Time in a ferial office.

Lessons from Scripture have been taken away from the Common in feasts of non-privileged rite. Nevertheless even for these they remain if those feasts occur on days on which Lessons from Sacred Scripture are vacant, or if they are altogether proper Lessons, or at least proper responsories. Rubrics to be observed, title I, n. 4.

Responsories are always proper or from the Common in feasts of whatever rite; but those of the Time are only in the respective Office. In feasts which have proper responsories, proper Lessons or assigned Lessons from the Common are read. Rubrics to be observed, title I, n. 4. "To Lessons from occurring Scripture let responsories of the Time always adhere." Pius X, Motu Proprio *Abhinc duos annos*, October 23, 1913, § III.

The *Te Deum* is always said in the Office of Saints, even Simple, or of St. Mary on Saturday; in the Office of Sundays or Ferias it is omitted only when at Matins the ninth or third Responsory is had.

Absolutions

Monday and Thursday: *Exaudi Domine*. Tuesday and Friday: *Ipsius pietas*. Wednesday and Saturday: *A vinculis*.

Saturday in the Office of St. Mary: "By the prayers and merits of blessed Mary ever Virgin, and of all the Saints, may the Lord lead us to the kingdoms of heaven. Amen."

Blessings

I. On ferias when a Homily is read:

1. May the evangelical reading be salvation and protection for us. Amen.
2. May divine help remain always with us. Amen.
3. May the King of Angels lead us to the fellowship of the citizens above. Amen. II. On ferias when a Homily is not read: Monday and Thursday: as in the first Nocturn. Tuesday and Friday:

as in the second Nocturn. Wednesday and Saturday: 1. May He bless us who lives and reigns without end. Amen. 2. May divine help remain always with us. Amen.

3. May He lead us to the fellowship of the citizens above, as above. III. On feasts of simple Saints: 1. May He bless us, as above.

2. May he whose feast we keep, or she whose feast we keep, or they whose feast we keep, intercede for us with the Lord. Amen. 3. May He lead us to the fellowship above. IV. In the Office of St. Mary on Saturday:

1. May the Virgin Mary with her loving Child bless us. Amen.
2. May the Virgin of virgins herself intercede for us with the Lord. Amen.
3. Through the Virgin Mother may the Lord grant us salvation and peace. Amen.

Lauds, Vespers, Prayers

If Lauds are separated from Matins, the *Pater* and *Ave* are prefixed to them. In feasts of privileged rite, the psalms at Lauds, the Hours, and Compline are always to be taken from Sunday, as in the Psalter.

"Before Vespers of the Dead, *Pater* and *Ave* must be prefixed; and before Matins, *Pater*, *Ave*, and *Credo*, whenever Vespers or Matins of the Dead is recited separately from the Divine Office." Sacred Congregation of Rites, October 25, 1912.

The Prayers at Lauds and Vespers have been modified for Advent, Lent, Passiontide, Ember Days, and Vigils.

Versicles have been added for the Pope and the diocesan Bishop. They are to be recited also by exempt Regulars. Sacred Congregation of Rites, n. 294, ad 6; n. 1333, ad 9; n. 1827, ad 1. The versicle is omitted if the Ordinary of the place is not a Bishop. The psalm *De Profundis* and *Miserere* are no longer said in the prayers; but the prayers which are to be said at Lauds and Vespers are said on ferias if the office is made of the current feria, although a commemoration is made of a double or semidouble.

In a ferial Office of Advent, Lent, Passiontide, Ember Days, though not on the Vigils of the Nativity of the Lord, Epiphany, Ascension, and Friday after the Octave of the Ascension, nor on the Vigil and Ember Days of Pentecost, the ferial Prayers are said both at Lauds and at Vespers and at the other Hours, even if a commemoration is to be made of a double or semidouble reduced after the manner of a simple.

The Prayers at Prime and at Compline are recited in semidoubles, even of Sundays, in simples, and on ferias. But they are omitted if in the Offices a commemoration is made of Doubles or Octaves. Cf. Rubrics of the Breviary.

The ferial Prayers and the final Antiphon of the Blessed Virgin Mary are prescribed by the Rubrics to be recited on bent knees only in Choir. Cf. Decree of the Sacred Congregation of Rites, n. 2682, ad 41.

Athanasian Creed, Confiteor, Suffrage

The Athanasian Creed is recited on the feast of the Most Holy Trinity, on Sundays after Epiphany, and on Sundays after Pentecost, unless a double or octave occurs and a commemoration has been made. It is omitted on all greater Sundays and in Paschal time.

The *Confiteor* is recited only once in the private Office, by one, or by two, or by nuns in choir, by all together, the words *vobis, fratres*, and *tibi Pater*; *vos fratres*, and *te, Pater*, being omitted. Similarly only once is said: *Misereatur... nostri... nostris... nos*, and *Indulgentiam... nostrorum... nobis*.

The Suffrages have been reduced to one. The new Suffrage is recited in simples and semidoubles at Lauds and Vespers. The Suffrage is always omitted during Advent and Passiontide. In Paschal time, from Monday after Low Sunday up to the Vigil of the Ascension, when the Suffrage would have to be said, in its place a Commemoration of the Cross is made, as in the Ordinary.

Outside Paschal time, and excluding days on which any double Office whatever occurs, or one within an octave, or a Sunday on which a simplified double is commemorated, the Suffrage is made. Sacred Congregation of Rites, February 24, 1912.

But the Suffrage of All Saints has no place on the Vigil of All Saints, when the office or commemoration is made of it in a semidouble office. Sacred Congregation of Rites, March 22, 1912.

At the letter N. the name of the Titular of one's own church is said; and the name of the Angels and of St. John the Baptist, if they are titulars, is placed before the name of St. Joseph.

Nothing concerning the Title is to be done in the Suffrage when the church has as its Title some Mystery of the Lord. Sacred Congregation of Rites, March 22, 1912.

Motu Proprio Abhinc duos annos

Concerning the divine Offices to be ordered in a new way in some part. Pius PP. X.

"...

I. According to the ancient custom of the Church, let the Offices of Sundays not easily be omitted. Therefore no feast, not even of the Lord, is hereafter to be established to be celebrated on Sundays; nevertheless from these let there be excepted, because of its particular nature, that which occurs from the first to the fifth day of January, which We assign to be kept in honor of the Most Holy Name of Jesus, because of the connection which it has with the mystery of the Circumcision. But feasts to which up to now a Sunday had been attributed, all, except the feast of the Most Holy Trinity, are perpetually to be transferred to another day. But lest perhaps during Lent some one of the Offices of the Sundays be omitted, which are wonderfully made for exciting Christian penance in souls, We promote the second, third, and fourth Sundays of that time to the rank of the first class.

"

II. Since the celebration of Octaves is an impediment to the recitation of the Psalter, so that this may happen more rarely, in the future only doubles of the first class which have entire Octaves are to preserve them; but in these same Octaves, excepting privileged ones, the psalms of the current feria are to be used. But the Octaves of doubles of the second class are to be celebrated only on the octave day, and indeed with simple rite.

"

III. To Lessons from occurring Scripture let Responsories of the Time always adhere.

"

IV. No translation of feasts which are celebrated in the universal Church, not even perpetual, is to be made, except of doubles of the first and second class." October 23, 1913; *Acta Apostolicae Sedis*, vol. 5, p. 449 ff.

General Decree

On the Motu Proprio *Abhinc duos annos*.

"Since His Holiness Our Lord Pope Pius X commanded that those things which he decreed by the Motu Proprio *Abhinc duos annos* on the 23rd day of the present month of October be applied opportunely and aptly by this Sacred Congregation of Rites, according to the vote of the liturgical Commission, this same Sacred Congregation of Rites, obeying the will of His Holiness with due observance, judged that the following things were to be declared and established:

I. Concerning Sundays and Feasts up to now Affixed to Sundays

"

1. Sundays exclude the perpetual assignment of any Feast whatever; therefore Feasts both of the universal Church and proper to some place, which up to now have been assigned to Sundays, are to be celebrated on the fixed day of the month on which they are inscribed in the Martyrology, if this is had; otherwise, on the first day on which the Sunday can occur on which up to now they have been celebrated. Nevertheless the following are excepted: a) The Feast of the Most Holy Trinity, which remains assigned to the first Sunday after Pentecost. b) The Feast of the Most Holy Name of Jesus, which will be celebrated by all on the Sunday which occurs from January 2 to 5, and, if such a Sunday has not occurred or has been impeded by a nobler Office, on the second day of the same month. c) The Solemnity of St. Joseph, Spouse of the Blessed Virgin Mary, Confessor and Patron of the universal Church, which will be assigned to the Wednesday occurring before the third Sunday after Easter, and on it will be kept with its entire Octave, the other Feast of St. Joseph on March 19 being reduced to the rite of a Double of the second class. d) The Feast of St. Joachim, to be celebrated fixedly on August 16, with the Feast of St. Hyacinth being transferred from there to the following day, August 17. e) The Anniversary of the Dedication of the Cathedral Church, which, separately from the Anniversary of the Dedication of the other Churches of the Diocese, will be celebrated in the whole Diocese on the anniversary day itself, if it is known; otherwise on another fixed day, at the judgment of the Bishop, after nevertheless hearing the Cathedral Chapter, to be designated once for all. f) The Anniversary of the Dedication of one's own Church, which likewise, if up to now it has been celebrated on its own proper day by the individual churches of the diocese, is to continue to be celebrated on that day. But if in the whole diocese or Institute the Dedication of all Churches of the Diocese has been accustomed to be kept on one day, this, outside the Cathedral Church, can be kept only in consecrated Churches, but not in others, on a day to be designated by the Ordinary, as above, which nevertheless is to be another day than the day

assigned for keeping the Dedication of the Cathedral Church. The same things are likewise to be observed concerning the Anniversary of the Dedication of all Churches of some Order or Congregation which up to now has been accustomed to be celebrated on Sunday. g) Feasts of Saints or Blesseds of whom mention is not made in the Martyrology, which nevertheless are to be celebrated, according to the Rubrics, on their natal day, if it is known, provided that another day has not been assigned by Apostolic Letters. h) Feasts which are affixed to certain Sundays after Easter or after Pentecost, which once by the Ordinary, as above, are to be assigned to the more fitting feria within the week immediately preceding.

2. Where the external Solemnity of Feasts which up to now were perpetually affixed to some Sunday is celebrated on that same Sunday, of the Solemnity of a Feast of Double of the first class all Masses are permitted, except the Conventual and Parochial, which are always to be said of the Office of the day; but of the Solemnity of a Feast of Double of the second class only one solemn or read Mass is permitted. The external Solemnity of the Most Holy Rosary is excepted, which can be celebrated on the first Sunday of October with all Masses, except the Conventual and Parochial, of the Most Holy Rosary, as was said above concerning Doubles of the first class.

All Masses of these Solemnities celebrated on Sunday are always to be said as on the Feast itself concerning which the solemnity is being held, with the Prayer of the Office of the day and all other things being added which would have to be said if the Feast had fallen on that same Sunday. (1) Nevertheless they are prohibited on all greater Sundays and on other Sundays on which an Office is made nobler than the Feast whose external Solemnity is being performed; but in the case, except in Doubles of the first class of the Lord of the universal Church, in all Masses which otherwise would be permitted of the externally celebrated Solemnity, its Prayer is added under one conclusion with the first. But where there is an obligation of the conventual Mass, in the case another solemn Mass is not permitted; rather, the Prayer of the Feast only externally celebrated can be added, as above, in the Conventual Mass itself.

(1) Hence, for example, if on the third Sunday after Easter one wished to celebrate the external Solemnity of the Patronage of St. Joseph, whose feast is perpetually assigned to the Wednesday preceding the same Sunday, all Masses, except one only, can be said of the aforesaid Feast with commemoration of the Sunday, with its Gospel at the end, the other commemorations of a simplified double or semidouble and of a simple, and other imposed Collects, being omitted, unless they were concerning a grave matter.

Likewise, if on the third Sunday of September one wished to celebrate the external Solemnity of the Blessed Virgin Mary of Sorrows, whose feast is perpetually fixed on the fifteenth day of the same month, only one solemn or read Mass is permitted of the aforesaid Solemnity, with commemoration of the Sunday and of other Saints of a simplified double or semidouble, but not of a Simple if the Mass is sung; only imposed Collects are omitted as above, provided they are not concerning a grave matter.

Note nevertheless that all Masses of these Solemnities celebrated on Sunday are prohibited on all greater Sundays, that is, of the first and second class, for example of Advent, Lent, etc., and on other Sundays on which an Office is made nobler than the Feast whose external Solemnity is being

performed; but in the case, except in Doubles of the first class of the Lord of the universal Church, such as Easter, Pentecost, Most Holy Trinity, etc., in all Masses which otherwise would be permitted of the externally celebrated Solemnity, its prayer is added under one conclusion with the first.

3. The second, third, and fourth Sundays of Lent, raised to the rank of Sundays of the first class, will hereafter yield to no Feast, not even to a Double of the first class.

But the Sunday which occurs on January 2, 3, or 4, if on it the Feast of the Most Holy Name of Jesus or another Feast of the Lord is not to be celebrated according to the Rubrics, and provided that no commemoration of the Lord Himself is made either occurring or concurring, is commemorated in both Vespers, Lauds, and Mass, by the Antiphons, Verses, and Prayers of the Sunday within the Octave of the Nativity; but concerning it the ninth Lesson of the Homily is not said, nor is the Gospel read at the end of Mass.

But the Office of the Sunday which after Epiphany, with Septuagesima supervening, or after Pentecost, with the twenty-fourth Sunday supervening, must be anticipated, is celebrated on the preceding Saturday with semidouble rite, with all the privileges of a Sunday both in occurrence and in concurrence at first Vespers. All things are said of Saturday, and in first Vespers, of the preceding Friday, except the Prayer, Lessons, Antiphon at *Benedictus*, and proper Mass; and after None nothing further of the anticipated Sunday.

II. Concerning Octaves

1. The Octaves of Easter, Pentecost, Epiphany, the Most Holy Body of Christ, the Nativity of the Lord, and Ascension are privileged; and concerning them, if sometimes the whole Office is not to be made, nevertheless a Commemoration is always made at Lauds, Mass, and Vespers. Their Office is recited entirely as on the Feast day, except those things which are assigned in their own places.
2. But in the Office both of a day within the Octave and of the Octave Day of any other Doubles of the first class, even of the Lord, the antiphons and psalms at all the Hours and the Verses of the Nocturns are to be said from the occurring day of the week; and the Lessons of the first Nocturn, unless proper ones are had, or, when Lessons from Scripture are lacking, must be taken from the Feast or from the Common, are said with their Responsories of the Time, as will be said below. But an Octave Day of this kind, even of the Lord, both in occurrence and in concurrence, yields to any Sunday.
3. But concerning the Octaves of Doubles of the second class of the universal Church, nothing is made except on the Octave Day, and indeed under simple rite: so that if on it some Double or Semidouble Office occurs, even one replaced or transferred, or a greater Feria or Vigil, only a Commemoration is made of an Octave Day of this kind according to the Rubrics. But occurring Simple Feasts are commemorated in the Office of the Octave Day, to which also the Office of St. Mary on Saturday yields, to be omitted in the case.

The same is observed concerning the Octaves of Doubles of the second class of some Diocese or particular Church, which likewise, unless they wish them to be entirely omitted, will have to be celebrated only on the Octave Day and under simple rite.

4. The Octaves of particular Feasts after the day of the Nativity of the Lord are no longer impeded.

5. The Lessons of the second and third Nocturns assigned up to now on individual days through the Octaves of Feasts of Double of the second class of the universal Church are to be inserted in the Roman Octavary; but not the Lessons of the first Nocturn, even if proper ones are had.

III. Concerning Responsories of the Time, Lessons from Occurring Scripture, and Other Proper Parts of Offices

1. In Offices both of nine and of three Lessons, whenever Lessons are taken from occurring Scripture, the Responsories of the Time are to be used with them; in such a way nevertheless that the Lessons of any Sunday, even if they are replaced within the week and said together with the Lessons of a Feria, always take the Responsories from the first Nocturn of that Sunday itself. But Lessons of a Feria, if they are transferred or anticipated, provided nevertheless that they are not said together with the Lessons of Sunday, take Responsories from the current Feria, to be newly arranged in Ferias of Paschal Time. Nevertheless the following are excepted: a) Lessons from occurring Scripture to be recited within privileged Octaves of the universal Church, which are always said with Responsories of the Octave. b) Lessons from some Beginning of occurring Scripture, which necessarily are to be placed, according to the Rubrics, in Offices having proper Lessons or Lessons assigned from the Common, and which are said with proper Responsories of Offices of this kind if they are had; otherwise with Responsories of the Time, but never from the Common. c) Lessons from Scripture placed on Sundays after Epiphany, which, if they are transferred within the week, are said with Responsories of the current Feria. d) Responsories of Monday within the first Week after Epiphany and of Monday within the first Week after the Octave of Pentecost, which, if they are impeded on their own day, are transferred further, according to their proper Rubrics.

2. The Responsories which in the Feasts of St. Lucy, Virgin and Martyr, of Saints John and Paul, Martyrs, and of St. Clement, Pope and Martyr, are had as proper in the first Nocturn, are to be placed in the second Nocturn, in place of the Responsories from the Common; and in the first Nocturn the Lessons from occurring Scripture are to be said with Responsories of the Time.

3. Similarly, all things which in the Feast of St. Elizabeth, Queen and Widow, are had as proper, except the Invitatory, Hymns, Lessons of the second Nocturn, Verses at both Vespers and Lauds, Antiphons at *Magnificat* and at *Benedictus*, and the Prayer, are to be expunged; and in the first Nocturn likewise Lessons from occurring Scripture are to be said with Responsories of the Time.

4. In the Commemoration of All the Faithful Departed, the psalms at Compline and the other lesser Hours are no longer to be taken from the occurring day of the week, but proper ones are to be assigned.

IV. Concerning the Occurrence and Translation of Feasts and Their Concurrence

1. Feasts of Doubles of the first and second class, both of the universal Church and proper to some place, impeded even perpetually, any privilege up to now granted to certain Feasts being

removed, are to be transferred to the first following day not impeded by any Sunday or by the Vigil of Epiphany, by another Feast of Double of the first or second class, or by Offices excluding Feasts of this kind respectively. The same Feasts, both of the first and of the second class, in second Vespers do not admit a Commemoration of the following day within an Octave, nor of any Simple Office, even if on the next day the whole Office is to be celebrated of them.

2. But greater or lesser Double Feasts or Semidouble Feasts which are celebrated in the universal Church, if they have been accidentally or perpetually impeded, are not transferred, but a Commemoration is made of them according to the Rubrics, and the ninth historical Lesson is read. If nevertheless the impeding Feast was a Double of the first class of the Lord of the universal Church, nothing is made of the Feast impeded as above; but if it was another Double of the first class, of the impeded Office only a Commemoration is made at Lauds and in private Masses, and the ninth Lesson is not read.

The same is observed concerning Feasts proper to some Nation, Diocese, Order, or Institute, which likewise, if in some particular Church they have been impeded on their own day, are commemorated or omitted, as above. But proper Feasts of some Nation, Diocese, Order, Institute, or particular Church, which in the whole Nation, Diocese, Order, Institute, or in their particular Church are impeded, if the impediment is accidental, are likewise commemorated or omitted as above; if the impediment is perpetual, they are replaced on the nearest day not impeded by a Double Office, by a Semidouble Feast, by privileged Vigils, and by Octaves of the second order.

But concerning Feasts of this kind, greater or lesser Doubles or Semidoubles, which are impeded perpetually or even accidentally, private Masses can be said at the will of the priest, provided the impeding Office was not a Double of the first or second class, any Sunday, an Octave of the first or second Order, an Octave Day of the third order, a privileged Feria or Vigil. This Mass is said with festive rite, with the second Prayer of the Office of the day and others from Commemorations perhaps occurring. (1)

Feasts which up to now both in the universal Church and in particular places have been celebrated under semidouble rite *ad libitum* are to be reduced to simple rite, and concerning them a Commemoration is to be made whenever they are impeded, as is done concerning other Simples according to the Rubrics. Nevertheless the Feast of St. Canute yields to the Feast of Saints Marius, etc., Martyrs, and therefore is commemorated in its Office.

4. If the secondary Patron of a place, or another proper Saint, has been described in the Calendar with other Saints, he is not to be separated from them; rather, of all together the Feast is celebrated under the rite of greater or lesser Double, or Semidouble, according to the Rubrics, unless it is described in the Calendar under a higher rite.

5. When some greater or lesser Double Feast, or Semidouble Feast, occurs on a greater non-privileged Double Octave Day of the same Person, the Office is made of the Feast, under the rite befitting the Octave Day, the Commemoration of the same Octave being omitted or added according to the Rubrics.

(1) Hence, for example, for the Society of Jesus, on February 5, Masses can be said *ad libitum* either of the Holy Martyrs of the Society of Jesus with commemoration of St. Agatha, or of St. Agatha with commemoration of the Holy Martyrs of the Society of Jesus.

Hence it also follows that if a Regular Priest celebrates in a foreign Church, he can at will say Mass either of the Saint whose feast is being kept in that Church, or of the simplified Saint in the Calendar of that same Church. Wherefore it is not lawful for one of the Society of Jesus celebrating in a foreign Church on February 5 to read *ad libitum* the Mass of St. Agatha or of the Holy Martyrs of the Society of Jesus, if either is not simplified in the Calendar of the said Church, but only of the Saint whose feast is being kept on the day.

Nevertheless the exception remains firm of the case in which someone about to celebrate in a foreign Church on the feast day of some Saint of semidouble or simple rite in the same Church can celebrate the Mass *ad libitum* either of the same semidouble or simple Saint, or of the Saint assigned in his own Calendar, and indeed with festive rite. Sacred Congregation of Rites, n. 3892, ad V.

V. Concerning the Reform of Particular Calendars

1. But so that all things which are prescribed by this decree may duly be put into execution, individual Ordinaries, even of Regular Orders, and general Moderators of Institutes of any kind which use their own Calendar, are to transmit to the same Sacred Congregation, before the coming month of March of the year 1914, a supplicatory petition according to the Instruction of this Sacred Congregation of Rites of December 12, 1912, published in the *Acta Apostolicae Sedis* on March 1 of the present year. Those, however, who after the Constitution *Divino afflatu* was published have already obtained the reform of their own Calendar will receive a new one ex officio from the same Sacred Congregation without any expenses.

2. In this reform of Calendars, besides those things which have been disposed above concerning Feasts which up to now were affixed to Sundays, the following norms are to be observed: a) The Anniversary of the Dedication of the Cathedral Church, even where up to now it has been accustomed to be celebrated on a fixed day together with the Dedication of other Churches, is to be celebrated separately, according to the things decreed above concerning those same Anniversaries up to now affixed to a Sunday. b) Proper Feasts, unless something else has been disposed by Apostolic Letters, are to be celebrated on the natal day itself, if it is known; otherwise, they are to be placed on some day which is free in the Calendar. c) Two or three Saints who are comprehended under the same Common, if anywhere they occur on the same day and are to be celebrated under the same rite, are to be kept by one Feast, using those parts of the individual Commons which are assigned for several Saints of the same quality, and contracting the historical Lessons of the third Nocturn, which nevertheless will be submitted to this Sacred Congregation of Rites for approval. The same norm is to be observed for Feasts of the same Common which are to be replaced from prior days. d) The Feasts of St. Bartholomew, Apostle, and St. Louis, King and Confessor, in all and individual Calendars, not excluding the Roman, are to be assigned fixedly to August 24 and 25 respectively, notwithstanding any custom or privilege whatever. But where the external solemnity is celebrated on the 25th and 26th respectively, on those days one sung or read Mass of that Solemnity is permitted, as was established above for Feasts up to now affixed to a Sunday. e)

> The privilege which some Dioceses or Institutes enjoy, namely of conforming themselves to the Calendar of the Roman Clergy or of some Order or Congregation, and other things of this kind, is entirely abolished.

All these things, reported by the undersigned Secretary of this Sacred Congregation of Rites to our most holy Lord Pope Pius X in the audience of the 26th day of the present month of October, His Holiness deigned to approve and commanded to be observed by all. Moreover, the same His Holiness, consulting the indemnity especially of poor clerics, by Apostolic kindness permits that these, at the prudent judgment of the Bishop, may still be able to use the Breviaries which they presently use, without the addition of a new booklet, provided that, according to the prescription of the Rubrics, they altogether observe the new order of the Psalter. Anything whatsoever to the contrary notwithstanding." Sacred Congregation of Rites, General Decree *Cum Sanctissimus Dominus Noster*, October 28, 1913; *Acta Apostolicae Sedis*, vol. 5, p. 457 ff.

Decree Concerning Local Feasts Which Must Be Kept by Religious

To n. 132.

Orders, Congregations, and Institutes enjoying their own Calendar from now on must celebrate only the local Offices of the Dedication and Titular of the cathedral church, and also the more solemn Feasts of the principal Patrons, so that they are no longer bound to Offices granted to some kingdom, province, or diocese; nor to local Offices which had an attached cessation from servile work, but now have it suppressed. Sacred Congregation of Rites, February 28, 1914.

Apostolic Constitution Concerning the Suburbicarian Dioceses

To n. 203.

"Among the acts indeed last in time, but first in weight and usefulness, of Pius X, Supreme Pontiff of most holy memory, one is that which is contained in the Motu Proprio *Edita a Nobis* of May 5, 1914, concerning the Suburbicarian Dioceses. For a long time that complaint, certainly grave, had been common: that the governance of these dioceses, excepting Velletri and Ostia, was altogether unstable and as it were precarious. For the Cardinals of the Holy Roman Church, obtaining one of them by right of option, since they could always, after dismissing that one, choose another for themselves, it often happened that they had already changed several sees before they arrived at the place of Dean...

...of Dean. How many inconveniences and detriments this frequent change of sees would bring to the care of souls, the Pontiff, according to his vigilance, well observed, and determined to meet the matter directly. Therefore, by that Motu Proprio which we have mentioned, it is sanctioned: "that whatever See each Cardinal Bishop obtained at the beginning, he remain in it even when he has reached the rank of Dean; for then he will join his own diocese with Ostia. Wherefore, the perpetual conjunction of the diocese of Velletri and of Ostia having been dissolved, to which indeed it will happen that it is joined with one or another diocese in the person of the Cardinal Dean, these will be the Suburbicarian sees: Porto and Santa Rufina, Albano, Palestrina, Sabina, Frascati, Velletri." These things Our Predecessor most wisely established.

Now, with the stability of the Cardinal Bishops in each one's own see having been established, and with a law enacted that he who has become Dean does not dismiss the diocese which he holds when assuming Ostia, you would rightly say that sufficient provision has been made for the governance of those dioceses, and that, the cause of the inconvenient condition of things having been removed, the necessity no longer presses so urgently of assigning to the individual dioceses suffragan Bishops who, in the name of the Cardinals, would govern them; concerning which suffragans the same Pius X had decreed four years earlier in the Apostolic Constitution *Romanorum Pontificum* of April 15, 1910.

There is added that the Suburbicarian Dioceses have such smallness of territory and nearness to the City, and now especially such ease of travel, that each Cardinal residing in the City, although occupied, seems able rightly to govern by himself whichever of them he has received to be governed perpetually. But if it should happen to someone, from health, or from age, or from another cause, that he needs a helper for rightly discharging the office of bishop, it will always be easy for him to seek and obtain this helper or suffragan from the Apostolic See.

Therefore, since Our Predecessor, by the Motu Proprio *Edita a Nobis*, in that part in which we have brought forward its prescriptions, withdrew the foundation, as it were, from the Apostolic Constitution, and since other reasons also of no light moment have been added to this, We, after employing as counsel several Cardinals of the Holy Roman Church, declaring that Constitution abrogated, release the suburbicarian Cardinal Bishops from the office and burden of choosing suffragans, by which they were bound according to the prescriptions of that same Constitution.

Likewise, whatever was established by the mentioned Motu Proprio concerning annual payments which had to be supplied to the individual suffragans, and concerning all the goods of the suburbicarian churches to be administered jointly by the Office of Spoils at the sacred council of the Propagation of the Faith, these also, as it is fitting that they be abolished, so We declare abolished. But let that be sacred and inviolable which in that same Motu Proprio We said was established by Pius X with singular wisdom: that whatever see each Cardinal Bishop accepted at the beginning, he never change it; and that the Dean, besides that one, assume also Ostia. Finally, each Cardinal Bishop will administer, as before, all the revenues and goods of each of those same churches. Nevertheless We will that every year they take care to render an account of their administration to the economic Office of Spoils, which was spoken of above..." February 1, 1915; *Acta Apostolicae Sedis*, vol. 7, p. 229 ff.

Obligation of the Constitutions of Religious Institutes

To n. 250.

In the Constitutions or Rules of Religious Institutes, Rules are to be distinguished which in reality are not Constitutions of the Religious Institute, but certain spiritual or ascetical documents which are proposed to Religious so that with every effort they may tend toward perfection and make progress in it, always going from virtue to virtue. The matter is evident: there is no obligation *per se* of such Rules; and they are to be observed only so that someone may study always to preserve holiness of life and to increase it day by day. Therefore these Rules contain only a general spiritual direction and counsel for all.

But there are other Rules which contain true Constitutions of regular discipline to be observed by all in such an Institute, so that one who violates them can well be punished by the superior, some penance being imposed and altogether to be accepted and fulfilled by the subject. And thus also in Religious Congregations chapters of faults have been instituted. Cf. Norms of the Sacred Congregation on Religious, n. 167 ff.

Although these Rules or Constitutions do not of themselves bind under fault, nevertheless a religious is bound, even by obligation, to observe them by virtue of obedience, namely not always, but sometimes, that is, when its obligation presses either of itself or by accident. Namely, the object of the vow of obedience is only the external execution of the command of the Superior. But the virtue extends even to internal submission, thus rendering obedience perfect. Therefore the virtue of itself obliges one to observe the Rules or Constitutions when, concerning the Rules or Constitutions, a precept of the Superior intervenes: namely, so that then the religious not only executes the command of the Superior, which pertains to the vow of obedience, but also observes the Rules or Constitutions with an obedient and non-resistant will.

Likewise, the virtue of obedience obliges of itself not to despise the Rules and Constitutions. But it obliges by accident by reason of scandal or harm to the Community, which can arise from that non-observance of the Rules and Constitutions. And thus it is clear how the two numbers of the Norms, which at first sight appear to some to be mutually opposed, namely numbers 134 and 320, related below here, are easily reconciled.

But when the obligation of the virtue of obedience does not so press, the religious is still bound to observe the Rules or Constitutions of themselves from the virtue of obedience, not nevertheless by a strict obligation under liability of fault, but from the counsel and direction proposed to him by the will of legitimate Superiors and by mandate of the Church, if the Religious seriously wishes to study Christian perfection and to aspire to true holiness of life, to acquire it, and to increase it. From this also there arises an obligation of observing those Rules and Constitutions, not directly but indirectly, namely from another higher law, that the member be conformed to the whole and provide for the good of the whole.

For by the natural law itself he is held to this; from this, as he is bound always to act honestly, so also from this law he is bound to observe the Rules and Constitutions, insofar as it will not be without sin if he violates them from an end that is not right, if from circumstances his action is disordered, if finally the transgression of the Rules and Constitutions concerns matter contrary to the vows, or to natural or positive law by which he, like others, is bound.

These things having been laid down beforehand, it is easy to see that there is no opposition between the two cited numbers of the Norms.

"N. 134. From the virtue of obedience a Sister is held by the obligation of fulfilling the dispositions of the Constitutions and of Superiors.

"N. 320. The Constitutions of themselves do not oblige under liability of fault.

"Nevertheless a Sister who would transgress the Constitutions from contempt, or in a matter which was contrary either to the vows or to the precepts of God or of the Church, can by no means be excused from fault."

Testimonial Letters of Ordinaries for Those to be Admitted into Religion

To n. 262 bis.

Errata: 262 bis, Note: No one can licitly be admitted to the habit, or to beginning the novitiate, and then to profession, whether in an Institute of men of solemn vows, or in an Institute of men and women of simple vows, but by no means in an Institute of women of solemn vows, without testimonials, etc.

Correct: 262 bis, Note: No one can licitly be admitted to the habit, or to beginning the novitiate, and then to profession, whether in an Institute of men of solemn vows, or in an Institute of men of simple vows, but by no means in an Institute of women of solemn vows and of women of simple vows, without testimonial letters of the Ordinary of origin and of the place in which the postulant has dwelt for more than a year after the completion of his fifteenth year of age, under penalty of deprivation of all offices and of active voice, and of perpetual incapacity for obtaining others in the future.

Sacred Congregation on the State of Regulars, January 25, 1848, by the Decree *Romani Pontifices*, to be read publicly every year on the first day of January, under penalty of deprivation of office and of active and passive voice, to be incurred *ipso facto* by Superiors. This Decree cannot be derogated from unless expressly and by name. A dispensation granted to one Institute is not communicable to others. Cf. also the Declarations of the same Sacred Congregation, May 1, 1851; February 25, 1863; *Enchiridion Morale*, 4th ed., p. 239 ff.

But another Decree is also had of the same Sacred Congregation for Regular Discipline, January 25, 1848, concerning the reception of Novices to the habit and profession, to be observed also under penalty of deprivation of all offices and of active voice, and of perpetual incapacity for obtaining others in the future, and to be read publicly on January 1 and the first Sunday of July, likewise under penalty of deprivation of office and of active and passive voice. Nor can this Decree be derogated from except expressly and by name; and a dispensation granted to one Institute is not communicable to others. Cf. nn. 268, 277 bis.

On Affiliation to Religious Institutes

To n. 303 bis.

Affiliation to a Religious Institute can be twofold. The first affiliation, strictly such, can be had with respect to one Institute by another Institute. And this consists in this: that a Religious Institute depends on another Institute as regards its government and administration, or at least as regards spiritual direction. This affiliation, which is permitted as regards ancient Institutes, as can be seen in the ancient Second Orders and Third Orders, is now altogether prohibited to recent Religious Institutes.

In the Norms of the Sacred Congregation of Bishops and Regulars, June 28, 1901, art. 17, it is said: "Institutes of Sisters dependent on similar Institutes of men of simple vows are not approved in the future, nor Institutes of men having such Institutes of Sisters aggregated to themselves and directed

by themselves." And again, art. 52, it is said: "No Institute of religious of simple vows can aggregate to itself a similar Institute of Sisters which depends on it or is directed by it."

The other affiliation, broadly such, is that which is contained in participation of the good works of some Institute. There can indeed be no doubt concerning this participation of good works. The Supreme Pontiff Leo X, Constitution *Illius qui caritas est*, February 28, 1520, § 5, *Bullarium Romanum*, vol. 5, p. 741, granted it to the Confraternity of Charity of the City, namely that "whoever belong to the said Confraternity and whoever also are its officials... become participants in the fasts and divine offices and any other spiritual goods whatsoever, wherever in the whole world they are made for the time."

And that Regular Prelates also can grant this participation of good works is established by the fact itself. For they often grant it to benefactors, and special letters of affiliation of this kind are had. And a concession is had made by Urban V to the Order of Friars Minor of St. Francis. But Anacletus Reiffenstuel, *Theologia Moralis*, tract XII, dist. III, question XI, n. 144, says: "Authors note that this concession contains nothing which has not been granted by common law; for by common law every Prelate can already communicate and apply the goods and merits of his subjects to a benefactor."

But can the same thing be done by Superiors of religious men, even lay Institutes, and by Superioresses also of sisters of more recent Institutes of simple vows? There are not lacking those who deny it, or doubt it: because no special or general concession has been made to these by the Holy See, because they do not have spiritual jurisdiction over their subjects by force of their own Religious Institute.

Nevertheless it seems that it must be affirmed. And several Modern Institutes grant this affiliation to their benefactors without any doubt and without any difficulty. Let us undertake an analysis of this affiliation. And first, this is the question clearly enough set forth:

Whether benefactors of the aforesaid more recent Institutes can be affiliated to the same, namely so that they may become participants in the good works which are done in the aforesaid Institutes.

As is evident, in this affiliation it is a question of the fruit of the good works of the members, men or sisters, of the Institute. Now this fruit is manifold; and it must soon be spoken of individually, in order to set forth the Response to the proposed Doubt.

First there is the fruit of Indulgences. And the matter is evident, that affiliation to Religious Institutes cannot be extended to Indulgences without a special Apostolic Indult. Nor indeed has the affiliation which in reality is accustomed to be granted to benefactors by these Religious Congregations ever been understood thus, as can be seen in their Diplomas which are given to affiliated benefactors. Cf. also the Norms, art. 16.

There is besides the fruit of merit *de condigno*, and this fruit also is excluded from that affiliation. For one of the conditions of merit *de condigno* is that someone merit for himself. St. Thomas, I-II, q. 114, a. 6.

Besides merit *de condigno* there is merit *de congruo*. As is the common opinion, someone can merit *de congruo* for another. For as the Angelic Doctor says, I-II, q. 114, a. 6: "It is fitting according to the proportion of friendship that God fulfill the will of man in the salvation of another, although sometimes there can be an impediment on the part of him whose justification someone desires."

From these last words of the Holy Doctor it is evident that merit of this kind for others is not infallible.

Thus on account of ten just men, if they had been found there, the Lord would have spared Sodom and Gomorrah and the neighboring cities. Genesis 18.

Moreover there is another fruit of our good works, namely satisfactory for temporal punishments and impetratory of actual graces. The satisfactory fruit can profit the one working and other living persons by way of payment, and therefore more probably infallibly, by force of the communion of Saints. Likewise the impetratory fruit can without any doubt profit both the one working and other living persons. "For whatever things are undertaken piously and holily by one pertain to all, and charity, which seeks not the things that are its own, effects that they profit them..." Thus the Roman Catechism explains the Communion of Saints, part 1, on the ninth article of the Creed, n. 25.

Prayer remains, concerning which no doubt can be raised. For it is Catholic doctrine that we can pray for ourselves and for others; and therefore render others participants in the impetratory fruit which is proper to prayer. And thus in the last chapter of James we are admonished to pray for one another, that we may be saved. To the same pertains that text of 1 John 5:16: "He who knows his brother to sin a sin not unto death, let him ask, and life shall be given to him who sins not unto death..."

But the promise of Christ is altogether universal: Everyone who asks receives... Whatever you shall ask in My name, this I will do. Hence Suarez says: "On account of this the opinion which asserts the promise to be universal seems sufficiently pious and probable, whether one prays for himself or for others.... This infallible impetration is not from justice, but chiefly from mercy and also from simple fidelity."

Therefore, in order that there be participation of the good works of the Religious of some Institute, there is no need of ecclesiastical jurisdiction in the one who grants it, nor is there need of some special faculty first obtained from the Holy See; but there is need only of charity, which seeks not the things that are its own, and consequently that someone wish to render others participants in the fruits of his own good works.

Therefore there is no difficulty if the Religious of some Institute consent to that participation, as in reality all consent; nor can any serious difficulty truly be raised concerning that pious will and practice of Religious.

But it is not necessary that each individual Religious in particular manifest his will to the Benefactor. Rather it suffices altogether that the Chapter or the Superior do this, who by force of his economic authority represents the whole Community, nevertheless with this Community knowing and consenting.

And thus, if it is a question of the vows of Communities, these are emitted by the Superior of the Community, with the Community consenting. If it is a question of alms to be given for gaining Jubilee, the father of a family can give alms for himself, for his wife, for his children, for his servants; the Superior of a Convent or Monastery can give alms for the whole Convent or Monastery, etc. Therefore, since a Religious Institute is a certain Moral Body, its General Chapter or General Superior, who is its Head, will well be able to grant and communicate to benefactors that participation of the good works of the whole Institute, in the name of the same Institute, knowing

and consenting, with the whole Institute, as was said, well willing and approving this; concerning which there can be no question.

Finally, how useful this participation of spiritual goods is, is openly established from the Sacred Scriptures themselves. On account of ten just men, if they had been found there, God would have spared Sodom and Gomorrah and the neighboring cities. Genesis 18. Likewise Matthew 9:2: "Jesus seeing their faith," that is, the faith of those who were offering the paralytic to Him, "said to the paralytic, thy sins are forgiven thee." According to St. Augustine, Sermon 4 on the Saints, St. Stephen impetrated, and in some way merited, the conversion of Saul. Likewise it is known that St. Monica impetrated the conversion of St. Augustine. The assiduous prayer of a just man indeed avails much, as St. James himself asserts in the last chapter of his Catholic Epistle, and St. James speaks explicitly of prayer for others.

But impetratory force is properly in prayer, yet it is also in any good work done with the grace of God. For according to the opinion of all the Doctors, good works have meritorious, satisfactory, and impetratory force; and under this impetration is contained also propitiatory force, namely by the impetration of salutary graces.

From these things it is evident that, for making to another a participation in one's own good works, whether it is a question of a physical person or of a moral person or moral body, no special concession to be made by the Holy See, or any spiritual jurisdiction, is truly required. A special concession of the Holy See is certainly required if it is a question, as in the concession made by Leo X, of participation in the good works of all Christ's faithful in the whole world.

This alone can truly make difficulty in the aforesaid affiliation or communication of good works: that in those working there is required the intention of directing their own works to the aforesaid end, since this intention of the end depends only on those working. But for this reason it was said above that the aforesaid affiliation can well be made by the Superior or by the Chapter, with the Community knowing and consenting or approving, namely so that the aforesaid affiliated persons may be able to perceive every fruit from that affiliation; for even if the Community has not in some way been forewarned, some fruit will always come to the affiliated persons, and not a slight one, as will appear more broadly from the things soon to be said.

"It is certain by faith that there is given some communication of good works among the faithful, by which they can help one another and give suffrage to one another as regards the impetratory fruit. It is evident from that article of the Apostles' Creed: I believe in the Communion of Saints...

"Moreover, the just faithful can help one another through suffrages for satisfaction for temporal punishment. Thus the certain and common doctrine of Catholics, against the heretics.

"In order that a suffrage have its fruit, three conditions are required on the part of the one offering: I. the state of grace... II. that the one offering have the intention of offering his work for another and of applying the suffrage to him... III. that a work of this kind be of itself satisfactory, that is, have value and price for paying the debt of the one for whom it is offered. And works of this kind generally are three, namely prayer, fasting, and almsgiving, under which all other penal operations are comprehended.

"In order that a suffrage, as regards satisfactory force, have its effect also on the part of him for whom it is offered, three conditions are required: I. that he need suffrage; II. that he be in the state of grace; III. that the sins for which satisfaction is offered have already been remitted as regards fault...

"As regards satisfactory force is added, for as regards impetratory force a suffrage can profit even those existing in mortal sin, by meriting and impetrating for them *de congruo* special helps of grace, by which, inwardly enlightened, they may be converted more quickly to penance and may be preserved from various dangers both of soul and of body..." Thus Anacletus Reiffenstuel, *Theologia Moralis*, tract XII, dist. III, question XI, n. 133 ff.

And Suarez, in III, tom. 4, disp. 55, sect. 5, says: "Prelates of Religions, whether local, provincial, or general... have the power of granting to some a remission of punishments, by applying to them the good merits and satisfactions of their congregations and making them participants in them, by admitting them to a certain special union with their religions.... For any private person can offer suffrage for another from his own works...

"It must be noted that among suffrages some are offered by way of impetration or of merit *de congruo*, but others by way of satisfaction or payment... to satisfy for sins already committed... can be done by any private person by his own authority, either for himself, and then it keeps the proper name of satisfaction, or for another living person or departed person on account of the union of charity, and it is called satisfactory suffrage...

"When some Religion or its Prelate admits some persons to the fellowship or participation of the works of such a Religion... he admits them to the application of its merits and works, especially by way of impetration. For because, on account of the pious works of the whole Religion, God specially does good to its members, therefore also to all persons specially joined with such a Religion He confers special benefits on account of the same works.

"They can also admit some persons to participation of satisfactory suffrage, if they wish to apply their satisfactions when they make them. In this, nevertheless, it must be noted that an application of this kind always requires the particular will and intention of the individual persons working. Therefore it is not enough that the Prelate of one house, for example, by his intention and will apply for benefactors, or for a benefactor, so much satisfaction, or such a satisfactory work, which is performed by some subject of his; but it is necessary that the subject himself also offer it by his will, either expressly and directly, or by referring his intention to the intention of the Superior.

"The reason is that the will of the superior does not suffice for morally directing another's work, because it is not directly and immediately under his dominion, although he has some right to it; but the proximate one working has his own dominion of that work as regards its use, and therefore the relation to this or that end depends on him. And by the same reason it depends on his intention that the work be satisfactory for this one or for that one.... Wherefore Prelates of Religious act neither rightly nor validly if, in their subjects, they apply their works to others as regards satisfactions; because, morally speaking, the subjects who are ignorant of the Prelate's intention will have another and diverse intention, and that intention will be efficacious as regards the fact...

"But someone will say: What fruit, therefore, comes to the faithful... from the fact that they are admitted by Prelates of Religions to the fellowship and participation of the good works of the religion? For if the particular intention and application of individual religious is always necessary,

that alone would suffice without such admission or union, and this without the said intention does not suffice; therefore it brings no fruit...

"The answer is... that in three ways suffrage can profit another: by way of satisfaction, by way of direct impetration, and indirectly by way of a certain merit *de congruo*. Therefore I say that that admission or union first of all profits toward this last manner of fruit, which does not depend on the particular intention of individual persons working; but from this very fact, that someone is in a particular way a member or associate of this religion, the merits of the same religion avail before God, so that by reason of them He confers certain goods by a particular help on persons joined to it, even if those merits are not referred to this end.

"And especially they will have this efficacy if such a person asks something of God on account of the merits of such a religion.... For the prayer will receive greater efficacy from this, that such a person has been more joined to those on account of whose merits he asks; for the reason of friendship demands that on account of friends we do good to others joined to them, even if the friends themselves directly ask nothing...

"But it must also be added that it profits toward that fruit which can be obtained directly by proper impetration. For although for this fruit the proper intention of the person praying is necessary, nevertheless the prayer of a just person made for a person joined to him is more efficacious than for a stranger...

"And besides, it profits so that persons so joined become participants in all prayers which are accustomed to be made generally for the religion itself and its members; for they participate in them not only in the former way, or indirectly, but also as regards direct impetration.

"And it is likely that, when these prayers are made by the whole community and as it were in the name of the whole Religion, their effect, even as regards direct impetration, does not depend on the particular intention of the individual members, but that the intention of the Prelates suffices, although if the intentions of the individual members also are added, they would contribute much, other things being equal, to efficacious impetration."

Hence it has already happened that new Religious Institutes also of simple vows have admitted benefactors to the aforesaid participation of their own good works, no previous faculty having been obtained, and no ecclesiastical jurisdiction favoring them, which they altogether lack, as, for example, Institutes of Sisters. Moreover, in the very praised Norms of the Sacred Congregation of Bishops and Regulars, which the Sacred Congregation on Religious also now follows, an argument is had for the aforesaid admission. For in art. 51 it is said:

"It is not permitted to Congregations of simple vows to aggregate to themselves some third group having the appearance of a third order. NOTHING NEVERTHELESS PREVENTS Congregations of men from attaching to themselves, for the external business of the house, pious men, and Congregations of sisters, pious women, to whom they prescribe a certain form of living and grant participation in the merits of their own Institute."

Therefore, just as nothing prevents admitting to the participation of the good works of an Institute mandataries of this kind, secular persons, outsiders, benefactors; so by parity nothing prevents admitting to the same participation of the good works of the Institute other secular persons,

outsiders, benefactors, whether by a gift of money or by services rendered in another way in favor of the Institute. What, for example, can stand in the way of an Institute, by gratitude of soul, admitting to such participation of good works the Cardinal Protector of the Institute, the Cardinal Prefect of the Sacred Congregation on Religious, from whom it obtained various Decrees of Approbation? And let the same be said of others.

The Matter of Confirmation

To nn. 475, 476, 477.

A Bishop called to administer Confirmation to a certain young man found his forehead, because of a contagious disease, covered with a certain thick crust, which was abundantly flowing with pus. Therefore first he imposed his hand over his head, and then, with cotton dipped in sacred chrism, he anointed the aforesaid crust of the forehead. Was it valid? It does not seem so.

The proximate matter of the Sacrament of Confirmation is chrismation and the imposition of the Bishop's hand, as is established from the Confession of Faith of Michael Palaeologus: "Another is the sacrament of Confirmation, which Bishops confer by the imposition of hands, by chrismating."

The aforesaid imposition of the hand, a rite introduced by the Apostles, as in ordination so also in confirmation, is to be made by bodily touch.

But this imposition of the hand is not a rite really distinct and separated from the chrismation itself on the forehead of the one to be confirmed, and to be made in the manner of a cross. In the single chapter *de Sacr. Unct*. it is said: "Through the chrismation of the forehead the imposition of the hand is designated, which by another name is called Confirmation; because through it the Holy Spirit is given for increase and strength."

Therefore, since the imposition of the hand, altogether essential in Confirmation, is indistinct from the anointing, which is altogether to be made on the forehead and not on the head, it is evident that Confirmation is invalid if first the imposition of the hand is made over the head, and then the anointing is made by means of an instrument; which was also decided by the Holy Office, January 14, 1885.

And indeed, since the imposition of the hand essentially required in Confirmation is not an imposition of the hand over the head of the one to be confirmed, distinct from the anointing itself and separated from it; but is that imposition of the hand which accompanies the anointing on the forehead in the manner of a cross, and which consequently is indistinct from the anointing, St. Alphonsus, book 6, n. 164, it is evident that this imposition of the hand must be altogether physical, and consequently immediate, that is, it must be made with no instrument or no foreign thing intervening. And just as chrismation is essentially to be made on the forehead, so in that chrismation the imposition of the hand also is on the forehead.

"The anointing must be made by immediate contact of the hand of the Bishop who confirms on the forehead of him who is confirmed, without the cooperation of any intermediate instrument, such as a brush, cloth, sponge, etc." *Dictionnaire de Theologie Catholique*, Paris, 1908, v. Confirmation, p. 1098, vol. 3.

Therefore, in the Case, the imposition of the hand over the head of the sick person, first made, truly contributes nothing as regards the validity of Confirmation.

This validity indeed depends on immediate anointing, performed with chrism on the forehead of the sick person, and on the implicit immediate imposition of the hand of the minister. If Confirmation or chrismation could be made with a little brush or another instrument, "the immediate imposition of the hand of the minister, which is altogether required, would be lacking; that mediated imposition is improperly so called." Not the hand, but the brush, the cotton, is imposed. St. Alphonsus, loc. cit.

When the question was proposed: Whether Confirmation conferred with a small brush by an orthodox minister is valid? The Sacred Congregation of the Sacraments, August 6, 1912, answered: In the negative, and therefore it is to be repeated.

Now in the Case, the anointing was not made immediately by the hand of the minister, or by his thumb, but by means of cotton; hence in truth by this anointing the imposition of the hand was not immediate, but mediate.

And on this head, in the Case, Confirmation must simply be said to be invalid.

And if Confirmation was invalid from defect of the imposition of the hand, it was also invalid from defect of true anointing in the Case. For how can the forehead of the young man to be confirmed be said to have been anointed, if, as is explained, the anointing was made upon a crust flowing with pus? If that crust was flowing with pus, anointing was physically impossible, since the cotton had to be immediately soaked with pus, and the pus to adhere immediately to it; and consequently an anointing with sacred chrism could no longer be had by that cotton.

Furthermore, just as Baptism is held as doubtful if the head of the one to be baptized abounds with an oily crust, since then the water with difficulty touches the head itself, so by parity, indeed much more, Confirmation must be held as doubtful if anointing is made upon a crust which flows with pus.

As doubtful, namely prescinding from the required immediate imposition of the hand and the required anointing, concerning which it has already been said.

Communion of the Minister

To n. 537.

"II. The Roman Ritual, typical edition, title IV, chap. II, where the order of administering sacred Communion to those communicating both outside Mass and before or after it, and also within Mass, is described, at n. 11 has these words: 'The Priest offers the Eucharist to those communicating, beginning with the ministers of the altar, if they wish to communicate.' Likewise in decree n. 1074, of the Gauls, July 13, 1658, on the proposed doubt: Whether in Communion within Mass the Most Holy Sacrament of the Eucharist is to be administered first to the minister serving the Mass rather than to nuns or the others present there? The Sacred Congregation of Rites ordered the answer: In the aforesaid case the minister of the sacrifice is to be preferred to the others, although more dignified, not by reason of preeminence, but of ministry.

"Whence it is asked: Whether the word minister of the altar or of the sacrifice in these and similar documents of the Sacred Congregation of Rites is to be restricted exclusively to ministers already

constituted in minor orders, or at least tonsured, or rather whether by the word ministers are to be understood all, whoever they are, whether laymen or clerics, who serve Mass?

"Response to II. By the name of minister of the altar or of the sacrifice of the Mass comes any cleric or layman serving Mass at the altar, who is to be preferred to others in the distribution of the sacred Synaxis; taking care nevertheless that clerics be preferred to a layman serving, and that to clerics of a lesser order others constituted in a greater order be preferred, or persons who possess a higher dignity to be attended to liturgically either *per se*, as kings, or by accident, as spouses in a Mass for blessing nuptials." Sacred Congregation of Rites, January 30, 1915, Roman, ad 2.

Mass for the People

To n. 622.

"The obligation still remains for pastors of applying Mass for the people on March 19, on the feast of St. Joseph; on Thursday after the first Sunday after Pentecost, on the feast of the Most Holy Body of Christ; and on June 24, on the feast of St. John the Baptist; and not also on Wednesday before the third Sunday after Easter, on which the feast of the Patronage of St. Joseph is celebrated." Sacred Consistorial Congregation, December 16, 1914; *Acta Apostolicae Sedis*, vol. 7, pp. 26-27.

Decree of the Sacred Congregation of the Council Ut debita, May 11, 1904

Concerning things to be observed and avoided in satisfying manual Masses. To n. 627.

1. The reason for the Decree is the growing danger, from the present state of things and the malice of men, lest alms for Masses received be lost and the obligations undertaken not be satisfied. Therefore the end of a decree of this kind is that greater cautions be employed, lest the pious wills of the faithful be frustrated, and so that the obligations undertaken in the celebration and application of Masses may be fulfilled studiously and holily. Paragraph *Ut debita*.

Manual Masses

2. The definition and determination of manual Masses which is made here is to be understood and held only for the effects of the present Decree. Paragraph *Declarat*.
3. Now these are Masses entrusted to others to be celebrated: 1. those which are not established in perpetuity or quasi-perpetuity; 2. those which are established in perpetuity, but not constituted in some church or annexed to some benefice; 3. those which are constituted in some church, or annexed to some benefice, but are celebrated outside that church, or by another and not by the beneficiary, for whatever reason. Paragraphs *Declarat*, *Pariter*, *Ad instar*.
4. But Masses annexed to benefices, which by law can and must be handed over to other Priests when the beneficiary does not celebrate and apply them himself, are those which from the tables of foundation the beneficiary is not bound to celebrate himself. St. Alphonsus, book 6, n. 330; paragraph *Ad instar*.

Likewise Masses which from a perpetual burden adhere to a church, monastery, confraternities, or any pious places whatever, which by law can be handed over to other priests, are those which are constituted in no church, so that they can be applied anywhere by any priest at the judgment of the administrators. Paragraph *Ad instar*; Sacred Congregation of the Council, December 19, 1904.

Useful Time for the Celebration of Manual Masses

5. The terms established are: one month for one Mass, a half-year for one hundred Masses, or another longer or shorter space of time according to the greater or lesser number of Masses; in such a way nevertheless that it is lawful for no one to assume so many Masses that he himself probably cannot satisfy them within a year from the day of the obligation undertaken, always preserving the will of the offerers, whether explicitly or implicitly demanding a shorter time or conceding a longer one. Paragraphs *Iam vero*, 1, 2, 3.

6. No one can seek and accept more Masses than he can probably celebrate within the established terms of time, whether by himself or through Priests subject to him. Therefore the collection of Masses made by a private person so that they may then be distributed among various Priests, although poor, is prohibited. And "by himself": nevertheless it is not prohibited to accept Masses so that someone may hand them over to the Ordinary or Prelate, or to accept them not so that he himself may celebrate them, but so that he may hand them over to another, the offerer having been warned about this matter. Paragraph *Iamvero*, 1.

7. A month is established for one Mass indefinitely, and therefore whether it is a question of Masses for the living or for the departed. If it is not a question of the recently departed, to defer them for a week seems to be only a light sin. For one Mass, or for several, which are not given by one and the same offerer, but by several: namely, for each one then the useful time will be one month from the day of acceptance. Therefore, if in that time the Priest could not celebrate all, he is bound to warn the offerers, unless the will of the offerers is otherwise established. Paragraph 2; Sacred Congregation of the Council, February 27, 1905.

8. A half-year is established for one hundred Masses, namely if they are accepted from one and the same offerer. It seems only light if someone were to defer a few of them, four or five, for a brief time, for three or four weeks. There are those who extend the brief time to five weeks. Paragraph 2.

9. From the fact that the Decree assigns a month for one Mass as the useful time, and a half-year for one hundred, various Authors assign variously the time for another number of Masses. But since for several Masses, one hundred in number, a half-year is assigned, that is, 180 days for 100 Masses, evidently the Sacred Congregation assigns 14 or 15 Masses for each month, that is, a Mass to be celebrated almost every other day. Hence the useful time, more or less as it is said by the same Sacred Congregation, can easily be determined for another number of Masses. And thus it seems possible to deduce that for two hundred Masses the useful time will be an entire year, for three hundred a year and a half, etc. Paragraph 2.

The Archbishop of Lviv of the Ruthenians proposed the following computation to the Sacred Congregation: namely, that up to ten Masses one month be established; for the first and second month, twenty Masses celebrated; and for each subsequent twenty Masses one month always be

established successively, and thus for one hundred, six months are had. The Sacred Congregation neither approved nor reproved it, but answered: the matter is left to the discreet judgment and conscience of Priests, according to the Decree and the rules handed down by approved doctors. Sacred Congregation of the Council, February 27, 1905.

10. But it is lawful for no one to assume so many Masses that he himself probably cannot satisfy them within a year from the day of the obligation undertaken, always nevertheless preserving the contrary will of the offerers, who either demand a shorter time for the celebration of Masses, whether explicitly or implicitly because of some urgent cause, or concede a longer time, or spontaneously give a greater number of Masses. Paragraph 3.

11. Therefore, if three hundred Masses are offered to someone by the same offerer, which he himself could not satisfy except within a year and a half, he is bound to warn the offerer; but he can simply accept them if he can and wishes to celebrate them within a year. But if six hundred Masses are offered by the same offerer, it is evident that then the offerer is altogether consenting to the delay of celebration beyond a year, since all cannot be celebrated in one year by one and the same Priest. On the contrary, the offerer can implicitly demand a shorter time for the celebration of Masses because of some urgent cause, for example if it is a question of Masses for the recently departed, which under grave obligation must be celebrated at least within a month, and which, for example, are offered to a regular Prelate of some monastery, namely so that they may be celebrated by the regulars of that monastery as soon as possible.

Obligation of Handing Over Masses Not Celebrated in Due Time to the Ordinary

12. All, however bound to fulfill burdens of Masses, whether ecclesiastics or laymen, at the end of any year must hand over to their own Ordinaries the burdens of Masses which they have not yet satisfied. For founded Masses or Masses annexed to some benefice, the obligation of depositing them runs from the end of that year within which the burdens ought to have been fulfilled. But for manual Masses the obligation of depositing them begins after a year from the day of the burden undertaken, if it is a question of a large number of Masses; for these certainly the obligation is to hand over those remaining Masses, not yet celebrated, at the end of the year, to their own Ordinaries.

For if it is a question of a smaller number of Masses, or of a diverse will of the offerers, the prescriptions of the preceding article 3 remain preserved. Cf. n. 10. For they must be celebrated within the time established by law: within a month, within six months, or within the shorter or longer time established by the offerer, without the Priest being able to retain them for an entire year. Hence, if he himself cannot celebrate them, he must take care that they be celebrated by others in due time, although the obligation of handing them over to the Bishop before the elapsed year is not had. Paragraph 4.

13. Therefore all those who have not satisfied the obligations undertaken after the elapsed year established by this article 4 are held by the obligation of handing over uncelebrated Masses to the Ordinary, that is, to their own Ordinary: Regulars to the Regular Superior, seculars to the Bishop. If a Priest handing over these Masses to the Ordinary would be left without Masses,

authors teach that he can retain some Masses for himself, for example fifteen or twenty; but it is better to warn the Ordinary concerning this matter.

14. The preceding prescription obliges of itself under grave sin. For concerning the observance of all these things, the conscience of all whom it concerns is gravely burdened. Paragraph *Super*. Against transgressors of the preceding article 4, the Bishop can proceed in particular, all things to be observed having been observed, with censures.

Faculty of Freely Disposing of Masses

15. Those who have an overflowing number of Masses, concerning which it is lawful for them freely to dispose, can assign them, besides to the Ordinary or to the Holy See, also to Priests well-disposed to themselves, provided these are certainly and personally known to them and above every exception. Paragraph 5. "Those who have an overflowing number of Masses": those namely who are not in delay as regards the celebration of Masses. For these, after the elapsed year, must hand them over only to the Ordinary, according to the preceding article 4. Therefore others, who have free disposition of Masses and who during the year have not been negligent in seeing to their celebration, can hand them over to other Priests also to be celebrated.

16. Those who have handed over Masses with their alms to the Ordinary or to the Holy See are relieved from every obligation before God and the Church, namely after they have handed over the Masses and alms. Paragraph 6. To the Ordinary, or to the Holy See, or to the Superiors General of Orders or Religious Congregations. Sacred Congregation of the Council, February 27, 1905.

But those who have handed over to others to be celebrated Masses received from the faithful and entrusted in any way to their faith, whether from the commission and handing over of the faithful, or from a testament or legacy, whether from the offerer himself or from his mandatary, executor, or anyone else, are held by the obligation until they have obtained proof of the celebration performed, whether by written document for the external forum, or only by living voice for the internal forum. Paragraph *Qui vero*.

17. Therefore the obligation of obtaining proof affects those who have handed over to others to be celebrated Masses received from the faithful, or in any way entrusted to their faith. Therefore it does not affect others who commit their own Masses to others to be celebrated. The former, if the alms are lost and the Mass is not celebrated from any cause even fortuitous, are bound to supply from their own goods and to satisfy the Masses. Paragraph *Qui vero*.

Obligation of Ordinaries

18. Diocesan Ordinaries will immediately enter in order into a book the Masses which, from the disposition of the preceding articles, they will gather, with the respective alms, and will take care, according to their strength, that they be celebrated as soon as possible, in such a way nevertheless that manual Masses be satisfied first, then those which are after the likeness of manual Masses.

But in distribution they will observe the rule of the Decree *Vigilanti*, namely: "they will first distribute the intentions of Masses among priests subject to themselves whom they know to need them; then the others they will commit either to the Holy See, or to other Ordinaries, or also, if they wish, to priests outside the diocese, provided they are known to themselves and above every exception," the rule of article 6 always remaining firm concerning the obligation until they have required from the priests proof of the celebration performed. Paragraph 7. Cf. n. 6.

"Diocesan Ordinaries": it is a question of Ordinaries of places; but evidently, by proportionate reason, the same is to be understood concerning Ordinaries of Regulars. Therefore in the present article 7, under the name of Ordinaries come also Regular Prelates for their respective subjects. Sacred Congregation of the Council, February 27, 1905.

19. Manual Masses are first to be satisfied: those namely which the faithful request to be celebrated, with a manual stipend offered, to whomever or in whatever way they hand over this stipend, whether by short hand or in testaments, provided they do not constitute a perpetual foundation, or one such and so long-lasting that it must be held as perpetual. Paragraph *Declarat*. Moreover, by the present Decree there are counted among manual Masses those which indeed burden the patrimony of some private family in perpetuity, but are constituted in no church, which Masses can be satisfied anywhere by any priests at the judgment of the father of the family. Paragraph *Pariter*.

20. After manual Masses, those which are after the likeness of manual Masses are to be satisfied. These, from the present Decree, are those which, constituted in some church or annexed to benefices, cannot be applied by the proper beneficiary or in the proper church, from this or that cause; and therefore either by law or with an indult of the Holy See must be handed over to other Priests so that they may be satisfied. Paragraph *Ad instar*.

21. "They will first distribute among Priests subject to themselves, then the others... or also, if they wish, to priests outside the diocese." As regards those first Priests, an obligation indeed is imposed on Bishops; but no strict right arises from this for Priests, as the matter is evident of itself; for otherwise Bishops would be obliged from strict justice to prefer those priests in the distribution, and consequently to make them indemnified if they passed them over. Certainly from the Decree a certain simple mandate made to Ordinaries is drawn out: "they will distribute," and nothing else.

22. The Ordinary must take care that, insofar as can be done, stipends accepted from various benefactors be handed over to various priests, so that the Masses may be celebrated within the due time. Sacred Congregation of the Council, February 27, 1905; namely within the time established by this Decree *Ut debita*, just as Masses entrusted by particular offerers. It then suffices that the Priests celebrate according to the mind of the Ordinary, who nevertheless must form the intention for the individual offerers, according to the rules handed down by approved authors of moral theology. Nevertheless it would be better if the prescribed intentions are made known to the priests. Sacred Congregation of the Council, February 27, 1905. But when stipends are received from the hand of the Ordinary, the useful time by concession of the Holy See begins from the day on which the Priest receives them from the

Ordinary, not from the day on which the faithful first handed them over. Sacred Congregation of the Council, February 27, 1905.

23. Bishops also are bound to hand over Masses to Priests known to themselves and above every exception. And besides, they themselves also remain obligated concerning the celebration of the Masses until they have required from the Priests proof of the celebration performed.

24. But if diocesan Bishops and Regular Prelates hand over Masses to be celebrated to other Bishops or Regular Prelates, they remain free from any other obligation, even if they hand them over to Superiors General of Religious Congregations. Sacred Congregation of the Council, February 27, 1905.

Every Kind of Commerce is Prohibited

25. By means of Masses any commerce, or kind of commerce, is prohibited under grave sin, whether to merchants or to others who are not merchants, whether to laymen or to ecclesiastics. And not only is the collection of Masses accepted from the faithful or from pious places prohibited, but also simply to request, accept, and hand over these Masses for any other end whatsoever than for the celebration itself of Masses, and with the full stipend then given and not commuted into another thing.

And this is prohibited both for Masses to be celebrated and for Masses already celebrated, namely if for these someone were to receive, in place of the stipend, books or other merchandise; so that for these Masses already celebrated, the contract not yet having been fulfilled, not merchandise but the stipend is to be handed over, whenever this falls into usage and habit and turns into the support of some commerce.

But it is prohibited to booksellers, merchants, sellers of sacred things, administrators of periodicals, and others requesting Masses, for example authors of books for selling them, to hand over not their own Masses, but others', namely those accepted from the faithful or from pious places. For these cannot be handed over except to those who celebrate them, whether by themselves or through their subjects. Contrary indults granted up to now all remain abrogated in the future. Paragraphs 8, 9, 10.

26. But it is not prohibited, in place of a stipend in money, to hand over to the Priest any other thing whatever in place of the stipend, whether by a merchant or by anyone else who asks of the Priest that he be willing to celebrate Mass for him or according to his intention, when namely, as is evident, it is a question of one's own Mass, not of another's which is committed to the Priest to be celebrated.

27. "Whenever this falls into usage and habit." Therefore a Priest who has bought cloth from a merchant and afterwards could not pay its price could on that occasion offer himself to celebrate Masses whose stipend would equal that price, and which perhaps he knows that that merchant must have celebrated from the legacy of his father. Nevertheless he could not do this habitually; for it is explicitly prohibited by the Decree and would certainly fall into support of that commerce.

28. The alms is to be handed over entirely to the one celebrating. The case is excepted in which the priest spontaneously, not having been asked, yields part of the stipend handed over to him to the one handing it over. But it is not a question of the case in which the excess of stipend is not given in view of the celebration of Mass, but in view of the person, for whatever other reason it is given, and this is certain.

29. Against this prescription, and consequently he would not incur the penalties, although he would sin from another source, would not sin a Priest who, celebrating a second Mass on the same day and accepting alms for it from indult, had to hand this over entirely to the Bishop, and handed over to him only part. Sacred Congregation of the Council, February 27, 1905. But although for this second Mass on the same day a stipend cannot be accepted by general law, nevertheless the priest can apply it according to that intention to which by the rule of the Order, if for example he is a religious, he is obligated, or by the statute of a pious Congregation or pious Sodality to which perhaps he is enrolled, he is held.

On the contrary, priests to whom by rectors or administrators of churches the satisfaction of one or several legacies of Masses founded in the church is committed could not at their own judgment commit the celebration of those Masses to other priests outside the proper church and with a lesser alms. Sacred Congregation of the Council, December 19, 1904.

30. Moreover it is lawful for no one, not even Bishops, not even with the permission of the offerers, without permission of the Holy See, to subtract anything from stipends handed over to Sanctuaries so that provision may be made for their adornment; nor, so that necessary expenses for the celebration itself of Masses may be sustained, namely for hosts, wine, etc., if the church has no other revenues, and for this reason the number of Masses is not diminished. Concerning this matter, cf. *Enchiridion Morale*, n. 624. Paragraph 11.

Penalties Against Transgressors of the Law

31. But whoever shall have dared to violate in any way or under any pretext the statutes in preceding articles 8, 9, 10, and 11, cf. here nn. 25, 30, if he is of the priestly order, will be liable to suspension from divine things reserved to the Holy See and to be incurred *ipso facto*; if he is a cleric not yet initiated to the priesthood, he will be subject to suspension from the orders received and moreover will become incapable of attaining higher orders; but if a layman, he will be bound by excommunication *latae sententiae* reserved to the Bishop. Paragraph 12.

32. Therefore Cardinals and Bishops, since they are not expressly mentioned, do not incur the aforesaid suspension. But the aforesaid penalties are incurred by those who exercise the commerce condemned by the preceding articles 8, 9, 10, cf. n. 25, by means of Masses, and those who illegitimately retain part of the stipend, even so that provision may be made for the adornment and ornament of sanctuaries, according to articles 9 and 11. Cf. nn. 25-30. But ignorance excuses from incurring penalties of this kind, even crass and supine ignorance, and also probably affected ignorance; for from the Decree itself daring, presumption, and knowledge are required. Paragraphs 8, 12.

33. "He will become incapable." This incapacity renders ordination only illicit, and not also invalid; and if it is occult it can be dispensed by the Bishop, by force of chapter *Liceat*.

34. But by the present Decree nothing has been taken away from article 12 of the second series of excommunications of the Constitution *Apostolicae Sedis*. It remains whole and unmoved. Therefore several who do not incur the excommunication reserved to the Supreme Pontiff by the Constitution *Apostolicae Sedis*, incur the excommunication and suspension imposed by the Decree.

...*Ut debita*, as is established from what has been said. For those incur it who knowingly hand over Masses, or even accept them, conducting some kind of commerce with the alms of Masses: namely by handing over or accepting Masses accepted from the faithful and from pious places, not specifically for their celebration, but for any other end; by commuting the accepted alms into other things, or diminishing them; by selling or buying things, or entering into subscriptions of periodicals, by means of Masses; finally by subtracting something from Masses handed over to a sanctuary, so that provision may be made for their adornment and ornament.

35. Then follows paragraph 14 of the present Decree, a certain prudential and provisional disposition, which now no longer has place.

Masses Annexed to Benefices and Masses Founded in Parishes

36. Finally, as regards Masses annexed to benefices, whenever they are handed over to other Priests to be celebrated, the Eminent Fathers declare and establish that the alms must be no other than the synodal alms of the place in which the benefices are erected.

But for Masses founded in parishes and other churches, the alms which is given must be no other than that which is found to have been taxed in perpetuity in the foundation or in the successive indult of reduction, always nevertheless preserving the rights, if there are any legitimately recognized, either for the fabrics of churches or for their rectors, according to the declarations presented by the Sacred Congregation in the Munich case, July 25, 1874, and in the Hildesheim case, January 21, 1898. Paragraph 15.

Hence priests enjoying founded chaplaincies, whether ecclesiastical or lay, cannot commit to other Priests the Masses of their chaplaincies to be celebrated, with the alms established according to their own judgment, but must observe the preceding dispositions of article 15 of the Decree. Sacred Congregation of the Council, December 19, 1904.

Masses founded in churches are Masses whose obligation is perpetual and which have not been erected as a title by authority of the Bishop, and therefore are distinguished from benefices. Ferraris, v. *Beneficium*, art. 1, nn. 9-10. But for admitting perpetual burdens of this kind, permission of the Bishop is necessary.

37. As regards Masses annexed to benefices, as for example is the Mass for the people to be celebrated by a pastor, nothing is said concerning time and place; for those things are to be observed which would have to be observed by the beneficiary himself. "Preserving the rights for the fabrics of churches": for in favor of the ministers and those serving the churches that

portion of revenues can be retained which at the beginning of the foundation, or in another legitimate way, was assigned to them, independently of the special work to be performed for fulfilling the legacy. "Preserving the rights for the rectors of churches": namely when the alms of Masses of certain legacies in part hold the place of the parochial congrua. Paragraph *In Monacen.*

Office and Vigilance of Ordinaries

38. Finally, it will be the office of individual Ordinaries to take care that in individual churches, besides the table of perpetual burdens and the book in which manual Masses which are handed over by the faithful are listed in order with their alms, there also be books in which the satisfaction of the said burdens and Masses is marked. Paragraph *Denique*.

39. Likewise it will belong to them to watch over the full and complete execution of the present Decree, which His Holiness commands to be inviolably observed by all, anything whatsoever to the contrary notwithstanding. Paragraph *Ipsorum*.

Decree of the Sacred Congregation of the Council Recenti

May 22, 1907.

On the Satisfaction of Masses

To n. 627 bis.

1. By this Decree of the Sacred Congregation of the Council, *Recenti*, May 22, 1907, it is declared an abuse and violation of the law to deduct something on one's own authority from the accepted stipend of Masses, and, with part of the money retained for oneself, to commit the Masses themselves to others to be celebrated, because of the consent of the priest receiving with a more or less even mind, or because of the end of helping some pious work or exercising charity.

2. Likewise it is declared an abuse and violation of the law to collect a great number of Masses, gathered in immense quantity in the hands of private persons, always liable to the danger which always threatens things committed to private trust.

3. Finally, it is declared an abuse and violation of the law to commit Masses to be celebrated not only more abundantly than it would be lawful to distribute to private persons, but also more inconsiderately to entrust them to unknown priests, because of the appearance of some name or title of theirs, or because of the recommendation of others who do not know them sufficiently. Hence it is deduced that it is enough if someone does not personally know the Priest, but from the trustworthy recommendation of others who fully know him, knows that he is upright and deserves all confidence.

4. But since Bishops and Ordinaries of places are admonished to employ every care and vigilance in this matter, and to teach the clergy and administrators of pious legacies the gravity of the matter, it is evident that not only ecclesiastics but also laymen are bound by these Decrees.

5. To extirpate the evil by the roots, the Sacred Congregation decrees three things under grave fault.

First, that in the future whoever wishes to commit Masses to be celebrated to Priests, whether regular or secular, residing outside the diocese, must do this through the Ordinary of those Priests, who for regulars is their Superior, or at least after he has been heard and has consented. For the Ordinary can have those Priests well known to himself.

But the Bishop of these Priests cannot prevent Masses from being transmitted to those Priests if the aforesaid Priests are worthy persons and deserve all confidence. Likewise the Bishop of those who send the Masses cannot prevent the transmission of Masses, unless it is a question of those Masses which, by his subjects not having been celebrated or caused to be celebrated within a year, according to the Decree *Ut debita*, article 4, must be handed over to their own Bishop.

Nor indeed do those seem to be comprehended by the present Decree who commit their own Masses to others, but those who commit the Masses of others to Priests to be celebrated. For each one can dispose of his own things as he wishes, provided he does this without unjust harm to others.

6. Second, that each Ordinary, as soon as it is permitted, draw up a catalogue of his Priests, and describe the number of Masses which each is bound to satisfy, so that thereafter he may proceed more safely in assigning Masses.
7. The obligation, as is evident, is for the Bishop, so that he may know which Masses each one is bound to celebrate from obligation of benefice, chaplaincy, or commission, so that he himself may thereafter proceed more safely in assigning Masses. The same obligation belongs to the Regular Superior. But by the present Decree no obligation is imposed also on Priests that they give an account to the Ordinary of Masses privately committed to them.
8. Third, finally, if any Bishops or Priests wish in the future to send Masses, of which there is an overflowing quantity, to Prelates or priests of churches which are situated in the East, always and in individual cases they must do this through the Sacred Congregation of Propaganda Fide.
9. "If any Bishops or Priests": wherefore this Decree does not touch laymen. "Of which there is an overflowing quantity": not others; of which there is an overflowing quantity, whether for themselves, as regards Priests, or also for their subjects, as regards Bishops, and as regards Masses accepted from others; not as regards their own Masses, which they themselves hand over, with their own money, to be celebrated.
10. Through the Sacred Congregation de Propaganda Fide; or also through Apostolic Delegates, or Superiors of Religious to their subjects. Sacred Congregation of the Council, September 9, 1907. Cf. also the Decree of the Sacred Congregation de Propaganda Fide, July 15, 1908, which is had in the text under n. 627 bis at the end.
11. His Holiness held and confirmed the preceding prescriptions as ratified, and ordered them to be published so that they may be observed, anything whatsoever to the contrary notwithstanding.

Notes to nn. 639 and 657 bis

To nn. 639 and 657 bis.

"Ordinaries, from just and reasonable causes, and with the things to be observed by law having been observed, can permit, by way of act, the celebration of Mass at home, on any day.

"Ordinaries, from just and reasonable causes, and with the things to be observed by law having been observed, can permit, by way of act, the celebration of Mass at home in favor of those who enjoy the Indult of a domestic Oratory, even on those days which are excepted in the Indult obtained, provided that the just and reasonable causes are other than those on account of which the Indult of the domestic Oratory was granted." Sacred Congregation of the Sacraments, March 22, 1915; *Acta Apostolicae Sedis*, vol. 7, p. 147.

Sundays of the first class are:

1. First Sunday of Advent.
2. First Sunday of Lent.
3. Passion Sunday.
4. Palm Sunday.
5. Easter Sunday.
6. Low Sunday.
7. Pentecost.
8. Most Holy Trinity.

Sundays of the second class are: 1. The second, third, and fourth Sundays of Advent. 2. Septuagesima. 3. Sexagesima. 4. Quinquagesima. 5. The second, third, and fourth Sundays of Lent.

In Doubles of the first class, commemorations can and must be made, if they occur: 1. of any Sunday whatever, whether of the second class or lesser; 2. of a Day within the privileged Octaves of the Nativity, Epiphany, and Most Holy Body of Christ; 3. of a greater non-privileged Feria, that is, of Advent, Lent, Ember Days, and the second day of Rogations; 4. of the Vigil of Epiphany.

But in Doubles of the second class, commemorations can and must be made, if they occur: 1. of any Sunday whatever; 2. of any Double, even of a non-privileged Octave Day, or Semidouble, reduced after the manner of a Simple; 3. of a Day within the privileged Octaves of the Nativity, Epiphany, and Most Holy Body of Christ; 4. of any greater Feria whatever; 5. of a Vigil; 6. but of a Simple only at Lauds and in private Masses.

Privileged Ferias, Vigils, and Octaves which exclude Doubles of the first class: 1. Ash Wednesday. 2. The Ferias of the whole Greater Week. 3. The Vigils of the Nativity and Pentecost. 4. The Days within the Octaves of Easter and Pentecost. 5. The Octave Day of the Nativity, or Circumcision, Epiphany, and the Most Holy Body of Christ.

Nevertheless on the Octave Day of the Solemn Commemoration of the Most Holy Body of Christ, when the Feast of the Holy Apostles Peter and Paul occurs, the Office is made of their Feast, with

commemoration of the Octave Day, which however is omitted in second Vespers because of the concurrence of the Feast of the Most Sacred Heart of Jesus. Cf. *Acta Sanctae Sedis*, fasc. January 31, 1912.

Ferias, Vigils, and Octaves which exclude Doubles of the second class, besides those already indicated in the preceding paragraph, are: the Days within the Octaves of Epiphany and of the Most Holy Body of Christ.

On Ferias of Lent, and also of Ember Days, of the second day of Rogations, and on Vigils, if there occurs the Office of some Double Feast, not however of the first or second class, or Semidouble, private Masses can be said *ad libitum*, either of the Feast with commemoration and last Gospel of the Feria or Vigil, or of the Feria or Vigil with commemoration of the Feast.

"From Decree of the Sacred Congregation of Rites, n. 3365, Chioggia, August 7, 1875, ad III, the Bishop can prescribe that a collect for a grave matter, if it truly is for a grave matter, be said even in doubles of the first class; it is asked:

I. When the Bishop prescribes a collect for a grave matter even in doubles of the first class, must the collect be said in all and individual doubles of the first class?

II. If the Bishop simply commands a collect for a grave matter without any mention of doubles of the first class, on what days is the collect to be omitted?

Response. To I: In the affirmative, excepting the following days, namely: the Nativity of the Lord; Epiphany of the Lord; Thursday in the Supper of the Lord; Holy Saturday; Easter of the Resurrection; Ascension of the Lord; Pentecost; the Feast of the Most Holy Trinity; and the Feast of the Most Holy Body of Christ.

To II: In all doubles of the first class, on the Vigils of the Nativity of the Lord and Pentecost, and on Palm Sunday." Sacred Congregation of Rites, December 23, 1914.

On the Sacrament of Order

To n. 880.

Since it is altogether certain that Order generally and without any distinction is a sacrament, from this it must be concluded that not only the presbyterate and diaconate are sacraments, but also the subdiaconate and minor orders. "Whence... it is necessary that in all of them a character be imprinted." St. Thomas, Supplement, q. 35, a. 2, corpus; q. 37, a. 5.

But since the episcopate is at the summit, or in the enlarged grade of the priesthood, it seems certain that the episcopate is a sacrament. Council of Trent, sess. 23, chap. 3, 4; canon 4, 6.

And as regards the subdiaconate and minor orders, that they are sacraments is the far more probable and truer opinion, since it is logically altogether more conformable to the doctrine of the Council of Trent, sess. 23, both in the Chapters and in the Canons, and to the doctrine of the Council of Florence in the Decree for the Armenians, which is asserted, altogether gratuitously, to be of no value, nor does this seem capable of being affirmed with any solid probability.

"But the division of order is not of an integral whole into its parts, nor of a universal whole, but of a potestative whole.... And therefore all orders are one sacrament." St. Thomas, Supplement, q. 37, a. 1,

ad 2.

Nor certainly are there solid arguments against the asserted sacramental nature of the aforesaid orders, namely that they lack divine institution, that they lack matter and form, that they lack efficacy of grace; because such orders before the third century are never named, nor is imposition of hands had in them; and because there is one distinction of them in the Latin Church and another in the Greek Church. St. Alphonsus, book 6, n. 735, paragraph *Patet*; St. Thomas, Supplement, q. 37, aa. 2, 4, 5.

1. The proposed thesis, as is evident, does not concern Order in general: whether it is a sacrament. Luther, Illyricus, Chemnitz, and other Innovators denied it, but it is a most certain truth from Sacred Scripture and likewise from divine Tradition. And the very clear definition of the Council of Trent, sess. 23, canon 3, is indubitable and in no way controverted: "If anyone shall have said that Order, or sacred ordination, is not truly and properly a sacrament instituted by Christ the Lord, or is some human fiction devised by men inexperienced in ecclesiastical matters, or is only a certain rite of choosing ministers of the word of God and of the sacraments, let him be anathema."
2. Nor likewise, in the proposed thesis, is it a question of the simple priesthood and of the diaconate. Concerning the simple priesthood: for the order of priests is divided in two, says Pope Anacletus, namely of Bishops, who are called first priests, and of presbyters, concerning whom Rabanus says: presbyters are men of the second order.

It is a most certain truth that the presbyterate, insofar as it is distinguished from the episcopate, is a sacrament. The Council of Trent, sess. 23, canon 1, affirms this in express words concerning the priesthood, at the same time declaring its intimate nature: "If anyone shall have said that in the New Testament there is not a visible and external priesthood; or that there is not some power of consecrating and offering the true Body and Blood of the Lord, and of remitting and retaining sins; but only the office and bare ministry of preaching the Gospel, or that those who do not preach are not priests, let him be anathema."

In canon 2 the Council likewise affirms that besides the priesthood there are other orders; and therefore that the priesthood is an order, and the primary or supreme order of all, since all other orders are directed to it. "If anyone shall have said that besides the priesthood there are not in the Catholic Church orders, both greater and lesser, through which, as through certain grades, one tends to the priesthood, let him be anathema." Then follows canon 3, already related, in which the Council affirms that Order, or sacred ordination, is a sacrament. Therefore either the presbyterate most certainly is a sacrament, or order is not a sacrament.

3. Likewise it is a theologically certain truth that the diaconate is a sacrament. For the same Council of Trent says in canon 4: "If anyone shall have said that through sacred ordination the Holy Spirit is not given, and therefore that Bishops say in vain: Receive the Holy Spirit; or that through it a character is not imprinted, or that one who was a priest can again become a layman, let him be anathema." But in the ordination of a deacon the aforesaid words also are said. Therefore in it also the Holy Spirit is given, and grace is conferred; and consequently, because it is a rite conferring grace, it is a sacrament.

Moreover, in canon 6 it is said: "If anyone shall have said that in the Catholic Church there is not a hierarchy instituted by divine ordination, which consists of Bishops, Presbyters, and Ministers, let him be anathema." But among the several orders of ministers which the Council of Trent itself enumerates in chapter 2, from porter to deacon, the principal ones are deacons, who consequently are at least principally designated by the aforesaid canon 6. But again, the aforesaid hierarchy divinely instituted, according to the same Council of Trent, chapter 4, in reality is nothing other than the sacrament of order. Therefore there can be no doubt that the diaconate is a sacrament.

4. But from these things which have just been set forth, by logical deduction it follows that both the episcopate and the subdiaconate and the other minor orders are sacraments; concerning these alone there is a question in our thesis, because concerning these alone among Catholic doctors is the matter disputed.

5. And certainly, first, if Order generally and without any distinction is a sacrament, all orders consequently are a sacrament, since otherwise that Tridentine assertion, canon 3, "Order is truly and properly a sacrament," would be very equivocal. This assertion indeed does not distinguish between order and order in such a way that it includes the presbyterate and diaconate, but excludes the subdiaconate and the other minor orders, or even the episcopate if it is held as a distinct order. And if certainly that indefinite proposition "Order is a sacrament" includes the diaconate, as in reality it includes it, by the same reason it must include all the other orders. The logical reason for the inclusion of the diaconate in that indefinite proposition certainly can be no other than because it is a true order. But the other orders also, according to the Council of Trent, are true orders. Therefore they also are included.

6. And this reasoning is confirmed from the Council of Florence. For after it had said altogether generally and without any distinction: the sixth Sacrament is that of order, it immediately adds explicitly the presbyterate, diaconate, subdiaconate, and the other orders. Therefore all are the sixth sacrament of order. And then it adds: the ordinary minister of this sacrament is the Bishop. Therefore this sacrament also has an extraordinary minister. But the extraordinary minister is only of the subdiaconate and minor orders; for concerning the diaconate the matter is very doubtful, although concerning the subdiaconate also there are authors both affirming and denying. Therefore all these orders are a sacrament.

And finally at the end the Council says: "The effect of this sacrament is increase of grace, so that someone may be a suitable minister." But the Council previously explicitly mentioned the ministries of the minor orders. Nor indeed can there be doubt that this is the right interpretation of the Council of Florence also from an extrinsic reason. For almost everything has been copied word for word from the Opuscule of St. Thomas *On the Articles of Faith and the Seven Sacraments*. And St. Thomas teaches the opinion proposed by us.

7. But let us return to the Council of Trent. The Council of Trent proceeds gradually in this way in the Chapters. In chapter 1 it asserts the existence of the priesthood and sacrifice, and order is not named. In chapter 2 it distinctly commemorates and enumerates all the orders which from office serve the priesthood and are the various grades by which one ascends to the priesthood. But in chapter 3 it says: Order is truly and properly one of the seven sacraments of holy

Church. Therefore, just as it is impossible to restrict this sentence of the Council to the priesthood, so in like manner it is impossible to restrict the same assertion to the priesthood and the diaconate. Evidently such a restriction would come only from a preconceived opinion, and against the mind and handed-down doctrine of the same Council.

8. And the Council proceeds in altogether the same way in the Canons. In canon 1 it affirms the existence of the priesthood, without naming order. In canon 2 it affirms, besides the priesthood, greater and lesser orders tending to the priesthood. In canon 3 it affirms that Order is a sacrament. Therefore Order in the third Canon cannot be understood as any other order than the order which is explained in the second Canon, and which, besides the priesthood, at the same time comprises greater and lesser orders, all of which tend to the priesthood.

9. Moreover the Council of Trent, chapter 4 of the same sess. 23, affirms that the ecclesiastical hierarchy of order is constituted by divine law in the Church. Now this hierarchy, according to the same Council, is constituted from Bishops and from the other ecclesiastical grades. But the other ecclesiastical grades are not only priests and deacons, but all those who are numbered in the preceding chapter 2, so that through them an ascent is made to the priesthood, namely from porter to deacon. Likewise the aforesaid hierarchy divinely constituted in the Church, according to the same chapter 4, comprises not only Bishops, but the remaining inferior orders, the other orders. But the remaining orders, the other orders, are not only the presbyterate, nor only the presbyterate and diaconate, but all other orders enumerated by the Council itself in the preceding chapter 2. Therefore all are divinely instituted; and if they do not lack divine institution, they all are sacraments.

10. This indeed is expressly confirmed by canon 6: "If anyone shall have said that in the Catholic Church there is not a hierarchy instituted by divine ordination, which consists of bishops, presbyters, and ministers, let him be anathema." Ministers in this canon 6, which corresponds to chapter 4, are all those who are ministers in the same chapter 4; and these are all those whom it pertains to Bishops to ordain, and therefore all, namely presbyters, deacons, subdeacons, acolytes, and the others. For it does not pertain to Bishops to ordain only presbyters and deacons.

Likewise Ministers in canon 6 are all those who pertain to the orders of ministers, which are in the most ordered disposition of the Church, as is had in chapter 2, and which comprise, according to the same chapter, all greater and lesser orders. Moreover, if the Council of Trent had truly wished to restrict the ecclesiastical hierarchy instituted by ordination to deacons, why, in place of saying "ministers," which is suitable to all ministers, did it not say "deacons"?

11. And if another proof is still needed, our conclusion is confirmed not a little from the fact that all the Theologians of the Council of Trent, with one only excepted, commonly attributed the nature of a true and properly so-called sacrament to the subdiaconate and minor orders. And consequently, as the very distinguished de Augustinis observes, the Tridentine Fathers, by approving the schema of doctrine and canons concerning the sacrament of order, which did not depart from the common opinion of theologians, yielded to this same opinion. *De Ordine*, art. 6, 2nd ed., Rome, 1887.

12. His Eminence Cardinal Louis Billot, in his treatise on Order, establishes this thesis XXIX: "The fullness of the sacrament of Order is in the Priesthood, but participation is in the orders of ministers. Wherefore even inferior ordinations are sacramental and imprint a character; nevertheless this is proposed as theologically certain only concerning the diaconate, but concerning the rest only as more probable and more consonant with the definitions of the Councils." Consequently His Eminence the Cardinal proves this thesis briefly indeed, but invincibly, especially from the Council of Florence, from the Council of Trent, and from St. Thomas.

13. And it is useful here to hear Peter Canisius, who, explaining against the heretics the summary of Catholic doctrine, with no controversy raised, simply affirms that all orders are sacraments. These are the very words of Canisius:

"What is the Sacrament of Order? It is that by which singular grace and spiritual power are handed over to certain persons, so that they may perform an office in the Church by profession. That is, the Sacrament through which, as through a door, there necessarily enter the legitimate dispensers of the mysteries and utterances of God, ministers of Christ and of the Church: Bishops, Presbyters, Deacons, and all finally who are rightly and with authority engaged in undertaking ecclesiastical offices. For no one, as Scripture testifies, takes or ought to take honor to himself, namely of exercising the ministries of the Church, except he who is called by God, as Aaron; that is, unless he has been initiated by the visible sacrament of ordination, and has been legitimately ordained by the Bishop, and sent to the work of a certain ministry, which he performs in the Church according to his state, according to the laws of divine and Apostolic tradition." Canisius, *Opus Catechisticum*, or *On the Summary of Christian Doctrine*, on Order, I.

"How many grades does this Sacrament contain in itself? Generally indeed it contains the minor orders and the major orders: namely the four minor orders, of Porters, Readers, Exorcists, and Acolytes; but the three major, namely of Subdeacons, Deacons, and Presbyters. Moreover, among presbyters some greater and some lesser are found instituted by Christ." Canisius, loc. cit., IV.

14. And similarly from the Catechism published by command of Pius X on October 18, 1912, the sacrament of Order comprises all orders, both greater and lesser; and all orders, minor and major, pertain to the sacred hierarchy, nn. 397, 399, 400. And altogether the same was had in the other Catechism prescribed for the Roman Province by the same Pius X, June 14, 1905, part 4, chap. 8, where it is said that the Sacrament contains various grades of Orders, namely the presbyterate, diaconate, subdiaconate, and minor Orders, from which the sacred hierarchy results.

15. Against this opinion the argument which is taken from the diverse numbering and distinction of orders in the Latin and Greek Church is indeed very weak. For they say: whatever the case may be, whether in the age nearest the Apostles the Greek Church had all minor orders, which Morinus indeed denies, now certainly it admits no other orders below the diaconate except the subdiaconate and lectorate, but the rest it has never numbered in its Euchologies for a thousand years and more.

Although Morinus denies that the Greek Church had minor orders from the time nearest the Apostles, others nevertheless affirm it, and Hallier proves it by several arguments.

And certainly an ancient author of the work *On the Ecclesiastical Hierarchy* commemorates minor orders besides the subdiaconate and lectorate, and likewise the ancient author of the Letter to the Antiochenes, if St. Dionysius is not the true author of the former and St. Ignatius Martyr of the latter. The Synod of Laodicea also commemorates them; and St. Epiphanius numbers Exorcists and Doorkeepers among ecclesiastical ministers. Cf. Wirceburgenses, n. 54.

16. And if afterwards and in the present all minor orders in the Greek Church are not conferred individually, it certainly withdrew from the ancient custom in the course of time, which Innocent IV reprehends in the Greeks. Although it can be said that only the exorcistate is neglected by the more recent Greeks; the acolytate and porterate are conferred together with the subdiaconate, as is drawn from the very form of the subdiaconate which is used by the Greeks. Hence Benedict XIV, Constitution *Etsi pastoralis*, concerning the rites of the Greeks, says that a Greek cleric, through the subdiaconate conferred in the Greek rite, is judged to have received the acolytate and porterate. Therefore these orders exist among the Greeks, although they are not conferred separately. And from Gabriel of Philadelphia it is established that the exorcistate also is conferred by other Orientals. Cf. Wirceburgenses, nn. 54, 55, 58, 59, 60.

17. But the diversity of the Latin and Greek Church in the essential rite of the sacraments is well explained from this, that Christ did not determine this rite in its lowest species. Hence among the Greeks, Copts, and Ethiopians the imposition of hands alone has been preserved. But the Latin Church added to it, for a certain greater signification and expression, the handing over of instruments, which alone it constituted for the subdiaconate and the other inferior orders.

18. Moreover, as regards the Greek Church, those things have force which are soon to be said concerning the Latin Church. For they say that before the third century the aforesaid orders, concerning which the whole controversy is, are never named before the third century: for first they are named by Pope Cornelius in the Letter to Fabius, Bishop of Antioch, around the year 251.

19. But it can easily be answered that all the inferior orders were always implicit in the supreme order of ministers, that is, in the diaconate; and that it was left to the disposition of the Church to decide their explicit conferral in part or in whole, according as it would seem expedient. Whence St. Thomas, Supplement, q. 37, a. 2, ad 2, says: "that in the primitive Church, because of the small number of ministers, all the inferior ministries were committed to deacons... nevertheless all the aforesaid powers were present, but implicitly in the one power of the deacon. But afterwards divine worship was enlarged, and the Church handed over explicitly in diverse orders what it had implicitly in one order. And according to this the Master says that the Church instituted other orders." Namely, it did not institute them by its own authority, but conferred separately on several persons those instituted by the Lord, as the number of the faithful increased.

20. But it is one thing that the aforesaid orders first are found by us commemorated by Pope Cornelius; it is another thing that then for the first time they were introduced into the Church.

Indeed, Pope Cornelius, by enumerating all by name, both greater and lesser orders, and affirming that they are present at Rome, implicitly affirms that they had already existed for a long time.

St. Justin Martyr, in the second century, died about the year 161, in the First Apology for Christians, n. 67, Migne, vol. 6, cols. 429-430, commemorates deacons and a reader, whose office it was to read in the Christian assembly the commentaries of the Apostles or the writings of the prophets: "*Eita pausamenou tou anaginoskontos*, then, when the reader has ceased..."

Likewise Tertullian, in the second century, died about the year 199, *De Praescriptione*, XLI, Migne, vol. 2, col. 57: "One man is bishop today, another tomorrow; today he is deacon who tomorrow is reader; today he is presbyter who tomorrow is layman: for they impose priestly duties even on laymen."

21. Hence it will not be very difficult to assert their divine institution, not without solid foundation. For their institution could well have been handed down by oral communication from Christ the Lord. And that this happened is to be said from the rule of Augustine. Namely, "What the universal Church holds, and has not been instituted by Councils, but has always been retained, is most rightly believed to have been handed down only by Apostolic authority."

But that this rule suits our matter is manifest. For although no Council is found in which the orders lower than the diaconate were instituted, nevertheless we know that they have always been in the Church from the beginnings of the Church, and have always been constantly retained. And indeed the Council of Trent, sess. 23, chap. 2, treating of the seven orders, says: "Not only of priests, but also of deacons, the Sacred Scriptures make open mention, and they teach in most grave words those things which are chiefly to be attended to in their ordination; and from the very beginning of the Church the names of the following orders and the proper ministries of each one of them, namely of subdeacon, acolyte, exorcist, lector, and porter, are known to have been in use, although not in equal grade. For the subdiaconate is referred to the major orders by the Fathers and sacred councils, in which we very frequently read also concerning the other inferior orders."

But the aforesaid beginning of the Church, according to the Council itself, is referred to the times of the Apostles. For in the same session, chap. 17, *de Reform.*, the Council wills "that the functions of holy orders from the diaconate to the porterate, laudably received in the Church from the times of the Apostles, and for some time interrupted in many places, be recalled to use according to the sacred canons."

22. The divine institution of all ministers can be explained in three ways. The first mode, which St. Alphonsus hands down, book 6, n. 735, derives the institution of ministers from the very institution of the priesthood, in which it was implicitly contained. After citing the text of Luke 22: "Do this in commemoration of Me," the Holy Doctor soon adds: "Where, although only the priesthood was ordained, nevertheless in it was contained the ordination of other ministers who serve Priests." And St. Thomas gives the reason, "because the inferior power is comprehended in the superior virtue, as sense in intellect and dukedom in kingdom." Supplement, q. 35, n. 5; q. 37, a. 1, ad 2 and ad 3; a. 2; a. 4. Cf. Scavini, Milan, 1874, on the Sacrament of Order, n. 528.

Another mode is brought forward by the very learned Struggl, tract IX, q. 3, art. 2, n. 22. The aforesaid Author says: "All Orders, namely the diaconate, subdiaconate, and all the other minor orders, were instituted by Christ, at least by the general institution of ministers of the Church."

Finally, the third mode is if it is said that all inferior orders were comprehended and instituted in the diaconate, and then by the power of the Church were separated from one another, as we have already heard from the Angelic Doctor. And hence it is evident that this difficulty of divine institution, as regards the subdiaconate and the other minor orders, is the same for the diaconate, concerning whose divine institution there is indeed certainty from the Council of Trent, but when and how it was instituted by Christ is not explained in particular in the Sacred Scriptures. Indeed, not even concerning the episcopate, whose divine institution is certain, is it certain when and how Christ instituted this sacrament. It is probably said that this was after the Resurrection, when He constituted the Apostles Pastors of the Church. For during those forty days Christ showed Himself alive, appearing and speaking of the kingdom of God. And, after the Resurrection, He also gave to the Apostles the power of remitting sins, when He had already instituted the sacrifice and priesthood at the Last Supper.

23. And could not also the exorcistate and lectorate have been instituted when Christ, before the institution of the priesthood at the Last Supper, sent His disciples two by two, conferring on them power of casting out demons and preaching the word of God? In Luke 9:1-2: "And having called together the twelve Apostles, He gave them power and authority over all demons, and to cure diseases. And He sent them to preach the kingdom of God and to heal the sick." And 10:17: "And the seventy-two returned with joy, saying, Lord, even the demons are subject to us in Thy name." And in Mark 6:7: "And He called the twelve and began to send them two by two, and He gave them power over unclean spirits." And below, v. 12: "And going forth they preached that men should do penance." And v. 30: "And the Apostles coming together to Jesus reported to Him all things which they had done and taught." They had acted by expelling demons; they had taught by instructing the peoples, by which they were disposed and prepared for receiving the mystery of the Eucharist, which was to be instituted later. Besides, could we not also assert the institution of the acolytate and subdiaconate in the mission of the Apostles for preparing the place for eating the Pasch, indeed for instituting and receiving the Eucharist?

24. This objection concerning divine institution having been removed, another objection is to be removed from the efficacy of grace, which they say is not had in the subdiaconate and the other inferior orders, since in them the imposition of hands is not had, by which grace is conferred.

There can certainly be no doubt that grace is conferred by the imposition of hands in the Episcopate, in the Presbyterate, and in the Diaconate. Nevertheless it is altogether false that grace is not also conferred in the other orders because they do not contain the imposition of hands. For in the other orders there is had the handing over of instruments with the corresponding words; and therefore matter and form are in no way lacking in them, as is had from the Council of Trent itself, from the Council of Florence, in the Decree for the Armenians, from the Roman Pontifical, and from the Roman Catechism.

25. But that assertion is gratuitous. Nowhere is it said that grace in order is not given except by the imposition of hands. And from the fact that by this imposition of hands grace is conferred in some orders of a superior grade, it does not follow that it is not conferred by other rites in other orders of an inferior grade. Then the assertion seems false from the Council of Trent itself, which does not attribute grace in this sacrament either exclusively or simply to the imposition of hands, but generally to the signs by which the sacrament is effected.

By this assertion it again appears from the Council of Trent that Order as a sacrament comprises all orders, both major and minor. Behold the words of the Council, chapter 3, sess. 23: "Since by the testimony of Scripture, Apostolic tradition, and the unanimous consent of the Fathers, it is clear that through sacred ordination, which is effected by exterior words and signs, grace is conferred, no one ought to doubt that order is truly and properly one of the seven sacraments of holy Church."

26. Moreover, according to the Roman Pontifical, the Bishop "warns those to be ordained that they touch the instruments in the handing over of which a character is imprinted." From this warning it is evident both that all orders are sacraments and that the only rite efficacious of grace is not the imposition of hands.

And the Roman Catechism, n. 10, speaking of the Priesthood itself, has these very grave words, which well show how false is the assertion of the adversaries: "Wherefore the Bishop, offering to him who is ordained Priest the chalice with wine and water and the paten with bread, says: Receive the power of offering sacrifice, etc.; by which words the Church has always taught that, while the matter is presented, the power of consecrating the Eucharist is handed over, with a character impressed on the soul, to which grace is joined for duly and legitimately undertaking that office." And n. 34 attributes spiritual character to all orders.

Finally the Council of Florence, while not excluding the imposition of hands, brings forward no other rite of the sacraments except the handing over of instruments; and to this rite it evidently annexes the efficacy of grace, which, after the orders have been enumerated and their matter and form, it explicitly affirms at the end.

27. But the adversaries say that the Council hands down only an accidental rite. This assertion is false. For the Council declares at the beginning that the Sacraments "are effected by three things, namely by things as matter, by words as form, and by the person of the minister conferring the sacrament, with the intention of doing what the Church does; if any of these is lacking, the sacrament is not effected."

It explains these three substantial things for the individual sacraments, and therefore also for order hands down substantial matter and form; whence again it is established that all orders, according to the Council of Florence, are sacraments, since it assigns the substantial matter and form of all. Moreover that it is not a question of a merely accidental rite, but of a substantial one, is established from the assertion of the Council itself, since it says: "The sixth sacrament is that of order, whose matter is that by the handing over of which the order is conferred." Therefore if order is conferred through the handing over of this matter, this handing over is altogether substantial.

28. But the adversaries press by another way, asserting that the Decree of the Council of Florence is of no value, since in it there is a question of a certain mere Instruction of the Armenians, for whose union the aforesaid Decree was issued. But it is one thing that this Decree does not contain in this matter a dogmatic definition *ex cathedra*; it is another thing, quite different, that the Decree reports only a certain mere opinion, and indeed a false one, according to the same adversaries. For by this Decree, with the Sacred Council approving and the orators themselves also consenting, the doctrine of the orthodox faith was proposed to the Armenians under a compendium.

The Decree is contained in the Bull of Eugene IV, *Exultate Deo*: "It was given at Florence in a public synodal Session, solemnly celebrated in the greater Church." As is had in § 3, the faith of the orators was examined beforehand, both concerning "other things pertaining to the orthodox faith and the rites of the universal Church" and concerning "the Seven Sacraments of the Church." And then in § 4 it is said: "We judged it expedient, lest in the future any hesitation concerning the truth of the faith be able to exist among those Armenians themselves, and that they may think the same in all things with the Apostolic See, and that the union itself may persevere stable and perpetual, without any scruple, that by this Decree, with this sacred Florentine Council approving, and the same orators also consenting to this, We should hand down to those orators, under a certain brief compendium, the truth of the orthodox faith which the Church professes concerning the aforesaid matters."

And then in § 9, where the treatment of the Sacraments begins, these things are set before the exposition of the doctrine of the Church: "Fifth, for the easier instruction of the same Armenians, both present and future, We reduce the truth of the ecclesiastical sacraments into this very brief formula." Since these things are so, it is indeed not understood how modern writers can hold this Decree as of no value, or at most as a certain practical instruction and in no way doctrinal.

Moreover, a practical Instruction can at most be understood as regards the rite to be observed, but in no way as regards the intrinsic nature of order. And our proposed thesis concerns this, not that. For in the thesis it is not a question of the rite by which orders are conferred, but whether orders are sacraments, consequently instituted by Christ Our Lord, by whatever rite at last they may be conferred.

Nor finally is this to be passed over: the doctrinal value of the Decree can in no way be diminished from the fact that, in the Sacrament of the Eucharist, it prescribes that water be mixed with wine before consecration. For THAT RITE ALSO PERTAINS TO DOCTRINE. For thus it is said in the Decree: "But water is therefore mixed, because according to the testimonies of the Holy Fathers and Doctors of the Church, presented earlier in the disputation, it is believed that the Lord Himself instituted this Sacrament in wine mixed with water."

If, according to the testimonies of the Holy Fathers and Doctors, Christ thus instituted this Sacrament, this institution of the Sacrament pertains especially to the doctrine of the Sacrament itself. And that a rite of this kind truly pertains most greatly to doctrine is evident also from the fact that the Sacred Congregation de Propaganda Fide, in its Decree of January 30, 1635, most gravely reprehends the Armenians omitting the aforesaid rite, "because water is mixed in the wine to be consecrated from Apostolic tradition, and it is believed from the testimonies of the Holy Fathers that Christ did this," and because the contrary rite of the Armenians "either involves the heresy of the

Monophysites, or at least is most suspect of it." For the Armenians consecrate wine alone, so that through this they may show that there is only one nature in Christ the Lord. Do not these things pertain to the doctrine of orthodox Catholic faith?

29. It is worthwhile to hear those things which His Eminence Cardinal Louis Billot has concerning this question. For he says: "In very truth, only from the necessity of a prejudged cause could certain persons have been led to rejecting the norm of the Decree for the Armenians, whose full authority has always existed in the Church of God. Have theologians not been accustomed to adhere religiously to this Decree, while everywhere they bring it forward among the other rules from which it is not lawful to depart? Did not the Tridentine itself take from the same Decree many dogmatic formulas in the doctrine of the Sacraments?... It is established that all these were taken from the Decree for the Armenians, which is cited in the margins with the places of Scriptures, Canon Law, and preceding Councils, on which the Fathers of the Council relied in their definitions. Wherefore very few are those who have not feared to decline the authority of this Decree." *De Ordine*, questions XXXIV-XXXIX, Supplement, thesis XXX, § 1, n. 2. Thus the most learned Cardinal.

And the learned Spanish annotator of Gury's Compendium, Father Casajoana, S.J., says: "More truly,... all orders, both major and minor, are Sacraments according to the more probable and more common opinion. Thus Eugene IV teaches in the Decree to the Armenians; whose authority proves more than all the reasons of the opposite opinion." On Order, n. 699, Note.

30. Nor, as regards the subdiaconate, does the objection have force that it was not always a major and sacred order, but first began to be counted among the major and sacred orders under Urban II in the Council of Benevento in the year 1091, or under Innocent III in the year 1207.

If sacred and major order is understood from its intrinsic reason, namely insofar as it gives the spiritual power of serving more closely the sacrifice of the altar than those initiated in minor orders do, the subdiaconate was always in the Church of God a sacred and major order. For we have already heard from the Council of Trent that from the very beginning of the Church the proper ministries of each of the seven orders were in use. Likewise we have heard from the same Council that the subdiaconate is referred to the major orders by the Fathers; which words express an ancient and universal tradition, nor can they be referred to Fathers and Councils of later centuries, since they are uttered absolutely and in a general way, and are uttered after the other words concerning the use of the proper ministries of each of the seven orders from the very beginning of the Church.

31. But if sacred and major order is understood from another extrinsic reason, then certainly the subdiaconate was not always a sacred and major order; but nothing can be deduced from this against its sacramental nature.

Certainly the subdiaconate was not always a sacred order, this denomination being drawn from the vow of continence, which was not always annexed to it. Nor was it always a major order insofar as a subdeacon can be chosen as Bishop, which did not obtain except from Urban II and from Innocent III. For Urban permitted that sometimes, but very rarely, when opportunity required, and not without the permission of the Roman Pontiff or Metropolitan, a subdeacon could be chosen as Bishop, whom

the ancient Canons had sanctioned should be assumed from the assembly alone of those who are constituted in sacred orders. But Innocent, from the fact that the subdiaconate was already counted among sacred orders, established that a subdeacon can freely be chosen as Bishop, just as a deacon or priest.

Nor finally is it a sacred order if sacred order is taken for a hierarchical order, hierarchy strictly taken. For in this way those belong to the hierarchy who obtain some jurisdiction or principate in the Church, of which kind are Bishops, Presbyters, and Deacons, as the Fathers Ignatius, Jerome, and Chrysostom teach.

32. Likewise, as regards minor orders, it is not a valid objection that their proper functions are slight and inferior. Nothing is inferior and slight, but on the contrary anything which of itself looks to divine worship, to the most holy sacrifice of the Eucharist, is a great and noble thing. And did not Christ Himself, the Savior of the human race, also exercise those functions, as the Master of the Sentences, book 4, dist. 24, and St. Bonaventure, *Compendium Theologicae Veritatis*, book 6, chap. 36, skillfully noted?

Therefore since the Lord Himself already used the sevenfold office of Orders, from His example the dignity of sacred orders shines forth still more. For Christ, says St. Bonaventure, exercised: the porterate, when He cast the sellers out of the temple, Matthew 21:12, and did not permit anyone to carry a vessel through the temple, Mark 11:16; the lectorate, when standing in the midst of the elders He read in the Synagogue, after taking the book of Isaiah, Luke 4:16 ff.; the exorcistate, when He freed those possessed by a demon, Luke 11:14-15; the acolytate, when He said: I am the light of the world, John 8:12; the subdiaconate, when He girded Himself with a towel and washed the feet of the disciples, John 13:4 ff.; the diaconate, when after supper He distributed His Body and Blood to His disciples, Luke 22:19-20; and the Priesthood, finally, when He offered Himself on the altar of the cross, and when at the Supper He changed bread into His Body and wine into His Blood.

33. It must now be said concerning the sacramental nature of the episcopate. That the episcopate is a sacrament is certainly established from the Council of Trent, sess. 23, chap. 3, where it establishes that Order is a sacrament. The Council proves this thus: "For the Apostle says: 'I admonish thee that thou stir up the grace of God, which is in thee, through the imposition of my hands. For God has not given us the spirit of fear, but of power and of love and of sobriety.'"

Here the Apostle speaks to Timothy, and the imposition of hands made to him was ordination as Bishop, as Theophylact, Oecumenius, Anselm, and other interpreters of no low note affirm with Chrysostom. And St. Thomas, lecture 3 on 2 Timothy, explaining those words: "which is in thee through the imposition of my hands," says: "by whom namely he had been ordained Bishop; in which imposition of the hand the grace of the Holy Spirit was given to him." But the Apostle in that place, namely in 2 Timothy, chapter 1, treats of the offices proper to a Bishop, and the same is had in 1 Timothy, chapter 4.

34. Moreover the Council of Trent, after it has asserted generally that order is a sacrament in chapter 3, in the immediately following chapter 4 teaches that through order the sacred hierarchy of bishops, presbyters, and other orders has been constituted, and that priests and especially bishops pertain to the hierarchical order. Therefore the sacred ordination of bishops

also is a sacrament, as the sacred ordination of presbyters and of the remaining inferior orders is a sacrament.

35. Besides, according to canon 6 of the Council of Trent, the episcopate pertains to the hierarchy instituted by divine ordination; and likewise according to chapter 3 and canon 4, by the imposition of hands and the words, "Receive the Holy Spirit," grace is conferred. But the episcopate is conferred by this rite. Therefore, since in it there is had that threefold element intrinsically constitutive of a sacrament, a sensible sign, divine institution, and efficacy of grace, it must necessarily be concluded that the episcopate also is truly and properly a sacrament.

36. Since therefore there are seven orders, and each of them is a sacrament, it is asked in the last place whether there are seven orders and seven sacraments, or one order and one sacrament. To define this question it must be premised from the Angelic Doctor that a threefold whole is to be distinguished.

First, a whole is integral, which is divided into integral parts, which consequently individually do not receive the predication of the whole. And thus it cannot truly be said: the roof is the house; the vestibule is the house, etc.

The second is a universal whole, which is divided into subjective parts, of which each can be predicated separately, but which together receive the predication of the whole in the plural, not in the singular. And thus it is said: Peter is a man, Paul is a man; man is an animal, donkey is an animal; man is an animated body, donkey is an animated body. But it is not said: Peter and Paul are man, but they are several men; nor is it said: man and donkey are animal, are animated body, but they are several animals, several animated bodies.

Finally, the third whole is potestative, whose nature is this: that the whole according to the complete notion is in one, but in others there is some participation of it. And thus in a kingdom, although the whole fullness of power resides with the king, nevertheless the powers of ministers are not excluded, which are certain participations of royal power. "And so it is here: for the whole fullness of this sacrament is in one order, namely the priesthood, but in the others there is a certain participation of order. And this was signified in this, that the Lord said to Moses, Numbers 11:17: I will take of thy spirit and give it to them, that they may sustain with thee the burden of the people. And therefore all orders are one sacrament." St. Thomas, Supplement, q. 37, a. 1, ad 2 and ad 3.

37. And as all orders are a sacrament and one sacrament, so also the individual orders are a sacrament, "according to the mode by which a potestative whole is predicated of its parts, which is midway between a universal whole and an integral whole. For a universal whole is present to any part according to its whole essence and power, as animal to man and horse; and therefore it is properly predicated of the individual parts. But an integral whole is not in any part, neither according to the whole essence nor according to the whole power; and therefore in no way is it predicated of the parts, but in some way, although improperly, of all together, as if we should say that wall, roof, and foundation are a house.

"But a potential whole is present to the individual parts according to its whole essence, but not according to its whole power. And therefore in some way it can be predicated of any part, but not so properly as a universal whole. And in this way Augustine says that memory, intelligence, and will are one essence of the soul." St. Thomas, I, q. 77, a. 1, ad 1; namely because the essence of the soul exists whole in these powers, although not according to its whole power. And so here, as has already been said, the whole fullness of this sacrament is in the priesthood alone; in the others there is a certain participation of it; and from that also, to which the other orders are referred, the various orders are distinguished. St. Thomas, Supplement, q. 37, a. 2.

Form of Ordination

To n. 882.

Since, according to several authors, the Preface in the Ordination of Presbyters, especially the last words, "Grant, we beseech Thee, Almighty Father, IN these Thy servants the dignity of the Presbyterate," etc., pertains to the form of the Sacrament, it is asked:

1. Whether in the aforesaid words, the word *ut* used through inadvertence in place of *in*, substantially vitiates the form?
2. What is to be done in this case?

The matter is evident that the aforesaid change is substantial in that proposition: "Grant, we beseech Thee," etc. For by substituting the word *ut* for the word *in*, no sense at all remains.

But from this no doubt can be had concerning the validity of the ordination. For although there are authors who assert that the aforesaid Preface pertains to the form of the Sacrament, nevertheless that is not true.

For first, the form accompanies the matter; the matter here is the imposition of hands, which, when the Preface is pronounced, has been altogether completed. Moreover, when the Preface is pronounced, other rites and other ceremonies have already intervened between the imposition of hands and the Preface, with which consequently the Preface could no longer be joined with the matter as form. And finally the Preface is not recited with hands extended over those ordained, which extension is the continuation of the prior imposition of hands and consequently joins it morally with the form: "Let us pray, most dear brethren," etc.; but it is recited with hands extended before the breast, and this extension of hands before the breast, according to the Decisions of the Holy Office, in no way suffices for the validity of ordination if it is used in place of the aforesaid extension. Therefore it is a very different rite. And consequently, when the extension of the hands and the form which accompanies it have ended, the whole essential rite has been completed, nor do those things which follow pertain to the essence.

After the extension of the hands and the accompanying form, "Let us pray, most dear brethren," etc., there follow: genuflection, rising, extension of hands before the breast. This most certainly does not pertain to the essence of ordination as matter; therefore neither does the accompanying prayer and Preface.

To the preceding intrinsic considerations there are added several Decisions of the Holy Office, from which it is established that the substantial form of the imposition of hands is only the aforesaid Prayer: "Let us pray, most dear brethren."

The Holy Office, March 17, 1897, declared that a priest was to be ordained again under condition, when the Bishop did not remember whether he had held his hands elevated over the head of the one to be promoted, in the second imposition, while the prayer was recited: "Let us pray, most dear brethren."

The same Holy Office, July 6, 1898, declared that an ordination is valid if the Bishop, noticing the defect of extension of the hand before the handing over of the instruments, himself alone extends the hand over those to be ordained and repeats in a low voice the exhortation: "Let us pray, most dear brethren."

Ordinations have been declared valid by the Holy Office if the Bishop held the hand extended at least immediately before or immediately after the prayer "Let us pray," or at least did not omit it entirely during the aforesaid prayer. See *Enchiridion Morale*, 4th ed., p. 621 ff.; St. Alphonsus, ed. Fr. Gande, vol. 3, p. 755 ff., note d.

Therefore the necessary and substantial form is only the Prayer: "Let us pray," etc. For if the imposition of hands is not made during it, or immediately after it, the ordination is to be repeated. Therefore the substantial form corresponding to the matter, or imposition of hands, is only the aforesaid Prayer.

And this is confirmed. For according to the Sacred Congregation of Rites, February 18, 1843, the Roman Church imposes hands on those to be ordained ONLY IN THE FIRST PRAYER: "LET US PRAY, MOST DEAR BRETHREN." Therefore only this Prayer substantially refers to the imposition of hands. Therefore the other Prayer and the following Preface are altogether substantially foreign to the imposition of hands. And consequently they are not its form.

But it is superfluous to note that that "only" refers to the Prayer, that is, to the form, and not to the imposition of hands; for the Roman Church, besides that imposition of hands in that Prayer, also uses another imposition of hands at the end of the Ordination, in that other handing over of power: "Receive the Holy Spirit," etc. Therefore the sense of that proposition is: The second imposition of hands, which according to the common opinion is only a continuation of the first, is had only in that Prayer. Therefore, when the imposition of hands or application of the matter is finished, the form which refers to it, and which regularly coexists with it, ends.

And certainly, if the imposition of hands is had only in the Prayer: "Let us pray, most dear brethren," etc., therefore it is not had in the other following Prayer and much less in the following Preface. If in this the imposition of hands is not had, evidently this Preface cannot be referred and joined as form with matter which is not present.

And this is confirmed, because the Preface is recited not with hands extended over those to be ordained, but with hands extended before the breast, which extension, according to the Decrees of the Holy Office, is not an imposition of hands, and in place of this would render ordination invalid, or certainly doubtful.

Therefore, when the extension of hands over those to be ordained and the accompanying Prayer, "Let us pray, most dear brethren," are finished, the rite of imposition of the hand with its form has been completed; and another ceremony altogether begins. This is also shown by the fact that the one ordaining then turns to the altar, etc. And this also does not seem to be omitted in the last place: that it seems incongruous for so long a form to be used here, since regularly in all the sacraments it is accustomed to be very brief. For that form would be almost two pages long.

These things having been premised, it seems that the proposed doubts must be answered: To the first: Provision will be made in the second.

To the second: Let him acquiesce. And thus the Sacred Congregation of the Sacraments responded to this Case, September 17, 1914.

Concerning Interruption of Studies

To n. 903.

"

I. Since it not rarely happens that Religious students, without any fault of their own or of their superiors, are compelled to interrupt studies for several months, for example by reason of infirmity or military service, it is asked whether students of this kind are bound to repeat the whole scholastic year thus interrupted or shortened; or whether they can be dispensed by the Superior General, with the deliberative vote of his Consultors acceding.

"

II. Whether the examination or test concerning which there is mention in the Response to n. VI of the Declarations of the Sacred Congregation of September 7, 1909, must be undergone also by students who have not cultivated in schools some discipline accessory to Theology; and if in the affirmative, whether this examination, to be undergone both by these students and by others, can coincide with the examination usually to be undergone at the end of the scholastic year.

"Response to I. In the negative to the first part; in the affirmative to the second, provided that: 1. the interruption or abbreviation of studies, taken as a whole, has not lasted beyond three months; 2. the studies omitted have been supplied by private schools; 3. and in the examination it has been established, from the testimony of the examiners or judges of doctrine, that the students have thoroughly learned the disciplines concerning which treatment was had in the schools during their absence.

"To II. The examination concerning which treatment is had in the Response to n. VI of the Declarations of the Sacred Congregation of September 7, 1909, is required for any omitted discipline; nevertheless the ordinary examination, even one given at the end of the year, suffices, which must be established from the testimony of the examiners or judges of doctrine." Sacred Congregation on Religious, January 8, 1915.

Concerning Betrothals and Marriage

To nn. 912, 1026.

"Lest clandestine unions be entered rashly, which the Church of God has always detested and prohibited for very just reasons, the Council of Trent prudently took care, chapter 1, sess. XXIV, *de reform. matrim.*, declaring: 'Those who shall attempt to contract marriage otherwise than in the presence of the pastor, or of another priest with the permission of the pastor himself or of the Ordinary, and of two or three witnesses, the Holy Synod renders altogether incapable of contracting thus, and decrees contracts of this kind to be invalid and null.'

"But since the same Sacred Council had commanded that such a decree be published in individual parishes, and that it have force only in those places where it had been promulgated, it happened that several places in which that publication was not made lacked, and even today lack, the benefit of the Tridentine law, and remain still subject to the hesitations and inconveniences of the old discipline.

"But not even where the new law was in force was every difficulty removed. For often grave doubt exists in deciding the person of the pastor in whose presence marriage is to be contracted. Canonical discipline indeed established that the proper pastor must be understood as the one in whose parish the domicile or quasi-domicile of either contracting party is. But because sometimes it is difficult to judge whether there is certainty concerning quasi-domicile, not a few marriages were exposed to the danger that they were null; and many also, whether by ignorance of men or by fraud, were discovered to be altogether illegitimate and invalid.

"These things, long deplored, we see happening more frequently in our age, the more easily and swiftly intercourse is completed with peoples, even those very far separated. Wherefore it has seemed expedient to wise and very learned men that some change be introduced into the law concerning the form of celebrating marriage. Many sacred Prelates also from every part of the world, especially from the more celebrated cities where the necessity appeared graver, offered suppliant prayers to the Apostolic See for this.

"At the same time it was requested by Bishops, both most of Europe and of other regions, that there be provision against the inconveniences which are derived from betrothals, that is, mutual promises of future marriage privately entered. For experience has sufficiently taught what dangers betrothals of this kind bring with themselves: first, inducements to sin and cause by which inexperienced girls are deceived; afterwards disagreements and inextricable lawsuits.

"Moved by these circumstances, His Holiness Our Lord Pope Pius X, for that solicitude which he bears for all the Churches, desiring to use some moderation to remove the mentioned harms and dangers, committed to the Sacred Congregation of the Council that it should consider this matter and propose to Him what it judged opportune.

"He wished also to hear the vote of the Council established for reducing canon law into one, and also of the Eminent Cardinals who were chosen by a special commission for preparing the same code; by whom, as also by the Sacred Congregation of the Council, meetings for that end were held several times. But after the opinions of all had been obtained, His Holiness commanded the Sacred Congregation of the Council to issue a decree in which would be contained the laws approved by Him from certain knowledge and mature deliberation, by which the discipline of betrothals and marriage would be ruled in the future, and their celebration would be made expeditious, certain, and ordered.

"Therefore, in execution of the Apostolic mandate, the Sacred Congregation of the Council by the present letters establishes and decrees those things which follow.

Concerning Betrothals

"

I. Only those betrothals are held valid and obtain canonical effects which have been contracted by a writing signed by the parties and either by the pastor or by the Ordinary of the place, or at least by two witnesses.

"But if both parties or either party does not know how to write, this is to be noted in the writing itself; and another witness is to be added, who, together with the pastor or Ordinary of the place, or with the two witnesses mentioned above, signs the writing.

"

II. Under the name of pastor here and in the following articles comes not only one who legitimately presides over a canonically erected parish; but in regions where parishes are not canonically erected, also the priest to whom the care of souls has been legitimately committed in some defined territory and who is equated to a pastor; and in missions, where territories are not yet perfectly divided, every priest universally deputed by the Moderator of the mission to the care of souls in some station.

Concerning Marriage

"III. Only those marriages are valid which are contracted before the pastor or Ordinary of the place, or a priest delegated by either, and at least two witnesses, nevertheless according to the rules expressed in the following articles; and preserving the exceptions which are placed below in nn. VII and VIII.

"IV. The pastor and the Ordinary of the place validly assist at marriage:

"§ 1. only from the day of acquired possession of the benefice or of office begun, unless by public decree they have been excommunicated by name or suspended from office;

"§ 2. only within the limits of their territory, in which they validly assist at the marriages not only of their subjects, but also of non-subjects;

"§ 3. provided that, invited and asked, and constrained neither by force nor by grave fear, they request and receive the consent of the contracting parties. "V. But they assist licitly:

"§ 1. after it has been legitimately established for them concerning the free state of the contracting parties, the things to be observed by law having been observed;

"§ 2. after it has further been established concerning the domicile, or at least the monthly stay, of either contracting party in the place of marriage;

"§ 3. but if this is lacking, in order that the pastor and Ordinary of the place may licitly be present at marriage, they need the permission of the pastor or Ordinary of either contracting party, unless grave necessity intervenes which excuses from it;

"§ 4. as regards wanderers, outside the case of necessity, let it not be lawful for the pastor to assist at their marriages unless, the matter having been brought to the Ordinary or to the priest delegated by him, he has obtained permission to assist;

"§ 5. but in any case let it be held as a rule that marriage be celebrated before the pastor of the bride, unless some just cause excuses.

"VI. The pastor and the Ordinary of the place can grant permission to another priest, determinate and certain, that he assist at marriages within the limits of their territory.

"But the delegate, in order that he assist validly and licitly, is bound to observe the limits of the mandate and the rules established above for the pastor and the Ordinary of the place in nn. IV and V.

"VII. When danger of death is imminent, where the pastor, or Ordinary of the place, or priest delegated by either cannot be had, to provide for conscience and, if the case requires, for the legitimation of offspring, marriage can be contracted validly and licitly before any priest and two witnesses.

"VIII. If it happens that in some region the pastor or Ordinary of the place, or a priest delegated by them, before whom marriage can be celebrated, cannot be had, and that condition of things has already persevered for a month, marriage can be validly and licitly entered by the formal consent emitted by the spouses before two witnesses.

"IX. § 1. Once the marriage has been celebrated, the pastor, or the one who holds his place, is immediately to write in the book of marriages the names of the spouses and witnesses, the place and day of the celebrated marriage, and other things according to the manner prescribed in the ritual books or by his own Ordinary; and this although another priest, delegated either by him or by the Ordinary, assisted at the marriage.

"§ 2. Moreover the pastor is also to note in the book of the baptized that the spouse on such a day contracted marriage in his parish. But if the spouse was baptized elsewhere, the pastor of the marriage is to transmit notice of the contract entered to the pastor of baptism, either by himself or through the episcopal curia, so that the marriage may be entered in the baptismal book.

"§ 3. Whenever marriage is contracted according to the norm of n. VII or VIII, the priest in the former case, and the witnesses in the latter, are bound in solidum with the contracting parties to take care that the union entered be noted in the prescribed books as soon as possible.

"X. Pastors who have violated the things prescribed here up to now are to be punished by the Ordinaries according to the manner and gravity of the fault. And moreover, if they have assisted at someone's marriage against the prescription of § 2 and 3 of n. V, let them not make the stole fees their own, but let them remit them to the proper pastor of the contracting parties.

"XI. § 1. All baptized in the Catholic Church and those converted to it from heresy or schism, even if either the former or the latter afterwards defected from the same, are bound by the laws established above whenever they enter betrothals or marriage among themselves.

"§ 2. They are also in force for the same Catholics mentioned above if they contract betrothals or marriage with non-Catholics, whether baptized or not baptized, even after a dispensation has been obtained from the impediment of mixed religion or disparity of cult, unless it has been established otherwise by the Holy See for some particular place or region.

"§ 3. Non-Catholics, whether baptized or not baptized, if they contract among themselves, are nowhere bound to observe the Catholic form of betrothals or marriage.

"Let the present decree be held as legitimately published and promulgated through its transmission to the Ordinaries of places; and let those things disposed in it begin everywhere to have the force of

law from the solemn day of Easter of the Resurrection of Our Lord Jesus Christ of the coming year 1908.

"Meanwhile let all Ordinaries of places take care that this decree be published among the people as soon as possible, and explained in the individual parish churches of their dioceses, so that it may be duly known by all.

"These presents to be valid by special mandate of His Holiness Our Lord Pope Pius X, anything whatsoever to the contrary, even worthy of particular mention, by no means standing in the way.

"Given at Rome on the second day of the month of August in the year 1907."

1. "I. Only those betrothals are held valid and obtain canonical effects which have been contracted by a writing signed by the parties and either by the pastor or by the Ordinary of the place, or at least by two witnesses.

"But if both parties or either party does not know how to write, this is to be noted in the writing itself; and another witness is to be added, who, together with the pastor or Ordinary of the place, or at least two witnesses mentioned above, signs the writing."

2. Only those betrothals, namely of Catholics among themselves or also of Catholics with non-Catholics. "By the pastor," namely the same one who below in the Decree is assigned for marriage. "By the Ordinary of the place," namely by the Bishop, or by his Vicar General, or by the Apostolic Administrator, or by an Abbot Nullius, or by a Vicar Capitular.

"By a writing signed": therefore without a writing, or without the signature of all, although the signature of only one party or witness is lacking, the betrothals are null. "Are held valid": wherefore those entered otherwise are invalid, both in the external forum and in the internal forum. "And obtain canonical effects": wherefore again, those entered otherwise produce no impediment of marriage.

But it is a question, as is evident, of betrothals, not of a simple promise of marriage made by one and accepted by the other, which consequently remains valid and obliging, as before the Decree, in the forum of conscience. *A fortiori* the obligation remains valid in the forum of conscience from the promise of the seducer who deflowered a girl under the offered execution of marriage.

Moreover, it is a question only of the form of betrothals; wherefore as regards all other things, those things have force which had force before the Decree, and thus betrothals entered, for example, after other betrothals are null, as intrinsically illicit.

3. "By the pastor, or by the Ordinary." Betrothals cannot be celebrated, besides before the Ordinary or Pastor, before one delegated by either. Sacred Congregation of the Council, March 28, 1908. An oeconomus, although delegated by the pastor or by the Bishop to the universality of causes, can neither licitly nor validly assist at betrothals. They do not necessarily have to be celebrated before the Ordinary or Pastor of domicile or of monthly stay; but they can be celebrated before any Ordinary or Pastor, provided it is within the limits of the territory of the same Ordinary or Pastor. Sacred Congregation of the Council, March 28, 1908.

4. "By a writing signed by the parties, and either by the Pastor or by the Ordinary of the place, or at least by two witnesses." Since betrothals contain a mutual promise, mutual acceptance of it is also required. Therefore, in order to enter valid betrothals, the parties are bound to sign together the writing, in one context, with the Pastor or Ordinary, or with two witnesses; and it does not suffice that the writing signed by one party with the Pastor or Ordinary, or with two witnesses, be remitted to the other absent party, who in turn signs with the Pastor or Ordinary, or with two witnesses. Sacred Congregation of the Council, July 27, 1908. If the bridegroom or bride lives in another place, this difficulty can then be met by constituting a procurator. For as marriage can be contracted validly and licitly through a procurator, because it is a contract, so also for the same reason betrothals can be contracted through a procurator.
5. Although in the Decree no mention is made of the date, nevertheless from the very nature of the matter it appears that for the validity of betrothals the date, or inscription of the day, month, and year, is to be placed in the writing. Sacred Congregation of the Council, July 27, 1908, ad 2. The reason is that otherwise the aforesaid writing remains altogether uncertain for making proof.
6. "II. Under the name of pastor here and in the following articles comes not only one who legitimately presides over a canonically erected parish; but in regions where parishes are not canonically erected, also the Priest to whom the care of souls has been legitimately committed in some defined territory and who is equated to a pastor; and in missions where territories are not yet perfectly divided, every Priest universally deputed by the Moderator of the mission to the care of souls in some station."
7. "Under the name of Pastor..." The Pastor in question is the Pastor for betrothals and for marriage. It does not say "under the name of the proper Pastor"; wherefore any pastor, nevertheless in his own territory, is the legitimate Pastor for betrothals and for marriage, every question of domicile or quasi-domicile of the spouses or those about to marry being removed. "A Pastor who legitimately presides over a parish; a Priest to whom the care of souls has been legitimately committed." Therefore a pastor, a Catholic priest; not a heretic, not a schismatic.
8. Whether bad Christians, heretics, pagans can be used as witnesses, in order to observe the prescriptions of articles II, III, VII, VIII: as regards the quality of witnesses, nothing has been changed by the Decree *Ne temere*. Sacred Congregation of the Sacraments, March 12, 1910.
9. By article 1 of the Decree there remains abrogated the special law which before the same Decree was in force in Spain, by force of which for the validity of betrothals a public writing signed by a notary was required. Sacred Congregation of the Sacraments, March 12, 1910.
10. "III. Only those marriages are valid which are contracted before the Pastor or Ordinary of the place, or a Priest delegated by either, and at least two witnesses, nevertheless according to the rules expressed in the following articles, and preserving the exceptions which are placed below in n. VII and VIII.

"IV. The Pastor and Ordinary of the place validly assist at marriage:

"§ 1. only from the day of acquired possession of the benefice or of office begun, unless by public decree they have been excommunicated by name or suspended from office;

"§ 2. only within the limits of their territory, in which they validly assist at the marriages not only of their subjects, but also of non-subjects;

"§ 3. provided that, invited and asked, and constrained neither by force nor by grave fear, they request and receive the consent of the contracting parties."

11. Therefore for the validity of marriage it is required that it be contracted: 1. before the Pastor or Ordinary, or a Priest, not a deacon, delegated by the Ordinary or by the Pastor; 2. before at least two witnesses; wherefore if there is one witness, the marriage will be invalid.

"Delegated." As regards delegation, whether special delegation is always required, or whether general delegation suffices, nothing has been changed, except the necessity of making it to a determinate and certain priest and restricted to the territory of the one delegating. Sacred Congregation of the Council, July 27, 1908. "Pastor": not the assistant of the Pastor. Pastor either by institution or by commission. Ordinary: Bishop, Vicar General, Chapter when the see is vacant, Vicar Capitular. Witnesses: any whatsoever who are capable of testifying, and therefore they must be present physically and morally and understand the consent of the contracting parties. Delegation can be made general, whether to one or to several, nevertheless certain and determinate, whether for one or for several marriages. A faculty of subdelegating can also be given to the delegate.

12. "The Pastor and Ordinary of the place," etc. Here are enumerated the conditions necessary so that the Pastor or Ordinary validly assist at marriage. The chief one is that they assist at marriage only within the limits of their own parish or diocese, their territory, although it is a question of those not their own subjects. And outside those limits they assist invalidly, although it is a question of their own subjects.

13. As regards pastors and military chaplains having absolutely no territory, not even cumulatively with another pastor, but exercising jurisdiction directly over persons or families, for example reigning persons, so that they follow these persons wherever they go, nothing has been changed; wherefore they will be able validly to assist at the marriages of their subjects, as they were able before. Sacred Congregation of the Council, February 1, 1908.

But pastors who do not have exclusively their own territory, but retain a territory cumulatively with another or other pastors, can assist at marriages in the territory held cumulatively. Sacred Congregation of the Council, February 1, 1908.

A pastor who in territory assigned to other pastors has some persons or families subject to himself can assist at marriages, as regards his own subjects only, everywhere in the said territory. Sacred Congregation of the Council, February 1, 1908.

Chaplains or rectors of pious places of any kind, for example of a hospital, exempt from parochial jurisdiction, can assist at marriages without delegation of the pastor or Ordinary as regards persons entrusted to them, nevertheless in the place where they exercise jurisdiction, and provided it is

established that full parochial power was committed to them. Sacred Congregation of the Council, February 1, 1908.

14. Those living in places of the Indies in which a double jurisdiction is in force, with attention to the peculiar circumstances occurring in the case, in order that they enter marriage validly and licitly, are bound to present themselves only before the personal pastor, and cannot also before the pastor of the territory. Sacred Congregation of the Sacraments, May 27, 1910.

15. "Only within the limits of their territory." Exempt regular churches, according to the tenor of the Decree, can and do have force to be considered as the territory of the Pastor or Ordinary in whose territorial district they are, for the effect of assistance at marriage. Sacred Congregation of the Sacraments, March 12, 1910.

16. "Only within the limits of his territory." In an audience of May 1, 1910, the Most Holy Father deigned graciously to grant to the Most Reverend Abbot Nullius of Saint Paul, by way of delegation, a permission by which, either personally or through a delegate, in the Churches of Saint Paul outside the Walls and of Saint Callistus beyond the Tiber, he may validly and licitly assist, the things to be observed being observed, at the marriages of his subjects only. That is, outside the limits of his territory.

17. Moreover, for the validity of marriage the Pastor and the local Ordinary must be not only elected, but also placed in possession of his office, either possession of the benefice having been taken by the usual formalities, or equivalently by the very beginning of the exercise of his proper office; nor, by a public decree, may he be suspended from office, or, by a public decree, by name excommunicated. Therefore mere nomination to the office or benefice is not sufficient; possession of it is required. Likewise, for validity it is required that the Pastor and the local Ordinary be invited and asked, all force and grave fear being removed; and that they themselves question the contracting parties and receive their consent. Invited and asked, not only explicitly but also implicitly, they validly assist at marriages. Sacred Congregation of the Council, March 28, 1908.

18. Since, however, by the present Decree, in order to contract marriage validly it is generally required that the Pastor ask for and receive the consent of the contracting parties, it follows that also for mixed marriages to be contracted validly the consent of the contracting parties must be sought and received by the Ordinary or by the Pastor, while, as to liceity in other respects, the prescriptions and instructions of the Holy See are to be observed. Sacred Congregation of the Council, July 27, 1908. By these prescriptions and instructions, however, it is provided that the Pastor not assist at the marriage in a sacred place, but outside the church; that he not recite any ecclesiastical prayers over the contracting parties; that he in no way bless them, unless, however, according to the prudent judgment of the Ordinaries, in order to avoid greater evils, something of these can be tolerated, while the celebration of Mass is always excluded.

By a Decree of the Holy Office, June 21, 1912, however, it was declared that the prescription concerning the Pastor's asking for and receiving consent for the validity of marriage, "in mixed marriages in which the parties obstinately refuse to furnish the due cautions, shall hereafter have no

place, but one must stand exactly by the preceding concessions and instructions of the Holy See on the matter, especially those of Gregory XVI in the Letter of April 30, 1841, to the Bishops of Hungary." A.A.S., vol. 4, p. 443.

19. But, having regard to the special difficulties set forth by the Chinese Ordinaries, the Sacred Congregation granted to the aforesaid Ordinaries the faculty of dispensing from the substantial form of marriage for cases only of true necessity, with power also habitually to subdelegate this faculty to mission rectors, the matter having been spoken of with the Most Holy Father. Sacred Congregation of the Council, July 27, 1908.

20. V. "They assist licitly, however:

§ 1. when they have lawfully established for themselves the free state of the contracting parties, the things to be observed by law being observed;

§ 2. when, moreover, the domicile, or at least the monthly stay, of one or other contracting party in the place of marriage has been established;

§ 3. if this is lacking, in order that the Pastor and local Ordinary assist licitly at the marriage, they need the permission of the proper Pastor or Ordinary of one or other contracting party, unless grave necessity intervenes which excuses;

§ 4. as regards wanderers, outside the case of necessity, it is not lawful for the Pastor to assist at their marriages unless, the matter having been referred to the Ordinary or to the Priest delegated by him, he has obtained permission to assist;

§ 5. but in any case, let it be held as the rule that the marriage be celebrated before the Pastor of the bride, unless some just cause excuses."

21. "When they have lawfully established for themselves the free state of the contracting parties, the things to be observed by law being reserved."

The Sacred Congregation of the Sacraments "judged that the following things should be prescribed:

I. Let pastors be reminded that it is not lawful for them to be present at a marriage unless they have lawfully established for themselves the free state of the contracting parties, the things to be observed by law being observed (cf. Decree Ne temere, n. V, § 1); and let the same especially be warned not to omit requiring from the contracting parties the testimony of baptism, if this was conferred in another parish.

II. But in order that the things prescribed in n. IX, § 2 of the aforesaid Decree may be duly observed, the announcement of a celebrated marriage, to be sent to the pastor of baptism, should carry with it the written names and surnames of the spouses and of their parents, the age of the contracting parties, the place and day of the nuptials, and the names and surnames of the witnesses who were present, and should have the pastor's subscribed name with the parochial seal added. The address, moreover, should accurately indicate the parish, diocese, town or place of the spouses' baptism, and those things which pertain to the safe transmission of writings through the public carriers.

III. If perhaps it should happen that, even with the precautions of which in n. I having been employed, the pastor of baptism, in receiving the announcement of the marriage, discovers that one

or other contracting party is already bound by another marriage, he shall as quickly as possible signify the matter to the pastor of the attempted marriage.

IV. Let Ordinaries watch diligently that these prescriptions be religiously observed, and let them take care to recall transgressors, if they find any, to their duty, even by applying canonical penalties where there is need." March 6, 1911.

22. "When they have established for themselves," etc. Therefore for liceity the Pastor or Ordinary must make an inquiry concerning the free state of the contracting parties, and accordingly he is bound as to the examination of these parties, the examination of witnesses, and the proclamation of the banns. The Pastor himself, therefore, can conduct the summary process concerning the free state.

23. Nevertheless, the law or custom in force in some dioceses has not been abolished, by force of which acts are to be carried out by the episcopal Curia by which the free state of the contracting parties is established, and then leave is granted to pastors to assist at marriages. Sacred Congregation, February 1, 1908.

24. If betrothed persons contract marriage in another parish by leave of their own pastor, it is evident that the marriage proclamations cannot on that account be omitted in their own parish.

25. On feasts recently suppressed, however, as is gathered from the Decision of the Sacred Congregation of the Council, April 7, 1862, in Pinerolien., announcements can be made for marriages and for sacred orders; care must nevertheless be taken that they be made at the time of the divine office, when a more numerous gathering of the faithful is accustomed to be present in church, and with the permission of the Bishop.

26. "When moreover it has been established," etc. It is further required for liceity that the contracting parties have domicile, or reside for an entire month in the diocese, if the Bishop assists at the marriage; in the parish, if the Pastor assists at it. The contracting parties: both, or at least one of them. "Reside": the fact of residence for an entire month is required, and nothing else is required. Therefore, although they have had neither domicile nor quasi-domicile elsewhere, but have been wanderers, they can now contract marriage before the pastor of the place of monthly residence, the things to be observed by law concerning their free state being observed.

27. "But if this is lacking," etc. If domicile, or at least monthly residence, in the place is lacking, the permission of the Pastor or Ordinary of the place of domicile, or at least of monthly residence, of one or other contracting party is required, except in a case of grave necessity. Permission is required, not delegation; and accordingly permission reasonably presumed, and even interpretative permission, is valid. But grave necessity ought to be established in writing, so that it can be shown if some difficulty should afterwards arise. Moreover, the Pastor who assists at a marriage by permission of another Pastor makes the stole fees his own.

28. "As regards wanderers," etc., "or to the priest delegated by him." Permission is to be given either by the Ordinary or by the Priest delegated by the Ordinary. As regards wanderers, even if

not both contracting parties, but only one, is a wanderer. Therefore a Priest, or several Priests, are to be delegated by the Bishop in several principal places of the diocese, who shall inquire into the condition of wanderers in order to the contracting of marriage. "Outside the case of necessity": again the case of grave necessity is excluded; when it exists, the Pastor can proceed to the marriage without the aforesaid permission.

29. Under the name of wanderers, of whom article V, § 4 treats, come all and only those who nowhere have their own Pastor or Ordinary by reason of domicile or monthly residence. Sacred Congregation of the Sacraments, March 12, 1910. For the licit celebration of marriage regard must be had only to monthly residence, and not also to quasi-domicile. Sacred Congregation of the Council, March 28, 1908. Monthly residence: in the Diocese, if the Bishop or local Ordinary assists at the marriage; in the Parish, if the Pastor assists at the marriage.

30. "In any case." When both contracting parties do not have domicile, or at least have not resided for an entire month in the same place, regularly the pastor of the bride must assist at the marriage, unless some just cause, not grave, excuses. This too is to be recorded in writing, for the case in which some difficulty could afterwards arise.

Marriages between faithful of mixed rite, Latin and Ruthenian, in the Canadian region, as also among Ruthenian faithful, must be contracted with the form of the Decree Ne temere being observed. During the marriage, the wife can follow the rite of the husband. When the marriage has been dissolved, the woman may resume her own original rite. Marriages of mixed rite are to be blessed in the rite of the man and by his pastor. Dispensations, however, are to be given and requested from the Bishop of the bride. Sacred Congregation de Propaganda Fide, August 8, 1913, arts. 34-38.

But, in the United States of North America, marriages between faithful of mixed Latin and Ruthenian rite, and also among the Greek-Ruthenians themselves, must be contracted with the form of the Decree Ne temere being observed, and therefore are to be blessed in the rite of the woman by the pastor of the woman. Sacred Congregation de Propaganda Fide, August 17, 1914. Cf. First Supplement to the Institutions of Moral Theology and Enchiridion Morale, ed. 3, p. 18 ff.

31. "VI. The Pastor and local Ordinary can grant permission to another determinate and certain Priest to assist at marriages within the limits of their territory.

But the delegate, in order to assist validly and licitly, is bound to observe the limits of the mandate, and the rules laid down above for the Pastor and local Ordinary in n. IV and V."

32. Therefore there are four conditions in order that assistance at marriage can validly and licitly be furnished by another Priest than the Pastor or Ordinary: 1. that permission be given to him by the Ordinary or by the Pastor, not by another; 2. that permission be given only to a Priest; 3. that permission be given to a certain and determinate Priest; 4. that he assist at the marriage in the territory of the one giving the permission. But it is by no means required that delegation be made only in individual cases. For as regards delegation, by the present Decree nothing has been changed, except the necessity of making it to a determinate and certain Priest, and restricted to the territory of the delegator, namely when the delegation is made to a simple Priest. Sacred Congregation of the Council, July 27, 1908. Therefore valid will be the

permission, given generally, that he assist at marriages, to a vice-pastor or to another Priest who supplies for the Pastor in case of absence. For it is not also required that permission be given only for a certain and determinate marriage. But if permission is given to another Ordinary or Pastor, they can validly and licitly assist at the marriage within the limits of their own territory. Since, however, the delegate is bound to observe the limits and the things which are laid down for the Pastor and local Ordinary in paragraphs IV and V, it follows that there can be committed to the delegate both assistance at the marriage and also those things which regard the inquiry concerning the free state of the contracting parties, and the summary process concerning it; and that delegation cannot be made to a Pastor who, by public Decree, is suspended from office, or by name excommunicated by public Decree. Delegation, moreover, cannot be made in general, but altogether in particular, to a determinate and certain priest. To a determinate and certain Priest, whether from the secular clergy or from the regular clergy.

33. If a Pastor and Ordinary who are not proper have obtained permission from the proper Pastor and Ordinary to assist at a marriage, they can delegate the faculty of assisting at the marriage to another determinate and certain Priest, within the limits of their territory. For since they have obtained permission, they can assist licitly; but, since they are Pastor and Ordinary, they have, by force of their own office and by their own right, the faculty of validly assisting at the marriage, and consequently they can delegate it to another certain and determinate priest, within the limits of their own territory.

Since the local Ordinary and the Pastor can, by ordinary power, delegate permission to another certain and determinate priest, that he may assist at marriages within the limits of his territory, they can indeed delegate that permission to him with the faculty of subdelegating; but evidently with the faculty of subdelegating not anyone whatever, but another certain and determinate priest. For this, contrary to the Decree, would equivalently be to grant the faculty, by an indirect way, to an uncertain and indeterminate priest.

34. "VII. When danger of death is imminent, where the Pastor, or the local Ordinary, or a Priest delegated by either, cannot be had, for the care of conscience and, if the case requires, for the legitimation of offspring, marriage can be contracted validly and licitly before any Priest and two witnesses."

35. "Danger," and not only the article, of death. "Cannot be had": morally speaking, and accordingly probably cannot be had, or even in doubt whether he can be had. "For the care of conscience, and... for the legitimation of offspring." Therefore in these two cases, if the Pastor or Ordinary or duly delegated Priest cannot be had, any other Priest licitly and validly assists at the marriage. For the care of conscience, therefore, for avoiding the danger of sinning and consequently the danger of the eternal salvation of the dying person. For the care of conscience, if likewise the dying person is otherwise held by a grave obligation. "For the care of conscience" is general; and accordingly it is not in the sole case of concubinage, as had expressly been held before in the Decree of the Holy Office, February 20, 1888. And for the legitimation of offspring, which consequently is not sacrilegious, incestuous, or adulterine. "Before any Priest": even one publicly excommunicated or suspended.

36. In the aforesaid danger, therefore, there is no need of any leave of the Ordinary or Pastor, much less is there need of the Pastor himself or of another Priest delegated by the Ordinary or Pastor; but any Priest, with two witnesses however, can assist at the marriage. But if witnesses are lacking, can there be place for legitimate epikeia? There are those who affirm it. But it does not seem so. For this is implicitly presupposed in the proposition condemned by the Holy Office, January 19, 1661; E.M., n. 1044. Moreover, in the present Decree there is question precisely of a most urgent case, when danger of death is imminent, and the law is invalidating. And if place is given to epikeia when witnesses are lacking, then one would have to say that place is also given to epikeia when the Priest too is lacking.

37. "Any priest, however, who according to the norm of article VII of the Decree Ne temere, when danger of death is imminent, where the pastor or local Ordinary or priest delegated by either cannot be had, can validly and licitly assist at marriage before two witnesses, can also, in the same circumstances, dispense from all impediments, even public ones, which by ecclesiastical law invalidate marriage, except the sacred order of priesthood and affinity in the direct line from lawful intercourse." Sacred Congregation of the Sacraments, May 14, 1909. "This further faculty is valid not only for concubinarii; but also, even if there is no question of concubinarii, if another cause is present for the care of conscience, and, if the case requires, for the legitimation of offspring." Sacred Congregation of the Sacraments, August 13 and 15, 1909. Moreover it is valid for all impediments, with only two excepted. Therefore it is valid also for the impediment of clandestinity, and consequently the priest can dispense even from the presence of the two witnesses, if they cannot be had.

38. "VIII. If it happens that in some region the Pastor, or local Ordinary, or Priest delegated by them, before whom marriage can be celebrated, cannot be had, and this condition of things has already persisted for a month, marriage can validly and licitly be entered upon by the betrothed parties giving formal consent before two witnesses."

39. "If it happens": in whatever place this happens; whence it follows generally: "that in some region," namely whether in some whole Nation or Province, or in another determined part or place; whether the local Ordinary is lacking, or only the Pastor, or the Priest delegated by the Ordinary or by the Pastor is lacking; and for whatever cause this happens, whether because, for example, the missionary does not return to the place except after six months, or because the betrothed parties cannot go to the missionary; for then also it is verified that he cannot be had.

40. Therefore, on the other hand, in remote places to which the missionary does not come each month, but in which, nevertheless, if he were requested, he could be had, and the betrothed parties could go without grave inconvenience either to him or to another missionary who is a Pastor in the sense of the Decree, marriages contracted without the presence of the missionary or pastor are to be held invalid. Sacred Congregation of the Council, July 27, 1908. Nevertheless, in the aforesaid case, with a grave cause urging, marriage can freely be contracted before another Pastor; for by the present Decree marriage is validly contracted before any Pastor. The proper Pastor is required only for liceity; only his permission would be needed, and this, with a grave and most just cause standing, can well be omitted and presumed.

41. "For a month," that is, for thirty days, although after the month has elapsed the Pastor, or Ordinary, or Priest delegated by them is soon to come. "And this condition of things has already persisted for a month." This condition of things is not considered interrupted by reason of the momentary, unexpected, and entirely unknown passage to the faithful through some place of a missionary who has already been absent from it for a month. Sacred Congregation of the Council, July 27, 1907.

42. "In some region," whatever place it may be, marriage can validly and licitly be contracted before witnesses alone, without the presence of a Priest competent to assist, whenever, a month having already elapsed, a competent Priest cannot be had or approached without grave inconvenience. Sacred Congregation, March 12, 1910.

43. "If it happens that in some region." He validly enters marriage before witnesses alone who goes into that region in fraud of the law. Sacred Congregation of the Sacraments, March 12, 1910.

44. "IX. § 1. When marriage has been celebrated, the Pastor, or he who takes his place, shall immediately record in the book of marriages the names of the spouses and witnesses, the place and day of the celebrated marriage, and other things according to the manner prescribed in the ritual books or by his own Ordinary; and this even if another Priest, delegated either by himself or by the Ordinary, assisted at the marriage.

§ 2. Moreover, let the Pastor also note in the book of the baptized that a spouse contracted marriage on such a day in his Parish. But if the spouse was baptized elsewhere, the Pastor of the marriage shall transmit notice of the contract entered into, either personally or through the episcopal curia, to the Pastor of baptism, so that the marriage may be entered in the baptismal book.

§ 3. Whenever marriage is contracted according to the norm of n. VII or VIII, the Priest in the former case, the witnesses in the latter, are bound in solidum with the contracting parties to take care that the entered marriage be noted as soon as possible in the prescribed books."

45. "The Pastor... shall immediately record": that pastor, namely, who furnished his assistance to the marriage, although not the proper pastor, by leave of the proper pastor. "Shall record," namely those things which are enumerated: the names of the spouses and witnesses, the place and day of the celebrated marriage, and the name of the Ordinary, Pastor, or delegate who was present at the marriage. "And other things, according to the manner prescribed in the ritual books or by his own Ordinary"; wherefore the Ordinary can prescribe other things to be added besides the aforesaid.

46. "He shall record in the book of marriages," and moreover he shall note the marriage in the book of the baptized. And if the contracting parties were baptized elsewhere, the Pastor must transmit notice of the marriage, either personally or through the episcopal curia of his own diocese, or of the diocese of the contracting parties, to the Pastor of that parish in which the contracting parties were baptized.

47. The priest or the witnesses are bound in solidum with the contracting parties to take care as soon as possible for this notation of the marriage, when the marriage is celebrated in extremis, or when the Pastor or Ordinary or their delegate is lacking. But the Pastor to whom this notice

is transmitted must note it in the book of marriages and in the book of the baptized; and if the contracting parties were baptized elsewhere, he himself is bound to transmit it to the pastor of baptism. They are bound in solidum; wherefore, if one neglects the notation, the others are obliged to take care of it; if one takes care of it, the others remain free.

48. "X. Pastors who shall have violated the prescriptions made thus far shall be punished by the Ordinaries according to the measure and gravity of the fault. And moreover, if they have assisted at someone's marriage contrary to the prescription of § 2 and 3 of n. V, let them not make the stole fees their own, but send them to the proper Pastor of the contracting parties."

49. "Pastors who": not others. "The prescriptions made thus far," that is, as regards both validity and liceity. "Let them be punished": the penalties, therefore, are to be imposed by sentence of the Ordinary. "Contrary to the prescription of § 2 and 3 of n. V," namely if a Pastor assists at the marriage of those who belong to another parish, without the leave of the proper Pastor or Ordinary of one or other contracting party, and outside a case of necessity. "He shall not make them his own"; and accordingly no sentence is required for undergoing this kind of penalty. "Let him send them to the proper Pastor of the contracting parties": proper by reason of domicile, of the contracting parties, namely of the bride, if they are of different parishes.

50. "XI. § 1. All those baptized in the Catholic Church, and those converted to it from heresy or schism, are bound by the laws laid down above, although either these or those later defected from it, whenever they enter betrothal or marriage among themselves.

§ 2. They are also in force for the same Catholics spoken of above, if they contract betrothal or marriage with non-Catholics, whether baptized or not baptized, even after a dispensation from the impediment of mixed religion or disparity of cult has been obtained, unless for some particular place or region the Holy See has otherwise established.

§ 3. Non-Catholics, whether baptized or not baptized, if they contract among themselves, are nowhere bound to observe the Catholic form of betrothal or marriage."

51. "All those baptized in the Catholic Church, and converts, although they later defected." The law, therefore, is universal for every place, with consequently any other contrary law or custom, whether general or particular, abolished.

52. "All those baptized in the Catholic Church." The Decree is not extended to Catholics of the Eastern rite. Sacred Congregation of the Council, February 1, 1908. Therefore marriages of Catholics among themselves are valid, or their mixed marriages, if namely they contract with a schismatic or heretic, even when the form of the Decree is not observed. Nevertheless a marriage contracted by a Catholic of the Latin rite with a Catholic of the Eastern rite is not valid if the form established by the Decree Ne temere is not observed. Sacred Congregation of the Council, March 28, 1908. Cf. moreover the things which were said above concerning the Ruthenians, n. 30, paragraphs 2 and 3. Whether those also are bound by the aforesaid Decree who, born of non-Catholic parents, were baptized as Catholics and from earliest age grew up heretically, infideliter, or according to the rite of atheists, has not yet been defined, and recourse must be had in individual cases. Holy Office, March 31, 1911.

53. "Later defected": after baptism in the Catholic Church, or after conversion to it. Even in the German Empire, Catholics who have gone over to a heretical or schismatic sect, or converts to the Catholic faith who afterwards defected from it, even in youth or infancy, in order to contract validly with a Catholic person, must employ the form established in the Decree Ne temere, namely in such a way that they must contract before the pastor and at least two witnesses. Sacred Congregation of the Council, February 1, 1908. And the reason is that the Decree Provida, which alone is excepted, regards only marriages of heretics among themselves and with Catholics. Cf. n. 55.

54. "For the same Catholics, if with baptized non-Catholics," and accordingly all marriages of mixed religion, saving the exception indicated, are subject to this law. "Mixed religion." Those things remain unchanged which have been established for such nuptials, to be celebrated without the Catholic rite and outside the church. Cf. what was said above, n. 18, paragraph "By a Decree." "If with non-Catholics." Under the name of non-Catholics are also comprehended schismatics and heretics of the Eastern rites. Sacred Congregation of the Council, March 28, 1908.

55. "Unless for some particular place or region the Holy See has otherwise established." Only the Constitution Provida of Pius X, January 18, 1906, for the German Empire is comprehended. Nor are the other Indults and Declarations regarding the impediment of clandestinity by any means comprehended. Sacred Congregation of the Sacraments, February 1, 1908. But the aforesaid Constitution Provida was extended, as regards mixed marriages, to the Kingdom of Hungary. Sacred Congregation of the Sacraments, February 9, 1909.

56. After the extension of the Constitution Provida to the Kingdom of Hungary, between Germany and Hungary, as regards the validity of clandestine mixed marriages, a reciprocal relation is not had, such that two spouses both born in the Kingdom of Hungary do not validly contract, even clandestinely, in Germany, and, vice versa, two spouses both born in Germany do not validly enter a mixed clandestine marriage in the Kingdom of Hungary. Sacred Congregation of the Sacraments, June 18, 1909. Nor likewise does one born in Germany with one born in the Kingdom of Hungary validly enter a mixed marriage either in Germany or in the Kingdom of Hungary. But, in any case, both spouses must have been born in Germany, or respectively in the Kingdom of Hungary. Sacred Congregation of the Sacraments, June 18, 1909.

57. Heretics and schismatics, all of them, on the other hand, are not bound by the present Decree. They can validly contract betrothal and marriage in any place whatever.

58. "Let the present Decree be held as lawfully published and promulgated by its transmission to the local Ordinaries; and let the things disposed in it begin everywhere to have the force of law from the day of the solemn Pasch of the Resurrection of Our Lord Jesus Christ in the next year, 1908.

Meanwhile let all local Ordinaries take care that this Decree be published among the people as soon as possible, and explained in the individual parochial churches of their dioceses, so that it may be duly known by all.

These presents to have force by special mandate of our Most Holy Lord Pius, Pope X, anything whatsoever to the contrary, even things worthy of particular mention, notwithstanding."

59. "Everywhere to have the force of law." The Decree, therefore, has the force of a universal law in the whole Church. It is considered published and promulgated by its very transmission to the local Ordinaries. It abolishes any contrary law and custom whatsoever, even particular, anything whatsoever worthy of particular mention notwithstanding. Finally, its obligation begins from the day of the solemn Pasch of the Resurrection of the present year 1908, that is from April 19, from the beginning of that day, which is from midnight after the preceding day. Hence Ordinaries are warned to take care that this Decree be published among the people as soon as possible, and moreover be explained in the individual parochial churches of their dioceses; for this is altogether necessary so that the aforesaid Decree may be duly known and observed by all.

Proof of Marriage

"First of all, very diligent care must be taken that the fact of a contracted marriage be shown by lawful proofs; if these proofs, although diligently sought, cannot be had, let an oath be tendered to the parties, by which they confirm their own assertion. When this has been furnished, let the parties be held as joined by lawful marriage, and their offspring as legitimate. Cases, however, are to be excepted in which the law requires full proof, for example if there is question of prejudice to another marriage or of receiving orders.

But a marriage confirmed by oath as above is to be entered not indeed in the common book of marriages, but in a distinct little book destined for this purpose." Sacred Congregation of the Sacraments, March 6, 1911.

Marital and Perfect Intercourse

To n. 958.

Truly marital intercourse is not imperfect intercourse, such as is had by penetration of the virile member within the vessel of the woman with the outpouring of male seed, while the woman is impotent for generation; rather, perfect intercourse is that which is completed by the commingling of seeds, namely of the male seed and of the female. For without this commingling of seeds the proximate principle of generation is not had; since a principle of this kind is not had except by the male seed and the ovule, and by the commingling of both, so that the former can fecundate the latter. For indeed, as marriage from its intrinsic end is for generation, so also marital and perfect intercourse is for generation as for its intrinsic end.

"In the generation of man," says St. Thomas, Quodlibet 5, a. 8, "as also of the other animals, the father's seed is the active principle, while the matter supplied by the mother is as the passive principle, from which the human body is formed." And Quodlibet 8, a. 5 ad 3: "For the conception of a human body two things concur: namely the matter from which the conceived thing is formed, and again the formative power which forms the conceived thing... The conceived matter is prepared by the generative power of the mother, but the formative power is in the father's seed." Moreover,

according to St. Thomas, Supplement, q. 44, a. 1, marriage is the conjunction of man and wife for one generation and education of offspring and for one domestic life. Therefore marital and perfect intercourse cannot be that which is not of itself simply generative, but generative only on the part of the man and not also on the part of the woman, and accordingly unsuitable for generation. "I wish to procreate children, and for that reason I took a husband." C. Accepisti 1, de Frigidis. She therefore who is impotent for procreating children is also impotent for taking a husband. Certainly she "will never be able to be a mother or a wife." C. Fraternitatis 4, same title; as if it were said: she cannot be a mother, therefore neither can she be a wife. Hence the same St. Thomas, Catena Aurea on Matthew, c. 19, v. 15: "God created man as male and female on account of the necessity of generating children... And this is what is said: For this reason a man shall leave father and mother, and shall cling to his wife." And on the Epistle to the Ephesians, c. 5, lect. 10: "And because a man in respect to father and mother is inferior, not superior, therefore toward his wife, of whom he is the superior, and toward his children he is naturally more affected than toward his parents, and also because the wife is joined to him for the act of generation." And Contra Gentiles, book 3, c. 122: "Thus therefore the emission of seed ought to be ordered so that both suitable generation and the education of the begotten can follow. From this it is evident that every emission of seed in such a mode that generation, according to itself, cannot follow is contrary to the good of man; and if this is done deliberately, it must be a sin."

If marital and perfect intercourse is perfect only in the notion of intercourse, marriage will be had also among eunuchs, who can complete intercourse in the notion of intercourse; marriage will be consummated even if the man does not emit seed in that intercourse. The outpouring of seed is altogether extraneous to intercourse in the notion of intercourse, and does not in the least pertain to its completion. It pertains to intercourse generative of itself; and this cannot be of itself simply generative, or suitable for generation, unless it is such at the same time on the part of the man and on the part of the woman. As intercourse of an impotent man is not suitable for generation, so neither is intercourse of an impotent woman suitable for generation. Operation follows being.

Perfect intercourse is the intercourse of a man emitting seed in the due vessel of the woman, and accordingly of one not otherwise impotent for generation. For the due vessel of marital intercourse is not the mere vagina, but is the vessel apt for generation; Salmanticenses, de Matrimonio, tract. 9, c. 4, punct. 1, n. 2. The vagina is not the place in which the male seed ought to come to rest by the institution of nature, as in its natural terminus, but is only the way and channel through which that seed ought to arrive at the uterus and fecundate the ovule. Hence in intercourse there is naturally produced a movement of the muscles and of the ciliated epithelium of the mucous membrane, and at the same time there occurs a movement of descent of the uterus, which contracts spasmodically to draw in the seed; when this is completed, the seed then arrives at the ovule to be fecundated. Hence it is evident that, when the uterus and ovaries have been removed, there is not only a subsequent obstacle to generation, but an antecedent defect of the essential power of generation, and consequently a concomitant impotence for generating; since then intercourse remains substantially incomplete and imperfect, by the very fact that that union of the organs of the man and woman cannot be terminated in union, because of the aforesaid essential defect of the elements essentially required for generation, the male seed and the female ovule.

Nor is it of avail to say that that intercourse is certainly suitable for quieting concupiscence, even if it is not suitable for generation, and that marriage can still be licitly and validly contracted for quieting concupiscence, with the impotence of the woman for generating standing. For by what act will concupiscence be licitly quieted? Certainly not by intercourse of any kind whatsoever, but by marital intercourse. And what is this? That in which the man alone emits seed, while the woman's impotence for generating exists? But this is that which must be proved. Hence a clear begging of the principle is evident. For then it is already supposed that the marriage is valid, notwithstanding that impotence for generating.

Noldin (De Sacramentis, n. 577) calls carnal intercourse that which is "of itself apt for the generation of offspring."

Sanchez (De matrimonio, book VII, disp. 92, n. 28): "The contract of marriage consists essentially in the mutual obligation to perfect intercourse, of its own nature apt for the generation of offspring."

Santi (book IV, title 15, n. 1): "Perfect intercourse is that which... of itself is capable of operating toward generation."

Wernz (book IV, title 13, n. 342): "That intercourse is called perfect which of itself is apt for generating offspring, although by accident it does not in fact produce the generation of offspring, for example in women already pregnant or in men or women who are sterile, for example because of advanced age."

It is called apt of its own nature, or capable of itself, because it is not required that generation actually follow. Wherefore impotence, which is "the incapacity of a man or woman for perfect intercourse or for generating offspring" (Wernz, loc. cit.), is not to be confused with sterility, "because in sterility it is only by accident that generation does not follow, whereas in impotence it is per se or from an intrinsic defect of nature; in the former, generation does not follow because of some obstacle coming from without which impedes it, as from deficiency of heat or its excess; but in impotence for intercourse, generation does not follow from defect of those things which nature itself requires as necessary means to this end" (S. R. Rota, in one Platien., Nullity of Marriage, coram Mori).

And these things indeed are said as regards speculative doctrine. For, practically speaking, marriage will certainly not be impeded, both because practically it is not established concerning the absolute and perfect impotence of the woman, and because the question has not yet been settled.

Consummation of Marriage According to the Common Opinion of Doctors

It must be said, says the Angelic Doctor, that frigidity impedes marriage more and more frequently than heat, because "it removes not only the commingling of seeds, but also the vigor of the members, by which conjunction is made"; 4 Sent., d. 34, q. 1, a. 2 ad 2.

Viva, De Matrimonio, q. 5, a. 10, n. 5, says: "Here they are called impotent who cannot have such intercourse, from which one flesh is made from two through the commingling of the seed of each, from which one flesh can issue."

Sylvius on the Supplement, q. 58, a. 1, question 1, says: "The impotence which invalidates marriage is impotence of carnal intercourse, that is, of that intercourse in which the seeds of man and woman are

commingled... Of the notion of marriage is the handing over of power for carnal intercourse; but this intercourse cannot be made unless the seeds, or the things which are in place of seeds, can be commingled."

Pichler, Summa Iurisprudentiae, book 4, title 1, n. 75, says that marriage is "consummated" when it has been contracted not by consent alone, but also "completed and perfected by carnal intercourse, and that perfect, ... or of itself sufficient for the generation of offspring and making it so that the spouses through the commingling of seeds become one flesh."

Billuart, Summa S. Thomae, new edition, Paris, 1895, vol. 10, p. 161, says that marriage "is consummated when it is completed by marital carnal intercourse and commingling of seeds; because then the spouses become one flesh... I said, and commingling of seeds; because neither by mere penetration of the vessel without emission of seed, nor by the seed of the man alone without the seed of the woman, is marriage consummated in the forum of conscience, although it is presumed consummated in the external forum; because without the commingling of seeds apt for generation they do not become one flesh inchoatively, which inchoation is completed by offspring, in whose one flesh they are completely united."

Zacchias, Quaestiones Medico-Legales, Consil. 72, n. 11, says: "It is certain that spouses become one flesh, which is of the essence of marriage, not by penetration of the vessels, but by the commingling of seeds poured out on the part of each." And in the cited work, book 9, title 3, q. VII, nn. 2-3: "In the consummation of marriage potency for generating is required, because through generation, which follows from the mixture of the seed of each into one, husband and wife become one flesh... For what is that, that husband and wife become one flesh? Is it the simple conjunction of both through the members of generation? By no means: for this conjunction is fruitless unless generation can follow from it, or the separated seeds of each are not mingled for conceiving a fetus... Therefore where from coitus there is no hope of generation because the seeds of the spouses do not concur together, nor are united... husband and wife cannot become one flesh, and thus they cannot consummate marriage."

If theologians certainly were not lacking, indeed if there were many among the ancients, who required only male seed for the marital act, this was because they followed the opinion of Aristotle, who required only male seed for generation, without anything having to be supplied in it by the woman. Wherefore those theologians were never content precisely with the coitus itself in which the man alone had poured out seed, except because they believed that coitus by itself sufficient for generation; this sufficiency they themselves exclude under the other opinion of Galen and Hippocrates, which requires a twofold essential element, one on the part of the man, the other on the part of the woman, and which many also of the ancients, and those most learned, embraced.

And so, for example, De Iustis, who adheres to that Aristotelian opinion, De dispensatione matrimonii, book 2, c. 7, n. 10 ff., speaks in this way: "Only through perfect and consummated intercourse do man and woman become one flesh." Therefore, in order that affinity be contracted, "there is required the outpouring of true male seed in the vessel, which is sufficient for the generation of offspring... I said that the outpouring of male seed is required of necessity, because it is most probable that female seed is not required for generation; whence, although the woman does not emit seed, but only the man, affinity is contracted; nevertheless conversely it is not contracted if the woman alone emits seed and not the man." Therefore, if the contrary is most probable and certain, as it is at present, namely that female seed, or the ovule, is required for generation, neither according to

De Iustis will intercourse be perfect, nor will there be consummation of marriage, nor will there be affinity.

And thus also Sanchez, De Matrimonio, book 2, d. 21, nn. 10, 11, who adhered to the same opinion of Aristotle, raises the question whether that opinion is certain, and responds: "But although this opinion is more common and more probable, nevertheless it is not so certain as some of its defenders think, since it rests on that sole philosophical principle, that female seed is not necessary for generation; and that is not certain, because many, as Hippocrates and many others, hold the contrary with sufficient probability. Since therefore the foundation is not certain, neither is the opinion resting on it... Wherefore I conclude that it is probable that marriage is not consummated unless the woman also emits seed. Proof: because for the consummation of marriage intercourse is required from which generation can follow... as is clearly gathered from the other Doctors, since they prove from this that marriage is consummated without female seed, because it is not necessary for generation; but it is probable that, unless the woman emits seed, generation cannot follow from that intercourse, as I have proved; therefore it likewise has the same probability that marriage is not consummated when only the man emits seed."

From this it is clearly had that, according to the opinion of all the ancient doctors, marriage is consummated by intercourse of itself simply apt for generation, namely which has all the elements so that generation can follow. And therefore if many of them thought marriage to be consummated when only the man poured out seed in the due vessel of the woman, this was because they held that the seed of the woman was not necessary for generation. But if it is held, as now seems certain, that the seed or ovule of the woman is necessary for generation, then that intercourse in which only the man pours out seed is neither of itself sufficient for generation, nor consequently is marriage consummated by it, nor does affinity arise from it; but there is altogether need of the commingling of the seeds of both, man and woman.

Intrinsic Nature of Affinity According to the Common Opinion of Doctors

To n. 1002.

As consanguinity is a natural bond from communion of blood, so affinity is a natural bond from the commingling of seeds.

St. Thomas, 4 Sent., d. 41, q. 1, a. 1, qc. 4 ad 2: "Man and woman become one flesh through the mingling of seeds. Hence, however much someone invade the enclosures of modesty, unless commingling of seeds follows, affinity is not contracted from this." "It must be said," says the same St. Thomas, Supplement, q. 55, a. 3 ad 3, "that intercourse against nature does not have commingling of seeds, which can be a cause of generation, and therefore from such intercourse affinity is not caused."

St. Bonaventure, book 4 Sent., d. 41, q. 1, response: "Affinity is generally contracted through every coitus in which there is commingling of seeds. And the reason for this is that it is not contracted except by reason of union; but then they are said to become one flesh when, through the commingling of seeds, the consummation of that act is made."

Pyrrhus Corradus: "Through the conjugal bond, with the power for intercourse, husband and wife are united in the notion of one principle for generation, and thence affinity arises between them... It is called affinity only when man and woman are made one and the same flesh; whence the blood of one is said to touch the blood of the other." The blood of one, the blood of the other: certainly not the blood of the man, but the seed, which by a more modest word was called blood by the ancients; and accordingly neither the blood of the woman, but the seed, or ovule. Dispens. Apost., book 8, c. 7, nn. 18, 19, 20.

And by this same expression of blood and commingling of blood affinity is explained in C. Lex Divinae 18, can. 27, q. 2. Commingling of blood, that is, of the seed of each, man and woman, since commingling is not made when only one emits seed.

But still more clearly the same Pyrrhus Corradus, Praxis Dispensationum Apostolicarum, book 7, c. 1, n. 18: "for causing affinity the concurrence of the seed of each is required."

Perez, De Matrimonio, disp. 31, s. 1, nn. 1, 2, says: "Affinity arises from this alone, that the blood of the man, that is, seed, which by a more modest name is called blood because it is proximately made from blood, and the menstrual blood of the woman, or her seed, are commingled within the womb of the woman herself... Without this commingling, those who are otherwise joined do not become one flesh... to become one flesh or one blood is to become a principle of itself sufficient for one flesh and offspring."

The Salmanticenses, Cursus Theologiae Moralis, De Matrimonio, tract. 9, c. 4, punct. 1, nn. 5-6, say: "By that intercourse, and not another, marriage is consummated, by which the spouses become one flesh and affinity results with the consanguineous relatives; but even if the man penetrates the enclosure of modesty, unless the commingling of the seed of each follows, neither does affinity follow, nor do the spouses become one flesh. Therefore unless the seed-emission of the woman is joined with the seed-emission of the man within the vessel, marriage is not consummated."

St. Alphonsus in his Moral Work takes up almost the whole moral doctrine of the ancients. Now in book 6, n. 1075, he treats the question whether, for affinity to be contracted, it is required that intercourse be consummated on the part of both, man and woman, and he responds: "It is certain that the seed-emission of the man is required; whether, however, the seed-emission of the woman is also required, Pontius, Palaus, etc., deny... The reason is because, according to the opinion of very many, female seed is not necessary for generation. But the second opinion, also probable, affirms it, and this is held by St. Bonaventure, Innocent, etc.... The reason is both because, according to the opinion of many others, the seed of the woman also is required for generation, and because (and this reason presses more strongly) affinity is not contracted unless those having intercourse become one flesh; but they do not become one flesh unless the seeds are commingled. And this opinion is greatly strengthened from the authority of St. Thomas," etc. Hence St. Alphonsus, ibid., n. 918, says that this latter opinion is to be held in practice.

Marriage of Old Persons

To nn. 994, 1053.

The Angelic Doctor, Quaestiones Disputatae de Malo, q. 15, a. 2 ad 14: "That act is against nature in the genus of lust from which generation cannot follow according to the common species of the act;

but not that from which it cannot follow because of some particular accident, such as old age or infirmity."

Paulus Zacchias, book 9, title 3, VII, nn. 2-3: "Whenever a decrepit man contracts marriage, he is presumed capable of generating; for whenever a decrepit man is capable of intercourse, he can be presumed capable of generating, since from the authority of Aristotle and from daily experience we have that a man at any age whatever can generate, provided he can have intercourse and emit seed."

Since old persons retain the power of generating, and are certainly presumed to retain it unless the contrary is positively proved, for the power of generating is most natural, therefore they contract marriage licitly and validly, without any difficulty. And as regards men, daily experience establishes, and most learned physiologists assert, that at whatever age they are, they can generate, provided they are able to have intercourse and emit seed, as Zacchias himself affirmed. For the elaboration and production of male seed, once begun at the time of puberty, endures throughout the whole of life. And as regards women, no age can be defined at which the generative power ceases in them. For, as again is established from experience and from physiology, no time can be stated in old women at which menstruation can be said definitively to have ceased, from which an absolute incapacity for generating could be deduced in them. The menses, even once ceased, are restored again by several causes; and even without menses ovulation persists, and pregnancy actually occurs. Nevertheless, the power of generating, joined with effect, regularly fails in women from the age of 45-50, and is regularly diminished in men from the age of 50. Yet there are cases in which even sexagenarian and septuagenarian women generate; and septuagenarian men more easily generate with a younger woman. But detriment to offspring is not absent when there is a notable inequality in the age of the spouses. Let the learned Opuscula and Medicina Pastoralis of Joseph Antonelli be consulted, a man most versed in this matter and beyond all envy. Let also the Opuscula of the learned and erudite Francis Topai, a very distinguished surgeon in the City, be consulted.

Intercourse with a Pregnant Woman

To n. 1074.

This intercourse could seem illicit, because, since the uterus is closed during the time of pregnancy, commingling of the male seed with the ovule of the woman cannot be had. Consequently marriage cannot be consummated by that intercourse, since generation is altogether impossible.

But intercourse of this kind is in fact licit, because pregnancy does not render the woman impotent for generation. It is only a merely extrinsic particular accident, which at present can only impede the effect of intercourse. But intercourse remains in itself altogether suitable for generation both on the part of the man and on the part of the woman, and is truly consummative of marriage. And it is so true that true commingling of seeds is not of itself lacking in that intercourse, nor consequently is aptitude for generation lacking in it, even for actually having offspring, that superfetation is not impossible. Moreover, true commingling of seeds is of itself present in that intercourse, insofar as commingling of seeds is inchoatively present in that intercourse; for in it there is the true concurrence of the seed of each, although this does not reach its terminus and effect because of the accidental impediment of pregnancy. By marital intercourse spouses become one flesh, not actually in the offspring or in the effective generation itself of offspring, but potentially in relation to offspring,

in one proximate principle of offspring, which is that inchoative commingling of seeds and concurrence of the seed of each; and this seed, in various ways according to various circumstances, can be impeded in its active and passive fecundation. Appositely Perez, De Matrimonio, disp. 31, sect. 1, n. 2: "To become one flesh is to become a principle of itself sufficient for one flesh and offspring." And Cajetan, Ientac. 9, q. 1, says that spouses are two in one flesh, "that is, in one perfect and just principle of carnal generation."

Decisions of the Sacred Congregations Concerning Onanism

To nn. 1066, 1067.

"It is asked of the Apostolic See with what theological note the following three propositions are worthy, namely:

1. For honest reasons spouses may use marriage in the way in which Onan used it.
2. It is probable that this use of marriage is not prohibited by natural law.
3. It is never expedient to question spouses of either sex about this matter, even if it is prudently feared that the spouses, whether the husband or the wife, abuse marriage.

Response to the first: that the proposition is scandalous, erroneous, and contrary to the natural law of marriage. To the second: that the proposition is scandalous, erroneous, and otherwise implicitly condemned by Innocent XI in proposition 49. To the third: that the proposition, as it stands, is false, too lax, and dangerous in practice." Holy Office, May 21, 1851.

It is asked: "1. Whether spouses who use marriage in such a way as to prevent conception perform an act morally evil in itself?

2. If the act is to be held as morally evil, whether spouses who do not accuse themselves of it can be considered as constituted in that good faith which excuses them from grave fault?
3. Whether the manner of acting of confessors is to be approved who, lest they offend married persons, do not question them concerning the manner in which they use the rights of marriage?

Response to the first: Since the whole disorder of the act proceeds from the malice of the man, who, instead of consummating, withdraws himself and pours out outside the vessel, therefore if the woman, after due admonitions, makes no progress, while the man insists by threatening blows or death, she herself, as approved theologians teach, will be able without sin simply to permit it, and this from a grave cause which excuses her; since charity, by which she is bound to impede it, does not oblige with so great an inconvenience."

But to the second and third it is responded: "That the aforesaid confessor recall to mind that saying: holy things are to be treated holily; and also that he weigh the words of St. Alphonsus de Liguori, a learned man and most experienced in these matters, who in the Praxis Confessariorum, § 4, n. 41, says: But concerning the sins of spouses with respect to the conjugal debt, ordinarily speaking, the confessor is not bound, nor is it becoming, to question, except wives, whether they have rendered it,

in the most modest way he can... Let him be silent about the rest, unless he is asked. Nor let him omit consulting other approved authors." Sacred Penitentiary, June 8, 1842.

"Bertha has a husband whom by constant experience she knows to be an onanist. In vain she has tried all means to draw him back from so wicked a crime. Indeed very 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, etc.

Response: Since in the proposed case the woman on her part does nothing against nature, and gives herself to a lawful thing, while the whole disorder of the act proceeds from the malice of the man, who, instead of consummating, withdraws himself and pours out outside the vessel; and therefore, if the woman after due admonitions makes no progress, while the man insists, threatening blows or death or other most grave evils, she herself will be able (as approved theologians teach) to behave permissively without sin; since in these circumstances she simply permits the sin of her husband, and this from a grave cause which excuses her; because charity, by which she is bound to impede it, does not oblige with so great an inconvenience." Sacred Penitentiary, February 1, 1823.

By another Decision of November 13, 1901, the same Sacred Penitentiary declared that pure and simple onanism is still had, although the husband, in the act of interrupting intercourse and emitting seed outside the vessel, intends the quieting of concupiscence and not pollution; and that consequently he cannot be absolved if he wishes to persevere in that act.

Decree of the Holy Office, Wednesday, July 3, 1907

by which certain propositions are rejected and proscribed.

"With truly lamentable result, our age, impatient of restraint in investigating the highest reasons of things, not rarely follows new things in such a way that, having dismissed as it were the inheritance of the human race, it falls into most grave errors. These errors will be far more pernicious if there is question of sacred disciplines, if of interpreting Sacred Scripture, if of the principal mysteries of faith. But it must be deeply lamented that there are found also among Catholics not a few writers who, having passed beyond the boundaries established by the Fathers and by Holy Church itself, under the appearance of a higher understanding and in the name of historical consideration, seek that progress of dogmas which in reality is their corruption.

But lest errors of this kind, which daily are spread among the faithful, fix roots in their minds and corrupt the sincerity of the faith, it pleased our Most Holy Lord Pius, Pope X by divine providence, that through this office of the Sacred Roman and Universal Inquisition those which were chief among them should be noted and rejected.

Wherefore, after a most diligent examination had been instituted, and after the vote of the Reverend Consultors had been received, the Eminent and Most Reverend Lord Cardinals, General Inquisitors in matters of faith and morals, judged that the propositions which follow are to be rejected and proscribed, as by this general Decree they are rejected and proscribed:

1. The ecclesiastical law which prescribes that books concerning the Divine Scriptures be subjected to prior censorship does not extend to cultivators of criticism or of scientific exegesis of the books of the Old and New Testament.

2. The Church's interpretation of the Sacred Books is indeed not to be despised, but nevertheless it is subject to the more accurate judgment and correction of exegetes.
3. From ecclesiastical judgments and censures brought against free and more cultivated exegesis, it can be gathered that the faith proposed by the Church contradicts history, and that Catholic dogmas cannot in reality be reconciled with the truer origins of the Christian religion.
4. The Magisterium of the Church, not even through dogmatic definitions, can determine the genuine sense of the Sacred Scriptures.
5. Since in the deposit of faith only revealed truths are contained, under no respect does it pertain to the Church to pass judgment on the assertions of human disciplines.
6. In defining truths, the learning Church and the teaching Church collaborate in such a way that nothing remains for the teaching Church except to sanction the common opinions of the learning Church.
7. When the Church proscribes errors, she cannot require from the faithful any internal assent by which they embrace the judgments issued by her.
8. They are to be considered immune from all fault who make nothing of the condemnations issued by the Sacred Congregation of the Index or by the other Sacred Roman Congregations.
9. They display excessive simplicity or ignorance who believe that God is truly the author of Sacred Scripture.
10. The inspiration of the books of the Old Testament consists in this, that the Israelite writers handed down religious doctrines under a certain peculiar aspect, little known or unknown to the Gentiles.
11. Divine inspiration is not extended to the whole of Sacred Scripture in such a way that it safeguards all and each of its parts from every error.
12. If an exegete wishes to engage usefully in biblical studies, he must first set aside any preconceived opinion about the supernatural origin of Sacred Scripture, and interpret it no otherwise than other merely human documents.
13. The evangelic parables were artfully arranged by the Evangelists themselves and by Christians of the second and third generation, and thus they gave the reason for the slight fruit of Christ's preaching among the Jews.
14. In many narratives the Evangelists reported not so much the things which are true, as those which, although false, they judged more profitable for readers.
15. The Gospels, up to the definite and constituted canon, were augmented by continual additions and corrections; therefore there remained in them only a slender and uncertain trace of the doctrine of Christ.
16. The narratives of John are not properly history, but a mystical contemplation of the Gospel; the discourses contained in his Gospel are theological meditations concerning the mystery of salvation, destitute of historical truth.

17. The Fourth Gospel exaggerated miracles not only so that they might appear more extraordinary, but also so that they might become more apt for signifying the work and glory of the Incarnate Word.
18. John indeed claims for himself the character of a witness concerning Christ; but in reality he is only an eminent witness of the Christian life, or of the life of Christ in the Church, at the end of the first century.
19. Heterodox exegetes have expressed the true sense of the Scriptures more faithfully than Catholic exegetes.
20. Revelation could have been nothing other than the consciousness acquired by man of his relation to God.
21. Revelation, constituting the object of Catholic faith, was not completed with the Apostles.
22. The dogmas which the Church declares as revealed are not truths fallen down from heaven, but are a certain interpretation of religious facts which the human mind has acquired for itself by laborious effort.
23. There can exist, and in reality there does exist, opposition between the facts which are narrated in Sacred Scripture and the dogmas of the Church founded upon them; so that the critic can reject as false facts which the Church believes as most certain.
24. An exegete is not to be reproved who sets up premises from which it follows that dogmas are historically false or doubtful, provided he does not directly deny the dogmas themselves.
25. The assent of faith rests ultimately on a heap of probabilities.
26. Dogmas of faith are to be retained only according to a practical sense, that is, as a preceptive norm of acting, but not as a norm of believing.
27. The divinity of Jesus Christ is not proved from the Gospels; but it is a dogma which Christian consciousness deduced from the notion of Messiah.
28. When Jesus exercised his ministry, he did not speak for the purpose of teaching that he was the Messiah, nor did his miracles tend to demonstrate this.
29. It is permitted to grant that the Christ whom history exhibits is far inferior to the Christ who is the object of faith.
30. In all the Gospel texts the name Son of God is equivalent only to the name Messiah, and by no means signifies that Christ is the true and natural Son of God.
31. The doctrine about Christ which Paul, John, and the Councils of Nicaea, Ephesus, and Chalcedon hand down is not that which Jesus taught, but that which Christian consciousness conceived about Jesus.
32. The natural sense of the Gospel texts cannot be reconciled with what our theologians teach concerning the consciousness and infallible knowledge of Jesus Christ.
33. It is evident to anyone who is not led by preconceived opinions that Jesus either professed an error concerning the near messianic advent, or that the greater part of his doctrine contained in

the Synoptic Gospels lacks authenticity.

34. The critic cannot assert that Christ had knowledge circumscribed by no limit except by making a hypothesis which historically can hardly be conceived and which is repugnant to the moral sense, namely that Christ as man had the knowledge of God and nevertheless was unwilling to communicate knowledge of so many things with the disciples and posterity.

35. Christ did not always have consciousness of his messianic dignity.

36. The Resurrection of the Savior is not properly a fact of the historical order, but a fact of the merely supernatural order, neither demonstrated nor demonstrable, which Christian consciousness gradually derived from others.

37. Faith in the Resurrection of Christ from the beginning was not so much about the fact itself of the Resurrection, as about the immortal life of Christ with God.

38. The doctrine concerning the expiatory death of Christ is not evangelical but only Pauline.

39. The opinions concerning the origin of the sacraments with which the Tridentine Fathers were imbued, and which without doubt had influence on their dogmatic canons, are far distant from those which now rightly prevail among historical investigators of Christian matters.

40. The sacraments had their origin from this, that the Apostles and their successors, with circumstances and events urging and moving them, interpreted some idea and intention of Christ.

41. The sacraments tend only to this, that they recall to the mind of man the ever-beneficent presence of the Creator.

42. The Christian community introduced the necessity of baptism, adopting it as a necessary rite and attaching to it the obligations of Christian profession.

43. The use of conferring baptism on infants was a disciplinary evolution, which was one of the causes for the sacrament being resolved into two, namely into baptism and penance.

44. Nothing proves that the rite of the sacrament of confirmation was used by the Apostles; but the formal distinction of two sacraments, namely baptism and confirmation, does not belong to the history of primitive Christianity.

45. Not all things which Paul narrates concerning the institution of the Eucharist (1 Cor. 11:23-25) are to be taken historically.

46. In the primitive Church the concept of the Christian sinner reconciled by the authority of the Church was not present, but the Church became accustomed to this kind of concept only very slowly. Indeed, even after penance was recognized as an institution of the Church, it was not called by the name of sacrament, because it was held as a shameful sacrament.

47. The words of the Lord: Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them, and whose you shall retain, they are retained (John 20:22-23), by no means refer to the sacrament of penance, whatever it pleased the Tridentine Fathers to assert.

48. James in his Epistle (vv. 14 and 15) does not intend to promulgate any sacrament of Christ, but to commend some pious custom; and if perhaps in this custom he sees some means of grace, he does not take it with that rigor with which theologians who established the notion and number of the sacraments took it.

49. When the Christian supper gradually assumed the character of a liturgical action, those who had been accustomed to preside over the Supper acquired a priestly character.

50. The elders who discharged the duty of overseeing in the assemblies of Christians were instituted by the Apostles as priests or bishops to provide for the necessary ordering of growing communities, not properly to perpetuate the Apostolic mission and power.

51. Marriage could not become a sacrament of the new law except later in the Church; since, in order that marriage be held as a sacrament, it was necessary that a full doctrine concerning grace and a theological explanation concerning the sacraments precede.

52. It was alien to the mind of Christ to constitute the Church as a society upon earth destined to endure through a long series of centuries; indeed, in the mind of Christ the kingdom of heaven together with the end of the world was about to come very soon.

53. The organic constitution of the Church is not immutable; but Christian society, just as human society, is subject to perpetual evolution.

54. Dogmas, sacraments, hierarchy, both as regards notion and as regards reality, are only interpretations and evolutions of Christian understanding, which by external increments increased and perfected the small germ hidden in the Gospel.

55. Simon Peter never even suspected that primacy in the Church had been entrusted to him by Christ.

56. The Roman Church became the head of all the Churches not by the ordination of divine providence, but from merely political conditions.

57. The Church shows herself hostile to the progress of the natural and theological sciences.

58. Truth is not immutable any more than man himself is, since it evolves with him, in him, and through him.

59. Christ did not teach a determinate body of doctrine applicable to all times and all men, but rather began a certain religious movement adapted or to be adapted to diverse times and places.

60. Christian doctrine in its beginnings was Judaic, but by successive evolutions became first Pauline, then Johannine, finally Hellenic and universal.

61. It can be said without paradox that no chapter of Scripture, from the first of Genesis to the last of the Apocalypse, contains doctrine entirely identical with that which the Church hands down on the same matter, and therefore that no chapter of Scripture has the same sense for the critic as for the theologian.

62. The principal articles of the Apostles' Creed did not have for Christians of the first times the same signification which they have for Christians of our time.
63. The Church shows herself unequal to effectively safeguarding evangelical ethics, because she obstinately adheres to immutable doctrines which cannot be reconciled with modern progress.
64. The progress of the sciences demands that the concepts of Christian doctrine concerning God, concerning Creation, concerning Revelation, concerning the Person of the Incarnate Word, and concerning Redemption be reformed.
65. Modern Catholicism cannot be reconciled with true science unless it is transformed into a certain non-dogmatic Christianity, that is, into broad and liberal Protestantism.

But on the following Thursday, the fourth day of the same month and year, after an accurate report concerning all these things had been made to our Most Holy Lord Pius, Pope X, His Holiness approved and confirmed the Decree of the Eminent Fathers, and ordered that all and each of the propositions reviewed above be held by all as rejected and proscribed."

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